



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Tuesday 7 September 2010

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**RURAL AFFAIRS AND ENVIRONMENT COMMITTEE**  
**18<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

\*Maureen Watt (North East Scotland) (SNP)

**DEPUTY CONVENER**

\*John Scott (Ayr) (Con)

**COMMITTEE MEMBERS**

\*Aileen Campbell (South of Scotland) (SNP)  
\*Karen Gillon (Clydesdale) (Lab)  
\*Liam McArthur (Orkney) (LD)  
\*Elaine Murray (Dumfries) (Lab)  
\*Peter Peacock (Highlands and Islands) (Lab)  
\*Bill Wilson (West of Scotland) (SNP)

**COMMITTEE SUBSTITUTES**

Rhona Brankin (Midlothian) (Lab)  
Jim Hume (South of Scotland) (LD)  
Jamie McGrigor (Highlands and Islands) (Con)  
Sandra White (Glasgow) (SNP)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Libby Anderson (Advocates for Animals)  
Bill Braithwaite  
Robbie Douglas Miller (Scottish Rural Property and Business Association)  
Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals)  
Jonathan Hall (NFU Scotland)  
Alex Hogg (Scottish Gamekeepers Association)  
Duncan Orr-Ewing  
Dr Colin Shedden (British Association for Shooting and Conservation Scotland)  
Hugo Straker (Game and Wildlife Conservation Trust)  
Malcolm Strang Steel (Scottish Rural Property and Business Association)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Buccleuch Centre, Langholm



## **Scottish Parliament**

### **Rural Affairs and Environment Committee**

*Tuesday 7 September 2010*

[The Convener *opened the meeting at 13:33*]

### **Subordinate Legislation**

#### **Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2010 (SSI 2010/225)**

#### **Solvent Emissions (Scotland) Regulations 2010 (SSI 2010/236)**

**The Convener (Maureen Watt):** I welcome everyone to the committee's 18<sup>th</sup> meeting of the year and ask all of you to turn off your mobile phones and BlackBerrys, as they impact on the broadcasting system.

It is great to see such a big turnout. As someone on the committee wisecracked, if you have come for the Solway Rhythm Aces, you are a bit early. Perhaps you can think of us as a warm-up act.

Our principal business this afternoon is to continue the committee's scrutiny of the Wildlife and Natural Environment (Scotland) Bill—or the WANE bill, as it is often referred to. We are the Scottish Parliament's Rural Affairs and Environment Committee, a cross-party parliamentary committee that scrutinises the Scottish Government's policies and proposals in the areas of rural affairs and the environment.

Our job with this piece of proposed legislation is to scrutinise in a robust and thorough way the Government's proposal, to ensure that in our view it is fit for purpose. The committee believes that it is important to get out and about and to engage with people who could be directly affected by changes such as those proposed in the WANE bill and, as such, we are delighted to be in Langholm today. The committee spent a very productive morning at a demonstration project on Langholm moor and I thank all those who made that extremely informative visit possible.

This afternoon, the committee will take evidence from a variety of organisations with views on the bill at what is known as stage 1 of the bill process. This particular stage will continue back in Edinburgh at future meetings over the next couple of months before the committee produces a report to Parliament containing our views on what are known as the bill's general principles—in other words, the fundamental thrust of what the bill

seeks to achieve—and most likely making a recommendation to Parliament on whether the committee supports those principles and whether the bill should proceed to the next stage. The whole Parliament then votes on whether the bill should proceed.

If the bill is allowed to proceed, it goes on to stage 2, at which all MSPs have the opportunity to suggest amendments to the bill to try to improve it. The amendments are often suggested by organisations and members of the public like yourselves who have extensive interest in and knowledge of the matters at hand. After the committee votes on all the suggested amendments, the bill passes to its final stage, known as stage 3. At stage 3, all MSPs and indeed the Government are able to suggest further amendments, which are voted on by the whole Parliament before the final vote to pass the bill. If successful, the bill then becomes an act—in other words, the law.

To support the process of engagement, after our first panel of witnesses some members of the audience will have an opportunity to state their views on what they have heard so far and the bill's contents. Anyone who wishes to do that should let James Drummond know and we can work out how many people wish to take part in the open-mic session. I stress, though, that the session will not be an opportunity to ask committee members questions, because that would take all day; it simply gives you a chance to state your thoughts on the bill and any improvements that might be made to it.

Before we get to our main business, we have two negative Scottish statutory instruments to consider. The Subordinate Legislation Committee has made no comment on the instruments and no member has raised any concerns or lodged any motions to annul. Given that, do members agree not to make any recommendations with regard to the two instruments?

**Members indicated agreement.**

## Wildlife and Natural Environment (Scotland) Bill: Stage 1

13:38

**The Convener:** Agenda item 2 is continued stage 1 consideration of the Wildlife and Natural Environment (Scotland) Bill. After our first panel of witnesses, we will have the open-mic slot that I mentioned and then a second panel.

I welcome to the meeting: Dr Colin Shedden, director of the British Association for Shooting and Conservation Scotland; Libby Anderson, policy director with Advocates for Animals; Alex Hogg from the Scottish Gamekeepers Association; Mike Flynn, chief superintendent of the Scottish Society for the Prevention of Cruelty to Animals; and Hugo Straker, senior field adviser for the Game and Wildlife Conservation Trust.

To maximise the time available, I will move straight to questions. How much of a problem is the poaching of game birds, rabbits, hares and even raptors? What are the panel's views on police enforcement with regard to poaching and the loss of special powers for landowners and gamekeepers to apprehend poachers?

**Dr Colin Shedden (British Association for Shooting and Conservation Scotland):** The question is very important because the national wildlife crime unit's most recent figures indicate that poaching is the most frequently reported wildlife crime in Scotland. To the list of species that you mentioned, I would add deer, because over last winter deer poaching was the most commonly reported wildlife crime in Scotland after hare coursing. As I say, the issue is important and has been well addressed in the bill. For example, we have lost—or, I hope, will lose—a lot of very archaic legislation that is in very archaic language. With the definition of poaching as the illegal removal of game or other wildlife species from land without permission, the whole thing has been very much simplified.

**Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals):** Like the national wildlife crime unit, we have seen a marked increase in reports of poaching, although I have to say that it is probably not the traditional type of poaching that the bill is aimed at. For example, people on the outskirts of cities are causing tremendous suffering with the use of dogs, crossbows and air rifles. The police are taking a lot of action. We have been involved in joint operations in West Lothian, Fife, Tayside and Grampian to try to target moving gangs who come up with lurchers in the back of their vans. We have done a lot of work to try to encourage landowners to report such activity to the police, because the

people do not just take animals; once they are there they will attack the farm buildings, and all that kind of stuff.

**Alex Hogg (Scottish Gamekeepers Association):** Gamekeepers tend to be at the sharp end of the stick. We are usually the first guys to apprehend such people. I agree with Mike Flynn that a lot of them are criminals who break into the farm buildings and steal whatever is there. It is vital that we try to stop such poaching.

**The Convener:** It is not the traditional image of "one for the pot".

**Alex Hogg:** No.

**John Scott (Ayr) (Con):** What are the witnesses' views on the loss of special powers for landowners and gamekeepers to apprehend poachers?

**Alex Hogg:** The issue is difficult, because our evidence must always be corroborated anyway. Whenever I have been in court, the court has wanted other witnesses. The loss of the power will not really affect us.

Another issue is that we have shotgun and firearms certificates and we do not want to apprehend those guys face on sometimes, because we can end up landing in trouble because of the firearms. It is better if we watch the guys and the police come and deal with them.

**Dr Shedden:** In our submission, we suggested that the provision on single witness evidence should be removed. We discussed the issue with the police and the courts. No case has come to light in which single witness evidence has been used without corroboration.

We do not advise our members to approach poachers. Poachers are involved in other things and there have been incidences of violence towards gamekeepers and other people in the countryside. We always advise people that if they suspect that poaching is taking place they should take what notes they can, for instance about the vehicles, and get in touch with the police as soon as possible.

**Bill Wilson (West of Scotland) (SNP):** Do the other members of the panel have views on the current law on single witness evidence?

**Mike Flynn:** There is a place for it. It originally applied to the stealing of birds' eggs, given the remote nature of the places where that happens. That is a problem whether we are talking about taking birds' eggs or poaching; it is not happening at the end of the street in front of 20 witnesses. As Alex Hogg said, in the majority of cases the evidence has to be corroborated anyway, but Alex could say that he saw somebody poaching and that he found the carcass of the animal that was

killed—that is a form of corroboration. There can be evidence that a dog attacked an animal, for example. There can be corroboration that does not come from another person, so the single witness approach is valuable.

Like Colin Shedden and Alex Hogg, I stress that someone on their own should not try to apprehend poachers. Some of them are dangerous and violent criminals.

**Bill Wilson:** Do the other witnesses want to express a view on the current law on corroboration? The law came about because the crimes that we are talking about tend to take place out of the sight of people and there is often only one witness. It has been suggested to us that given that a large range of wildlife crimes are carried out out of the sight of people, with perhaps only one witness, single witness evidence could be extended to a wider range of crimes, such as illegal poisoning or shooting of birds. Do the witnesses have a view on that?

13:45

**Mike Flynn:** I would welcome such an approach. As I said, there is always secondary corroboration, because there is a poisoned carcase, for example. It comes down to the credibility of the witness and the interpretation of the court.

**Libby Anderson (Advocates for Animals):** I agree with Colin Shedden that there is always likely to be corroboration in a court case. However, before we even get to the problem of single witness evidence, we have to think about enforcement. The experience of many people who come across what they think are offences in the countryside is that the police do not come and address the problem. Evidence needs to be looked at quickly, because it can disappear. Before we even think about the admissibility of evidence, enforcement is a serious issue.

**Alex Hogg:** We have been working with the partnership for action against wildlife crime Scotland on that. We always try to get the police to come and deal with a crime scene—every time. However, due to our being so far away from police stations and whatnot, it is difficult for them. We would much rather have the police come and deal with something right from the start.

**Bill Wilson:** I am getting the sense that it might be more important to extend the provision for single witness evidence than to remove it, on the grounds that it takes a long time for the police to get to a crime scene and the likelihood of there being two witnesses must be quite low. Dr Shedden seems to take a different view.

**Dr Shedden:** Yes. The general impression that we get is that single witness evidence does not get far when it reaches procurators fiscal, who think that they need much more than that. The police contacts with whom I have spoken gave the impression that the provision is rarely used. To extend it to a wider range of rural crimes could lead to an awful lot of reporting of potential offences but very little action being taken. I think that everyone round the table would like the people who commit crimes in the countryside to be taken to task through the courts. I would be concerned if more and more of fiscals' time was taken up in looking at cases with which they would decide not to proceed.

**Karen Gillon (Clydesdale) (Lab):** I suppose that in this day of modern technology there are lots of ways in which you can get corroboration, but there might not be lots of ways in which you can get two people on the ground at the same time. You could corroborate an incident because someone's mobile phone was in the area or in various other ways, but you might have only one witness to the act. That is the issue. Only this morning, an instance of bird poisoning, of buzzards outside Arbroath, was reported. We need to do something, and extending the provision might be one way of making people realise that we are serious about it.

**Libby Anderson:** That is relevant for anyone who takes a particular interest in the issue. We have a field research officer who will look for examples of practice in the countryside that support our campaigns on some of our welfare issues. Inevitably, he comes across what he believes are offences, but he often has difficulty getting anyone to investigate. He would normally document things, as Karen Gillon suggests, to have that back-up evidence, but even then, it can be difficult. For instance, in a recent case, he thought that he had found some illegal snares and he informed the police about them, but they were unable to attend. The incident took place in Strathclyde, but he was advised to go to his local police station in Gayfield Square in Edinburgh and give a statement, which would be passed back to Strathclyde Police. That is not really taking forward the issues of enforcement and investigation. I realise that we are getting a bit off the subject of evidence standards and single witness evidence, but it is all part of the wider question of how we address potential offences in very remote areas.

**The Convener:** We are taking evidence from the partnership for action against wildlife crime—PAW Scotland—at a future evidence session, so we will not dwell on the issue at the moment.

**Karen Gillon:** My question is for the gamekeepers. On your concern about the incorporation of game species into the Wildlife and

Countryside Act 1981, do you think that there is a risk that it could lead to a ban on shooting? Is that a real concern or a potential concern, and could we put a safeguard in the bill to address that concern?

**Alex Hogg:** Pheasants and partridges have been put in the bill and have been accepted as being non-indigenous, but there are lots of other examples, such as brown hares. Where do you draw the line in respect of whether an animal or a bird is indigenous? The pheasant has been in this country for nearly 1,000 years. Why has it been chosen over and above other animals? We would rather that the pheasant and partridge remained as part of a list of game species, to go along with the seasons when you can shoot them, and for that to be enshrined in law. We are a wee bit worried that it has been pointed out that the pheasant is non-indigenous. What is non-indigenous? The committee will need to decide what is non-indigenous to Scotland.

**Karen Gillon:** Hugo, I think that you have voiced some concerns on behalf of the Game and Wildlife Conservation Trust.

**Hugo Straker (Game and Wildlife Conservation Trust):** As an organisation, we would support Alex Hogg and his gamekeeping fraternity. The presence of game birds and their close seasons has encouraged exceptional land management practices, an example of which the committee saw this morning up on Langholm moor, with red grouse. We have two sets of partridges: the grey partridge and the red-legged partridge. Although the grey partridge is very much an indigenous species, pheasants and red-legged partridges have been with us for many centuries. They contribute to wild stocks and encourage fantastic management practices, many of which are similar to what we saw up on Langholm moor. Their presence as game bird species is an important incentive for active management, which brings ensuing social and economic benefits to many rural communities, many of which are fairly remote.

**The Convener:** Was there not a concern that the bill as it stands would allow a future Government to ban the killing or taking of game by passing secondary legislation rather than coming back to Parliament with another law? Was that not a concern?

**Alex Hogg:** Yes, that was one of the concerns.

**The Convener:** What do you feel about that?

**Alex Hogg:** How do we get round that one? How can we enshrine that in law through the bill?

**The Convener:** That is something that we can look at. I think that Colin Shedden wants to say something on the issue.

**Dr Shedden:** I possibly take a slightly more relaxed view because I come from an organisation that represents a wide range of shooting sports and disciplines, including the shooting of ducks, geese and waders. All those species are already named in the Wildlife and Countryside Act 1981. I think that there is a logic to putting all the quarry species, as it were, together. We need to recognise that things can change. For example, we have lost some quarry species in the past—the last one was the capercaillie, because of its population decline. I think that the flexibility could be useful if other species become much more abundant in Scotland and become legitimate quarry for game-shooting interests. I think that the flexibility works both ways.

**Bill Wilson:** I am just curious about one point. Would not the logic of Alex Hogg's argument be that the pheasant and the red-legged partridge should simply be considered indigenous birds and be treated in the same way as the other indigenous birds that are referred to?

**Alex Hogg:** That would probably be the route to go down. As long as we could call all of them game, as we did in the past. In that way, we could have seasons that are recognised as such.

**The Convener:** We come to our next area of questioning, which John Scott will lead.

**John Scott:** What are the panel's views on the proposals to protect hares through the establishment of a close season and the proposed offences of poaching rabbits and hares?

**Dr Shedden:** We recognise that close seasons provide a lot of welfare protection for mammal species. For instance, we are pleased that the suggestion to remove close seasons for deer has been put to one side for the time being. The introduction of close seasons for the mountain hare and the brown hare will not compromise shooting or management interests. The start date of the seasons is an issue for us. Many people on the ground want to push forward the date by one month to allow essential management. In the past, no one has shot hares or taken them in any other way during the spring and summer, when they have dependent young. The proposal would formalise what takes place at the moment. As I think Hugo Straker agrees, we are quite relaxed about the introduction of close seasons for hares.

**John Scott:** Do all the panel agree on that? What are your preferred dates for the close seasons? I understand that the seasons would be different for brown hares, mountain hares and blue hares.

**Libby Anderson:** I do not feel qualified to offer a view on the season. As Colin Shedden said, it is absolutely fundamental to protect mammals when they have dependent young. If a lactating mother



is killed, her young die a death that is not quick and easy. In principle, on animal welfare grounds, we are pleased that close seasons have been included in the bill.

**Alex Hogg:** We agree. We could manage brown hares in the month of February before they breed in March, so the close season would be from March to the end of August. The close season for mountain hares would start one month later than that. The most prolific hare counts are found on shooting estates; there are thousands of white hares on those estates. The Game Conservancy Trust undertook a count, albeit that it was difficult to do. As I said, the most prolific numbers are found on estates with managed shoots.

