

RURAL DEVELOPMENT COMMITTEE

Tuesday 4 December 2001
(*Afternoon*)

Session 1

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CONTENTS

Tuesday 4 December 2001

Col.

INTERESTS	2521
FUR FARMING (PROHIBITION) (SCOTLAND) BILL: STAGE 1	2523
PROTECTION OF WILD MAMMALS (SCOTLAND) BILL: STAGE 2	2528

RURAL DEVELOPMENT COMMITTEE

28th 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)

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

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

*Mr Alasdair Morrison (Western Isles) (Lab)

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

*Irene Oldfather (Cunninghame South) (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:

David Mundell (South of Scotland) (Con)

Mr Murray Tosh (South of Scotland) (Con)

Allan Wilson (Deputy Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Richard Davies

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 1

Scottish Parliament

Rural Development Committee

Tuesday 4 December 2001

(Afternoon)

[THE CONVENER *opened the meeting at 14:00*]

The Convener (Alex Fergusson): Welcome to this meeting of the Rural Development Committee. I ask everyone present, including members of the public, to ensure that their mobile phones are switched off.

I welcome David Mundell to the meeting. I would also like to pay short but heartfelt tribute to Cathy Jamieson and Elaine Murray for the work that they have done over a long period. Elaine Murray was a member of the committee from its inception and Cathy Jamieson's considerable contribution to the committee's work was always welcome. They have gone to a higher place in the Scottish Executive, but their presence on the committee will be missed, as they were both good and productive members.

Interests

The Convener: I whole-heartedly welcome Alasdair Morrison as a new member of the committee. Irene Oldfather has sent apologies and has indicated that she may be a little late. I am sure that Mr Morrison will contribute a great deal to the work of the committee over the coming weeks, months and, possibly, years—should he be so unfortunate as to remain on the committee that long. I invite Mr Morrison to declare any interests that are relevant to the work of the committee.

Mr Alasdair Morrison (Western Isles) (Lab): I cannot think of anything, apart from my membership for 12 or 13 years of the once-radical Scottish Crofters Union. I assume that my membership of that union has now been transferred to the Scottish Crofting Foundation. I think that that is my only relevant declaration—certainly, when I left the house this morning, I was not in possession of large tracts of land in the Western Isles.

The Convener: I welcome Irene Oldfather to the committee and invite her to declare any interests that are relevant to the work of the committee.

Irene Oldfather (Cunninghame South) (Lab): I am a member of the National Union of Journalists and have been paid to write a couple of articles on the common agricultural policy.

The Convener: I trust that you will not be tempted to write too many articles on the internal workings of the Rural Development Committee. However, I welcome you warmly to our number.

We have one other housekeeping matter to deal with. Along with Fergus Ewing, Mike Rumbles and me, Elaine Murray acted as a reporter on the committee's work programme. I seek from the Labour group a nomination for a replacement for Elaine Murray in that position.

Mr Morrison: I nominate Rhoda Grant.

The Convener: Does Rhoda Grant accept the nomination?

Rhoda Grant (Highlands and Islands) (Lab): Yes.

The Convener: As no members have indicated that they wish to speak against the nomination, I welcome Rhoda Grant as a reporter on the committee's work programme. Our first meeting is next Thursday at 1.45 pm, but we will deal with that at another time.

We need to consider the Fur Farming (Prohibition) (Scotland) Bill today. We have a long agenda before us and, to ensure that we reach the bill, I would like us to take it as the next agenda item. Is that agreed?

Members *indicated agreement.*

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

The Convener: Item 3 on our agenda is stage 1 consideration of the Fur Farming (Prohibition) (Scotland) Bill. Members will have received a paper from the clerk and a private paper with an analysis of the evidence that we received last week. Do members have any comment to make on those papers before we draw up a draft stage 1 report for consideration next week?

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): As I said at last week's meeting, we have to be careful. If we are to ban something, it is not good enough simply to say that the practice promotes no public benefit; we must be able to find out whether the practice is causing harm in some form or another. The minister said to us last week that the Executive is

"concerned about the considerable damage that occurs when mink escape from farms".—[*Official Report, Rural Development Committee*, 27 November 2001; c 2476.]

We also heard, in written evidence from the Scottish Landowners Federation, that

"banning the keeping of mink and other species for fur in England and Wales without a carefully controlled 'exit strategy' could have serious implications for other species, if feral populations become established."

I am content to proceed with the bill on the ground that fur farming causes damage to indigenous species and our local environment, but I am not at all convinced by the Scottish Executive's moral justification for the ban.

Mr Jamie McGrigor (Highlands and Islands) (Con): I would like us to delay our report until the European Union's scientific report on fur farming has been published and assessed. I would also like to see more evidence from Denmark, where there are 2,000 fur farms, before we ban something for no specific reason.

The Convener: The problem with delaying our report is that we have been presented with a timetable by the Scottish Executive. That is why we have to consider the bill today.

Mr McGrigor: I am sorry, but I still stick by my comment that our report should be delayed. I think that Ross Finnie said last week that he was not prepared to ban fur farming just because of some argument about mink coats. Fur farming has continued in other, forward-thinking, European countries without any problem. Simply to ban it before all the evidence can be heard would be wrong.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): We all take the view that we would wish any activity that is cruel to animals to cease. We have spent a great deal of time

discussing that principle in relation to Lord Watson's Protection of Wild Mammals (Scotland) Bill. Last week, in response to a question that I asked, the minister said that fur farming was not necessarily cruel. He said that the moral justification for the bill was that it was morally wrong to farm animals purely for their fur. There is a question about the definition of "solely or primarily" in section 1 of the bill, with which we need to get to grips. How will the distinction be made, for example?

I would like to see more evidence about what fur farming involves. The information that we have had so far has been extremely limited. My position is that, if fur farming is cruel, it should not continue. However, if, as the minister last week admitted might be the case, fur farming is not cruel, we should hear much more evidence about it.

I understand that an important and detailed report is being prepared at EU level, against the backdrop of three or four regulations that regulate the industry in the EU countries. It would seem odd if we were to fire ahead, regardless of the fact that that substantive body of work is being done and will be available soon. At the very least, it would be sensible for the committee to ask the Executive the reasons for disregarding that work and pressing ahead now. Perhaps it is right to press ahead, but it would seem sensible, given that the EU report will be published at the end of this year, to take that report into account before we prepare our own report at stage 1.

Mr McGrigor: I agree with everything that has been said about animal welfare. I would never support mink farming if the animal welfare was not correct. Would not it be a good idea for the committee to conduct a fact-finding tour to fur farms in Denmark? How can we make a decision without finding out what goes on in fur farming?

Mr Morrison: With due respect, we do not need a fact-finding mission to find out exactly what fur farming means.

Mr McGrigor: We would establish whether the animal welfare was good or bad and we would understand why a country that is extremely politically correct and forward-thinking has 2,000 fur farms when Scotland has none.

Rhoda Grant: Delaying would serve no purpose. We have no fur farms in Scotland—that came across loud and clear in last week's evidence; in fact, we were searching so far for evidence that we invited someone whose organisation represents only one company in Scotland. To delay is just to put off the inevitable. We have no fur farms and we would not be affecting anybody's livelihood—we should proceed quickly with the bill.

Stewart Stevenson (Banff and Buchan)

(SNP): We have a bill in front of us that is unsatisfactory in certain respects, but which, in essence, seeks to preserve the status quo. I am not often accused of advocating the status quo, but on this occasion I believe that there would have to be proof that there was sufficient benefit to the Scottish economy for us to say, "We want to encourage fur farms." We would also need to be satisfied about our welfare concerns.

If, however, we do not pass the bill, we will have the difficulty that, by default, there will be migration of banned fur farming activities from south of the border into Scotland, which would change the status quo without our having taken a definite decision that that is what we want to do. On this occasion, I find myself more inclined to accept that the bill should go through—although it is a little unsatisfactory—to preserve the status quo. If the EU finds that we should do more work on the subject, so be it—let us come back to the subject later.

Mr McGrigor: On Rhoda Grant's point, I know well enough that there are no fur farms in Scotland. However, there used to be about 350 such farms, which closed for economic reasons. The economic balance could easily change to make fur farming profitable here again. I do not see the point of banning something that does not exist here anyway. Fur farming could be animal-welfare friendly and be of benefit to the Scottish economy. We are meant to be actively seeking new industries in Scotland.

Elaine Smith (Coatbridge and Chryston)

(Lab): Point 4 of the paper says that we could consider a draft stage 1 report at our meeting on 18 December. If we were to agree to do that, would that be one way of moving forward today?

The Convener: I had intended to make that point once members had finished the discussion.

14:15

Fergus Ewing: We all want to move forward as quickly as possible. Pleasant though it appears, when we are marooned in this committee and dealing with our work load, I do not entirely agree with the invitation to make an extended trip to Denmark. As Alasdair Morrison said, that may not be entirely necessary. I agree; a trip to Denmark is unnecessary. If we were to stravaig over to Copenhagen for a day and sample the joys there, I wonder how that would be interpreted.

Some evidence about what fur farming involves would help. We have had little evidence, other than that from the body that alleges that fur farming is inherently cruel. If that body is right, I want fur farming to be banned, but I would like further evidence.

We could pursue Elaine Smith's idea by writing to Mr Robert Morgan, who gave evidence last week and is in touch with many fur farmers. We could invite those people to submit evidence about what fur farming entails and to answer some of the serious allegations that have been made, and have those responses by 18 December. If we had that further evidence, I hope that we could proceed with our report. Taking no evidence from the people whose work we might ban would be a bit foolhardy and would set a dangerous precedent.

The Convener: I see no problem with that; it would be quite helpful. Last week, it was argued to us that fur farming cannot be inherently cruel because an animal that is treated cruelly does not perform. I have great difficulty with the Executive's moral justification for the bill, but I can accept other reasons for it.

I suggest that we write to Mr Morgan, from whom we took evidence last week, and invite him to submit written evidence. We can produce that with a draft stage 1 report on 18 December. If the committee has further misgivings, it can include them in the draft report.

Elaine Smith: Is that the only further evidence that we want? Last week, we also took evidence from Respect for Animals. Perhaps we should ask Mark Glover whether he wishes to add anything.

I am slightly concerned about Mr Morgan of the British Fur Trade Association adding to his evidence. Rhoda Grant mentioned that his organisation has only one member in Scotland. I, too, asked him about that and I do not think that he said that his organisation had more than one member in Scotland. Asking for more evidence is fair enough, but we cannot ask only one person. We must ask for other evidence.

Fergus Ewing talked about cruelty. I wonder whether the Scottish Society for the Prevention of Cruelty to Animals wishes to have an input.

The Convener: I have no difficulty with that. Are members content that we ask the witnesses from whom we heard last week, plus the SSPCA, whether they have anything to add? The clerk has just told me that the SSPCA was asked previously for written evidence and made no comment, but there is nothing to stop us from asking it again.

Fergus Ewing: In case the clerks do not know, I point out that Mr Morgan was accompanied last week by a gentleman who used to farm fur in England. He seemed a gentleman who might be willing to give evidence and whose name and details I am sure that Mr Morgan has. I think that his name may have been mentioned during last week's meeting.

The Convener: That is correct. His name was mentioned, but it would be up to Mr Morgan to include that gentleman's evidence along with his own.

Is the committee content that we ask for that written evidence, to be received before our meeting on 18 December, and that we finalise our draft report at that meeting? The stage 1 debate must take place before the end of January, so our time is limited. We will try to voice any concerns that we continue to have in our final report. Does the committee agree to consider the draft stage 1 report on the bill in private on 18 December?

Members indicated agreement.

Protection of Wild Mammals (Scotland) Bill: Stage 2

The Convener: We proceed to what was agenda item 2 and continue our stage 2 debate on the Protection of Wild Mammals (Scotland) Bill. All members should have with them the marshalled list of amendments and the groupings. If they do not have them, I trust that we have extra copies.

Section 4—Arrest, search and seizure

The Convener: Amendment 25 is grouped with amendments 95, 96, 99 and 100. I point out that amendment 25 pre-empts amendment 95: if amendment 25 is agreed to, amendment 95 cannot be called.

Fergus Ewing: Amendment 25, which is in my name, and amendment 95, which is in David Mundell's name, seek to do the same thing, albeit in slightly different ways.

My motivation in lodging amendment 25 was to take up a recommendation that was agreed—unanimously, I believe—by the Justice and Home Affairs Committee in paragraph 25 of its stage 1 report on the bill. Amendment 25 would amend section 4(1), which says:

“A constable who suspects with reasonable cause that a person has committed, is committing or is about to commit an offence under this Act may without warrant—

(a) arrest that person”—

or do a number of other things.

I object to the inclusion of the phrase “about to commit”. The evidence that the Justice and Home Affairs Committee heard resulted in that committee concluding as follows:

“The Committee accepts the consensus among witnesses both for and against the Bill that extending the police powers to situations where someone is ‘about to commit’ an offence is unnecessary and inappropriate. We therefore welcome Mike Watson's reported intention to lodge an amendment to address the point.”

Amendment 25 would delete “about to commit”.

Paragraph 22 of the Justice and Home Affairs Committee's report records that, in evidence, the Law Society for Scotland described the inclusion of the phrase “about to commit an offence” as

“a radical departure from the standard provisions of Scots criminal law, which entitle a constable to act only where there are reasonable grounds for suspecting that the commission of a crime has taken place or is in the course of taking place”.

I believe that the police regard as undesirable the way in which section 4(1) would extend police powers.

Paragraph 22 goes on to say:

"The Society recommended the deletion of the relevant words, suggesting that the Bill could simply rely on the existing law ... which makes an attempt to commit a crime itself an offence".

Section 294 of the Criminal Procedure (Scotland) Act 1995 states that an attempt to commit an offence is an offence. Deleting the phrase "about to commit" would not result in an inability to prosecute someone who was plainly attempting to commit an offence. That criticism of amendment 25 has been made by one or two of the organisations that are represented here today, but it is untrue.

My approach differs from that of David Mundell, in that his approach seems to assume that existing law does not incorporate the provision that an attempt to commit an offence is in itself an offence. I bow to the wisdom of the Law Society, although the extent of David Mundell's wisdom surprises us from time to time. If David Mundell can persuade me that I am wrong and that he is right, I will vote for amendment 95.

