



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 23 June 2010

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
17th Meeting 2010, Session 3

CONVENER

*Maureen Watt (North East Scotland) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Aileen Campbell (South of Scotland) (SNP)

*Karen Gillon (Clydesdale) (Lab)

*Liam McArthur (Orkney) (LD)

*Elaine Murray (Dumfries) (Lab)

*Peter Peacock (Highlands and Islands) (Lab)

*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Rhona Brankin (Midlothian) (Lab)

Jim Hume (South of Scotland) (LD)

Jamie McGrigor (Highlands and Islands) (Con)

Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Hugh Dignon (Scottish Government Rural and Environment Directorate)

Steven Dora (Scottish Government Rural and Environment Directorate)

Kathryn Fergusson (Scottish Government Rural and Environment Directorate)

Stuart Foubister (Scottish Government Legal Directorate)

Angela Robinson (Scottish Government Rural and Environment Directorate)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 2

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 23 June 2010

[The Convener *opened the meeting at 10:01*]

Decision on Taking Business in Private

The Convener (Maureen Watt): Good morning, everyone. Welcome to the 17th meeting this year of the Rural Affairs and Environment Committee. I remind everyone to turn off their mobile phones and BlackBerrys, as they impact on the broadcasting system.

The first item of business is a decision on whether to take in private item 5, under which the committee will consider its work programme. Do members agree to take that item in private?

Members *indicated agreement.*

Subordinate Legislation

Seed (Scotland) (Miscellaneous Amendments) Regulations 2010 (SSI 2010/219)

Sea Fishing (Restriction of Days at Sea) (Scotland) Order 2010 (SSI 2010/238)

10:02

The Convener: Item 2 is consideration of two Scottish statutory instruments under the negative procedure. The Subordinate Legislation Committee has made no comments on the instruments, no member has raised concerns about either of them in advance of the meeting, and no motions to annul have been lodged. Do members have any comments?

Liam McArthur (Orkney) (LD): I want to speak briefly about SSI 2010/238. On looking through the regulatory order, I was struck by the fact that we have a do-nothing option and an option to bring in the SSI, as set out by the Government. I am struggling to accept that there are only two options. Options beyond the do-nothing option could and should have been considered.

There seems to be a suggestion that there was fulsome support in the conservation credits steering group for the approach that is being taken, but I am aware that there was significant disagreement in that group on aspects of the approach. There were also concerns that the steering group was presented with paperwork very late in the day, on the eve of the meeting that was scheduled to consider the approach. I raised that matter with the Cabinet Secretary for Rural Affairs and the Environment earlier this month. He acknowledged that there were concerns, and he proposed to address them urgently with the industry. I am interested to know what progress he has made on that, particularly on monkfish quota transferability and the threatened loss of the deep-water edge along the so-called French line.

I do not think that we can do anything in relation to the statutory instrument—I think that what has been stated about the legal vacuum that could be left is entirely valid—but I would welcome clarification on the action that is being taken.

The Convener: Okay. We can certainly raise that matter with the cabinet secretary.

John Scott (Ayr) (Con): I largely support Liam McArthur's comments. I am not entirely certain that the order absolutely reflects the views of the industry either, notwithstanding the consultation that appears to have taken place. However, that

said, we probably have no choice but to pass the instrument today.

I am happy to say that I welcome the quality of the instruments that are now being put before us. That is a huge step forward and the fact that there is no report from the Subordinate Legislation Committee is to be welcomed.

The Convener: Apart from writing to the cabinet secretary on the points that Liam McArthur raises, do we agree not to make any recommendations in relation to the SSIs?

Members *indicated agreement.*

Wildlife and Natural Environment (Scotland) Bill: Stage 1

10:06

The Convener: I welcome the Scottish Government's bill team. Hugh Dignon is the head of the wildlife management team, in the natural resources division; Stuart Foubister is divisional solicitor, food and environment division, in the legal directorate; Kathryn Fergusson is bill manager in the wildlife management team, in the natural resources division; Steven Dora is a team leader, for landscape and protected sites, in the natural resources division; and Angela Robinson is a policy adviser in the biodiversity strategy team, in the natural resources division. All our witnesses are from the Scottish Government.

I invite you to make a short opening statement about the bill in general and to explain part 2 briefly—there is no need to discuss parts 1 and 6. Members will question you thereafter.

Hugh Dignon (Scottish Government Rural and Environment Directorate): The Wildlife and Natural Environment (Scotland) Bill covers a diverse range of topics relating to the protection of wildlife and the natural environment and the regulation of our use of those natural resources, but it has some overarching themes that link those policy areas together. The first intention is to modernise the legislation to ensure that the legal framework is fit for purpose. The second is to improve the welfare of wildlife when it comes into contact with human activities and to improve the protection of wildlife and of the natural environment, where weaknesses in the current legislation have been identified. We also aim to ensure that the legislation is responsive to the needs of economic and social development.

There are many competing interests and demands in relation to wildlife and the natural environment. The bill aims to balance those interests, maintain the high quality and biodiversity of our natural environment and recognise our natural environment's vital role in the Scottish economy. The bill seeks to achieve those various aims by amending the current legislation that applies to each of those topics.

Part 2 is the largest part of the bill. In the main, it amends the Wildlife and Countryside Act 1981. It abolishes the game licensing regime and repeals poaching statute to bring game species and related offences within the scope of the 1981 act. That is one of the modernisation aims of the bill.

Part 2 also abolishes the areas of special protection regime, which is no longer considered to serve any useful conservation purpose. In other

words, that role has been overtaken by other means of protecting the environment. It also brings forward Government commitments on snaring. The aim is to improve animal welfare and standards for snaring operators. All snaring operators will have to undertake training and each snare that is set will have to have a tag attached, showing the operator's identification number.

Part 2 also addresses some duplication in the current species protection legislation and makes some changes to the licensing regime to provide Scottish ministers with further flexibility to decide on the most suitable licensing authority. It also adds an additional purpose for which a licence may be issued.

I hand over to Angela Robinson, who will say a few words about the invasive non-native aspects of part 2.

Angela Robinson (Scottish Government Rural and Environment Directorate): Sections 14 to 17 of part 2 deal with non-native species. The provisions were developed as a result of the debate in the Scottish Parliament in October 2008, when there was cross-party agreement that there are weaknesses in the existing legislation and the Parliament resolved to ask the Scottish Government to review it, to ensure that there is a coherent and comprehensive framework for dealing with non-native species.

The bill will amend and strengthen the release provisions in the Wildlife and Countryside Act 1981 and provide flexibility so that the release of beneficial non-natives can be permitted, if appropriate. It will provide new powers for ministers to prohibit by order the keeping of invasive species and to require by order the notification of specified invasive species. It will consolidate the law, where that is appropriate, and it will enable ministers to issue codes of practice to support the legislation.

The bill will introduce a new regime of species control orders, which will enable relevant bodies—the Scottish ministers, Scottish Natural Heritage, the Scottish Environment Protection Agency and the forestry commissioners—to ensure that effective control and eradication measures can be taken, where appropriate.

The Convener: Thank you. On the repeal of provisions on game licences and the new approach to game, I think that water bailiffs still have powers of stop and search—and seizure, if that is justified. If that is the case in relation to fish in our rivers, why should it not be the case in relation to game birds, rabbits, hares and so on? Is the poaching of those animals less of a problem than the poaching of fish?

Hugh Dignon: The poaching of game birds, hares and so on is certainly a problem, but in

practice it is probably less of a problem than the poaching of migratory fish. I guess that the main underlying reason for the different approach is that a different regime applies to freshwater fisheries. There is a statutory role for salmon fisheries boards, and the bailiffs have a role in that regard. The structure is different from that of most game businesses, which are run by private-sector landlords and are a matter of private property.

The Convener: How will the police be resourced to prevent poaching offences?

Hugh Dignon: In practice, the police currently do most of that anyway. It was clear from the consultation that many land managers are reluctant to send their own people out on a dark night to tackle poachers, who often carry firearms. Land managers realise the impracticality of doing that; they normally call the police. Given that the police are the first line of enforcement under the current arrangements, no major change is expected.

The Convener: Are you aware that a number of gamekeepers and land managers are special constables?

Hugh Dignon: Yes. There was a recent initiative on the part of some police forces to try to recruit more gamekeepers and other rural workers as special constables. The Government has supported the initiative.

The Convener: How does the system work? If a special constable suspects that poaching is going on, can they stop and search or arrest the person?

