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Official Report

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 12 January 2011

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
1st Meeting 2011, Session 3

CONVENER

*Maureen Watt (North East Scotland) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Karen Gillon (Clydesdale) (Lab)
*Liam McArthur (Orkney) (LD)
*Elaine Murray (Dumfries) (Lab)
*Peter Peacock (Highlands and Islands) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)
*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 ALSO ATTENDED:

Roseanna Cunningham (Minister for Environment and Climate Change)
Marilyn Livingstone (Kirkcaldy) (Lab)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 6

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 12 January 2011

[The Convener *opened the meeting at 09:33*]

Interests

The Convener (Maureen Watt): Good morning. I welcome everyone to the committee's first meeting of 2011. I ask you to switch off mobile phones and BlackBerrys, as they impact on the broadcasting system.

I welcome Stewart Stevenson as a replacement for Aileen Campbell on the committee. I place on record my thanks to Aileen for all her work while she was on the committee and to Sandra White for ably deputising in her role as committee substitute for Aileen towards the end of last year.

Under agenda item 1, I invite Stewart Stevenson to declare any relevant interests.

Stewart Stevenson (Banff and Buchan) (SNP): For the sake of completeness, I declare my joint ownership with my spouse of a registered agricultural holding of approximately 3 acres. I derive no income from the holding and undertake no agricultural activity on it. It is lent to neighbours for the grazing of sheep in exchange for their management of the park. Other than that, I have no relevant interests.

The Convener: Thank you, and welcome to the committee.

Decision on Taking Business in Private

09:33

The Convener: Item 2 is a decision on whether to take in private item 5, which is consideration of the committee's work programme up to dissolution. Do we agree to take item 5 in private?

Members *indicated agreement.*

The Convener: I will have to suspend the meeting for a minute as Liam McArthur is not here and he is involved in the first group of amendments in our next item. We will try to track him down quickly.

09:34

Meeting suspended.

09:39

On resuming—

Wildlife and Natural Environment (Scotland) Bill: Stage 2

The Convener: Apparently, Liam McArthur is in the building but is taking an important phone call. If he is not here after Marilyn Livingstone has spoken, I will invite Elaine Murray and John Scott to speak, and take him after that. However, I hope that he will be here before then.

Item 3 is consideration of amendments to the Wildlife and Natural Environment (Scotland) Bill at stage 2. Members should have in front of them their copies of the bill, the second marshalled list of amendments and the second groupings list. I welcome to the meeting Roseanna Cunningham, Minister for the Environment and Climate Change, and her officials. I remind members that the officials cannot participate in the debate.

Section 7—Prevention of poaching: wild hares, rabbits etc

The Convener: We begin with amendments on snares. Amendment 6, in the name of the minister, is grouped with amendments 26 to 31, 8, 32 to 37, 9, 38 to 44, 53 and 10 to 13.

The Minister for Environment and Climate Change (Roseanna Cunningham): Good morning and happy new year to everybody. I will open by speaking to Government amendments 6 and 10, both of which are in response to the committee's recommendation that the Government take stock of the snaring provisions in five years' time. Amendment 6 is a purely technical amendment to pave the way for amendment 10, which is the substantive amendment proposing that the review be carried out no later than 31 December 2016, with a report of the review being laid before Parliament soon after. Amendment 6 also ensures that the review must consider whether further legislation is required. Those are clear parameters for a future Administration to work within. The review that amendment 10 introduces is an important safeguard and will be a health check on whether the legislative regime meets the Government's objectives.

Amendments 11 and 12, in the name of Elaine Murray, propose a review process every two years. We need to bear it in mind that any serious review process involves a significant investment in time and resources on the part of the Government and, of course, the stakeholders. My judgment is that two years is much too short an interval and that it would appear to all those involved that, like the painters on the Forth rail bridge, no sooner had we finished one review than we would be back to the beginning to start again—I am mindful of the fact that we no longer paint the Forth bridge, but people will understand the point. What is proposed might suit some folk but, in my view, it would not be the best use of scarce resources. I therefore urge the committee to support amendments 6 and 10, which will enable a review of the snaring provisions to be carried out in a more meaningful timeframe, in accordance with the committee's recommendation.

Amendment 26, in the name of Marilyn Livingstone, would introduce an outright ban on snaring. As committee members know, I do not support an immediate ban, for the reasons that they identified in their stage 1 report, so I oppose the amendment. I do not believe that anyone who has looked closely at the issue believes that snaring is something to actively like or enjoy, but many people will conclude that it nevertheless remains a necessary part of a land manager's toolkit. Land managers and farmers need to protect crops and livestock from pests and predators. If we ban snaring, control of predators will continue, but it may need to be by less effective and even less humane methods, which in many cases will be more resource intensive. For example, shooting in less than ideal situations could simply lead to many more wounded animals. Therefore, on the ground that snaring may well be the least bad option in some cases, we support its retention.

Amendment 13, in the name of Elaine Murray, would provide for an enabling power to ban the use of snares. For several reasons, I am not in favour of the approach of taking a reserve power to ban the use of snares. First, as was mentioned in our response to the stage 1 report, there are already negative procedure powers in sections 11(3E) and 11(4A)(b) of the Wildlife and Countryside (Scotland) Act 1981. Section 11(3E) states that it is an offence for any person to use a snare

"otherwise than in accordance with such requirements as may be specified in an order made by the Scottish Ministers".

Section 11(4A)(b) enables the Scottish ministers to specify circumstances in which a snare has

"been set or used in a manner which constitutes an offence".

Those measures might not provide the power to ban snaring completely, but they allow us to take quick action to deal with particular problems that come to light in relation to snaring. Those powers were used to introduce the Snares (Scotland) Order 2010, which contained a package of improvements on snare construction and further regulation on where and how snares can be set. The powers might be used to react to other technical improvements, such as innovations that

are under development. An example of that is breakaway snares, which would allow some non-target species to escape.

09:45

A second point is that including such a reserve power would appear to pre-empt the idea of a review of snaring at some future point. I would prefer the approach of holding a genuine review without any preconceptions and, if the conclusion was to ban snaring, then legislating in the normal way. Finally, I hope that there might be a period during which we can allow the reforms to snaring that we have proposed to have time to bed in and to become established practice.

I turn to Liam McArthur's proposal on individual snare numbers. I might be wrong, but I understand that the intention behind amendments 27 to 43 inclusive is to provide more control over the snares that are set by each operator. I have sympathy with the intention behind the amendments but, on balance, I think that the proposal to number each snare is not the right approach. The individual number on each snare would not provide anything more useful for enforcement or the prosecution of offences than the information that will be available through the operator's identification number.

The downside of having unique numbers for each snare set would be the massive increase in administration that would be required on the part of the police. The police have confirmed to us that they are already at the limits of what they can do in administering a system of unique numbers for each operator. If they had to provide numbers for each snare, it is easy to see how that would in effect tie up wildlife crime officers in inputting and managing data on spreadsheets, when they should be out enforcing the law. We are clear that the proposal would be a burden on police resources at this difficult time, and the police have indicated to us their serious concerns about it.

It has been suggested that some keepers are asked to look after more land than they can reasonably manage and that the temptation must be to set snares in greater numbers than can be properly monitored. If the intention behind Liam McArthur's amendments is to provide a sort of overall limit on the number of snares that a keeper can set, I can agree with the sentiment, but the proposed scheme would not achieve that objective. In any event, a better approach is to rely on the requirement that an operator must check each of his snares every 24 hours. In practice, that requirement acts as a limit on the number of snares that can be set.

There are further amendments that can loosely be grouped under the headings of snaring as a last resort and snaring training. They include amendments that have been lodged by Elaine Murray, Liam McArthur and John Scott. I understand the intention behind amendments 8 and 9, in the name of Elaine Murray. In seeking to make snaring a last-resort option for pest or predator control, the amendments follow the line that was taken in relation to the control of wild birds under the 1981 act, under which a licence can be granted only when there is no satisfactory alternative to a proposed operation. However, there are fundamental and crucial differences between the two types of operation. Operations that are carried out under a licence relate to protected species and would be unlawful without the licence. However, snaring is a lawful operation and is targeted at species that are not protected by law.

Turning to the practicalities, I note that most land managers will use a wide range of pest and predator control measures depending on the circumstances. Different techniques will be ineffective at different times. Shooting is the main alternative to snaring. On a given piece of ground, it might be generally effective except, for example, in an area where public safety is compromised or where high vegetation has grown up and obscured the target. It would simply not be practical to require an operator to seek clearance from the police for snaring in such circumstances either in advance, as proposed, or each time there is a particular issue. It is also not a practical proposal to ask the police to take a view on that sort of question, even with guidance in subordinate legislation. The expertise of the police does not lie in deciding which methods of controlling predators are effective or ineffective; it lies in dealing with illegal methods of controlling predators.

We very much support the idea behind amendment 44, in the name of Liam McArthur, which seeks to ensure that training on snaring contains an animal welfare element. We have made it clear that our policy objective is to improve animal welfare in relation to snaring. However, we have also made it clear that we intend to issue an order specifying certain matters in relation to the training course. One of those matters would be the inclusion of an animal welfare element. We think that that is the better approach, as we can be more detailed in an order than we would wish to be in the act. I therefore ask Liam McArthur not to move amendment 44.

We also have some sympathy for the objective of amendment 53, although I am a little nonplussed that John Scott should think it the Government's responsibility to ensure that sufficient training opportunities are in place. We feel that it is the responsibility of the land management industry, which is making good progress in that direction, helped by some finance

from the Government through the partnership for action against wildlife crime in Scotland. Of course, we will bear in mind progress with training when it comes to commencing the provisions. We think that our approach is the right one, rather than having a provision in the bill, so we ask John Scott to reconsider amendment 53.

I move amendment 6.

The Convener: Before I call Marilyn Livingstone, I draw members' attention to the information on pre-emption that is given in the paper showing the groupings of amendments.

Marilyn Livingstone (Kirkcaldy) (Lab): I will concentrate my comments on amendment 26, which calls for the replacement of section 13, which regulates snaring, with an outright ban on the manufacture, sale, possession and use of all snares. The amendment allows limited exceptions to the ban for reasonable purposes such as law enforcement, education or scientific use under licence.

The committee has already considered the issue of snaring in Scotland in detail. Our stage 1 report, and amendments lodged by committee members and by the Scottish Government, all include recommendations that are intended to strengthen the original proposals. Indeed, the Government included the provisions on snaring in the bill because of widespread public concern over the harm that is caused to animals by snares. I remain convinced, however, that the measures in the bill cannot ensure that snares will operate humanely.

The committee has heard some veterinary evidence on the effects of snares on animals, but I believe that it would be helpful for us to hear more evidence. It must be stressed that the British Veterinary Association does not have a settled view on the matter and that most vets in Scotland—75 per cent—believe that snares should be banned. Recently, the veterinary pathologist Professor Ranald Munro stated that snares are primitive and indiscriminate traps, which are recognised as causing widespread suffering to a range of animals. He described effects ranging from abrasion and splitting of the skin to strangulation and choking, often preceded by extreme distress and vigorous attempts to escape. Gamekeepers tells us that snared animals eventually stop struggling and lie quietly; but Professor Munro's views are the views of an expert who has carried out many post-mortem examinations on snared animals.

William Swann, the senior vice-chairman of the Animal Welfare Science, Ethics and Law Veterinary Association, stated in a report that the use of snares should be banned, unless the use was under ministerial licence when it could be ensured that they were humane and did not cause any suffering. He also said that the only way in which a snare could be humane in practice was to have it under constant surveillance.

We have all had the opportunity of seeing film footage of badgers and foxes in legal snares in Scotland, showing animals in great mental and physical distress. Snares can lodge around the chest, abdomen or legs, rather than the neck. Even on a stopped snare, the wire can cut through muscle and bone. Evisceration and amputations are well documented. Researchers at the University of Cambridge concluded that, on any cost-benefit approach that weighs up the adverse effects of pests against the poor welfare caused by control methods, the use of snares can never be justified.

Some of the measures in section 13 are already in force, yet numerous examples of snares that are set in defiance of the law continue to be found, including drag snares and snares that have clearly not been inspected within the required period. As long as snaring is permitted, people will take chances in that way and the public will not know enough about complicated regulations to know whether to make a complaint. A simple ban is much easier to understand.

Finally, snares are said to be essential to the shooting industry and in agriculture, but no one has told the committee what the economic impact of a ban on snares would be. Research that was put before the committee pointed to a supposed need for predator and pest control rather than for that to be done specifically by snaring.

All MSPs have been shown evidence of animal suffering and there is overwhelming public support for a ban on these outmoded traps. If members support amendment 26, they will show their humanity and reflect the views of the vast majority of people in Scotland. I cannot agree with the minister that snaring is a necessary part of land management. It is cruel, indiscriminate and not supported by scientific evidence. Importantly, it does not have public support.

Liam McArthur (Orkney) (LD): I apologise to committee members for my late arrival and to the minister for missing the early part of her remarks. As we began the scrutiny process, I think that we all accepted that the provisions on snaring were likely to be the most controversial part of the bill. The issue is not necessarily divisive along political lines but is certainly so among those from whom we took evidence at stage 1. Raptor persecution and wildlife crime may have given snaring a run for its money, but it is clear that the issue continues to arouse strong emotions and to divide opinion.