To be serious, I believe that David Mundell and I are attempting to achieve the same end, which is to avoid the imposition of a draconian power and an infringement of civil liberty in respect of only one group of people in society. That would be wholly wrong. The Justice and Home Affairs Committee was, I understand, unanimous in its view that that would be wholly wrong and that the provision should not find its way into the bill.

I move amendment 25.

The Convener: I call David Mundell to speak to amendments 95, 96 and 100. Am I right to assume that you will also speak to amendment 99, which is in the name of Murray Tosh?

David Mundell (South of Scotland) (Con): Yes. As one of the few regular protagonists in our discussions on the bill who has not achieved promotion, I will speak on behalf of Mr Tosh until he arrives—he hopes to come to the meeting at some point.

Before I speak to the amendments, may I clarify what is happening about the promoter of the bill? Mike Watson is not with us, and our previous practice was that when amendments were moved, the promoter expressed a view and contributed to the debate.

The Convener: I am told that there is no procedure that requires the member in charge—or, indeed, his nominee—to be present during the debate. It is up to the committee to determine the desirability of any amendment to the bill. Does that clarify the situation?

David Mundell: It is helpful. Thank you.

I would not disagree with Fergus Ewing's legal analysis, but he will recall that the committee has had a number of discussions about Scots law and what is and is not implicit in the ordinary meaning of the law. I lodged amendment 95 because the committee has previously preferred to go down a declaratory route, making things explicit. However, I would be happy for Fergus Ewing's amendment to be supported, as it would achieve what he says it would achieve. Being "about to commit" is not an offence that is known in the Scottish legal system, and if it were extended to any other activity, it could render anybody in Scotland liable to arrest on the basis that they were "about to commit" any offence.

Amendment 96 seeks the deletion of the expression "without warrant". The ability of a constable to arrest without warrant is draconian in the context of the bill. Previous operation of the criminal justice system in Scotland would employ a measure such as this in relation to the most serious of offences involving physical violence, murder and robbery. It is therefore excessive to include the phrase "without warrant" in section 4.

Amendment 99—Mr Tosh's first amendment—seeks to bring the provisions of the bill into line with what might be regarded as similar provisions. For example, the amendment is similar to the provisions of the Deer (Scotland) Act 1996. It would be consistent with both amendment 25 and amendment 95, and it is consistent with the level of criminality that the bill deals with.

Amendment 100 is an alternative to amendment 99. I would be happy for amendment 99 to be agreed to, although amendment 100 would tie in with amendment 95.

Stewart Stevenson: My late father would have welcomed such changes in the law as amendments 96, 100 and 99 would make, as a few skirmishes would have been prevented if that principle had applied to salmon fishing and pheasant shooting. The idea that, if one did not have a warrant, one would not be able to lift someone who was in possession of a poached salmon—as I was able to, when I was a water bailiff—could change the face of the countryside forever.

In rural situations, getting a warrant is a far from trivial activity. The bothy in which I lived when I operated as a water bailiff was some 50 miles from the nearest police station and rather further from the nearest sheriff. More important, it was 14 miles from the nearest pub. Therefore, I certainly oppose those amendments.

14:30

Rhoda Grant: As I agree with all Stewart Stevenson's comments, there is no point in

repeating them. I prefer amendment 95 to amendment 25, as it allows the police to arrest someone who is preparing to commit an offence as well as someone who is in the act of committing an offence. That allows the police to stop an offence being committed if they have reason to do so. Amendment 95 strengthens the bill's original wording, which says

"or is about to commit an offence".

Deciding whether or not someone is about to commit an offence is a matter of judgment. Amendment 95 refers to a person who is

"doing any act preparatory to the commission of"

an offence, and I favour that wording.

Richard Lochhead (North-East Scotland) (SNP): I, too, agree with Stewart Stevenson. I appreciate that David Mundell has opposed the bill from the beginning and wants to take every opportunity to make it unworkable, but his amendments 96 and 100 would make the bill particularly unworkable. Were they to be passed, if someone thought that fox baiting was going on and fetched a constable, and fox baiting was indeed going on, the police officer would not be able to do anything about it. For that reason, I oppose the amendments.

I am happy with either amendment 25 or amendment 95 and will take into account what the members who lodged them say when they sum up.

Mr Rumbles: Listening to Stewart Stevenson and Richard Lochhead, I wonder whether I have missed something. I probably have. Murray Tosh's amendment 99 says:

"A constable exercising the power given by subsection (2) above must be in possession of a warrant except where an offence is in the process of being committed."

I understand that to mean what it says. I do not understand members' objections to the amendment. Perhaps Stewart could enlighten me.

Stewart Stevenson: In the case that I mentioned—I am sorry, but I will have to use technical salmon fishing terms—I made my arrest under the Salmon and Freshwater Fisheries Protection (Scotland) Act 1951 after the offence had taken place, because the fishermen concerned were guilty of sniggering, which is a process in which one foul-hooks a salmon. Inevitably, one is more likely to have to lift a salmon fisher after they have committed the offence and are leaving the scene, on report. If one were not able to do that, there would be no realistic prospect of making an arrest. I foresee exactly the same circumstances being repeated in the areas that the bill seeks to cover.

The Convener: I hope that members will bear

with me. I was remiss at the beginning of the meeting not to welcome the newly appointed Deputy Minister for Environment and Rural Development, Allan Wilson. Please forgive me. It is very nice to have you with us.

It has not been my previous practice to offer the minister a chance to speak in every group. I take it that you are happy for me to continue with that. If you wish to speak, please feel free to catch my eye and I will be pleased to take your comments. Do you wish to comment on the group?

The Deputy Minister for Environment and Rural Development (Allan Wilson): No.

The Convener: I just wanted to clarify that.

David Mundell: I am disappointed at Richard Lochhead's remarks. My amendments are not an attempt to make the bill unworkable. In fact, as members who were present at the previous committee meeting will know, an amendment that Richard Lochhead lodged would have made the whole bill unworkable. The purpose of lodging amendments is to allow discussions to take place. I note Stewart Stevenson's comments. I am certainly a lot more comfortable with the "without warrant" position, given the general reaction of members to amendment 95.

As Mike Rumbles helpfully pointed out, Mr Tosh's amendment 99 does exactly what it says it would and would restrict the requirement of a warrant if an offence was in the process of being committed, as would my amendment 100, which reflects the wording of amendment 95. It would not limit the bill's scope.

I am sure that Stewart Stevenson and the other members who have spoken are aware that all the elements of managing and poaching deer that are covered by the Deer (Scotland) Act 1996 take place also in remote and rural parts of Scotland. I do not think that any evidence has been produced to show that the Deer (Scotland) Act 1996 is unworkable because it has a similar "without warrant" provision.

Fergus Ewing: We are all pleased to welcome the new Deputy Minister for Environment and Rural Development to the committee. I find it a wee bit disappointing that he pursues the same strategy in giving evidence as his two predecessors, Rhona Brankin and Ross Finnie—an almost Trappist introspection. It is especially disappointing as there was no such shyness at stage 1.

Paragraph 5 of the Justice and Home Affairs Committee's report states:

"The Scottish Executive pointed out that 'the creation of a new criminal offence is a serious matter, and generally one of resort where legislation initiated by the state is concerned'".

In other words, it is not appropriate for a non-Executive bill to create an offence.

I am extremely surprised that the Executive will not comment on an argument that is essentially about important technical issues. That is surely the role that an Executive should play. Along with Mr Mundell and other members, I would have valued hearing the advice from civil servants and the minister's comments. That is the minister's choice. I gather that the position is one of neutrality, so that any mistake made is the mistake of the members involved.

The starting point is the evidence that was given by Assistant Chief Constable Gordon, who made the fairly obvious point that if there is a crime, the police must have clear powers to enable them to deal with that crime. I am sure that many of those who oppose the bill root-and-branch would agree that the police must be armed with proper powers. Assistant Chief Constable Gordon said:

"The fact that invariably crimes against wildlife occur in remote areas makes it absolutely essential that an unconditional power of arrest is available to the police."

That is why I think that the remarks by Rhoda Grant and Richard Lochhead are correct—there must be clear powers.

The powers in the Protection of Wild Mammals (Scotland) Bill should perhaps be akin to the powers in the Wildlife and Countryside Act 1981, because the activities that the bill deals with tend to occur where there is no bobby on the beat, as Stewart Stevenson pointed out, for example on a moor or up a hill. It is quite clear that amendment 99 would not deprive the police of the necessary powers, because it would be obvious when an offence

"is in the process of being committed."

I am not 100 per cent certain about that phrase—I had hoped that the Executive would help—but in the absence of anything else, we must ensure that the police have powers. Therefore, I support amendment 99.

If we compare amendment 25 with amendment 95, we see that there is serious doubt about what the words

"doing any act preparatory to"

in amendment 95 mean. If somebody in a red coat gets up on a horse, drinks a glass of port and blows into a horn, is that an act preparatory to a crime? It might be, but as I understand it, if people want to do that, there will be nothing against it, as long as they do not use dogs to chase foxes. Acts that could be preparatory to an offence might be consistent with other explanations. I am no expert on the matter, but I believe that the Law Society's view is that amendment 25 would achieve the necessary result because, it said, section 294 of

the Criminal Procedure (Scotland) Act 1995 makes an attempt to commit a crime itself an offence. If that is the case, Rhoda Grant is wrong and amendment 25 would address the fears that she and Richard Lochhead expressed.

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

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

Amendment 25 agreed to.

The Convener: As amendment 25 has been agreed to, amendment 95 is pre-empted.

Amendment 96 moved—[David Mundell].

The Convener: The question is, that amendment 96 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

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

The Convener: The result of the division is: For 2, Against 7, Abstentions 2.

Amendment 96 disagreed to.

The Convener: Amendment 97 is in a group on its own.

David Mundell: Amendment 97 seeks to delete the expression “appears to belong to”. As the provision stands, it is excessively broad. It is difficult to define “appears to belong to”, as we can see from the papers spread about the tables. The bottles of mineral water on the table, too, might appear to belong to me, but they belong to my colleague Mr Jamie McGrigor.

In a rural setting, the expression “appears to belong to” is far too broad and is not found in other legislation. Members will be familiar with legislation about the seizure of drugs and other serious matters. Such legislation does not incorporate wide-ranging statements such as “appears to belong to”. I therefore suggest that those words should be deleted and the words “belongs to” should be inserted. That would focus the offence.

I move amendment 97.

Fergus Ewing: I disagree with David Mundell, but not because I endorse the wording of section 4. I hope that the minister will advise the committee whether the section is technically valid and, if it is not, what the flaws are.

David Mundell has not mentioned an important factor, which is that section 4(1)(c) states that a constable can only

“search or examine a vehicle, animal or article ... if the constable suspects with reasonable cause that evidence in connection with the offence is to be found in or on it”.

Therefore, there is a safeguard: the constable must have reasonable cause. Such safeguards are littered in many criminal statutes.

How can a constable know who owns a vehicle when he sees it? Ownership of a vehicle is difficult to establish because the owner is not necessarily the keeper. Documentary evidence is needed and a constable cannot get that information when he needs the power to search the vehicle.

Although I am not 100 per cent clear that the wording of section 4 is correct—I hope that the deputy minister will keep us right—I do not urge support for amendment 97.

Mr Rumbles: I am inclined to support amendment 97 on the ground that the section needs to be more succinct. It is excessive to give the police powers to search something that “appears to belong to” someone rather than something that actually belongs to them. There is a safeguard. Section 4(1)(c) includes the words

“or be in the possession ... of”,

which is more likely. Later on, it states:

“if the constable suspects with reasonable cause that evidence in connection with the offence is to be found in or on it”.

The idea of reasonable cause is already in the

section, but amendment 97 tightens it up and makes it more succinct. I do not think that we should leave the provision the way it has been written. I agree that amendment 97 should be supported.

Elaine Smith: Happily, I agree with Fergus Ewing on this issue, although that is strange.

Fergus Ewing: Mazeltov.

Elaine Smith: One of the points that has not been made is whether, if a constable wanted to search a car, someone could say that they could not, because the car was not theirs. If we were to accept amendment 97, that might be the case and that is not acceptable.

The Convener: Thank you. Does the minister wish to rise to the challenge this time?

Allan Wilson: It is appropriate at this juncture to state what should be obvious. Mr Ewing and other members should not confuse a change in ministerial personnel with a change in Executive policy. As members know, we are neutral on the policy content and intent of the bill. It is for the committee to decide what to agree. If we consider there to be a requirement for a technical amendment, we will lodge one at stage 3. That is fairly well known to the committee and to Mr Ewing.

Fergus Ewing: Would not it be helpful to deal with problems at stage 2? Can it be guaranteed that dealing with matters only at stage 3 will not leave other unresolved problems? Stage 3 is the final chance. Would not it be helpful if the minister were to adopt a new approach of participation in the debate?

14:45

Allan Wilson: If the Executive held the view that the proposed legislation was unworkable in law, it would say so. If the bill cut across Executive policy or had financial implications, the Executive would say so.

The Convener: Thank you.

David Mundell: As I said to the minister, he has moved into his new role as seamlessly as the Miss Ellies in “Dallas” were switched in the early 1980s. We all carry on without noticing.

I will press amendment 97, because members must reflect positively on how serious they believe the activities that the bill would cover are on the scale of criminality in Scotland. Other legislation covers what the public would generally regard as more serious crimes, relating to physical violence, murder and drugs. Allowing property that appears to belong to somebody to be subject to the provisions of the bill is not within the same ambit.

As Fergus Ewing said—sorry, I am confusing Mike Rumbles and Fergus Ewing. The bill is really getting to me—

The Convener: That is known as getting bill-weary.

David Mundell: As Mike Rumbles said, if amendment 97 were agreed to, section 4(1)(c) would still contain the words,

“in the possession or control of”.

That deals with Elaine Smith's point about the motor vehicle. If a person were in control of a motor vehicle, the provisions of section 4(1)(c) would apply to them. The provisions should not apply in cases in which an article, whether a motor vehicle, an animal or any other article, appears to belong to someone. The section is far too vague and, in any other context, people would be jumping up and down about such an infringement of civil liberties. I do not think the committee should accept the situation.

The Convener: The question is, that amendment 97 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

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

Amendment 97 disagreed to.

The Convener: Amendment 98 is grouped with amendments 110, 111, 115 and 116.

