



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 29 September 2010

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
20th 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:

John Bruce (British Deer Society)
Finlay Clark (Association of Deer Management Groups)
Dr Justin Irvine (Macaulay Land Use Research Institute)
Robbie Kernahan (Scottish Natural Heritage)
John Kerr (Scottish Natural Heritage)
Ron Macdonald (Scottish Natural Heritage)
Professor John Milne

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 5

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 29 September 2010

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Maureen Watt): Good morning. Welcome to the committee's 20th meeting this year. I remind everyone to switch off their mobile phones and BlackBerrys, which impact on the broadcasting system. We have received apologies from Karen Gillon.

Do members agree to take in private item 5, which is consideration of the committee's work programme?

Members *indicated agreement.*

Subordinate Legislation

**Smoke Control Areas (Authorised Fuels)
(Scotland) Regulations 2010 (SSI 2010/271)**

**Smoke Control Areas (Exempt Fireplaces)
(Scotland) Order 2010 (SSI 2010/272)**

**Less Favoured Areas Support Scheme
(Scotland) Regulations 2010 (SSI 2010/273)**

**European Fisheries Fund (Grants)
(Scotland) Amendment Regulations 2010
(SSI 2010/323)**

10:00

The Convener: There are four instruments for us to consider. No motions to annul have been lodged. The Subordinate Legislation Committee had no comment to make on SSI 2010/272 and SSI 2010/323, and its comments on SSI 2010/271 and SSI 2010/273 are included in members' papers. Does the committee agree that it has no recommendation to make on the instruments?

Members *indicated agreement.*

Wildlife and Natural Environment (Scotland) Bill: Stage 1

10:02

The Convener: Item 3 is continued consideration of the Scottish Government's Wildlife and Natural Environment (Scotland) Bill. I welcome the first of the two panels from which we will hear today, which comprises representatives of Scottish Natural Heritage. They are Ron Macdonald, who is head of policy and advice; John Kerr, who is a policy and advice officer; and Robbie Kernahan, who is unit manager of wildlife operations and is also—as we found out last week on our visit to the Aviemore area—the panel's deer expert. We will move straight to questions.

John Scott (Ayr) (Con): Good morning, gentlemen; welcome to the committee. What is your view on the success or otherwise of the voluntary approach to managing deer through deer management groups?

Robbie Kernahan (Scottish Natural Heritage): When putting together the advice that it submitted to ministers, the Deer Commission for Scotland recognised that voluntary deer management must be at the heart of deer management. However, the expectations on voluntary deer management groups to deliver a host of public benefits are probably greater now than they have been at any time since the groups were first put together 30 years ago.

Traditionally, such groups were set up to manage a common sporting resource. They did that reasonably well; some still do. However, with more complex land management and land ownership, it is difficult for voluntary deer management groups to deliver everything that we might expect of them today. Nature conservation designations, issues with road traffic accidents and growing public awareness of animal welfare are putting more pressure on the voluntary system. In our advice to the previous Minister for Environment, we recommended that some legislative change was needed to accommodate that.

John Scott: In that case, do you think that there is a need for statutory provision to improve the way in which the groups work?

Robbie Kernahan: We recognise that we need to be able to provide a better statutory basis on which to build better support and guidance for DMGs and that, at the same time, we need to have a more plausible and credible backstop power when the voluntary system fails.

John Scott: How should disputes between owners with different objectives for deer management be resolved?

Robbie Kernahan: One of the key remits of the Deer Commission, prior to merging with Scottish Natural Heritage, was to provide some form of facilitation between estates that are managing for different objectives. That is becoming more commonplace; as community ownership grows, and as there is a more diverse range of ownership, it will continue to grow.

The voluntary system struggles with reconciling conflicting objectives, especially when they are two private conflicting objectives and there is perhaps not the clear, direct opportunity for our involvement—in other words, there is a lack of designated sites and so on. It is difficult for voluntary groups to reconcile two private land managers who have completely differing objectives. They do not necessarily have the capacity and, as often as not, they do not have the resources to bring in external facilitation if it is required.

Peter Peacock (Highlands and Islands) (Lab): To take a statutory approach, which is what the Deer Commission previously advocated, is quite a significant step. You have to do it on the basis of the public interest. What would the statutory approach be seeking to protect in the public interest?

Robbie Kernahan: The starting point for that is that no one owns wild deer; they own only the right to take deer. Wild deer are a common resource; as such, we have recognised for a long time that people need to work collaboratively to manage that shared resource and to derive the benefits that we get from deer, such as designated sites in good condition, animals shot well and managed to the highest welfare standards, and the sporting revenue that comes from the sporting resource. Deer provide a host of economic and downstream benefits to rural communities that may not have much else in the way of employment.

The impact of deer on habitats can provide a host of ecosystem benefits. Deer contribute to, and are a significant part of, a range of things. It is difficult to talk about the public interest in its wider sense because deer impact in a host of ways, but we can narrow that down to specific things that we have used as triggers for intervention in the past. Over the past five or 10 years that has been specifically to do with deer causing damage to natural heritage interests, agriculture and forestry, and areas where deer may pose a threat to public safety. However, other interests are coming to the fore.

John Scott: In your submission, you say that the public interest needs to be defined. Is what

you have just said your definition or is there anything that you would wish to add?

Robbie Kernahan: One of the things that came through in the consultation was concern about how we define sustainable deer management and the public interest. To a certain extent, we can already do that reasonably well; indeed, we have done so in terms of trying to justify what actions the Deer Commission and SNH will take. There is that element to it. However, it is also about trying to keep one eye on the future to see what else deer will have an impact on that may be in the public interest, such as carbon soils and carbon sequestration. It is about how well we equip ourselves legislatively to take action, and not only how we currently define public interest but how we might in the future.

John Scott: Is there anything more that you would like to add on sustainability? You thought that there should be a duty to manage deer sustainably, but that is not in the bill. Will you develop that thought?

Robbie Kernahan: I alert the committee to the fact that originally, in our submission, the Deer Commission—supported by SNH and the Forestry Commission—recognised that with the right to manage land comes a certain amount of responsibility. At the moment, the responsibility sits on SNH to manage deer or to co-ordinate the management of deer. We thought it only appropriate that that duty should be shared among those who have the rights to take deer. We recognise the difficulty of defining sustainability in legislative terms. We thought that that would be supported and underpinned by a code, which would have a lot of stakeholder buy-in. In other words, the code would be developed with stakeholders so that everyone would have an opportunity to help to illustrate and articulate what we mean by sustainable deer management in its broadest sense—not just the ecological impacts of managing deer, but the economic and social impacts.

John Scott: Are you developing a code as we speak? Will it be available soon, as the bill progresses? Where are we on that?

Robbie Kernahan: We have had one meeting to bring together a range of stakeholders to discuss and agree the outline structure of a code and what it might look like. Essentially, it will be designed to help to guide people's behaviours in a range of circumstances. That one meeting was quite productive, and we have put together a timetable to coincide with the development of the bill to ensure that we have a draft code in time for the conclusion of the bill process. We have started the process: we have given it quite a lot of thought and are bringing in the right people to ensure that everyone is involved.

John Scott: For information, who are the stakeholders in those discussions?

Robbie Kernahan: The stakeholders include animal welfare charities such as the Scottish Society for the Prevention of Cruelty to Animals and the British Deer Society, the Scottish Gamekeepers Association, the Association of Deer Management Groups and the British Association for Shooting and Conservation. Those are the organisations that are foremost in my mind, but if there is any requirement to bring in any additional expertise, we will.

John Scott: I am interested to know whether landowners are represented on that group.

Robbie Kernahan: The Scottish Rural Property and Business Association and the ADMG are the key representatives of landowners' interests. If required, we might need to think about bringing in NFU Scotland, to ensure that all the agricultural issues are dealt with adequately.

Aileen Campbell (South of Scotland) (SNP): In Langholm, we heard from NFU Scotland that it would be a good idea to have it on board with that.

A fortnight ago, we heard from the John Muir Trust, which thinks that SNH would be the best body to take the lead role in deer management. Does SNH feel that it is well placed to have such a role, given the limited resource that is available? How do you respond to the comments of the John Muir Trust?

Robbie Kernahan: Following the merger of the Deer Commission for Scotland and SNH, SNH is the body that is statutorily responsible for the conservation, control and management of all wild deer in Scotland. There is no doubt that from a legislative point of view, we are the body that is responsible for pursuing the conservation and sustainable management of deer.

The Deer (Scotland) Act 1996 allows us to take action as and when we think it appropriate, when deer are causing damage. Some of the provisions in the bill will strengthen the opportunities that SNH has for taking action. I am not entirely clear what the JMT expects SNH to do over and above what it currently does. As you say, there are competing priorities and we have finite staff and budgetary resources. We tend to spend money in areas in which we think that the most urgent action is required.

Aileen Campbell: I think that the JMT feels that there is a lack of management of deer at the moment and that something needs to be done. It feels that SNH is best placed to take action and that—because what was happening was not sufficient—SNH should have a stronger role. However, given that we are all aware of the cuts and the different financial pressures that every

organisation faces, would you be able to deliver on that suggestion?

Robbie Kernahan: I go back to the commission's original advice to the Government and our belief that voluntary deer management must be at the heart of delivering sustainable deer management. The majority of that comes from significant private investment, so we are already deriving public benefit and not at the expense of the taxpayer, which should continue. It is a question of being clear about the point at which it is appropriate for the Government or SNH to step in and take action. In developing the code, we will clarify what the triggers might be and we will ensure that they are quite closely aligned with the legislative powers that will be available to us through the bill. That is about as much as we can expect.

Liam McArthur (Orkney) (LD): I return to an issue that we touched on last week. We have already explored the public interest and public benefits. You will be aware that some concern has been raised about the shift in definition from "severe damage" to "damage" in the Deer (Scotland) Act 1996 for when SNH action would be triggered. Why is that necessary, and what would trigger SNH action under that criterion?

10:15

Robbie Kernahan: We must recognise that the 1996 act is not consistent in how it uses the term "damage". An example relates to applying to shoot deer out of season under section 5 when deer are causing damage to unenclosed ground or the natural heritage. The bill uses the term "damage" in section 7, but in section 8 it refers to "serious damage", as it does in sections 10, 18 and 26. Therefore, the term is not applied consistently throughout the act, and we hope that through this process it can be made much more consistent.

We must also recognise that, when considering compulsory action under section 8 of the 1996 act, the burden of evidence to demonstrate serious damage is difficult for someone who builds a case on the fact that they have tried the voluntary system under section 7, which makes reference only to damage.

If I am honest about it, we are probably quite relaxed about whether we go with "damage" or "serious damage", but we would like the term to be applied consistently throughout the 1996 act.

Liam McArthur: Do you find that the 1996 act inhibits you from taking action that you want to take simply because there are definitional issues around "serious damage" and the evidential base that is required?

Robbie Kernahan: I am sure that you will hear more from John Milne, the previous chairman of the Deer Commission, in the next evidence session, but I know that the commission never used its compulsory powers under section 8 of the Deer (Scotland) Act 1996 partly because of the difficulty of being able to demonstrate serious damage, the costs and evidence base that are required to do that, and the possibility—indeed, the likelihood—of a successful challenge to any work.

In the past, the commission's view was that the 1996 act is slightly unwieldy as it is currently worded, and any action under it would be subject to legal challenge. If we have an opportunity to clarify the term "damage" or to think about how we define it clearly and more concisely, that will be a significant improvement to the current legislation.

Liam McArthur: Do you envisage that change leading to a more interventionist approach by SNH?

Robbie Kernahan: One benefit that we see in the provisions is that there is a clear timeline that gives us an opportunity to negotiate an agreement with a number of owners. That is time bound and, if we have not secured agreement in that time, we can move on to compulsory measures, which clearly define why and when we would take such action.

Liam McArthur: That is helpful.

I want to move on to the competence of those who are permitted to shoot deer. Will you set out for the committee what you see as the rationale behind the requirements? It has been pointed out to us that similar requirements are not needed for the shooting of foxes or rabbits, for example. It has also been highlighted that the number of incidents in which accidents have occurred is limited—the one that has been brought to our attention involved a foreign stalker who had taken the competence test and would not have been debarred under the bill. Will you give us a better sense of the rationale behind the move?

Robbie Kernahan: The starter is that deer welfare must be at the heart of any legislation to ensure that we provide sufficient safeguards and security to everybody in Scotland that deer are managed to the highest possible standard. I do not think that anybody would disagree with that.

Liam McArthur: Nobody would disagree, but people would probably assume that there is, if we are looking to make a change through the bill, perceived to be a problem that needs to be addressed.

Robbie Kernahan: Deer welfare is an issue for 365 days of the year. Although under the 1996 act there are statutory close seasons to protect deer

welfare at certain times of the year, the owner-occupier of ground can legally control deer throughout the year. It would be up to such individuals to decide whether their action to prevent damage is balanced against the possible welfare implications of leaving orphaned deer calves.

