



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 14 December 2011

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
15th Meeting 2011, Session 4

CONVENER

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

DEPUTY CONVENER

*Annabelle Ewing (Mid Scotland and Fife) (SNP)

COMMITTEE MEMBERS

*Graeme Dey (Angus South) (SNP)

*Jim Hume (South Scotland) (LD)

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)

*Richard Lyle (Central Scotland) (SNP)

Jenny Marra (North East Scotland) (Lab)

*Aileen McLeod (South Scotland) (SNP)

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE SUBSTITUTES

Claudia Beamish (South Scotland) (Lab)

Jamie McGrigor (Highlands and Islands) (Con)

Alison McInnes (North East Scotland) (LD)

Jean Urquhart (Highlands and Islands) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Iain Dewar (Scottish Government)

Alastair MacGugan (Scottish Natural Heritage)

Stewart Stevenson (Minister for Environment and Climate Change)

CLERK TO THE COMMITTEE

Lynn Tullis

Simon Watkins

LOCATION

Committee Room 2

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 14 December 2011

[The Convener opened the meeting at 10:01]

Subordinate Legislation

Crofting Commission (Elections) (Scotland) Regulations 2011 [Draft]

The Convener (Rob Gibson): Good morning, everybody, and welcome to the 15th meeting in 2011 of the Rural Affairs, Climate Change and Environment Committee. Members and the public should turn off mobile phones and BlackBerrys because leaving them in flight mode—especially for ministers—or silent mode will affect the broadcasting system. We have received apologies from John Lamont and Jenny Marra.

Agenda item 1 is subordinate legislation. We will take evidence from the Minister for Environment and Climate Change on the draft Crofting Commission (Elections) (Scotland) Regulations 2011. The regulations have been laid under affirmative procedure, which means that Parliament must approve them before their provisions may come into force. Following this evidence session, under agenda item 2, the committee will be invited to consider a motion to approve the regulations.

I welcome the minister, Stewart Stevenson, and his officials, who are Michael Anderson, from the directorate of legal services, and Iain Dewar, from the land tenure branch. I invite the minister to make any brief remarks that he thinks are appropriate.

The Minister for Environment and Climate Change (Stewart Stevenson): Thank you very much indeed for inviting me to discuss the regulations, which mark another piece of crofting history in the making. For the first time, crofters will be given the opportunity to have their say on who they think should be on the new crofting commission and how crofting should be regulated.

It is not often that you get much agreement in the world of crofting, but I think it is fair to say that the proposals to make the commission more transparent and accountable have generally been supported for some time. There has been plenty of discussion as to what form it should take.

The Shucksmith inquiry proposed the abolition of the Crofters Commission and the election of local crofting boards with a national federation of

boards. The Government consulted on elected area committees of the commission, which would have delegated authority.

Following consideration of the consultation responses, the Government brought forward proposals for directly elected commissioners. The proposals, which were passed in the Crofting Reform (Scotland) Act 2010, were widely supported, as those of you who were on this committee's predecessor committee will recall. I refer to Dr Murray, in particular.

There was a bit of discussion around the detail of the election. Liam McArthur lodged an amendment to the Crofting Reform (Scotland) Bill, which everyone supported, requiring the Government to consult on the regulations. When the bill was passed, the consultation took place, and here we are with the draft regulations. I will give the committee a wee bit of feedback on the consultation response and an update on preparations for the election.

The regulations are modelled on other election regulations and adopt many of the practices, procedures and offences that are used in other election regulations, such as those for national park, health board and local government elections. Nonetheless, local authorities made some helpful technical comments on the regulations, many of which we have taken on board. I thank them and the Association of Electoral Administrators for their comments.

On the wider policy issues that were considered in the consultation, the analysis of responses showed broad support for the proposals from a range of stakeholders. On the electoral system that is to be used, as was agreed during the passage of the bill, the Government consulted on regulations that provide for the alternative vote system. Despite the result of the referendum on that issue for Westminster elections, there were few comments against, so we propose to use the AV system because it seems to offer the fairest method of electing a single candidate from each of the constituencies. On boundaries, the majority of respondents preferred the second of the two options that were debated when Parliament considered the issue, so we have gone with that option.

I think that everyone recognised the challenge of devising a franchise that is fair and appropriate for the commission elections, but the vast majority of people who responded to the consultation thought that we had got it right with the proposal to have one vote per croft but to limit it to one vote per crofter. In the end, there were few substantive amendments to the draft regulations on which we consulted.