Hugh Dignon: I am not an expert on how special constables work, but I think that they need to be clear about the role that they are undertaking—if someone is acting as a special constable, I do not think that it is possible to mix that with their role as a gamekeeper, although it is clear that information that comes to their attention as a gamekeeper will be useful to the police in the more general sense.

John Scott: I am interested in what you said about how landowners or gamekeepers who suspect that an armed person is on their ground use the police as the first line of response. How quickly would you expect an armed police response to arrive in order to apprehend a poacher? I would argue that it is not a realistic defence—the police might not turn up for something like that in the middle of the night.

10:15

Hugh Dignon: It depends on the area of the country. In some more remote parts of the country, that is right, and landowners have made the point that it is difficult to get the police to respond.

John Scott: So there is no defence in many instances—there is no real way of apprehending poachers if they are armed.

Hugh Dignon: We would recommend that people call the police if they suspect that someone is on their land, armed with a shotgun. That would be the most sensible way to proceed, I imagine.

John Scott: Forgive me—I did not hear what you said.

Hugh Dignon: The most sensible way to proceed would be to call the police if a landowner or gamekeeper thought that there were armed people on their land.

The Convener: Do we have any idea of how many incidents of poaching are reported to the police and of how many prosecutions there have been?

Hugh Dignon: I am sure that the data on that are available, but I do not have them to hand.

Karen Gillon (Clydesdale) (Lab): I am interested in John Scott's idea that people would get the police to respond. My understanding is that if someone has a weapon, an armed police response unit is needed, and those are not readily available in most parts of rural Scotland. It is an interesting thought.

Can Hugh Dignon take me through the stuff about rabbits? I am interested in the assumption that the landowner owns the rabbits on his land and so, if somebody takes a rabbit, that is in some way an offence. Rabbits have been part of Scottish eating culture for many years. Who makes the assumption that the landowner owns the rabbits?

Hugh Dignon: It is set out in statute. It is probably in the Ground Game Act 1880, originally.

Karen Gillon: Is that correct in modern Scotland?

Hugh Dignon: As far as I am aware, that act is still on the statute book and it still applies—until it is repealed.

Karen Gillon: Those provisions could be repealed under the bill.

Hugh Dignon: I think it is the intention that they will be repealed under the bill. Nevertheless, the ownership—

Karen Gillon: But they would be replaced with something else.

Hugh Dignon: The ownership of the right to take ground game will be retained under the bill.

Karen Gillon: You expect that only the landowner, or someone to whom he has given permission, will have the right to take rabbits.

Hugh Dignon: That is correct.

Karen Gillon: That is a ridiculous position.

Hugh Dignon: That is the current position.

Karen Gillon: It is—I am not saying that that is not the current position, but it is pretty ridiculous. Do we have any evidence that it is the landowner who puts the rabbits on the land in the first place?

Hugh Dignon: Most landowners would try to remove the rabbits on their land.

Karen Gillon: Indeed—that is why it is kind of a strange situation.

The Convener: I think people are supposed to ask a landowner if they wish to shoot rabbits on their field.

John Scott: Could I help in this regard? Most landowners are happy to get rid of rabbits; the problem arises when people take dogs with them on to the land, which might inadvertently cause sheep disturbance or worrying, or might spook cattle. It happens most often through the night: cattle can take off in groups of 30 or 40—they get frightened and they can run for 2 or 3 miles, taking fences with them and destroying everything in front of them. That is why landowners do not generally want people on their land without their permission. In most instances, they are more than happy to get rid of the rabbits in any way that they possibly can.

That is speaking for myself, at any rate—and I declare an interest, as a farmer.

The Convener: Elaine Murray has a question on game loss.

Elaine Murray (Dumfries) (Lab): Following up first on what John Scott was saying, I would have thought that the Protection of Wild Mammals (Scotland) Act 2002 controlled the extent to which people could use dogs in the pursuit of rabbits. I thought that we had dealt with some aspects of that in legislation already.

I return to the subject of my question. Someone can be convicted of poaching on the evidence of a single witness, which is not the case in relation to the illegal poisoning of birds of prey, for example. Why is a single witness permissible in cases of poaching? Why cannot we extend that degree of corroboration to cases of poisoning of wild birds of prey? As we have seen, that is a significant problem in Scotland.

Hugh Dignon: Essentially, the bill simply replicates the current position. Under Scots law, single-witness evidence is sufficient for a conviction for poaching whereas nearly all other crimes require corroboration. I guess that it would be possible to change the current position. That said, the argument would be why should wildlife

crime be prosecuted on single-witness evidence and not other—

Elaine Murray: In that case, why poaching? In rural areas, having more than one witness to a crime of laying poison to kill wild birds of prey is very unlikely. I assume that the argument for having single-witness corroboration in cases of poaching is that it happens in unpopulated areas where it is unlikely that more than one person will witness what is going on.

Hugh Dignon: I understand that that is correct. The original reason for having single-witness evidence was the difficulty of getting corroboration. Often an individual—for example, a gamekeeper—is the only person who can provide evidence.

Elaine Murray: Perhaps something could be done in the bill about the poisoning of wild birds.

Hugh Dignon: Potentially, yes.

Elaine Murray: I turn to the issue of hares, which is slightly different from that of rabbits. Like Karen Gillon, I am a little confused about the situation in relation to rabbits, which are a pest—they undermine river banks and all the rest of it. I am not sure why hares, which are an endangered species in certain respects, should be treated the same as rabbits. Why have you decided on a close season for hares as opposed to full protected species status? The Hare Preservation Trust is pleased about the close season, but it would like the argument to be taken further and says that hares require full protection.

Hugh Dignon: We saw no conservation evidence that such provision was required. The close season is a welfare measure rather than a conservation measure; it is to protect hares when they have dependent young.

Elaine Murray: What sort of evidence would you require to give full protection to a species such as the wild hare?

Hugh Dignon: In the first instance, we would look to SNH to provide us with advice that it thought that was required. We have not had such advice.

Karen Gillon: Under Scots law, having single-person burden of proof is a special circumstance. What is the policy objective behind retaining that?

Hugh Dignon: As I said, the policy objective was not to disturb the current situation and, as I said, poaching offences require only single-witness evidence. The various pieces of archaic poaching legislation were simplified and consolidated into the single piece of legislation that is the Wildlife and Countryside Act 1981. At this stage, we did not wish to change the policy or the way in which that was done; it was more a matter of simplification and of bringing everything

under a single regime. That is why we have ended up with the current situation of retaining single-witness evidence for poaching.

Karen Gillon: But there is no reason why that cannot be changed under the bill.

Hugh Dignon: I think that that is right, yes.

Peter Peacock (Highlands and Islands) (Lab): I return to the point on bird poisoning. Obviously, you are aware of the serious incidents of golden eagle, red kite and other species being killed. I am unsure whether it is yet clear whether all of them were poisoned, but it looks as if that was the case. Indeed, it looks as if those deaths are part of a pattern—a growing incidence of bird poisoning. In that context, it is puzzling that there is nothing in the bill per se to strengthen the provisions to tackle this serious crime, given the fragile natural environment for some of those species. Has policy consideration been given to strengthening the law on bird poisoning or has that been positively ruled out?

Hugh Dignon: It has not been positively ruled out. There is an argument that we already have a strong legal framework for the protection of wild birds in the Wildlife and Countryside Act 1981 and now need more effective enforcement. The ministers are keeping the issue under review in light of the recent events on shooting estates in the north of Scotland. They wish to think about whether any further provisions would need to be introduced to the bill, but no firm decisions have been taken.

Peter Peacock: I will take the question slightly further and try to link grouse management and moor management to bird poisoning. There is evidence that, because the market for grouse shooting is quite buoyant and affluent, new grouse moors are being brought into active operation and intensively managed. There is also at least anecdotal evidence that the management practices on those moors do not necessarily accord with the traditions that we have had in Scotland but are new management techniques imported from elsewhere. There is a school of thought that an increase in the incidence of bird poisoning is part of what accompanies that intensification.

In that context, have you explicitly considered introducing vicarious liability, so that the owner of the estate would be put in the frame? Notwithstanding the fact that we have quite tough laws, incidents of poisoning appear to be on the increase, so perhaps further steps are required.

Hugh Dignon: Yes, is the short answer to that. Vicarious liability is one of the options that we would propose as part of any review of possible measures. That would be based on the report “Natural Justice: A Joint Thematic Inspection of

the Arrangements in Scotland for Preventing, Investigating and Prosecuting Wildlife Crime” by Her Majesty’s inspectorate of constabulary for Scotland, which recommended that the partnership for action against wildlife crime’s legislation sub-group consider vicarious liability. That sub-group has done some initial work on it and continues to consider other options.