**John Scott:** Why is that?

**Alex Hogg:** Hares are prone to fox predation and so forth, especially the young—the leverets. Hares have a far greater chance of survival on ground that is kept and managed.

**John Scott:** We have heard that white hares are being culled systematically on estates in the eastern Highlands. That might, or might not, be a breach of the habitats directive. I think that the hares are being culled because of the ticks that they carry.

**Alex Hogg:** Lyme disease has been on the increase since 2000, when there were 30 cases. I think 675 cases were recorded last year. Lyme disease is on the up and we have brought that to the attention of Parliament. Estates are being forced into managing white hare and deer to try to keep down tick numbers. The same number of hare are taken off the estate each year; it is like a crop. It is not causing a decline in the hare population. We have to try to find an answer to the tick that causes Lyme disease. The Scottish Parliament is encouraging people to access the countryside, but some areas of the country are absolutely ridden with ticks. Hugh Dignan from the Scottish Government is in the public gallery. I went up to the Highlands with him one day to look at snares. Within 10 minutes, his legs were covered in ticks. It is a serious problem.

**John Scott:** In fairness, the evidence was on the effect of ticks on grouse chicks.

**Alex Hogg:** The hare carries the louping ill virus, which I reckon came originally with the sheep. Unless the virus can be tackled, it will not only kill 80 per cent of the grouse on an estate, it will kill 80 per cent of lapwing, curlew and other wader chicks. Anyone who has seen wee chicks covered in ticks on their heads and so forth will agree that it is an absolutely horrible sight. We need to try to find a way in which to subdue tick numbers.

14:00

**John Scott:** So, we are talking about something that is specific to mountain or white hares. You know more about this than I do, but there are two completely different types of hare. Low-ground hares are essentially brown hares.

**Alex Hogg:** Yes.

**Hugo Straker:** For clarification, the hares amplify the ticks. They carry ticks, and a tick will feed next door to another tick. The hare acts as the means of a co-feeding process, and the louping ill virus will pass from tick to tick through the hare's bloodstream.

Brown and blue hare populations are increasing throughout Scotland. Their population density is 10 times greater than that of their cousins in Europe. That is the result of the active management that has been undertaken by shooting estates through good muirburn practice and good predator management. The populations are therefore in a great state, and one could argue that there is no conservation reason for putting a close season on hares. As we have identified, management is done naturally. Good land managers and good gamekeeping naturally leave the hares alone at the time of the year when their young are dependent on them.

**The Convener:** We now move on to the part of the bill that deals with snares.

**Karen Gillon:** That part of the bill is probably one of its pinch points and the one on which we will hear the most diverse range of opinions. This morning, we were out on a hill, and we have seen first hand what a snare looks like. Many of us have seen photographs that back up the other side of the argument. Why does the Scottish Gamekeepers Association think that snaring is necessary? What would the consequences be if we introduced a ban on snaring through the bill?

**Alex Hogg:** If snaring is banned in Scotland, the Government will wreck Scotland's biodiversity for the future. We seriously need snares; they are the last tool that we have in the toolbox. Does the Government have something to replace them? We have racked our brains trying to think of something that might replace them, but we cannot come up with anything.

We have gone with snares. We have pulled out all the stops and we now have 600 keepers trained. We phoned people throughout Scotland and managed to arrange meetings. Colin Shedden and Hugo Straker have done some training days, so we have guys trained.

Snares now have stops that prevent them from choking anything. They are holding devices. If the snare is checked within 24 hours, the animal should be held. A non-target species such as a

badger can be released. We all carry cutting gear to release badgers. Most of the horrific pictures of snaring that we have seen in past years are of snares of non-professional poacher types around urban areas. We have really tidied up our house, and we are trying our best to work with the new snaring, tagging, stops and all the regulations that go with them. A snare cannot be set any more where it would get entangled in a fence, a fox could be strangled by it or it could be dragged away, and it must be held by a good anchor.

We have jumped through all the hoops. If we lose snaring, we will have no other means to control the fox population, which is on the up.

**The Convener:** What proportion of the number of gamekeepers in Scotland are the 600-odd people who have gone through the course?

**Alex Hogg:** I would bet that around 95 per cent are gamekeepers, but there are many guys out there who have wee shoots who will come on the course. Initially, we caught up many keepers because they were keen to come and get the course done.

**Karen Gillon:** So, they go on the course and put out their snares. The gap in the snares that we saw today seems to be very narrow and tight for a fox's head or neck.

**Alex Hogg:** The part of the snare that you are referring to is not for a fox's head.

**Karen Gillon:** Is it for a fox's neck?

**Alex Hogg:** No.

**Karen Gillon:** If I put my hand into the snare and pull, I can see how tight it will get.

**Alex Hogg:** The snare that you have is for deer or a dog's paw. It will help in terms of anything that you would not want to catch in it. Years ago, deer were terrible for going into snares, and they would get caught by the leg.

**Karen Gillon:** I understand that, but the snare seems to be very tight for a fox's neck. I can see how a fox struggling in it could do itself a bit of damage. The wire is quite thick, although I take it that it could also do serious damage if it were thinner. Something struggling in it would be cut into. Is the loop big enough? What would happen if a tag were put on a snare and it was found that it was not set properly? Would the person not be allowed to set snares any more, or would they simply be told not to set a snare like that again? Would it be up to the landowner?

**Alex Hogg:** Those snares are set at certain times of the year to try to protect ground-nesting birds and lambs from foxes. Nine times out of 10, the animal will go into the snare in the hours of darkness. When it enters the snare, its instinct is to lie like a dog or hide, especially in the hours of

darkness. When we check our snares first thing in the morning, which we normally do—we have a snaring round; we check the snares at daylight and onwards through to breakfast time—we will dispatch the animals that have been held in them. The snare must close to a certain tightness to be able to hold the animal. The old-fashioned snares locked, so the tighter they got, the more the animal was strangled. However, the snares that we now have are non-locking; they can slip back again. They will hold the animal in the same way as a choke lead on a dog that is pulling too hard.

As far as setting a snare illegally is concerned, if we were accused, or found guilty, of setting a snare next to a badger sett or whatever—guidelines exist—we would be charged under the Wildlife and Countryside Act 1981 and we may end up losing our jobs because we would not be able to snare any more. There are rules and regulations to make sure that we comply with the law.

**Karen Gillon:** Mr Straker, you were involved in some work in England and Wales, and you have been involved in setting the diameter of a legal snare. We are all intrigued as to how we got to this point. It would be helpful if you could talk us through some of what you have been doing.

**Hugo Straker:** Much of the research on snares that is being done in the UK is being done by the Game and Wildlife Conservation Trust biologists. A lot of the work is being done with the Department for Environment, Food and Rural Affairs, and a report will be published on or around 1 October. I urge the committee to see the results of that work before making any firm decisions.

The research that we have been doing on foxes has been extensive. I return to your point about the stop being fixed—as it now is in Scottish law—at 23cm, or 9in, from the running eye of the snare. Every one of the foxes that we have captured—it is an awful lot—has been restrained, and many have been released, strangely enough, with a radio collar attached to enable us further to understand fox behaviour. A lot of what we have been doing has been captured on camera, and a snare of 23cm has held a fox comfortably without causing it any harm. We must balance humaneness with visibility, and the 2mm diameter wire has been found to be most effective while addressing some of the humane concerns that you have. That work is on-going.

The trust is also examining other things such as relaxer locks, other swivels and break-away devices, which might be considered in order to allow badgers, which have greater pulling power than foxes, to get away. I have here an example of the type of snare that is currently being considered. The break-away is the little metal ring by which the noose is attached. At a certain pulling

pressure, that ring will open and allow any animal larger than a fox to be removed. We are always looking for opportunities for snares to be target-species specific, so that they can hold the problem animals, such as foxes, but not non-target species such as brown hares and badgers.

Our courses also alert keepers to better management practices. A lot of keepers may set snares at a standard height that, arguably, could be too low. Through our courses, we are encouraging them to set them to at least 7in off the ground in order to minimise the capture of badgers. However, keepers in this room who have caught badgers will know that, should badgers be caught, a snare such as the one that I have here will hold a badger without harming it. That is particularly true now that the law says that a keeper must not set a snare where an animal is likely to become entangled, or partially or fully suspended, or where it may drown. Good practice today, under law, says that the snares must be set out with any hard vegetation that would encourage entanglement.

The risks of harm being caused to non-target species have been greatly reduced, and the snares that we have today are great, in as much as they are restraining devices.

**Karen Gillon:** I take it that Libby Anderson and Mike Flynn have a slightly different perspective on that. In the evidence that we have received from Advocates for Animals, you mention that snares may contravene the habitats directive and you cite a case that was on-going in Spain, although I understand that the courts have found against that case. How does that affect your views on the habitats directive, on snaring and on how these things work?

**Libby Anderson:** First, that was a historical case from a few years ago. I was really questioning whether snares would come under the heading of non-selective or indiscriminate traps, as described by the habitats directive. In that case, the court accepted without question the fact that snares were in that category of traps. That is why I referred to that case.

May I comment on what Alex Hogg and Hugo Straker have said, or would you like me to say more about the habitats directive?

Reference has been made to the regulations that we now have, which are, in effect, replicated in the bill—the bill will consolidate the rather new status quo. Hugo Straker has shown you a stopped snare and a snare of cable of the diameter that I am showing you with my hands. I have made available to the committee photographs that show numerous breaches of the regulations, including an incident in which deer were snared and an incident in which a badger

was virtually sliced in two around the abdomen through being caught by a stopped snare that used that type of cable. Later, the snare had moved up so that the badger was caught under its front legs. Again, there was a very deep wound in the animal, which had to be put down.

I fully recognise the efforts of what we might call—I do not want to be rude—the acceptable face of the snaring industry, but the regulations, well intentioned as they are, are simply not going to be effective, because as long as snares can be set, people will take a chance that they can set them and leave or neglect them, set them inappropriately, or set them in the wrong areas. Those chances will be taken because those acts are so unlikely to be detected. The cost in animal suffering is so high that I would like the committee to consider what is acceptable and what we should legislate for. On the one hand, we hear that there might be the relatively mild impacts that Hugo Straker described and which Alex Hogg mentioned in relation to best practice, but at the other end of the spectrum—this starts not too far down the scale, in my opinion—the suffering of animals is appalling. Does the committee want to legislate to allow that to continue?

**Karen Gillon:** We heard evidence this morning that when the moor was left unmanaged, with no snaring and no shooting, the foxes had a catastrophic impact on other species. The other side of the argument is that, if we want to protect other animals, we might need to snare foxes.

**Libby Anderson:** I am not here to argue against control of predators, although we might have that discussion on another day. However, snaring is only one part of fox control. Only about 25 per cent of foxes are killed using snares. Snaring has a role in that management, but nobody has shown the evidence that it is absolutely indispensable to the conservation of biodiversity or indispensable in terms of the economics of the shooting industry. That is often said, but it has never been evaluated and quantified.

**John Scott:** The 25 per cent of foxes that are killed using snares could probably not be killed in any other way—at least, not at the moment. What do you propose as the best way of controlling those foxes?

**Libby Anderson:** As I said, the majority of foxes are shot. You were up on Langholm moor today, and I know that the keeper there shoots foxes at earth as well as snaring. I do not know what the proportions are of those activities, but there are alternative methods if fox control is necessary.

**John Scott:** Such as?

**Libby Anderson:** Such as lamping, shooting and habitat management. Around pheasant pens, more people are using electric fencing, for example. I am not saying that those things will be the perfect solution to the problems of fox predation, which is natural—the prey is there for the animals and foxes are part of our environment. The question is how acceptable it is to use a potentially extreme means that can inflict so much suffering in order to protect economic interests and biodiversity—and not to protect 100 per cent, but just the amount that would be at risk if the particular tool of snaring was withdrawn.

**Karen Gillon:** Let me take us away from the shooting fraternity. Say that I am an upland hill farmer, I am lambing on the hills and I have a fox problem. If I do not set snares, I am going to lose my lambs.

14:15

**Libby Anderson:** You could shoot the fox if you needed to.

**Karen Gillon:** The reality is that I might not hit the fox. I might be out all night and miss it because it is in heavy bracken and I cannot see it. It might still get my lambs. That farmer needs his income, because his family relies on it. If I stop snaring, am I in danger of impeding his income stream, thereby making his family life more difficult? Is there a human consideration as well as an animal consideration?

**Libby Anderson:** I would never argue against human considerations. Clearly a single incident is never a good reason for making policy, but it is perfectly valid to consider that example.

The advice from Science and Advice for Scottish Agriculture is that snares are used relatively little on farms. I know that NFU Scotland is giving evidence later, so perhaps it could give you hard figures as to the extent of snare usage on farms. The SASA paper that I read recently suggested that it is not that significant.

**Elaine Murray (Dumfries) (Lab):** I want to follow up on the alternatives to snares. We have had evidence that in other countries snares are not used at all, but we have also been told that in some of those countries other forms of predator control, such as poisoning or gassing, are used, which we would not find acceptable in this country.

You visited the Langholm moor project this morning, which uses lamping as well. If lamping could deal with all the foxes, surely people would just rely on lamping. If they set snares, they have to go out and check them in the morning—there is a lot of work in setting snares. If the foxes could be adequately controlled through shooting, should they not all be controlled by shooting?

**Libby Anderson:** I am sure that that is the case. I know that Colin Shedden is desperate to comment, as he is the authority on shooting. There will be times of the year, such as when the vegetation is high, when it is not so suitable to shoot foxes. I perfectly understand that. How much loss would there be if snaring was not available at that time and is that loss bearable in economic or convenience terms when you consider the downside of snaring? What we are trying to demonstrate is that the downside is very severe.

**Elaine Murray:** There have, however, been developments in snares. I was a bit worried by the snare that Karen Gillon was showing us earlier. I would be worried not just about a fox's neck—a fox is quite a small animal—but about the fact that badgers are occasionally caught in such snares. It is very likely that that sort of circumference around a badger's neck would cause it considerable suffering. However, it looks as if attempts are being made to develop snares that a badger would be able to get out of. Is it possible that this method of restraint can be refined to such an extent that it would overcome the animal suffering that you have been describing?

**Libby Anderson:** What we have so far—the legislation on stops, the legislation on inspection and the legislation on drag poles, which I have seen being ignored—has not stopped animals being strangled, eviscerated and left to die, because the inspection regulations are not being observed. We have regulations—a genuine attempt by the Government and the industry to address bad practice—but they are not working.

**Alex Hogg:** I disagree with that. The few pictures that you have shown us, Libby, have definitely not come from shooting estates; it is the poaching element that is setting some of these snares.

**Libby Anderson:** The pictures have come from shooting estates, Alex.

**Alex Hogg:** I disagree.

**Dr Shedden:** I want to pick up on a couple of points that have been made in the last 10 minutes or so. Alex Hogg mentioned the importance of biodiversity. Let us not forget that the main reason for using snares is the economic reason to which Karen Gillon referred. The economics are incredibly important for the shooting world. Work that we did in 2006 showed that shooting is worth £240 million to the Scottish economy and employs the equivalent of 11,000 people. We are talking about important social and economic drivers.

Libby Anderson said that 25 per cent of the foxes that are controlled in Scotland are snared. We have some information that suggests that the rate is as high as 40 per cent. In some locations

and circumstances, practically all fox control is done through snaring. From a farming and shooting point of view, snares are important at many times of the year and in many different locations.

Alex Hogg said that 600 participants have been through training courses. The response so far has been good, given that the courses started only in March this year. Government estimates and our estimates are that between 3,000 and 5,000 gamekeepers, farmers and others use snares in the Scottish countryside. We have made a start, but the target is to train between 3,000 and 5,000 people to use snares legally and as humanely as possible.

**Bill Wilson:** Was a welfare organisation such as the SSPCA involved in the design of the training course? If not, would there be any advantage in including such an organisation? Perhaps Mike Flynn will respond to that.

Karen Gillon talked about enforcement. Does Alex Hogg see any advantage in making the licence to snare conditional on attending the course? Should there be provision for the removal of a licence if a person does not meet the course requirements when they are snaring?

**Mike Flynn:** The SSPCA's only input to the industry in that regard was at a meeting with Colin Shedden, Hugo Straker and the Scottish Government, at which I said that if the provisions in the bill are enacted, the code will enable people to comply with the law. That does not mean that we endorse what is happening. The SSPCA is firmly against snaring.