By way of an update on the arrangements for the elections, the committee will appreciate that preparations take a while and that we often have to make a start before regulations come forward. If all goes well, we propose to hold the elections in March 2012, with the new crofting commission taking office on 1 April 2012. The six elected members will be joined by three appointed members, whom I will announce in due course.

If I may be so bold, I ask for committee members' help in promoting the elections to as many people as possible, because it is important that the elections are successful, that people register to vote, that some put themselves forward for election and that anyone who is entitled to vote does so. It is a unique opportunity for them to have their say on the future of crofting and those who will influence it.

The Convener: Thank you, minister. My personal history in this area goes back to the second session of Parliament, when I supported amendments by John Farquhar Munro that went against the position of his party's coalition partners. I believe that elections are a good thing and I am glad that we have reached the point of seeing the elections take shape. We will now have questions from members.

Graeme Dey (Angus South) (SNP): On the conduct of the elections, I note from the papers in front of us that there are no references to limits on spend by candidates, on how to access the list of candidates or on limits on the contact that they can have with electors. Is there guidance to cover those points?

Stewart Stevenson: There is a limit of £600 on candidates' expenditure. In part VI—"Miscellaneous and Supplemental"—of the regulations, paragraph 63 sets that limit.

It may be worth drawing the committee's attention to the fact that when someone submits their papers for standing in the election, they have the opportunity, but are not required, to submit a candidate statement to the returning officer that will be distributed to every elector with the ballot paper. Clearly, given the distribution of the constituencies, we do not have to do too much arithmetic to realise that for £600 a candidate will not be able to post other material to every elector. Of course, it is perfectly permissible for candidates to go and knock on doors or telephone people, but that must be done within the expenses limit of £600.

Graeme Dey: Are you entirely satisfied that there will be no need to check the expenses of unsuccessful candidates?

Stewart Stevenson: As with similar elections, a record of expenses will have to be submitted, so the expenses will be open to public scrutiny. It

depends what you have in mind when you use the word "check", but people will certainly be able to look at what candidates have spent their expenses on.

Of course, there is no requirement for people to spend anything. The electorates will probably be familiar with the candidates and a statement—from all the candidates, I presume—will come with the ballot papers. I suspect that much of the campaigning might be done on the basis of the local media taking an interest in the election.

I am just playing for time, because Iain Dewar is writing something down for me and I do not know what it is. I do not know what I have not said.

Iain Dewar (Scottish Government): I just wanted to point out the thinking behind the provision. Who would spend more than £600 knowing that, if they were successful, they would be disqualified? That would be a bit illogical. When someone wins the election, their expenses will be checked and if they are found to be within £600, they will be duly elected.

Stewart Stevenson: It is fair to say that in other elections people have inadvertently gone a few pounds over the limit but, ultimately, it was decided that that was not a deliberate ploy. I suspect that that is not likely to happen in this context, but human nature being what it is, the important thing is that the information that candidates have will make it clear what the limit is. It is up to the candidates to obey the regulations; if they do not, they risk not being successful in their campaign.

Elaine Murray (Dumfriesshire) (Lab): In the previous session of Parliament, the Rural Affairs and Environment Committee saw draft regulations that were similar to the current ones that spelled out Government thinking on how the elections would be conducted. The equality impact assessment says that there will be no impacts. When we considered the Crofting Reform (Scotland) Bill, a concern was raised that, in many areas, the majority of registered crofters are male and that there could therefore be an equalities issue to do with gender representation. That is difficult to tackle: the alternative would be to give everybody who lives on a croft a vote, so if four people lived on one croft, they would have four times the say of one person on another croft. Will you say a little more about that?

I note that candidates must either be registered crofters or be nominated by an elector. The executive note states:

"The regulations ... set out the details for the constituency in which a candidate may stand."

Is there a requirement for the candidate to live in, or to be on the electoral roll in, the constituency in which they stand?

Stewart Stevenson: I will deal with the first point second, if I may, because it is more complex. I might get a nudge from my officials on that.

To be a crofter, a person is required to live within 32km of the croft, and someone must be a crofter to stand.

Elaine Murray: I am sorry: I thought that a candidate could be nominated by an elector and will not need to be a crofter.