Under the 1996 act, there is an opportunity for those people to have a negative impact on deer welfare. We had hoped to ensure that anybody who shoots deer in Scotland—a professional stalker, a recreational stalker, a farmer, a forester or a crofter—would be clear about what we consider to be the basic level of competence for deer welfare, food safety and public safety in terms of firearms management. We recommended that anybody who shoots deer in Scotland should have that basic level of competence and that their simply having a firearms certificate would not be sufficient to provide reassurance that deer are being managed and shot to the highest possible standards.

Liam McArthur: You have touched on the general licence for shooting out of season. What other provisions would need to be satisfied for the sanctioning of a general licence to enable owner-occupiers to shoot deer out of season?

Robbie Kernahan: Currently, anybody who applies to shoot deer out of season or at night must apply to the Deer Commission, and they have to demonstrate to SNH that they are fit and competent. However, those same tests are not applied to owner-occupiers of agricultural or forestry ground, who have the opportunity to shoot deer under section 26(2) of the 1996 act. We had hoped that anybody who wanted to shoot deer out of season would have had to demonstrate their competence, which would have required a change in the law.

Liam McArthur: You have also expressed the view that you envisage deregulation of the close seasons through the licences and system of authorisation. How do you see that working?

Robbie Kernahan: That goes back to our original advice. If everybody who wants to shoot deer in Scotland has demonstrated that they are competent to do so—if they have studied the theory and demonstrated practically that they understand the implications regarding shot placement, food safety and all the ecology associated with deer and their reproductive cycle—there may be an opportunity to deregulate certain elements and allow individuals to make decisions on the basis of their local circumstances. We would support that in principle. If everybody has demonstrated their competence, let them be empowered to make decisions about when they shoot deer and how many deer they shoot.

Liam McArthur: As you have expressed that, it seems to make sense. Have any concerns been raised about the implications of that? Would it be more of a free-for-all?

Robbie Kernahan: Yes. Inevitably, when that idea was consulted on, a lot of specific concerns were fed back. It was suggested that, if the close seasons were done away with or changed for both male and female deer, some greedy people may start to overexploit the resource. Our argument against that was that if the powers exist to safeguard the resource, those can be rolled out in the event of overexploitation in much the same way as we can use other powers if deer are causing damage and more need to be shot. The view of the commission and SNH was that we have sufficient safeguards in place to prevent that from happening.

We recognise that there must always be a close season to ensure that female deer and their dependent offspring are protected. However, there could and perhaps should be a little bit more flexibility around the close season for male animals to better reflect local circumstances. In situations that I am aware of, a bit more flexibility around the close season would be helpful to some; however, I recognise that that was not reflected in the feedback from the consultation.

John Scott: I want to develop that point about the necessity of the close season for male animals. In your written submission, you suggest that it is perhaps not necessary. Have I understood you correctly?

Robbie Kernahan: If you are talking about a close season based simply on welfare issues, the view of the commission and SNH is that it is entirely appropriate to have a close season for female deer to protect them at times when they have dependent young.

John Scott: Indeed.

Robbie Kernahan: However, we could not see any argument for having a close season for male animals on the basis of welfare. There is an argument about the protection of a sporting resource, but that is a separate issue.

John Scott: Yes. The other thing that I want to ask you about is the shooting of deer at night. I was not even aware that the practice took place. How much night shooting of deer is there? I presume that it is not done for sporting purposes but for culling.

Robbie Kernahan: Under section 18 of the 1996 act, we can authorise people to take deer at night when they are causing damage to agriculture and woodlands. Under that act, people have to be quite clear about the justification for applying for a night-shooting licence, and as often as not, it is in

circumstances in which deer are not present during the day. They might come into fields or woodlands at night, which might provide the only opportunity to prevent them from causing damage.

I am trying to think how many deer are shot at night. I think that the figure is approximately 6,000 or 7,000, but I can double-check. That gives a flavour of the scale of the activity.

John Scott: Goodness. Thank you.

The Convener: We move on to game and quarry species. The bill will add some game birds to the schedule of quarry species in the Wildlife and Countryside Act 1981. What information does SNH collect or hold about the conservation status of quarry and rarer game species such as black grouse and ptarmigan? Are you able to access bag records from estates? How would a decision be taken that a species has become so rare that it is no longer appropriate quarry?

Ron Macdonald (Scottish Natural Heritage): We do not routinely record population levels of game species. We carry out detailed research and surveys on species that are of particular conservation interest, such as ptarmigan. You have put your finger on an important point, convener. The current estimate of the game bird population is very low.

National game bag records are undertaken by the Game and Wildlife Conservation Trust, and by the British Association for Shooting and Conservation. SNH does not carry out that work.

The Convener: Are those other organisations quite liberal about sharing their information with SNH?

Ron Macdonald: Yes. Most of the information that is gathered about national game bags is available online, so everyone can look at it and make their own judgment about where the populations are going.

Peter Peacock: I want to move on to brown and mountain hare. We have had, on the face of it, conflicting evidence. The Game and Wildlife Conservation Trust said that brown and blue hare populations are increasing throughout Scotland, but the Hare Preservation Trust gave evidence that the brown hare population in Britain has fallen by 75 per cent since 1960. What is SNH's information about the hare population?

Ron Macdonald: The most authoritative source is the Game and Wildlife Conservation Trust, which undertakes the national game bag census. That is an index rather than an absolute measure of population. The figure for mountain hare shows that no long-term significant changes have been detected, due to recycling populations. However, a 10-year trend shows a non-significant decline. That is also shown in an associated survey that

was carried out by the British Trust for Ornithology as part of the breeding birds survey reports. On the basis that there has been no long-term decline, there is no case for an absolute ban.

On brown hare, the trend is unclear. Neither the 25-year nor the 10-year United Kingdom trend is statistically significant. Essentially, therefore, the population is at a standstill.

Peter Peacock: Is SNH happy to accept that the Game and Wildlife Conservation Trust evidence that you have just cited is robust?

Ron Macdonald: I believe that it is robust. We undertook some further research in 2008 in conjunction with the Game and Wildlife Conservation Trust and the Macaulay Land Use Research Institute, on the distribution of mountain hare. We found that there had been no change in the distribution of the species, so the species is healthy within the Scottish and UK contexts.

10:30

Peter Peacock: Okay. That is helpful. Thanks.

It has been suggested to us that, in some grouse moor estates, because hares carry ticks and ticks affect the grouse, a new policy appears to be emerging of the systematic culling of hares. Do you have a view on that? Are you aware of that?

Ron Macdonald: Yes, we are aware of it and we have concerns about the sustainability of culls of mountain hares in certain areas, which seem to be intended primarily to control ticks. For that reason, we commissioned further research last year to find a relatively quick method of assessing local populations of mountain hares, which will be relevant to any licensing regime that may be enacted—possibly through the WANE bill. We have concerns and we are taking steps to put in place appropriate methodology to measure changes in mountain hare populations at the local and regional levels.

Peter Peacock: You mentioned the issue of licensing. Let me put this in a wider context. The suggestions that have been put to us about the taking of hares extend to the taking of other species such as stoats and weasels, which might affect ground-nesting birds on grouse moors. It has also been implied that the same pressures lead to the trapping or poisoning of raptors. That seems to be part of a wider scorched-earth approach that is being taken on some estates—I stress that it is not all estates—that are introducing new management practices. In SNH's experience, is the issue wider than just the culling of hares? How does it relate to the issue of licensing? Does SNH advocate, or have you considered, that

grouse moors should be licensed so that such matters could, ultimately, be better controlled?

Ron Macdonald: Obviously, we have grave concerns about the on-going persecution of birds of prey that is primarily associated with grouse moors. Although there has been on-going dialogue—the committee has visited Langholm moor—and we have made great strides in talking around the table and reaching a mutual understanding of what the key issues are, we are concerned that there has been no substantive progress in reducing the scale of the persecution of birds of prey. We have a continuing concern about that. We are keen not only to continue enforcement of the law but to seek other measures to bolster the current law. The committee has heard several suggestions of such measures from the likes of Sheriff Drummond.

On your specific point about the licensing of grouse moors, I think that that would be possible. We want to work towards the sustainable use of land, but whether a licensing regime would be the right way forward is an open question. The proportionality of that could be an issue, as it might mean putting a burden on the majority for the sins of the few. Also, what would be licensed? Would it be the person or the land? There is a series of issues that would need to be worked through. Nevertheless, the principle of a licensing scheme is worthy of consideration, particularly given the on-going persecution of birds of prey.

Peter Peacock: I will return to birds later. The point simply developed out of my question on a policy that appears to be emerging in relation to hares and other species including birds. Thank you for your comments on the idea of a licensing system. It is obviously something that SNH has considered.

I have a final question on hares. What is SNH's response to the call from one organisation that the close season for hares should be shortened by a month?

Ron Macdonald: I have two points to make on that. First, our advice was based on the pregnancy rate that we have encountered in shot hares. In February, 47 per cent of the female brown hares that were shot were pregnant; in September, the figure was 44 per cent. There are comparable figures from March for mountain hares. If you shortened the mountain hare close season by a month, that would take out an appreciable proportion of pregnant female mountain hares and would have an impact on the welfare of leverets. We believe that it is an animal welfare issue.

My second point is about the impact on management. We have statistics from research that we undertook on the number of mountain hares that are shot. We reckon that just over 10

per cent of mountain hares are shot between March and August in commercial formal shooting. For unlet or informal shooting, the figure is 2 per cent. Shooting mountain hare in February does not seem to be very important to their management, so the impact on operations would be low. Most management is conducted from September to February, so March does not appear to be an important month.

Bill Wilson (West of Scotland) (SNP): I want to be sure that I have understood your comments. Did you say that hare populations are being estimated from the game bags?

Ron Macdonald: Yes.

Bill Wilson: Let us take the scenario that Peter Peacock described, in which the kill of hare increases in intensity—because of culling to reduce ticks, for example. I presume that that would increase what was in the game bag. Would that create the possibility of an increased intensity of killing and a higher game bag against the backdrop of a declining population? The game bag is not a direct measurement of the hare population.

Ron Macdonald: It is not an index, but the figures are smoothed over several years. We look across the country and we can reflect differences in a region. The statistical power is still sufficient to allow monitoring over several years—enough statistics are available. If any one estate performs intensive culls, that is balanced by areas elsewhere in the country doing less.

Bill Wilson: That is fine—I just wanted to check that.

John Scott: Are hare and deer still culled in Forestry Commission Scotland areas or private forests? Is that culling—particularly the culling of hare—part of the national statistics? I remember that practice from my childhood, when hare were shot on sight to protect young trees. I appreciate that we are not planting the number of trees that the Government would like.

Robbie Kernahan: I cannot quantify the volume of hares that are shot on the public forest estate, but I suspect that that is still common practice to protect the woodland resource. To allow young trees to become established, it is crucial to maintain deer management in woodlands.

John Scott: Does that go for hare and for deer, which do the same thing?

Robbie Kernahan: Yes.

Bill Wilson: You note in your submission that single witness evidence is a legal anomaly. Pretty much everyone agrees on that. However, we are not clear on whether you support abolishing that

legal anomaly or extending it beyond poaching and egg theft to all types of wildlife crime.

Ron Macdonald: The provision is an anomaly and should not be extended. Corroboration is a basic tenet of Scots law. We see no need to extend the provision. Sheriff Drummond said that, even with single witness evidence, he would require separate corroboration. I hope that that clarifies our position. We are not saying that the provision should be extended; it is an oddity and we see no benefit in extending it to other crimes.

Bill Wilson: Would you like the provision to be abolished, or would you like the law to be left as it is?

Ron Macdonald: We say that the law should be left as it is or the anomaly should be abolished—whichever is easiest.

Elaine Murray (Dumfries) (Lab): The bill covers snaring. SNH is a significant landowner and it manages a lot of land. Do you use snaring to control foxes, rabbits or other predators? What are the reasons for your land management policy?

Ron Macdonald: We do not employ snaring on any of the land that we own or manage directly. We carry out predator control on several of our national nature reserves. For example, at Forvie, in the north-east, we carry out targeted control of gulls, crows and foxes, primarily to protect the nationally important eider duck colony and several species of tern. We do that through Larsen traps, targeted shooting of problem gulls, shooting foxes at night and digging foxes out of dens.

The reason why we do not employ snares is twofold. We think that other methods are effective enough for our purposes and we are concerned about the possibility of bycatch. We are trying to attract the public to our reserves, and we want their experience to be enjoyable. The risk of bycatch—whether we are talking about otters or another species—is too great, and we have other methods in place.

Elaine Murray: Landowners, grouse moor owners and representatives of the Scottish Gamekeepers Association told the committee that, in the circumstances in which they work, there is sometimes no alternative to the use of snares. Do you agree that there are circumstances in which snaring is inevitable?

Ron Macdonald: We agree that snaring is a legitimate land management tool, which is applicable in certain circumstances, for example for the purposes of fox control in areas that are adjacent to large forestry blocks, as well as in areas outwith woodlands. We are a partner in the Langholm moor demonstration project and we support the use of snares there, according to the law and the highest standards of animal welfare.