Vicarious liability is definitely one of the measures of which ministers are aware, but I stress that no decisions have been taken on it as far as I am aware. It would be one of the measures that we would present to ministers if they asked us for options.

Peter Peacock: Okay. As I understand it, the bill repeals the game licensing provisions. You might be able to help me, because I am not entirely clear how that system currently works. I know that a small fee—about £6—is paid for such licences but I am not sure whether they license the whole estate, a grouse moor or an individual to shoot. Perhaps you can clarify that.

A second way to tighten up provisions that might discourage poisoning would be to ensure that grouse shooting was a licensed activity. Perhaps an entire estate or moor could be licensed for shooting and one of the penalties, if there were sufficient evidence of successive poisonings, would be for the estate or moor to lose its licence. If that happened, there would be a real financial penalty for the estate. The argument would be that because of that possibility, the management regime would act against the poisoning of important bird species. Has that been considered in the context of the repeal of game licences?

Hugh Dignon: Currently, the game licence is a licence for an individual to shoot. It does not have much bearing on anything—it has no conservation value, raises no revenue, exerts no control over shooting and is not well complied with—so we think that the appropriate thing to do is to abolish it.

People have suggested to us the licensing of grouse moors; we are aware of it as an option. All I can say is that we would certainly include it for ministers’ consideration if they asked us to give them options, but it is a fairly large-scale and radical proposal to consider introducing at stage 2 of the bill.

10:30

Peter Peacock: From what you are saying, people have an open mind on tightening up some of these policy areas. You have given your point of view and I accept that ministers would have to determine what happens, but at the moment the door seems to be open.

Hugh Dignon: Ministers started out accepting the argument that the legal framework is sufficiently strong and enforcement is the key requirement. As more cases come to light, ministers will keep the situation under review and those are the options that they will consider as part of that review.

Bill Wilson (West of Scotland) (SNP): An individual who commits a wildlife crime, but does not use a firearm, cannot have their firearms licence automatically removed. Being guilty of illegal snaring or of poisoning birds suggests a level of irresponsibility in an individual that means that they should not possess a firearms licence. Will any consideration be given to the automatic removal of a firearms licence from someone who has committed a wildlife crime?

Hugh Dignon: The major obstacle to any consideration of that suggestion is that the matter is reserved and we cannot determine it one way or another. Whether people get firearms licences is a matter for chief constables rather than ministers.

Bill Wilson: I wrote to many of the chief constables to inquire about the matter and they suggested to me that they lack powers. That is my understanding of their replies. That suggests that there could be room to change the law.

Hugh Dignon: As I say, I understand that Westminster legislation controls firearms licences.

John Scott: Am I right in thinking that the repeal of the current licensing situation would bring Scotland into line with England and Wales?

Hugh Dignon: Are you talking about game licences?

John Scott: Yes.

Hugh Dignon: That is correct.

John Scott: So we are in the anomalous position of having game licensing in Scotland, but not in England and Wales.

Hugh Dignon: Yes. England repealed that legislation two or three years ago.

John Scott: Peter Peacock made a point about the potential licensing of grouse moors. If that were to be considered, what would the likely costs be? I agree with Peter that wildlife crime is a problem and that it should be stamped out, but licensing grouse moors could be like taking a sledgehammer to crack a nut. What is your view on that?

Hugh Dignon: We have not looked at the issue in any detail, so it is difficult for me to say, but, on the face of it, it seems to be one of the more radical and large-scale proposals. Vicarious liability has also been proposed, which might be quite a significant change in the law, but it would

have less than the major impact of the licensing scheme that Mr Peacock mentioned.

The Convener: We move on to areas of special protection.

Aileen Campbell (South of Scotland) (SNP): In your opening remarks, you said that ASPs will no longer be needed because there are other ways of protecting the environment. How will birds in the ASPs be protected if the designation is removed? What legislation is in place that gives you confidence that those birds will be protected?

Hugh Dignon: I will hand over to my colleague, Steven Dora, whose area this is.

Steven Dora (Scottish Government Rural and Environment Directorate): The protection provisions of areas of special protection are duplicated by provisions of the Wildlife and Countryside Act 1981. That relates to things such as egg collection and the disturbance of nest sites. In relation to the public access provisions, the Land Reform (Scotland) Act 2003 gives everyone statutory access rights to most land if those rights are exercised responsibly. However, powers to restrict access are available to access authorities, with the Scottish ministers' approval, under section 11 of that act and through bylaws.

Aileen Campbell: The policy memorandum says that SNH is satisfied with the measure. Did it raise any concerns with the Government about the abolition of ASPs?

Steven Dora: No—absolutely none. The majority of the designations are now completely redundant. In at least one case, the birds for which the special protection area was originally designated are absent. They came and went some time ago. SNH is entirely satisfied that it is an outdated designation.

Aileen Campbell: Did any other bodies raise concerns through the consultation?

Steven Dora: A concern was raised by a non-governmental organisation, which has written to the minister on the issue. We are considering that.

Aileen Campbell: Will you elaborate on that? I do not know whether it is in the public domain. If it is confidential correspondence with the minister, perhaps we can discuss the issue at a later date.

Steven Dora: If I may, I will confer with my colleague Kathryn Fergusson. Is the correspondence public?

Kathryn Fergusson (Scottish Government Rural and Environment Directorate): Overall, the consultation revealed broad support for abolishing ASPs but, as Steven Dora said, one NGO raised a concern—in public, so we can talk about it—about whether the other available options will be put in place for a specific site. The

concern was not whether other provisions are in place to replicate what ASPs were designed to do; it was whether ministers would consider it appropriate to use those provisions.

The Convener: We will come back to that. As there are no further questions on ASPs, we will move on to snares.

John Scott: In a consultation that was carried out in 2006, more than 50 per cent of the respondents said that they were absolutely against snaring. The Government has chosen not to go down the route of a complete ban and I agree with that decision. Why did the Government choose not to go down that route?

Hugh Dignon: The decision was taken by Mike Russell in 2008, after careful consideration of the range of arguments that were made. The decision could be summarised by saying that Mr Russell was convinced that it was essential for land managers to carry out pest and predator control to protect crops and livestock. There are a number of ways of carrying out pest and predator control, but not all the methods work all the time, and snaring remained one of the key tools that land managers needed in certain circumstances. The minister decided that to remove snaring would be to remove one key tool from their toolbox. At the same time, the minister was convinced that significant improvements could be made to the way in which snaring is carried out, to improve the professionalism of the people who carry it out and the animal welfare impacts. That has been our policy on the issue for the past couple of years.

Elaine Murray: We recently passed the Marine (Scotland) Act 2010, which acknowledged that seals are predators and that they require to be controlled, but introduced a pretty strict system of licensing for those who exercise that control. Has the Scottish Government considered the possibility of using a similar system for snaring?

Hugh Dignon: The bill will introduce a system that will require snare operators to be trained and to demonstrate that they have completed that training before they are given an identification number, which they will have to use every time they set a snare. We thought that a licensing system was not appropriate in this situation, given the bureaucracy and the cost that would be involved. The important thing is to ensure that people are adequately trained and can demonstrate that they are.

Elaine Murray: So people must demonstrate that they are adequately trained, but they are not required to prove why they have to use a snare, rather than another method of control.

Hugh Dignon: No. That decision is appropriately left to the land manager in such circumstances.

Liam McArthur: I will follow up Elaine Murray's line of inquiry. The former Minister for Environment, Mike Russell, refused to ban snares because he was persuaded that, in certain circumstances, other means of pest and predator control did not work. To some extent, that leads one to assume that there was a presumption against snaring, but that it would be permitted in circumstances in which other methods of control had proved to be unworkable. However, that presumption is not in the bill, and it was not in Mike Russell's earlier decision. Was it considered at the time, perhaps along the lines that Elaine Murray has suggested?

Hugh Dignon: I am not sure that I follow you. Are you suggesting that landowners would need to justify when they use snaring?

Liam McArthur: In a sense. There is evidence that other states operate perfectly well and profitably without the use of snares; there are certainly bans on snares in other countries. I accept that there may be circumstances in which other forms of pest control do not prove to be as effective in every instance, but I would have thought that that would lead to an argument for a presumption against snares without ruling out their use in specified circumstances. Have ministers and officials considered that?