Stewart Stevenson: That is correct—there are two categories. If a candidate is a crofter, they will be geographically associated with the area. Otherwise, it could be a person from New Zealand, although that seems unlikely. Under crofting tenure, there is an option for people to continue to be a crofter even though they live more than 32km away. For example, they might be in hospital for the long term or they might work abroad for a period. The provision covers a number of such difficult exceptions.

One point in the regulations that might be relevant and which applies generally in elections is that people can stand in only one constituency. If someone is nominated in more than one constituency, which is possible under the rule that a person who is not a crofter can be nominated, they must choose one constituency before the period for nominations closes, otherwise they will be disqualified in total. I do not know whether that was part of the thinking behind your question. If you want to ask supplementary questions, I can come back to the gender issue later, if the convener permits.

10:15

The Convener: We really need to explore these things.

Stewart Stevenson: I have written the gender one down, so I will not forget it.

Elaine Murray: If someone were nominated who was not an elector—for example, our former colleague, Peter Peacock, who might decide that, now that he is not an MSP, he would like to be a crofting commissioner—would he have to stand in the Inverness area or could he be nominated in, say, Shetland? I should point out that I am not suggesting for one minute that Peter Peacock wishes to be a crofting commissioner; it was just an example.

Stewart Stevenson: Peter Peacock is now doing some valuable work in his area. I have met him in that connection on a number of occasions.

If Peter Peacock were appropriately nominated, he could stand in any of the constituencies. With all the respect that I have for Peter, I would say that that is not as improbable as you suggest—not that I have heard any rumours on the matter.

The Convener: It is interesting that the crofting counties, as designated, now include part of Moray and Arran and Bute. Many parishes within the crofting counties do not contain crofts—only about a third of them do. It is interesting to see the way in which the constituencies have been drawn up, given that we are talking about crofting, not the more general representation of people in the Highlands.

Stewart Stevenson: The issue is about crofters having the vote. When we talk about electoral boundaries, at the end of the day, decisions have to be made. One could put those decisions against alternatives and it would be difficult to find an objective reason to make one decision instead of another; at the end of the day, one simply has to decide. The consultation asked what shape the constituencies should be and we ended up with a pretty clear balance of opinion in favour of what we have proposed. Does that mean that the arrangement cannot be changed? Of course it does not. Like parliamentary constituency boundaries, the boundaries can be changed.

I accept that registered crofts are in defined areas, but there are crofts well outside the crofting counties. I speak of my immediate neighbours in what is called Aberdeenshire but which those of us who live there would prefer to call Banffshire. In that area, there are many crofts that are not registered crofts under crofting legislation. There are complexities to the language that we use.

The Convener: As a historian, I will not go into that at the moment. I think that we should move on to other questions.

Stewart Stevenson: Forgive me, but I was going to address the issue of equality. You allowed your member to ask two questions.

The issue of equality that Dr Murray raised in respect of there being comparatively few female crofters is valid, but that is a separate equality issue from that of how the elections are run. The only opportunity that we could have had in that regard—which would have been open to challenge, if we had taken it—would have involved situations in which multiple crofters are associated with the croft, whether in one location or distributed across locations, and must make a choice about who should vote. Clearly, we could have thought of making a direction to the effect that, if there is a female available, she must be given preference. However, there is little doubt that we would have been unable to do that, under human rights legislation. Apart from that, I do not

think that there are equalities issues within the limits of what we are trying to do in relation to an election.

The equalities issues lie much more broadly in the croft-ownership pattern. In a sense, it might be considered slightly surprising that there should be such a preponderance of men among croft owners. Statistically, women tend to outlive their husbands; therefore, one would expect crofts to pass from husband to wife so that there would be more women owning crofts. However, that is a broader issue, which goes beyond the elections.

The Convener: Does that satisfy Elaine Murray?

Elaine Murray: Yes.

Stewart Stevenson: That is as good as it gets, convener.

Elaine Murray: It is a difficult issue.

Richard Lyle (Central Scotland) (SNP): After an election, people might come along and say, "I wasn't on the electoral roll," or "I was lost from the roll, so when I went to vote I couldn't cast my vote." It says on the second page—the pages are not numbered, which is unfortunate—of the Executive note:

"However, not all crofters will be entitled to vote. Regulation 5 provides that if, on the day the election notice is published, the Commission has determined under section 22(1)(a) (as repealed by schedule 4 of the 2010 Act) that a crofter was not ordinarily resident on or within the then defined 16 kilometres of the croft ... they will be disqualified from voting."