In the capercaillie life project, which tried to bring the capercaillie back from the brink of extinction, we supported the use of snares outwith woodlands.

Elaine Murray: In your submission, you make an interesting point about the definition of “snare”. You say:

“it is uncertain whether snares are considered to be traps for the purpose of licensing”

under the Conservation (Natural Habitats, &c) Regulations 1994. People who use snares have tried to impress on us that snares are not used as a method of killing but are used to restrain an animal until the gamekeeper can get to the snare and despatch it. You say:

“SNH would support measures taken to include snares as traps including any necessary amendments to domestic legislation.”

What would be the effect of such an approach?

John Kerr (Scottish Natural Heritage): There is perhaps an anomaly in the legislation, in that there is a difference between the Wildlife and Countryside Act 1981 and the habitats regulations. The 1981 act refers to “trap or snare” in section 11, “Prohibition of certain methods of killing or taking wild animals”, whereas the equivalent regulation in the habitats regulations refers to

“traps which are non-selective according to their principle or their conditions of use”.

The problem is that, although we can license the use of certain prohibited methods under the habitats regulations, the use of only the word “traps” in the regulations and the fact that the 1981 act appears to suggest that traps and snares are not the same thing mean that there is doubt about whether we can license the use of snares to take, in particular, mountain hares, which are an annex V species under the habitats directive.

There has been much doubt about that over the years. I understand that a case is pending that might clarify the position—I think that it will be heard in Inverness later this year. As far as I am aware, the legal fraternity has always had difficulty in establishing whether someone who is snaring mountain hares is falling foul of the habitats regulations.

Elaine Murray: So, what you suggest would not make any difference to the use of snares for trapping foxes, for example, or create the opportunity to license the taking of non-protected species.

John Kerr: No. It is just to clarify the intention of the legislation.

10:45

The Convener: We turn to species licensing. As I understand it, certain species, such as otter and wildcat, are protected under the habitats directive, and others, such as red squirrel and pine martin, are protected under the Wildlife and Countryside Act 1981. The bill would remove anomalies in species protection. Is SNH comfortable that the tests for issuing licences under the 1981 act, as amended by the bill, and the 1994 regulations would be the same?

John Kerr: Is that in relation to the new purpose?

The Convener: Yes.

John Kerr: The new purpose is intended to deal with anomalies relating to schedule 5 species, which are predominantly species such as red squirrel and water vole, as certain developments have been held up because no licence can be issued for the disturbance of the place of rest of those species. Those developments are not covered in the purposes for which a licence can be issued under the 1981 act. The new purpose is intended to address that anomaly.

Ron Macdonald: As John Kerr said, the policy context is the mismatch between the species that are covered by the European habitats directive, which includes a public interest test, and those that come under schedule 5 to the 1981 act, whose provisions were strengthened by the Nature and Conservation (Scotland) Act 2004, which created an absolute protection for places of shelter such as dreys and nests. That has created some difficulties for our staff in dealing with casework that involves planning applications, for example.

I will give an example from Grampian in your area, convener, which involved an application for the reopening of a quarry that was also the home of water voles. The water vole population was very disaggregated, with the burrows spread out across several areas, and the conditions were not the most healthy. We felt that if we could mitigate the situation, we could improve things for their welfare, but the advice that we got was that, because the protection for the burrows of water voles was absolute, it was not possible to introduce any mitigation that would benefit the water vole population. Ultimately, the quarry and accompanying operations had to be redesigned to avoid any impact on the water voles' burrows. We felt that not only was that disproportionate in terms of development and the wider public interest, it was detrimental to the water vole population. The bill will allow us to consider reasons of economic and social purpose alongside the conservation of species in a way that is much more joined up and

holistic. We believe that the provision is reasonable and will deliver benefits for species.

The Convener: That is a good example of where a law can have unintended consequences.

Ron Macdonald: Yes.

The Convener: You think that we are getting it right in the bill.

Ron Macdonald: I think so. The challenge will be in some of the guidance, for example in defining where public interest begins and ends. Certainly, that will be the case for SNH if ministers decide to delegate the licensing function to us. If a licensing scheme is introduced, it needs to be proportionate and not overly bureaucratic. For example, we are not in the business of stymieing forestry development. We have to devise systems that are protective and also proportionate and minimal in bureaucratic terms.

Peter Peacock: On another aspect of licensing for the taking of species, the SGA and others have put arguments to the committee for the need to control buzzards, particularly in relation to the release of pheasant and red-legged partridge on the basis that they could be regarded as livestock, having been hand-reared. What is SNH's view on the need to control predatory birds, which are of course—by and large—protected species, in the way that the SGA has argued?

Ron Macdonald: The first point to make is that there is provision in section 16 of the 1981 act for people to apply for licences to control serious damage to livestock, so there will be nothing in the bill that is not currently available. Essentially, the test relates to what constitutes serious damage, whether there are any suitable alternatives that can avoid or mitigate the impact of the birds, and what the impact is on the conservation status of the species. A thorough, rigorous process is already in place and we have been working alongside the SGA and the Scottish Government to develop guidance, which will further inform the trigger points for serious damage in that context.

Peter Peacock: You see no need to change the law; it is about doing more to illustrate when the law might apply. Is that a fair summary?

Ron Macdonald: Yes, I think so. The other point is that it has to be clearly demonstrated that all reasonable efforts have been made to find a suitable alternative approach—in other words, the non-lethal control of buzzards. I think that the SGA and other land management organisations would support that. Lethal shooting of buzzards, which are a fully protected species, is a last resort. Lots can be done through the design of cages and scaring to avoid the next step.

Peter Peacock: But, in the final analysis, subject to the safeguards and other approaches

being tried first, SNH is not opposed to the removal of buzzards in defined, clear circumstances, is it?

Ron Macdonald: Not at all. As I say, the licensing regime allows for that, so we would not be in a position to oppose it.

Peter Peacock: It is a question of the level of the hurdles that have to be cleared before a licence is granted.

Ron Macdonald: Yes.

Peter Peacock: In evidence that was given to us at the committee meeting in Langholm, the SGA argued—it was certainly the implication of what it was saying—that if licences were more freely available, that would reduce bird poisoning. In fact, I think that the SGA representative thought that, if they were, bird poisoning would decline in a matter of years, which implies that bird poisoning occurs to control the situation that we are discussing. That implies that there would be a slightly lower hurdle than the one that you are perhaps thinking about for someone to get a licence. What is your view on that?

Ron Macdonald: It would be wrong to imply that, in developing guidance that will assist with the ease of making applications, SNH or any other Government body would lower the bar in relation to the evidence required. That evidence bar needs to be kept high, because we have obligations under the European birds directive and derogations in respect of the directive have to be fully justified by clear evidence of need and of the fact that there will not be an impact on the conservation of the species being controlled. Therefore, I would tend to disagree. The law is the law and we have to apply it in a way that fully protects the buzzard, which is a protected species.

John Scott: You would accept, nonetheless, that the success of conserving this particular species, the buzzard, has led to a growing problem for people who are rearing pheasant poults and red-legged partridges. How do you suggest that that problem be dealt with, given that there is obvious unhappiness about the current situation, which you are defending?

Ron Macdonald: I am not defending it; I am stating the status quo. I think that the way forward—it is something that we have been doing through the Scottish Government—is to develop the guidance. The SGA, the SRPBA and land managers have been actively involved in trying to tease out what are the trigger points and what level of economic impact in relation to pheasants would determine that a licence could be considered, alongside consideration of suitable alternatives and the impact on conservation. I recognise the frustration, but we are working together with the land management sector to try to

revise and update guidance that will make it easier for people to apply without necessarily lowering the bar. The sector is happy to establish the bar but, up to now, it has felt alienated from the process. It is now part of the process, which is a major step forward.

John Scott: It is a work in progress, which you are optimistic will lead to a satisfactory resolution.

Ron Macdonald: Yes.

Bill Wilson: The bill would allow the Government to delegate the function of issuing licences to SNH and local authorities. Do you have a view on the idea that local authorities could issue licences?

Ron Macdonald: We consider that local authorities could be in charge of licensing. When they consider planning applications, it is normally part of their duties to have regard to conservation. For example, if European protected species are involved, local authorities are the competent authority under the habitats directive. They are fully aware of their responsibilities under the 1994 regulations and are well versed in the nuances of the licensing system, so they could carry out licensing.

Bill Wilson: You would be comfortable with local authorities carrying out licensing.

Ron Macdonald: We are comfortable with that. We obviously have a close working relationship with local authorities because, to mention only the European habitats directive, we tend to be consulted on most, if not all, planning applications that involve European protected species. We are comfortable with providing such advice to them.

Bill Wilson: In the case of the issuing of licences, would SNH want to be a compulsory consultee for the local authorities? I presume that a local authority might decide not to consult you. Is that possible?

Ron Macdonald: It is possible. It would be highly desirable if we were consulted, because we can provide the necessary expertise, but I am neutral about whether that requires to be compulsory. It would be preferable if we were consulted.

Elaine Murray: In some circumstances, local authorities themselves might apply for licences—for example, for the control of seagulls or protected species that are a nuisance in particular areas. Would there be a problem with local authorities being able to issue licences to themselves? Would there be a need for safeguards or would it facilitate the process?

Ron Macdonald: Currently, SNH considers applications from its own staff on national nature reserves for the conservation of species. We have

no difficulty in separating the roles of our licensing section and our front-line staff. In much the same way, I do not imagine that there would be a difficulty with local authorities considering licences for their own staff provided that there was clear separation of the licensing function.

John Scott: I will take you on to a question about resources and the costs of licensing. Your workload has already increased significantly—by 250 per cent between 2005 and 2008—and, were goose licensing to transfer to you from the Scottish Government rural payments and inspections directorate, that would add another function. At the moment, you have allocated a cost of some £109,000 to that. The bill considers adding on licensing in connection with the taking of hares and rabbits, and snaring. How do you intend to resource that additional workload, given the declining budgets that you are almost certain to face?

Ron Macdonald: That is a good question, to which I have a part-answer. My chief executive, Ian Jardine, wished to raise that issue with the committee. We are in a phase that is being called the age of austerity or decline in public sector funding, so we have a real issue.

There is agreement that the proposal to transfer some of the species licensing that our sponsor division—the natural resources division—currently carries out would amount to four full-time equivalent posts transferring over to SNH. Beyond that, there is no further provision at the moment. Either we would have to provide that resource ourselves by reprioritising our work within SNH or else we would get additional grant in aid from our sponsor division.

11:00

John Scott: You said that you wanted to raise that issue with the committee, but I point out that we are the Parliament, not the Government. It might be more appropriate to raise it with the Government. However, thank you for your answer. I take it from that that there will be some difficulty.

Ron Macdonald: Yes. That is partly because we do not yet know the full scope of the delegation from Scottish ministers—what will be transferred. It will be significant, covering deer management, species licensing and muirburn. There is the question of not only staff but all the systems that are required to ensure that things run efficiently, from information technology through to customer care.

John Scott: On financing and your ability to deliver the requirements within budget, presumably it would make more sense to have the minimum amount of licensing, rather than to license everything. Taking the voluntary approach

that you talk about, particularly with regard to deer, would make sense. Does what I am saying make sense?

Ron Macdonald: The approach has to be proportionate but still comply with the provisions that the licensing system sets out. If we are running a licensing system, we have to ensure that we discharge our duty efficiently, monitor and evaluate the system and report back on its effectiveness in relation to the population and to applicants' use of licences. Even with effective running, a substantial amount of work remains to be done and we have yet to cost that fully. The Finance Committee has invited us to submit our estimates of the cost of all the potential duties that will fall our way and we are keen to do so. It is a work in progress.

John Scott: That work is in progress and you have to report the figure to the Finance Committee, so we are not trying to pin you down to anything, but what is the ballpark figure? Given that the current requirements cost £100,000, are we talking about additional tens of thousands or will you require £300,000 or £500,000? I just want to get some idea of the scale, which will allow us to discuss these matters with the minister and others.

John Kerr: I think at this stage we are looking at hundreds of thousands.

John Scott: In addition?

John Kerr: That is in addition, given the additional staff requirement for some of the licensing and the time required to develop some of the guidance. The bulk of it will be for the licensing that is currently done at Victoria Quay. We do not expect some of the new licensing provisions, such as on taking hares out of season and on muirburn, to swamp us. The figures on muirburn are difficult to estimate but, on the basis of figures from England, we reckon that there will probably be about 10 applications a year. However, all those applications will need to be considered, and there is a staff resource requirement for that. Some of that can probably be absorbed, but we are looking at hundreds of thousands at this stage.

John Scott: So you are not looking at percentage increases; you are looking at multiples of your existing budgets.

John Kerr: Yes.

The Convener: One of the things that landowners mention is the time that it takes for SNH to consider and grant a licence. By that stage, time has elapsed and we are into another year and another season. Can anything be done to speed that up?

The other thing is that, under the 1981 act, there is no appeals process if an application for a

licence is refused. What can an applicant do if a licence is refused?