Many arguments have been going about this morning. I think that a main reason why snares are still used is that they are a cheap and labour-efficient way of catching predators. As Karen Gillon said, she could be up all night and still not shoot a fox. Shooting foxes is labour intensive. However, someone can lay 500 snares—I would argue that so many snares cannot be checked properly—and catch a fox, without having to stay up all night to do it. In the meantime, an animal can suffer.

There is a lot of bad practice, as Alex Hogg pointed out. He mentioned that people who have a part-time shoot do pest control. I have debated the issue with Alex for years. No one who is in part-time employment should be snaring, because they are not checking their snares properly.

Alex Hogg probably knows about the most recent horrible case that we had—I did not circulate the pictures to the committee. Three weeks ago, outside Aviemore, a snare that had been set by a very reputable SGA member on a very reputable estate caught a dog, which was owned by the next-door neighbour. The injuries

were horrific. The dog had not been in the snare for more than 12 hours, because it had last been seen 12 hours before it was found. The guy took our inspector to the snare and said, "You show me that I've set that wrong." The snare was totally in accordance with the Snares (Scotland) Order 2010; there was nothing that the dog could have got tangled in. Karen Gillon talked about the stop being fixed at 9in. As Alex Hogg rightly said, that is about preventing a deer's leg from being caught. However, if an animal gets caught by the torso, or if a badger gets caught round its neck, the animal will be injured.

The gamekeeping fraternity has done well to try to improve its practice and I know that Alex Hogg and good old Bert Burnett have spoken out publicly about people who misuse snares. However, bad practice still goes on. I am adamant that no one should be snaring on a part-time basis.

On Bill Wilson's question, we discussed the code with the Game and Wildlife Conservation Trust and the BASC.

**Alex Hogg:** Bill Wilson asked whether people should lose their licence to snare. I think that that would be covered by the law. If a snare has been set wrongly or not checked, the gamekeeper will likely be charged. If someone is charged under the Wildlife and Countryside Act 1981, they might not be able to work under general licence, for example, so there are currently things in place.

With regard to the dog that was running about and was caught in a snare, it must be brought to everyone's attention that it is bad practice to allow your pet to roam the countryside. Dogs must be kept under reasonable control. I would worry to death if one of my dogs disappeared for 10 minutes at home. That is bad practice, and it is not the dog's fault—it is the fault of the people who look after the dog. The poor dog in question was caught in a snare, but the main thing is that it was still alive, because the keeper checked his snare every 24 hours. We hear stories about dogs being caught in snares, and the reason for that, quite often, is that the owner has not looked after the dog when they have been out walking in the countryside or it has run away from home.

**Mike Flynn:** I would like to respond to that. I used the dog example to show that snares are totally indiscriminate. Badgers are a prime example, along with deer and dogs. Bad practice on the outskirts of cities means that cats are getting caught quite a lot, too.

Our inspectors do not go out looking for snares—we do not have that role. Every time we attend a snaring incident, we do so because a member of the public has reported it to us. It has already come up in discussion that the biggest

problem with any wildlife crime—I am not saying that snaring is a crime—is that it happens in a remote area, and enforcement is pitifully low. The police just do not have the resources to deal with any such incidents. I think that the committee will address that at a future meeting.

**Elaine Murray:** My question follows on from the points that have been made. As has been said, the sanctions appear to be insufficient to deter other people from setting snares, so they think that it is worth taking the risk. Do you have any suggestions about how, if snaring continues to be used as a restraining device, the sanctions can be increased and the enforcement improved so that it is no longer worth while setting a snare unless you have to? What happens if someone does not bother to go to the training and continues to set snares? Is there sufficient likelihood that they will be caught because they have not done their training and be punished as a result?

14:30

**Alex Hogg:** Peer pressure has already brought snaring to everyone's attention, and everyone has a far tidier house.

**Elaine Murray:** I am not necessarily talking about the gamekeepers, who want to stick by the rules, but about the bad guys, who might think, "Snaring is still allowed, so I can set a snare and no one will catch me. I'll be all right."

**Alex Hogg:** How do you legislate for the bad guys? It is similar to what happened when pistols were banned. The bad guys were always going to use them, no matter what laws were introduced. They are the guys who will set illegal snares. We have just got to try and catch them and get them to the police somehow or other. It is extremely difficult.

**The Convener:** With all snares being tagged and identified, it should be possible to root out the really bad guys in the gamekeeping fraternity and establish how many snares are set illegally by poachers or the criminals we talked about earlier.

**Alex Hogg:** That will help, as long as the criminals do not steal some of our snares and go and set them somewhere else.

**Aileen Campbell (South of Scotland) (SNP):** I am interested in finding out your thoughts on whether, when a gamekeeper is prosecuted for setting a snare wrongly or badly, the right person is prosecuted. Given that tied houses are often associated with gamekeeping posts, are some gamekeepers suffering from being directed by a more senior gamekeeper or a landowner about how they should set snares or being told to be a bit more relaxed about how they set them? Is the person who sets a snare badly always the person

who is culpable and the one who should be prosecuted? If they are not, that bad practice could continue, regardless of whether that person is prosecuted.

**Alex Hogg:** I believe that the person who sets the snare is the one who is culpable. If it is a young person, they should be trained properly; if it is an older person, they should know, through peer pressure and the courses and so on, what is right and what is wrong.

An old farmer across the road boasted to me last week that he had caught a fox in a snare hanging on a fence. I said, "You can't do that any more." That will take time to work its way down through the system. It will take time for everyone to catch up and get an explanation of exactly what is needed.

**Bill Wilson:** Is that not almost an argument for saying that a person has to be licensed to set snares and must attend the course to get the licence?

**Alex Hogg:** Maybe attending a course would be a good thing.

**The Convener:** I ask Bill Wilson to direct his questions through the chair, as I have a queue of members waiting.

**Bill Wilson:** Sorry.

**Peter Peacock (Highlands and Islands) (Lab):** I want to pursue the point about enforcement. I guess that Alex Hogg is right that it will always be difficult to catch the illegal snare setter. We have heard that about 3,500 people are potentially licensable, if that is the right expression, and so have to check their snares every 24 hours.

**Dr Shedden:** Potentially, yes.

**Peter Peacock:** However, I just do not know whether that is happening, and nor do the police or, I guess, the estate owners. There is a high degree of trust. As we have heard, there is potential suffering, notwithstanding the measures that have been taken to improve snares. Given that, are there things that we can do to better enforce the system? That has already been asked, but we did not really get an answer.

How do we know whether a gamekeeper has checked a snare? This is just one idea, and I am not pushing it, but I rather suspect that every gamekeeper has a mobile phone and it probably has a digital camera in it. If someone checks a snare every day, would it be possible for them to snap a photograph of it and keep a record, with the number on the snare, so that if anybody wanted to check—from the police or another enforcement agency, such as Scottish Natural Heritage—they could ask to see the records? That is one example. Are there other things that we

could do to make the system more policeable and the enforcement more trusted?

**Libby Anderson:** I will be as brief as possible. The original consultation on the bill mentioned a requirement for record keeping and for records to be produced to police officers, for example, on request. However, that is not in the bill. If the committee is not minded to do as I would prefer—which is to amend the bill to ban snares—it might want to consider reinstating that requirement on record keeping.

I want to return to Elaine Murray's question about sanctions and enforcement. The bill provides that every snare must have an identity tag on it. The ID tag will be issued by the chief constable if he is satisfied that the person has been trained to a satisfactory level to set snares. My problem with that is that the training is already being delivered—pre-emptively, we might say—by the industry and, as far as I can discover, it has no independent animal welfare content. The Game and Wildlife Conservation Trust website talks about the courses that the trust delivers, which cover humane dispatch, the use of stops and the appropriate setting and siting that Hugo Straker referred to. That is all about legislation; it is not about animal welfare. We would like independent veterinary advice to be included, explaining to people who set snares what the adverse welfare impacts are on the animals that are trapped—the stress, hunger, thirst, fear and pain and potential pressure necrosis and after effects. All that was identified by the independent working group on snares. If there is to be training, that should be part of the content, at the minimum.

**Dr Shedden:** I want to return to the question on records. Although the legislation does not demand that records of snaring or trapping activity be maintained, the guidance that we have produced clearly states that it is very good practice to keep such records. That will be equally important if we get to the stage at which tags are attached to snares. If someone checks their snare line of 20 fox snares in a morning and finds that one has been interfered with, tampered with or removed, they should make a record stating, "On Tuesday morning, I lost one of my snares." We strongly advocate that people keep records of—

**Peter Peacock:** May I interrupt? Given that position, would you be happy for the bill to state that records should be kept, to reassure people who might be suspicious that the system is not well policed or well conducted that, actually, it is?

**Dr Shedden:** I cannot speak for other organisations, but I can see no downside to having that as a requirement.

**Karen Gillon:** Similarly, on the point that Libby Anderson made, is there anything to preclude the

training courses including an element of training on animal welfare and the issues that have been raised?

**Dr Shedden:** I will pass the question to Hugo Straker, because the course that we are running in Scotland is based on the regional GWCT course, which had some proviso on animal welfare.

**Hugo Straker:** The issue has always been a concern of Mike Flynn's—the SSPCA has an open invitation to attend a course at any time and we hope that it will take that up. The GWCT operates under a Home Office licence that allows us to conduct much of our research. Much that is in the course came from work by the Game Conservancy Trust, as we were known then, on fox snare research under a Home Office licence. That has satisfied a number of the concerns that members raise.

I take Libby Anderson's point about veterinary concerns, but the Veterinary Association for Wildlife Management endorses the course, which takes place on the back of supporting organisations. I repeat that we would welcome the attendance at our courses of any organisation of such standing to approve—if you like—what we do.

We are confident that welfare issues—issues of cruelty and suffering—are threaded through the course that we deliver. The SSPCA's stance on snaring is clear but, when we met Mike Flynn before we rolled out the courses in March, he was initially satisfied from the course paperwork that the welfare issues would be addressed.

**Mike Flynn:** At that meeting, I was satisfied that, if the course reflected the GWCT's document, people would comply with the law. I can never support snaring, but I asked for an invitation from all the organisations involved to attend the training. I have recently received an invitation from the British Association for Shooting and Conservation Scotland and I will definitely attend its training.

I return to Mr Peacock's point about keeping records. We are strongly in favour of that, for a few reasons. Such a measure should be in the bill. One reason for that is to protect gamekeepers. If one of their snares is missing and somebody has put it somewhere illegally, they will have records. However, the main reason is that records should be available to an estate's owner or factor.

Two or three years ago, our inspector found a line of just under 300 snares on an estate. The estate claimed that they were placed by the gamekeeper who had left three months before and that it did not know where they were. Those snares represented 300 potential animal injuries waiting to happen, and a couple of dead animals were found. I totally believed the estate—the

gamekeeper had been fired, had left and had told nobody about his snares. Keeping records would prevent such problems and preclude vicarious liability for an estate or any allegations from being made. The task is not overonerous.

**Liam McArthur (Orkney) (LD):** We have talked about the identifiable tags process. It has been suggested that Olympic numbers of snares are deployed on some estates. This morning, the feedback was that gamekeepers set the number of snares that they know they can check and which complies with the law. Is there an argument for saying in the bill that, in granting tagged snares, a chief constable should take into account whether any estates or any people who set snares have the capacity to check every snare for which they have a tag?

**Dr Shedden:** I have one small point: the chief constable will issue not tags but a number that will be transferred to tags. We are considering manufacturing techniques for tags.

I am sure that Alex Hogg and Hugo Straker would agree that gamekeepers do not set a number of snares that they cannot effectively check and manage once every 24 hours—that is usually done in the early morning. As the day length changes and mornings become shorter, the number of snares that can be set is seriously reduced.

**Liam McArthur:** Do checks and balances exist? Could something be done through the process of giving each snare a numbered tag to ensure that an estate did not put in for 5,000 snare tags with no evidence that it could check them manually?

**Dr Shedden:** An estate might require to go for a big bulk of tags that could be attached to snares by several keepers over several years, so restricting the number of tags that could be obtained would not help. In practice, responsible gamekeepers do not set the 300 to 500 snares to which Mike Flynn referred. I like to think that that would not happen under the training and endorsement that we are talking about.

**Alex Hogg:** We can only really set a number of snares that we are physically capable of checking. As far as having a set amount is concerned, as Colin Shedden said, it depends on the hours of daylight and what the job is at that time. Someone might be fully committed to working just on snare lines.

**Liam McArthur:** I understand the theory, but I wonder whether there is a check in the process to address the argument that it is too easy to set as many as you might need, but, with the best will in the world, you might not be able to get round them within 24 hours. The period could become 48 hours or 72 hours.

**Alex Hogg:** If a gamekeeper could lose his job and his house, there is every chance that he will check the snares every 24 hours. The rules are very strict.

**The Convener:** I will give Mike Flynn the last word on this because we must move on. I am conscious that Alex Hogg will be in front of the committee again.

**Alex Hogg:** No problem.

**Mike Flynn:** It is a good point. There should be a limit on what we do. Not every estate limits the numbers, and we have found plenty of cases where the snares have obviously not been checked within 24 hours.

To me, a lot of that is about the changes in land practice. Alex Hogg is probably dealing with exactly the same amount of pests as he did 10 years ago when he had twice the number of employees on the estate. A man from an estate in Caithness gave evidence to Parliament that he does the same amount of work and controls the same number of species as 10 keepers were doing a decade before. One of the big answers is to put bodies back on the ground in the countryside.

**Alex Hogg:** It is happening to an extent. The owners have said that they will check only a certain number of snares, and they need a certain amount of manpower for that, so they need to raise it.

**Mike Flynn:** You must also remember that people can and do get ill. If there is a single keeper on the estate and he is ill, and the records are not kept, no one will check those snares.

14:45

**The Convener:** We move on to non-native species. Elaine Murray will kick off with a question on that.

**Elaine Murray:** The issue is probably slightly less contentious than snaring, but the bill proposes certain amendments to the Wildlife and Countryside Act 1981 to deal with invasive non-native species, which can cause environmental and economic problems. The proposals in the bill suggest that a number of organisations—Scottish ministers, Scottish Natural Heritage, the Scottish Environment Protection Agency and the Forestry Commission Scotland—would all be able to issue species control licences. What are your views on the proposed powers for those bodies? Would it be better if one single organisation were responsible for issuing such orders?

**Dr Shedden:** We are pretty relaxed about the proposed licensing system. We recognise that in Scotland, and around the world, non-native



invasives can and do cause a massive amount of damage, and the sooner that such situations are nipped in the bud, the better. There are a number of developing situations in Scotland, and it would usually fall to one of those agencies to deal with them. As I said, we are pretty relaxed because we recognise the extent of the damage that can be caused by non-native invasives.

**Alex Hogg:** I agree with Colin Shedden.

**Mike Flynn:** There are a lot of sensible proposals in the bill. I like the proposal that a list will be made, and that people will have to register if they are keeping a non-native animal. If muntjac deer get up here, that will cause a real problem. We welcome the vast majority of the proposals on non-natives.

**Elaine Murray:** Earlier, Alex Hogg touched on the exceptions in the bill to allow the release of partridges and pheasants, describing the concerns around and the different ways of dealing with those species. If those exceptions remain in the bill, should there be additional ones? It was suggested that species such as rainbow trout are released outside their native range, and there are other species such as edible dormice, which are now naturalised in the United Kingdom. Should anything else be on the list of exceptions?

**Dr Shedden:** I take the point about rainbow trout, because I wondered where they fell within the proposed legislation. We accept the significance of red-legged partridge and pheasant. They are certainly not invasive. They may, in some people's books, be non-native, but they are naturalised—they have been here for a very long time—and, with the exception of one or two circumstances that I am aware of, the release of pheasants and red-legged partridges has not caused any massive problems. Most people accept that the biodiversity benefits from habitat management of 4.4 million hectares in Scotland vastly outweigh any small, localised impact that they have had. The guidance from the GWCT, which is endorsed in the code of good shooting practice, makes it clear that these birds should not be released in densities that the habitat cannot sustain.

**Elaine Murray:** Advocates for Animals has suggested that the species control orders should contain safeguards for the animal welfare of the species that are being controlled. What would you like to see in that respect?

**Libby Anderson:** By and large, we have no problem with the provisions on not releasing, or not keeping, non-native species, which are sensible.