David Mundell: Amendment 98 follows on from a recommendation of the Law Society, which questioned the inclusion of section 4(1)(d). The issue is whether the bill needs to include such provisions or whether we can just rely on the legal system in general.

Part II of the Proceeds of Crime (Scotland) Act 1995 already enables the procurator fiscal to apply to the sheriff for the power to seize and detain property that may subsequently be the subject of a forfeiture order. I am of the view that that legislative provision satisfies the policy intention

behind section 4(1)(d). As the provisions of the paragraph are already covered by legislation, I think that it is unnecessary.

I will move on to Mr Tosh's amendments 110, 111, 115 and 116, which stem from a concern regarding dogs or other animals that are seized under section 4(1)(d). The amendments intend to ensure that proper arrangements are in place, not only for keeping the animals, but for their return to their owners or their being passed to other owners. My understanding—and that of Mr Tosh—is that, in many local authority areas, there is a limit on the length of time for which animals may be kept. If proper provision is not made, many animals could face being put down, simply because the end of the period has been reached.

Amendments 110, 111, 115 and 116 set out requirements in that regard. In particular, they seek to ensure that an animal cannot be put down without the owner's permission, as long as it is the subject of an order under part II of the 1995 act. Amendment 111 deals with the return of animals; amendment 115 removes the court's power under the bill to order the destruction of dogs that an offender had in his custody either during the committing of the offence or after the offence was committed; and amendment 116 requires the dog owner's permission prior to the dog's being dispatched.

I move amendment 98.

Rhoda Grant: I have concerns about most of the amendments in the group, apart from amendment 111, the provisions of which I think come under normal procedure anyway. My concern about amendment 110 is that what it provides for already happens. It puts a duty on the police to look after the animal concerned, but it may later be the prosecution service, rather than the police, that has jurisdiction over the evidence, so I do not think that the amendment adds anything.

Amendment 98 would restrict what the police are able to do and hamper their ability to keep evidence, so I do not agree with it. I also have concerns about Murray Tosh's amendments 110 and 116, which concern disposal of animals and obtaining

“the written permission of the dog's owner”

before disposal. At present, a court order is required to dispose of an animal if it might create a problem. An awful lot of animals that have been bred for fox baiting might fight with other animals. They might also harm human beings—they might be given to biting and the like. It might not be safe to keep those animals. The bill should allow for a court order to be issued to dispose of animals if they pose a danger.

Stewart Stevenson: I wish to speak to amendment 98, which would delete the part of the bill that provides for the right of

“A constable who suspects with reasonable cause that a person has committed, is committing or is about to commit an offence under this Act”

to

“seize and detain ... a vehicle, animal or article which may be evidence in connection with the offence”.

I will be boring once again. In my days as a water bailiff, some gentlemen were doing dynamite fishing—they throw dynamite into the pool and the fish pop up after the explosion. Had it not been possible to seize their vehicle, it would not subsequently have transpired that it was stolen. It turned out that the vehicle belonged to the procurator fiscal’s wife. That is one reason why I believe that such provisions are entirely proper. Quite major items, which might be important, cannot be seized by a constable who is remote from other sources of support.

Fergus Ewing: I must say that I am enjoying these tales from the riverbank.

Stewart Stevenson: There are more.

Fergus Ewing: One wishes that stage 2 could last even longer.

The Convener: I regret to say that I do not share that view.

Fergus Ewing: I would like to ask David Mundell a question, because I am not clear about amendment 98. I understand that the intention of amendment 98 is to delete section 4(1)(d). At present, the power of seizure and detention of a vehicle, animal or article can be exercised under the section without warrant. David Mundell’s argument is that those powers exist in the law as it stands and so the provision is unnecessary. Are those powers for the police to seize and detain without warrant?

David Mundell: Fergus Ewing can ask that question and I could put forward an argument with the usual legal bluster, but I must demit that to the minister, whose legal advisers may have chapter and verse on the matter.

The Convener: The minister has indicated that he wants to comment on that point.

Allan Wilson: I want to comment not on that specific point, but on the point made by Rhoda Grant in connection with amendment 110.

We wish to resist amendment 110 on the ground that the police are already under a duty to look after any animals seized, as any person would. The same applies to articles or evidence seized in any case. The responsibility that Rhoda Grant referred to passes to the Crown if the animal

becomes evidence in a case. In that case, the Crown would also have a duty to care for the animal properly. It is highly unlikely that animals would be evidence in cases. The amendment appears to place all the responsibility for caring for seized animals on the police and that is not an accurate reflection of the position. There would be financial consequences. If the objective of amendment 110 concerns written permission for humane destruction, an amendment on that alone should be lodged. We intend to resist the amendment in its current form.

Fergus Ewing: I was going to make a few remarks on the remaining amendments in the group that were lodged by Mr Tosh. It is the committee’s loss that he is not here.

The amendments are well-intentioned attempts to safeguard the welfare of dogs. I am aware that there is a large number of people who own dogs and who regard the prospect of their dogs being seized with absolute horror. It should be noted that there are many people for whom the confiscation of their dogs, were it ever to happen, would cause quite a considerable problem. We should not underestimate that.

I disagree with the minister in respect of amendment 110. In no way could it be said to place responsibility for the welfare of the animals wholly on the police. It says only that

“A constable ... shall ensure that appropriate arrangements are made for the care of that animal”.

I imagine that the constabulary will have established procedures, perhaps in conjunction with bodies such as the Scottish Society for the Prevention of Cruelty to Animals, to ensure that animals are looked after. I see a nod of approval from the SSPCA representatives in the public gallery. The police already have the unavoidable duty of ensuring that, if they seize an animal, they make arrangements for that animal. I am sure that the minister cannot be suggesting that the police should have no responsibility. They are the ones who are doing the arresting and the seizing. Of course they have responsibility, even if it is only in the period immediately following the arrest and seizure. The police must make arrangements. Amendment 110 is well intentioned.

The idea that, if we pass the bill, animals that have been used for legitimate purposes could be killed without the owner’s permission is absolutely insidious. I profoundly disagree with it. We will be moving into really troubled waters if we do not support Mr Tosh’s amendments 110 and 116.

15:00

Mr Rumbles: I would like to ask David Mundell, who is speaking for Murray Tosh, about amendment 111, which seeks to insert the words:

"A vehicle, animal or article seized under subsection (1)(d) above shall be returned to the person from whom it was seized as soon as any proceedings under this Act are concluded without the conviction of the person accused."

My question is for my own education. How important is the amendment? Does it not represent the law as it stands? Is that not what happens automatically?

David Mundell: In due course, that is what would happen. The provision in Murray Tosh's amendment is a declaratory one, which is the approach that has been preferred in the bill.

Mr Rumbles: So whether the provision was in or out would not change anything.

David Mundell: One could say that for half the bill. However, in relation to such issues, where people would be concerned about animals rather than necessarily about vehicles, we have tried to make it clear that there would be immediate return.

Allan Wilson: I do not think that Fergus Ewing really understood what I was saying. I was not seeking to change the obligation that is already on the police to look after any animal that has been seized. However, people who are genuinely concerned about the well-being of their dog in police custody would surely oppose any confusion in the respective roles of the different law enforcement agencies involved. That is a fairly simple point, which takes account of the welfare of the animal in custody.

David Mundell: On the comments that Stewart Stevenson and Fergus Ewing made on amendment 98, I would say that legal provisions are already available, so subsection (1)(d) is unnecessary. This is one of the issues for which we would benefit from having an independent legal adviser, because I understand that the committee does not necessarily regard the legal advice that I give as wholly objective, although I try to be as objective as possible. However, I am sure that it would be helpful to have someone here who could say yea or nay.

I found the minister's comments on Mr Tosh's amendment 110 useful. I know that Mr Tosh had intended amendment 110 to be helpful. However, when I spoke to him before the meeting, he said that he was concerned that the SSPCA had not, in its briefing, responded as positively to the amendment as he might have expected. Therefore, I will not move amendment 110.

Mr Tosh intends to work with the Executive, the SSPCA and anyone else who wants to make a positive contribution towards lodging an amendment at stage 3 that will absolutely clarify the arrangements about animals that are seized under section 4. I am sure that Mr Tosh is committed to doing that.

Amendment 111 is a helpful declaratory provision. I will not move amendments 115 and 116, because they relate to the provisions in amendment 110. Mr Tosh will lodge amendments similar to those amendments when he lodges a revised form of amendment 110 at stage 3.

The Convener: The question is, that amendment 98 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

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

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

Amendment 98 disagreed to.

Amendment 110 not moved.

Amendment 111 moved—[David Mundell]—and agreed to.

The Convener: Amendment 99 has been debated with amendment 25. I point out that, as amendment 96 was disagreed to, it will not make much sense to move amendment 99 and I suspect that Mr Tosh might have had second thoughts about doing so.

David Mundell: Mr Tosh has had second thoughts about many things, as you well know, convener. I will not move amendment 99.

Amendments 99 and 100 not moved.

Section 4, as amended, agreed to.

Section 5—Proceedings and penalties

The Convener: Amendment 102 is grouped with amendment 103.

David Mundell: I will be brief. The expression "as a result of neglect by"

is not one with which I am familiar or that is commonly used within Scots law, whereas the expression

"negligence on the part of"

is a well-known and defined expression. Amendments 102 and 103 would significantly clarify the bill.

I move amendment 102.

The Convener: As no other members want to comment on the amendments in this group, this is an historic occasion—which is too good to be true.

Fergus Ewing: I do not want to be a party-pooper, but let me say that Mr Mundell is right to state that negligence is a Scots law concept, although I thought that he might have used the term “delict”. Is there not a difference between neglect and negligence? Neglect is not necessarily meant to imply or be the same thing as negligence. I wonder whether the minister could enlighten us on the Executive’s view. Would the concept of neglect be different from the concept of negligence for an officer of the relevant bodies?

Allan Wilson: It appears to us to make little practical difference.

The Convener: I ask David Mundell to wind up on the group of amendments and to press or withdraw amendment 102.

David Mundell: I have nothing further to say. I want to press amendment 102.

Amendment 102 agreed to.

Amendment 103 moved—[David Mundell]—and agreed to.

The Convener: That is great progress. I take this opportunity to welcome Murray Tosh, who is the new Deputy Presiding Officer. His presence is a pleasure for the committee and a relief for David Mundell.

Amendment 26 is in a group on its own. If amendment 26 is agreed to, it will pre-empt amendment 51.

Fergus Ewing: I am pleased that the political obituary that I gave a moment ago for Mr Tosh and his appreciated contributions to the committee was premature. I am delighted to see him back.

Amendment 26 is straightforward and acts on a unanimous recommendation in the report of the Justice and Home Affairs Committee. Paragraph 33 on page 47 of the report states:

“section 5(6) is draconian and represents a greater compromise of the rights of an accused person than is justified in this context.”

Why did the committee come to that conclusion? Section 5(6) states:

“In proceedings for an offence under section 1(2), the burden of proving that section 2(1)—

or various other subsections—

“applies is on the person charged.”

That raises the issue of a reverse burden of proof. The Justice and Home Affairs Committee concluded that section 5(6)

“imposes on the person charged with contravening the prohibition on hunting ... the burden of proving that one of the exceptions to that prohibition applies. That burden would require to be discharged on the balance of probabilities (which is generally the burden applicable in civil cases); the prosecution would still require to prove beyond reasonable doubt that an offence had been committed.”

Bodies as diverse as the Scottish Countryside Alliance and the Scottish Campaign Against Hunting with Dogs feel that section 5(6) is unsatisfactory. The Justice and Home Affairs Committee concluded unanimously that it was unsatisfactory and that it would put the onus of proof on the accused, which is wrong and not known in Scots law. I hope that amendment 26 will be non-controversial.

I move amendment 26.

Mr Rumbles: I support amendment 26. Many people who originally examined the bill felt that the provision was draconian and Fergus Ewing has highlighted why many people tagged the bill with that word. Section 5(6) would reverse the burden of proof; I am delighted that the Justice and Home Affairs Committee recommended removing it. I am sure that we will do that now.

Amendment 26 agreed to.

The Convener: Amendment 51 is therefore pre-empted. Amendment 112 is in a group on its own.

Mr Murray Tosh (South of Scotland) (Con): The origins of amendment 112 lie in a series of complicated amendments that I lodged with the clerks towards the end of last week. The clerks discussed those amendments with me and assisted me in making them admissible and relevant. The amendments stemmed from an intention to insert a definition of an owner into section 7 to clarify exactly who might be the subject of a prosecution. However, because of the various ways in which the concept of an owner is phrased in the bill, that proved to be impossible. The clerks co-operatively and constructively framed amendment 112 to try to achieve my purpose, which was to clarify the level of blame that might be attached to an owner and the circumstances in which that blame might be applied.

I have considered the wording of amendment 112 and I suspect that it might be a little declaratory in its purpose, as some of the earlier changes to the bill already achieve what it is intended to do. However, its intention is clear: to ensure that the owner of the land will not be prosecuted unless there is proveable express permission. The committee may feel that the

amendment is a bit declaratory, given what is already in the bill, but I offer it for the minister's and Mike Watson's responses.

I move amendment 112.

15:15

Rhoda Grant: I am a little concerned about the use of the word "directly" in the amendment. The amendment says that proceedings shall not be taken against the owner

"if the owner was not directly involved in the giving of the permission".

It would read better if it said "not involved" rather than "not directly involved", as the landowner could be indirectly involved and therefore guilty of the crime along with the occupier of the land. I would like some clarification on that point.

Mr Tosh: Some landowners may be decreed by whatever interest they have in the land to have implicitly consented to certain activities simply by virtue of being landowners. Rather than allowing the reverse burden of proof to stand, amendment 112 tries to establish the requirement on the prosecution to show that the landowner has done or said something that proves that that person has co-operated in the committing of a crime. In some circumstances, the bill as it stands might require the landowner to prove that he had not been associated with an activity simply because he is the landowner. For example, permission may have been given by an agent rather than by the landowner. The amendment tries to reverse the burden of proof; it would require the prosecution to show that there was a direct intention on the part of the landowner and that the landowner had permitted something in the reasonable knowledge that that permission would lead to the committing of an offence.