Are you concerned about that? People might say, "I should have voted, but I was not entitled to vote."

Stewart Stevenson: There are two parts to the question of who gets on the electoral register and is, therefore, entitled to vote. First, it is up to people to come forward to be put on the register. Not everyone chooses to do that, as is the case for the electoral register for local authority and parliamentary elections. What proportion of the population chooses not to register to vote is a little unclear—I asked about that—but it is perhaps in the range of 7 per cent to 10 per cent.

Secondly, crofters have to meet a range of qualifications if they are to get on the register, one of which is residency. The issue was subject to considerable debate as the Crofting Reform (Scotland) Bill went through Parliament, and Parliament took the view that the approach that is before the committee is the fairest and most equitable one. The issue revolved around—as much as anything—whether a crofter who has an interest in multiple crofts should have a vote in relation to each croft. In other words, should someone with six crofts have six votes? The

Parliament was clear that that would not be appropriate.

There is the corresponding issue of a croft that is associated with more than one person, which itself has two aspects. Many crofts have no habitable property on them, but it was decided that, where people reside together in a property on a croft, it would be up to the residents—assuming that there was no non-resident owner—to make up their minds. If all the people who are crofters are at one address, the ballot paper will be sent to that address and it will be for them to decide who votes. If there is a distribution of addresses of crofters who have an interest in the croft, the crofters will be contacted and invited to nominate a person to vote.

Although the system is complicated to describe, we are seeking to make it relatively straightforward for the people who are involved, so that they understand how the people who vote are selected. We are seeking to ensure that it is the people who are entitled to vote who choose, rather than the returning officer. However, the returning officer will have to take decisions about whether people meet the eligibility rules and can be registered to vote, so there are complexities.

Mr Lyle talked about people turning up to vote. We are talking about an all-postal ballot, so the issue will be whether a person receives a ballot paper. There are provisions—as there are generally in electoral rules—for replacement ballot papers to be issued where it appears that they have gone missing and so on. There is nothing particularly different about that. It is as well to remember that it is a postal vote.

Richard Lyle: I take it that when we agree to the regulations, each person will be contacted and invited to register and that a decision will then be made as to whether they are entitled to go on to the electoral roll.

Stewart Stevenson: Yes—although I draw to your attention the fact that we do not know where they all are. A huge proportion of crofts are tenancies and it is not always obvious who the tenant is, for a variety of reasons. Although there is value to someone's registering their interest in a croft—and we encourage them to do so—people might choose not to or might simply forget or neglect to do so. A proportion of people who are entitled to vote will ultimately not end up on the register. It is fair to say that in the crofting counties there is a pretty widespread understanding of what is happening. We will make sure, by every means possible, that as many people as possible are aware of that and have the opportunity to consider whether they wish to register to vote, but there is no legal requirement for them to do so.

Annabelle Ewing (Mid Scotland and Fife) (SNP): I want to ask about timing. I see in the Executive note that the regulations set out specific provisions. Given the potential complexity in that on the date of the publication of the notice of the election, there might be further tweaking of the roll, depending on the disqualification criteria, are you satisfied that there will be sufficient time to ensure that a properly administered postal ballot takes place? There would need to be time to ensure that all the i's were dotted and all the t's crossed, unless I am missing something.

Stewart Stevenson: Let me read the timetable into the record. Assuming that Parliament consents to passing the regulations, publication of the electoral notice, which is required to be not less than 10 weeks before the day of the count, would therefore be no later than 5 January. We expect it possibly to be on 4 January. The closure of the electoral roll has to be not later than eight weeks before the day of the count, which would be no later than 19 January. The deadline for returning nomination papers and applications for proxy and absent votes is not later than seven weeks before the day of the count, which is no later than 26 January. Return of notices or withdrawal of candidates is required to be done by the deadline for the return of nomination papers at the election, which is 26 January. The draft electoral roll will be available to check the validity of nominations on 26 January—not surprisingly, because that is the closure date.

The registration officer has to supply thecrofting electoral register to the returning officer not later than four weeks before the day of the count, which is no later than 16 February, and issue ballot papers no later than two weeks before the day of the count, which would be no later than 1 March—although we expect it to be about half a week earlier than that. The deadline for returning ballot papers is not later than 4 pm on the day before the day of the count, which is 4 o'clock on Thursday 15 March. The count itself, which is expected to take place in committee rooms 1 and 2 of the Highland Council headquarters in Inverness, is scheduled for Friday 16 March. The return of expenses has to be done within 35 days of the result being declared, which would mean by 4 May.