On balance, the committee accepted at stage 1 that snaring remains a necessary tool to deal with pests and predators, albeit that by no means should it be used in all circumstances and its use should have stringent conditions attached. The minister covered those in some detail. For that reason, although I respect entirely Marilyn Livingstone's reasons for lodging amendment 26, I do not feel able to support it.

Like committee colleagues, although I recognise that the regulations that govern the use of snaring have been strengthened through the recent order, we cannot allow the bill to pass without first testing robustly whether sufficient regulation is in place or whether further improvements can be made. I think that more can be done and, to that end, all but one of my amendments in the group seeks to explore the scope for making individual snares more readily and individually identifiable as belonging to particular land managers.

At stage 1, the committee heard conflicting evidence on the scale of snaring on estates and by farmers and crofters in Scotland. If some of the numbers are to be believed, it is hard to imagine how such a multitude of snares could be checked, as required, over a 24-hour period. The minister acknowledged that to some extent in her remarks. It therefore seems to be in the wider interest to establish more accurately the number of snares that are issued and deployed. The identification numbers that are allocated to each person who is permitted to snare will help to a large extent, but the number does not distinguish between individual snares. The committee felt that that could give rise to problems, not least in instances where snares have been tampered with. Some form of sequential numbering or bar coding might help in that regard, as well as improving accurate record keeping, which is another area that the committee expressed concern about at stage 1. I appreciate that the practicalities may prove difficult, possibly prohibitively so, as the minister may be able to confirm, but, in lodging the amendments in my name, I was keen to pursue the issue further with her.

Amendment 44 picks up on another concern that the committee raised: training for those who use and set snares. We want to ensure that that training fully covers all aspects of animal welfare, as that would help to address some of the problems that have arisen in the past. I am also sympathetic to amendment 53, in the name of John Scott, which makes provision more widely in that regard. I note what the minister said on more detailed guidance and, on that basis, I am minded not to move amendment 44.

I voice my support for the principle that lies behind amendments 11 and 12, in the name of Elaine Murray, and amendment 10, in the name of the minister. I think that the committee recognises that continued improvements in the design and use of snares will absolutely need to take place in future. Unless we can find a means of assessing practice and progress periodically, the risk is that some of the welcome innovation that we have seen over recent times will be slower to come forward in the years ahead. However, it would go too far to have a reserve power in the bill to ban snaring by secondary legislation. If nothing else, that risks denying the chance for Parliament to give this complex and emotive issue the sort of scrutiny that it deserves. That is not a recipe for ensuring that our law commands confidence and support.

10:00

Elaine Murray (Dumfries) (Lab): There is no doubt that many members of the public find snaring unacceptable. A recent survey suggested that around three quarters of the Scottish population want a complete ban on snaring. There is also no doubt that restraining an animal for up to 24 hours without food or water and possibly exposing it to extremes of temperature—members need only think about the recent weather that we have had in Scotland—will cause it to suffer. A snare itself may not cause injury, but we know from evidence that has been presented by vets and organisations such as the Scottish Society for the Prevention of Cruelty to Animals that they often do. Marilyn Livingstone has already described the types of injuries that animals suffer from being subjected to snaring.

The only reason why I am not arguing for an outright ban on snaring is that we were presented with evidence that suggested that there are circumstances in which and types of terrain on which there is no alternative effective method of controlling pest species. When we visited the Langholm moor demonstration project, for example, we were advised that methods such as lamping are not effective on such terrain, as it can be very difficult to see a fox in heather moorland. We have also received conflicting evidence on the amount of predation of lambs by foxes on hill farming terrain. I was not convinced by either side of the argument.

Amendment 8, in my name, would require the chief constable issuing the identification number for the snare to be satisfied that other methods of control would be ineffective before they agreed to the application. The minister made a comparison with species licensing. When I was thinking about amendment 8, I was thinking about our approach to the control of seals in the Marine (Scotland) Act 2010, which is that seals are to be taken only as a last resort. I would not envisage a chief constable having to sit and determine whether an individual

snare should be set in a particular location. It is about ministers providing the guidance that would enable chief constables to make a judgment on whether the use of snares on terrain such as hill farms and heather moorlands should be permitted.

Amendment 9 would enable the Scottish ministers to make provisions on other methods of control that might be suitable and on the steps that a chief constable should take to assure herself or himself that they could not be used in the circumstances in which the snare was being applied. Amendments 8 and 9 therefore act together.

As others have said, it is a question of balance. I am not convinced that the provisions in the bill are sufficiently rigorous. I would prefer snaring not be used at all but, if it has to be used, it must be the exception rather than the rule. I do not think that the bill as it stands makes snaring the exception rather than the rule.

I turn to the other amendments in my name in the group. The committee agreed that the snaring regime should be reviewed every five years. Amendment 12 does not refer to two years; rather, it refers to five years. Amendment 12 is a direct alternative to amendment 10, in the name of the minister. In her summing up, could the minister explain the difference between our amendments? I would be quite happy to support her amendment if it is worded better. We could talk about whether the period should be five or two years at stage 3, when there will be another opportunity to lodge amendments. OneKind, which was formerly known as Advocates for Animals, has argued that a period of five years is too long and that it would in effect put review beyond the next parliamentary session. It would mean that snaring would be unlikely to be reconsidered until after 2016. OneKind suggested that two years would be more appropriate.

Amendment 11 is almost identical to amendment 12, but it would bring the period of review forward to two years, which would enable MSPs in the next session to consider whether the bill's provisions on snaring have been effective and whether the technical developments in snare design, which we were advised on during evidence taking, have resulted in a reduction in suffering and have prevented the taking of non-target species. Like OneKind, I would prefer amendment 11 to be agreed to, but I am prepared to accept a period of five years if that is the committee's will and the minister's amendment is more suitably written to achieve what we want to achieve.

Amendment 13, as others have said, would enable Scottish ministers to instigate an outright ban on snaring after consultation and by using the super-affirmative procedure. I believe that the amendment would add clout to whichever of amendments 10, 11 and 12 is passed, as it would give ministers powers to act to ban snaring should the review suggest that the measures in the bill have not been effective in reducing suffering and the capture of non-target species. I hear what the minister says about existing provisions, but they do not enable ministers to instigate a complete ban, as amendment 13 would do.

I am very sympathetic to Liam McArthur's amendments. What they propose is not about individual policemen having to spend all their time checking individual snares and looking at the tag numbers; it is to allow gamekeepers to record where their snares are set, which would also provide some protection for them. What the amendments propose would strengthen the regulations on how snares are used.

John Scott (Ayr) (Con): Amendment 53 follows on from the stage 1 report, which states in paragraph 434:

> "The Committee recommends that the Scottish Government works closely with those delivering the relevant training courses on snaring to ensure that everyone who requires the training receives it no later than two years following the commencement of the provision."

That recommendation follows on from the minister's assertion that it will take up to two years to train all relevant individuals. It is my firm belief that policy makers have an on-going obligation to ensure that the legitimate and necessary practice of snaring is made as humane and effective as possible. That is why the training is so essential in maintaining public confidence in the practice.

I note the minister's comments on amendment 53, but I did not intend that what it proposes on training should be a burden on and expense for the minister. As such training takes place at the moment, I intended that the industry would carry out the training and that the Government would merely ensure that it is carried out. I take it from what she said that she might support a stage 3 amendment being lodged on this issue. I expect that she will address that point in a moment.

Although I do not expect to agree with the minister all day, I support her views on snaring and support its retention, although I respect what I know are the strongly held views of Marilyn Livingstone and others on the issue. I, too, believe that snaring is necessary as part of the toolkit and, with regard to what Elaine Murray has said, I would welcome and expect further work on the development of snares so that they become more sophisticated in future and ultimately become a tethering device.

With regard to Liam McArthur's amendments for the unique numbering of snares, I supported the proposal in principle at the committee, but I now

believe that the bureaucracy that would be involved for all concerned would simply make it impractical. I will therefore not be able to support his amendments, notwithstanding the fact that I sympathise with the concept behind them.

Bill Wilson (West of Scotland) (SNP): Snaring is clearly a complex and emotive issue and one that I believe should be subject to a conscience vote. I hope that the code of practice works and I am delighted that the minister has accepted the need for a review, because otherwise I could not have voted to support the Government today. The review will need to address both the specificity of catch and the nature of injuries to the caught animals. If the review shows that the code is not working, I believe that, logically, a ban must follow. I would also like to see a commitment to reviews beyond the five years, because I believe that snaring is an issue that should be reviewed on a fairly regular basis.

Roseanna Cunningham: I have a few disparate comments. I will address amendment 53 first. The reason why we are resisting the amendment is simply that it does not seem necessary. Training is already taking place with the financial support of the Government, so in effect industry and Government are already working together to do exactly what I presume John Scott wants to see happen. I do not really see what is achieved by restating that in legislation.

John Scott: My understanding is that training is taking place at the moment on a voluntary basis and I want to make certain in the bill that it takes place.

Roseanna Cunningham: A significant number of people are already being trained on a voluntary basis. That process is working through. The order will set out training in more detail, but it is already happening. If it was not happening, I would have more sympathy with the position that John Scott is taking. However, it is already happening so, at the moment, I do not see any great reason to do overtly what John Scott wants.

We listened to the points that Marilyn Livingstone made. A lot of discussions were had in the committee at stage 1, which is shown in the committee's stage 1 report. I should say one or two things in response to her comments. She talked about the illegal snaring that currently takes place. We recognise that that is happening, which is why we are trying to professionalise those who are conducting snaring. Indeed, there is already evidence that they bring to bear peer pressure on those who are continuing to snare illegally.

If people are prepared to set illegal snares now, I do not see why that will change if there is an outright ban on snaring. My guess is that the likely illegal setting of snares would, at a minimum, continue and would possibly even increase after an outright ban. In a sense, the current illegal snaring is rather by the by in the context of an outright ban on snaring.

Marilyn Livingstone referenced the Cambridge research. However, our understanding is that that was only a partial literature review; it was not basic research. In those circumstances, it does not add anything; it simply goes over the bits of literature that already exist on this issue. In our view, it is not a particularly substantive piece of research. There are vets who say one thing and wildlife pathologists who say something completely different—I think that the committee heard from one of those. There is certainly a lot of conflicting discussion and evidence. In our view, the evidence is not of enough weight and preponderance to mandate an outright ban.

On the issue of the review, I should perhaps point out to Elaine Murray that the Government amendment is better for three distinct reasons. First, it expressly refers to considering further legislation, which is an important aspect. Secondly, it is not reliant on the timescale of the commencement of provisions, as the date is not tied to commencement. Thirdly, the report that emanates must be laid before Parliament. Those three things are more than is contained within Elaine Murray's amendments. I accept from her comments that we are not a million miles apart on the review, but I ask her not to move the amendments in her name. We can have a conversation if there are any small things that we can do to tweak what we are doing with respect to the review.

On Bill Wilson's comments about on-going reviews after five years, I am certainly prepared to think about how we might build that into legislation. It would require a separate stage 3 amendment, which I am happy to consider.

Liam McArthur is clearly concerned about the checks and balances that are out there. I am willing to have a conversation with him to ensure that we think about how we might increase that capacity, although keeping in mind that we do not want to overload existing resources unreasonably. We can perhaps have a conversation on that.

Amendment 6 agreed to.

Amendment 7 moved—[Roseanna Cunningham]—and agreed to.

Section 7, as amended, agreed to.

Sections 8 to 11 agreed to.

Section 12—Single witness evidence in certain proceedings under the 1981 Act

10:15

The Convener: The next group is on single witness evidence. Amendment 52, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray: The committee has considered whether it is appropriate to retain single witness evidence in relation to poaching and whether that provision should be extended to other wildlife crimes that take place in remote rural places where it might be difficult or impossible for more than one witness to observe the crime. Amendment 52 would extend the use of single witness evidence to a range of other wildlife crimes that are contained in the 1981 act. It seeks to achieve greater consistency. The view of the majority of members of the committee was that consistency should be sought, either by extending single witness evidence or by getting rid of it altogether.

Other provisions outwith the bill and the 1981 act allow single witness evidence to be used, such as the Environmental Protection Act 1990, in relation to littering, and the dog fouling legislation that the Parliament passed in 2003. Dog fouling is an irritating crime for many members of the public, but if single witness evidence is suitable for that it should also be available for crimes such as the poaching of eggs and the killing of raptors, which are serious crimes and possibly more serious than dog fouling. If single witness evidence is sufficient for dog fouling, I do not see why it cannot be extended to wildlife crimes.

There has been confusion during our evidence sessions regarding corroboration and additional witnesses. In principle, single witness evidence could mean that there would be no need for corroboration, but conviction by a court would be unlikely on the basis of one person's word against another. I imagine that some other form of evidence, such as forensic evidence, would always be required to back up the evidence of a single human witness and therefore that cases based on vexatious claims would be unlikely to get very far.

I move amendment 52.