Rather like Colin Shedden, I am fairly relaxed about who imposes species control orders; the issue is when they are imposed, on what species

and what definitions bring a species within that sphere. When it comes to a control order for an animal that is deemed to have an adverse affect on social or economic interests, I would like to have a great deal more clarity about what that implies.

Finally, in all control programmes, animal welfare tends to be a bit of a poor relation. We have come across that with regard to grey squirrels in particular. Grey squirrels have been here quite long enough to be considered native in any case, but, given that there is such a strong lobby for their control, it is essential that, for them and for other species, the measures should be subject to some welfare assessment. For example, we referred earlier to seasonality. If mammals have young and the young are dependent on them, consideration must be given to whether it is acceptable to kill the mothers at that time. Many other aspects of animal welfare could be included in a formal assessment. That could be provided for in the bill and included in any control order. That would be a very helpful improvement, which would enhance protection of animal welfare.

**Elaine Murray:** You are in red squirrel country down here. We are not quite so keen to see their grey cousins coming over here, but I accept that there are some horror stories about grey squirrels being put in sacks and thumped over the head and that sort of thing. There may be a need for definitions of what methods of control are appropriate for the species.

**Libby Anderson:** SNH commissioned research into acceptable methods of lethal control of grey squirrels. By and large, I think that it thought that striking them over the head was the preferable one—I am not sure that we would agree—but the time of year was not really looked at. There is tremendous public aversion to the use of other methods such as warfarin or drowning. That needs to be considered. We are obviously also in favour of red squirrels.

**The Convener:** Okay, as we have exhausted that subject, we move on to species licensing.

**Peter Peacock:** I hope to deal with the issue fairly quickly, convener. Both the Gamekeepers Association and Hugo Straker's organisation have put the argument to the Government that there should be a more relaxed approach to giving licences to kill what would otherwise be protected species when they are predating on young pheasants, partridge or whatever. What do you think about the bill's proposals in relation to what you have been arguing?

**Hugo Straker:** Are we talking about the species licence, which you have just brought up?

**Peter Peacock:** For buzzards or whatever.

**Hugo Straker:** Buzzards or ravens. Certainly, the populations of those species are a matter of considerable conservation concern to a number of the species that we are talking about. There are red squirrel down here, and farmers have concerns about their lambs. Red grouse managers have their stocks of birds to consider. There are black grouse and grey partridges, which are biodiversity action plan species. Potentially, they will all be impacted.

Species such as the raven and buzzard are of good, healthy conservation status, and we support a licensing procedure. Following the considerable amount of work that the GWCT and the SGA have done on how individual applications might be assessed and processed, our organisation recognises the conservation status of some species and their impact on many other species.

**Peter Peacock:** Forgive me, but I had the impression that part of the argument was about protecting released and hand-reared birds, such as pheasant, partridge and grouse.

**Hugo Straker:** Indeed. Alex Hogg is well known for his comments on this subject. He is a practising gamekeeper on an estate. Alex can speak for himself, but many other estates similar to the one that he works on rely on the release of their partridges and pheasants to provide an important income stream and employment stream in their areas.

**Alex Hogg:** The law states that we should have a licence to protect livestock should serious damage be occurring. It has to be livestock—and we decided that a pheasant poult was livestock if it was in the pen or in close proximity to the pen.

When it came to triggering the licence, however, we could not decide what “serious damage” meant. We are still talking. In my experience, when we have tried every deterrent in the book to scare off buzzards—hanging up bags, putting wires across rides, spinning compact discs, playing radios and anything else that we might think of—they become, to use the only analogy that I can think of, like seagulls at a resort: they have no fear of people whatever. When we drive up to the pen, the buzzards will arrive on the scene. When we try to feed the pheasants, the buzzards will sit there and, with the patience of a saint, they will drop down and kill a poult after waiting for an hour or so.

I only have a problem with young rogue buzzards. If I could deal with those specific ones, the problem would stop, I am quite sure. A lot of money would be lost to the rural economy if every shoot in Scotland ended up losing poults. A pheasant poult is worth the same as a lamb—it is worth about £35 when it is shot, and that is a huge amount of income for the rural economy. All that

we are asking for is something to deal with specific rogue birds. We do not feel that a huge number would be involved, but we would need to find a way to balance the situation.

**Peter Peacock:** Is that situation limited to buzzards? I have heard about goshawks falling into the same category. There was a situation in the past couple of years—I regretted it personally but, nonetheless, it was done—where sparrowhawks were being caught and relocated in order to protect racing pigeons. What worries me about suggestions of that sort—it will worry a lot of people—is that they could be the beginning of a slippery slope. Is it not frankly ridiculous to take out—to kill—species that are protected under European law in order to protect unprotected, hand-reared species? Where do you draw the line? How do you stop that move continuing? More and more arguments are being made to take out protected species.

**Alex Hogg:** Take buzzards and ravens. Their numbers have increased by 500 per cent. We now have a local buzzard in Peebles, and it is attacking walkers. You have to stop protecting species and start managing them. If we do not manage the species we will end up with one protected species eating another protected species. At some point, we have to decide which one needs more protection.

**Peter Peacock:** But, with respect, you are arguing for protected species to lose their protection in order to protect unprotected species that are abundant.

**Alex Hogg:** No, those unprotected species are livestock—they are like lambs to us. Our pheasant poults are termed as livestock so we should have the right to protect them. If we do not have the right, we will end up with no money coming into the rural economy as shoots will shut down because of the sheer pressure of predation from buzzards.

**Peter Peacock:** Is it not a circular argument? The more hand-reared pheasants and other species you rear and release, the more buzzards there will be, because that is a natural part of the cycle. How would you ever control the situation? That is my real worry. What are the criteria? You are arguing for a relaxation of the protections, but what criteria should be introduced so that we do not have just a wholly relaxed situation in which we take out more and more protected species? The birds are behaving naturally—they are not trained to take poults—and they are protected in European law because they have required that protection. They would not exist in numbers if they had not had that protection—we know that from all the history.

**Alex Hogg:** You used the phrase “behaving naturally”. Thirty years ago, buzzards behaved the opposite of how they do now—they have learned to predate the pheasant poults. They change as things change.

Buzzard numbers are at an all-time high, and we have to introduce some form of management. It would have to be licensed and relate to when serious damage occurred. There would have to be a loss that was registered, after which someone could phone up for help. I am the first to say that I do not want to shoot the buzzard. I would be happy if somebody came from Government, caught it in a trap and released it somewhere else. However, we need some form of management to control ravens and buzzards, because their numbers have climbed to an all-time high.

**Dr Shedden:** A lot of what has been discussed is contained in the Wildlife and Countryside Act 1981, which provides for licences for the protection of livestock and wild birds. A number of people have suggested—I generally support this—the provision of licences to control birds such as buzzards to protect the economic or sporting resource. At the moment, someone can apply for a licence to protect grouse if the grouse are at a low population level and their conservation status is compromised, but they would not be able to get a licence to protect them as a valuable natural asset or sporting resource. That is one legislative area that could be considered under the bill—an expansion of the licensing provisions to protect, in this case, grouse moors.

**Peter Peacock:** As well as advocating that, do you have arguments on how to introduce sufficient safeguards to ensure that the regime does not become too liberalised? We could end up changing or relaxing the economic impact criteria so that we kill more and more protected species in order to protect what could be argued are narrow economic interests.

**Dr Shedden:** I agree. The protocols that are in place for existing licences, and I hope for any future licences, include the condition that SNH would seriously consider the conservation status of the species of bird to be controlled. It has done that with respect to raven licences that have been issued in recent years, and it would certainly do that with respect to any licence for other predatory birds. I feel that a safeguard is in place, in that SNH would be obliged to consider the conservation status.

**The Convener:** Okay. We will move on to deer with John Scott.

**John Scott:** I want briefly to pick your brains on deer. We are expecting a panel to discuss the whole deer issue in a few weeks, but since we have you here today I will ask whether you would

like to contribute anything to the debate. I know that there has been a lot of discussion and that many amendments to the initial proposals have been brought forward in the bill. Is there anything in particular that you would like to say?

15:00

**Dr Shedden:** No, because the issues that caused us concern one or two years ago have been adequately addressed by the good consultation that we have had with officials in preparing the bill. The main contentious issues for us have been resolved. The Scottish Gamekeepers Association was concerned about the removal of close seasons and the introduction of mandatory testing of all deer managers in Scotland. Those issues have been resolved to our general satisfaction at this stage.

**John Scott:** Good.

**Alex Hogg:** I agree with Colin Shedden.

**John Scott:** So, by and large, all of you are happy with the proposals in the bill.

**The Convener:** We move on to protection of badgers.

**Peter Peacock:** The principle was covered in my previous series of questions.

**The Convener:** We move on to muirburn.

**Liam McArthur:** This time last year, we discussed the muirburn provisions of the Climate Change (Scotland) Bill. At that stage, there appeared to be a great deal of controversy among the various interested parties. It appears that in the intervening months, while the bill became an act, a considerable amount of work was done to bring the parties together. However, the Game and Wildlife Conservation Trust appears to be concerned about the reduction of the muirburn season from the middle of May back to April. Its evidence suggests that that could be damaging. Would Hugo Straker like to comment further on the issue? In our discussions this morning, there appeared to be agreement that licensing people to burn outwith the season might be the best way of addressing on-going concerns and bringing us more into line with the situation south of the border.

**Hugo Straker:** The GWCT questioned whether there was evidence that stopping burning in May would reduce impacts on nesting birds. That said, we had a good discussion this morning about Langholm moor. Collectively, we felt that reducing heather burning to a close season on 30 April would be generally acceptable. However, we also discussed giving people the opportunity to access licensing for out-of-season burning—during the early part of the season, for example, in

September—so that other moorland management issues can be addressed. One of the interesting issues that we discussed this morning was using out-of-season burning as a mechanism for the control of heather beetle.

**Liam McArthur:** South of the border, out-of-season licences have not been requested to the point that, *de facto*, the season is extended because they are used so widely. The experience is that use of such licences is targeted, for targeted benefits, whatever those may be.

**Hugo Straker:** The situation south of the border is different; in Scotland, we are faced with climatic and topographical differences. However, all of us would be happy with what was discussed this morning. The key measure that we seek is the opportunity to secure and get quick decisions on out-of-season burning licences, especially at the beginning of the burning season, prior to 1 October.

**Liam McArthur:** I know that areas north and south of the border differ in climate and topography. However, is the speed with which out-of-season burning licences are granted south of the border seen as generally effective? Is there a timeframe towards which we should work?

**Hugo Straker:** Forgive me, but I cannot comment on the issue, as I have not been directly involved with it. However, I can provide the committee with the information that you seek.

**Dr Shedden:** Generally speaking, we are happy that there is an overall relaxation from the tight season that was imposed on us before. There is the flexibility that we will need for the changing landscape of Scotland.

**John Scott:** From the evidence that we have heard this morning, it seems that the relaxation in the granting of special licences is very much welcomed where efforts are being made, as at Langholm moor, to restore former grouse moors. Taking on board what was said this morning, it seems that that tool is required to enable out-of-season burning to restore grouse moors.

**Alex Hogg:** In Scotland, we have a small weather window for burning. If we could get those licences—they would have to be licences for the next day in September—that would be a great asset.

**The Convener:** There is an issue about the time that it takes from application to approval. We will take that forward.

**Peter Peacock:** I have several questions. Before I begin, I should make it clear that I am a member of RSPB Scotland and the Scottish Ornithologists Club.

Bird poisoning has become a serious and worrying issue. On the face of it, the poisoning of some of our raptors is on the increase. We have recently had some awful cases of golden eagles being poisoned, and we know about the poisoning of peregrine falcons, red kite and other species. The issue resonates with the public in a way that very few other issues do. Despite all the efforts that have been made and the potentially tough regime and penalties, bird poisoning seems to be on the increase. Some have argued to me that there is a relationship between poisoning and the new ways in which some grouse moors are now being managed. What we saw this morning at Langholm moor is very impressive in many ways, but I suspect that it is atypical of what is happening everywhere else. What can be done about the increase in bird poisoning, and is there a relationship between new ways of managing grouse moors—but not the Langholm experience—and the increase in the incidence of poisoning?

**Dr Shedden:** We have one thing at least in common, as I, too, am a member of the SOC. I declare that as an interest.

There have been arguments about whether the number of recorded cases of poisoning of birds of prey is stable or on the increase. That is academic, as cases are still coming to light annually and, in our view, one case is one too many. There are a large number of grouse moors in Scotland that manage their grouse in association with populations of birds of prey successfully—certainly this year, as they are enjoying a very good grouse season. There is no clear indication that it is necessary to use illegal methods of raptor control to maintain good grouse populations, but evidence is coming forward that, in some areas, there is a trend towards a no-tolerance policy with respect to birds of prey. That is to be regretted, and it is something on which I have been working as a member of the Tayside partnership against wildlife crime. I know that others, in other areas, are working hard to stamp out poisoning. The shooting community has no tolerance of bird poisoning.

**Mike Flynn:** The recorded incidence of bird poisoning is certainly on the rise. I do not know whether that is because more people are aware of it and are reporting it or whether it is because SASA is doing a better job. However, the bottom line with wildlife crime is that it happens in very remote and rural places. The recorded crimes are only those that we know about—God knows how many we do not know about—and we just cannot catch the people who commit them. Unless they are witnessed by two people with a substance in their hand, putting it down and leaving a baited carcase, you are on a hiding to nothing. You can take the poison to SASA and prove that it has

been left illegally, but it is really dangerous not just to the wildlife but to the public. Some of the poisons that are being used can kill a person. I am sorry to harp on about it, but we must do something about enforcement in Scotland.

**Alex Hogg:** We have worked hard to reduce wildlife crime, and anybody who is caught poisoning any birds of prey will be thrown out of the SGA. Nevertheless, I point out that the numbers of birds of prey in Scotland are at a fantastic high. We have 440 pairs of golden eagles and more than 700 pairs of harriers, whereas there is nothing in England at all. Our raptor population has not stopped rising since the 1960s. The incidence of bird poisoning rose last year, but I am sure that, through peer pressure over the next couple of years, it will go down to nearly zero, although we will not get rid of poisoning. It is like rape and murder—it will always be there. We will try our hardest to drive it out of the country. However, we also need some means of managing the raptor population, the raven population or whatever population we are trying to balance with our work in the countryside.

**Peter Peacock:** You are not seriously suggesting that we should start to license the killing of golden eagles, are you?

**Alex Hogg:** No.

**Peter Peacock:** I am glad that you clarified that—

**Alex Hogg:** Only raptors, to a population level that SNH would be happy with—a level that could be controlled in a small number.

**Peter Peacock:** I guess my worry is that, despite the tough penalties that are potentially available, we are seeing a rise in the number of poisonings of some of our top-level species—species that are, frankly, still very rare in many parts of Scotland. It has been argued that we should ratchet up the penalties a bit further, to create further incentives on landowners in relation to the staff they are employing, or indeed the agents they are employing, who may in turn be employing staff—that in itself might be an issue. I think that Colin Shedden's group has been doing some work on this, so he may wish to comment. The notion of vicarious liability has been raised. It has a certain appeal to it, in that it involves pinning responsibility directly on someone in the hope that the message runs right down throughout the management system that under no circumstances is any bird to be poisoned. Dr Shedden, would you care to comment on that, based on the work that you have been doing?

**Dr Shedden:** I am a member of the PAWS legislation, regulation and guidance group that is chaired by Sheriff Kevin Drummond—it may be known to some of you. He has produced a paper

that we have discussed in recent months that looks specifically at the issue in relation to the Wildlife and Countryside Act 1981 and the pesticides acts. A clearer link could be made between employer and employee, and a clear statement could be made that the employer needs to know everything that the employee is doing. Work is moving forward in that direction, and there are parallels in other forms of employment legislation, so we do not see too much of a problem with that.

**Peter Peacock:** You think that that is quite a workable proposition.

**Dr Shedden:** A form of vicarious liability with respect to poisons legislation could, from what I have seen, be workable.

**Peter Peacock:** I expect that we will explore vicarious liability quite fully in the next few weeks. However, another argument is that legal complications could arise—for example, if a bird is poisoned on one estate and then crosses the boundary and dies in another estate.

It has also been argued that an alternative would be to license the estate for the activity of grouse shooting. If, against certain criteria, there was evidence of a persistent problem with poisoning in that vicinity, the licence could be removed, and grouse shooting would end. That would be a serious and direct financial penalty. Have any members of the panel considered that possibility?