There are quite a lot of dates there. The question that was asked was, essentially, when does the roll close? That date is 19 January, but it is set in the context of quite a lot of other dates that are prescribed by the legislation.

10:30

Annabelle Ewing: Thank you for that detailed response, minister. Assuming that the regulations are agreed to, I take it that an effort will be made

to publicise the electoral process as soon as possible, because we are coming up to the Christmas and new year holidays. I understand that the timetable is as it is so that we can get the process in place as soon as possible but, as we are getting into the festive period, I hope that the regulations will be publicised sufficiently so that electors—particularly the ones that we do not know about—realise that something is afoot and ensure that they are on the roll.

Stewart Stevenson: One part of that process is the election notice, which is two weeks in advance of closure of the electoral roll. There will be the usual public notices, but we also expect there to be substantial editorial comment. I repeat that those committee members who have the opportunity to do so—although looking round the room I think that that is only one of you: Mr Gibson—should, by whatever means, ensure that their constituents and as many others as possible are aware of what is going on.

The Convener: I presume that members of other parties have colleagues from somewhere near the Highlands.

Stewart Stevenson: Indeed.

Jim Hume (South Scotland) (LD): Part of my question concerns Annabelle Ewing's last point. I am concerned about people coming out of the woodwork because they have not had notices. The minister says that it would be good for all of us to ensure that people are aware of what is going on, but it could be seen as being the Government's responsibility to advertise the election as widely as possible. It would be good to explore that a little bit more.

I have a question on the basics of the votes. The minister mentioned that the election ballots would be counted in the Highland Council building in Inverness. Does that mean that the returning officer will be a Highland Council official? Will responsibility for the election lie with the council, the commission or the Government?

Stewart Stevenson: The returning officer will be provided by Highland Council and is an experienced returning officer, which is good. There are four councils within thecrofting areas, so one could have made three other choices quite reasonably. There will be depute returning officers from the other local authorities, so all four authorities will be involved—I beg your pardon, that should be “all five authorities”; I somehow forgot Argyll and Bute Council for a moment.

In a huge area, we inevitably need to have the count at one physical location. Inverness is simply the most convenient place to have it.

It is important to say that, although the Government and local authorities will make every

effort to ensure that people are aware of the election, it is electors' individual responsibility to register. We are not legislating to make registration a legal requirement. We will make every effort, but it would be astonishing if, at the end of the day, there were not at least one case of an individual who has somehow slipped through the net. We will do our best to avoid that, so that people have the choice of voting, but ultimately the duty and choice are theirs; it is not for us to compel them. The Parliament did not debate whether we should compel people to vote and, even if it had, it would be rather difficult to deliver on that in practice.

Jim Hume: I was not implying that you would compel people to vote. My concern was about someone missing the chance to vote because the election was not advertised widely enough.

Stewart Stevenson: We will make every effort. Our success will be substantial, but I do not wish to claim to the committee that it will be 100 per cent, because that would be a specious claim.

Graeme Dey: When the boundaries were drawn up, was any consideration given to the likely broad elector numbers in each constituency? If not, there is surely the potential for an imbalance—perhaps a pronounced imbalance—in the size of the electorate from constituency to constituency. If that proved to be the case, would it be addressed by a boundary review ahead of the following set of elections?

Stewart Stevenson: We would certainly look at the outcome of the electoral process and the operation of the new body, which we expect to establish on 1 April. Although those who are elected are being elected by different areas, the intention is not that they should be representatives of those areas. The intention is that all who sit on the crofting commission should take the interests of all crofters to heart. We have laid down that principle and we will look at how the body works in practice.

If we had adopted a strict rule about how close the size of the electorate in each constituency had to be, that would have had the potential to lead to a disproportionate geographical skewing that would probably have been unhelpful. The consultation process showed that people were substantially behind the two alternatives. There were some differences between them and people plumped pretty substantially for the one that we have brought forward, which was option 2 in the consultation.

The Convener: As there are no further questions, I thank the minister and his officials for the information that they have given the committee.

Agenda item 2 is consideration of motion S4M-01522. The motion will be moved and there will be an opportunity for a formal debate on the Scottish statutory instrument, which can last for up to 90 minutes. In practice, I hope that most of the issues will have been covered in the evidence.