Bill Wilson: I support Elaine Murray's point that we need consistency. If single witness evidence is needed because poaching crimes take place far out of sight and only one witness might see them, logically, the provision should apply to any form of wildlife crime. On the other hand, although I originally thought that we should extend single witness evidence, now, having heard that no corroboration would be needed, I am concerned about the human rights issues. I have therefore moved, and I am now more inclined to think that the consistency should be that we do not have single witness evidence. Either way, we should have consistency.

Stewart Stevenson: Elaine Murray talked about the use of single witnesses under the dog fouling legislation, and then talked about other evidence. In the case of dog fouling, it is clearly possible to identify which dog fouled, so the single witness provision in that case can perhaps be justified.

I speak from a basis of some limited experience, as one of my summer jobs was as a water bailiff, covering 25 miles of the Tay. When we made an arrest, it was perfectly possible to ensure that two people were there to provide the dual witness evidence that is normally required in Scots law.

My concern about addressing the issue in a piecemeal way is that that is unlikely to create a stable environment for the provision of evidence in the legal system generally. I suspect that the issue should be dealt with on a much more systematic basis elsewhere, looking at the whole of the legal system, rather than on the piecemeal basis that is proposed in amendment 52.

Liam McArthur: Like Bill Wilson, I subscribe to the notion that we need to achieve consistency. However, I have misgivings about extending the provision to other types of crime, when the most compelling evidence that we heard at stage 1 from legal experts in the field was that achieving a conviction or even taking a case to court on the basis of single witness evidence was so unlikely as to be, to all intents and purposes, impossible.

In that regard, it seems to make more sense to remove the provision in relation to, for example, poaching and egg stealing, where presumably it is having no tangible legal effect, rather than to invite others to get all dressed up in the Emperor's clothes. The fact that there may be anomalies in other legislation is not a persuasive argument for making the situation more confusing and, importantly, creating unrealistic expectations about what the bill will achieve. For that reason, while I am sympathetic to some of what Elaine Murray said in support of her amendment 52, I am unable to support it.

John Scott: I am afraid that I, too, am unable to support amendment 52. That said, the use of single witness evidence is so rare that applying it to a wider range of offences would not have a massive impact. If there was to be change, I would rather that the provision was restricted, not expanded. In general, being able to convict without corroboration is not a sound principle and it leaves scope for mischief making by unscrupulous individuals and organisations.

Roseanna Cunningham: The committee is of course aware that the bill effectively preserves the status quo in relation to what offences can be convicted on the basis of single witness evidence. I have considerable sympathy with a number of the comments that committee members have made, including those of Elaine Murray. We are in the position of having anomalies all over the place, because previously we proceeded on a piecemeal basis without giving much consideration to the efficacy of single witness evidence and its impact on and implications for our criminal justice system.

I note that in its stage 1 report the committee was in favour of consistency in the application of single witness evidence. However, amendment 52 would not give us that consistency. It would allow single witness evidence for some offences but not for others—for example for offences relating to the nests of wild birds but not for offences relating to the shelters of wild animals—so what is proposed would be just as inconsistent, which is the opposite of what the committee is seeking.

I am also conscious of the fact, as you might expect me to be, that corroboration is a fundamental principle of Scots law. I am reluctant to be responsible for making further changes to the law in relation to that principle on a piecemeal basis. Simply because that is how we have gone about it in the past does not mean that we should continue to go about it in the same way in the bill, whatever the good intentions. I personally would much prefer that the issue was looked at in a wider context.

I think that I said before to members that Lord Carloway is undertaking a review in respect of the criminal law of evidence, and the requirement for corroboration would be within the scope of his review. My position is that we should hold off on making any further changes in the area of wildlife crime until we can consider the outcome of that review and how it could be applied in respect of wildlife crime. That is a much more sensible way of proceeding. Looking at corroboration in such a principled way is far more in keeping with the history of Scots law than what is proposed by amendment 52 and, indeed, what we have been doing for almost the past 15 years in a piecemeal fashion.

I therefore oppose amendment 52, not because I oppose the concerns and worries about the issue, but because continuing to do what we have said was the wrong thing to do in the past would simply compound the error.

Elaine Murray: It was useful to have the debate about consistency, because there were differences of opinion about it within the committee, although there was an overall desire to see consistency. May I say that it was a pleasure to hear Stewart Stevenson reminisce about being a water bailiff.

On dog fouling, obviously DNA evidence could be used for dog identification, but there is unlikely to be that type of evidence for littering, unless it involves chewing gum, so there is a lot of inconsistency in the law at the moment. I accept that taking the approach that amendment 52 proposes might not help to achieve a more consistent overall view. I will not press the amendment, but it was worth while to concentrate our minds on the fact that there are still inconsistencies that need to be resolved and that we may need to return to the issue from the opposite direction at stage 3. I seek the committee's agreement to withdraw amendment 52.

Amendment 52, by agreement, withdrawn.

Section 12 agreed to.

Section 13—Snares

The Convener: I remind members that if amendment 26 is agreed to, I cannot call amendments 27 to 31, 8, 32 to 37, 9, 38 to 44, 53 and 10 to 13 because of pre-emption.

Marilyn Livingstone: I listened to what the committee and the minister said, but I still believe that, against what John Scott—

The Convener: I ask you to be brief.

Marilyn Livingstone: Okay.

I do not believe that snares are tethering devices. They are cruel and indiscriminate, and it is important that we have a debate on them. Because of that, I am prepared not to move amendment 26, but I reserve the right to bring the matter back at stage 3. There is enough public concern to warrant that.

Amendment 26 not moved.

Liam McArthur: On amendment 27, in light of what the minister has said, I welcome her invitation to explore ways of providing further safeguards. On that basis, I will not move amendment 27 or its related amendments.

Amendments 27 to 31 not moved.

Elaine Murray: I will not move amendment 8. I still feel quite strongly about the need to ensure that snaring is a last resort and would like to revisit the issues that are raised in amendments 8 and 9 to see whether I can make it clearer that it is not about chief constables having to look at individual applications for individual snares. As I say, I will not move amendment 8, but I intend to consider the matter further.

Amendments 8, 32 to 37, 9, 38 to 44 and 53 not moved.

Amendment 10 moved—[Roseanna Cunningham]—and agreed to.

Elaine Murray: I am happy to accept the minister's assurances on why amendment 10 is better than amendment 11, so I will not move amendment 11.

Amendments 11 to 13 not moved.

Section 13, as amended, agreed to.

After section 13

The Convener: The next group is on the protection of certain species of bees. Amendment 80, in the name of Peter Peacock, is the only amendment in the group.

Peter Peacock (Highlands and Islands) (Lab): As this is the first time that I have spoken in the meeting, I should declare that I am a member of the Royal Society for the Protection of Birds and the Scottish Ornithologists Club. I am also a member of the Bumblebee Conservation Trust. That does not technically relate to amendment 80, but it is worth people knowing that for their interest.

Amendment 80 seeks to allow the minister in certain circumstances to designate bee protection areas by order if the minister is concerned that the health or genetic integrity of colonies of black bees is under threat. Because of the scope of the bill, the amendment is limited to black bees—or Apis mellifera mellifera, for those who are technically minded—which I understand are found on the island of Colonsay, but which might also be found in other remote and isolated areas. I know from past correspondence, parliamentary questions and the like that ministers share the objective. However, hitherto we had not found a satisfactory conclusion, partly because it appeared that there might be a limit on ministerial powers. Amendment 80 is designed to create a mechanism for ministers to use.

I am interested to hear what the minister has to say about amendment 80, which has been lodged for the purpose of debate. If the minister has found another way of achieving the same objective, I will be perfectly happy to hear what she has to say about it, particularly if she can commit to using such a mechanism. Alternatively, if she wants to take away the amendment and bring back a better version at stage 3, I will be equally happy. My concern is simply to provide better protection for colonies of bees in places such as Colonsay, which are currently free from disease, with the aim of ensuring that that continues.

I move amendment 80.

10:30

Liam McArthur: Unlike Peter Peacock, I am coming close to exhausting my time allocation for the meeting already, and I am not a member of the Bumblebee Conservation Trust. However, I support the intention behind his amendment 80. I do not doubt the difficulties in arriving at a means of achieving what Peter Peacock and I suspect most committee members want on the protection of key bee species, but I hope that the minister will respond positively to the proposals. The recent news that scientists might have found an antidote to the destructive varroa mite was greeted with rejoicing in my constituency, albeit perhaps confined solely to the local beekeeping fraternity. Even with the energetic stretch of water that separates Orkney from the mainland and the parasitic terrors for bees there, the islands have not yet been afforded the protection that many of us feel we should have. I look forward to hearing what the minister has to say.

John Scott: I, too, am happy to support the ideas behind Peter Peacock's amendment 80 and I am interested to hear what the minister has to say.

Bill Wilson: I add my support, at least for the principles behind Peter Peacock's amendment.

Roseanna Cunningham: I understand that black bees are believed to be on Orkney, which possibly is the source of Liam McArthur's concerns.

I am grateful to Peter Peacock for lodging amendment 80, as it gives us an opportunity to put some things on the record in respect of the impact of the bill. We believe that the provisions in the bill are fit to address the issue. Section 14 proposes a new no-release offence that will cover the threat that is posed by non-native types of bee. If necessary, we could extend that ban to other native types of bee to protect the black bee.

In addition, a keeping order under proposed new section 14C of the 1981 act could be made. Such an order would allow us to regulate or prohibit the keeping of bees that are a threat to the genetic integrity of native black bees. So although I agree that it is important to arm ourselves with the powers that are needed to protect vulnerable native species, I am not sure that it is necessary to introduce a species-specific regime that replicates what will be achieved elsewhere in the bill.

I therefore ask the committee not to support amendment 80, although not because we do not support the sentiments, which we do. I am happy to discuss in more detail with Peter Peacock the options for protecting our native bees and to undertake to consider that as a priority following the passage of the bill.

Peter Peacock: I am grateful to the minister for her comments and I note what she says about the powers that will exist under section 14 and the keeping orders. I take the point that if there is a way of dealing with the issue that applies more widely than to a single species, that is probably desirable. In light of that, I seek to withdraw amendment 80 and I will take up the minister's offer to discuss the details.

Amendment 80, by agreement, withdrawn.

Section 14—Non-native species etc

The Convener: The next group is on the exemption of pheasant and red-legged partridge from the ban on releasing non-native species etc, and the power to disapply the exemption. Amendment 81, in the name of Peter Peacock, is grouped with amendments 82 and 83.

Peter Peacock: The amendments arise because of evidence that we had at stage 1 that the releases of pheasant and red-legged partridge have been increasing over the decades and, if they got to a very high, intense level, damage to the local ecology around the release sites could follow.

I am content that the practice of growing birds for shooting and releasing them should continue. It is an active and important part of the scene in rural Scotland. However, it would be wise to ensure that, if the releases ever became too great, ministers would have the powers to intervene to take some regulatory action. It would be unfortunate to say the least if, having become aware of the issue during the passage of the bill, ministers subsequently found that they had no power to act and were concerned that circumstances were changing significantly enough to cause local ecological damage.

I am interested to hear what the minister has to say and, if there is a better way to achieve what I am trying to do, or if it is covered in some other way, I would be happy to listen to arguments about that.

Meanwhile, I move amendment 81.

Bill Wilson: The conservation benefits of shooting are fairly widely recognised and not particularly disputed, but I share Peter Peacock's concern that, if very unusually high-density releases of pheasant and red-legged partridge took place, they might cause local damage. Therefore, I am also interested to hear what the minister will say.

John Scott: I do not believe that there is any evidence of there being a problem in Scotland with the release of birds in such quantities as to risk serious damage to the environment. Scottish Natural Heritage is quite capable of using existing mechanisms to deal with any localised issues that might occur. Therefore, amendment 81 seems unnecessary to me and I will not support it.

Elaine Murray: I disagree with John Scott. The fact that there is not a problem at the moment is not the point under discussion—indeed, Peter Peacock did not argue that there was a problem at the moment. Amendment 81 is about providing a backstop power should there be a problem with releases causing serious environmental damage. It is helpful for ministers to have that power and I support the amendment.

Roseanna Cunningham: I appreciate that Peter Peacock seeks to future proof section 14 with amendments 81 to 83, but I question whether that is necessary or indeed appropriate.

I ask the committee to remember that section 14 is about invasive non-native species. Although pheasants and red-legged partridges are non-native, they are not invasive.

The other difficulty is that I am not aware of any evidence that suggests that pheasants or red-legged partridges are regularly released in Scotland in such high densities as to cause significant damage to habitat or biodiversity, nor of any indication that that is likely to happen.

Peter Peacock may be in possession of information beyond that, in which case I am perfectly happy to discuss it with him. However, in the absence of any evidence that the practice is taking place and given the fact that we have legislative tools to safeguard protected sites under the Nature Conservation (Scotland) Act 2004, amendment 81 is of little value. Its effect would be limited to providing a further layer of potential regulation to the rural sector for no particular practical purpose.

I indicated that, if Peter Peacock could provide evidence of an issue or point to areas where it looks like there will be one, I would be prepared to have a conversation with him about amendment 81. However, so far, the occasional circumstances in which a specific concern has been raised have been resolved within the currently available mechanisms.

On those grounds, I ask the committee not to support amendments 81 to 83.