15:15

**Dr Shedden:** My major concern with such an approach, which appears on the face of it to be quite logical, is that it would be very difficult to define what a shoot is. As I said earlier, 4.4 million hectares of Scotland's land area is influenced by shoot management. That is about 67 per cent of the whole land area. It is an important driver. That ranges from a small duck-flight pond, which may be one or two acres, up to an estate of 10,000, 20,000 or 30,000 hectares. It will be difficult to define what a shoot is—that is the major stumbling block to that approach.

**Peter Peacock:** But it is not the principle of that that you find difficult; it is the practicalities.

**Dr Shedden:** I find elements of the principle difficult as well, because individuals are currently licensed by the police according to their suitability to have a shotgun or firearms certificate. That is the approach that society has taken over the past 100 or so years—to license the individual rather than to license the nebulous concept of a shoot. It is difficult to make that approach jump from the individual, who is responsible for his own activities, to a much larger entity. A lot of innocent people

could lose out because of the behaviour of one individual.

**Peter Peacock:** A slightly different argument, related to the issue of how you might define a licensed estate as opposed to an unlicensed one, would involve there being some obligation to manage a grouse moor sustainably.

You touched on the issue of some new management practices coming into Scotland principally via agents who are brought in to manage estates when the owner opts for that rather than following the traditional route of working directly with their own employees. There appears to be evidence that some of those new management practices amount to a scorched earth policy whereby the managers eliminate anything that might be of danger to a grouse population, which involves taking out raptors—illegally, potentially—killing all weasels and stoats; killing hares, because they might carry ticks; cutting down trees because birds might roost in them before going hunting; and so on. That is not environmentally sustainable; it is the pursuit of a single economic goal with ruthless management techniques. In that context, how would a duty to manage estates sustainably help to create the kind of thing that we have seen in Langholm today?

**Dr Shedden:** I have heard the estates that you mention being described as a monoculture of grouse, and I would put my organisation on the side of Langholm rather than of pure monoculture. I do not think that a pure monoculture of any individual species has any place in Scotland's landscape. My preference would be for a much more traditional approach that provided a surplus of grouse but also had deer, hare—which are important for eagles—and a wide variety of other species.

**Peter Peacock:** What is your view about a sustainability requirement being placed on estates that want to operate in the grouse-shooting marketplace?

**Dr Shedden:** I would love the voluntary approach to be endorsed so that we did not even have to discuss the sustainability requirement on individual landholdings. Many estates are already doing what you are talking about, and it would be a pity if they were to be placed under some form of legal obligation under a sustainability banner because of the actions of a small number of private estates.

**John Scott:** Peter Peacock is rightly outraged, as we all are, about the continuation of poisoning. Something needs to be done, but it seems to me that there is also an issue of enforcement. Libby Anderson has also raised that issue in relation to snaring.

Do you have views on how we can get better enforcement? Do you have comments that we should be taking back to ministers with responsibility for justice about better policing in rural areas, or are there better ways of achieving better enforcement of existing legislation? That is where it is all falling down.

**Mike Flynn:** Our inspectors regularly deal with wildlife crime, because the national wildlife crime unit has finally acknowledged that the vast majority of wildlife crime impacts on animal welfare. We can deal with a lot of wildlife crime under the existing animal welfare legislation, but there is a big gap in the Wildlife and Countryside Act 1981, which means that only constables can do certain things without warrants and that we have to jump through hoops in order to get warrants and so on before we can do those same things, by which time evidence can be lost.

I have more than 100 officers out there, from Shetland to Stranraer. They work with the fiscals, the wildlife police and all the other agencies at any time. If we had the same recognition under the Wildlife and Countryside Act 1981 that we do under the Animal Health and Welfare (Scotland) Act 2006, it would be a great help.

I have big concerns over the impending cuts to police forces. The Government cannot tell a chief constable what to do. A lot of wildlife crime officers are part time. Two forces just have civilian wildlife crime officers, and civilians are going to be the first to go in the cuts.

Enforcement is really bad at the moment, and I can only see it getting worse.

**Alex Hogg:** I feel that wildlife crime would stop in the next two or three years if we could address the question that Mike Russell asked, which was how many is too many. How many hen harriers does Langholm need? How many raptors, ravens, rabbits or whatever does an estate need? An estate needs to be managed and kept in balance with nature. It is dead easy to make a political decision about enforcement—to say, "We should jail people for 20 years"—but we should try to get people around a table to try to get them to come to a commonsense solution that everyone will benefit from. People who are involved in wildlife tourism, grouse shooting and the private estates all want the same thing, so we must be able to get around a table and thrash out the issues until we get an answer.

**Mike Flynn:** The problem with what Alex Hogg is saying is that the courts can do nothing if the person is not caught in the first place. The fact is that the people are not there to catch those who are doing it. I disagree with Alex. Wildlife crime will not stop, because it is not just about some estate owner saying, "Poison the birds or you'll lose your

job.” Wildlife crime is a massive area. It is about birds, egg theft, badger baiting—this, that and the next thing. Legal estates have nothing to do with badger baiting. Wildlife crime does not just focus on bird poisoning.

**Libby Anderson:** As Mike Flynn said, poisoning of any animal including raptors is a serious animal welfare issue. As far as we are concerned, whether it is an iconic species such as a golden eagle or a sea eagle or whether it is a buzzard really does not matter when an animal has suffered unnecessarily.

Secondly, to go back to John Scott’s question on enforcement, enforcement after the event is always a bit of a failure because the offence has taken place. We could say that the police should be resourced without limit and should be swarming all over the hills, but we know that that is not going to happen, so we should attempt to be more realistic. In that respect, we should consider the value of vicarious liability, because when everyone who is involved in the management and practices on the estate is held to account, the incentive to reform the practices from above will be much stronger.

In recent years, there has been a move to withdraw subsidy from some estates. That is probably not within the scope of the bill, but such forms of deterrence might have a greater effect. We can talk about education as well. Education is going on, but it is a bit of a slow burn. When a case is identified, the greatest form of deterrence that can be developed through the bill or other means would assist.

**The Convener:** Aileen Campbell did not catch my eye earlier. She is dying to ask a question on deer.

**Aileen Campbell:** It was just because we skipped past the issue.

We have spoken about the balance in the environment. This morning, we saw land that is managed, and we have heard from many different people about a lot of land that needs to be managed. You all said that you are quite content with the way in which the deer issue has been dealt with in the bill, but others are not as content given that there is overgrazing by deer and that, apparently, only half of the deer management groups have management plans and there is no sanction if they fail to produce a plan. How can we reconcile everyone’s desire for good, well-managed countryside with a general contentment about deer being left to roam with no natural predators?

**Dr Shedden:** I was surprised by some of the figures in some of the responses, especially the ones relating to deer management plans and the number of deer management groups that monitor

the level of culling that takes place. I know that every individual estate keeps records of the number of deer that it shoots, for instance, and that most of those are fed into deer management groups, so let us not think that deer management groups are the failures that some seem to point them out to be. Let us also recognise that deer management has been pretty effective in Scotland in the past 30 or 40 years and that most if not all of that has been at no expense to Scotland as it is privately funded.

There are one or two areas in which deer numbers have perhaps created problems and there has been overgrazing. A number of those have been or are being addressed by section 7 agreements, but the interesting point is that at no point has a section 8 control scheme had to be introduced in Scotland. There might have been legal barriers to that, but there has been no great list of areas to go into section 8 control agreements.

The fact that deer numbers are so stable, albeit that the number of roe deer might be increasing, and that 87 per cent of the deer Natura targets were achieved—it was not 100 per cent, but it was pretty close—indicate that deer management in Scotland is not as bad as some people might want to paint it to be.

**The Convener:** As I said, we will have a wider look at the issue of deer at a future meeting.

I thank all the witnesses for the evidence that they have given us. If there is any supplementary evidence that you think of on the way home—if you think, “Damn it, I wish I’d mentioned that”—please make sure the clerks have it in writing as soon as possible.

I will suspend the meeting for no more than five minutes for a brief comfort break and to allow people time to tell James Drummond if they want to take part in the open-mic session.

15:29

*Meeting suspended.*

15:42

*On resuming—*

**The Convener:** We move to the open-mic session. We have two people who wish to say something. I call Duncan Orr-Ewing first.

**Duncan Orr-Ewing:** Thank you for taking my question. My interest in the bill is that I work for RSPB Scotland. My question revolves around pheasant and red-legged partridge releases. As someone who works for RSPB Scotland I have been involved with the reintroduction of several native species, such as the white-tailed eagle and

the red kite. Stringent licences have been required to allow their reintroduction into Scotland. It seems rather odd that one is still able to release 25 million—some say more than 30 million—pheasants in the UK, a large proportion of which I imagine are released in Scotland, without any form of regulation whatever.

It seems that, as part of the bill, the release of red-legged partridges and pheasants is being made a special exception. There are obviously some justifications for that, but it seems to us that there should be provision somewhere to allow the regulation of such releases, given that they occur in such large numbers and have the potential to cause damage to certain habitats where the birds are released in large numbers. In our experience, not many people follow the guidance that is produced by the GWCT on sustainable pheasant releases. Although it is welcome, it seems poorly used in practice.

That is my question.

**The Convener:** As I think I made clear at the beginning, we are not here to answer questions, but we will certainly take on board what you said.

I call Bill Braithwaite.

15:45

**Bill Braithwaite:** I am a retired Forestry Commission ranger and I have been dealing with deer for well over 40 years. The deer got kind of short shrift this afternoon, but you are talking about red deer and I know that the legislation encompasses all the deer in Scotland.

Since just after the first world war, we have created absolutely ideal conditions in Britain for deer, especially in Dumfries and Galloway. Since the 1960s, 70s and 80s there has been a great proliferation of private forestry companies and landowners, which all want to get the grants and so on. Landowners and forestry companies were not getting paid a lot for venison, so they did not take on proper people. The deer could be managed properly without the aggressive, Deer Commission Scotland way of managing them. Glenfeshie is a classic example where deer are coralled and shot out of season, and where heavily pregnant does and hinds are shot. They can be managed properly if you employ more people.

The British Government and the Scottish Government go on about healthy eating. There is no more healthy meat than venison. They should be promoting it as a healthy alternative.

We have created the ideal conditions; we should supply the things. I do not think that you need all these draconian laws that are coming in.

I am trained, but there are licences for this and licences for that. You have to jump through hoops to get your firearms certificate and jump back again to get a variation or whatever. It is really difficult.

Management has to be done better, and landowners and forestry companies have to employ more people to do it, rather than managing aggressively through, for example, out-of-season shooting and night shooting.

You have said that the golden eagle is iconic. There is nothing more iconic than a red deer or a beautiful roe deer.

**The Convener:** Thank you for your contributions.

I welcome the second panel: Robbie Douglas Miller and Malcolm Strang Steel are both from the Scottish Rural Property and Business Association; and Jonathan Hall is head of rural policy for the NFU Scotland. Welcome again—it does not seem that long ago that we had you before us on the Crofting Reform (Scotland) Bill.

**Jonathan Hall (NFU Scotland):** We are obviously in trouble again.

**The Convener:** I invite Liam McArthur to start this question session.

**Liam McArthur:** In its evidence to the committee, the SRPBA suggested that the reference to the natural environment in the context of the Wildlife and Natural Environment (Scotland) Bill might be somewhat misleading. The evidence that we saw on Langholm moor reinforced the fact that we were looking at a spectacular environment, but that it is the product of active and on-going management. Your point was an interesting observation, but, over and above that, are there practical implications of our considering a wildlife and environment bill as opposed to a wildlife and natural environment bill? Do you wish to make any detailed observations to support the point that you made?

**Malcolm Strang Steel (Scottish Rural Property and Business Association):** The short answer is that we are making the same point that Alex Hogg made earlier: there has to be some sort of holistic management. In some instances, hands are tied behind backs. Snaring is one valuable means of controlling predators for the benefit of not just lambs and game but ground-nesting birds and brown hares, which from my experience have been at risk. That is the implication of our comment. What we have is largely man made, for better or worse. It will continue to be managed and it should be managed holistically.

**Liam McArthur:** You are bravely foraying into snaring before we are ready to do so.



**Malcolm Strang Steel:** I was using it only as an example.

**Liam McArthur:** From your perspective, would it be helpful to the purpose and extent of the bill if the “natural” element was qualified, or if something was included to clarify that we are talking about a process that requires a level of active engagement, investment and management, whatever objectives we seek to achieve?

**Malcolm Strang Steel:** It is simple: you could make the point by dropping the word “natural”. Over the years—over the centuries—the people who managed different bits of the land had different objectives. What we have at the moment—the land of which we are proud—is the result of all that. It is important that that diversity of management is not lost. Today’s current wisdom is not necessarily the wisdom of tomorrow. In my lifetime, which is not very long, I have seen that happen in the agricultural world, and I am sure that it will happen again.

**Jonathan Hall:** It is excessive to include the word “natural” in the bill. Talking about the environment, environmental management and environmental legislation is sufficient to capture everything. The word “natural” is misleading. The vast majority of, if not all, Scotland’s land mass is managed in some way, shape or form; it has the intervention of man somewhere upon it. Indeed, 5.6 million hectares, or about 80 per cent of the land mass, is under agricultural land management. As I said, describing the land mass as a “natural environment” is misleading. Focusing purely on the wildlife and environment that we are to manage responsibly and protect in various ways and conserve in others would remove the possibility of ambiguity and prevent the formation of misleading views.

**Liam McArthur:** Poaching is another area about which there could be misconceptions, if not misleading interpretation. You will have heard in the first evidence session the notion that poaching is simply “one for the pot”. If that was ever true, it is no longer. We are interested in your views on the extent of poaching. What impact will the repeal of the game laws have? In particular, I am interested in the capacity of landowners and land managers to take action where necessary.

**Robbie Douglas Miller (Scottish Rural Property and Business Association):** I will give an illustration. I chair our district fishery board in Sutherland. We have a number of poaching problems in our area. One of the most difficult issues that our bailiffs encounter is the police response time. Our police station in Lairg closes at 5.30 pm. The nearest police station to Lairg is at Golspie, which closes at 11 pm, and the nearest one to that is in Inverness, which is nearly two hours away. If, at two o’clock in the morning, eight

people in two transit vans arrive from Glasgow—I have nothing against Glasgow, but we are closer to Glasgow than I thought—we have a real problem.

In support of Alex Hogg and the other previous witnesses, I give an example of the nature of some of the people we come across. Last year, we had instances of gangs of poachers using semi-automatic weapons on herds of deer. The problem is not strictly within our jurisdiction, given that we look after the rivers, but the deer are in the area, too. The poachers would pull up at the side of the road and, from the side of a van, fire 40 or 50 rounds into a herd of deer perhaps 80m to 100m away. The poachers would then go and hack off the pieces that they wanted and could take in a short period of time, but they would leave everything else—including deer that were wounded, wandering around waiting to die. That is a real issue.

**Liam McArthur:** Is the issue a combination of the greater prevalence of such poaching and its changing nature? On the police response time, if the police cannot be there to see the poaching take place or to apprehend the people in the vans, in a sense it makes little difference whether the police are 20 minutes late or two hours late—

**Robbie Douglas Miller:** Or come the next day. The problem for those of us on the ground is what to do with people we have detained, especially if there are more of them than there are of us. What do you do with someone in the middle of the night? Ringing the police might be fine, but—

**Liam McArthur:** The suggestion is that they should not be detained or approached at all.

**Robbie Douglas Miller:** Exactly. However, when there is a direct confrontation, what should we do? Should we walk away? They know who we are, so if we walk away, they know that it is free rein and they can just come back tomorrow. It is a difficult problem.

**Malcolm Strang Steel:** On Liam McArthur’s question about whether the nature of the problem has changed, the answer is that, yes, it has changed quite a lot since the Game (Scotland) Acts were passed in 1772 and 1832. Those acts were aimed largely at what one might call low-ground game such as birds. Alex Hogg might shoot me if he is listening, but I do not think that the poaching of grouse, pheasants and partridges is actually an issue. The market value of a dead pheasant is very low indeed, if not non-existent. However, the gangs who go after deer and salmon, which are covered by separate legislation, are still very much an issue.

Of the things that were protected by the legislation on day and night poaching, hares are probably the most vulnerable. As the man from the

SSPCA said earlier, hare coursing remains quite an issue. I think that I am right in saying that the first—and possibly the only—successful prosecution under the Protection of Wild Mammals (Scotland) Act 2002 was of some people who were caught coursing outside Broughty Ferry shortly after that act came into force.