Rhoda Grant: That causes me even more concern. Although it is the landowner's agent who has given permission for a crime to be permitted, the agent is working on behalf of the landowner. The amendment would give everyone who owns a large estate a loophole, as they could say, "It was my factor who gave permission, not me." The bill states that it is the landowner or occupier of the land who can be charged with the offence. What Murray Tosh has said has raised more concerns rather than alleviating any of them.

Mr Tosh: I do not offer the factor as a generic definition. The landowner may be a sleeping partner in a company or trust that owns the business. This discussion is similar to one that we had at our first meeting on the bill about all the different people who could have an interest in land and where the balance of responsibility might lie between a tenant and a landowner.

I take the point that, if a factor has a general duty or is held to act in the name of the landowner, the factor has probably implicated the landowner anyway. The landowner would have to have clear guidelines laid down to protect himself in any circumstances in which he mistrusted his factor. However, there are wider possibilities, as occupiers and owners may not be the same people and the owners might have a distant relationship with those who are controlling or supervising the land and only a contingent knowledge of what is going on.

Elaine Smith: If I remember correctly, we changed section 1 to mention an owner who "knowingly" permits. Would it not be better to make the offence "to permit knowingly"?

Mr Tosh: That is the point that I made at the beginning. Having reflected on amendment 112, I thought that it was possibly rather declaratory, as the "knowingly" amendment, which the committee agreed to, may have addressed the concern that I had in lodging the amendment. Amendment 112 may not achieve anything additional to the insertion of the word "knowingly".

Fergus Ewing: I will pursue the same point. My concern is that amendment 112 does something that I am sure Murray Tosh would not want it to do. It would provide a defence for a landowner who says, in a conversation with a land manager or factor, "I think you can give permission to those chaps to go ahead." The land manager or factor then gives the permission and the owner says that he just spoke to his factor and was not involved in the giving of permission. I wonder whether the amendment is necessary, given that it is now a requirement of proof that a person does something knowingly, as the committee previously agreed. I would be interested to hear what the minister has to say about this legal minefield. Perhaps we will have to wait in suspense until stage 3 to hear the pearls of wisdom from the serried ranks of civil servants who are here today.

Mr Morrison: I have never heard Fergus Ewing, who usually speaks with such clarity and certainty regardless of whether he is right or wrong, seek advice or guidance from a minister. It is certainly a refreshing departure from his usual behaviour.

The Convener: The minister has not indicated a desire to speak. If no other member wants to do so, I ask Murray Tosh to wind up and to press or withdraw amendment 112.

Mr Tosh: I moved the amendment to enable the discussion to take place. I have considered the points that were made during the discussion and have read the e-mail of 3 December from the clerks, which was helpful to me in reframing what I had sought to do. At this stage, I would prefer, if the committee will agree, to withdraw the

amendment. That would give me the opportunity to lodge an amendment at stage 3 if, on further reflection, I see any point in continuing to press the matter.

Amendment 112, by agreement, withdrawn.

Section 5, as amended, agreed to.

Section 6—Disqualification orders

The Convener: Amendment 113 is grouped with amendments 104, 114, 118 and 120. If amendment 113 is agreed to, amendments 104, 114 and 115 will be pre-empted.

Mr McGrigor: As the bill stands, dogs not belonging to an offender could be seized even if they had been used to commit an offence without the consent or knowledge of the owner. Innocent children or adults could be wrongly punished by having their dog, or dogs, taken away. That would be a severe punishment for people who love their dogs. In some cases, it could be mental cruelty. People have been known to commit suicide over the deaths of animals. The bond that exists between dogs and human beings is often stronger than the bond that exists between people. Many people who own dogs will understand what I am talking about. Dogs live to a maximum age of only about 15 or 16 years; in many cases, they die when they are 12. If two or three of those years are taken away when someone is disqualified from having custody, that is the same as taking away 21 years from a human life.

Under section 6, a court could remove any dog that was in the custody of an offender when an offence was committed, or afterwards, even if the dog was not used in the commission of the offence. Amendment 113 would remove the court's ability to remove any dog that the offender had in his custody when or after the offence was committed when the dog in question was not used in the commission of the offence.

Amendment 104 would prevent the seizure of dogs that had nothing to do with any offence. Amendment 114 aims to clarify the drafting on the arrangements that can be made for the care of a dog in custody.

Amendment 118 is consequential to amendment 113. The creation of the offence under section 6(3)(b) is a duplication of existing provisions for failure to comply with a court order. Furthermore, the offender might be unable to relinquish to the courts a dog that he had in his custody if he was not the legal owner of the animal. He may commit an offence by simple failure to comply, even if it were not in his power to comply.

On amendment 120, it is clearly unjust that someone who has not committed an offence or has no knowledge of the use of his dog in an

offence should be forced to go to the High Court to relinquish his dog. That would be a distressing, time-consuming and possibly expensive process. Totally innocent parties could be wrongly punished.

I move amendment 113.

Mr Tosh: Amendment 104 is a probing amendment to invite Mike Watson to clarify the intention stated in the bill that a court should have the power to remove not only the dog that was in the offender's custody at the time the offence was committed—presumably the dog that was involved in the commission of the offence—but other dogs. It is a shame that the lead member is not here for us to discuss that issue. It struck me that the committee ought to consider carefully which dogs should be the subject of removal—hence the amendment.

David Mundell: Amendment 114 would delete the word "permanent" from section 6(2)(b). By their very nature, the arrangements that are made under the section are not permanent. Under section 6(4), even where an order is made, that order can be reviewed. Therefore, by continuing to include the word "permanent" in subsection (2)(b), we are opening up an almost unending requirement on the offender to pay. I do not think that that was what was intended. There is clearly a wish that permanent arrangements can be made for the dogs in question, but that does not necessarily mean that that ambition would be realised.

Stewart Stevenson: I obviously misunderstand the intention of those who lodged the amendments. The section focuses on the offender, the dogs that the offender has used to commit an offence and any dogs that are in the possession of the offender. If a dog has been used to commit an offence, fair enough—it is associated with the offence. If a dog is not in the custody of the offender at the time, it is perfectly reasonable that that dog should be surrendered to be, in effect, in the custody of the offender and dealt with appropriately in relation to the offence. I am unclear why we should not be able to deal with things in that way. On disqualification in relation to a dog in the possession of an offender, when the dog is not part of the offence, it seems reasonable that we should relieve the offender of that dog to return it to whoever is its owner. I am not at all clear that the emotional points that Jamie McGrigor is putting up as arguments for the amendments have any validity when we examine what would happen in the real world.

Rhoda Grant: I agree with Stewart Stevenson and point Jamie McGrigor to amendment 105, in the next group, which says that if the owner of the dog is not involved in the offence and did not knowingly allow their dog to take part in that

offence, their dog should not be taken away from them. The issues that the amendments raise will therefore be dealt with if we accept amendment 105. There would also be protection for animals that belong to cruel owners who would use their dogs in a way that is contrary to the legislation.

The Convener: As no other member wishes to speak on the group, I ask Mr McGrigor—

Elaine Smith: Convener, I am sure that it is easy to miss me, but I wanted to say something.

The Convener: I apologise.

Elaine Smith: I would like clarification of the use of the word “permanent”. Given that the section seems to be about the reimbursement of costs, if the word “permanent” were taken out, arrangements would be made from day 1. Perhaps the word is wrong, but its removal could prevent any costs at all from being recouped from the offender.

The Convener: I think that you are referring to amendment 114.

David Mundell: Elaine Smith makes a legitimate point—the word “permanent” is wrong. A balance must be struck. We must ensure that we do not set out something that is not achievable or, as Elaine Smith indicated, that minimises costs to zero, which is not the intention. On that basis, I will reflect on the amendment in the seconds ahead.

15:30

The Convener: I invite Jamie McGrigor to wind up on the group and to press or withdraw amendment 113.

Mr McGrigor: I have nothing to add. I wish to press amendment 113.

The Convener: That was commendably short. The question is, that amendment 113 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

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

Amendment 113 disagreed to.

Amendments 104 and 114 not moved.

The Convener: Mr Tosh, do you wish to move amendment 115?

Mr Tosh: Has it been debated?

The Convener: It was debated before you arrived.

Mr Tosh: As I am not aware of what members discussed, it would be inappropriate for me to move amendment 115. I will consider the section and, if I think that the amendment should be moved in the light of the other amendments, I will lodge a similar one at stage 3.

Amendment 115 not moved.

The Convener: Amendment 105 is in a group on its own.

David Mundell: Rhoda Grant referred to amendment 105. Its purpose is self-evident. It ensures that a dog will not be taken away from an owner where the owner was not a part of the offence and had not knowingly permitted the use of the dog in the offence. It could be suggested that that is partially declaratory, but the amendment would allow someone's dog or dogs that had not been used with their consent to be free from the threat of seizure.

I move amendment 105.

Amendment 105 agreed to.

The Convener: Before we continue, I welcome clerks from the Northern Ireland Assembly, who came in the back door—some people might have seen them. I do not know whether they came here to learn or to teach—perhaps they will do a bit of both. We are delighted to have them with us. I do not know whether I should ask them to enjoy proceedings, but it is nice to have them with us.

There will be a comfort break. I ask the committee to reconvene by 3.45 pm.

15:35

Meeting adjourned.

15:47

On resuming—

The Convener: I believe that I nearly caused an international incident by welcoming the clerks from Northern Ireland, given that one of them is from the National Assembly for Wales. My apology is now made public and I am grateful for the well-known Welsh tolerance that was displayed.

Amendment 116 has been debated with amendment 98.

Mr Tosh: I think that I have grasped enough of what happened earlier to say that I am happy to move the amendment.

I move amendment 116.

The Convener: The question is, that amendment 116 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)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (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 116 disagreed to.

The Convener: Amendment 117 is in a group of its own.

Mr Tosh: The purpose behind amendment 117 was to get a response from the member in charge of the bill and perhaps from the Executive, if it was willing to give its view, on the scale of the penalties to be applied. The bill lays down clear penalties, which include a term of imprisonment and a substantial fine. There is no guidance in the bill, however, for a maximum cost to be incurred by the owner of dogs if the animals are confiscated and held in care for what could be a substantial period of time.

Amendment 117 aims to establish whether the member who introduced the bill, the minister or the committee wants the costs to the accused capped to put a ceiling on the effective financial penalty—because there is a ceiling on the specific penalty. The costs of kennelling and looking after a dog would be quite substantial if the disqualification were for two or three years. If a pack of dogs were disqualified and held for some time, there might be a very substantial financial penalty to be applied. It is appropriate that the Executive, at least, should indicate whether it believes that it is reasonable for there to be unlimited financial penalties of that nature. Amendment 117 would have the effect of setting a maximum penalty for kennelling and other costs associated with the care of a dog

seized under the terms of the proposed act.

I move amendment 117.

Stewart Stevenson: If the dogs were retained for two years, as Murray Tosh said, amendment 117 could reduce the costs to the offender if it were a substantial pack of dogs and if the costs that could be recovered from the offender, which were capped at, say, £5,000, were less than the costs that the offender would have incurred had the dogs been in the offender's possession for the two years. I am sure that an appropriate amendment could be lodged that would strike a proper balance. However, amendment 117 is not that amendment, because where substantial numbers of dogs are involved amendment 117 would not have the effect that Murray Tosh seeks.

Richard Lochhead: I wish that I had not discussed that point with Stewart Stevenson just before the coffee break because that was the point that I was going to make.

Stewart Stevenson: Mea culpa.

Richard Lochhead: I welcome Murray Tosh's comment that he is just trying to get the debate to take place. There is a case, perhaps, for the costs being taken into account in terms of a fine. However, costs would have been borne anyway by the owner of the dogs had he had to keep them, so the full costs of looking after the dogs elsewhere should not be taken into account in terms of the fine. For that reason, Murray Tosh should perhaps not press amendment 117, but rather lodge a better amendment at stage 3.

The Convener: Do any other members want to speak on this group? As no one has any comments, I ask Mr Tosh to wind up and press or withdraw amendment 117.

Mr Tosh: Does the Executive have a view on the scale of penalties?

Allan Wilson: It is clearly not the responsibility of the Executive to determine or voice an opinion on the scale of the penalties that might be imposed or to cap the costs. The committee must determine those matters.

Mr Tosh: I am a bit disappointed by that because I take seriously the suggestion that two colleagues have made about rewording amendment 117. I make the point to Richard Lochhead that a confiscated pack of dogs will not earn any income. In that case the whole balance of the income flow—the earnings and expenditure—of someone who operates dogs for pest control purposes would be substantially upset. If someone is guilty of an offence, it is appropriate for them to be punished. However, there is a risk that the indirect punishment that arises from the costs for care of the animals might be greatly in excess of what the penalty was

anticipated to be in terms of a cash limit.

It would be appropriate to have guidance on that matter. I am not clever or skilled enough in the law to be able to lodge an amendment that would have the effect of requiring the courts to take all the circumstances into account. I would be happy to co-operate with the minister at stage 3 in drafting an amendment that the Executive thought to be sensible. If the minister indicates a willingness to do that, I would be happy to co-operate with him. In the light of the response that the amendment has received, I ask the committee's permission to withdraw it.

The Convener: It may be of comfort to you to know that I spotted the minister nodding vigorously. I assume that that is an affirmative response.

Amendment 117, by agreement, withdrawn.

Amendment 118 moved—[Mr Jamie McGrigor].

The Convener: The question is, that amendment 118 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

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

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

Amendment 118 disagreed to.

The Convener: Amendment 119 is grouped with amendment 106.

Mr Tosh: Amendment 119 would tighten up a slightly loose expression in the middle of section 6(4). Subsection (4) provides for the disqualification of a dog owner to come to an end but does not explicitly call for the revocation of the order that confiscated the dog. Some committee members may feel that the amendment is somewhat declaratory, but we have incorporated several declaratory phrases in the bill through other amendments. From a layperson's point of view, it is unclear whether the dog would be

returned automatically. I wanted to insert a phrase to say that the order would be revoked at the point at which the disqualification ended, so the owner of the dog could get the dog back then.

I have nothing to say on amendment 106.

I move amendment 119.

The Convener: I am sure that Mr Mundell has something to say on amendment 106, which is in his name.

David Mundell: As ever, convener, you do not anticipate me correctly. I am not going to move the amendment.

Mr Tosh: But you had something to say.

The Convener: Indeed, he said something. Do any other members wish to comment on amendment 119? As no one has any comments, do you wish to say anything further, Mr Tosh?