Peter Peacock: I hear what the minister has to say. As she said, amendment 81 is an attempt to future proof the bill. It was lodged on the basis of evidence that we received that the intensity of releases has been increasing. It is not yet at a problematic level but, if the trend were to continue, it might become an issue. I was simply trying to provide some reserve powers.

I will reflect on what the minister said about section 14 and species that are non-native but not

invasive; and I will consider further the points that she made about the Nature Conservation (Scotland) Act 2004 in relation to protected sites. In light of that, I will not press amendment 81 or move the other amendments in the group.

Amendment 81, by agreement, withdrawn.

The Convener: The next group is on the power to exempt specified persons and certain types of conduct from the ban on releasing non-native species etc. Amendment 59, in the name of the minister, is grouped with amendment 60.

Roseanna Cunningham: The bill bans the release of an animal outwith its native range, or the growing of a plant in the wild outwith its native range. As the committee is aware, that general no-release approach is considered to be a much more effective way to prevent the introduction and spread of invasive non-native species, compared with what has been the case hitherto.

To provide flexibility, the bill contains an order-making power under new section 14(2B) of the 1981 act, which section 14 of the bill introduces, to allow the release of beneficial non-natives, when that is considered appropriate. Such an order can be made only for specific animals or plants.

Amendments 59 and 60 would introduce greater flexibility by providing that the order-making power can relate to release by specified persons, or to release that takes place under the authority of an enactment. The power may, for instance, be used to exempt activities that are carried out to achieve the Scottish forestry strategy, which is underpinned by a regulatory regime for which the Scottish ministers already have responsibility. Planting as part of that strategy may, in some circumstances, be in the wild.

As things stand, we would only be able to make an order to allow such planting on a species-by-species basis, which would not be feasible. That issue was raised with the committee in the course of its evidence gathering at stage 1. The better option, as is now proposed, would be for ministers to be able to exempt activities that are already regulated for the purposes of the forestry strategy. The amendments in this group would allow legitimate activities to take place without frustrating the need for restrictions on the release of non-native animals and plants into the wider environment.

I move amendment 59.

Amendment 59 agreed to.

Amendment 60 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is on the duty to notify the presence of invasive plants or animals. Amendment 61, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: As the committee will be aware, when invasive non-native species take hold, a rapid response is important for increasing the likelihood of successful control action and for minimising the impact of the invasive animal or plant. That is why, as part of our approach to dealing with invasive non-native species, we have included notification requirements in the bill. The sooner we know about the presence of an invasive non-native, the sooner we can decide how best to deal with it.

For high-risk invasive non-native species, ministers can make an order requiring certain persons to notify the authorities if they encounter a particular species. In the policy memorandum, we have set out when we expect that orders may be made. The provisions would be limited to those with knowledge of the species concerned, such as people who work in a professional capacity.

The Subordinate Legislation Committee considered the order-making power to be too broad for our stated intention and recommended amendment. Amendment 61 is in response to that recommendation. It makes it clear that an order will be made only for people who are likely to have knowledge of the animal or plant concerned, for example as they will come into contact with the species in a professional or official capacity.

I move amendment 61.

Amendment 61 agreed to.

Section 14, as amended, agreed to.

Section 15—Non-native animals and plants: code of practice

10:45

The Convener: The next group is on the code of practice on non-native species etc. Amendment 62, in the name of the minister, is grouped with amendments 92, 63 to 66, 93, 67 to 69, 94, 70 to 73, 95 and 74 to 76. I draw members' attention to the pre-emption information on the groupings document.

Roseanna Cunningham: I will speak to Government amendments 62 to 76 and John Scott's amendments 92 to 95.

Amendments 62, 64, 70 to 73 and 75 respond directly to the committee's recommendation that the codes that the bill establishes should be subject to parliamentary scrutiny. The committee recommended that I should seriously consider affirmative procedure, so amendment 71 will make the first code of practice subject to that procedure. Any revisions to or revocations of the code will be

subject to negative procedure. That strikes the right balance in recognising the code's importance while ensuring that we can be responsive and flexible. After all, the code will be a living document and might need to be revised as new circumstances develop.

John Scott's amendment 95 would mean that no particular weight was given to compliance with the code of practice in court proceedings. The code is intended to provide more detailed guidance on complex issues and further practical explanation of the terms that are included in the bill. Invasive non-native species are a significant threat to environmental interests and the economy and it is right that the courts should be able to use the code to assist them in establishing liability. Those who follow the best practice in the code should have the comfort of knowing that doing so will count in their favour in any court proceedings.

At the same time, if no offence is underlying, a person will not be criminalised for failing to follow best practice. I hope that the additional scrutiny in the Government amendments will suffice to convince John Scott not to pursue amendment 95, which I ask the committee not to support.

Government amendments 63, 66, 69 and 74 provide that guidance on species control orders can be included in the code of practice. The amendments respond to a committee recommendation at stage 1.

John Scott's amendments 92 and 94 relate to species control agreements. If the Government amendments were agreed to, guidance on species control agreements could be included in the code as part of guidance on species control orders. It would be helpful to make that clear in the bill, so I ask the committee to agree to John Scott's amendments 92 and 94.

Government amendment 65 provides that the code of practice can set out how the relevant bodies, which include SNH, the Scottish Environment Protection Agency, the Forestry Commission Scotland and the Scottish ministers, should co-ordinate how they exercise their relevant functions in relation to non-native animals and plants. The amendment follows—and, I believe, goes further than—the committee's suggestion that SNH should be the lead co-ordinating body for such matters.

John Scott's amendment 93 would amend the provision that relates to guidance on keeping invasive animals or plants. The amendment could be confusing, as it relates to species that are permitted to be kept. For example, best practice guidance might be provided on the permitted keeping of animals outwith their native range, to help to prevent escape. The term "compliance" in the amendment is not very helpful when it relates to lawful activity. For that reason, I ask the committee not to support the amendment.

Government amendment 67 ensures that guidance on keeping animals can also relate to invasive species that are within their native range. That might be important for species that are being kept close to areas, such as islands, to which they are non-native and where they might cause problems should they escape.

Government amendment 68 ensures that the code of practice can include best practice for containing, capturing or killing non-native or invasive animals; containing, uprooting or destroying plants; and transferring to safe custody animals or plants that are not permitted to be kept. Guidance on all those issues may be important as new situations develop.

Amendment 76 is a technical tidying-up amendment that removes the term "such" from new section 14C(7)(b) of the 1981 act, so that it will refer to "a code of practice" and not

"such a code of practice".

I move amendment 62.

John Scott: The purpose of amendments 92 and 94 is to clarify that the INNS code of practice can include guidance on species control agreements, which are the first step in the process of making a species control order. Dealing with issues such as whether the owner or the occupier should be party to the agreement would be useful, as the bill is vague on that—it refers simply to entering

"into an agreement with the owner or, as the case may be, occupier".

The amendments would simply allow for guidance to be provided. I welcome the minister's comments on that and her intention to support the amendments.

Amendment 93 picks up on concerns that a number of witnesses raised during stage 1 about the status of codes of practice that give guidance on legislation. New section 14C(6) of the 1981 act states that failure to comply with a code of practice

"may be taken into account"

in any proceedings against an individual. As I understand it, best practice goes above and beyond the legal requirement. If compliance with the code can be looked at by the courts in establishing criminal liability, the code should stick to explaining the law. Standards of best practice would be best developed separately by Government in consultation with stakeholders and practitioners, and adherence to best practice should be an entirely voluntary matter. Individuals should be encouraged to adopt best practice, but they cannot be forced to do so. Best practice will

also change and evolve over time—in line with technological advances, for example. Therefore, it is not appropriate for statutory guidance to set out best practice. I appreciate that that is essentially a point of law, and I will reflect on the minister's remarks on the matter.

Amendment 95 would remove section 14C(7) of the 1981 act. That relates to the previous concerns about the status and use of codes of practice. The bill already states that failure to comply with a code of practice can be taken into account by the courts in any proceedings. As it stands, the bill says that failure to comply with a code of practice

"may be relied upon as tending to establish liability".

Surely it is for the courts to make decisions about liability and the provision is unnecessary in light of section 14C(6) of the 1981 act.

Roseanna Cunningham: There is nothing that I particularly want to add, other than to make a point about John Scott's comments. Most of what has been proposed will come into play only if somebody is being taken to court for an underlying offence. Best practice is voluntary, of course, but if an offence results in court action, the court should be able to look directly at the code and consider it as part and parcel of the evidence in which it would be interested. Therefore, I would not necessarily agree with John Scott's comments in that regard. Courts look at codes of practice all the time, and it is perfectly reasonable for them to do that when they are assessing the evidence that is before them.

Amendment 62 agreed to.

Amendment 92 moved—[John Scott]—and agreed to.

Amendments 63 to 66 moved—[Roseanna Cunningham]—and agreed to.

Amendment 93 moved—[John Scott].

The Convener: The question is, that amendment 93 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scott, John (Ayr) (Con)

Against

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 93 disagreed to.

Amendments 67 to 69 moved—[Roseanna Cunningham]—and agreed to.

Amendment 94 moved—[John Scott]—and agreed to.

Amendments 70 to 73 moved—[Roseanna Cunningham]—and agreed to.

Amendment 95 not moved.

Amendments 74 to 76 moved—[Roseanna Cunningham]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Species control orders etc

The Convener: The next group is on species control orders. Amendment 96, in the name of John Scott, is grouped with amendments 97 and 98.

John Scott: The bill allows only 42 days, or six weeks, for a party to sign up to a species control agreement after receiving an offer from the relevant body. I do not dispute that there is a good rationale for having a time limit to avoid unreasonable delays, but in my view six weeks is possibly not long enough. For example, it is foreseeable that a person could be out of the country or indisposed or ill for a substantial portion of that time. Amendment 96 would simply allow flexibility if there is good reason why the agreement has not been entered into within 42 days.

I move amendment 96.

Roseanna Cunningham: John Scott's amendments 96, 97 and 98 propose changes to the system of species control orders. We envisage that in most cases voluntary species control agreements will be established with no need for recourse to species control orders. It is within such a voluntary framework that agencies achieve the control action that is presently possible. The purpose of the species control provisions in the bill is to control invasive non-native species where that is necessary. The bill's provisions specify clear procedures that would provide an owner or occupier with a fair opportunity to appeal any order to the courts. My concern is that amendment 96 will result in unnecessary and harmful delays in taking control measures. The bill's approach is the right one where there is a strong public interest in securing control. John Scott's approach may mean that a vital window of opportunity could be missed. I therefore ask the committee not to support amendment 96.

John Scott's amendment 97 relates to the ability of relevant bodies to require payments from the owner or occupier in relation to control work. While

I agree with the principle of the amendment—we have previously said that it is our intention that costs will be recovered only where it is fair and proportionate to do so, in accordance with the polluter pays principle—I am concerned that it is too restrictive. My concern is that situations may be more complex than is envisaged in the amendment. For example, while an owner or an occupier may not be responsible for the presence of an invasive plant, they may have caused the spread to be much worse by their actions, such as spreading contaminated soil or strimming Japanese knotweed. I believe that the code of practice is the best place to deal with the issues raised by the amendment in the way that they merit. I therefore ask the committee not to support amendment 97.

I accept, however, the rationale of John Scott's amendment 98, which changes the notification requirements for species control orders so that both the owner and any occupier of the premises to which the order relates must be given notice. I therefore ask that the committee support amendment 98.

11:00

John Scott: With regard to amendment 96, I note what the minister says about the requirement for immediacy in the timescale that she envisages and I accept that what she says is probably reasonable, so I will not press amendment 96. Again, I note what the minister says about amendment 97, so I will not move that amendment. I welcome the fact that she supports amendment 98.

Amendment 96, by agreement, withdrawn.

Amendment 97 not moved.

Amendment 98 moved—[John Scott].

The Convener: The question is, that amendment 98 be agreed to. Are we agreed? [*Interruption*.] Did somebody say no? [*Laughter*.]

Amendment 98 agreed to.

The Convener: As somebody may be losing their concentration, I think that this is an appropriate time to have a short break.

11:01

Meeting suspended.

11:07

On resuming—

The Convener: Amendment 99, in the name of John Scott, is grouped with amendment 100. The group is on "Non-native species etc: interpretation of 'native range' and 'in the wild'".

John Scott: The current definition of "native range" makes no reference to time, but in reality native ranges for many species are an evolving concept, given factors such as climate change. Amendment 99 seeks to address that concern by adding a time reference to allow the legal framework to adapt if necessary.

Amendment 100 deals with a concern about the role of codes of practice, which often tend to blur the line between law and guidance. The amendment would include in the bill a definition of "in the wild". That is a core element of the sections of the bill that deal with non-native and invasive species, and it is therefore appropriate that it be defined in the legislation rather than left to the code of practice.

The issue has been much debated in committee. The definition in amendment 100 is very similar to that which is set out in the Government's draft code, but it differs in that it would change the emphasis slightly by referring to

"no (or only extensive) management"

and does not make any reference to urban environments. Even open green spaces in urban environments are usually managed and could not be considered "in the wild". Furthermore, the definition does not refer to commercial cropping, so it is clear that if land is cropped, even if not commercially, it is not and would not be "in the wild".