Hugh Dignon: In considering the arguments, ministers and officials were persuaded that there are a wide range of land use objectives and ways in which land is managed, and that it was not a sensible way forward for Government to set a prescription for how and when certain techniques could be used.

Liam McArthur: There is a risk of saying, "It's aye been thus". It is not that the other methods of pest control do not work, but that traditionally snares have been used. Although we might tighten up the way in which snares are used, the extent to which they are checked regularly and all the rest, they are used because they always have been, not necessarily because the other methods have been tried and proved to be unworkable.

Hugh Dignon: We were presented with the argument that the main alternative to fox snaring, which is probably the most contentious form of snaring, is shooting. That is clearly a useful way to control foxes. Most foxes are controlled by lamping and shooting at night, but there are circumstances in which shooting is inappropriate. Those include a range of fairly common situations such as where there are high levels of vegetation so the fox cannot be seen, where there is broken ground so a rifle cannot be used, where there are public safety issues with shooting or where there is no vehicle access to carry out lamping operations. The land managers with whom we

spoke told us that snaring would be the front-line form of predator control in those circumstances.

Liam McArthur: One point that has been raised is the extent of an estate—the larger the estate, the more impractical it would be to control pests solely through shooting. By the same token, however, one would have thought that the size of an estate would militate against the requirement to check snares. In a sense, therefore, you are setting up a system to fail, because unless there is a vast increase in manpower on a large estate, there is very little chance that snares will be checked as often as required.

Hugh Dignon: That does not really accord with the advice that we got from the Game and Wildlife Conservation Trust, which recommends that snares are set in limited numbers, and advises that snares that are set carefully and professionally and are checked regularly are likely to be more effective than a large number of snares scattered around the place.

10:45

Bill Wilson: As the training is partly based on welfare issues, will any welfare bodies, such as the Scottish Society for the Prevention of Cruelty to Animals, be involved in the training programme or its design?

Hugh Dignon: The people who provide the training have discussed it with the SSPCA. Although the SSPCA is not in a position to endorse the training because it is fundamentally opposed to snaring—and I would not want to say this without confirming it with Mike Flynn of the SSPCA—I understand that he discussed the training with the providers and expressed some contentment that it meets animal welfare objectives, or at least that it addresses those objectives.

Bill Wilson: To return to an earlier theme, snares are often placed in isolated areas and whether they catch a non-target species or are placed illegally might be observed by only a single witness. Is that not a perfect example of a situation in which a single witness should be able to report the crime, in line with the situation for poaching?

Hugh Dignon: It could be.

Bill Wilson: If the bill does not ban snares, will it be possible to ban them later without making primary legislation?

Hugh Dignon: Primary legislation would be required to ban snares.

Bill Wilson: There is nothing in the bill that would allow snares to be banned if we decided somewhere down the line that the new provisions

had not worked and we wanted to ban them after all.

Hugh Dignon: There is not.

Bill Wilson: Could such a measure be included in the bill? Is it bad to conclude that if further research shows that the provisions in the bill are not working, we can introduce a ban through a statutory instrument?

Hugh Dignon: I need to take advice on that.

Bill Wilson: I would be obliged if you would reply to the committee later on.

Hugh Dignon: Yes.

Karen Gillon: Perhaps you will also need to come back to us with answers to these questions. I am interested in some of the facts and figures about snaring and whether you know how many people in Scotland are currently trained to use snares. How many snares are in operation and how many snaring offences have been reported under the provisions of the Nature Conservation (Scotland) Act 2004?

Hugh Dignon: The numbers are pretty hard to come by, but we think that about 5,000 people are setting snares in Scotland. That is an estimate from industry sources. The training has only just started and I do not know how many people have completed it, but it will be hundreds. Data on snaring offences are available, but I am afraid that I do not have them to hand.

Karen Gillon: If we do not know how many people are setting snares in Scotland, how will we know that they have all been trained to comply with the provisions of the orders? I suppose that the answer is that we will not know and that they will not all be trained. Given the vagaries of who would report those people and how they would be reported, how do you enforce the current legislation?

Hugh Dignon: As I mentioned earlier, there will be a strong link between the identity tags and the snares. Any snare that is set will need to have an identity tag on it that will identify the operator. The number on the tag will be provided to the operator by the local police, who will not provide that number to the snare operator until they have been satisfied that the snare operator has the certificate that shows that he or she has completed the training.

Karen Gillon: What is the timescale? We think that 5,000 people are putting down snares and a few hundred have been trained. I take it that you would not be able to get a tag until you had been trained. What happens to the people in between? Are we saying that when the bill comes into force, if you have not been trained and do not have a tag you will not be able to lay a snare?

Hugh Dignon: Yes, when the provision commences.

Karen Gillon: When will the provision commence?

Hugh Dignon: I do not think that we have finalised that yet.

Karen Gillon: So we have no idea of the likely timescale.

Hugh Dignon: I do not think that it will take very long for the training to be completed. We are talking about a year or so.

Karen Gillon: How many people are carrying out the training, given that 5,000 people need to be trained?

Hugh Dignon: Several organisations are keen to provide the training.

John Scott: I question whether 5,000 people across Scotland require to be trained.

I presume that, as far as vermin are concerned, setting snares is largely for fox control. Can you confirm that, by and large, that is what we are talking about?

Hugh Dignon: In the main, yes.

John Scott: From my recollection of farming, part of the reason for the use of snares is that foxes move at night, so if snaring were not available, the alternative would be to have more people with guns on the landscape at night. Is that your understanding of the situation?

Hugh Dignon: That would be a result, to the extent that lamping could replace snaring.

John Scott: Do you have any figures that tell us the level of damage that foxes inflict on livestock across Scotland? What is the cost of that and what effect does it have on the viability of hill farms in remote and fragile upland areas? In my experience, it is possible to lose 10, a dozen or 15 lambs in a morning because of a fox, but my evidence is only anecdotal. Do you have any figures on the problem?

Hugh Dignon: I am afraid that I do not have any figures with me, but we certainly have research that Science and Advice for Scottish Agriculture has carried out on behalf of Scottish agriculture on the impacts of predators on livestock in Scotland.

John Scott: Could you let the committee have that information? We would be extremely grateful.

Hugh Dignon: Yes.

Peter Peacock: There is another point about snaring that I want to address. Notwithstanding the fact that many people are completely opposed to snaring and will dislike immensely—even if they

accept—the fact that it may continue under the proposed tightened provisions, they will be concerned about how those provisions will be enforced. I hear what you say about the tag, but that obviously does not cover illegal snaring. There will be no tag on an illegal snare, so it will not necessarily be possible to know who set it.

As regards the provision for checking snares every 24 hours, how do we know that that will be done? Given the nature of the terrain, the geography and so on, surely we will not have snare police going round looking at snares—or will we? Will part of the training be that people who set snares will have to report on where they have set snares so that someone could check them if they wished to? What consideration has been given to the proper enforcement of the proposal?

Hugh Dignon: The first thing to say is that members of the land management community—the people who set snares—are acutely aware of the delicate situation that they are in, in as far as there is a strong movement to ban snaring. They are well aware that bad publicity and reports of bad snaring incidents and crime that is connected to snaring are likely to push the practice into being banned, so there is a strong imperative, especially among professional land managers, to ensure that snaring is done properly. They are keen to support the training and the efforts to improve the welfare aspects. There will always be illegal snaring. Even if we were to ban snaring, I do not suppose that that would stop. We cannot legislate for that.

There is no intention to have people out patrolling the countryside specifically to check on snares. Our belief is that most professional land managers are law-abiding people who will do their best to abide by the law, as they will recognise that it is in their interests to do so.

Peter Peacock: In that sense, the provision will be entirely self-policing and will depend on a high level of trust. On occasion, someone who is out walking in the countryside may come across a snare that has not been set properly, which they will be able to report if there is a tag on it, but that will not happen terribly often. Essentially, the provision will be self-policing.

Hugh Dignon: As you say, large numbers of people walk in the countryside and lots of them take a very close interest in those sorts of thing when they find them. If a snare has a number on it identifying who set it, people will be much more inclined to ensure that it is set properly, checked regularly and does not fall foul of the regulations in some way.

Peter Peacock: If an incident was reported and the police or whoever followed up on that and asked the land manager how often snares were checked and so on, they would be entirely

dependent on the land manager's word for what happens. There is no other evidence that they actually check the snares every 24 hours.