Mr Tosh: No. I simply thank the committee for allowing me to speak to my amendments. I apologise because I shall have to leave now, as I have a 4 o'clock meeting, although one or two more of my amendments are on the list for today.

The Convener: We understand. You have other duties now.

Amendment 119 agreed to.

Amendment 106 not moved.

Amendment 120 moved—[Mr Jamie McGrigor].

The Convener: The question is, that amendment 120 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)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Oldfather, Irene (Cunninghame South) (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 120 disagreed to.

The Convener: Amendment 108 is in a group of its own.

Mr McGrigor: Section 6 is unjust, as it gives a

court the power to seize any dog that is not owned by the offender, whether or not it has been involved in an offence. The section adds another penalty to that of a fine or imprisonment, which can be imposed at the court's discretion. In view of the offences created by the bill, that seems unnecessarily draconian. The bill gives the court the power to remove any dog that was in the offender's custody when the offence was committed or any dog that has been in the offender's custody since then. This would allow a dog—or dogs—that did not belong to the offender to be seized even when the dog was used in the commission of an offence without the owner's knowledge or consent. That could raise serious problems within a family. If, for example, the parent was the offender but the dog belonged to the child, a person who had not committed a crime would be punished. That is why the section should be taken out. It is unnecessary, draconian and creates an unfair penalty.

I move amendment 108.

16:00

Stewart Stevenson: What Jamie McGrigor is proposing will have the opposite effect from the one that he intends. The ability to seize from an offender a dog that does not belong to the offender, a dog that they had in their possession at the time of the offence or a dog that comes into their possession subsequent to the offence is precisely the action that allows a dog to be restored to its owner and avoids suffering being caused to the owner. I oppose Jamie McGrigor's amendment.

Fergus Ewing: I have considerable sympathy with the sentiment behind this amendment and Mr McGrigor's previous amendments. However, because we have agreed to amendment 105, the main point has been dealt with, as that amendment says:

"A disqualification order shall not deprive a dog's owner of custody of that dog where that dog was used by another person in the commission of an offence under section 1, unless the owner knowingly permitted the use of that dog".

I have one fear however, and I will take this opportunity to underline its importance in the presence of the minister. If gamekeeping, the activities of the hill packs and the use of terriers cannot continue legally, the people who will fall into the class of potential criminals and face the prospect of the confiscation of their dogs and a bill for thousands of pounds for the care of their dogs before they are disposed of are not people who have been pursuing mounted fox hunting for sport wearing red coats but people who have been carrying out pest control activities.

The draconian power that we are discussing

underlines the importance of ensuring that the work that is carried out by land managers of all types can continue to be carried out with the knowledge of the detailed evidence that we have heard that, in certain circumstances, it is necessary to use dogs to dispatch foxes, often underground. Just about everybody admits that that is the case. If, at stage 3, the bill is not made to protect those people, they will become potential criminals. Some of those people—respectable, law-abiding land managers and others—have told me that they will be parted from their dogs only over their dead bodies.

The bill at stage 3 must reflect the unanimous views—and I stress that they were unanimous—of the committee, as expressed in its stage 1 report: on terrier work, at paragraph 78; on Scottish hill packs, at paragraph 88; and on falconry, at paragraphs 94 to 97. However, I know from speaking to members that all the work that this committee has done is going to be undone at stage 3 by people who are determined to drive through an agenda. I hope that the ministers will depart from their phoney position of impartiality and stand up and be counted like the rest of us. The Executive owes it to the people who have been contributing to this debate to do that before stage 3 and to support the gamekeepers, land managers, hill packs people and terrier men.

Stewart Stevenson: Although I suspect that Fergus Ewing and I might find ourselves on opposite sides of the vote on amendment 108, it is important that I put on record the fact that I share Fergus Ewing's concern that activities in the countryside other than those relating to the horseback hunting of foxes should be allowed to continue without any significant adverse effects or new threats. I will judge the bill's merits against the test of preserving jobs in the countryside that relate to pest control and all the other activities that the organisations to which Fergus referred represent. I may be on the other side of a vote from Fergus occasionally, but I strongly associate with the general principle about country activities that he laid down.

Elaine Smith: Jamie McGrigor's amendment 108 would leave out section 6. I understand his concern for dogs and wider families, but the SSPCA's briefing to us strongly recommended retaining section 6, to protect the welfare of dogs that are involved in court cases. That point has not yet been made.

Mr McGrigor: Fergus Ewing and Stewart Stevenson made the case for my amendment 108, which I will press.

The Convener: The question is, that amendment 108 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)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Oldfather, Irene (Cunninghame South) (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 108 disagreed to.

Section 6, as amended, agreed to.

After section 6

The Convener: Amendment 109 is in a group of its own.

Mr Rumbles: I thank the clerks particularly for all their helpful and detailed advice on an amendment that is substantial, by any account, and comprehensive. Members might be interested in why amendment 107 was withdrawn and substituted by amendment 109. I was willing to reconsider the issue and make my amendment as watertight as possible, which is why amendment 109 was lodged.

In the Scottish Parliament and in the Westminster Parliament, members are duty-bound to be consistent in their approach to legislation. At stage 1 in the chamber, the activities of mounted fox hunts, fox hunting and hare coursing received clear parliamentary disapproval. Everyone on both sides of the vote agreed that the Parliament disapproved of those activities.

It is interesting that the other bill that the committee is dealing with is the Fur Farming (Prohibition) (Scotland) Bill. As members made clear, Scotland has no fur farms, but England has. That bill mirrors legislation that was adopted to cover England and Wales. It is clear that parliamentarians disapproved of fur farming south of the border and I am sure that they will disapprove of it north of the border. We instituted a compensation programme for fur farmers, because ending an activity of which we disapproved would put people's jobs on the line.

Consistency in our approach is essential. Logic dictates that a similar case should be made. Whether or not we approve of the Protection of Wild Mammals (Scotland) Bill, a moral and logical case is proved, which is why I lodged amendment

109. I must say that some of the amounts of money that have been mentioned in recent sensational press reports have not helped us to look at the amendment fairly.

I will go through the amendment in a moment, but another reason that I want the committee to accept amendment 109 on its merits is that the process for the bill—stage 1, stage 2, in which we are currently involved, and stage 3—has gone on for two years. During that time, members of the committee have come and gone. Looking round the committee now, I think that there are only five members—just under half of the members of the committee—who have been involved with the bill from the beginning. John Farquhar Munro left the committee and came back again so that is really only four members, or just over a third of the committee. I am one of those four. We have spent two years looking at the issue.

In the stage 1 debate, it pained me to see members of the Parliament—although it was absolutely their right to do so—making less than informed comments on the bill. After working on it for two years, I am concerned that the vast majority of MSPs at stage 3 will not have a working knowledge of the bill. I am worried that things that we have removed from the bill during our detailed scrutiny at stage 2 will come back at stage 3.

By no means will the bill affect only those who are involved in mounted hunts or hare coursing. My interest has always been in gamekeepers. I was impressed by the arguments that the Scottish Gamekeepers Association has pressed over the past two years. My amendment is an attempt to provide some form of protection for livelihoods that may be at risk.

I want to focus on amendment 109, which would establish an independent commission on hunting compensation, which would

“establish a scheme for compensation in respect of loss of earnings, pension rights and tied accommodation (or losses of any other kind) incurred by persons whose businesses or employment are directly affected by the enactment or coming into force of this Act”.

The key words are “directly affected”. The reason that some of the press reports at the weekend were not helpful is that I am not proposing a compensation package that would be available to anyone who might be affected by the bill. The words make it clear that compensation would apply only to those businesses and individuals who would be directly affected by the legislation.

The amendment is comprehensive. It specifies the criteria that the independent commission would use. I shall not go through amendment 109, as members can see all its paragraphs in front of them. I am trying to argue with colleagues that we

need to consider the issue on its merits.

We must be consistent. Rather than simply banning an activity that we do not like, we need to do something about all those who are involved in the activity and who do not agree that the activity needs to be banned. We need to have some moral backbone. Although we may not like the activity, we need to compensate those who are involved, in the same way that was done south of the border for those who were involved in fur farming. Amendment 109 is a way of doing that. It would prevent fiddles and overexaggerated claims because it would provide an independent commission on hunting compensation.

I move amendment 109.

Stewart Stevenson: It might surprise members, but I would first like to thank the Scottish Countryside Alliance for providing me with a copy of the report on which were based the figures that appeared in the papers at the weekend and this morning. It was quite big of the Scottish Countryside Alliance to do that, because I do not intend to heap great praise on the report.

Before I turn to that, I would like to ask Mike Rumbles to let us know, in his summing up, how much discussion of compensation took place at stage 1. Amendment 109 is substantial and is likely to have substantial financial implications. If I were still in business and was on the board of a company, I could characterise the amendment almost as a poisoned pill, which companies sometimes include in their financial arrangements to inhibit hostile takeover bids. By the same token, if the figures in the Scottish Countryside Alliance's report—which was prepared not by the SCA but on its behalf by others—were anywhere near the mark, that would make it extremely difficult for the Parliament and, indeed, the Executive to allow the bill to pass. That would go very much against the spirit of the Parliament's approval, by a ratio of 2:1, of the principles of the bill at stage 1.

16:15

To counterbalance the press reports, I would like to talk about the figures in the SCA report, which have led to the wildly exaggerated compensation estimates of between £99 million and £127 million. The figures in the report are based on 166 job losses in mounted fox hunting. There is room for debate over that figure, although it has been used elsewhere. The report also includes a projected job loss of 124 that is associated with hill packs and gamekeeping. I reiterate my previous comment: my objective—and, I think, one that is widely shared in the committee—is to ensure that no such job losses occur. If that was ensured, let us say that the figure might still be 166—for jobs lost in mounted fox hunting. Using that figure as a

basis for the calculations, the A9 Partnership Ltd has calculated a figure of between £54 million and £63 million. That is wildly at odds with the explanatory notes for the bill, which suggested that numbers relating to financial considerations for job losses should be in line with redundancy payments that people might reasonably expect if a change of circumstances arose.

Those figures can be compared with the numbers that arise from the decommissioning scheme for fishing vessels in the white fish fleet, under which 100 vessels may be expected to be taken out of the fleet at a total cost of £25 million, with no guarantee of any payments of any kind to the deck hands. The number of deck hands involved is between 300 and 450, and they will get no recompense of any kind. They are, of course, self-employed.

If we were to consider paying substantial amounts of money to the comparatively small number of people who have been involved in fox hunting—instinctively, I do not accept that the figure would be 166—while neglecting people in other industries, I think that we would send out entirely the wrong message. I will find it very difficult to accept Mike Rumbles's amendment 109, although I will listen carefully to the arguments.

The figures that the newspapers have published, based on the SCA's report, are fantasy economics that bear no relation to reality. I therefore welcome the fact that Mike Rumbles has dissociated himself from them. He is correct to feel that press comment has been unhelpful to his case—although I have other reasons for opposing his amendment. However, Mike Rumbles has not provided us with an alternative set of figures to indicate what the cost of his proposal might be. I cannot see how the committee can support amendment 109 at this stage without such figures. If Mike Rumbles wishes to persist with his amendment, it would be in his interest to withdraw it now and return with it at another stage, because, at the kernel of what he is saying, there is a point that needs to be addressed.

Mr Morrison: Before I turn to the substantive points that Mike Rumbles raised, I add to the convener's words of congratulation and good wishes to the new Deputy Minister for Environment and Rural Development and to Murray Tosh in his new position.

My first point is in direct response to Mike Rumbles's opening remarks, which I found offensive. It is sneering and possibly condescending for Mike Rumbles to write off comments that were made in the chamber at stage 1 by describing them as ill-informed or not informed. Mike Rumbles also made the obvious point that not all members of the committee have

been actively involved in the minutiae and the detail of the bill, but I think that his remarks require to be reconsidered.

Mr Rumbles: Will the member take an intervention on that point?

The Convener: We cannot have interventions during this type of debate. Mr Rumbles will have a chance to answer when he winds up on the group of amendments.

Mr Morrison: Thank you, convener, for making the obvious point that Mr Rumbles will have the last word on the matter.

I turn to the issues that amendment 109 raises. Like Stewart Stevenson, I think that there are a number of delicacies. The point has to be made that employers have responsibilities. The tone of amendment 109 is that of a charter of unemployment rather than that of protecting employees. There are historical occasions, going back a number of years, on which Governments have outlawed badger baiting and bear beating. There was no question of compensation on those occasions.

In Mr Rumbles's opening statement, he said that we were duty-bound to be consistent. He talked about the end of an activity. I refresh Mr Rumbles's memory about what was established at stage 1. The bill does not end an activity; it makes mounted hunting illegal. If we were to agree to amendment 109, we would remove the obligation on hunts to look after their employees by, for example, converting to other activities such as drag hunting or hill-pack work.

It is important to remember that the financial resolution was established clearly in the stage 1 debate, when the Parliament agreed to it unanimously on 4 October. The resolution anticipated possible minor costs relating to the licensing scheme. It would be wholly inappropriate for a committee of the Parliament to change the provisions of the financial resolution.

I have not seen the newspaper reports that Mr Stevenson referred to, nor have I seen the analysis by the SCA. Unusually, I am willing to accept Mr Stevenson's analysis of the figures, although he decried some of them as fantasy economics. I could make a cheap political point and say that Mr Stevenson is no stranger to fantasy economics, but I will desist from that opportunity.

Stewart Stevenson: Desist, sir, desist.

Mr Morrison: Mr Stevenson made valid points in relation to compensation in other sectors. There are a number of delicacies, and I cannot find myself agreeing to amendment 109 as it is worded.

The Convener: For the benefit of members, I point out what is contained in the *Official Report* of the meeting of the Parliament when the financial resolution for the Protection of Wild Mammals (Scotland) Bill was discussed. The wording of the financial resolution is:

"That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Protection of Wild Mammals (Scotland) Bill, agrees to—

(a) the expenditure payable out of the Scottish Consolidated Fund of the expenses of the Scottish Ministers in consequence of the Act; and

(b) any payments made to the Scottish Ministers under the Act."—[*Official Report*, 4 October 2001; c 3196.]

I do not think that that wording is limited in the way in which Alasdair Morrison said that it was.