**Jonathan Hall:** The convener was very up-front about the committee's role in the stage 1 process as being to look at whether the bill is fit for purpose. From our perspective, I do not for a minute think that the bill will single-handedly tackle such criminal activity, but it could nevertheless support or complement other pieces of existing legislation. That takes us into the whole issue of enforcement, as the previous panel highlighted, and what are the right actions that individuals should take in the circumstances. The bill as drafted will not fix the problem of poaching, but I hope that it will make a positive contribution as part of a package of legislation. More important will be how matters are enforced and prosecuted so that poachers are deterred as much as anything else. As someone said earlier, you can pass as much legislation as you want on any issue, but unless it can be enforced practically and efficiently, whether it is fit for purpose remains a very open question.

**Liam McArthur:** Is the biggest impact the financial loss or is it welfare concerns? Certainly given the deer poaching that you described earlier, the most striking issue is probably that of welfare.

**Robbie Douglas Miller:** Yes, it is horrific. The welfare issue is probably of primary concern. The economic loss is not necessarily measured by what is taken or killed on the night in question, as it depends on how things are taken or killed.

For example—this would be on the river rather than on the hill—a team of poachers might pour a tin of cyanide into a particular pool on the river in order to kill everything in the pool. After putting in a net, they will scoop up most of the fish from the pool and then push off. They might get 20, 30 or 40 fish. They probably do not appreciate that they have killed every fish, including all the juvenile fish, in every one of the 10, 20 or 30 pools below them, depending on the amount of cyanide that they have put in. They have killed not only the stock in that pool, but the stock that was going to replenish it. Taken to an extreme, they could wipe out a whole river system very quickly. Obviously the person who is doing that is not particularly interested in the river system; they are just there for the quick 50 quid for which they can sell the fish.

16:00

**John Scott:** On that subject, what are your views on the maintenance of single witness evidence provisions for poaching offences? Should they be maintained? How should we go about that?

**Malcolm Strang Steel:** I am rather assuming that, as far as the poaching aspects of the bill are concerned, it is almost a consolidation bill. Conviction on the evidence of a single witness was written into the acts that are being replaced, which is why the provision is still there.

Incidentally, I would like to correct something that was said earlier. There was talk about a single witness and corroboration. If there is corroboration, someone is not being convicted on the evidence of a single witness alone, which is what we are talking about. We can have corroboration without evidence having to come from two people.

My information is that single witness evidence is not hugely important because fiscals are looking for corroboration anyway. If a gamekeeper stood up and said to John Scott, "I saw you do this terrible thing and I am taking you to court", the fiscal would neither take up the prosecution nor sanction a private individual to take up the prosecution, which he could do at the moment.

Scots law has always said that uncorroborated evidence is a bad principle. Single witness evidence is an exception because it is a hangover from 150-plus years ago. I do not think that we would be desperately upset if it disappeared. However, we would be desperately upset if it came in through the back door in relation to anything else. Corroboration is an extremely important principle and should be maintained, unless there is a very strong reason otherwise, and I cannot think of one within the context of what we are talking about at the moment.

**Robbie Douglas Miller:** I concur completely.

**Elaine Murray:** You have probably touched on this already, but I will just check your views on the bill's proposals for the close season on hares and the proposed offences of the poaching of rabbits and hares. I am slightly surprised to see that there is an offence of rabbit poaching, given how many rabbits there are in this part of the world. There are an awful lot of them around and it would be difficult to identify whom a particular rabbit belongs to.

**Malcolm Strang Steel:** As a matter of law, they do not belong to anyone when they are in the wild. Only the owner of the land on which they are present or, in some cases, the occupier of the land is entitled to shoot or take them.

Rabbits were a valuable resource. They were originally brought into the country to provide food through the winter, and they were kept in warrens. You can still find the warren woods where they were fenced in. Rabbits are still of value, so it is quite right that they should continue to be protected from being killed by unauthorised people, in the same way as it is proposed that other game should be protected.

**Jonathan Hall:** On the principle of close seasons generally, as was made clear earlier, it is absolutely right for that to be established because it is an animal welfare issue. However, there must be the option or opportunity to seek out-of-season licensing for specific reasons and to address particular management requirements. That takes us back to the earlier point that we do not live in a purely natural state and that although animal welfare is an important issue, it is not the only issue that legislation and licensing need to address. The close season principle is important.

With specific reference to hare, particularly mountain hare, several references were made earlier to tick management. I suggest that hare management is not the only tool in tick management and that sheep can have an effective role as tick mops in particular situations. That is another vital component if we are to safeguard the interests of wildlife, the viability of driven grouse moors and so on. We need a range of tools. As we always say, there must be tools in the toolbox that can be developed and deployed in appropriate situations.

**Karen Gillon:** I want to take you back to the issue of single witness statements. It strikes me as surprising that, following all the consultation that has taken place on the bill, the Scottish Government has put back into the bill something that nobody wants. At our first meeting on the bill, before we took any evidence, the committee realised that there was an anomaly. Perhaps the reason why everybody has suddenly converted against the single witness provision for poaching is that the reality is that we might want to introduce that for other forms of wildlife crime, such as bird poisoning, for example. Is that why there has been such a conversion?

**Malcolm Strang Steel:** I cannot speak for the Scottish Government and its consultation and why it included the provision in the bill. As I said, I assume that it did so because the provision was in the old statutes and to a large extent, the first part of the bill is a consolidation of those statutes, integrating them into the Wildlife and Countryside Act 1981 framework.

**Karen Gillon:** I suppose that I am asking whether, in your submission to that consultation, you argued the position that you now argue, which is that we should get rid of that provision.

**Malcolm Strang Steel:** I cannot answer that question, because I was not involved in the submission during the consultation period. I was involved in the submission that the committee has before it, in which I think we make no reference to the single witness provision.

If the single witness measure for poaching is included, so be it. As I said, we would not die in a ditch over that but, personally, I think that it is a bad principle.

**John Scott:** I should have declared an interest as a farmer at the beginning of the meeting, so I do so now, very belatedly.

I have questions about snares, although Karen Gillon will subject you to interrogation on that, too. I seek your views on whether snaring is needed as a form of pest control. What would your view be if snaring were to be banned? You can cite other countries as reference points, if you like.

**Jonathan Hall:** The hill farming view on snaring is that it remains an absolutely vital tool in protecting livestock, particularly lambs around lambing time, from fox predation and so on. I would like to clarify one point that was mentioned this morning and then reinforce another point that was made. An awful lot of fox control takes place on land using snares that are not set by farmers, but which then protect lambs and livestock from foxes.

Very few farmers set snares. I do not know any and would struggle to find many, if any, in the membership of NFU Scotland. Snaring is done by the professional—that word is important. It is done by a gamekeeper who has gone through the training and adheres to the guidance and all the requirements that the committee discussed earlier.

That is exactly the right way for it to be, but it does not take away from the point that hill farming and vulnerable marginal hill farm units benefit from properly done snaring. We are absolutely unequivocal about that. The farmers do not set the snares themselves, but they benefit directly, so the loss of snaring would have a major economic impact on hill units that already operate under vulnerable circumstances, particularly on the west coast of Scotland and in upland situations, as you saw this morning.

That is replicated throughout Scotland in many ways and forms. Without snaring as part of the management of predators—foxes, in this case—very few options would remain for farmers.

The overlay of land use is really important and the bill must recognise it on many levels. It is not the case that individual parcels of land are managed by farmers here, foresters there and gamekeepers somewhere else, because there is a continual overlap between those activities. We

must not lose sight of the importance of that complementarity between the activities of some individuals and some land-use interests.

The loss of snaring would have extremely adverse consequences for hill farming in particular, but I will also mention forestry, foxes and snaring. The mixed land use in which we have blocks of Sitka spruce next to open hill ground is not necessarily the best designed or most integrated in the world, as we all know. Those blocks of forestry provide all sorts of havens and shelters for fox populations to flourish. The forester, as well as the gamekeeper and farmer or shepherd, definitely has a role and responsibility to work more coherently to address fox issues. I look to the Forestry Commission and Forest Enterprise as much as anybody else on that.

**John Scott:** What has their record on that been?

**Jonathan Hall:** They have a written fox policy in place, but my experience suggests that it is not adhered to at all.

**Robbie Douglas Miller:** I own an upland property on which I have a full-time shepherd and a full-time keeper. We have a sheep flock, for which the shepherd is responsible, and we run a small shoot—it is not commercial; it is really for my own fun. My keeper spends a great deal of his time setting snares on our neighbouring sheep farmers' properties at certain times of year to protect their livestock from foxes. He does that with their full consent and co-operation. He is qualified—he has been on the course on snaring and knows what he is doing—and prevents a great deal of suffering that would otherwise take place in our area.

**Malcolm Strang Steel:** In a low-ground situation, snaring is absolutely critical for fox control. Often, through the summer, crops are up and we cannot see the foxes to shoot them. They are rural foxes, not the ones that committee members might run over in the Queen's park on the way to Holyrood, so they quickly learn what flashing lights are about and they are off when they see them. That leaves us with snaring.

Since 1 February, we have killed 24 foxes on my ground; 22 of them have been snared—not because we have not been trying the other methods but because the practice is that important. Indeed, I question the earlier statement that only 25 per cent of foxes are killed in snares. I do not know where that figure comes from. It might be true in other situations, but in mine, which is quite a common low-ground situation, I suggest that the overwhelming number of foxes are killed by snaring.

16:15

**Robbie Douglas Miller:** A human welfare issue is also attached to this. As anyone who has taken part in a lambing season knows, you have to work 24/7 and it is extremely tiring for a very long time. It is also extremely distressing to find out that your young lambs are being harassed or predated by foxes and to find the sometimes dead carcasses and sometimes still living remnants. It is a huge mistake to suggest that shooting, which is very time consuming and haphazard, is the alternative to snaring. Lambing a fox is a professional job. It is not normally an easy task and my experience is that farmers are not as equipped as keepers to carry it out. At certain times of year, particularly at lambing time, you do not have the time to spend three, four, five or six hours of the night driving around your property, looking for a fox that might or might not be killing your or your neighbour's lambs. Everyone is sufficiently tired and bad-tempered to be done with that sort of thing and adding such pressure at a key time of the year is simply unnecessary.

**Jonathan Hall:** I entirely support those comments, which very neatly illustrate the relationship between shepherd and gamekeeper—or indeed between farmer and gamekeeper—and the reliance of the former on the latter with regard to that kind of predator control.

The farm units and businesses that we are talking about are the most marginal in their economic viability, the sort of land they occupy and so on, and the impact at critical times of predators—not just foxes; we should also bring ravens, sea eagles and other species into the equation—only stretches their viability. Those with blackface hefted flocks on the west coast of Scotland are doing pretty well if their lambing percentage is 80 or 90 per cent. If that figure gets pulled down to 60 per cent because of predators—although I point out that that is not the only reason why lambing percentages might be low—you really have to wonder whether, despite single farm payments, less favoured area support and so on, that unit can remain in business at all. It contributes to abandonment, because it gets to the point where it becomes unsustainable to keep people and sheep on that land.

**Bill Wilson:** You have all referred to foxes predated live lambs. However, research by Professor David Macdonald at Oxford University and Ray Hewson in the far north of Scotland indicates that foxes do not normally predate and I have certainly met shepherds who will state that that is unusual. Are you able to point the committee to any studies that show that the earlier work of Macdonald and Hewson is incorrect?

Secondly, we heard evidence from people in Langholm that 80 per cent of foxes were being

killed by shooting and 20 per cent by snaring. I might have got those figures slightly wrong; if so, I apologise. If, as you say, snaring is more intensive in your area, is that perhaps because you have fewer staff?

**Robbie Douglas Miller:** I am familiar with the situation in Langholm, as I have been involved in the project in a small way and visited the place a number of times. The number of keepers on the ground in this area is not necessarily typical of the current situation on most Highland estates—it is higher, largely because they are trying to regenerate something from a very low base.

Predation is one of the primary reasons for the low base in Langholm, and enormous effort and energy are required to put the area back on a sustainable footing. I am not suggesting that any of the processes that have been tried and tested at Langholm are right or wrong; it is early days with regard to drawing any factual conclusions about what is happening in relation to diversionary feeding of hen harriers and to other land management uses.

**Bill Wilson:** The percentage ratio of 80:20—or 75:25—that we heard about earlier is perhaps the product of the fact that Langholm has a higher level of staff, which you have hinted at. The situation in Langholm is unusual, as in general people tend to shoot rather than use a snare. I want to get an idea of how critical the level of staffing was in achieving that ratio.

**Robbie Douglas Miller:** I am not able to elaborate on that much further. I suspect that the situation is different in every place, depending on whether there is an emphasis on shooting or farming, or a combination of both.

**Jonathan Hall:** You asked for evidence on the extent of the problem of predation by foxes—I would probably stretch that to include predation full stop. I have found no concrete evidence in peer-reviewed literature, or anything like that, but I have significant evidence from individual holdings. On those holdings, the number of lambs stands at 150 to 120 per cent when pregnant ewes are scanned but, by the end of the hill lambing season in May, only 60 or 70 per cent of the lambs are there. Those losses cannot all be attributed to predation, from any source, but it is without doubt a significant factor.

Depending on the area, predation is a problem. Once those margins are reached, the viability of the hill units is significantly tested, given that ewe replacement of 25 to 30 per cent is required from within the same flock. How many lambs does that leave to be sold? What is the productivity—in terms of the gross margin—of each ewe?

You are right to raise the issue of evidence; we all require evidence to prove a point. Nevertheless

the significant amount of single witness evidence out there suggests that predation is a major issue.

**Bill Wilson:** From the committee's point of view, there is obviously a difference, with regard to making a decision on snaring, between predation by foxes and predation by corvids, for example. Such a decision would depend on what is doing the predation rather than the fact that there is a high level of predation.

**Jonathan Hall:** Yes—and that will vary from place to place. There is not a single fox on the Isle of Mull, but there are 10 pairs of breeding sea eagles and a lot of juveniles. There is a predation problem, but it is of a different sort and requires a different management solution, which involves absorbing the impact of sea eagles rather than controlling their numbers in any way.

Such flexibility is necessary in terms of how land is managed in different places at different times. If we remove the ability of the right people—professionals who know what they are doing—to utilise snares properly and effectively, we are without a doubt inviting predation issues to escalate. That would have a severe impact on the viability of hill units throughout Scotland, and particularly up and down the west coast and in the Highlands.

**John Scott:** I declared an interest as a hill farmer a moment ago, and I want to comment from a practical perspective and for the committee's information—Bill Wilson's in particular. Having done three lambings a year for 25 years, I have gone out on all too many mornings at first light when no other predators are about—crows, ravens and seagulls do not get up until after first light—to find dead lambs that were certainly not there at darkness the night before.

**Bill Wilson:** They may not have been killed by predation.

**John Scott:** They were killed by foxes. The professionals—gamekeepers—were called in to lamp and shoot foxes. They got the fox and the predation stopped. Bill Wilson might regard that as circumstantial evidence, but I have seen fox predation in my own flock all too often

**Bill Wilson:** I am not sure—

**John Scott:** And I am sure that there will be many people in this room who regard it similarly.

**Bill Wilson:** I think that we would need more solid evidence—

**The Convener:** Can we move on? Elaine Murray will pose some questions on non-native species.

**Elaine Murray:** I want to hear from the panel about whether they support the general approach on non-native species. The previous panel

seemed quite relaxed about the proposals in the bill, but I know that SRPBA has suggested that it is not such a useful concept and that the major consideration should be the potential of the species to cause harm rather than the fact that it did not originally come from these islands. Will the witnesses say more about that?

On the release of species, surely we do not know how much harm a species might cause or how invasive it is until it has actually got out. For example, I do not suppose that anybody who originally kept a rhododendron in their garden had any idea of the devastation it would create in natural woodlands.

**Malcolm Strang Steel:** As I think that we said in our written submission, we think that the approach is flawed. It is what we might call the hair-shirt approach—that anything that has been introduced into Scotland, whenever that was, is to be regarded as non-native. At a conference last September, I asked somebody whom I think may have had a hand in preparing the bill whether she thought that non-native species meant everything that had appeared here since the ice age, to which I got an affirmative reply. For a start, that rules out as non-native anybody descended from any Dalriadic Scots.

We would like a much more pragmatic and realistic approach. A great many of such species—animals, birds and plants—have been here for a very long time, have become well established and perhaps naturalised, and are not harmful. One or two species are harmful. They tend to have come in more recently, although I am not saying that there are not a few more out there that we would regard as harmful if they came in.