Hugh Dignon: The evidence that a snare was not being checked would be finding an animal that had clearly been in the snare for more than 24 hours. If snares were found in a self-locking state because they had rusted or become damaged in some way, that would also make it clear that they had not been checked and that would also be an offence.

Peter Peacock: Is the use of dogs, ferrets and so on to get foxes out of fox holes, rabbits out of rabbit holes and so on controlled by other parts of statute?

Hugh Dignon: Hunting with dogs comes under the provisions of the Protection of Wild Mammals (Scotland) Act 2002, which is the main legislation in that area.

Peter Peacock: Does that also cover the use of ferrets and so on?

Hugh Dignon: I do not think so.

Peter Peacock: Perhaps you could write to us about that.

Bill Wilson: To return to the conversation about foxes and lambs, there is of course a solid body of scientific evidence by authors such as MacDonald and Hewson, showing that foxes do not attack live lambs. A long period of research involving dietary analysis and radio telemetry has consistently produced the same results. If you are going to send us evidence, I request that you check those and similar authors in order to give us a full picture of scientific opinion on whether foxes predate live—I emphasise live—lambs.

Karen Gillon: I am trying to get it clear in my head why we have not gone as far as licensing. We have taken the steps of training people, verifying their training and issuing them with tags so that we know who they are. What is the barrier to giving somebody a licence so that they are then legally responsible? We are almost there. I do not understand what is stopping us from taking that final step.

Hugh Dignon: It was a matter of judging where the appropriate level of intervention lay. What you described is what ministers decided was the right approach.

Karen Gillon: Was there any policy basis behind that decision?

Hugh Dignon: The general policy that underlies it is to keep intervention to a minimum and a desire not to intervene unless it is necessary.

Karen Gillon: So we rely on people's word for things.

Hugh Dignon: It is rather more than relying on their word. We require them to have training, to demonstrate that they have had it and to show that they are responsible for each snare that they set by putting their identification number on it.

Karen Gillon: What additional burden would be placed on somebody if we moved to a licensing regime?

Hugh Dignon: It would mean, for example, that we would have to maintain a register, with all the attendant costs and data protection issues, and decide when people should be put on or taken off the register. We would, in effect, legally sanction particular people to become licensed snare operators. I do not think that the Government felt that that was necessary or required.

Karen Gillon: In Scotland, there is a strong lobby of people who do not want snaring and another who want the right to snare. I think that there is a case for having a legal basis on which to allow people to carry out the activity or to prevent them from carrying it out—that is the key thing. It is not the ability to snare, but the ability to prevent from snaring those who can be shown not to have complied with the law. I am trying to get my head round whether there is anything in the bill to prevent somebody who has set and tagged a snare that has been found not to have been set appropriately from setting another snare in the future.

11:00

Hugh Dignon: No.

Karen Gillon: Thank you.

The Convener: We move on to invasive non-native species, or INNS, as they will come to be known by us, I suppose.

Bill Wilson: Obviously, there are plenty of examples worldwide of the effects of INNS on biodiversity, but it might be useful to have on the record a few examples of those effects in Scotland.

Angela Robinson: Everybody is aware of things such as Japanese knotweed, giant hogweed and *Rhododendron ponticum* on the west coast of Scotland. American signal crayfish, which eat just about everything, are starting to become a problem in Scotland. There are around 1,000 non-natives in Scotland. Most of them are benign, but obviously those that become invasive can cause not just significant problems for biodiversity but economic, social, recreational and health issues.

Bill Wilson: There is concern that, because there is no named body to lead on INNS in the bill, some species or actions may fall through the gap.

Why has the Government decided not to go for a lead body, such as SNH?

Angela Robinson: Obviously, SNH is the lead body on biodiversity. However, there is such a wide range of invasive non-native species, habitats and impacts involved that the work tends to be spread over different organisations. Other work is going on. Agencies are currently—I hope—signing up to a rapid response protocol, which has been considered in Great Britain work. That protocol is about being able to respond rapidly to invasions of new species. Things need to be kept flexible, because, obviously, we do not know what the future problems will be. We had to keep that in mind in considering the improvements to the bill.

Bill Wilson: I understand and would not dispute that flexibility is needed, but the concern is that, with a large range of bodies and sometimes complex issues being involved, there is a slight risk that something will not be done. There is concern that too many bodies will work on things and that no one will have the authority to say, “Okay. I’ll take charge of this circumstance.” That is where the lead body concern arises.

I will move on, as we are short of time. The consultation document says that the Government has commissioned research into the costs of INNS. Can you give us any of the headlines from that research?

Angela Robinson: The report has not yet been finalised, but it will be over the next few months. We expect that we will have it over the summer. We can send a copy of it to the committee once it is available.

Elaine Murray: The bill will introduce a new regime of species control orders. Can you give us examples of where species control orders might be used to address problems with non-native species? Could they be used to help to control grey squirrels, for example?

Angela Robinson: First and foremost, it is important to say that we do not envisage species control orders being used in a widespread way. If somebody had Japanese knotweed on their land, say, they would not automatically be asked to clear it. The idea behind species control orders is that the relevant agencies can use them to target work so that they can deal with new populations that arrive. If, say, somebody had bullfrogs in their garden that were about to spread, that could have significant implications for Scotland. If access to that land was not permitted, not much could be done about that. The purpose of the orders is to enable something to be done about new populations of species where there are obvious problems. If a national or local strategic plan was in place and there was a threat to it as a result of

an individual not allowing access to their land, for example, a species control order could be used. That is how we see those orders being used.

Elaine Murray: Would you envisage a species control order being used if there was a population of grey squirrels adjacent to a population of red squirrels and you did not want the grey squirrels to invade the red squirrels' area?

Angela Robinson: I cannot say whether a species control order would actually be used in those circumstances, but the bill would allow that to happen.

Elaine Murray: Section 20 makes provision for wildlife inspectors to take enforcement action in relation to the new offences in the bill. How many wildlife inspectors are there in Scotland, and do you have any details of the number of full-time wildlife crime officers employed in Scotland?

Angela Robinson: Hugh Dignon is best able to answer that question.

Hugh Dignon: The provisions on wildlife inspectors consolidate the different people who can take samples and pursue enforcement action under the bill. There were people described in legislation as "authorised by the Scottish ministers" while others were described as "wildlife inspectors", so we are essentially bringing them all together into the single regime of wildlife inspectors.

There are wildlife inspectors currently in Scotland, who are largely employed to deal with operations such as bird ringing under schedule 4 to the Wildlife and Countryside Act 1981 and the enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Although they are authorised by the Scottish ministers, in the main they are paid by the Department for Environment, Food and Rural Affairs, which carries out work under an agency arrangement on behalf of the Scottish ministers—the schedule 4 work in relation to birds in particular. There are about a dozen, but I could not be certain how many operate in Scotland at present.

Elaine Murray: As you are placing additional duties on people employed by DEFRA, what discussions have you had with DEFRA about the impact on its resources?

Hugh Dignon: We are talking about business that is done on behalf of the Scottish ministers, and therefore we rather than DEFRA would resource it. However, we do not envisage that the changes will have a major impact on the work of wildlife inspectors.

The Convener: As no one has any more questions on INNS, we will move on to species licences.

Peter Peacock: On the way to doing that, can I ask a question about the impact on our cities of an invasive native species, the seagull—not the sea eagle? Seagulls have become resident in our cities and towns and go to the supermarket to be fed, so at one level they are quite domesticated. Did you think about including any controls on seagulls in the bill?

Hugh Dignon: Seagulls can already be controlled, when there are good reasons to do so, under the licensing system. When they are a threat to public health or safety or for similar reasons, there are licensing options to control them, usually involving the removal of nests or oiling of eggs, although there can be lethal control of gulls as a last resort. That happens in a number of cities—in Glasgow, Aberdeen and Dumfries, for example—but we are also mindful that some of the species are becoming somewhat rare: herring gulls and black-backed gulls, for example.

Peter Peacock: I am going to weave this question in now, convener, as I cannot find anywhere else to do so.

I notice that the Wildlife and Countryside Act 1981 gives protection to certain insects. Does that include bees? I recall some interesting correspondence on whether the Scottish bee is, in fact, a native species and therefore deserving of protection. There was an argument that it was brought here by the Romans, but there is great dispute about the issue—some people say that it is a native species. Given the genuine threat of and danger from declining bumble-bee and honey bee populations, was any consideration given to tidying up the law to afford better protection to bees in future?