Fergus Ewing: The debate raises the interesting point of principle of to whom and in what circumstances the state owes a duty of compensation. We saw recently during the foot-and-mouth epidemic that compensation was, rightly, paid to farmers whose animals had to be slaughtered because of the operation of the law. The anomaly was that many others who had been affected by the epidemic—such as those who work in tourism, outdoor guides and instructors, and many individuals in the north of Scotland—received no compensation. By sheer coincidence, I received an e-mail today from a small businessperson who operates in Lochaber. He reckons that he lost £50,000 of turnover in cancelled business, and that is by no means unique. He received no compensation.

As Mike Rumbles pointed out, we are proposing, under the Fur Farming (Prohibition) (Scotland) Bill, that compensation be paid to people who can no longer carry out fur farming. The Government is proposing that compensation should be paid in respect of an activity that it proposes to ban because it disapproves of it. The Executive seems, so far, to be holding a hopelessly inconsistent position on the general principle concerning the circumstances in which compensation should be paid by the state to individuals who can no longer carry out an activity because of a legal ban or whose economic livelihood is directly affected.

I imagine that the minister, in his response, will refer to the European convention on human rights, particularly article 1 of protocol 1, which provides protection of a certain kind to individuals. It is helpful to remember that we have a body of evidence—I refer in particular to paragraphs 34 to 38 of the stage 1 report—on the economic impact of the ban under the bill. Paragraph 39 mentions a group of people whom the committee met in Dumfries—the Scottish Borders countryside traders—and whose evidence influenced me greatly. Annexe C of the report notes:

"Its members included a Hotelier, Veterinary Surgeon, Livery Yard owner, Groom, Farrier, Feed Merchant, Agricultural Engineer, and a Chartered Surveyor."

That is important, because the people whose economic livelihood will be affected by the bill will not be the landed gentry—it will not be lords, toffs and belted earls. The people who will lose their livelihood if the bill is passed will be ordinary working people, many of whom we have met. The group that we met was led by Peter Leggate, and the groom's name is Wendy Turnbull—she will lose her job and her tied house. Is it right that we make an activity illegal, that an individual such as Wendy Turnbull loses not only her job, but her house, and that we owe her nothing?

Let us consider that as a moral proposition. If we do that to people who do such work—who are not, in any case, directly engaged in the hunt, but merely look after animals and do all the required ancillary activity to what is basically a sport—can we really say that we owe them nothing? Does it matter whether the number of people involved is one or 100, or whether the bill is £100 or £1 million? Does that make the situation morally different? I do not think so. We have already accepted, under a decision of the Parliament, that we will pick up the tab for the effects of a ban. I emphasise that the ban will not affect the wealthy and the landowning interests—they will merely no longer be able to pursue a sport. The ban will, however, affect ordinary working people. I was very impressed by the sincerity of their evidence, which I believe to be correct. I will therefore support amendment 109.

I will be interested to hear whether the Deputy Minister for Environment and Rural Development will support Mr Rumbles's amendment. I will be especially interested to hear the Executive's response, given that it has said that it is neutral—apparently—on the matter. I hope that Mr Wilson will say whether he believes that a moral duty is owed to ordinary people who will lose their livelihoods and, possibly, their houses, as a direct consequence of the bill becoming law.

Richard Lochhead: This is a difficult issue, which reminds us that ordinary people may be affected if the bill is passed. The question of how many jobs would go if the bill were passed has been one of the most difficult for the committee to grasp. We relied on a lot of survey material at stage 1. We asked people who were opposed to the bill whether its provisions would cost them money and whether it would lose them their jobs. Understandably, the feedback was negative. The figures persuaded us that the bill would have a major impact on those people.

In fact, there is a question over whether any jobs will go. In Mike Rumbles's constituency, the local hunt said to the press that it would not make

people redundant, but would find other work for them. That is worth bearing in mind. The chances are that job losses would be related to the mounted hunt, which means that the state would compensate people whose sport had been outlawed because it is cruel. I am not sure that I am comfortable with that. That issue is central to the bill. It is difficult and we must take the moral factor into account.

Mike Rumbles's argument that we should agree to amendment 109 now because, at stage 3, ignorant MSPs might reverse some of the amendments that have been passed at stage 2 is weak. Amendment 109 looks to the future and tries to plant a seed in the bill that can be used as a stick with which to beat it at stage 3. That is clutching at straws. Mike Rumbles opposed the bill from the beginning—it was his prerogative to do so—and I suspect that if we agree to amendment 109, Mike's next argument will be that the Parliament cannot afford to pass the bill at stage 3. I support the comments of Stewart Stevenson and Alasdair Morrison.

16:30

Mr McGrigor: I support the move to provide compensation, but I am worried that amendment 109 does not go far enough, particularly in subsection (2)(a) of the proposed new section, which Mike Rumbles mentioned. That subsection mentions people who are "directly affected" by the bill, but what about people who are indirectly affected? Many people who own dogs, but who are not employees of hunts, will be affected. Is the word "directly" wide enough to include such people?

It is fundamental that a person who has been relieved of his job, livelihood or property by the banning of a legitimate activity should receive compensation. A hunt ban would affect hundreds of people other than those who are directly employed by hunts. There has been a foretaste of that in hunting areas as a result of the restrictions that were imposed because of foot-and-mouth disease. People who would suffer various financial losses as a result of a ban include farmers and shoot managers. Local authorities would have to undertake the conservation that is done by hunts for nothing, such as hedge laying and fencing. Examples such as fur farming and fishing boat decommissioning have been given. We should think of the compensation money that was paid in the 1950s and 1960s when hydroelectric schemes affected fishing. There are plenty of precedents for compensation.

Every job that goes involves a family and an impoverished community. That has not been thought about. The Executive must consider the bill and how it will affect people. Lord Watson is

now the minister with responsibility for tourism. He must deal with the problem of people who plan shooting, fishing and hunting holidays and who stay in hotels and bring money into the country. Those areas will suffer a decrease in income. Livery stables and other businesses are reliant on hunting, both north and south of the border, and they will suffer as a result of the bill.

I congratulate Mike Rumbles on lodging amendment 109, but I am concerned that although the scope for compensation is satisfactory, the number of people who will receive it is a little low.

Rhoda Grant: Members have drawn comparisons with the foot-and-mouth measures and the Fur Farming (Prohibition) (Scotland) Bill. When a Government agency enters somebody's property and slaughters their livestock, that person is entitled to compensation. However, the Protection of Wild Mammals (Scotland) Bill will not involve that.

My other concern about amendment 109 is that it moves the onus of considering other ways of employing people from the employer to a commission. During our consideration of the bill, we received evidence on issues such as drag hunting. Most of the people who are employed in hunting are employed not full time, but part time; only part of their income comes from hunting. Amendment 109 would remove the onus on employers to consider other ways of making good that lost income. It is for us to work with employers to ensure that employment is created to fill the gap. We must not forget that there are agencies in place to do that. Local enterprise companies and the like will be involved in retraining and in providing opportunities in areas such as tourism. The committee should vote against amendment 109, because it would remove the onus from the people on whom it should rest. The amendment would put people out of work and make them homeless, because it would transfer responsibility from employers to an agency.

David Mundell: I am always troubled when I agree with Mike Rumbles, but I agree with his point about the stage 1 debate on the bill. No one could argue that that debate contributed anything to our discussion of the bill. Over the past weeks, we have struggled with the problem that many of the issues that should have been discussed at the debate, following the publication of the committee's stage 1 report on the bill, were not discussed. That is why there has been such lack of clarity about intention and about whether cruelty is an important consideration in determining whether an offence has been committed. The stage 1 debate on the bill was not a good debate. I look forward with expectation, although not necessarily with hope, to better debate at stage 3.

If I read my crystal ball correctly, it is clear that

the Scottish Executive is opposed to compensation and that, consequently, compensation will not be offered. That is not acceptable. It is quite legitimate for MSPs and for the Parliament to pontificate on hunting in the way that they have. It is legitimate for people to want to ban hunting. I am quite clear about Parliament's stance on the activities that it wants to ban. However, until now those activities have not been illegal. People have participated in them for a long time and participate in them in other countries. If we want to ban them, we should be willing to pick up the tab for the people who will be directly affected by that decision.

Rhoda Grant made a good point: many of the people who would be affected by the bill are employed part time or are self-employed. Much of the thinking on the bill is dominated by the belief that somehow the toffs will see people right and that the Government will not have to compensate people because the big, wealthy landowners will redeploy them. That is not the case. We are talking about ordinary people who are simply going about their business. That is true particularly of those who are involved in the equestrian aspects of hunting, including breeders, trainers and grooms. Such people cannot be redeployed within a vibrant economy. Large chunks of the south of Scotland are not vibrant and do not afford opportunities for easy redeployment.

I welcome Rhoda Grant's suggestion that Scottish Enterprise should step in to assist those people who are not redeployed. However, members who represent rural parts of Scotland see people losing their jobs all the time. The enterprise companies struggle to deal with those people, let alone the additional people who will become unemployed if the bill is passed. It is a great shame that the opportunity is not being taken to allow the Parliament, once it has taken a decision on the bill, to carry the cost of implementing that decision. As my colleague Mr Tosh clarified in Parliament, the financial resolution in respect of the bill could deal with compensation. Unfortunately, we have decided to forget about the people who will be affected directly by the bill. Those are not the people who take pleasure in hunting, but people who are already working for some of the lowest wages in our economy.

The Convener: Before I ask the minister to speak, I will comment on the amendment, which is not something that I often do. After attending the informal meeting in Dumfries and meeting the people to whom Fergus Ewing referred, I find it quite extraordinary that we should even consider making some of these people redundant and taking away their livelihoods without effectively providing compensation. The meeting in Dumfries was not official, but it was far and away the best

evidence session that we had. As a result, I want personally to associate myself with Fergus Ewing's statement.

Allan Wilson: Not for the first time today, Mr Ewing has misrepresented the Executive's position. We have made it perfectly clear that our position on the bill is neutral with three exceptions, two of which apply in this instance as the issue cuts across wider Executive policy and has significant cost implications for us. As a result, the Executive asks the committee to reject amendment 109. The administrative costs that would be involved in establishing and running a new commission of the kind that is proposed would be high and, as Mr Rumbles knows, would cut across the Executive moratorium on the creation of new non-departmental public bodies. Furthermore, the costs of any compensation scheme would be unnecessary. We do not believe that there is any legal need to include such provisions.

In this respect, David Mundell and Mike Rumbles both made a point that is worth repeating. At stage 1, the Parliament agreed to the bill's general principles, which did not include the right to compensation. I do not doubt the convener's judgment in admitting amendment 109, but I think that it is wrong to amend the bill so fundamentally and to impose undetermined costs on the Executive in committee when the principle of compensation was not endorsed by the Parliament at stage 1.

In the debate on the previous group of amendments, Mr Ewing remarked on the Executive's "phoney position". In response, I point out that this is a member's bill, not an Executive bill. Compensation cannot be provided for everyone who is affected by any legislation. As Mike Rumbles himself accepted, a view must be reached based on the circumstances of each bill. We feel that, as far as the Protection of Wild Mammals (Scotland) Bill is concerned, there is no case for the sort of compensation scheme that Mr Rumbles has proposed. The Fur Farming (Prohibition) (Scotland) Bill was mentioned, but that is an Executive bill, which includes compensation provision because the Executive considers it appropriate. Mike Watson did not include such a principle in his bill and, as I have said, Parliament has voted in favour of the bill's general principles without the need for compensation.

As for the moral responsibility that Fergus Ewing seeks to impose upon us, I am a rural dweller and have seen at first hand the devastation that can be wreaked in rural communities—in my own case, a steel-working community—because people have lost their jobs and the bottom has fallen out of the local economy. I need no lessons from Mr Ewing

or anyone else on the consequences of such an event. That said, we are not morally responsible for compensating anyone as a result of somebody else's bill. Most of the hunting infrastructure—the livery, the stables and the horses, to which other members have referred—can be put to alternate use and other employment opportunities can be generated. Indeed, a number of other Government agencies are specifically designed for that purpose.

We should not underestimate the flexibility and adaptability of people who work or, like myself, live in the countryside. As Rhoda Grant said, the country is constantly evolving and rural communities such as the one in which I reside have proved themselves adept at diversification and survival. I have no doubt that they would survive the enactment of the bill without the need for compensatory provisions.

Mr Ewing also raised the question of ECHR protection. The Presiding Officer has given the bill a certificate of legislative competence. The Executive does not question that decision.

Richard Lochhead: It is Mike Rumbles's amendment, not Fergus Ewing's.

Mr Morrison: It is a mistake—

The Convener: We should not have a free-for-all.

Allan Wilson: Mr Ewing raised the point to which I am referring. I am seeking to respond to it.

This is an important ECHR provision, of which Mr Lochhead should be aware. ECHR case law does not automatically require compensation in every case. We do not question the judgment of the Presiding Officer in granting his certificate of legislative competence in this instance.

The Convener: I thank the minister for that. I do not believe that compensation is part of the general principles of the bill. It has never been referred to as being part of the general principles of the bill. Amendment 109 was not brought to me for admissibility. I hope that there is no question that I put through an amendment that I should not have.

Allan Wilson: No. I did not doubt your judgment.

The Convener: Thank you very much, minister. I am relieved to hear it.

16:45

Mr Rumbles: Stewart Stevenson raised several issues. I make it clear that I have not had any talks with the Countryside Alliance about amendment 109. The Union of Country Sports Workers first raised the issue with me. I had a lengthy

discussion with the clerks to formulate the amendment properly.

Stewart Stevenson said that I have not provided another set of figures. At first glance that is a fair comment, but I did not raise the matter in my initial contribution to the debate because the short story about it is that nobody knows. That is patently obvious from the discussion that we have had. Proponents of the bill say that not many people will be affected. If that is the case, the bill will not cost the Executive very much money. I disagree with those who say that it will cost a huge amount of money. I focus on the people who are directly affected by the bill. It is important that we get this into perspective. There is a reason why the financial element is not specified.

Alasdair Morrison will bring a ruggedness of approach to the Rural Development Committee. I was taken somewhat by surprise by his rather unpleasant attack on me—I hope that it is not indicative of future relations on the committee. I never said that members were ill-informed—he will see that if he checks the *Official Report* when it is published. I went out of my way to say that four committee members have been involved with the bill for two years. I did say that the speeches in the chamber were less than well-informed. I hope that he will realise that I was not saying what he thought I was.