I move amendment 99.

Roseanna Cunningham: John Scott has made it clear that amendment 99 is specifically about the impact of climate change, but he perhaps misunderstands the nature of the definition that is already in the bill. The species that are likely to have their native range changed by climate change are already included in the definition in the bill, so no amendment is required.

When species move as a result of climate change, by definition their native range will change, so they will, therefore, be covered by the definition in the bill. What John Scott is trying to do in amendment 99 is wholly unnecessary because the circumstances are already dealt with in the bill. I hope that my putting that on the record is sufficient to satisfy John Scott.

John Scott's amendment 100 provides a definition for the term "in the wild". The issue was considered at length before the bill was drafted. Our position, and that of the Scottish working group on invasive non-natives, is that the concept of "in the wild" is complex and that putting a definition into the 1981 act is not the right way forward. The better approach is to describe it in detail in the code of practice and to allow the courts to take that into account in proceedings.

Amendment 100 may replicate some of the information that is contained in the code, but that is at the expense of the remaining information and guidance that the code contains. As such, it would be of very limited assistance and would, in my view, do more harm than good because we would have partial information in the bill and other information in the code of practice, which—looking at the issue as a lawyer would look at it—would raise certain aspects into a different category, compared with the rest of the code of practice. The potential for harm is too high for amendment 100 to be an acceptable way forward. I therefore ask the committee not to support it.

John Scott: I thank the minister for her remarks. I note her view that amendment 99 is not necessary. I also note the complicating element of amendment 100, which I had not envisaged—although it would not be exceptional for there to be complications and a misunderstanding between legislation and guidance.

The minister has said definitely that the amendments are not necessary and would complicate matters, which is not my intention. I will therefore not press amendment 99 or move amendment 100.

Amendment 99, by agreement, withdrawn.

Amendment 100 not moved.

Section 16, as amended, agreed to.

Section 17—Non-native species etc: further provision

Amendments 82 and 83 not moved.

Section 17 agreed to.

After section 17

The Convener: The next group is on "Pesticides: offences etc and amnesty scheme". Amendment 101, in the name of Liam McArthur, is grouped with amendment 102.

Liam McArthur: After clearly becoming a little confused during my brief vow of monastic silence over recent groupings, it is a relief to be called to speak again.

We will come shortly to the Government's amendment on vicarious liability, which I think the majority of the committee and, I hope, the Parliament will support. Vicarious liability provisions are by no means a magic bullet, nor will it be straightforward to achieve successful prosecutions, but the provisions will provide another useful weapon in the armoury of those who are tasked with tackling the scourge of illegal raptor persecution. In that spirit, and based on the evidence that we heard during stage 1 from Sheriff Drummond, the police and others, I believe that there is more that we can do to bolster the vicarious liability provisions.

11:15

My amendment 101 seeks to extend the range of offences for the illegal possession and/or use of poisons. It would do that through small but significant amendments to the current provisions in the 1981 act. They would be useful additions; they are not fully covered elsewhere in statute and would add to the tools that are available to both the police and prosecutors in the fight against raptor persecution.

There may, of course, be people who find that they have in their possession pesticides and biocides that they no longer need, which are out of date or which are perhaps even illegal. It is only fair that an opportunity be provided to allow for disposal of such pesticides without penalties being applied. That is the basis for amendment 102. I know that the Government has expressed sympathy for such an amnesty in its response to the committee's stage 1 report, although I am also aware that the minister is concerned that, given the way in which carbofuran and other substances are often sourced, the effectiveness of an amnesty may be more limited than we would wish.

Nevertheless, I would welcome the minister's comments, not least on the extent to which the current pesticides amnesty that has been arranged by the security in the operational environment initiative and is administered by Killgerm Chemicals Ltd may be expected to work in Scotland. As I understand it, the amnesty is open to pest controllers, gamekeepers, farmers and growers in England, Wales and Scotland and is due to run until 14 March. Is that scheme currently running in Scotland? If so, what publicity is the Government and its agencies giving to it? Does the minister feel that once the details of the bill are finalised there may be a case for running a similar scheme in the future, perhaps to sweep up those who may be waiting to see what Parliament does in the bill before deciding whether to act?

I move amendment 101.

Peter Peacock: I support in principle what Liam McArthur has set out. We should try to support anything that strengthens, or seeks to strengthen, provisions to bear down on abhorrent and illegal practices. Like Liam, I am interested to hear what the minister has to say about the principles of his amendments, but I would be happy to support them if they are likely to be a way forward.

Karen Gillon (Clydesdale) (Lab): Like Peter Peacock and Liam McArthur, I support the principle of an amnesty. There may well be people who have such substances. We should not be offering anybody any excuse and we should send

a clear message that there is no excuse for having such materials on one's premises. We should be wanting to get them out of the system. A date should be set after which a person will be prosecuted if they are found with the substances. If the substances are used, a person will be clearly liable for their use if they are found on that person's premises.

We need to be clear that there are no excuses for having these materials. We may have been too lax until now, so we need to be much clearer. Amendments 101 and 102 might not be exactly how the provisions should be written, but we need to find a way forward and set the timeframe. We need to do this and do it properly.

John Scott: I am prepared to support Liam McArthur's amendment 102 on an amnesty, which should be available for those who have such substances on their premises. However, I have a problem with amendment 101, because it seems to transfer the onus of proof. It appears to be disproportionate to provide that conviction of one crime—in the context of the bill—should mean that a person is guilty of another and different crime. Simply by the fact of possession of or being concerned in the use of a pesticide, one would also be guilty of

"setting in position ... unless the contrary is proved."

I do not think that that was Sheriff Drummond's recommendation. I will oppose amendment 101. I am sympathetic towards amendment 102, although I will wait to hear what the minister has to say about it.

Elaine Murray: I will respond briefly to John Scott's comments, because I am sympathetic to both amendments. First, the point of an amnesty is to tighten up the law and to encourage people to get rid of the relevant substances, with the idea being that if they still have them after the amnesty, the law will apply.

The other point about amendment 101 is that we already have legislation of this nature in respect of illegal drugs. If we can do it for drugs, I think that we can do it for pesticides and other materials that are being used illegally to poison birds of prey and other species.

Roseanna Cunningham: I will speak to amendments 101 and 102. As Liam McArthur has outlined, there has been some support for considering offences of this type in order to strengthen the legal framework. It will not surprise members to hear that the possibilities have been under consideration, as part of a range of options, for some considerable time.

However, it transpires that the more one looks at such proposals—I am talking about the generality rather than Liam McArthur's amendments specifically—the more difficult it appears that they would be to use in practice. We need to be sure that any offences that we add to the bill will make a practical difference to enforcement against wildlife crime. We must keep it in mind that an improvement in rates of wildlife crime will not follow from new offences that do not, in practice, add anything to the array of offences that are currently available to the police and prosecutors.

First, amendment 101 is on a "concerned in the supply" offence. I understand that Liam McArthur's aim is a good one, and I understand the attraction of using the model that is in the Misuse of Drugs Act 1971, but the situation for which that act caters and which involves extremely complex chains of supply, does not, as I understand it, replicate the situation in respect of use of poisons for wildlife crime. The 1971 act is designed to catch people who are far removed from the supply of drugs but who in some way support it financially or operationally. The evidence that Liam McArthur envisages could be gathered to support such an offence would in practice support charges under existing offences, such as possession charges.

Secondly, amendment 101 is on a "concerned in the ... use" offence. I take Liam McArthur's point that there was support for that proposition during stage 1, but an amendment that will introduce vicarious liability is on the table. The vicarious liability offence will catch people who tacitly or explicitly support illegal use of pesticides. Art and part covers us for situations in which there is knowledge of an offence—it is an integral part of existing Scots law that can be applied to wildlife crime in the same way that it can be applied to any other crime. Those two routes would cover the situations that the proposed offence is designed to deal with, so I urge the committee—

Karen Gillon: May I intervene, minister?

Roseanna Cunningham: Yes.

Karen Gillon: In other situations, however, there will be underlying crimes. Vicarious liability will be very difficult to prove—it is a very high-level offence. For example, with corporate manslaughter, there would be a corporate manslaughter offence, but underneath it there would be offences under the Health and Safety at Work etc Act 1974. It might be possible to prove those lesser offences but not the main offence. It might be possible to prove a "concerned in the supply" offence: it might be desirable to have offences underlying the main offence of vicarious liability, which it might not be possible to prove beyond reasonable doubt.

Roseanna Cunningham: I understand that point, but my point is that such underlying offences already exist under the common law in Scotland.

Art and part is a common-law offence—there is no legislative provision that one can point to, any more than there is a legislative provision on breach of the peace. Those are common-law offences that are available in respect of all crimes. The necessity to prove beyond reasonable doubt applies in all criminal cases, regardless of what someone is charged with. As Karen Gillon knows, most complaints and/or indictments in the criminal courts in Scotland carry with them a number of different offences, some of which are, in theory, lesser offences but which in practice, because they are common-law offences, might attract far greater punishments.

Karen Gillon: That begs the question why no one has been charged with an art and part offence in relation to an act of persecution.

Roseanna Cunningham: Introducing new offences will not necessarily change that situation, because the problem is the gathering of evidence. It does not matter what we call the offence; the difficulty lies in whether sufficient evidence can be reported to the procurator fiscal to give the fiscal or the Crown Office the confidence that, if the case is taken to court, there will be a reasonable chance of success. In a sense, that is about the available evidence, not about what the charge is called. All attempts to tackle wildlife crime have been bedevilled by the capacity to gather a sufficiency of evidence rather than by what the crime itself has been called. Although the vicarious liability measure—which we will come to, so I do not want to go into it in any great detail now—will widen the scope of the people who are chargeable, it does not depart from the necessity of having the evidence required to achieve a successful prosecution.

The danger is that we will mix up two issues: the evidence gathering that is necessary and required and which must be achieved before any criminal charges can stick, and the nature of the charges. As I said, it does not matter what we call what people are charged with, because without supporting evidence, a charge will not be successful either under the common law or under a statutory offence. We are in danger of straying far into another committee's area of expertise, so I merely point out that we have to be very careful when we talk about such matters because we are, after all, talking about the criminal law.

That is our position with regard to amendment 101. I should add that I am, in any case, concerned about a number of technical issues with the drafting, but I ask members not to support the amendment on the grounds that I have already set out. Moreover, we have discussed these offences with the Association of Chief Police Officers in Scotland, which endorses the Government's position.

Liam McArthur's amendment 102 is interesting. Previous examples of immunity from prosecution on the face of legislation are few and far between; however, there are some major ones—one huge exception is decommissioning in Northern Ireland—and it is clear that it is not something that cannot be done. However, as far as the Government understands it, providing immunity from prosecution is unheard of in Scottish legislation. Of course, that is no accident. Prosecution decisions are for the Lord Advocate. We have an effective and independent prosecution system that allows for minor amnesties when appropriate—as we know, there have been knife amnesties or so on—and Government ministers should not cut across that. For those reasons, I oppose amendment 102.

On the specific issue of pesticides, my preference has always been to look at more workable measures such as the kind of disposal scheme that I can confirm is now running on a UK-wide basis and is applicable in Scotland. Once that scheme is complete, we will assess its success or otherwise, and the level of uptake in Scotland, and we will gauge whether any future schemes should be considered.

As part of that, we must, in the context of our current discussion on wildlife crime, assess the impact of any scheme on illegal poisoning disposal. Leaving aside the stand-alone issue of the substantial merits of removing dangerous chemicals from the countryside, I point out that the pattern of poison use suggests that the possession of substances does not arise from the inability to dispose of them since they were made illegal—in other words, it is not, as the situation is often painted, that they were kept in a rusty tin that has been left over from that time. Far from it—many substances are actually being imported for the purpose of illegally poisoning wildlife. We should not lose sight of the fact that people doing that should be brought to account.

I oppose amendments 101 and 102, not because I disagree with the sentiments behind them but simply because I do not believe that they will add to the aspects of wildlife crime with which we are concerned anything that we are not already able to do.

11:30

Liam McArthur: I am grateful to members who have expressed their support, at least in principle, for either amendment 101 or 102 or for both of them. Karen Gillon's point about effectively clearing the slate so that there can be no ambiguity or dispute in the future about the law and the consequences for those who fall foul of it is a good one. I listened with interest to John Scott's concerns in relation to amendment 101,

about shifting the burden of proof. Elaine Murray made a useful and helpful response to part of that, although I should say that anyone who is caught in possession of carbofuran, which is currently illegal, cannot have much claim to provisions around the burden of proof.

The minister's point about the sufficiency of evidence is something that the committee has wrestled with throughout stage 1, and I think that it is a point well made in terms of managing expectations about what the bill will do.

The suggestion that the provisions in amendment 101 are already covered in common law is interesting, and almost certainly correct. However, as Karen Gillon said, we have not seen much evidence of that biting. Now that we have sight of the detail of the vicarious liability provisions, we have an opportunity, between now and stage 3, to decide whether there are gaps that need to be plugged, in that respect.