Hugh Dignon: Bees are regarded as a farmed animal rather than a wild animal so they do not usually come within the ambit of the Wildlife and Countryside Act 1981, although bumble-bees do. Honey bees are not dealt with by my bit of the office, I am afraid.

Peter Peacock: No consideration has been given to that.

Hugh Dignon: Certainly not to farmed bees.

Peter Peacock: That is part of the argument. When is a farmed bee a farmed bee? We will perhaps come back to that.

Moving on to the issue of species licences, I note that the bill provides for things done

"for any other social, economic or environmental purpose"

to be included in the activities that are exempted from the protection of the act and therefore for which a licence may be issued. That seems slightly broader than the current provisions. What lies behind that?

Hugh Dignon: The reason for that was that there are animals that are protected under domestic legislation—schedule 5 to the 1981 act—that, in practice, receive a greater degree of protection than species that are protected under European legislation. For example an otter is a European protected species. If someone wished to build a school that required an otter's holt to be disturbed, they could do so under licence if they could show that it was necessary to do so, and if the appropriate mitigation measures were put in place. However, by comparison, if someone wished to build a school that required the disturbance of red squirrel drays, they would be unable to do so because red squirrels are protected under domestic legislation rather than European legislation. The aim of the policy is to make similar licensing options available to disturbed species that are protected under domestic and European legislation.

Peter Peacock: I understand the reasoning behind that. On the other hand, there is concern, particularly given the recent flurry of news coverage—which may not have been entirely accurate—about licences potentially being granted for killing buzzards and other raptors because they were audacious enough to take reared and released pheasant and red-legged partridge. It is a bit bizarre that we might license the killing of protected species in order to protect an introduced species that is hand-reared. There is an underlying concern that widening the definition is a way of relaxing the controls on killing buzzards in relation to pheasant releases and so on.

If someone is a land manager for whom pheasant shooting is part of their business, it is in their interests to increase the number of pheasants. However, they should not be surprised if there is also an increase in the number of buzzards. Who is to blame? There are quite complex arguments here. Should we read this as a signal that provisions are being relaxed to allow more taking of birds—principally buzzards—in relation to pheasants and partridge?

Hugh Dignon: No. As you say, licences in relation to buzzards and pheasants and so on are a separate issue that has nothing to do with the bill. The species under schedule 5 to the 1981 act, which is what this is about, do not include any birds. I cannot remember all the species under schedule 5, but the main ones that will be affected are the water vole and the red squirrel. It is primarily a matter of trying to bring that into line with existing legislation that applies to European protected species. There is no wider policy intention to relax licensing. The issue in relation to pheasants and buzzards is a preliminary attempt to clarify the situation under current law, which has not been completed yet. The newspaper reports were inaccurate.

Peter Peacock: Let me take you back a step to the provisions on non-native species. Pheasants are a non-native species. Will any of the provisions in the bill on non-native species apply to pheasants and other introduced bird species?

11:15

Hugh Dignon: Angela Robinson might want to respond to that. The bill makes an exception to allow for the release of pheasants and partridges, even though they are non-natives.

Angela Robinson: The provisions on release apply to non-native species because they take a precautionary approach. Most of the other bits of the bill relate to invasive rather than just non-native species. In relation to the provisions on species control orders, requirement for notification and prohibition on keeping certain species, we have in mind the species that we know are invasive and want to regulate and control; those bits of the bill will not apply to pheasants or red-legged partridges.

Peter Peacock: I want to go back to the issue to do with buzzards and pheasants. Are you saying that no part of the bill will touch on the provisions in schedule 5 to the 1981 act in relation to licences to kill buzzards to protect pheasants and so on?

Hugh Dignon: The preliminary work that I mentioned is on guidance on the protection of game birds under section 16(1)(k) of the 1981 act. I am not aware of any proposal to change the law as it stands. Certainly nothing in the bill will do so.

Peter Peacock: You are recommending that local authorities, as well as SNH, be given the authority to grant licences. However, the consultation seemed to indicate that people are pretty much against giving local authorities such a power. What is the argument for doing so? What worries did people have about the approach?

Hugh Dignon: The argument is that local authorities already apply tests that central Government applies in relation to licensing. For example, if a local authority is considering an application for planning consent and part of the proposal involves disturbing a protected species in some way, the authority is required to consider whether the activity falls within a licensable purpose, whether there are satisfactory alternatives to what is proposed, whether there will be an impact on conservation status and so on. Those are the same tests that we or SNH would carry out if we were doing the licensing so, to some extent, there is duplication. Given that local authorities already undertake consideration in relation to disturbance to protected species, it made sense to us that they should go a step further and issue the licence.

In quite a number of consultation responses, concern was expressed that local authorities would not develop a sufficient body of experience, because they would not carry out such work as frequently as SNH or the Scottish Government did.

Peter Peacock: Is that not a legitimate concern? A degree of expertise is required, which SNH will have as a result of the frequency with which it deals with the issues. An individual local authority will not develop such expertise.

Hugh Dignon: That is a legitimate concern. However, local authorities already examine such issues, as I said. Furthermore, local authorities will be required to consult SNH on issues such as conservation status, which is a key area in which expertise will be required.

Peter Peacock: What steps will the Government take to check that local authorities—and SNH, for that matter—are meeting the required standards and expectations? Will there be some quality control?

Hugh Dignon: Local authorities already carry out a large number of licensing and control functions. For example, they implement European regulations on behalf of central Government. We depend on authorities to do what is required of them in the way that they do in other areas. We have not proposed a formal system for checking in relation to licensing.

Peter Peacock: Will guidance be issued?

Hugh Dignon: Certainly. We expect to issue guidance on how that should be done.

Elaine Murray: I have a couple of quick questions. The first relates to the insertion of the words

“for any other social, economic or environmental purpose”

into section 16(3) of the 1981 act. Could that make it easier for a local authority to apply for a licence to control lesser black-backed gulls, for example, on the basis of their somewhat antisocial and environmentally detrimental activity?

Hugh Dignon: The provision would not apply to that. There are already straightforward methods of licensing control of gulls where they are a public nuisance. I am not aware of any situation in which we have told a local authority that it cannot control gulls where they are a public nuisance. There are difficulties in implementing such controls—we are not saying that it is an easy job to do—but the licensing regime is not the main obstacle.

Elaine Murray: That is interesting. I am not sure that Dumfries and Galloway Council takes that view—it seems to think that it cannot do anything about the problem.

The bill removes a number of species, including marine species, from provisions of the 1981 act. Has thought been given to extending protection to other marine species such as sharks, spurdog and tope?

Hugh Dignon: Certain species are being removed because—

Elaine Murray: I appreciate that those species are being removed because they are already covered by other regulations. Is it possible to use the bill to extend protection to other species?

Hugh Dignon: The Joint Nature Conservation Committee, on behalf of all of the nature conservation agencies in Great Britain, conducts a quinquennial review in which it proposes species for addition to and deletion from the 1981 act. Such a review is under way at present. That is the procedure by which species are added to or removed from the protection of the 1981 act.

Elaine Murray: When is that likely to happen?

Hugh Dignon: It is happening now.

The Convener: That concludes questioning on part 2. Before we move to part 3, which relates to deer, we will have a short comfort break of, at most, five minutes.

11:22

Meeting suspended.

11:27

On resuming—

The Convener: We move to part 3, which is about deer.

Liam McArthur: The provisions in part 3 stem from the review of the Deer (Scotland) Act 1996 that the Deer Commission for Scotland carried out and which flowed into the Government's consultation. The Scottish Parliament information centre note on the bill points out that the Deer Commission, following its review, recommended a duty to manage deer sustainably and referred to the voluntary system

“failing to protect the public interest.”

The Government seems to have moved away from that in the bill. It would be interesting to know the reasons for that and what is felt to be unsustainable in the current system of deer management.

Hugh Dignon: To take the last part first, we would not go as far as to say that all deer management is unsustainable, but there are parts of the countryside in which deer are not managed in a way that protects the public interest. The impacts include damage to protected sites and

fragile environments, and overgrazing. That unsustainability is the main issue in the countryside. There are also the issues of deer in urban environments and around road systems, with the risk of road traffic accidents. All those issues lead to the requirement for deer management.

We have moved away from a duty to manage deer sustainably. However, the point is not that we do not want deer to be managed sustainably; rather, it is that, on reflection, we consider that a legal duty in the bill to manage deer sustainably basically would not work. It would be insufficiently precise and would not focus on particular individuals. It would not be sufficiently clear in telling people what it meant.