Ron Macdonald: I will start off with the concern over speed. Under SNH's current customer service standards, we have 20 working days to turn around the licence application and issue the licence, provided that all the information is supplied. Over 99 per cent of licences are issued within two weeks—that is 10 working days—and most of them are issued within a couple of days. We have no concerns about our ability to turn the licence applications around. Another way of improving our customer service that we are considering is to issue multi-year licences. If, instead of having to apply annually, someone could apply for a licence for consecutive years, that would help in many ways.

In conjunction with stakeholder bodies, we have also been trying to get their members to submit applications well in advance of the need for them so that the licences can be worked up and ready for issue as and when a problem arises. For example, in the case of the predation of ravens on lambs, we can turn around the licence applications and our advice to the Government in a day. We do not have to go out and conduct large-scale surveys; we have most of the information to hand and we are quite confident that we can provide a pretty good service.

The Convener: Good. That is reassuring. What if licences are refused?

Ron Macdonald: At the moment, there is no right of appeal. We always try to get back to applicants and explain fully the reasons why we have turned down an application. Under the freedom of information regime, we make freely available to them all the information that we have used in considering their application. That is another area in which we have tried to develop guidance, providing examples of what a successful application will look like and what an unsuccessful application will look like. We are trying to improve people's understanding of how we reach our decisions. There is currently no right of appeal, but we discuss the matter with unsuccessful applicants at their request.

Liam McArthur: The bill will make an exception to the prohibition on the release of non-native species to allow the release of red-legged partridges and pheasants. Last week, we heard evidence from RSPB Scotland and Scottish Environment LINK that some releases are now of such a scale that they give rise to potential environmental problems. You have referred to the need to consider the sustainability of the land, so I am interested in your observations on the point that RSPB Scotland made. Is there a potential issue? If so, ought there to be powers in the bill to regulate the release of those two species?

Ron Macdonald: We see no reason why pheasants and partridges should be exempted on biological grounds. We recognise that the Government may have good reason for exempting them—perhaps the importance of pheasants to the economy or whatever—but there does not seem to be a clear justification for doing so on biological grounds. It is a major departure from the mainstream policy.

We are concerned about certain localities in Scotland that have been subjected to large-scale releases, which have caused problems. We had a case on Deeside where a large-scale release of red-legged partridges caused damage to important lower plant species—bryophytes—outwith the protected site, although we resolved the situation by agreement. Such problems occur, and several large-scale releases of pheasants have caused concern about their impact on biodiversity in Scotland. Therefore, I basically agree with the RSPB line that there are local issues. I disagree, however, that the problems are extensive and widespread; they tend to be localised.

Liam McArthur: Your comments suggest that, even without a backstop power, you have found workarounds in instances in which problems have arisen. You have been able to get traction in discussions that you have held with the responsible landowners and have managed to alleviate the problem.

Ron Macdonald: That is the case.

Peter Peacock: If there were no backstop power, the number and intensity of such releases could increase, even in a localised way, but we could do nothing about that. Does that seem wise?

Ron Macdonald: The situation is slightly different on protected sites. In the case to which I referred, we considered a nature conservation order—essentially, a stop order—that would cause the activity to cease. Beyond protected sites, you are right to say that currently there is little that can be done to regulate or stop the activity.

Peter Peacock: If the rate of releases intensifies, that will have a localised effect on biodiversity, regardless of whether a site is protected.

Ron Macdonald: Potentially.

John Scott: Will you expand on that answer? What is the scale of the problem? You seem more au fait with what happens on Deeside than with the situation elsewhere. Is this a big problem across Scotland? I appreciate that I can always learn, but I am a rural person and am not aware of its being a massive problem. How big is the affected area? Is it 5, 15, 500 or 5,000 hectares? I want to get a handle on the problem, so that we can respond to it proportionately.

Ron Macdonald: The scale of the problem is in single figures per year. It can be counted on the fingers of one hand.

John Scott: Are you talking about hectares?

Ron Macdonald: I am talking about the number of cases; a very small number of acres are affected. We must be proportionate. Releases are taking place on a small scale but have the capacity to create a problem at a local level. For the most part, we have the necessary tools to resolve it on protected sites.

John Scott: I understand that the immediate area of a release pen—which might be a small amount of land—could be affected. Do you have the tools in place to protect such areas?

Ron Macdonald: I think so. We must be careful not to overestimate the scale of the problem. It is relatively small at the moment.

John Scott: I should have declared an interest as a farmer, but not a pheasant rearer or someone who shoots.

Bill Wilson: You may be aware that we have received evidence from Dr Paul Walton of the RSPB on the RSPB's attempts to deal with an invasive non-native species on one of its reserves. It approached SNH, which sent it to the Scottish Environment Protection Agency, which sent it back to SNH. In light of that evidence, do you accept that there should be a lead body to deal with invasive non-native species? If so, who should that body be? Why have you suggested that it be specified in the code of practice, rather than in the bill?

Ron Macdonald: Was it the RSPB that pointed out that the issue fell between SEPA and SNH?

Bill Wilson: Yes.

Ron Macdonald: We agree. Roles are set out in the rapid response framework that is about to be published, which identifies more clearly than documents that are currently available the lead bodies in particular circumstances. I agree that there is merit in having a lead co-ordination body in Scotland—essentially, a helpdesk that could assign responsibility for taking forward the work to the lead operations body. However, there must be a clear understanding that resources and responsibility for addressing the issue do not rest with the co-ordinating body.

11:15

Bill Wilson: If there is to be a lead co-ordination body, is your preference for it to be SEPA or SNH, given that you said that it would be just a co-ordination body and would not be required to produce the resources to do the work?

Ron Macdonald: I could say that there is a great opportunity for SNH to show leadership, provided that it is appropriately resourced, of course. Does that answer satisfy you?

Bill Wilson: Yes. You have seized the leadership decisively.

You suggested in your submission that the lead body should be specified in the code of practice rather than in the bill.

John Kerr: Yes. We put that in for two reasons: first, because if the decision on who should be the lead co-ordinating body for different sectors changed, there would be no need to change the legislation; and secondly, because it is arguable that which public body in Scotland should take on the role is a matter of Government policy.

The Convener: Is it right that SNH should have discretion to charge owner-occupiers for the cost of implementing a species control order, even if the species is present on the person's land through no fault of their own?

John Kerr: It is right that we should have the option to pass the charge for species control to a landowner, at our discretion. In reality, we would be unlikely ever to place a cost on a landowner for work that was needed as a result of what a predecessor owner had done, whether it was the landowner's grandfather or someone else. I think that in reality that would not happen. However, the option to pass costs to the owner, if necessary, should be kept as a backstop.

Aileen Campbell: You will also be allowed to pass the charge to the occupier, who might not necessarily be the landowner. Are you content with that?

John Kerr: There are similar provisions in the Nature Conservation (Scotland) Act 2004 in relation to land management orders.

In the vast majority of cases the costs will be met by the public purse. We would have to consider whether the landowner or an occupier under an agricultural tenancy had control of the land and could carry out the work—that is why we support the approach.

The Convener: We move on to muirburn.

John Scott: Again, I declare an interest as a farmer. I want to talk about the environmental impact of different practices for grouse moor management and sheep farming purposes. For example, there is the practice of burning in strips for grouse moor. What is the impact of burning incorrectly?

Robbie Kernahan: Muirburn is a helpful land management tool, for a variety of reasons. It is carried out for a variety of purposes and brings a host of benefits from an agricultural and a sporting

point of view. However, if it is done poorly it can have a host of knock-on negative impacts on ground-nesting birds and the soil. If it is done at the wrong temperatures and is not well managed, there can be a severe impact on biodiversity. We are supportive of the muirburn code and the regulations that are in place to try to prevent poor practice.

John Scott: Are you relaxed about the potential extension of the burning season through the granting of licences? At Langholm, we heard that bringing forward the start of the season to August or September would bring benefits in the context of controlling the heather beetle.

Robbie Kernahan: We support the granting of licences in September for specific purposes, for example in relation to the heather beetle. However, special licences should not be used as a catch-up for poor planning earlier in the season. That is a slight concern. Such licences should not be a default—in other words, people should not be saying, “If I can’t get all my burning done at the start of the season, within the muirburn season, I will simply apply as a catch-up.” There has to be a particular management purpose for granting a licence out of season.

John Scott: I hear what you say, but I am not sure whether it is practical. The vagaries of the Scottish weather are such that you can go for years without being able to burn at the beginning of the season or through the winter, especially in the west and the south-west, where I come from. I know the difficulties of trying to burn, particularly if you are close to forestry and so on. Wind direction, too, makes a huge impact on whether to burn.

I put it to you that your position is not entirely reasonable, and that late licences could and should be used as a catch-up. For example, the committee recently visited the Langholm estate, which is trying to bring a moor back into use as a grouse moor because of the benefits for the community and the local economy. Given the scale of the problem and the type of burning that is required to reinstate the moor to how it should be, catching up with muirburning would take the estate thousands of man days. Therefore, catch-up should be considered as a reasonable reason for applying for a special licence.

Ron Macdonald: Part of our reticence about simply opening the gates to September licences is predicated on the fact that we do not know what the true impact of late-season burning might be. Part of the purpose of creating the extension is to find out, using research through management, what the impact of later burning is.

On your earlier points, if SNH were the licensing authority, we would have due regard to issues

such as poor climate and difficulties at the start of the season in coming to a final decision. What we are saying is that muirburn should be part of a sustainable form of management that should be well planned, in advance. If there are difficulties, we would be the first to consider those and to make allowances for them—there is not an absolute bar on late licences. However, the context for September burning is to address specific management issues. We also want to carry out further research on the impact of later burning on valuable habitats such as moorland.

John Scott: You probably recall that in the days of steam trains, there was a lot of out-of-season burning on moorland close to railway lines because of sparks from steam engines. Obviously there is historic evidence, but I wonder whether any evidence was gathered at the time on the effect on moors of those unintended fires. I appreciate that that is perhaps an odd point to make, but we are talking about evidence on the impact of out-of-season burning.

Ron Macdonald: There is no information that we know of. However, one of our concerns—in relation not to steam trains but to out-of-season burns—is the severity of late burns. A much hotter fire tends to be needed to burn off an awful lot of still-green vegetation, and deep fires are extremely damaging to the peat layer on peatlands. I hope that that explains our concern about simply having a free-for-all.

John Scott: I quite agree.

Ron Macdonald: Therefore, there has to be a graduated response. Inadvertently, I may have given you too precautionary a view. All I am saying is that late burn has to be justified in the context of sustainable management overall. Our position is also predicated on our lack of knowledge about the impact of fires late in the season.

Elaine Murray: You seem to be suggesting that some sort of ecological survey should be undertaken before a licence can be applied for. What would people have to include in that survey? That could increase the cost of it. Also, if somebody is reacting to an outbreak of heather beetle or something like that and there is a requirement to burn out of season, they may not have the time to undertake a survey and apply for a licence to take the required action.

Ron Macdonald: We would not require any research to be undertaken regarding heather beetle. We would send out one of our area officers to confirm that there was an issue with heather beetle and a licence would be issued within a couple of days. The issue is more to do with managing non-priority issues such as improvements to an area for game shooting in an upland area, where there might be vulnerable

species such as lichens, or an upland dwarf shrub heath, where we would not know exactly what the impact would be. We have an open mind about whether we would require further research in those circumstances. In the circumstances that you mention, there would be no requirement for research; the licence application would be turned around as normal.

Liam McArthur: The bill contains a power to merge sites of special scientific interest, and SNH has said that it envisages half a dozen to 10 such mergers. We have received evidence from Western Isles Council and the Scottish Association for Country Sports querying how the power might be used. Are we talking about SSSIs that are next to each other and have been designated for the same reasons, which are the ones that SNH has identified, or could the measure be extended to combination of SSSIs that have been designated for slightly, or even dramatically, different reasons?

John Kerr: The power will be used mainly to merge two adjacent or nearby sites that are notified for similar reasons. There is another class of sites whereby some SSSIs are within other SSSIs, the impact of which is that for some bits of land there are multiple lists of operations requiring consent. There is a good example of that in the north of Shetland, where Hermaness is near three other SSSIs that are either adjacent to it or within it. The boundaries of those sites are all within metres of each other and it can be a complicated process to decide what notifications apply to what pieces of ground. In such situations, we would want to merge sites, if necessary.

However, we would not want to merge every site in Fife, for example. We would merge sites that have very different features only if there would be a benefit both to the land manager in terms of the management of those sites, and to SNH, in identifying what the sites are notified for and in the on-going management with the land manager.

Liam McArthur: You see the benefit as being greater clarity about what would be sanctioned in those areas and under what circumstances.

John Kerr: Yes.

Liam McArthur: Do you envisage the process being streamlined in the five to 10 instances that you have identified?

John Kerr: Yes. We would obviously discuss the merger with the land manager in the first place, to clarify what the process would be. If, through discussions on other topics to do with the management of the SSSI, it became clear that it might simplify things for him, for us or for both if the sites were merged into one, we would want to proceed with that.