On that basis, I seek leave to withdraw amendment 101 and will not move amendment 102. The point about there being in Scots law no immunity from prosecution at all is interesting, although I note that this is not a Government that has shied away from historic firsts in other areas and, as the minister pointed out, other amnesties have been undertaken in the past. The disposal scheme might be the appropriate route. I will take time between now and stage 3 to reflect on that.

Amendment 101, by agreement, withdrawn.

Amendment 102 not moved.

Section 18—Licences under the 1981 Act

The Convener: The next group is on granting of licences under the 1981 act. Amendment 103, in the name of John Scott, is grouped with amendments 104, 55 and 56.

John Scott: Amendments 103 and 104 incorporate two unadopted parts of the birds directive. I believe that they will assist SNH when it considers how and whether to grant licences to protect the direct and indirect public benefits of game management. Those benefits include rural employment, the provision of winter food and nesting cover, and reduced predation pressure for birds, mammals and insects across Scotland.

Specifically, amendment 103 would increase the legal options for management of species by incorporating article 9.1(c) of the birds directive, which deals with the judicious use of species, accommodating recent European case law.

At present, Scots law recognises only four specific applications of the term "judicious use": falconry or aviculture; public exhibition or competition; taxidermy; and photography. However, the European Court has recognised a wider range of activities that can constitute judicious use, so Scotland is being unnecessarily restrictive in its transposition of the directive. I urge the minister to think about that.

Amendment 103 would not automatically allow new licences to be granted in circumstances in which they are currently not permitted but would give ministers flexibility to adapt the regime in future, in appropriate circumstances.

Amendment 104 would offer guidance to SNH with regard to what criteria to assess when licensing to prevent undue pressure on bird populations and thus on investment in their management. The amendment reflects the aims of article 2 of the birds directive, which places the protection of bird species in the context of other environmentally and economically beneficial activities.

Amendment 104 would not change the requirement for those seeking licences to provide evidence of the impact on the species to be controlled or the need for consideration to be given to a range of alternative management strategies to reduce the predation pressure before the granting of a licence could be considered.

I move amendment 103.

Peter Peacock: The bill introduces a wide-ranging category of licensing, authorising activities

"for any other social, economic or environmental purpose"

in respect of non-avian animals and plants that would otherwise be protected. That ostensibly addresses a problem with licences for such species not hitherto being available. I agree that it is desirable and important to address that problem, but it could be argued that the bill fails to provide adequate checks and balances to safeguard biodiversity, certainly to the same extent that species are safeguarded under other European Union directives.

My amendments 55 and 56 seek to rectify the situation and bring the provisions for such licences into line with EU habitat regulations for European protected species. Even if my amendments are agreed to, there will still be scope for licensing the wide-ranging development activity that the bill introduces. However, my amendments would apply additional safeguards that closely parallel those in the habitats regulations and provide some balance in favour of biodiversity, including rephrasing the licence category to restrict it to objectives in the "overriding public interest", as set out in amendment 55.

Amendment 56 would require the licensing authority to assess the impact of the licence on the species concerned. Species such as water vole and red squirrel are species of concern, and one

would hope that they would benefit from any greater protection that might be afforded.

I am interested to hear the minister's view on the issues and whether there might be a way forward if the solution that I have suggested is not appropriate. I would be happy to consider that for stage 3 if appropriate.

Liam McArthur: John Scott has helpfully set out some of the background to amendment 103. On first reading, it looked rather open-ended. As he alluded to in his comments, the "judicious use" of some birds is permitted under the birds directive, and he cited some examples. However, the licences are to be granted under strictly supervised conditions, on a selective basis and in small numbers. Although it has been helpful to hear the motivation behind what John Scott is seeking to achieve with amendment 103, I am still slightly concerned that it might be a little bit open-ended.

On amendments 55 and 56, the committee wrestled with the issue at stage 1. There were those who argued that species licensing ought to be relaxed and those who felt that it ought to be tightened up further. In practice, it appears that licences are granted infrequently. I am not sure that there is necessarily a compelling case to tighten up the wording still further, but I am interested to hear what the minister has to say.

Roseanna Cunningham: I turn first to John Scott's amendments 103 and 104. The issues that they raise are in no way straightforward. He will accept that he had time to touch on only some of them, as I will do.

I put on the table what I suspect is really behind the amendments. The intended effect of amendment 103 would be to allow a derogation from the birds directive to control some wild predator species for the purpose of maintaining a shootable surplus of other wild birds. The purpose of such a derogation would be to prevent damage to property, but there is already a derogation for that purpose. It is clear from the directive and supporting guidance from the European Commission that it does not cover shooting rights. Our initial analysis is therefore that to grant such a derogation would raise a high risk of legal challenge.

Amendment 104 is loosely based on article 2 of the birds directive. Licences are currently granted under section 16 of the 1981 act in a way that is compatible with our obligations under that directive, so amendment 104 is not required. In addition, it could cause difficulty. It does not expressly follow the directive's terms, and it is widely applied to section 16.

The wider issues that amendments 103 and 104 raise may be worthy of further consideration, but they deserve a proper consultation process and should not be pursued in the bill. For that reason, I do not support them.

On the face of it, amendments 55 and 56, in the name of Peter Peacock, would provide for the same tests to be used for domestic protected species as are included in the habitats directive for European protected species. We considered the terms of the directive, but those are European law tests and we are dealing with domestic legislation. We need to be careful that what we do does not create unnecessary burdens for business and environmental bodies. However, I do not accept that the provisions in the bill fail to recognise the importance of biodiversity.

I consider the "no other satisfactory solution" arm of the provision in the bill to be of considerable importance, as it restricts greatly what would otherwise be a wide provision. Having said that, I could have further conversations with Peter Peacock about significant scenarios in which he fears that our current formulation will not be up to scratch. If those fears prove to have substance, I will be happy to look again at the wording of the provision in the bill for stage 3.

I oppose all amendments in the group for the reasons that I have set out.

John Scott: I note the minister's comments and am heartened by the fact that she says that amendments 103 and 104 are worthy of further consideration. However, I note that she is not inclined to support them at the moment, so I will not press either amendment. I will reflect on what she has said and note her interesting interpretation of article 2.

The Convener: John Scott is seeking leave to withdraw amendment 103. Does anyone object?

Karen Gillon: Yes.

The Convener: There is an objection to the amendment being withdrawn, so I must put the question on it. The question is, that amendment 103 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scott, John (Ayr) (Con)

Against

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 103 disagreed to.

Amendment 104 moved—[Karen Gillon].

The Convener: The question is, that amendment 104 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scott, John (Ayr) (Con)

Against

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 104 disagreed to.

The Convener: I call amendment 55, in the name of Peter Peacock.

Peter Peacock: In view of the minister's helpful offer to discuss amendments 55 and 56 further, I will not move either amendment.

Amendments 55 and 56 not moved.

The Convener: The next group is on delegation by ministers of licensing function under the 1981 act. Amendment 84, in the name of Elaine Murray, is grouped with amendments 77 and 85 to 90.

Elaine Murray: Section 18 allows ministers to delegate their species licensing functions to SNH or to local authorities. Amendments 84 to 90 remove from the bill delegation to local authorities. Those councils that responded on the provision did not seem to want the delegated powers and had no enthusiasm for them. In those circumstances, they might not need to apply for them. However, if powers were devolved to that level, inconsistencies could develop with regard to the circumstances in which a species licence could be issued. For example, a local authority might come under pressure to issue licences for the control and taking of buzzards, peregrine falcons or other birds of prey in circumstances in which ministers or SNH would not be inclined to issue such licences. Delegation to SNH will not be problematic, as ministers take advice from SNH before issuing species licences. Removal from the bill of delegation to local authorities is desirable to ensure a national overview and consistency in the issuing of species licences.

I move amendment 84.

11:45

Roseanna Cunningham: I will speak to amendments 84 to 90, in the name of Elaine Murray, and Government amendment 77. I recognise some of the concerns that Elaine Murray has expressed, which have also been raised by some stakeholders.

I make it crystal clear that it is our intention to delegate this function to local authorities only in relation to development planning. In exercising their planning functions, local authorities are in no way strangers to the legal protection of species. Where a development site contains European protected species, the local authority must consider the tests that are set out in the habitats directive. The future flexibility to allow delegation of the function to local authorities is intended to deliver a more efficient and streamlined process. Local authorities have well-established guidance in place where the potential for conflict of interest arises, if that is a concern. A good example of that is in the planning regime, where councils are often both developer and planning authority at the same time. For those reasons, I oppose Elaine Murray's amendments.

Amendment 77 is a technical amendment that ensures that the licensing provisions in the 1981 act are consistent with other sections in referring to "type" instead of "species". That will allow the flexibility to include or exclude subspecies and hybrids, as necessary.

Elaine Murray: I am reassured by the minister's statement that delegation will relate only to planning issues, which removes some of my concerns about the provision. I am happy to seek to withdraw amendment 84 and not to move the other amendments, and to reflect further on whether concerns remain.

Amendment 84, by agreement, withdrawn.

Amendment 77 moved—[Roseanna Cunningham]—and agreed to.

Amendments 85 to 90 not moved.

Section 18, as amended, agreed to.

Section 19 agreed to.

After section 19

Amendment 57 not moved.

The Convener: The next group is on management of geese. Amendment 105, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur: My mind was on this amendment when I was considering whether to move an earlier one.

The longest ministerial response that I have yet received as an MSP was to an inquiry that I made on behalf of constituents in relation to the management and control of geese, so I am under no illusions about the complexity of reaching a solution to a problem that is growing ever more serious in a number of parts of the country, not least in Orkney. I am also aware of and support the work that is on-going under the auspices of the ministerial advisory group on the issue.

Amendment 105 seeks to provide an avenue to allow any relevant recommendations by the group to be brought forward on a timely basis and, if necessary, with the force of statute behind them. I appreciate that the wording of the amendment may need improvement, possibly by being more tightly focused, but I would welcome any comments and reassurances that the minister can offer at this stage.

The damage that is caused, often to prime agricultural land, by some goose populations cannot be overstated. Some of those populations were once predominantly migratory but they are becoming increasingly indigenous to the affected areas. I appreciate that that may have much to do with improvements in farming practices that have made more readily available a source of food for the geese, but it is recognised that a solution now needs to be found.

I am also conscious that the taking of geese would almost certainly be controversial and that individual farmers may be reluctant to undertake such an exercise for that reason, and I know from experience in my constituency that inviting others in to carry out a shoot on one's land can often create more serious problems.

I look forward to hearing what the minister has to say.

I move amendment 105.

John Scott: Having discussed the matter at length in committee, I understand that the national goose management review group has recently undertaken a review, the conclusions of which I largely support. There is a desire for policy to address the consequences of increasing populations of most species, with associated increases in damage costs and escalating expenditure throughout Scotland. Questions about the longer-term effectiveness of the existing framework, its delivery and the associated legislation need to be addressed. I support the principle behind amendment 105, although the minister may have a view on whether its wording is appropriate.

Peter Peacock: Like John Scott, I support the principle behind what Liam McArthur says. Whether or not the minister believes that the amendment is technically correct, it raises an important matter. One of the most amazing sights and sounds of the oncoming winter is the geese arriving back in Scotland, as they have been doing for millennia. It is a hugely significant part of Scottish life and, for many people, it is a wondrous scene.

However, in recent years, the geese have been thriving and have been arriving in greater numbers than ever before, causing—as Liam McArthur and John Scott have described—significant damage to the interests not only of farmers, but of crofters. I am thinking particularly of the islanders of the Uists, who have been severely affected by that in recent years and are anxious to find the right balance between protecting the species and allowing their livelihoods to continue. They are not the only island populations that are affected—many other islands on our west coast, as well as inland areas, are increasingly affected. It is important that people are able to take the actions that Liam McArthur suggests. I hope that the minister will give that due consideration.

Roseanna Cunningham: I in no way deny the importance of the Scottish Government's national policy for goose management nor Liam McArthur's concerns for his constituency, which I suspect are reflected in the concerns of other constituency members. Goose management is an area in which we have a high level of collaboration from stakeholders. I recognise the contribution of those who participate in local goose management schemes and the national goose management review group.

Nevertheless, the effect of amendment 105 would be that Scottish ministers would be required to prepare and publish a national framework for goose management, which has already been done. The policy framework has been reviewed every five years since 2000, and the reports and Government response have been published on each occasion. A comprehensive review was carried out last year and the report that is currently being considered is due to be published shortly. Therefore, the amendment is not necessary, as the Scottish Government is fully committed to regular review of goose policy in collaboration with interested parties. Indeed, in many ways, the amendment suggests that less be done than is currently going on.

A slightly different point is that the current, non-statutory approach provides us with far greater flexibility than would be provided by having such a provision in the bill. I ask Liam McArthur to think about that. I appreciate what he is trying to do through the amendment, but I genuinely believe that it would serve no practical purpose. On that basis, I oppose it.

I am perfectly happy to talk to Liam McArthur about goose management issues more generally.

However, I do not believe that amendment 105 would do what he thinks it would do; in fact, I believe that it would do far less.

Liam McArthur: The minister may come to regret that offer to discuss the matter in more detail if the response that I got from her predecessor is anything to go by. I welcome the comments from Peter Peacock and John Scott in support of the general principle behind the amendment, but I recognise some of the flaws in the amendment and the wider problems that the minister has identified. On the basis of her offer, I seek to withdraw the amendment.