Liam McArthur: Was the Deer Commission wrong to make that recommendation following its review?

Hugh Dignon: I do not think that it was wrong. We share the aim and absolutely agree that deer should be managed sustainably.

11:30

Liam McArthur: The commission clearly had misgivings about the voluntary approach.

Hugh Dignon: The Deer Commission has never thought that the voluntary approach should be thrown out altogether, although it thinks that the approach has shortcomings. We certainly agree that there need to be robust intervention powers to step in when the voluntary approach breaks down. However, ministers are persuaded that, in the first instance, the voluntary approach should be pursued, but that there should be the option of robust and useable intervention powers when that approach fails to deliver what is in the public interest.

Liam McArthur: You talk about having robust powers in reserve. There are already powers to impose control schemes, but my understanding is that they have not been used to date. Is there an explanation for that, given some of the problems that have emerged in the recent past and which the bill aims to address? What are the shortcomings in the powers that SNH already has at its disposal?

Hugh Dignon: It is true that control schemes have not been used, but they are the second step in a two-step process. There are control agreements, which come before control schemes. Control agreements have been used in the past and are being used now, but it has been difficult to translate them into control schemes when the Deer Commission has thought that to be necessary. We have considered legal analyses of the problems and we think that some of them can

be fixed. That is what we have attempted to do by amending the intervention powers through the bill.

Liam McArthur: So there is an acceptance of the need, in certain instances, to move from control agreements to control schemes and a willingness to do so, but you have been frustrated by anomalies in the legislative framework.

Hugh Dignon: That is generally right, yes.

Peter Peacock: I want to pursue the issue of why you stepped back from the consultation proposals about managing deer sustainably. In response to Liam McArthur, you said that there was a lack of precision and clarity about what a duty to manage sustainably would mean. However, there is surely a lot of evidence about maintaining habitats and what would widely be regarded as an acceptable rate of natural regeneration through reducing grazing pressure. It is widely held that the significant growth in deer numbers—particularly of red deer—in recent decades has had profound impacts on the natural environment and biodiversity of certain areas. I presume that there are quite a lot of data on that. Therefore, there could be agreements between SNH, estates and advisers about what constitutes the sustainable management of a piece of land, and there could be plans to do that, which could be monitored. In fact, is it not the case that support that SNH or the Forestry Commission has given to certain estates in the past has been based on sustainable management concepts? I am not clear that there is not enough evidence for that.

Hugh Dignon: As I said, we do not dispute the need to manage deer sustainably. That is the policy plank on which all the measures are built. However, we think that a better approach to achieving that is to take all that evidence and to build it into the code of practice, which is being developed with the DCS—which will soon be part of SNH—and in consultation with stakeholders.

The code of practice will be a key document. It will set out in detail what we mean by sustainable management, and it will have a role to play under the statute. The code will be taken into account when SNH decides whether to use its intervention powers. That is a more useful approach than just setting out in the bill a general duty to manage deer sustainably. It is more useful to describe in the code of practice what that actually means, and to link that with the intervention powers.

Peter Peacock: I understand that argument but, ultimately, unless there is a statutory duty on landowners to manage sustainably, the approach that you suggest will always be a lesser provision than that which was originally proposed—a duty in law, albeit backed up by a code and so on—and which would have been stronger. You have

stopped one step short of making that an explicit duty in the bill, and I am not entirely sure why.

Stuart Foubister (Scottish Government Legal Directorate): The essential problem with the duty approach is that it applies equally to private and public bodies—perhaps more to private persons and bodies than to public bodies. If general duties are included in statute for public bodies, there is a reasonable expectation that they will simply be observed; with private persons, that really needs to be backed up with criminal sanctions to make the duties have any force or teeth. It would be unreasonably vague to impose on individuals a general duty of sustainable deer management that was backed up by criminal sanctions. That would not meet tests under article 7 of the European convention on human rights.

Peter Peacock: Would a criminal sanction always be required? Some of the cross-compliance measures for European funding routes and so on would be very powerful. There could also be powerful licensing arrangements. The provisions that we are considering would not necessarily end up in the criminal law, would they?

Stuart Foubister: That would mean trying to find mechanisms to make a general duty work, when the mechanisms in the bill can deliver sustainable deer management—it would be about having a general duty for the sake of having a general duty.

Peter Peacock: So you do not think that having a statutory duty adds anything at all to the provision in the bill.

Stuart Foubister: Not if the duty was unenforceable.

Peter Peacock: So it is more a legal question than a policy question. Is that right?

Hugh Dignon: There are two elements to the matter. We were conscious of the legal advice that we were getting: the policy objective could not easily be achieved, although there are other ways of achieving it—and we think that we have now achieved it.

John Scott: Would it be fair to say that sustainable deer management is a policy objective that everybody is generally signed up to anyway?

Hugh Dignon: Yes—I do not think that anyone would seriously disagree with the need to manage deer sustainably. There are plenty of people who might query what is meant by the term “sustainable deer management”; that is why we think that the code of practice will have a key role to play in setting out exactly what we mean by that, so that there is no misunderstanding.

John Scott: For the avoidance of doubt.

Elaine Murray: I appreciate that you have stepped back from having a statutory register of people with the appropriate competence to kill deer. However, a register could still be introduced if it is felt that the voluntary approach is not working. We do not take the same approach with other animals that are shot, such as foxes. What is special about deer that it might be necessary to legislate on the basis of competence to shoot them, whereas that does not happen for other species?

Hugh Dignon: There is a general acceptance among the public that the larger, more iconic mammals require a greater degree of care. In their case, welfare issues are more to the fore in the public’s mind, and we wish to reflect that. There are also issues around public safety. People who shoot deer are using high-powered rifles in public spaces. There are further issues around carcass management and food preparation—these things are entering the food chain.

We thought that competence was worth taking into account, and we are not on our own in that regard. The deer industry agrees that those are desirable objectives, as is demonstrated by the fact that its representatives have offered to work with us to achieve an increase in demonstrable levels of competence.

John Scott: What is deerstalking’s safety record? Is there a problem with it? Are you somehow suggesting that competence does not exist?

Hugh Dignon: We are not suggesting that at all. The safety record is extremely good as far as the public are concerned. It is less clear that deer are always shot to what could be considered an acceptable level of humane practice and welfare. The general standard is that a deer should be killed within five minutes of being shot, and according to evidence that we have seen from the Deer Commission and anecdotal evidence, it is not always obvious that that happens. It is also clear that, although professional deerstalkers and keen recreational stalkers usually have high standards, there are those who are less interested in the welfare aspects of shooting deer. If someone views deer as a pest that needs to be dealt with, they might be less interested in maintaining high standards of welfare and humane practice. The picture is not uniform.

Liam McArthur: Another area in which the Government appears to have moved away from what the Deer Commission proposed is with regard to amending the way in which the close season operates. What is the basis for that change in emphasis and approach?

Hugh Dignon: The original proposals were part of a package that suggested that, once the

competence register was in place, local deer management groups might be able to set local close seasons to reflect the issues in their areas. A number of deer management groups and others in the sector raised strong objections to that. There were also legal concerns about having varying close seasons throughout the country. Ministers decided that, on balance, the Deer (Scotland) Act 1996 is flexible enough to allow the adjustment of close seasons if necessary, so there is no need to get involved in major changes to close seasons and they decided to leave it for the time being.

Liam McArthur: You have identified the concerns about the approach that the Deer Commission proposed. Have similar concerns been raised about the move away from that approach? Is it generally felt that the current legislation can be made to work and that it is not a source of concern?

Hugh Dignon: There are arguments on both sides, as with most aspects of deer management. Some people would like the season to be extended to allow more deer to be shot during what is currently out of season. As I said, ministers are not minded to do anything about that at present.

At some point, we will possibly consider—I use the word “possibly” because it is not part of the bill, given that the 1996 act already contains the power to vary close seasons—whether the close seasons could be better focused to reflect the time of greatest welfare dependency of deer with their young. It is not clear that the current close season for female deer best reflects the time when their young are most dependent.

Liam McArthur: Are you likely to come up with a view on that during scrutiny of the bill? I appreciate that it does not depend on the bill, but it has a bearing on our consideration of the bill.

Hugh Dignon: We are not working on it right now, but we are conscious of it and have said that we will consider the issue.

John Scott: For information, what is the close season for deer and how would you propose to change it? I am fascinated by the suggestion that there is a need for change and the point about the dependency of calves.