Liam McArthur: Would you take recommendations from or respond to land managers, for example, who wanted to bring to your attention difficulties that they were encountering? Would you consider that sort of application?

John Kerr: Yes. The current problem is that we cannot denotify one site in order to merge it into another—we cannot denotify land that is of special interest. In removing the anomaly, we hope to simplify land management.

11:30

Bill Wilson: You are probably aware of the area of special protection at Loch Garten and the situation there. In its evidence, RSPB Scotland stated that it is happy to see ASPs go if it is given powers that are the same as those that it currently has at Loch Garten. It has also requested that the orders that are provided when ASPs are abolished give it powers that it has at present to continue to manage visitors. I get the impression that SNH is not comfortable with the proposal.

Ron Macdonald: I think that “not comfortable” is probably the right expression. As the committee knows, we have written again to the RSPB on the matter. I think that the Cairngorms National Park Authority has also written to the committee and the RSPB to try to broker a way forward. We are very keen to work with the RSPB, which does an excellent job in terms of visitor management at Loch Garten. Obviously, the site not only has iconic status but is important for the local economy and very important for nature conservation. It is in all our interests to try to work together. We already have strengthened provisions on ASPs. For example, the Nature Conservation (Scotland) Act 2004 and Wildlife and Countryside Act 1981 make provision for reckless disturbance of protected species.

The RSPB raised the issue of people straying accidentally into an ASP and ardent bird watchers who come early or late. All the issues that it raises can be addressed through the voluntary principle and the access code. We are preaching to the converted. I refer in particular to bird watchers who have the interests of the birds at heart.

Before you consider additional regulatory or restrictive processes, you should try to reach out to people. Some people might not know that an area is an ASP. We need to get people to modify their behaviour by means of a voluntary approach. We believe that we have to go through that stage before we consider greater regulatory and restrictive measures. Indeed, those measures are already available under access and nature conservation legislation. We are very keen to work with the RSPB to see whether that can be done.

Obviously, if it is not possible, consideration should be given to other powers, regulation and restriction. We are not quite there yet.

Bill Wilson: You talk about additional powers. I understand that we already have those powers under the ASP regulations. I also understand that some powers will be lost when the ASPs are abolished. Clearly, the RSPB wants the powers to be maintained by way of orders. Is there a case for additional powers? If the RSPB gets what it wants, would we see a continuation of the present powers, albeit that they would come under an order and not ASP regulations?

John Kerr: The difference is that the main power that the RSPB is looking to retain is the ability to restrict public access. It wants to be able to inform people with whom it has a problem that the land is a statutory bird reserve to which access is restricted at certain times of year. The powers that Ron Macdonald mentioned focus on impacts on birds—in other words, intentional or reckless disturbance to birds is already an offence. We are really talking about two sides of the same coin. Our view is that our focus should be on disturbance to birds and not on someone accessing land without RSPB consent. For example, it is a strict offence for someone to stray off the Speyside way, which is a long way from the Loch Garten visitor centre. There is no relationship between someone doing that and the impact that it might have on birds in the ASP.

Bill Wilson: That is true, but the RSPB tells us that its volunteers in the area of the birds—I do not have the impression that it is talking about people straying accidentally off the Speyside way—can say, “You are disturbing the birds.” Volunteers have in the back of their minds the legal requirements—although they are said to be rarely used—that allow them to ask people to leave the land. That reassures volunteers when they have conversations with individuals. By all accounts, individuals normally leave without volunteers being required to quote the law, but that is a back-up.

My difficulty is that, if the present situation works, why not provide an order to ensure that the same powers are available? You seem to say that you will remove the powers and not replace them with an order and that the RSPB can approach you if things start to go wrong. That approach of waiting to see whether a problem arises is not entirely positive. We have no problem now, so why not keep the status quo?

Ron Macdonald: The current ASPs are not publicised and the information is brought out of back pockets when dealing with people. Most visitors are likely to behave on sites despite the ASP designation, not because of it. The lack of advertisement means that most people are not given the opportunity to comply with a designation

order. The system is not working in the way that it was set up to work in the early years, when no other provision existed.

The same staff can bring the Scottish outdoor access code and access legislation out of their back pockets when they tell people that if they do not discharge their access responsibly they will not comply with the Land Reform (Scotland) Act 2003. That measure exists and it replicates many provisions in the existing ASP orders.

The issue is modernising the law to make it much more in keeping with how most people in Scotland regard access to land. People are familiar with the Scottish outdoor access code and they know that free access is a basic right, provided that that access is responsible. All we are saying is that we should use that and the existing provisions. Criminal damage, such as vandalism or egg theft, can be addressed through the courts and through the police. They are dealt with already. We see no problem with the tools that we have in modern legislation. We do not need the ASP status.

Peter Peacock: As before, I make it clear that I am a member of the RSPB and the Scottish Ornithologists Club.

You have mentioned that SNH has a continuing concern about raptor poisoning, but raptors can be trapped in other illegal ways. We have heard evidence from the RSPB about, and others have hinted at, an unexplained absence of some species—such as golden eagles—compared with the occupied territories and bird numbers that we would expect to see. Other evidence says that that does not prove that illegal activity is the reason for the unexplained absence of golden eagles. Has SNH considered whether a bigger problem exists? We have been told that the poisonings that we hear about and read of in the papers are the tip of the iceberg. Has SNH done work on what the size of the iceberg might be?

Ron Macdonald: In our published framework on golden eagles, we estimate that up to 50 golden eagles are missing in the black hole in north-east Scotland, which is probably the most productive area for golden eagles in the country. That area is much more productive than the west coast, which has a high population but does not have the richness of prey that the east coast has, largely because of grouse moors—they are a productive food source for golden eagles. We have done some work that shows the scale of the golden eagle problem.

In a population of 500 hen harriers UK-wide, only five breeding pairs were successful in 2008 on all moors throughout the UK. Given the rich food supply and the ideal and optimum breeding

habitat, that indicates that we have a major problem on our hands.

Peter Peacock: So, you are confirming that there is an unexplained number of absent eagles—up to 50—which confirms what the RSPB said. You are also concerned about the continuing number of finds of poisoned raptors. Would it be possible for SNH to share that information with us and give us a submission or any briefing papers on it? It would be interesting to see more detail about how that figure is arrived at.

Ron Macdonald: Yes.

Peter Peacock: You also said that, because of the concerns that SNH has about continuing raptor poisoning—there may also be other forms of illegal removal of raptors—it is worth thinking in principle about a licensing system for grouse moors that might help to create some means by which the situation might be better controlled. Will you say a little bit more about that? You mentioned that licensing would have to be proportionate and not overly bureaucratic. Is there any reason why such licensing would have to be particularly bureaucratic?

John Kerr: No. I imagine that if the purpose of the licence was to regulate shooting practice so that some of the bad practices were not pursued, it would be intended to be easy to get and easy to lose. It would not be a bureaucratic process to get a licence, but it would be another piece of paperwork that people would have to complete. I would hope that no licensing authority would look for a huge amount of information to support a licensing application.

Peter Peacock: Have you done any work within SNH to think through how any such licensing scheme might look? Is it more a matter of principle than of detail at this stage?

Ron Macdonald: We have not given much thought to how it would work, such as whether the licence would be for the individual or the land. It is worthy of consideration, but we have significant concerns about the detail of how it would work and, of course, about resources, should any such licensing function come to SNH.

Peter Peacock: I take it as read that anything that SNH says about extra works comes with the caveat that there is a resource question. I do not mean that flippantly, but genuinely.

Many aspects of public life are licensed to protect the public interest. Every pub is licensed. Anyone who wants to be a taxi driver must be licensed and anyone who wants to be a street trader must get permission for it. Somebody who wants to practice as a solicitor, general practitioner, social worker or child care worker must abide by certain rules. Would it be

conceivable for a local authority to consider and hear within its existing licensing committee system representations about a grouse moor's operation? Do you anticipate hurdles with grouse moor licensing because of the attributes of such operations that are essentially different from any of the others on which I touched?

Ron Macdonald: No. SNH is well versed as a licensing authority and grouse moor licensing is doable. All I am saying is that there are significant hurdles in defining the scope and determining whether it is reasonable. Obviously, licensing has the potential to have quite an impact on people's traditional rights, although that is not a reason not to consider a licensing regime.

Of late, we have been encouraged by the fact that the land management sector, particularly the SRPBA, is keen to develop a wildlife estates initiative, which considers grouse shooting and upland management according to sustainable land management principles. We have been supportive of that initiative, but it must have teeth. It must have some sort of code of practice and accreditation so that not only the good estates come in but those that are still wanting. There must also be demonstrable improvements in respect of the number of deaths of birds of prey.

We are keen to give that a fair wind and to support it. It is always better to have a voluntary approach than to have a regulatory approach with licences. Because the WANE bill gives quite a short time window in which to develop a licensing system and we are not sure that that can be done, we tend to support the development of the voluntary code.

11:45

Peter Peacock: You have described the voluntary code. I recently had a discussion with the SRPBA in which it explained all of that to me and gave me some documentation. Like you, I think that it is an encouraging step forward. Equally, however, there are no sanctions attached to it. It is entirely voluntary and people who are not members of that organisation—or even those who are—may not apply it. Given what you said earlier about the need to develop the criteria against which a licensing system might work, might there be some way of connecting the two things? Might the criteria that are being developed voluntarily over time become the criteria against which we would judge whether someone should or should not be licensed for the activity?

Ron Macdonald: That is right, which is probably why we are viewing the matter with interest.

Bill Wilson: You are almost certainly aware that the Marine (Scotland) Act 2010 imposes a duty to

create a coherent network of protected areas. Given that we are having some difficulty in meeting our biodiversity targets—as is the rest of Europe, as far as I can make out—and given the vagaries of climate change, would the addition of a duty to create a coherent network of protected areas in Scotland be a useful addition to the Wildlife and Natural Environment (Scotland) Bill?

Ron Macdonald: That question was raised by the Scottish Wildlife Trust. The question is really whether the regulations that underpin the habitats directive are adequately transposed for the requirements of articles 3 and 10 in relation to ecological coherence. We think that they are. Arguably, the wording of regulation 37 is wider than the provisions of the two articles. Instead of referring to improving the ecological coherence of the Natura 2000 network, it seems to cover all land.

The difficulty is that the provisions are weak. The regulations are fine, but the provisions regarding what Government must do leave it to Government to develop that. We think that that is probably better dealt with by the Scottish Government as a matter of policy, whether through planning policy or through the land use strategy. We believe that, although the policy and the provisions are currently weak, the tools exist in the articles to enable us to make some improvements that we think are justifiable. We are very much behind ecological coherence, developing corridors and linking habitats together to tackle climate change or whatever else. It is a question of land use planning rather than of any beefing up of regulation or insertion of a particular provision in the WANE bill.

The Convener: This session has been extremely helpful. I thank you all for your attendance. If, on your way home or in the next few days, you think of any supplementary information that you would like to give us, please provide it to the clerks as soon as possible.

I suspend the meeting for a brief comfort break, in which the witnesses can change over.

11:48

Meeting suspended.

11:54

On resuming—

The Convener: I welcome the second panel, which will focus more or less exclusively on the bill's provisions on deer. I welcome Finlay Clark, from the Association of Deer Management Groups; Dr Justin Irvine, from the Macaulay Land Use Research Institute; Professor John Milne, ex-chairman of the Deer Commission for Scotland;

and John Bruce, of the British Deer Society. We will move straight to questions.

John Scott: We are talking about deer again. Thank you for your input. What do you see as the key environmental impacts of deer in Scotland? Where are there too many deer? Is the impact of deer on the natural heritage reducing? Are current deer management structures working? Will you give us the background on those subjects, please?

Professor John Milne: I will kick off. Any time I am asked about the subject of deer numbers I always get frustrated, but I am pleased that you mentioned impacts rather than numbers. The deer impacts on the environment are currently mainly addressed in relation to Natura 2000 sites and biodiversity. That has been a major plank of the agencies' work for the past 10 years. I am pleased to say that we are moving to the stage where we have quite a lot of agreement with deer management groups and estates about those sites. However, that does not mean that the problem will go away. The sites are continually monitored and some get into an unfavourable condition, so there will always be an on-going issue.

The impact of deer on forestry is of great significance. It has been over the past 10 or 15 years and I believe that it will continue to be so, particularly if we increase the area of land under forestry in Scotland. We create habitat for deer and they will use that habitat and cause damage. That continuing issue has to be addressed.

It is interesting that the number of authorisations that are sought in relation to agriculture has been in decline in the past 10 years. That is not because deer are not having an impact on agriculture; it is because farmers are not taking action in the same way that they did in the past. The impact is therefore different.

Looking to the future, we have major concerns about potential damage to areas of peat from treading and grazing by deer. Deer will also have impacts on our efforts in relation to climate change, particularly in relation to our efforts to increase the amount of woodland. Those are all negative things, but of course deer also have positive impacts, particularly their annual sport value to the Scottish economy. There is also a major impact on tourism. It is difficult to quantify, but all the surveys suggest that when people come to Scotland one of the things that they want to see is deer. Deer are our largest mammal, so they have a major cultural impact that we cannot ignore.