Alasdair Morrison referred to the stage 1 debate and to that on the financial resolution. It was made clear during both those debates—through an intervention from Murray Tosh; I am sorry that he has left—that the specific issue of compensation could be and would be addressed in this process. I am stunned that members suddenly feel that it is inappropriate to discuss it. It was intended that a measure such as this be introduced if the bill progressed. Remember what the committee decided at stage 1. We decided to recommend to Parliament that the bill should not proceed.

Fergus Ewing made the point about compensation being made to farmers affected by the application of the law. He referred to the people who met us in Dumfries. He said that we must pick up the tab for the effects of the bill, we must be honest and we must get it right. He talked about a moral duty to ordinary people who will lose their jobs and their homes. I agree with the convener's comments. For those of us who were there, it was the most effective informal evidence session to which we were invited.

Richard Lochhead made the point, which I wrote down as I do not want to misquote people, that if any jobs are to go, the chances are that they will be related to the management of the hunt. He said that I had talked about ignorant MSPs. Well, I hope I have addressed that, as I did no such thing.

David Mundell made the point that nothing substantial was added during the debate in the chamber that we had not already covered in great depth. It was a disappointing debate in that respect. One of the reasons that I lodged amendment 109 was that I am concerned that amendments that are lodged at stage 3, by people who have not been fully involved in the detail of the bill, will change the bill's course and direction. It is important that there is a compensation package.

I am pleased that Jamie McGrigor feels that my amendment does not go far enough. Jamie feels that we have not gone far enough and other members feel that I have gone too far, so as a good Liberal, who is sometimes accused of sitting in the middle, I feel that I have got it right. Mine is a reasoned and constructive approach to the subject.

Rhoda Grant and the minister talked about other agencies, such as the enterprise agencies, getting involved. I am trying to achieve something more practical. When other major industries throughout Scotland have collapsed, we have always tried to think of what we can do to help, not just through the enterprise agencies, but through any other aspect that the Executive or even the Parliament could get involved in.

Richard Lochhead: Will you take an intervention?

Mr Rumbles: No, I will not.

I am trying to do more than just suggest that we go down the enterprise agencies route. The amendment is substantial and would set up an independent commission on hunting compensation. It sets out the criteria used—I am sorry that Jamie McGrigor thinks that those are too weak and too narrow. In my view, the criteria that I set down here are effective criteria that will keep the commitment narrow.

I noticed that the minister said that the Executive's Fur Farming (Prohibition) (Scotland) Bill accepts the principle of compensation. The point that I am trying to make—which the minister accepts—is that the bill is not an Executive bill. The bill is Parliament's bill. It is our bill. The Executive accepts the principle of compensation; the Parliament should accept it. It is logical, right and moral. We have a duty to help ordinary people who are faced with great difficulties. I am doing my best to address that through amendment 109.

The Convener: The question is, that amendment 109 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)
 Lochhead, Richard (North-East Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Oldfather, Irene (Cunninghame South) (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 109 disagreed to.

Section 7—Meaning of expressions

The Convener: Amendment 84 was debated with amendment 53 on day two. It might be of use to members if Fergus Ewing could briefly explain the purpose of amendment 84.

Fergus Ewing: The amendment was intended to make it plain that a firearms or shotgun certificate should include a visitor's firearm permit and a visitor's shotgun permit.

Am I right in thinking that we are talking about amendment 84, on page 5 of the marshalled list?

The Convener: Is it on page 5? I am sorry—I have an extended copy of the marshalled list.

Amendment 84, in the name of Fergus Ewing, was debated as part of the day two groupings. However, given the length of time since then, I am foregoing normal procedure and allowing Fergus Ewing to make a few brief explanatory remarks.

Fergus Ewing: Members will recall that, to provide the safeguard that those who are engaged in pest control activity are properly qualified and suitable people, we agreed that they should be in possession of an appropriate firearms or shotgun certificate. To obtain such a certificate, someone must apply to the police and, if there are any black marks on their character, the licence will not be granted. I believe that licences can and have been suspended or revoked.

Amendment 84 is intended to cover visitor's firearm and shotgun permits. That was suggested by the British Association for Shooting and Conservation, which pointed out to me that, although it is unusual for visitors to be present when pest control activities are being carried out, they could be grouse shooting, for example, when they spot a pest and shoot it. The main activity might be shooting for sport, but incidental to that could be the control of pests.

If amendment 84 were not included in the bill, the participation of visitors in properly supervised activities would be jeopardised. Those activities contribute fairly substantially to the economy in various ways. I believe that John Farquhar Munro spoke about this general topic, although I am not sure whether he would support amendment 84. If amendment 84 were not supported, there would be a potential impact on one part of our rural economy. I hope that members agree that amendment 84 is a small, but useful amendment.

I move amendment 84.

The Convener: As we have already debated amendment 84, there will be no further debate on it.

Rhoda Grant: I am not happy that there is to be no further debate. If there was to be no debate, Fergus Ewing should simply have moved the amendment. However, the convener has opened up debate and I want to speak to remind the committee of the comments that I made in the original debate on amendment 84.

The Convener: Very well. I allowed Mr Ewing to go over amendment 84 only to inform members again of what it was about. However, I accept what you say. Please keep your comments as brief as possible.

Rhoda Grant: I will keep my comments extremely brief. My feeling is that pest control should be carried out by professionals and not by tourists roaming around the country on jollies. Pest control must be done by professionals, who know what they are doing. Amendment 84 would open up the bill to allow other people to take part in pest control.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Fergus Ewing is right to say that we discussed amendment 84 at a previous committee meeting. The point that he has just made is perfectly valid. People engaged in sports such as grouse shooting or deerstalking who are presented with the appearance of what in their opinion is a pest—whether it be a fox or another pest—and shoot it, would be committing an offence under the bill as it presently stands. That is all wrong.

Stewart Stevenson: I have a small point. One of the rules of shooting flying game is that, for safety reasons, one shoots only when there is a clear sky behind the bird. That is particularly important for amateurs such as me, who participate in shooting only occasionally. To lower the gun to shoot something that is on the ground is to put the beaters at serious risk from amateur shooters.

The Convener: Fergus Ewing has moved amendment 84. Members have had their say

again and I probably should not have let them do that, but I was happy to make an exception in this case. The question is, that amendment 84 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)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (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 84 disagreed to.

The Convener: Amendment 121, which is in a group of its own, is in the name of Murray Tosh, who is not here. Does any other member wish to move amendment 121?

17:00

David Mundell: I would like to move the amendment.

Amendment 121 seeks to clarify some of the issues that were raised by Elaine Smith and others in previous discussions. We have incorporated the term “orphaned” into the bill. The purpose of amendment 121 is to define that term. There was a concern that the application of the term could be widened to include virtually any cub. The amendment seeks to give a firm definition of the term “orphaned”.

I move amendment 121.

Elaine Smith: Amendment 121 is quite helpful, particularly given my confusion last week about what is and what is not an orphan. I would be happy to support the amendment. However,

“the mother of which is dead”

perhaps causes slight confusion. In the context of the bill, we have talked about mothers that are dead as a result of intentional fox-control activity. However, that does not make a huge amount of difference in the definition section, so I will support amendment 121.

Amendment 121 agreed to.

The Convener: Amendment 63 is grouped with amendment 64.

Fergus Ewing: Amendments 63 and 64 are meant to be considered together. The aim is to provide a definition of what we mean by the term “pest species”. That phrase has been used throughout stage 2, particularly in amendment 53, where “pest species” and the need to control

“the number of a pest species”

are referred to on two or three occasions. To be clear about what is legal, we need to know what we mean by “pest”. First, there is a need for such a definition. Secondly, what should that definition be?

A few weeks ago, I invited one of Allan Wilson’s predecessors to contribute the thoughts of the Executive. As several issues are involved, I hope that the minister will break his silence and depart from his neutrality to comment on an important matter.

According to amendment 63:

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

The amendment provides a list of animals that can be considered to be pest species and gives Scottish ministers the power to decide in the future that other species might be considered to have become pest species. In the past, for example, mink were not present in Scotland. They were introduced and are now undeniably a pest. If the bill had been enacted 100 years ago, a power to classify mink as a pest would have been needed so that they could be controlled.

I want to make several points. First, having a list provides more protection to animals than not having one. If there was no list, anyone engaging in the killing of any animal could claim that that animal was a pest. Therefore, it is desirable to have a list. We would not want animals that are not regarded as pests to be shot at, or chased by dogs and so on, if that is not appropriate.

Secondly, amendment 63 does not cut across or in any way detract from existing legislation that protects particular species. For instance, badgers are not on the list, so badgers cannot be controlled as a pest species. In any event, there is protection for badgers in the Protection of Badgers Act 1992. Various acts include protection, or at least restrict the circumstances in which animals can be killed. The Game (Scotland) Act 1772 makes it an offence for a person who is not qualified to take game in Scotland to take hares—that is, it introduces the need for a licence. The Ground Game Act 1880 defines hares and rabbits as

ground game, and landowners seeking to protect crops from damage do not need a licence to kill them. I have received a long list of such acts from the SSPCA, for which I am grateful.

The amendment's definition of a pest does not detract from existing protection. It does not imply the repeal or amendment of any of the statutes under which—quite rightly—animals receive protection. There may be other animals, such as pine martens, which some landowners would regard as pests—I understand that pine martens cause considerable losses in red squirrels—but I have not included them on the list in the amendment, as that would have introduced an element of controversy that I did not wish to introduce.

I wait with interest to hear what the minister will say. If the amendment contains some technical faults, I hope that we can hear about them today. At stage 3, we will need a definition of pest species. If mine can be improved on, I will happily work with anyone to achieve that aim. No members have lodged amendments to amendment 63 so I am hoping that it will be agreed to today.

I move amendment 63.

Rhoda Grant: I welcome what Fergus Ewing is saying about listening to what the committee says and returning with an amendment at stage 3. In principle, I do not have a problem with amendment 63. It would be good to define pest species in the bill and the amendment allows further pest species to be added to the list. However, my concern is about mink. Mink are normally tracked down by dogs; people use dogs to find where the mink are and then use traps to catch them. I am a wee bit concerned about including mink in the bill.

My other concern is that animals that are listed in the amendment may not be pests in different areas. It might be better to leave the definition of pest species to a statutory instrument, rather than put it in the bill, from where it cannot be removed.

Mr McGrigor: It is possible that other species might be introduced, which could become pests. Anything that is farmed can become a pest to another species. For example, farmed salmon can become a pest to wild salmon. A species might be farmed in future that could become a threat to the wild stock on land. On that basis, I support amendment 63.

Elaine Smith: I am sympathetic to what Fergus Ewing is trying to achieve and to his suggestion that there ought to be a list of pest species. However, the problem with having a list is that it must be right, and I acknowledge what Rhoda Grant said. Fergus Ewing is talking about trying to improve the amendment at stage 3. Has he had discussions with the SSPCA or anyone else about

drawing up a list of pest species? Might the concept of justifiable reason be introduced, as it is in the killing of birds that are regarded as pest species?

The Convener: Given the comments of members, would the minister be prepared to work with Mr Ewing to lodge a version of amendment 63 at stage 3?

Allan Wilson: Yes. I have no technical objection to what is proposed. As was said in the discussion on section 6, it is important to define what constitutes legitimate pest control so that it is not an offence.

Fergus Ewing: I have been in contact with the SSPCA, which believes that there is a need for a definition of the term "pest species". The SSPCA has reservations about the bill and I believe that it favours there being a closed season.

The best way to proceed would be to include the definition in the bill to provide a framework that could be amended. Elaine Smith has not mentioned any species that should not be in the list. Rhoda Grant mentioned mink, but dogs have to be used in the general control of mink, which is a pest—particularly in Alasdair Morrison's constituency. Dogs are not used in the control of mink in the same way as they are in the control of foxes but, unless we include mink in the list, we cannot control mink adequately. Dogs are too large to get down mink holes, but they can locate mink. If Rhoda Grant feels that mink should be off the list, we should pass the amendment today—especially as the minister did not seem to have any particular objections to it—and Rhoda Grant can lodge an amendment at stage 3 to remove mink. Jamie McGrigor and the minister have welcomed the fact that it would be possible for ministers to add other pest species at a later date.

Amendment 63 agreed to.

Amendments 55 and 56 moved—[Rhoda Grant]—and agreed to.

Amendment 85 moved—[David Mundell].

The Convener: The question is, that amendment 85 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)

Lochhead, Richard (North-East Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Oldfather, Irene (Cunninghame South) (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 85 disagreed to.

The Convener: Amendment 27 is in a group of its own.

Fergus Ewing: Amendment 27 would add another definition. It would add, at the end of section 7, the words:

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

The definition is intended to make clear something that I believe is a principle of the interpretation of statutes generally, namely that the singular implies the plural, which would mean that, where the phrase “a dog” appears in the bill, it can be interpreted as meaning “two or more dogs” as well. Of course, where the phrase “single dog” appears, that presumption does not apply. In other words, the general definition is removed by the use of the phrase “single dog”.

The amendment is important because it makes it clear that more than one dog can be used in pest control activities. All members realise that a pack of dogs must be used—Rhoda Grant and I, in particular, realise that from the evidence of the Scottish Hill Packs Association. If a pack cannot be used, there would be no hill packs. The amendment has particular relevance, but is inserted simply to make it clear that the general rule applies in case anyone thinks otherwise. I hope that the amendment will be passed without controversy.

I move amendment 27.

Rhoda Grant: I welcome amendment 27, but I want to clarify something. The amendment reads as if “a dog” means the use of two or more dogs. Would Fergus Ewing confirm that “a dog” can also mean one dog, if only one dog is required to be used?

Fergus Ewing: I believe that that is the case.

Amendment 27 agreed to.

The Convener: Amendment 64 was debated with amendment 63, which was unanimously agreed to.

Amendment 64 moved—[Fergus Ewing]—and agreed to.

17:15

The Convener: Amendment 89 is in a group on

its own. Elaine Murray is not here to move the amendment, but I invite Alasdair Morrison to speak to and move it.

Mr Morrison: Although I will move the amendment, I decline the opportunity to speak to it.

I move amendment 89.