By adopting the extreme philosophy behind the bill, you are creating difficulties. The special references to pheasants and partridges were mentioned earlier. I cannot remember exactly when they were introduced; I think that the Romans were responsible for bringing in pheasants. They have been well established here, and many people would be rather surprised to hear that they are not native. They would also be surprised to hear that the brown hare is not native, according to the definition that we have in the bill.

We think that there should be a rethink on that aspect. That is not to say that we are against control of new species. It makes sense to have controls as in recent years a number of species have come in and proved to be very detrimental. Signal crayfish, not far from here, are one example, and I remember the Colorado beetle being a bit of a difficulty. We are therefore not against control, but the philosophy of what is regarded as native and non-native is currently wrong.

On the question of invasive species, one rationale for changing the existing law in the Wildlife and Countryside Act 1981, which I must say is not far off the mark in what it says, was that we should depart from lists that are never up to date and which always have to be changed by ministerial order. However, in the bill we have another list of what is to be regarded as invasive that the minister will be able to change from time to time. That approach has not solved the problem that was identified, although I do not see how we can get away from lists. When something is identified as invasive, it is right that it should be controlled and, if possible, eliminated.

16:30

If I may say so, there is one quite major difficulty. This may be a lawyer's point rather than a farmer's point, but I will make it anyhow. It will be a criminal act to plant a non-native species "in the wild", but there is no definition of that phrase. A great many of the types of tree that are regularly planted, such as Douglas firs, larches, sycamores and beeches—you name it—fall within the definition of non-native species in the bill, but we are not told what the phrase "in the wild" means. The civil servants say, "Oh, we're going to put an exception in the code of practice," but that cannot be done. If a crime is created under a statute, the only way of exempting somebody from being charged with it is within that statute or another statute. Codes of practice are about behaviour, not about what are essentially matters of fact, such as whether something was planted "in the wild". I urge the committee to consider that point and try to get a definition of the phrase "in the wild" into the bill.

That occurs throughout the bill. References to "sustainability" appear in different contexts in different places. Sustainability means different things to different people, particularly in deer management. I am not quite clear what SNH is being asked to supervise.

That was a long-winded answer. I am sorry about that.

**Jonathan Hall:** I entirely support the points that Malcolm Strang Steel has made. Greyish tints remain around the definitions of invasive and non-native species. The problem is the "and/or" bit. Our concern is whether something is invasive rather than whether it is non-native.

In general, legislation is not very good at recognising spatial and temporal changes. A Scotland-wide piece of legislation that sets out what might be offences with respect to invasive non-native species might—dare I say it?—be interpreted differently in different parts of Scotland because of the contexts in which people find

themselves. Scotland's landscape and its wildlife constructs and management structures are very varied, and I am concerned that the bill as drafted will not necessarily be able to reflect any of that variation. What is deemed in one place to be in some aspect an invasive non-native species that therefore causes an issue may not necessarily cause an issue somewhere else.

The temporal aspect is that things are warming up, as we are constantly reminded. The behaviours of animal and plant species are therefore constantly changing as well. The classic example that affects agriculture is that of geese. The migratory patterns of geese have changed: they stay for longer in greater numbers, but they are also establishing what might be described as a native population. They are not migrating to Iceland and Greenland, as they might have done previously; rather, they are staying in Caithness, Orkney and various other places. Their behaviour has changed simply because the context has changed. I am not sure how one picks those things up. How do we deal with migratory species and migration patterns changing? There is a question in my mind about that. Somebody will put me right.

**The Convener:** That is not a question for this piece of legislation.

**Bill Wilson:** I would like Malcolm Strang Steel to clarify something. Leaving aside the precise definition of "native", which is fraught with countless difficulties—we could add fallow deer and several more species to the list without difficulty—are you arguing that, if a species has been in a small part of Scotland for a few hundred years, individuals should be able, without regulation, to move it to any new part of Scotland and artificially to extend its range?

**Malcolm Strang Steel:** We are getting on to the issue of foxes on Mull.

**Bill Wilson:** I was not necessarily thinking about that.

**Malcolm Strang Steel:** There is also the issue of hedgehogs on Uist.

**Bill Wilson:** Hedgehogs on Uist are not a bad example. Would you allow people to take hedgehogs to islands where they are not present at the moment?

**Malcolm Strang Steel:** Probably not, on the basis that they are invasive on Uist, rather than that they are not native. Jonny Hall is saying that, if the hedgehog is native to Dumfriesshire but has never been seen on Uist, it should be controlled. I do not disagree. Hedgehogs have had devastating effects on Uist. The issue is that they are invasive.

**Jonathan Hall:** We have a specific example of that right now. I am sorry to show a Mull bias but

my wife is from there, so I tend to talk about Mull quite a lot. There are recent reports of pine martens on Mull, but there is not much evidence that they were there before. The pine marten is clearly a native of Scotland, but it is not necessarily a native of Mull or of some other islands. If the pine marten population on Mull develops and flourishes, what will be the impact—not necessarily on agriculture, but on other species? I am thinking particularly of ground-nesting birds. There is a hen harrier population on Mull; there is also a sea eagle population, which happens to nest in pine trees.

**The Convener:** Peter Peacock has a question about species licensing.

**Peter Peacock:** You will have heard the earlier discussion on the arguments around licensing the taking out of currently protected species in order to protect other species. Those are set out in the SRPBA's paper, but Jonny Hall hinted at the issue in an earlier answer. It is not clear to me from the SRPBA's evidence whether it is arguing for licensing on economic grounds or in order to meet the provisions of the birds directive in relation to the taking of other species. Can you clarify the issue? Do you see it as an economic question or as a conservation question?

**Malcolm Strang Steel:** The Game and Wildlife Conservation Trust addressed the issue in detail in its evidence. We support what it said. We believe that section 16 of the WCA does not fully reflect what article 2 of the birds directive says about taking into account economic and recreational issues, as well as everything else, when deciding how protection is to be created. The trust has suggested a small amendment to section 16, to amend one of the reasons for the granting of licences to take out what would otherwise be protected species. We support that. The amendment reflects the provisions of the birds directive, as it must.

**Peter Peacock:** So there is no economic motivation for your position

**Malcolm Strang Steel:** One of the words that the amendment proposes to insert is "economic", so there is certainly an economic aspect.

**Peter Peacock:** I invite Jonny Hall to comment on the issue.

**Jonathan Hall:** Licensing as a principle remains vital to the management of any species, because of both economic and conservation interests. We cannot wrap one species in cotton wool and expect everything else to continue unhindered or unaffected. No matter what level of protection that species has, some flexibility is needed.

A lot of people talk about numbers—someone referred to Mike Russell's question, "How many

hen harriers is too many hen harriers?”—but what no one has mentioned so far is that the key thing is impact, not numbers. That is our view on all these matters. That impact could be economic, as is true of the impact of sea eagles and ravens on hill farming but, equally, there could be an impact that resonates with conservation interests.

Let me give an example. In recent weeks we have looked at the impact of greylag geese—which are a quarry species and have a season—on land management in a place such as Tiree, where a third of the UK’s corncrake population resides because of the type of land management practices that go on there. I am talking about fairly intensive management of grassland and machair, and cropping patterns that involve barley production and so on.

The farmers and crofters on Tiree are caught between a rock and a hard place because at the same time that they are being incentivised to manage the ground in the interests of corncrakes, to ensure that their numbers increase and they become a conservation success—that is working pretty well—the escalating greylag geese population in the area and the lack of availability of pragmatic measures to control their number mean that the very habitat that the farmers and the corncrakes rely on is being hammered by the geese. It is critical to get the economic and the conservation interests in balance, so there needs to be some sort of licensing mechanism—that is possible with greylags—whereby they can be shot out of season. It might be necessary to do something even more drastic—I am talking about real population management to pull the rug from under the impact that the geese are having, such as egg oiling or egg pricking.

**Peter Peacock:** I want to pick up on that. If there were to be a licensing system, which both the NFUS and the SRPBA would argue is required to allow exceptions to the general rule of protection, who would be best equipped to issue those licences? The Government has suggested that that role could be delegated to SNH and/or the local authority. Do you have views on that?

**Jonathan Hall:** It should be delegated to whoever would act the quickest.

An important point was touched on during this morning’s visit. The Scottish Government will not issue a licence without understanding exactly what the ecological and conservation impacts of doing so might be, and that advice must come from SNH. With the best will in the world, that might be quite a slow, tedious process. On top of that, SNH and the Scottish Government are likely to have less and less resource in the future.

In theory, I think that we should be looking at multi-annual licences, which we have already

delivered for raven management. There needs to be an effective tool to which farmers, gamekeepers and whoever have recourse. We do not want to wait for the problem to happen and then have to close the stable door after the damage has been done. If we are talking about mitigating the impacts of populations of species on a conservation or an economic interest, a tool that prevents rather than cures needs to be available up front. Otherwise, the damage will already have been done and we will forever be chasing our tails. Licensing is essential, but we need some means of delivering the licence almost up front—a vehicle that says that that tool is available to those who require to use it.

**Peter Peacock:** Are you not contradicting your earlier argument, which was that the assessment must be ecological, primarily?

**Jonathan Hall:** The assessment process is continuous—SNH has a rolling function to monitor all sorts of populations. If someone wants a licence to control X number of ravens or whatever, by the time it is understood what the ecological impact of that might be on the local population and that information is relayed to the Scottish Government office that issues the licence, I am afraid that the damage will well and truly have been done. I cannot see that being a pragmatic or effective way forward. In those circumstances, the licence almost becomes ineffective.

16:45

**Malcolm Strang Steel:** Jonny Hall is talking about speed, which is critical, whoever grants the licence. Peter Peacock asked who should grant the licence, and I do not think that the SRPBA has a view on that. My personal view is that it probably ought to be SNH, rather than the local authority. SNH is equipped to deal with the matter—it is involved in granting some licences already, whereas local authorities have no experience of that. The argument in favour of the local authority granting the licence is that every area is different and different considerations will apply. I hope that SNH, which has offices all over Scotland, will be able to cope with that, however. I stress that that is a personal view, not a SRPBA view. I do not know whether Robbie Douglas Miller agrees.

**Robbie Douglas Miller:** I completely concur with that.

**The Convener:** Let us move on to deer management. I will let Aileen Campbell take the lead.

**Aileen Campbell:** We heard some useful comments earlier about shortcomings within deer management. There is evidence that the current voluntary approach to deer management is working, but bodies such as Scottish Environment



LINK and the RSPB have said that it is falling short. What are your feelings on that? Is there any evidence to suggest that there has been a failing in effective deer management?

**Robbie Douglas Miller:** From what the previous witnesses were saying, we seem to be focused more on red deer than other deer that occupy lowland Scotland. My personal view, which I believe to be that of the SRPBA, is that any voluntary management mechanism is preferable to compulsory measures. You will hear later from the Association of Deer Management Groups, the British Deer Society or one of the other relevant organisations, and I am sure that they are better qualified to give a view than I am. My personal view, however, is that if we can encourage deer management on a voluntary basis, with collaboration across key areas, that will work better than any overarching single piece of legislation, which might not be entirely appropriate to the area concerned.

**Aileen Campbell:** If that approach does not work, should the Government make things a bit more mandatory?

**Robbie Douglas Miller:** It depends on the definitions of success and failure. I might use the analogy of the district salmon fishery boards, which operate on a voluntary basis throughout Scotland and seem to work very successfully. They have been around a bit longer, and they have perhaps had one or two more key issues to deal with than the deer management groups have had—they have had to pull things together, sort things out and get fisheries operating effectively. Now that the problem is known about and people want a solution to it, I am inclined to let things run for a while.

**Aileen Campbell:** There are issues around training and competence. Should the approach to that be voluntary, too? Who should deliver training?

**Malcolm Strang Steel:** As I understand it, and as was mentioned earlier, there have been discussions about that. I think that a training programme is in the course of being prepared, on a voluntary basis. That explains why the bill is holding off the introduction of a compulsory scheme until, I think, 2014. The discussions are proceeding, and they are well ahead as far as I am aware.

There is a great difficulty in sweeping three different issues concerning deer into one pot. First, there is a red deer issue. Underlying many of the representations that the committee has received is the perception that the devastation in the west Highlands is entirely the result of overgrazing by deer, but a lot of people dispute that. I know of one person who has a deer forest on the west coast,

and his problem is that there are not enough deer, as a result of which tenants are not coming to stalk with him. That is one issue.

Another issue concerns roe deer on low ground, in areas such as mine. I have never heard of an issue with overgrazing by roe deer. If trees are planted, there is a problem. If the population is big—in my area, it is not big enough—it might cause a problem with crops. Existing legislation and the bill contain mechanisms for dealing with that.

The third issue—it will be added to section 1 of the Deer (Scotland) Act 1996—is the urban and peri-urban position. “Peri-urban” is a new word to me and is rather a mixture of Latin and Greek. I understand—although I have no direct knowledge—that issues arise with road accidents and dealing with roe deer and other deer that get into parks in towns and so on.

Three distinct issues arise, for which the solutions—if I can use that term—should probably differ. In my area, where roe deer are present, no deer management group exists and it would be extremely difficult to get one together. I do not think that roe deer are a problem to anyone. Different people have different management objectives. As I said, it is important to maintain that diversity of management objectives, whether on low ground or in the Highlands.

**Aileen Campbell:** In your submission, you expressed concerns about repealing the requirement for evidence of “serious damage” and replacing it with a reference to just “damage” before a control scheme might be implemented. Will you expand on that?

**Malcolm Strang Steel:** The reference to damage is in the section that deals with emergency action by SNH. If the situation is an emergency, the test should be that serious damage rather than just damage has been caused. “Damage” means one deer eating one tree; “serious damage” might mean a herd of 50 deer devastating a forest. Emergency action would obviously be required in the second case but not in the first.

**Aileen Campbell:** So you would like us to distinguish our roe deer from our red deer and—

**Malcolm Strang Steel:** I would like you to retain the word “serious”—that would be more realistic.

**John Scott:** Is that the view of everybody on the panel?

**Jonathan Hall:** I will comment on deer management in the agricultural context. That goes back to a comment that I made earlier. The presence of deer can have different impacts. What has not come out so far is the fact that deer can cause significant agricultural damage. Deer

impacts also manifest themselves at designated sites and in road traffic accidents. Deer welfare is an overarching issue.

I am glad that, following the consultation, the mandatory competence requirement was removed and replaced by voluntary measures to establish the ability and professionalism of those who take or kill deer. That is exactly the right way to go. I would be equally concerned about compulsory deer management plans that covered different species in different regions, because deer have different impacts. Such plans would create a mess of the situation and would be difficult to put in place. Who would pick up the bill for all that? I am not sure whether such intervention would have a public benefit.

From an agricultural point of view, it is essential that we are able to manage deer when they cause an impact. That relates to all sorts of other matters. Such management might involve using out-of-season control measures or occupiers' rights, provided that those who exercise occupiers' rights do so to the highest welfare standards.

**Aileen Campbell:** Will you expand on the damage that deer cause to agricultural land?

**Jonathan Hall:** Hill farmers and crofters are very aware of what red deer do in the winter—they can come down and cause a serious impact on forage crops such as neeps.

I slightly disagree with Malcolm Strang Steel's comment that in predominantly roe deer areas, roe deer cause no agricultural impact. They can certainly work their way through a newly sown crop pretty neatly; if they are hungry enough, they could probably work their way through pretty high-value crops—brassicas, carrots and all sorts of other things. They are herbivores so, in significant numbers, they will have an impact. The issue is to do with that impact in a confined situation, which can be extremely damaging.

**Malcolm Strang Steel:** The occupier has the right to deal with such situations.

**Jonathan Hall:** I recognise that, and we have to retain that occupier's right, but I also recognise the fact that, if they are going to exercise that right, they need to do so with animal welfare very much to the fore.

**Aileen Campbell:** How are farmers dealing with the issue? Is there a collaborative approach with the gamekeepers? How are they managing it on their own farms?

**Jonathan Hall:** Traditionally, farmers have not been directly involved in deer management groups, particularly in the red deer range. One or two local deer management groups cover roe deer areas. In many ways it is a bit like the snaring situation. An awful lot of professional deer

management is not carried out by the farmer, who allows individuals to come on to their land to control and manage deer numbers. In the roe deer area, members of the BASC, in particular, and other organisations are responsible for an awful lot of deer management practice, from which farming benefits. Therefore, we need to retain the ability of people who are qualified in one sense to carry out the operation. The same argument is used in relation to snaring. To remove the ability to deal with the matter would raise a real issue from our point of view.