Amendment 105, by agreement, withdrawn.

Before section 20

The Convener: The next group is on the power to confer certain functions of constables under the 1981 act on other persons. Amendment 91, in the name of Peter Peacock, is the only amendment in the group.

Peter Peacock: Amendment 91 relates to the possibility of ministers authorising the SSPCA to take action against the wildlife crime that we have been debating endlessly in the committee and which we are all very concerned about. It would potentially widen the powers of SSPCA officers to act in ways similar to those in which they are currently authorised to act in relation to animal welfare matters. It would give SSPCA officers, in certain defined circumstances, powers that are similar to those of constables and analogous to similar powers already granted in relation to animal welfare. As such, the amendment does not raise any new issues of principle, in my view. The safeguard is that such powers could not be given without there first being a full consultation; thereafter they could be implemented only by order made under the super-affirmative procedure.

The alternative would be for us to wait for another opportunity for primary legislation, but why would we do that when the opportunity is available now to give SSPCA officers those powers, albeit subject to the safeguards that I have outlined? The matter was debated by the committee at stage 1. The committee is broadly sympathetic to the potential extension of the powers, subject to consultation, and the minister has an open mind on the principle of doing so, although she has hitherto been concerned about the procedure.

During stage 1, we received evidence that the resources that the police who deal with wildlife crime can deploy are very stretched. We heard lots of evidence about why, in many circumstances, the police are unable to devote sufficient time to such crime. The fact that the resources that are available to police forces are likely to shrink over the coming period makes the challenge of giving wildlife crime more priority even more difficult. The SSPCA could make available some 60 officers, which is a considerable resource, to help to combat an issue that we all want to see combated.

I will give an example of SSPCA officers being called out to deal with a bird that is caught in an illegal trap. If the bird is still alive when they get there, not only can they deal with the bird but they have powers to start the necessary formal evidence gathering under animal welfare and cruelty legislation, which may result in prosecutions. However, they cannot go beyond that in relation to wider wildlife crime. If, in the same example, the officers arrived two minutes later and the bird was dead, they could not act in the same way. That seems to be an anomaly that it would be nice to address. The impact of the amendment would be to make more resources available to enable more successful prosecutions, which one would hope would result in less wildlife crime in the long term.

I am interested in hearing what the minister has to say. If there are ways of improving the amendment for stage 3, I am happy for her to take that on or I would be happy to do so myself. I just hope that we can all find a sensible way forward on the issue. We are not far apart on the principles of the matter and this seems to be an opportunity not to be missed, subject to the safeguards that I have mentioned.

I move amendment 91.

Bill Wilson: In discussing amendments 101 and 102, the minister referred to the problems of gathering evidence, which are clearly substantial. The evidence is often located in very remote areas and there is a manpower problem. Therefore, there are good arguments for extension of the SSPCA's powers. Peter Peacock made a good point about the strange anomaly that if SSPCA officers find a bird in a trap that is still alive they can deal with it, whereas they cannot deal with it if it is dead.

I am very sympathetic to the proposal to extend the SSPCA's powers. I appreciate that the minister may not feel that the amendment is the way to go, but I feel that we should advance the issue and begin consultation on it as quickly as possible.

John Scott: I do not support extending the powers of the officers of private bodies such as animal welfare charities. Some in the legal profession raised concerns about the idea in principle at stage 1, and I agree with them. I appreciate that Peter Peacock has tried to work into his amendment the potential for consultation, but the measure is still too wide and would leave land managers open to targeting by single-interest groups that might have little or no accountability.

The alternative is for special constables to be enrolled to deal with wildlife crime, and I support that position.

12:00

Elaine Murray: I am sympathetic to the amendment. As Peter Peacock said, the SSPCA already has powers in relation to animal welfare, and the amendment proposes an extension of those powers to other areas. John Scott said that he would like to see greater recruitment of special constables, but the proposal does not preclude that—it could be done in parallel with anything else that comes in under the bill.

There is an argument that we should deal with the matter in the bill rather than putting it off until a future bill comes along, which is what the minister has argued for. That argument is about the amount of pressure on police boards. We are seeing financial restrictions now, and if the police are under a lot of pressure both to protect communities from crime and to investigate wildlife crime, I suspect that the investigation of wildlife crime will be the thing that suffers. The police will be under pressure to deal with disorder on the streets rather than sorting out wildlife crime. I would like progress to be made to ensure that wildlife crime does not fall off the agenda as police forces come under further financial pressures.

Roseanna Cunningham: Huge issues are raised by the deceptively simple suggestion in amendment 91, so we really have to ca canny on this one.

At stage 1, I said that I was open to the idea of the SSPCA playing a greater role in enforcement in relation to wildlife crime, and I am not departing from that position. It was a generous offer from the SSPCA, but let us be clear that it was about redeploying some of its resource to help in the investigation of wildlife crime. The talk about 60 officers does not mean that 60 officers will be doing that full time. SSPCA officers will still be doing their primary, original work as well.

During stage 1, I said that we would need to be absolutely certain that there was widespread stakeholder support and that we would need to consult the police, at the very least. ACPOS is not in favour of the approach in the amendment, which raises significant issues of accountability. The SSPCA is not a neutral organisation. It is a campaigning organisation with a particular campaigning role that, in my view, would sit somewhat at odds with an enforcement role. It is not publicly accountable in the same way that the police are. If we were to go down any road such as the one that is proposed in the amendment, we would have seriously to consider the huge issues of public accountability.

As I understand it, the amendment goes further than what the SSPCA has said—certainly in the recent past—that it wants. It would allow the powers of constables to be given to any person whom the Scottish ministers chose. The most significant power that we are talking about here is a stop-and-search power. I have some practical questions to ask about how that would work in management terms, because without effective training we could be putting people in a dangerous situation. After all, a stop-and-search power involves the officer potentially having to restrain an individual. It is not the simple, easy and straightforward thing that it might at first be thought to be.

As I understand it, the stop-and-search power was deliberately excluded by the SSPCA, I suspect for precisely the reason that I have mentioned—because of the implications of allowing the power. In those circumstances, unless the SSPCA has changed its position, the amendment goes infinitely further than the SSPCA has indicated it wants to go.

While I accept that Peter Peacock has attempted to build safeguards into this extremely broad ministerial power, that does not persuade me that his approach is the right way to legislate on the issue. We are talking about powers such as stop and search. Amendment 91 represents a major step change. It is worth noting the amount of training that SSPCA employees would have to undertake. It should not be left to an enabling power to determine who could exercise those powers. Therefore, I do not support amendment 91.

The proper way to proceed is for the issue to be considered fully and in detail, following public consultation and further discussions with the police and other relevant bodies. Parliament need not wait for another bill relating to wildlife. I fully accept that wildlife bills do not come along every five minutes in the life of a Parliament. However, criminal justice bills tend to come along far more frequently. In my view, a criminal justice bill would be the correct vehicle for any consideration of what is being proposed in amendment 91, because it raises such big issues in relation to criminal justice. In those circumstances, the right way to conduct consultations and to take the issue forward is not through the mechanism of the bill but through the normal process of primary legislation.

I ask the committee to oppose amendment 91.

Peter Peacock: I am grateful for the debate, the purpose of which is to discuss how we can deal with the issues that concern us all. I am also grateful for the support of Bill Wilson and Elaine Murray.

The minister was right to say that the SSPCA made a generous offer. It did not do so lightly—it understands the implications for its resources. Equally, the fact that the SSPCA is prepared to contribute to addressing the issue reflects how much it sees it as a high priority.

On the use of the SSPCA's resources, its officers are often at the scene of wildlife crime anyway but feel frustrated at their inability to act. As the minister said, serious implications arise from amendment 91 in respect of the potential powers that would be extended to the SSPCA or others that were identified as able to perform a similar role. Nonetheless, we must remember that similar powers have already been granted to the SSPCA in the public interest and that the public widely accept that the SSPCA is, in a sense, the police for the purposes of animal welfare. It is not beyond the SSPCA's capacity to train its officers adequately or to support them in that task.

I acknowledge the minister's point about the specifics of stop and search. I had envisaged that in authorising persons other than constables, limits could be placed on that authorisation, but I would need to revisit the matter to ensure that that was the case. I understand that to be the case in relation to other powers.

I note what the minister says about consultation and other opportunities to legislate. Perhaps before stage 3, the minister could reflect on whether the Government would be able to commit to such a consultation in the immediate future, which might provide reassurance that the debate would be advanced in the public way that she has described. However, in order to reflect further on what the minister has said and to allow her to reflect on whether it would be possible to move to such a commitment by the time we get to stage 3, I seek to withdraw amendment 91.

Amendment 91, by agreement, withdrawn.

Section 20 agreed to.

After section 20

The Convener: The next group is on the liability of certain persons for offences committed by others. I am mindful of the time, so this is the last grouping that I will take today. Amendment 78, in the name of the minister, is grouped with amendment 79.

Roseanna Cunningham: Amendment 78 will ensure that the partners or managers can be prosecuted where the relevant partnership or unincorporated association has committed an offence. Similar provisions can be found in other legislation such as the Nature Conservation (Scotland) Act 2004.

Amendment 79 is of course the more significant amendment. I announced that I would bring forward these changes when I appeared before the committee in early November. I took into account that we agreed that now was the time to strengthen the law to address the continuing problem of raptor persecution in Scotland.

We have worked together with colleagues in the Crown Office, police and SNH to develop these important new offences. Amendment 79 aims to make those that benefit from these crimes liable for them. It provides for two new offence provisions in the Wildlife and Countryside Act 1981. Both provisions will apply where working relationships provide for the killing or taking of wild birds on behalf of owners or managers of land, for example where a person employs a gamekeeper to carry out predator control to protect game birds.

New section 18A of the 1981 act will make employers liable for certain wild bird and pesticides offences committed by their employees and agents. The defence for any employer will be that he or she did not know that the offence was being committed and that they took all reasonable steps and exercised all due diligence to ensure that offences were not committed. That is fair.

It is important to note that amendment 79 does not create a situation in which landowners become vulnerable to mischief, such as bird carcases being planted on an estate, which I know is a concern in some quarters.

Depending on the circumstances, the Crown could choose whether to pursue the employee, the employer or both. However, even if only the employer was charged, evidence would still have to be led to prove beyond reasonable doubt that an underlying offence was committed by the employee.

New section 18B of the 1981 act will make the person liable for the same offences when carried out by contractors and other persons who do work on their behalf—described as "relevant services". The offences here are in my view an essential anti-avoidance measure.

I have included the section 18B offences as all those involved felt that relying entirely on employer-employee relationships would not have the desired effect. It would be far too easy for someone to demand that all their employees become self-employed or for someone to set up a company to sit between themselves and the people whom they would originally have employed. Leaving loopholes for such manoeuvres is clearly unacceptable. The second part of the amendment is therefore intended to close those and ensure that we can indeed make those that benefit from these crimes liable for them.

The concept of vicarious liability is well established but it is not currently applied to wildlife crimes. In proposing this amendment, I feel that I am proposing a proportionate but strong response to the continuing problem of wild bird persecution.

I remind people that we do not believe that this is a silver bullet that will solve all problems in the countryside, but the amount of work that has gone into this amendment means that, within the context in which it is drafted, it is absolutely the strongest and the most-likely-to-be-effective way forward, given the difficulties that we are currently experiencing, continue to experience and, it looks like, would continue to experience without these changes. An enormous amount of work has gone into this, which has included the Crown Office and all those whom one would expect to be consulted.

I move amendment 78.

12:15

John Scott: The minister's motivation for bringing forward criminal vicarious liability for wildlife offences is appreciated—indeed, I share it—but its introduction into nature conservation law by way of a stage 2 amendment is inappropriate and, in my view, a disproportionate response. Such a measure deserves full consultation with the legal profession and industry representatives. The manner of its introduction is liable to alienate the very people whom we need to work with to tackle illegal poisoning. The minister said that she has consulted the Crown Office, but that is not enough.

The minister has in the past cited liquor licensing law as a precedent for criminal vicarious liability in Scotland, but that is not entirely comparable. To hold a pub licence holder liable for breaches of the licence conditions to which he has signed up is one thing, but to hold an employer liable for the crimes of another person who commits a criminal offence without his knowledge or consent is entirely different.

The minister has said that law-abiding employers have nothing to worry about, but the wording of the new offences, and particularly the defences, does not give me comfort that that is the case. In my view, the committee really needed an opportunity to take further evidence before voting on the amendments with the confidence that we had scrutinised them properly and that we were fully aware of all the consequences.

The minister alluded to planting evidence and making mischief. A major concern is that there seems to be a reversal of the usual burden of proof, in that an employer will be assumed to be guilty for the crimes of another person until he can prove otherwise. Many rural employers, particularly the smaller and less well-resourced ones, will not be able to meet the thresholds that are set for the defence, even if they are entirely innocent. To require all due diligence to be taken to prevent the offence raises the bar unreasonably high. At the very least, there should be a reasonableness test in deciding what due diligence might be expected. The phrase "all due diligence" suggests that an employer must do everything possible and leave no stone unturned no matter how impractical or unaffordable. That surely places too great a burden on them and many will need to consider whether the risks of being involved in land and habitat management in Scotland are worth it.