The Convener: Does anyone else want to comment? You do not all have to answer every question, but if you have something to add, please

do. If you just want to nod in agreement, please do that, too, because we have a lot to get through.

12:00

Dr Justin Irvine (Macaulay Land Use Research Institute): There are clear cases where deer can have impacts on our natural heritage. Those can be negative, particularly in designated areas, but they can also be positive. It depends on the particular habitat. Certain habitats need a higher level of grazing than others to keep them in good condition.

Another factor to consider when talking about deer impacts is the impact of other grazing animals. In recent decades there have been some significant changes in factors that affect deer. More sheep have been taken off the hills in recent times and the question is how deer will respond to that. There will potentially be an increase in deer numbers if there are milder winters, because that will increase survival rates. As well as those changes, there is an increase in the amount of land owned by people who have different objectives and what is a positive impact for one group of people might be negative for another group. Impact is a neutral word; it is humans that judge it to be positive or negative.

There has also been an increase in public objectives and an increase in legislation on natural heritage in the past decades. That legislation is often in conflict, or not necessarily in agreement with, the existing deer legislation. We must consider how to manage the deer population sustainably in respect of the population size as well as the other natural heritage legislation that has come in. All those factors mean that deer management has become more complex.

John Scott: The number of variables is almost certainly changing and increasing. It is a constantly moving picture and there will be no one snapshot of what is perfection or what is to be aimed for, because that will change over time.

Dr Irvine: Yes, exactly. Deer management groups—

John Scott: If you would like to talk about those groups, whether they should be voluntary and whether they are currently successful, I would be grateful for your views.

Dr Irvine: Over many years deer management groups have been very successful to some extent in maintaining the deer population, but they are now being asked to deal with a complex environment. Some submissions have said that they are not really successful in doing that, or that they are failing to do that or that they are not fit for purpose. I suggest that if they are given better

tools to do that job, they will provide a very good structure in which to do it.

In our research, we found that deer management groups are open to considering multiple objectives but do not really know what the public objective or the public requirement is. There has not been a very good communication exercise in respect of what is expected of them in a complex environment. If there could be better communication of the public objectives to the deer management groups and they were provided with tools to allow them to make trade-offs or make decisions to balance those different objectives, that might be a way forward for the voluntary deer management group sector.

I do not have a strong view on whether these things should be made compulsory, but the work that we have done suggests that, rather than coming down with top-heavy regulation and something that has to have resources put into it from that point of view, some mechanisms that we have looked at could be transferable to the deer management group system, which could help them to deal with a complex situation.

John Scott: Would it be fair comment that, in your view, the public benefits of sustainably managing deer are inadequately defined?

Dr Irvine: Public benefits may well be reasonably defined in some areas, but what they are and how landowners and land managers should go about monitoring them, trading them off, assessing their relative importance and establishing how they fit in with private objectives is not necessarily communicated.

Finlay Clark (Association of Deer Management Groups): I will say a few words about the deer management group system. I think that SNH said earlier in the meeting that it was content that the voluntary approach to deer management had, by and large, worked. Consider the achievements of the deer management group system over the past decade or two. The figures indicate that 93 per cent of designated sites are now in a favourable or unfavourable/improving condition, or are under approved management.

We must consider whether, statistically, 100 per cent could ever have been achieved, given that many designated sites have many qualifying features, some of which require heavier grazing than other features. For example, blanket bog requires a low number of deer per square kilometre, whereas species-rich grassland needs a higher level of grazing. It is therefore very difficult for a designated site to qualify on all the features, so it may be that 100 per cent was never achievable. I think that achieving 93 per cent through the voluntary mechanism is a successful achievement.

The way in which the venison industry has developed during the past decade is a real success story about the delivery of a good-quality food product to the people of Scotland.

Section 8 of the Deer (Scotland) Act 1996 has never been used, and although there is a view that that is because the provisions were difficult to implement, the other view must be that the voluntary mechanism through section 7 agreements or communication and dialogue has ensured that any designated sites that were in an unfavourable condition have now been dealt with and are now under some form of approved management. The voluntary approach has therefore been successful.

It has also been less demanding on the public purse than regulated or compulsory deer management might be.

Professor Milne: I fundamentally disagree with that analysis. All the evidence that I have seen, and my experience of being chairman of the Deer Commission for Scotland for five years, and vice-chairman for six before that, has shown that the deer management group system does not work.

As Justin Irvine explained, the reasons for that are many. The ultimate reason is that nothing in law says that individuals have to take part in a group. If they do take part, they do not have to follow anything that the group agrees. The group itself has no teeth. Many chairmen have approached me and told me that they cannot get the group to work because one landowner will not do one thing and another will not do something else.

The idea is sound, which is why we all support it. We want decisions to be made by local people using their expertise, and that is the policy of all the parties that are sitting around this table. We want to make it work, but it does not work at the moment, and the parliamentary answer clearly suggests that. Only half the groups have deer management plans, and only 10 per cent of them use the plans to set culls and so on.

The important things, such as local collaborative deer management, have not worked in the past. In fact, I perceive that the situation has got worse. Before I became vice-chairman of the Deer Commission for Scotland, I was on the executive committee of the Association of Deer Management Groups. At that time the system worked much better than it does now. That is partly because of the complexity of land management issues that have arisen in relation to deer in the past 10 years. Equally, there is a lack of capacity within the sector. In the past, lots of people were prepared to give lots of their time voluntarily for deer management. People's time is much more valuable now, so we do not have the same

capacity and the system creaks and does not work.

The evidence that the DCS submitted was very much of that nature. We wanted to make the scheme work. Finlay Clark quoted the figure of 93 per cent of sites being in favourable condition, or moving towards favourable condition. That is the result of the work done during the past 10 years by the agencies, particularly DCS, on developing plans, putting them in place and monitoring them; it is not the result of what the deer management groups have done. Sometimes they have come along and helped in a positive manner, but they have often been negative, and we have had to do a lot of work to get a section 7 agreement in place. So the perception that the deer management group system is working is completely wrong.

That does not mean that it is not the right system to take forward. The alternatives are just not attractive. Moving towards a system of compulsory deer management planning or statutory deer management groups is not the way forward. It would mean extra bureaucracy and I do not think that any of the interested parties want it. We want to stiffen the voluntary approach and make it work better.

John Scott: Is that not partly what Dr Irvine said about the need to have more clearly defined objectives? Are the definitions too loose at the moment?

Professor Milne: That is a misperception. Two years ago, the Government published "Scotland's Wild Deer: A National Approach", which describes clearly what the public objectives for sustainable deer management should be. It is not reasonable to argue that the current approach is too loose.

John Scott: You will appreciate the committee's position—we are taking evidence and hearing diverging views. What is the way forward?

Finlay Clark: I return to some of the statistics that Professor Milne cited. He said that less than 10 per cent of deer management groups discuss culls or set cull targets and that only 50 per cent of deer management groups have deer management plans. Those statistics date back to 2005. The 2010 figures indicate that 96 per cent of deer management groups discuss, set and review cull targets, and that 76 per cent of groups have deer management plans in place. Seventy-seven per cent of deer management groups also undertake habitat monitoring on a regular basis and link that to deer culls and target culls.

Professor Milne: The figures that Finlay Clark cites come from the supplementary paper that has been submitted. I do not think that the paper is of much value. The questions that were asked do not refer to deer management groups and include estates. Of course estates have deer management

plans and review their culls; that does not mean that deer management groups do so. The figures misrepresent completely the reality of the situation.

John Scott: I do not want to interrupt a discussion between friends, but the other witnesses may have a dispassionate view on the issue. Would they care to comment?

The Convener: Obviously not. Does Aileen Campbell have a question?

Aileen Campbell: Professor Milne has answered it. I was going to ask how the answers that have been given to parliamentary questions can be reconciled with the figures that we have received from the Association of Deer Management Groups.

Bill Wilson: Trial by combat often works, I am told. Professor Milne said that he did not want compulsory management plans, but he also said that there is a problem with voluntary management plans. Would it be useful to have the option of compulsory planning, if voluntary groups do not plan voluntarily?

Professor Milne: One problem with compulsory planning is that first you must identify the group that will do it. At the moment, there is no statutory basis for deer management groups, which are voluntary and often have no constitutions. It is difficult to establish to whom the order to develop plans would be addressed. That approach would not work. Much more important than developing a plan is its implementation. The planning process is continuous and cyclical, which requires properly constituted deer management groups. That is why compulsory deer management planning is not the solution.

Bill Wilson: What is the solution, if voluntary groups will not plan voluntarily?

Professor Milne: The solution that the Deer Commission for Scotland recommended, which ran into difficulties with human rights legislation, was to place a duty on land managers who have significant numbers of deer on their land to collaborate with others to produce sustainable deer management. A code would be developed to guide them on how to deliver that. If they failed to do it under the code, there would be fall-back powers to allow it to happen.

We were trying to reduce the amount of bureaucracy on SNH and to increase local decision making. However, local decision making cannot happen if you do not get all the people who are involved around the table to do it. One problem with the voluntary approach is that one large landowner may decide to adopt a particular policy, irrespective of what his neighbours want to do on deer management. There are quite a few

examples of that. In such situations, deer management groups cannot work properly. We need to retain the voluntary system, which allows local decisions to be made about local issues, but to make people attend and work as part of the groups. That is why we are suggesting the duty.

12:15

Bill Wilson: Perhaps I have misunderstood you, but you almost seem to imply that there is some doubt as to who should or should not be members of any given deer management group. If there is to be a duty that requires members of groups to collaborate, the groups themselves will have to be defined. It would have to be specified that certain estates or areas are part of certain groups.

Professor Milne: The idea behind the deer management group system was to take sub-populations of deer bounded by roads, rivers, mountain ranges or whatever and to set up the 50-odd groups on that basis, or on some other good logistical basis.

There is a need to change some of the boundaries now, as time has moved on and the different land use management options that are in place have changed our landscapes, but I see no difficulty in identifying what group those sub-populations should belong to. The Association of Deer Management Groups, which takes an overview of all the groups, is the sort of body that could very appropriately do that.

The Convener: Did you wish to come in at this point, Mr Bruce?

John Bruce (British Deer Society): Yes, as an observer of the debate.

In general, priority site recording is public knowledge. Priority sites have, in the main, achieved the objectives that were set for them using a voluntary method. Where there is a specific problem—one that is irreconcilable among the community in the area—there is a power to create a panel under the 1996 act. That panel will have appointees—anybody in the community can be appointed to be represented on the panel to resolve the issues that way. There is a way to tackle specific, targeted, time-set, objective-set targets to achieve what is required.

I leave that information with you.

John Scott: So there is no need to reinvent the wheel.

John Bruce: I did not say that—I just gave you the information.

John Scott: Would it be reasonable for me and the committee to conclude from what you have just said that there is no need to reinvent the wheel, as mechanisms already exist for

establishing a reconciled position in cases where there are irreconcilable points of view?

Finlay Clark: The Association of Deer Management Groups supports the voluntary approach, with some measure of compulsion in the background or a backstop measure if that is required. That is what we have at the moment, and that is what we think is appropriate for the future.

John Scott: Brilliant—thank you.

Will you explore whether there are differences or conflicts between public and private objectives for deer management? There might not be.

Finlay Clark: There can be, in some instances. The issues are not limited to public versus private. Often, private owners within the same deer management group have different objectives. Largely, those relate to a specific owner requiring deer populations of 10 deer per square kilometre, say, to ensure economic and employment stability within the organisation or estate, whereas a neighbouring estate might be seeking to regenerate native woodland, with a requirement to have one or fewer deer per square kilometre. There is an obvious conflict there, in that deer range over a wide area, and it is difficult to deliver both those objectives without very careful management.

Fencing is a legitimate management tool and is used in some instances, but where there is a desire not to use fencing, competing land use objectives can become conflicting land use objectives. That is a difficulty, and that is one of the major challenges facing the deer management groups and the deer industry in the upland ranges.

John Scott: In the example that you have just given, how would you seek to reconcile such a position?

Finlay Clark: Some situations are reconciled by way of physical barriers—fencing—and some are reconciled by negotiation and discussion. Some are irreconcilable at the moment and those cases are work in progress. One of the difficulties is that the Deer (Scotland) Act 1996 offers no form of dispute resolution, so where two parties are in dispute regarding what an appropriate population of deer is, the 1996 act does not deal with that or allow a resolution to take place. We see such resolution as being important for the future.

John Scott: In a situation with two competing interests, where a fence might not be a reasonable option because the landowner wanted to reintroduce ptarmigan, for example—

Finlay Clark: It would be black game, probably.

John Scott: Right, black game. That would mean that you could not have a fence, because

SNH would say that that was not possible. Is there no dispute resolution under those circumstances? Can people not go to court if they want a decision, or is that not the position?