Hugh Dignon: There is not a single close season but various close seasons for different species and sexes of deer, so it is not straightforward. I have a table of them with me, so I can read them out if you want.

John Scott: It would be helpful if you could let us have the table, but do not spend hours telling us about it now. Thank you for the offer, just the same.

11:45

The Convener: I am conscious that I did not ask whether you wanted to make an opening statement on deer. We are short of time. Do you want to make an opening statement on badgers and muirburn, or can we move straight to questions?

Kathryn Fergusson: We are quite happy just to answer your questions.

The Convener: Thank you. Aileen Campbell has some questions on the protection of badgers.

Aileen Campbell: As you know, the bill makes a number of changes to licences that are issued to permit otherwise prohibited activity, makes it an offence knowingly to cause or permit certain acts, and increases the penalty for killing badgers. I understand that there is general support for the proposals, but concerns have been expressed that it will be difficult to establish proof and that legitimate land management practices might be restricted. What does the latter concern refer to?

Kathryn Fergusson: To be honest, I am not sure what it refers to, because the legislation already sets out when licensing may be applied for with regard to badgers. The changes to the offences are limited to adding the “knowingly causes or permits” offence to offences that are not covered by it at present. The Nature Conservation (Scotland) Act 2004 includes the “knowingly causes or permits” offence in relation to interference with setts, and we are extending that to include other offences in relation to badgers.

In the consultation, some parties expressed concern that badgers receive too much protection in legislation. I am not sure whether that is what you are referring to.

Aileen Campbell: I think that my question was just about why there is concern that the bill might restrict legitimate land management practices. Is the concern that land could be damaged?

Kathryn Fergusson: There is a belief that badgers are susceptible to persecution because of their ability to adapt to different habitats, but the bill does not touch on any of the tools that are currently available to land managers for badger control, should that be required.

Aileen Campbell: There is always concern about the relationship between badgers and tuberculosis. I understand that Scotland has been TB free since 2009. Is that relationship kept under scrutiny? Does it have any implications for the bill?

Kathryn Fergusson: As I have said, we do not consider that to have any relevance to the bill because we are not looking at specific areas such as that. The bill is limited to extending the “knowingly cause or permit” offence and changing

the procedure to allow greater penalties for some offences.

Aileen Campbell: Are there any figures on prosecutions under the Protection of Badgers Act 1992 for taking or killing badgers?

Kathryn Fergusson: I do not have any figures to hand, but we will get them from the Crown Office and forward them to the committee.

The Convener: Can I take you back to the point that badgers have been carriers of TB? That has certainly been the case in England. There was a case of bovine TB recently and there were two badger setts in close proximity to the cattle. That is not a big problem in Scotland at the moment, but will the provisions in the bill be adequate if we find that badgers are carrying TB here?

Kathryn Fergusson: The 1992 act contains provisions on disease control in badgers. The bill does not amend those provisions, which will still exist. The current legal framework should provide for the scenario that you mention.

Bill Wilson: It occurs to me that the concern about the restriction of legitimate land management practices might refer to snaring. Might that be the case?

Kathryn Fergusson: I am not sure. As I said, from my reading of the consultation responses, the concern appears to be limited to the protection that badgers have at the moment, rather than covering any problems that land managers have in relation to badgers.

The Convener: We move on to questions on muirburn.

John Scott: The Government's consultation on the bill contained proposals that relate to night-time burning, neighbour notification and restriction on the type of burning, but those proposals are not in the bill. Why are they not being taken forward?

Kathryn Fergusson: It was decided that the Fire (Scotland) Act 2005 is the appropriate forum in which to take forward the proposal on the night-time burning of suppression fires, as it will allow fire services to give authorisation to landowners for such fires. That is why the proposal is not in the bill.

With regard to neighbour notification requirements, the bill includes some changes to the current requirements. Land managers currently have to notify neighbours 24 hours before burning, but that is considered to restrict good practice and to be a burden on good management.

The bill proposes that the land manager will notify all those within 1km of the burn before the start of the season of when they propose to burn. The notified occupiers will have the opportunity to

request further information if they want it. The idea is that those who want to know about when a burn may be happening get the information that they need, without the need for an unnecessary burden to be imposed on those who have to notify people.

John Scott: So it is sufficient for someone to notify their neighbours at the beginning of the season that they would like to burn if conditions are suitable during the season.

Kathryn Fergusson: Yes. We recognise that, depending on the land involved, a large number of people may have to be notified, so there are additional provisions that should make notification easier. For example, if there are more than 10 occupiers within a 1km radius, the land manager can put an advert in the local newspaper rather than writing to everyone individually. The bill provides for the facility for people to be notified electronically, so someone could get a text message advising them of muirburn if that was their chosen form of communication.

John Scott: There is an argument that restricting the permissible burning dates will limit the ability of land managers to carry out management burning under good conditions. I see that the dates have been reduced in the bill.

Kathryn Fergusson: The dates have changed. The muirburn season currently runs from 1 October to 15 April the following year. That can be extended, with landowners' permission if appropriate, to 30 April for land at altitudes below 450m above sea level and to 15 May for land at altitudes of more than 450m above sea level.

The bill produces a standard muirburn season that runs from 1 October to 15 April. The extended season makes no differentiation for altitudes, and runs from 15 April to 30 April, for which—if it is appropriate—landowners' permission would be required. The change is that the ability to burn in the first two weeks of May at altitudes of more than 450m above sea level is removed.

John Scott: I understand that, but I do not understand, given the predicted change in climate and the likely increase in precipitation, why you would not consider extending the burning season to the middle of September. I appreciate that many people would not necessarily use such an extension, but conditions may often be better in mid-September than they are throughout the rest of the year. I cannot see that that would have any detrimental effects on land life, as it would have in the spring.

Kathryn Fergusson: We are aware that there is some support for extending the muirburn season into September. The bill does not propose to take that forward at present, principally for two reasons. First, the bill provides for an out-of-season licensing system under which an individual

could apply for a licence for September burning. That could be for conservation or restoration of the natural environment, or for research purposes.

Secondly, we consider that further evidence needs to be gathered on the impact of September burning. For example, there is a risk of peat fires because the heather is likely to be wetter in September; there may be an inclination to burn in drier weather given the associated risks. An additional concern would be the impact on other species. We feel that further research is required before the muirburn season could be extended to September.

John Scott: So you are saying that you would not want to extend it into September because it might be too effective.

Kathryn Fergusson: No, we are not saying that at all and I apologise if I did not make myself clear. A number of people consider that September burning would be a good idea, but more research needs to be done because of the risks of peat fire and the impact on species.

John Scott: Is that because the land is too dry?

Kathryn Fergusson: No; the principle is that, in September, the heather may be wetter and the inclination would be to burn when it is drier. It would not be good muirburn practice to encourage burning in conditions where it might not be ideal.

John Scott: I am afraid that I do not understand what you are telling me. It may be clear to others why you would not want to burn in September, but it is certainly not clear to me. You would make a better job of it. What do you mean by saying that the heather would be wetter and, therefore, you would not want to do it? It would be no wetter than it is in October or November.

Kathryn Fergusson: Possibly not, but that is what we are advised at the moment about the potential risks. We are not saying that it would necessarily be the case; we are saying that further research is required.

The Convener: We move on to part 5, which concerns sites of special scientific interest.

John Scott: Why is there a need for a provision in the bill to allow the combining of two or more SSSIs? Is there a real example of where that might be relevant or beneficial?

Steven Dora: I do not have information to hand on a specific real example. The purpose of the provision is purely to streamline administration. There are instances in which two or more SSSI notifications apply to the same land or are adjacent to one another. In such instances, two or more different lists of operations that require consent relate to the same land. That can be confusing for owner-occupiers and also increases

the risk of inadvertent non-compliance with the legislation and of possible damage to protected natural features. There are also costs associated with the maintenance and listing of each SSSI notification in corporate databases, the SSSI register, periodic statutory documentation review and boundary maps.

John Scott: Will you give us an example of an SSSI that might be a candidate for denotification under the circumstances that are relevant to the bill?

Steven Dora: I have not received any information from Scottish Natural Heritage on that.

The Convener: We can ask SNH about that when it gives evidence.

As there are no more questions on the bill, I thank the witnesses very much for the information that they have provided. I ask them to provide the clerks with any supplementary written evidence that they have agreed to provide.

That concludes the public part of our meeting. I thank everyone in the public gallery for attending.

11:58

Meeting continued in private until 12:39.

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