That must be bad for rural Scotland. Private land ownership is a controversial topic, and there are differing views in the committee, but it is undeniable that Scotland's modern estates generate enormous public benefits, economically, socially and environmentally. Whatever we do to tackle bird poisoning should not prejudice the vast majority of the land management sector who equally condemn it, but I am afraid that the amendments will do just that. The existing legislation would perhaps be adequate if it were more rigorously enforced.

Stewart Stevenson: The overwhelming majority of land managers and owners behave in a responsible way that serves the interests of conservation. Of course, that has not always been the case. In the past, the relationship between owners and their employees has often been one in which the employee has had little option but to do what the owner suggests. It is somewhat bizarre to suggest that owners should not be expected to take every possible step to prevent offending behaviour by their employees, which I think is the thrust of John Scott's comments. Owners should certainly be in that position.

The amendments will provide cover and defence for employees. Employees in rural areas are often relatively isolated from contact with others, apart from with the manager or owner of an estate. The bill will give employees the cover to be able to say, "No, this is not legal activity and I will not undertake it." They will know that the owner or manager can be held to account. I very much support the proposals as a way of providing cover for many people who are employed on rural estates and for improving the bill's conservation objectives.

Liam McArthur: I very much echo what Stewart Stevenson said about the extent of the issue, the good practice that the vast majority of estates and land managers follow and the complexity of the relationship between those managers and their employees. The purpose of the amendments is, as he indicated, to provide some cover for those

employees as well as to reinforce our expectation of the duties that land managers are under.

Much of what I wanted to say on raptor persecution I was able to say on earlier amendments on the use of certain pesticides.

I welcome sight of the detail of what the minister proposes. Between now and stage 3, there is an opportunity to consider how and where more clarity can be brought to amendments 78 and 79, including definitions of "reasonable steps" and "due diligence", and how the provisions might be expected to apply in practice. We might even pick up some of the concerns that John Scott identified, although he went way over the top in his expression of those concerns and the implications that he felt would result from them.

I would be interested to hear whether the minister believes that there is an argument for extending the liability provisions across all wildlife crime rather than staying with the limited list of relevant offences. I may have the opportunity to return to that when we discuss amendment 106 at a future meeting. For the moment, I am happy to indicate my support for what the minister described rightly as strong but proportionate proposals.

Bill Wilson: I think that we all accept that most landowners are responsible, but there is clearly a collection of irresponsible landowners who are regular lawbreakers and will continue to break the law until they believe that they can be caught. Vicarious liability is a method of saying to them that we have another way of attempting to catch them.

One of the problems for many of the employees who work the estates of such landowners is that they may be in tied houses. They are extremely vulnerable to pressure from unscrupulous landowners who are determined to break the law. Vicarious liability will help, as Stewart Stevenson pointed out, not only to tackle wildlife crime but, as the minister said, to protect those employees from the vulnerable position that they are in if an unscrupulous landlord is determined to continue breaking the law.

On health and safety issues, we can hold companies liable if they fail to take proper action to ensure that their employees protect the health of the public and other members of the organisation, so I cannot see why we should not do the same in wildlife crime.

I strongly welcome amendment 79.

Peter Peacock: I equally strongly welcome amendment 79. As Bill Wilson indicated, it appears that there is a section of persistent offenders. The introduction of vicarious liability is a clear signal that the net is tightening around them and that there is a clear parliamentary intention that they should not be allowed to continue knowingly to permit actions that we all find unacceptable to happen within their management purview.

As the minister said, vicarious liability is not a silver bullet. It will be difficult to secure convictions under the new provisions. Nonetheless, they are well worth having. Even if they secure one conviction, that—or the threat of that alone—may be sufficient to help to bear down on the practices that we are all trying to eliminate.

Stewart Stevenson made a good point about the vulnerability of employees and the fact that vicarious liability also gives them some grounds upon which to be able to stand up to their employers—to the extent that they ever could—and make it clear that what they are being expected to do explicitly or implicitly is not acceptable under the law and that they would be threatening others by taking part in such activities.

It is difficult to get into the detail of such a complex amendment at such short notice, and areas of its structure may require further clarity. The minister explained why amendment 79 includes proposed new section 18B of the 1981 act, but it was not entirely clear to me why that provision has to be separate from proposed new section 18A. That may just be a drafting point, but it may be worth thinking about it. Also, the points that Liam McArthur made about the phrases "all reasonable steps" and "due diligence" in proposed new sections 18A and 18B and the point that John Scott made about the phrase "all due diligence" perhaps require to be probed and thought about a bit more before stage 3.

Nevertheless, I think that this is a major and significant step in the right direction; I warmly welcome it and am very happy to support it. I reserve the right to examine the details to see whether they can be improved and tightened up in any way before we get to stage 3.

Karen Gillon: Like others, I welcome the comments that have been made and the provisions in the amendments. I have to say, though, that I am disappointed but not surprised by John Scott's comments.

As other members have said, the vast majority of land managers abhor the idea of raptor persecution. However, that is not always the case; indeed, members will be aware of a recent prosecution in my constituency in which the gamekeeper involved said that he was only trying to please his employer. This offence would allow us to test whether that had indeed been the case and whether the gamekeeper's employer was pleased with and, indeed, was encouraging him to do what he was doing. Certainly my constituents

would want that kind of prosecution to take place if the land manager had been pushing a gamekeeper in such a direction.

Clearly, it is not a silver bullet; the offence will be difficult to prosecute. I feel, like others, that we need to examine the detail and to ensure that the provisions comply with the Scotland Act 1998, particularly with regard to partnerships and companies and, like John Scott, I want to look at some of the detail of what is involved in all this. However, it will not be any more difficult to comply with these particular tests than it is to comply with tests under the Health and Safety at Work etc Act 1974 or tests required for other kinds of offences that people might be liable for.

I do not think that the provision will lead to the mass exodus that John Scott referred to. Every time that a new law is introduced, there are people who say, "We'll all have to leave the countryside" or "We'll all have to leave Scotland." The threat never materialises but I believe that, if there are companies that are scared of this provision, I do not want them in Scotland anyway and they are welcome to leave.

Elaine Murray: John Scott drew an important parallel with vicarious liability offences in pub licensing. With regard to pub licensing, an unscrupulous landlord could put pressure on an employee to break the law by selling liquor to an underage or intoxicated person knowing that, as they were not liable, they could get away with it and the poor employee would get prosecuted.

A direct comparison can be made with this type of wildlife crime. The gamekeeper, the guy in the tied house or someone on the minimum wage can be left to carry the can because of pressure that is put on them not necessarily by the landowner, but by the person running the estate—and we all know the name of one person who runs some of these sporting estates and is, I understand, pretty unscrupulous in some of his dealing. Young gamekeepers such as the individual whom Karen Gillon mentioned can be made to feel that their job is on the line unless they take this type of action and please their employer. As I say, big landowners might well not know what is happening on their estates; it could be the people running the estate for them who get prosecuted.

John Scott: Is it a matter of regret to you that we have not taken any evidence on this issue? It certainly is to me. Every time that we have discussed the matter, Karen Gillon has told us the same story, but we have heard no other evidence of that treatment of an employee by an employer. Do you agree that it would have been reasonable to have taken evidence at least before we had proceeded to this stage?

Elaine Murray: I am not sure that I necessarily agree that we have not heard evidence on this issue—we have taken evidence both in committee and in private. What we are talking about is not happening on all estates but, unfortunately, certain land managers on some estates are doing it and we need to send the message that it is unacceptable for gamekeepers to be put under such pressure and for anyone else to think that they can get off scot free.

I welcome the minister's introduction of the provisions—she has been brave in doing so. I know the sort of representations that she will have received, as her constituency is not dissimilar to mine. Before stage 3, we have a number of weeks in which the detail of the amendments can be examined and we will then have the opportunity of amendment at stage 3 if aspects of the detail still need to be addressed. In general and in principle, I am pleased that the minister has lodged the amendments in the group.

12:30

Roseanna Cunningham: A number of points have been raised, and I wish to respond to them. John Scott made some comments relating to due diligence and the use of the word "reasonable". He was concerned that somebody might be prosecuted because of something that had happened without their knowledge or consent. The point of the exercise is that, if an owner genuinely has no knowledge and has not consented, and he can show that he has taken all reasonable steps to prevent the action from happening, he will not be prosecuted.

The issue is one of criminal behaviour. It is not about the whole of the rural sector; it is about that element of rural land ownership or land management that indulges in criminality. We know that it is happening, because we find the evidence of it in the poisoned birds that are picked up depressingly often.

I say to various members, including Peter Peacock, that due diligence is a long-standing, well-established concept in Scots law. I understand that some organisations want some standard of due diligence to be set out in the bill, in statutory guidance or wherever, but because due diligence is a well-established legal concept, doing that would be most ill advised. We can work with the industry to give it guidance on due diligence, but I will not link that directly to the provisions of the bill. That concept in law in Scotland is far too wide ranging just to be connected to one particular offence. The reason that we use the concept is simply because it is so well known in Scotland—as, indeed, is the phrase "taking all reasonable steps". The word "reasonable" is very well understood in Scots law.

To try and define those things would be extremely ill advised. The minute that we begin to try to do that, it would almost implicitly exclude from consideration certain other things that we would not wish to exclude. It is important to keep that in mind.

John Scott: It is the combination, or juxtaposition, of the words "all" and "reasonable" that concerns some members when it comes to due diligence—the problem lies with "all reasonable steps" in terms of due diligence. Where does "all" stop and start?

Roseanna Cunningham: With the greatest respect, I point out that due diligence includes the concept of reasonableness. It is in use in the Scottish courts—I hesitate to say "on a daily basis", but it is so frequently part and parcel of the discussion that, from the point of view of any proceedings in the courts, there will be no confusion, difficulty or concern in applying the concept. I repeat that due diligence includes within it the whole notion of reasonableness. From the perspective of prosecuting crime, I do not think that these are difficult concepts to apply. We need to ensure that the provisions are strong enough for the employers whom we are talking about to be able to rely on them.

I commend a number of committee members for flagging up and explicitly recognising one very important point: the criminal offence that we are discussing gives a huge measure of protection to employees who might hitherto have been in a vulnerable position when they were explicitly told or given to understand that part and parcel of what they were expected to do was to perform behaviour that was criminal. They now have a basis on which they can legitimately dig in their heels—from here on in, it is not simply the employee who will be prodded out to the end of the gangplank. Unfortunately, that has been happening in a number of situations. It is important to view the matter in that context.

Like Elaine Murray, I recall that the committee took a certain amount of evidence on vicarious liability at stage 1 before there was any indication that we would take the matter forward. Therefore, I am not of the view that this has been suddenly sprung on an unsuspecting populace. In particular, it has not been sprung on the stakeholders. I have been saying to the stakeholders for well over a year that, if there was no significant improvement in the number of raptor poisonings in Scotland, this move would be almost inevitable. I have wanted them to make that improvement on a voluntary basis. I have been telling them that, if they do that on a voluntary basis, that will give me the justification to stand in the chamber and defend against anybody else's attempt to introduce such a liability. Unfortunately, that has not happened. We are where we are, but not in a completely arbitrary way—that is an important point to make.

Karen Gillon: We had a discussion on the matter with the people at the Langholm moor demonstration project early in our evidence taking, so it cannot be a surprise to anybody that this has been proposed. That was the first visit that we made and it was one of the first discussions that we had with people.

John Scott: I suggest that the introduction of a concept as huge as this into Scots law is disproportionate to the amount of consultation that we have undertaken.

Roseanna Cunningham: I reassure the committee that the issue was flagged up to various stakeholders more than a year ago. They were told that this would be the likely outcome of their failure to improve the position in rural Scotland. The committee has also taken evidence on the matter during the bill process. We have been in close consultation with the Crown Office to ensure that what we are doing will not cause difficulty in terms of criminal law. The Crown Office was the first place to which I went, to ensure that that will not happen—that is extraordinarily important.

I regret the fact that we are where we are with this. I would far rather have been able to tell members that we did not need the amendment because improvements had been made over the past year. I am very disappointed that I am unable to make that defence. I really am sorry that I have had to lodge the amendment, as I wanted the improvements to be made on a voluntary basis. I am disappointed for all those landowners and land managers who are working incredibly hard to ensure that raptor poisoning does not happen on their land. I recognise all the efforts that they have made. Unfortunately, there continues to be a minority of land managers and landowners who are basically laughing in our faces. If we do not take these steps now, the situation will only get worse.

Karen Gillon: Hear, hear.

The Convener: The question is, that amendment 78 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Against

Scott, John (Ayr) (Con)

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Amendment 78 agreed to.

Amendment 79 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gillon, Karen (Clydesdale) (Lab)
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Peacock, Peter (Highlands and Islands) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Against

Scott, John (Ayr) (Con)

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Amendment 79 agreed to.

The Convener: That ends today's consideration of the bill. We aim to complete our stage 2 consideration of the bill at our next meeting, on 19 January. I thank the minister, her officials and everyone else for their attendance. That concludes the public part of today's meeting.

12:39

Meeting continued in private until 13:02.

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