Finlay Clark: That is not the position at the moment.

John Scott: Should it be?

Professor Milne: Land managers do have different objectives and they can compete in relation to deer, as Finlay Clark described well. The Deer Commission's argument was that we want local solutions to those conflicts, not the bureaucracy of SNH coming in and getting involved. The deer management group system is the right way forward, but there is no need currently for all the land managers associated with deer in a particular area to belong to a group. All we were trying to do in what we were proposing was to make it a duty on land managers to take part in a group.

There are various types of dispute resolution. At the moment, the secretary or chairman of a particular group will try to broker some sort of solution. It is also possible to bring in facilitators who can help with the problem. There are different mechanisms. The resolution should be achieved in the context of the deer population, which means through the deer management group.

John Scott: If there are three legitimately and reasonably held yet irreconcilable positions regarding the same area of land, the problem might be defined, but there might not be a solution. That is not a way forward.

Professor Milne: I believe that there is always a way forward. We have suggested a need for the duty because it would force people into a situation where they have to come up with solutions. At the moment they do not have to; they can just walk away.

John Scott: The fallback position is the panel that Mr Bruce suggested, which could impose a solution. Is that the way to proceed?

Professor Milne: The panels have been used in relation to road traffic accidents in particular. Groups involving landowners, local authorities and Transport Scotland get together and come up with solutions. They can only advise SNH on what should then be done. If SNH does not have the tools to deliver it, nothing will happen.

In our advice to the minister we suggested that sections 7 and 8 of the 1996 act, which allow for a panel to be convened, should be given some teeth so that the panel can help to impose a solution. At the moment the panel is basically a talking shop and it is difficult to move from the talking shop to getting delivery. That is what we proposed, but that ran foul of the ECHR in terms of actually

putting a duty on individuals to take part in the panels.

John Bruce: Think of the deer. They are the unwitting target—literally—of this effort. Our organisation is specifically concerned for the welfare of specific deer, and we are encouraged not to talk about the welfare of the population, because there is no such thing as the welfare of a population. A population exists or does not exist.

When there are divergent interests, the vacuum effect of severely reducing the population density in one area, whether at times of hardship or at times of normal grazing patterns, is incredible. The deer will migrate towards the lower density, the consequences of which we can see at the moment. Hunting parties are out shooting deer because they are allowed to, because people want to maintain a low density. Females are being shot this week in the north-west of Scotland prior to the season opening to most—but authority has been given for that, because those concerned have a legitimate interest in controlling the deer population to allow trees to regenerate. That means that any deer that inadvertently crosses what is just a line is subject to be shot. It made a mistake. It does not know.

Is it right that we allow this compost to continue? Should we not take the intelligent view that one landowner wants to do one thing and the other wants to do something else and separate them, as we would separate two bairns who are fighting over a ball? We see no other resolution to the problem. The argument could go on forever if we have committees, panels or groups discussing it. Nothing will happen, because the fallback position is, “I am entitled to do what I want on my land.”

John Scott: I do not have a problem with what you are saying. My question was about the situation in which there are three irreconcilable interests and no fence is allowed to be put up to separate the landowners because of SNH considerations, which is often the case.

John Bruce: There is a proposal in the bill to broaden the powers of SNH to allow it to encourage the use of separating, divisional constructions. The powers were previously limited to allowing shooting. However, we do not know whether SNH will allow the construction of a fence to separate divergent populations of deer—never mind divergent populations of humans.

Elaine Murray: I am interested in fencing: it might work well to separate populations of deer, or people who have different ideas about the role of deer on their land, but RSPB Scotland argued strongly that deer fencing is dangerous to capercaillie, which fly into it. How do you deal with that? There is a public interest, as well as a

conservation interest, in encouraging the population of that species.

John Bruce: It could be organised site by site. I am all too aware of the disappearance of capercaillie. I have been involved with them for 30 years and I am very disappointed to see the population crash. I am not convinced that fencing has been the main cause of that crash. There might be another species in areas that capercaillie do not inhabit. Each case could be analysed and evaluated as being relevant or not relevant to the individual site proposal.

Professor Milne: I was going to make the same point. Capercaillie and black grouse are important in some areas but not in others. Therefore, fencing would be an option in some, but not all, areas.

Dr Irvine: There probably are situations in which the different interests are irreconcilable, but there is also great scope for reconciling a lot of differences by taking a different approach. I do not mean to denigrate deer management group meetings, but people often do not go to them with conflict resolution in mind. In our experience, when we have utilised the information that has been provided to us by members of the deer management groups to address some of the issues that they have faced, that has led either to our confirming that there is a problem or to our finding a counterintuitive answer when there might not be a problem. I am thinking of, for example, the vacuum effect that John Bruce mentioned. The data from counts and culls can demonstrate that there might well be some movement, and the two landowners can enter into dialogue about how they will deal with it. Some deer management groups have managed to deal with such issues not because of what we have done, but because they have utilised some of the available information.

There are mechanisms that we can put in place. They cannot, perhaps, be legislated for, but they can provide the tools to enable deer management groups to address some of the conflicts that they face. A lot of it is based on having good information and knowledge of the system. That is where we are lacking; we do not have good count data and, although cull returns have to be put in, it is quite hard to get hold of them. The information on habitats—on sheep distribution and so on—is quite hard to get hold of and pull together, yet a lot of that information is held locally. If we can bring that knowledge together and use it in a much more constructive way, that will enable deer management groups to resolve conflicts between neighbours.

John Milne mentioned “Scotland’s Wild Deer: A National Approach”. It articulates the objectives well, but we have spoken to people who are surprised that the Natura 2000 legislation—the habitats directive—places an obligation on the

likes of SNH to deliver national heritage benefits in the wider countryside. People do not realise that it is SNH's duty to do something about national heritage in the wider countryside. Although the national approach is a major step forward and the implementation of it will go a long way towards that, it is the provision of information at a local level and the use of local knowledge that have the potential to resolve some of the issues.

12:30

Finlay Clark: The backstop of any dispute resolution has to be sustainable deer management, whether that is economically sustainable or sustainable in terms of employment or the environment—each will carry different weights in different areas. That is at the heart of the Government's national deer strategy and it is in the foreword by Andrew Thin to "Managing Scotland's deer: Our new role", which was produced in relation to SNH and the DCS merging. He cites sustainable economic growth as the key to the future of deer management.

Aileen Campbell: I return to Dr Irvine's point that some deer management groups might not have sufficient capacity to exercise conflict resolution. If that has been a clear problem, why has it not been rectified before now? With the deer management groups that are working, is there any kind of best practice sharing or at least information sharing to try to raise other groups up to the standard that we would expect?

Dr Irvine: The DCS and SNH have conducted sustainable deer management case studies to consider what sustainable deer management means in four areas. From that, they have picked out a lot of good practice and what the criteria and issues are for people. On conflict resolution in the deer management groups, there might be the odd example of that, but as far as I am aware it does not go on. In a way, that is the problem that I have: how can we expect an individual member such as a landowner to do multicriteria decision modelling or work on participatory geographic information systems?

Aileen Campbell: Lots of environmental agencies are out there doing such things in their daily work. I wonder why there is no direction or help for the groups. It does not necessarily need to be something that is written into legislation or codes of practice—I am just talking about straightforward assistance. Maybe I have got it wrong.

Professor Milne: I think that you are slightly wrong, because the DCS has always had a role of advising deer managers and has spent a lot of its time doing that. DCS staff attend each deer management group meeting and give advice when

asked to do so. They often input into decision making on deer management groups. Why should we expect Government to have to continue to do that?

Aileen Campbell: I do not suggest that we should expect that all the time. If a group is helped once, maybe it will have the tools and capacity that are needed.

Professor Milne: That is not necessarily the case. As I said, one constraint is the amount of time members of deer management groups spend on deer management group work. You spoke about good examples of how deer management groups work. One of the best examples that I know is where there is one interest, which is sport shooting. That deer management group works excellently and uses best practice, but it is easy for it to do that because it has only one objective. When there are a range of objectives in one deer management group, it gets more difficult, and that has become more and more common. Agencies provide support and SNH provides a little bit of financial resource, but if we want local solutions with local people providing them, there is a need to develop a different approach to providing information and advice—and a need for extra capacity. If we are trying to look forward, it is not a good idea for the state to continue to provide capacity.

The Convener: In the evidence that we took when we were out and about, we found that deer management groups can work well.

Have Peter Peacock and Liam McArthur's questions more or less been answered?

Peter Peacock: I think so.

The Convener: Is there anything else that you want to ask about, Peter?

Peter Peacock: I want to ask about the contrast between what the Deer Commission argued for—the sustainability duty—and what the Government is arguing for. I would be interested in your observations on the fact that the Government has ruled out a sustainability duty for, on the face of it, European convention on human rights reasons. What do you make of the alternative approach that the Government is advocating, given where you have come from?

Professor Milne: I regret that it has gone down that route. Under the current legislation, it is implicit—indeed, it is written down in section 8 of the Deer (Scotland) Act 1996—that landowners have almost a duty to manage deer sustainably. I think that the Government lawyers or whoever advised the bill team perhaps did not look closely enough at what is still there. We are not proposing a huge change. In my written submission, I suggested that the committee might want to revisit

that and to get an alternative view, if only to confirm the position. I believe that the duty approach would be a positive way forward for everyone—it would fit in with Government policy and the policies of the other parties on how we want to develop the way in which we manage our rural resources.

Peter Peacock: In my mind, that gives rise to the question who decides what is sustainable.

The Convener: We will let some other people in.

John Bruce: You may be surprised that we broadened the argument and asked why deer should be selected to be the subject of special duties and special rights. Water voles are of national importance. Should every landowner be responsible for the condition of their water voles or of any other species on their land? Even though we might like to create a pre-emption by using deer, we think that, generally, it would be unwise to.

Peter Peacock: I guess that there is a difference between a water vole and a deer in a number of respects. As Professor Milne has indicated, there is a kind of implied duty under the present deer law that deer managers must act in the wider public interest on such matters. Given that deer have an impact on the wider public interest in a variety of ways, why should not there be firmer regulation of deer management?

John Bruce: Other species do, too.

Peter Peacock: But I do not think that you could argue that water voles have the same impact as deer.

John Bruce: Impact or rights? Every protected species has rights.

Peter Peacock: But the bottom line here, which is where we have difficulty—I certainly do—is what the public interest is in all of this. We have clear biodiversity duties on which deer could impact if we had a completely unregulated system, and deer have a significant impact on vehicle accidents, so there is a clear public interest in managing deer.

The Deer Commission came up with a proposition—which, on the face of it, seems reasonable—that people should manage their deer sustainably from the point of view of biodiversity and all the other issues that I touched on, but you seem to be saying that that is not really relevant and that people should just do what they like with deer on their land. Is that what you are saying?

John Bruce: We would rather they looked after them conscientiously and responsibly, but how do you imply a sustainability duty?

Peter Peacock: That is what I am asking.

John Bruce: I do not think that you can.

Peter Peacock: You think that that is impossible?

John Bruce: It is possible to encourage and to direct. When there is a defined public interest, the powers are available in the various acts to implement action, but I do not see how it can be said that a general duty is necessary for deer but not for other species.

The Convener: We need to move on. One question to ask is whether SNH would have the resources to monitor and enforce compliance.

Professor Milne: I do not work for SNH, but I know from my experience with DCS that section 7 of the 1996 act involved a large amount of work for DCS staff. If it is amended in the way that is proposed, it would still involve a large amount of work. In the past five years, in relation to Natura sites, about 80 per cent of the staff resource of DCS was involved in developing plans, getting them agreed, monitoring them and so on. That is a huge amount of resource. That resource has transferred to SNH, but a range of other responsibilities in relation to the public interest are now being placed on SNH. My concern is that that will increase the amount of work that SNH has to do at a time when resources will be relatively scarce.

Looking to the future—after all, legislation should last 10 years or whatever—we ought to consider whether, for the next 10 years, we want to put more and more from the public purse into managing a problem that can be dealt with in another way.

The Convener: Mr Clark, do you have a view on that?

Finlay Clark: Yes. However, I just want to go back a step and say that I do not know of one landowner or deer manager—or anyone else who is involved in the management of deer—who does not believe that they have an absolute duty to deliver good, proper and sustainable deer management. I do not know anybody who disregards that absolute duty.

The cost to the public purse of delivering sustainable deer management has been mentioned. Dealing with the private sector that owns and manages land is a large portion of my job. I know from personal experience what it costs. Significant sums of money are being put into the Scottish countryside and economy. It is delivering public benefit. If that cost fell to the public purse, I suspect that in these chastened times the public purse would not be capable of picking it up.

Dr Irvine: I am interested in the idea of regulations versus a voluntary code for deer management. If you apply more and more regulations and compulsion, they need to be monitored and policed. The code of practice for deer management is an opportunity. If it were implemented in the right way, it could save quite a lot of resources, because it would give clear guidance on how to deal with sustainable deer management in the light of all the complexity that I described earlier. It would perhaps mean that there was less need for SNH to play a policing or regulatory role. It would not remove it completely, but it would mean that instead of SNH having to enforce a set of regulations, deer management groups could demonstrate that they were following a code of practice, so there would not need to be such regulatory oversight. Although it could involve a lot of work to start with, it would ultimately save resources and it would also be less adversarial.