**The Convener:** Before I bring in Bill Wilson, Mr Strang Steel has mentioned his lowland area several times. For the *Official Report*, will he say where it is?

**Malcolm Strang Steel:** It is in Kinross-shire—the south side of the Lomond hills.

**Bill Wilson:** If we reinsert the word "serious", is there not a real danger that we might never be able to do anything? Let us say that deer come down on to some agricultural area, causing a lot of damage, and SNH thinks that a control order is needed. Damage is clearly being done and the control order can duly be given. However, what if the requirement is that "serious damage" must be caused? Someone might say, "Ah, but they have eaten only 25 per cent of the crop and it is necessary for them to eat 40 per cent for it to be serious," or, "Only 40 per cent of the crop has been damaged, and it needs to be 45 per cent." Is there not a risk that the introduction of the word "serious" is an obfuscation, because "serious damage" is difficult to identify?

**Malcolm Strang Steel:** I do not know where the motivation for removing the word "serious" came from, but perhaps you do.

**Bill Wilson:** No.

**Malcolm Strang Steel:** It seems to me that if you are dealing with an emergency situation, it ought to be clear that there is a problem and that it should be dealt with. The phrase used should therefore be "serious damage"; if it is just "damage", there is scope for the sort of argument that you are talking about.

**Bill Wilson:** Surely the argument arises if you introduce the word "serious", because then there will be a big debate about whether the damage is serious. Once you put in a bar such as "serious", you have to spend a lot of time arguing about what exactly is "serious", whereas "damage" is clear. I do not imagine that a control order will ever be put in place for some minor event, but "damage" is clear; you can see that there is damage. How do you define "serious"? I believe that you have a legal background.

**Malcolm Strang Steel:** You are right. Do you?

**Bill Wilson:** No. That is why I want to ask you how you would legally define “serious damage”, as opposed to “damage”, so that there would be no dispute.

**Malcolm Strang Steel:** I think that you recognise the elephant in the room when you see it. There is provision for dealing with damage that is not done in an emergency situation through a control agreement and, if necessary, under the compulsion powers. Let us say that we are dealing with an emergency situation such as a herd of deer breaking through a deer fence into an enclosed woodland—perhaps the herd walked over the fence on top of a snowdrift, which is a regular occurrence. In that example, the deer cause mayhem in the wood, there is serious damage and emergency action is clearly required.

**Bill Wilson:** Here is my problem. Let us say that someone then objects to SNH taking action, because they say that although there is a lot of damage, it is not serious. Does the insertion of the word “serious” not give the opportunity for someone to object and say that damage is not serious?

**Malcolm Strang Steel:** They have that opportunity whether or not you put in the word “serious”.

**Bill Wilson:** If the bill just says “damage”—

**The Convener:** Bill, we will stop there. You can take up the issue the next time that we discuss deer. You are like a little terrier. Can we move on to badgers?

**Karen Gillon:** After Bill’s badgering of the witnesses.

I have a quick question for Jonathan Hall. Are you concerned that the provisions in the bill will preclude our dealing with an outbreak of bovine tuberculosis, should it occur in Scotland and should it be proved that badgers are carrying it?

17:00

**Jonathan Hall:** Yes. Whether the bill would allow sufficient action to be taken in time to arrest an outbreak of bovine TB remains to be seen. We just do not know. I would not say that such an outbreak is probable, but it is possible and I question whether the bill is sufficient in itself. I do not have too much difficulty with what the bill says about badgers, but we have concerns about badgers, full stop, and it is not clear whether the bill will enable farming and other land management interests to overcome some of those issues. It is not just about the possibility that they spread bovine TB; there are all sorts of other issues. For example, when we discussed predation, we did not mention the fact that badgers predate lambs and attack older sheep.

The land where they dig out setts is sterilised in terms of development, they undermine—literally—all sorts of economic activities, not least railway lines and so on, and there is very little recourse available to land managers. In extreme circumstances, licences could be awarded—that is currently the case, as I understand it. We have no new concerns about badgers in terms of the bill, but there remain outstanding issues about badgers and badger management because of the fact that they can sterilise land and stifle economic activity.

**Karen Gillon:** Although we are tight for time today, it would be useful to get some more information on that. If you could send us some information on those issues, I would be interested in it.

**Jonathan Hall:** Fine. Other organisations—particularly commercial forestry interests—will be equally prepared to provide examples of how the presence of badger setts can sterilise a piece of woodland that has taken 35 years to grow but then has no economic value whatever. In such circumstances, there is nothing that the individuals can do, and the situation is the same for other developments in rural Scotland.

**The Convener:** The Government is developing a policy on badger control. Is it taking into account the possible relationship between badgers and the spread of bovine TB?

**Jonathan Hall:** I hope so and will endeavour to ensure so. We are not in a dairy area here, but there is an area not too far from here that relies heavily on the dairy industry, in which there are very tight margins for all sorts of reasons. There are bovine TB hot spots in Cheshire and parts of Wales, and if we suddenly get those in Dumfries and Galloway—in the Stewartry, for example—we will have to look closely at whatever causal relationship there is between badgers and the spread of bovine TB. It might be in the wider public economic interest for there to be a localised cull of some sort. I am not suggesting that that is what we are calling for, as I do not think that we are in that position yet, but in such a situation we might need to have that recourse. Dumfries and Galloway has an agricultural economy and remains the stronghold of the Scottish dairy industry, which is shrinking fast outside Ayrshire, Lanarkshire and the odd other place. Dumfries and Galloway remains the stronghold for that industry, and there are fewer than 1,000 dairy farms left in Scotland.

**The Convener:** It is the UK Government that is looking into the policy.

Bovine TB is probably often spread by unregulated cattle movements. We must ensure that badgers are not being tarred with a reputation

for spreading the disease, when the issue could also be cattle movements, as I know from my experience in the north-east.

**Jonathan Hall:** I would not suggest that the problem is exclusively down to the badger or anything else. However, if there is ever an outbreak and it is identified that the proximity of badgers to a dairy herd was the issue, some mechanism for taking action will need to be in place, albeit that I hope that action will be temporary and localised.

**Peter Peacock:** The witnesses heard us discuss bird poisoning with the previous panel. Despite all the penalties that exist, particularly for killing raptors, the problem is not going away and seems to be getting worse. This year a number of golden eagles have been killed, and the people who monitor eagles think that those cases are the tip of the iceberg and that up to 50 golden eagles are being killed every year. Malcolm Strang Steel screwed up his face at that figure; it is the figure that I have heard. I look forward to hearing more about that in due course. There is a serious problem, whatever the level.

A debate is taking place about ratcheting up penalties, to reduce the incidence of poisoning. The question of vicarious liability has been raised. I would be interested to hear Malcolm Strang Steel's legal view on that, as well as the SRPBA view.

**Malcolm Strang Steel:** First, the SRPBA is on record as utterly condemning the poisoning of raptors or indeed anything else that it is not legal to poison. An open letter to that effect was signed by me and many other members—I think that that was after the report of the Skibo incident. I cannot comment on whether 50 golden eagles are at risk, because I have no idea what the provenance of that figure is.

On vicarious liability, if an employer, factor or anyone else has been involved in a crime that their employee has committed, the person who is implicated is guilty of the crime art and part under existing law. That is not vicarious liability, but it is liability. If an individual employee goes off and commits a crime off his own bat, whether it is murder or the killing of a golden eagle, I do not see why an employer who had nothing whatever to do with the crime—and might condemn it, if he knew that it had happened—should be liable for the murder of the golden eagle any more than he is liable for the murder of the human being.

**Peter Peacock:** I was impressed by the letter that was signed by all the landowners, but in the following week one of the signatories found that a bird had been poisoned on their estate. The signing of a letter does not of itself stop bird poisoning. I accept that the SRPBA has expressed

a will to see less poisoning, but the problem continues, even on the estates of people who signed the letter—

**Malcolm Strang Steel:** I cannot comment on that.

**Peter Peacock:** I am not asking you to comment; I am making an observation. You have set out reasons why vicarious liability is not a way forward. Nonetheless, the Parliament might say that it wanted more action because what is happening is not acceptable. Another approach that has been postulated in the evidence that we have received is that estates could be licensed for the purpose of grouse shooting and so on. If there was enough evidence over time to demonstrate that there was a problem with an estate, it could lose its licence, which would be a direct financial penalty. The argument is that that would require all the management regimes in place to put on constant pressure to eliminate bird poisoning. Some people argue that the motivation for some of the poisoning is economic—to protect grouse and so on. What is your view about moving to a licensing system for estates?

**Malcolm Strang Steel:** Let me first outline what the existing penalties are for anyone found guilty of one of those offences, quite apart from the penalties that might be imposed. The automatic reaction of the rural payments and investigations department is to halt the single farm payment—sometimes, frankly, the department is not entitled to do that. Often, that involves very considerable sums. I am aware of one such situation involving an employee of a shooting tenant—it was nothing to do with the landlord at all. In many instances, that is already a pretty hefty penalty. Keepers have their guns removed and—for that reason, if not for any other—are likely to lose their jobs. If the factor, landowner or whoever else is involved art and part, as I mentioned earlier, they will be subject to those sort of penalties too. The penalties are pretty stiff as it stands.

As far as licensing is concerned, it would be hugely expensive and, as was mentioned earlier, there would be all sorts of practical difficulties. I really do not see that it is necessary. There are no particular advantages to it, and it would be bureaucratic and expensive for the Government.

**Peter Peacock:** I hear what you are saying—that the existing penalties are strong enough—but the problem is continuing and, indeed, increasing. Something else is required in the equation to try to make things better. If you do not support vicarious liability and you do not support a licensing regime, what does your organisation advocate to help us move forward?

**Malcolm Strang Steel:** The mere fact that something is illegal does not stop people doing it.

Murder has as high a penalty as you can get, but people still go off and do it. If you have any power and influence over people, you do your best to make them keep to the law, but if people are determined enough to break the law, they will do it.

**Peter Peacock:** Do you believe that there is nothing else that we can or should be doing to try to reduce the problem? I think that you were here earlier when I was rehearsing the arguments about what has been described to me as new management techniques that are being introduced to some estates—not every estate, by any means. Someone described it as a kind of monoculture, involving the management of almost every other species to protect one species. If such practices are going on, does your organisation condemn that, or do you support it? Is such an approach appropriate? What measures would you implement to bring about more pressure for change?

17:15

**Malcolm Strang Steel:** You have moved on to an issue of management techniques, rather than crime. Perhaps Robbie Douglas Miller would like to talk about management techniques.

**Peter Peacock:** That was very neat. Well done.

**Malcolm Strang Steel:** Well, you altered the line of discussion, Mr Peacock, not me.

**Peter Peacock:** I will come back to you on that.

**Robbie Douglas Miller:** Peter, when the previous panel of witnesses were sitting here, you declared an interest as a member of the RSPB. Perhaps I ought to declare that I am a life member of the RSPB and also a life member of the Game and Wildlife Conservation Trust.

The particular issues that you keep coming back to are vicarious liability and licensing. You keep trying, perhaps, to drive the discussion in that direction. Personally, I do not see what advantages you would get from that, for the reasons that Malcolm Strang Steel has already explained. The law already is the law. People break the speed limit every day, even though they take a test and have a licence that tells them that they cannot do that.

I encourage you to look at some of the positives that have happened in the past few years. The engagement of a lot of conservation organisations, particularly the RSPB and the GWCT, with land managers who are trying to make an economic return in certain parts of Scotland that, frankly, have a low economic return—I specifically refer to grouse moor management—has been one of the great strengths of the Scottish Parliament to date.

You mentioned Langholm moor, which you visited this morning. There are no new techniques at Langholm. There is only the trialling of certain techniques that we all hope will provide a solution to the conservation conflict of raptors and red grouse in particular, but also other game birds. The conflict exists and it will not go away whatever anybody does unless the Scottish Government decides that it simply does not want to allow shooting to take place in Scotland.

**The Convener:** I must wrap up the meeting in five minutes, so I ask Peter Peacock, Karen Gillon and Bill Wilson to keep their questions short. I will take them all together and then the witnesses can answer them all together.

**Peter Peacock:** I applaud a lot of the changed practices in recent years. Some good things have gone on. I applaud what has been done in Langholm to try to improve things further, and the attitudes that we saw this morning, but nonetheless, the problem persists and is getting worse. Now, if—

**Robbie Douglas Miller:** That is simply not true. When you say that it is getting worse, do you mean that it is worse than in the 1950s, the 1940s, the 1960s—

**Peter Peacock:** It is getting worse over recent trends. There is an increasing trend of apparent poisoning and taking raptors out. I do not think that that is in much dispute, to be honest.

**Robbie Douglas Miller:** Taking one year on one year is not, in my opinion, a trend.

**The Convener:** Let us not go over old ground, Peter.

**Peter Peacock:** My point is that, if the Parliament says—

**Robbie Douglas Miller:** My problem is that, the more that you drive this, the more you alienate all those who are trying to resolve the conservation conflict, which is real and a difficult issue to resolve. The more you try to drive a wedge between the various parties, which always seems to be happening, the less likely you are to provide a solution.

**Peter Peacock:** I think that you are misunderstanding my point. I am saying that there is a live debate about the issue, with one argument for vicarious liability and another for estates to be licensed in the way that I described. My question is, if neither of those is acceptable and the Parliament wants to do something else, what else ought it to be seeking to do?

**Robbie Douglas Miller:** Perhaps I could try to answer your question by saying—

**The Convener:** Do not answer that yet, Mr Miller. I ask Karen Gillon and Bill Wilson to put

their questions so that they can all be answered together.

**Karen Gillon:** I am probably the least animal-welfare person in the Labour team here, but I am becoming increasingly frustrated about birds of prey being killed. I just cannot understand it. I have sensed people's tension at every discussion that we have had about buzzards and ravens. People are taking them out because they do not like them and they are a pest to people who work on the land. We can talk round it, and we can pretend it is not happening and that things are getting better but, in my time as an MSP, I have been aware of more and more cases—only today, another two buzzards were killed. I cannot believe that we can allow that to continue. We have powers and stringent measures in place, but they are not working. We have a bill before us and we are going to have to do something in it to make the situation better. If you guys cannot come up with another alternative, the alternatives that are on the table are the ones that we will have to consider.

**Bill Wilson:** I hope that my question lies within Malcolm Strang Steel's legal expertise. If a member of the public is killed because of the action or negligence of individuals who are employed by a company, can that company not be held responsible for the negligent actions of its employees and, if so, is that not vicarious liability, and a parallel to what we are talking about?

**Malcolm Strang Steel:** That is a civil liability, if the employee is acting in the course of his employment. I hasten to add that that is not my field, but that is my understanding. It is not a criminal liability. As far as I am aware, a vicarious criminal liability would be completely novel.

**Robbie Douglas Miller:** I will try to answer Peter Peacock's and Karen Gillon's comments, as I share their frustration. In fact, I would go as far as saying that I am potentially more frustrated than they are by the continuing actions of a few people who undermine all the good will and the effort and energy that are being focused on trying to provide a solution that will work for all parties. Much of the work that is being done, particularly that at Langholm, is quite new. We do not yet have the answers to many of the problems, but they will come out of that work. To jump in now with vicarious liability, licensing or even further penalties will only polarise the issue; it will not help to bring everyone together and bring a solution to the table.

I do not suggest for a moment that more cannot be done. The industry could still make significant improvements. Some form of self-licensing or self-regulation might be the way forward to try to assist with the problem. Everybody is hugely aware of the problem and striving extremely hard to provide a solution. At this time, Government interference—

if I can put it that way—would not be helpful. In the long term, it would work out to be a much better solution if the various parties that are round the table were allowed to come up with a recommendation for Government to approve.

**The Convener:** That concludes our questions. I thank the witnesses for giving evidence. If you have any comments to supplement your answers, please send written evidence to the clerks as soon as possible.

That concludes the public part of the meeting. The committee will now go into private to review what we have heard and consider what we want to take forward in further meetings.

I thank everyone in the audience for attending. The committee very much enjoyed our visit to Langholm, and I hope that people have found the meeting interesting. The *Official Report* of the meeting—a verbatim report of everything that was said—will appear on the Scottish Parliament's website shortly. Thank you very much, and safe home.

17:23

*Meeting continued in private until 17:30.*

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