David Mundell: I congratulate Dr Murray on her promotion, but it is disappointing that she is not at the committee. She added an unpredictability as to how the Labour group might vote. Her absence detracts from the excitement.

Amendment 89 follows the discussions about the lack of clarity as to what “under control” means in the bill. Elaine Murray lodged the amendment to put forward a definition. As with a number of aspects of the bill, it is difficult to come up with something that is definitive. However, I am satisfied that the amendment is the best shot that we can make and I hope that the committee will agree to it.

Fergus Ewing: I would like to support amendment 89—perhaps David Mundell can persuade me. I have moments of unpredictability, too, as members may know.

There is a problem. What happens if somebody is using a dog that does not conform to paragraphs (a) and (b)? Some dogs are being trained and may require to learn correct behaviour. Some are being used for pest control outwith the range of the owner's whistle, for example. Some dogs go over the horizon and out of the line of sight of their owner or handler. In all those circumstances, it seems that amendment 89 does not quite meet the mark, although it is close to it. Elaine Murray made a good attempt at a definition, but the amendment does not quite provide sufficient protection.

As a result, I am not inclined to support the amendment or at least, if it goes to stage 3, I should register the fact that there is still a need to provide greater protection for those engaged in this activity. I am sure that David Mundell will recall the evidence that we received six weeks ago from Paul Crofts and others. When they were asked by Mike Watson when a dog was under control, they said that it was under control when they believed it to be so. That element of belief on the part of the handler is important and is not reflected in amendment 89. Despite the best efforts of the handler and the fact that they might have abided by the National Working Terrier Federation's code—which goes into these matters in a lot of detail—there must be occasions when a dog is outwith control. The definition contained in amendment 89 would not provide protection to law-abiding people in such circumstances. Does Mr Mundell agree that we might need to attend to

the issue at stage 3, and will the minister give us the benefit of his views on the matter?

The Convener: Would the minister like to respond now?

Allan Wilson: Certainly.

The Convener: Splendid.

Allan Wilson: It is obviously up to the committee to decide whether it is necessary to include a precise definition of the phrase "under control" in the bill or whether it is better to leave it to the courts to consider each case on the facts available. However, I might be able to assist the committee in its deliberations. We have been unable to locate a definition of the term "under control" in other primary legislation. The closest to such a definition arises in foot-and-mouth legislation, but even there the term is not definitively defined but refers to dogs that are

"accompanied by, and under the effectual control of, the owner".

Section 13(1) of the Animal Health Act 1981 contains the power to make an order that prescribes and regulates

"the muzzling of dogs, and the keeping of dogs under control",

but we have been unable to find any orders that have been made under that particular subsection.

Convener, I am not quite sure whether that assists you in your deliberations, but the matter is really for the committee to decide.

The Convener: I am not quite sure that it has helped us to identify the Executive's exact position.

Allan Wilson: Well, you did ask.

The Convener: I did, but I am beginning to regret it.

Rhoda Grant: I found Fergus Ewing's position predictable, so I will not argue with him about it. He mentioned that a dog that was being trained might not be under control but might be carrying out activities for which it was being trained. It would be impossible for someone to use a dog that was being trained unless they had control over it. For example, a dog might be on a lead to allow people to pull it back until it was adequately trained.

Proposed paragraph (b) in amendment 89 takes care of the argument about the dog being out of the owner's line of sight. Either the dog is within the handler's direct control, where it can be seen, or it can be trained for a certain purpose. Although the handler believes that a dog is trained, there is no way to prove that; the dog cannot sit a test. However, no professional would use a dog that they did not believe would carry out the acts that

they wanted it to do. As a result, the two parts of the amendment allow for everything.

Stewart Stevenson: Elaine Murray has lodged a very useful amendment, although I wonder whether it will have an unintended but probably beneficial consequence. By implication, amendment 89 contains a definition of dogs that are not under control in that any activity that falls outside those outlined in paragraphs (a) and (b) defines a dog as not under control. When a dog is not under control, the owner is not responsible for any activities that it undertakes when it is not under control and could therefore not be held liable for the consequences of any action that the dog undertook when not under control.

I would like clarification of whether, at this late time in the day, I am starting to see ghosts in the dark, or whether my point is valid in law.

Mr Rumbles: I find myself in complete agreement with everything that Rhoda Grant just said, which surprises me. That must be because amendment 89 was lodged by Dr Elaine Murray, rather than anyone else. Elaine Murray is greatly to be congratulated on the amendment.

I remember the discussion that took place about when a dog or is not under control; we even talked about whether it should be on a lead. Paragraph (b) of the new subsection that the amendment would insert in the bill refers to a situation in which

"the dog is carrying out a series of actions appropriate to the activity undertaken".

That may deal with the point that Fergus Ewing made about a dog disappearing out of sight, as it could be trained to do that.

The Convener: I am unclear about whom to ask to wind up, because although Mr Morrison moved the amendment, he chose not to speak on it. I will ask Mr Mundell to wind up, as he was the first person to speak to the amendment. Mr Morrison may then add some remarks, if he wishes.

David Mundell: I commend the minister on his extensive research into the meaning of the term "under control". Perhaps he should just have asked Mr McConnell.

The Convener: Ooh!

Fergus Ewing: That is close control.

The Convener: Speak to the amendment, please.

David Mundell: We have had a useful discussion of the amendment and it is clear that this is as good a definition as we are likely to get. I take on board the point that Fergus Ewing made. Some would describe the bill as a work of art; others might have a different description for it. However, we have slotted it together. When we

reach the end of stage 2, we will all need to go back through the bill to examine where the definitions apply. We need to ensure that they do not have any unintended consequences—that touches on the point that Stewart Stevenson made.

I commend the amendment as it stands, but we may need to return to this and other definition amendments because of how the bill as a whole fits together.

The Convener: Mr Morrison, do you wish to press the amendment?

Mr Morrison: Yes. I also support the comments that David Mundell has just made.

The Convener: There is a dangerous outbreak of consensus around the table.

Amendment 89 agreed to.

Section 7, as amended, agreed to.

Section 8 agreed to.

Schedule agreed to.

Mr Tosh: I would like to ask a question about the schedule, which may give rise to a committee debate. The committee has made many changes to the bill at stage 2. It would be pertinent for us to seek reassurance from the minister that the necessary amendments to other legislation have been accounted for adequately. It is possible that some of the amendments to other legislation that are set out in the schedule will disappear as a result of the changes that the committee has made to the bill. If legislation that was to have been amended by the bill no longer requires amendment, the relevant references should be deleted from the schedule. If any further changes to the schedule are required, the Executive should keep a careful eye on those and draw them to the attention of the committee and the Parliament.

The Convener: Last week, the Parliament made a wise choice. Minister, would you like to respond to Murray Tosh's point?

Allan Wilson: We undertake constantly to review and monitor the impact of the bill on other pieces of legislation.

Section 9—Short title and commencement

The Convener: Mr Tosh's return is very timely, as the next amendment for debate is amendment 122, which is grouped with amendments 123, 124, 125 and 126. I am advised that amendments 122 and 123 are alternatives, but that both may be voted on. If amendment 122 is agreed to, amendment 123 becomes an amendment to that amendment, which would replace the new subsection inserted in the bill under amendment 122 with the proposed new subsection set out in

amendment 123. That is all very complicated, but we will return to it later.

Mr Tosh: If I had known that this was going to hit me right away, I might have stayed outside for a few more minutes. I lodged amendment 122 because I wish the committee to discuss the period of commencement. In the absence of the member in charge, it is not clear to me why the intention was for the bill to be implemented two months after receiving royal assent. I think that the bill has changed quite a lot and that that has implications.

I am not aware of what members discussed in relation to compensation, and I do not know what view the Executive will take of the guidance and training that will be necessary for procurators fiscal and police forces in relation to the enforcement of the eventual act. All sorts of practical issues may require scrutiny before ministers are ready for the proposed legislation to come into force.

The time required may well be two months, but it may well be four months, six months, 10 months or whatever. It would be sensible to allow ministers to take a view on the appropriate time needed before implementation of the act. It is one of the few things on which I trust ministers to take a decision, although they do not have the absolute right to take that decision, because, if the proposal on implementation is presented in the form of a statutory instrument, it has to come before the Parliament. That is my thinking behind amendment 122. It takes the rigid two-month period before commencement out of the bill and in effect inserts whatever period of time ministers feel appropriate in the light of circumstances.

I move amendment 122.

17:30

Mr McGrigor: The point of amendments 123 to 126 is to allow the countryside to readjust to the impacts of the bill if passed, which will be extremely large in rural areas. All sorts of people will be affected. Fergus Ewing has already listed some of the businesses concerned—farriers, feed merchants and farmers, for example.

Two months seems far too short a time to allow a community to adjust to a considerable loss of income. Hunts and hunting communities carry out and fund significant conservation measures. Who will do that vital work if the bill is passed? Somebody has to organise who will do it.

The police have been mentioned. Who will organise the additional policing that will be required? Will we need mounted police? Presumably, we will not have the Royal Canadian Mounted Police—they wear red coats. All that has to be taken into consideration, but the bill as

introduced takes no account of that, and I believe that the time scale of two months before commencement would show contempt for people in the countryside.

I believe that ministers should be able to judge when a clearing-up period has been completed and when adequate alternative arrangements have been put in place to offset the damage done by the bill. Once ministers judge that all those arrangements have been made—in a civilised, caring society they should be made—the bill can be brought into force. It is surely not asking too much to allow those people whose livelihoods will be affected enough time to adjust to the ravages of the bill. That is why I intend to move my four amendments in this group.

Stewart Stevenson: Amendment 122 might be useful, in that we could reduce the two-month period before commencement by statutory instrument. I suspect that that is not what Murray intends, although it is a side effect.

Jamie McGrigor's amendments might postpone the date on which fox hunting ceases to the season 2003-04. Given the fact that the Parliament has spent a considerable time considering the bill, the general public would find it incomprehensible were there to be another season of fox hunting a substantial period after the bill's passage.

The effect of the two months—which is in the bill as it stands—will be to ban fox hunting from autumn 2002, assuming the timetable proceeds as it should. Is there, as has been suggested, a lack of understanding in the countryside about the effects of banning fox hunting? I suggest that there is a clear understanding of the effects of banning fox hunting, for the simple reason that there has been very little fox hunting for some substantial time. In various areas, businesses are adapting—as businesses always will do—to the new environment and are finding new ways of earning their keep. That is not to downplay the significance of the problem for what the Scottish Countryside Alliance's paper suggests are the 116 people who are currently involved. However, do not let us pretend that the two months in the bill is draconian. We are talking about there being no more fox hunting from the autumn of 2002. I repeat the point that although mounted hunts will undoubtedly be shown on television—as a glorious final shot for that immoral sport—some substantial time after the passage of the bill, the public will not expect to see them.

Mr Morrison: I concur with Stewart Stevenson and see no reason why we should delay a ban. Jamie McGrigor raised genuine concerns about those who will be affected by the legislation and said that they should be able to take stock of its implications if they need to. I say to Mr McGrigor

that no one in the countryside will be taken by surprise. Ultimately, it is the Parliament and not the Executive that should decide the start date.

Allan Wilson: We are neutral on the measure but, if asked to choose, we would prefer the controlled approach of amendment 122.

Mr Tosh: I was impressed by Stewart Stevenson's eloquent exposition of the efficacy of market forces. I would be happy to think that that philosophical bent might permeate SNP policies more in future. That is perhaps the final partisan political comment that I will be allowed to make in the Parliament.

Stewart Stevenson: Hear, hear.

Mr Tosh: I am glad that Mr Rumbles approves.

Stewart Stevenson: It was Mr Stevenson.

Mr Tosh: That is a different matter.

The minister's response was a pretty good wink to the committee. It is standard practice for bills to contain provisions for the bill or sections of the bill to come into effect at the discretion of the Executive. Alasdair Morrison is right—it will ultimately be a parliamentary decision, as it will have to come through Parliament by statutory instrument. Ultimately, therefore, and as is proper, Parliament has the control.

However, it is reasonable that the people who will be charged with the implementation of Parliament's decision—the enforcement of the act—should be in a position to signal to Parliament when they think that that act should come into effect. That would be the purpose of amendment 122. If the committee feels that it is reasonable to specify a period of time, it has a choice between the status quo and the various options offered by Jamie McGrigor. However, in general, it is unwise to be specific and much better to give the Executive control of when it wishes the bill to be implemented.

The Convener: I should point out that if amendment 122 is agreed to it will pre-empt amendments 124, 125 and 126.

Richard Lochhead: Sold.

The Convener: That may well be a telling point in its favour.

The question is, that amendment 122 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)

Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)

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

Amendment 122 agreed to.

Amendment 123 not moved.

The Convener: Amendments 124, 125 and 126 have been pre-empted.

Section 9, as amended, agreed to.

Long Title

The Convener: Amendment 18 was debated with amendment 38 on day one. I invite Mike Rumbles to say a few words on the amendment. Standing orders do not permit a debate to be continued, but I set the precedent earlier on.

Mr Rumbles: To refresh members' memories, my idea was that we should focus on cruel sports. It is not too late to add the word "sport" to the long title. I am conscious that Stewart Stevenson's final comments in the stage 2 debate referred to this "immoral sport". I hope that he will put his money where his mouth is.

I move amendment 18.

Allan Wilson: If we are in the business of refreshing memories, I would like to remind the committee that my predecessor, Rhona Brankin, asked the committee to resist the amendment.

Mr Rumbles: Look what happened to her.

The Convener: The question is, that amendment 18 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)
 Lochhead, Richard (North-East Scotland) (SNP)
 Morrison, Alasdair (Western Isles) (Lab)
 Oldfather, Irene (Cunninghame South) (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 18 disagreed to.

Long title agreed to.

The Convener: I congratulate the two newest committee members, whose arrival on the committee has been timed with great perfection, as that brings us to the end of stage 2. I genuinely thank members for the way in which they have engaged in a long and arduous process, which they have managed correctly. We have shown a parliamentary committee at its best in the way that we have handled stage 2. I have no doubt that stage 3 may be equally arduous, but I believe that the committee has done its duty very well at stage 2. I thank all members for that.

I propose that we postpone the rest of today's agenda until next week. Are we agreed?

Members indicated agreement.

The Convener: I did not think that I would get any dissent on that point.

I thank visiting members and the minister for their attendance today.

Meeting closed at 17:43.

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