The code needs to be flexible, because it will need to adapt to future changes. Carbon is probably one of the most important things that we have to deal with at the moment. Finlay Clark said that deer managers want to manage sustainably, but to some extent, perhaps, how they can manage in relation to carbon is not on their radar. That is through no fault of their own. How do they know what the carbon stocks on the land are and how their management impacts on them? There needs to be a mechanism by which such interaction can be communicated. We as researchers do not know the answers yet. When that new information comes along, we can feed it into the code of practice.

The Convener: That leads neatly on to Liam McArthur's question about damage and serious damage.

Liam McArthur: I do not know whether you were present for the first panel, when there was a discussion with Robbie Kernahan about the impact of the removal of the word "serious" from sections 8 and 9 of the Deer (Scotland) Act 1996 in relation to the damage that is caused by deer, which would trigger some of the enforcement powers that SNH would have. Professor Milne, you raised concerns about the back-up powers under section 8. I think that you even suggested that powers under sections 8 and 9 have always been regarded as impractical and have never been used. I do not know whether that reiterates some of the concerns that Mr Kernahan raised. What are your reflections on whether the bill will deliver a more manageable regime?

12:45

Professor Milne: Defining "damage"—and particularly "serious damage"—has been one of

the great problems as long as I have been involved with deer legislation. Our concern has always been that because some parts of the act, particularly section 8, refer to "serious damage", if you placed a section 8 control scheme on somebody, they appealed to the Court of Session and you got involved in a public inquiry or whatever, it would be difficult to prove easily that serious damage was occurring, because people could easily claim that it was just damage, not serious damage. You would get lots of experts in and you would be in a complete mess. From the training that we did on public inquiries and so on, it was clear to me that we do not want to go down that route if at all possible.

There are two solutions: one is to remove the word "serious" and focus on "damage", which is much easier to describe; the second is to change section 8 as it is currently drafted—although that is not proposed in the current bill—and instead use the powers in the Nature Conservation (Scotland) Act 2004 as the way forward. If you were to use those solutions, you would solve some of the problems.

Liam McArthur: I appreciate the point you made about the difficulties with the evidential base for "serious damage"; it echoes what Robbie Kernahan said. In moving to simply "damage", do you not think that there would be a risk that intervention would be brought about at too early a stage and on the basis of something that was not of such significant public interest as to merit the resources that were being deployed to address it?

Professor Milne: My personal view is that there would not. SNH has not used the current approach under the Nature Conservation (Scotland) Act 2004; it is a final backstop. If things work at all sensibly and you have a credible backstop, that intervention never needs to be used.

Elaine Murray: The bill would allow the deer sector to develop its own training and competence programme. Only if that did not happen would there be a possibility of introducing, no earlier than 2014, a mandatory scheme that would include a register, to be kept by SNH, of people who had passed the competence test. Professor Milne has argued that we need the register irrespective of whether the mandatory scheme is introduced. Will you explain why you think there should be a competence test for deer stalking when we do not have such a test for the shooting of other animals, such as foxes or rabbits? The committee introduced a similar provision in the Marine (Scotland) Bill; we required competence in shooting seals because there were particular issues to do with shooting animals at sea and in water. What are the particular circumstances that require a competence test for shooting deer?

Professor Milne: We took that approach to get the private sector to deliver the cull of deer. Approximately 135,000 deer are culled each year. We need that sort of cull if we are to manage our deer resource sustainably. In fact, we probably need to cull more. It is important that the cull continues year by year. Given all the airgun issues that we have experienced, the general public is concerned about shooting, particularly with high-calibre rifles. They are also more concerned about welfare than they have been. Combine that with the fact that you are dealing with our largest wild mammal with high-calibre rifles. The DCS view is that we very much want the public to be satisfied that the culling of deer is being done in an appropriate manner. If we want to do that, the best way to demonstrate it to the general public is to have a competence test.

Elaine Murray: Do we not require the private sector to cull foxes and rabbits as well?

Professor Milne: Yes, but not at the level of 135,000. Furthermore, foxes and rabbits are not the largest and most iconic species of mammal that we have in Britain. There are differences.

Elaine Murray: Why do you argue that a register should be established irrespective of whether a mandatory scheme is introduced?

Professor Milne: I am very supportive of the deer sector's current approach to getting itself up to speed, but I do not think that everyone will have reached the required competence level by 2014. In the future, we hope that new people will wish to shoot deer, and evidence that they have achieved the required level will be needed. Those are reasons for having a register.

Another reason for having a register is that it is a useful way of having good and accurate information on the number of deer that are culled each year in Scotland. The measures that are in the bill would provide us with information that is not very useful. We can use the register to obtain better information.

The Convener: Is Mr Clark's view different?

Finlay Clark: Slightly. The ADMG has consistently said that anybody who shoots deer—in the open range or in woodlands—must be competent to do so. There is no argument against the idea that people must be competent. We support the proposal that the industry should regulate competence itself and that it should do so by 1 April 2014. That target is deliverable. Training systems and practices that are in place can be adapted to comply with the national occupational standard.

Elaine Murray: What is the level of that? Is it level 2?

Finlay Clark: Discussion is taking place on how areas of competence and practical delivery can be added to our level 1 to satisfy the NOS.

A statutory requirement to make cull returns is already in place. Through game dealers, statutory mechanisms capture that information. That is all in place. The DCS previously managed that system and I suspect that it will fall to SNH in the future.

I do not believe that placing the duty of care to make a cull return on an individual who is regarded as competent and who might have shot the deer would be better. In fact, it would be much worse because that would mean relying on many more individuals than at present to make the returns. Many such individuals might not be in Scotland for long—they might be here for only two or three days, shoot half a dozen deer and then disappear back to Europe or the US. How their information would be captured is beyond me.

At the moment, we know where the people who have the rights to shoot deer are and we know where the landowners are. They are much more easily targeted than is the bigger audience that has been suggested.

John Bruce: We have all had to step into an area with which we are not wholly familiar—the vocational education system. Having put my head above the parapet, I have been pushed thoroughly into the middle. Learning about the national occupational standards and vocational training has augmented what I learned in the process of being trained, when I was just the recipient—the candidate.

The national occupational standards system has evolved and involved people in the sector for many years. Educationists and practitioners have commented on and given advice about the system, so it is well exercised.

Introducing, exploring and communicating the NOS system's benefits among all stakeholders will be an important step that we must take and which we are taking. Level 2, which is the lowest standard in game and wildlife management—no level 1 standard is available—is higher than the level that many people thought they would have to achieve. However, we will go through that carefully with people.

The great by-product of asking people to put themselves forward for assessment is that some must do a little reading and training. We hope that they develop their competences in the process, as well as satisfying the test. One hopes that the pick-up and the behaviour will bring about an improvement.

Our society has done such work for 40-odd years. We introduced the first woodland training schemes, hill training schemes and what have

you. We have been deeply immersed in that for years. Some say that we are too deeply immersed, but I have to say that we contribute our charitable moneys to help meet the cost of running training schemes. We see that as a duty of the charity.

We hope that the sector will willingly pick up on the need for competence. Otherwise, it will become mandatory, which will bring in resentment and anti-thinking. We will need more young stalkers because we will have a growing population of deer occupying a greater area. We need more man hours and lady hours on the ground. We need willing people, and we think that they are best found if we have a voluntary process, so that is what we hope for.

Elaine Murray: Are the hunter training courses in Scandinavia compulsory?

John Bruce: Yes. I cannot quote the numbers, although I think I have them in my briefcase.

Dr Irvine: There are 400,000 hunters in Norway. They all have to take a test that involves identifying different age classes of the species, a bit about the ecology, and a shooting test.

Elaine Murray: How does that compare with the proposed competency test in Scotland? Is it at a similar level?

Dr Irvine: I do not know.

John Bruce: I can comment on that. It is a little simpler than what we propose. There seems to be a general standard throughout Europe that involves the knowledge and exhibition of basic skills. As well as taking the lead in vocational training, we are volunteering to take the lead in competency assessment to a minimum standard that is higher than the standard in other countries. Some say that it will be unnecessarily high, but it is difficult to say where we should draw the line and what should be included.

The Convener: Dr Irvine, do you have anything to say about competency or, indeed, the monitoring of deer carcasses?

Dr Irvine: I agree with John Bruce that competency is a means to provide accreditation to the industry. It can demonstrate to the public at large that things are being done competently, so it is a good thing. Why should it be done for deer more than for other species? Possibly because there is a greater public interest in that.

If people are to be competent, it will be necessary to monitor the system and provide information to show that competency is being maintained. That could be done for welfare purposes, which is a difficult one, because how can we demonstrate that somebody shot an animal to the highest welfare standards, or that

they did not do that? Bullet track wounds are not a good means to test that.

Competency in management is also important, because if we can get some information back about what people hunt—that is, more than just information about how many deer they have hunted—we can monitor populations over time to see whether they are declining in body size and whether they vary between regions. That is important information in considering the sustainability of the national herd.

Carcase monitoring is important in relation to food safety. If carcasses were tagged, we could follow them to the game dealer and any problems with deer health could be picked up. We could then identify local or regional trends in the condition, health and performance of the deer population.

If we go with competency, we could say to people, “You need to return some information to us if we give you a licence to shoot deer.” That could provide a lot of useful information that would help us to monitor the sustainability, performance and health of the local, regional and national herds.

John Scott: MLURI gave evidence that close seasons are determined locally in other countries, yet there is resistance to that idea in Scotland. What makes Scotland so different that close seasons cannot be determined locally?

John Bruce: In terms of deer ecology, there is no difference in the breeding behaviour of species in the north, the south-east or the west, so the period of partition is much the same. There is no reason on deer ecology grounds to change it. In terms of deer population dynamics, you might need longer because of bad weather—or good weather—to control the deer to a certain density in a different region. Generally, the sector has provided all that it has been asked for, given the parameters that it has.

What is perhaps more important about the use of the term “close seasons” is that, under the current interpretation, it applies only to a minority of land. Deer on enclosed land are manageable by whoever occupies that group, and close seasons do not apply. The only place that close seasons apply is on the open moorland. You should be aware of that.

13:00

John Scott: I dare say. Dr Irvine, why did you suggest that it might be a good idea to determine close seasons locally? You might also want to talk about close seasons for male deer as opposed to female deer. I would like to hear your views on that.

Dr Irvine: Just to take a small step back, if people demonstrated competence, we would not necessarily need to have any seasons at all. However, it is probably worth retaining a female close season when calves could be orphaned. That is pragmatic and makes sense.

Close seasons for female deer do not vary much across Scotland in terms of the calving dates. They vary a little bit between woodland and open hill areas, but broadly speaking there could be a close season that fits.

There could be a problem with running out of time if we wanted to achieve a certain size of cull, so it would be worth having the option to extend the hind season so that a cull could be achieved in some situations. It could be useful to have that flexibility, but authorisation can be given for that under the current system.

The biology of male deer means that there is no reason why they cannot be shot all year round. They do not have dependant young and there are no other welfare reasons. There are potential welfare problems with how they might be culled. If a lot of pressure is put on them after the rut and they are displaced from where they want to recover, that could be a problem, but if people are competent there would not necessarily need to be any restrictions because of that. I do not see any biological reason for a male deer close season, but there might be good reasons for leaving them alone at certain times, and they could be set locally to suit local management needs, depending on whether it is a sporting or conservation estate. That would have to be done in collaboration with the estate's neighbours because we do not want one person shooting another person's sport stags out of season.

Professor Milne: I agree with Justin Irvine's analysis. The issue around shooting stags out of season can be resolved if there is a good working deer management group system. Decisions about the number of male deer, for example, that could be culled would be agreed and all that could be managed by a good working deer management group.

Finlay Clark: Back in history, the Deer (Scotland) Act 1959 was introduced largely to afford protection to deer by using close seasons. Deer were a dwindling resource and there was recognition that, unless some protection was afforded to deer species by way of a close season, that resource could not be managed properly.

Dr Irvine and Professor Milne have talked about welfare. I disagree with them on the basis that there might be no welfare issue with an individual male animal being shot out of season while its condition is depleted, but significant disturbance could be caused to the other animals that are

accompanying it. Both of my colleagues have acknowledged that stags that are wintering together in large numbers on land on which they might not summer can be problematic for groups. For that reason, the proposals to retain the current close seasons are pragmatic and take into account the welfare and protection of the resource.

John Scott: So everyone is happy with the close seasons as they stand, by and large. That is good. That is all that I have to ask.

The Convener: As there are no further questions, that concludes the session. I thank you all for your evidence. If you have any supplementary evidence to give, please provide it to the clerks as soon as possible.

That concludes the public part of today's meeting. I thank everyone for their attendance.

13:05

Meeting continued in private until 13:30.

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