We can have an opening speech from the minister and other speeches. We should bear it in mind that officials cannot take part in the debate. I invite the minister to speak to and move the motion.

Stewart Stevenson: I will limit myself to moving the motion formally.

I move,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Crofting Commission (Elections) (Scotland) Regulations 2011 [draft] be approved.

The Convener: The regulations will make it possible for some of crofters' responsibilities to match their rights under various pieces of legislation. I hope that many people will take up the opportunity that the regulations offer.

The question is, that motion S4M-01522, in the name of Stewart Stevenson, be agreed to.

Motion agreed to.

The Convener: Thank you, minister. I will record the result and report it to Parliament.

I suspend the meeting briefly to allow for a changeover of officials.

10:38

Meeting suspended.

10:39

On resuming—

Scottish Natural Heritage Code of Practice on Deer Management

The Convener: Agenda item 3 is consideration of guidance subject to approval. The committee will take evidence from the minister, Stewart Stevenson, on the Scottish Natural Heritage code of practice on deer management. Although not legislation, the code has been laid under the affirmative procedure, which means that the Parliament must approve it. Following the evidence session, members will be invited to consider the motion to approve the code.

I welcome, again, Stewart Stevenson, who is accompanied by two Scottish Government officials—Andrew Taylor from the natural resources division and Andrew Crawley from the directorate for legal services—and Alastair

MacGugan, a deer officer with SNH. I invite the minister to make some brief introductory remarks on the code.

Stewart Stevenson: I am pleased to speak on the code of practice on deer management, which is provided for under section 5A of the Deer (Scotland) Act 1996, as inserted by the Wildlife and Natural Environment (Scotland) Act 2011, with an intended start date of 1 January 2012.

Before I expound on the code, I acknowledge the work of SNH, which took the lead on developing the code, and all the interested stakeholders, some of whom went to very considerable effort to provide input in the course of the code's development. The code and what it aims to achieve originate with the previous Rural Affairs and Environment Committee, so the personnel have changed substantially—indeed, at one point, I was sitting on the other side of the table, so clearly a different minister was in post at the time.

In 2009, the consultation on the Wildlife and Natural Environment Bill proposed the introduction of a statutory duty on landowners to manage deer in a sustainable manner, supplemented by a code of practice. However, in the light of further policy and legal analysis in the run-up to the bill's introduction, we chose not to pursue that measure. Furthermore, in the course of developing the bill, the Government resisted proposals to establish a statutory requirement for deer management planning, with every plan requiring SNH approval, because of the significant cost in time and resources both to SNH and to individuals and businesses.

As a result, the legislation retained the voluntary principle in deer management with suitable enforcement powers, backed up with a code of practice on deer management. The important thing is that deer managers and deer management groups deliver what they have been entrusted with—the public interest in deer management, which might include protecting the natural environment, ensuring public safety by reducing deer-vehicle collisions, promoting deer welfare, securing employment in rural areas or promoting quality, sustainable local venison.

Although we have retained the voluntary principle, SNH's intervention powers with regard to deer control agreements and control schemes were refined to make them more usable and timely. The code of practice on deer management is intended to support deer managers and to provide practical guidance on what they need to do to deliver good practice. As I have mentioned, it was developed in collaboration with stakeholders, and SNH is developing further related guidance under the existing wild deer best practice guidance.

The code is also intended to support deer managers by setting out how to comply with the relevant legislation. However, failure to comply will not in and of itself constitute an offence. Instead, SNH will have a duty to monitor compliance with the code and to take any failure to comply into account in considering enforcement action. A higher standard is required of our public bodies, which will be required to have regard to the SNH guidance.

The code is based on the same approach taken in our strategy document "Scotland's Wild Deer: A National Approach", which sets out how deer management contributes to a high-quality and robust environment, a sustainable economic environment and social wellbeing. As I have said, the code provides a practical guide and sets out to whom it applies and what they have to do to manage deer. In summary, it provides guidance on what must be done, what should be done and what could be done. I believe that it is a valuable addition to the guidance that is already available and provides a link between wild deer strategy and the respected best practice guidance developed by the Deer Commission for Scotland, now SNH. I commend it to the committee.

The Convener: Thank you, minister. I invite questions from members.

10:45

Annabelle Ewing: Obviously, a lot of work has gone into the code and I commend everyone involved, including the organisations who made submissions during the consultation process.

I note the new duty on SNH to monitor compliance with the code, but I wonder who monitors the monitors, because this is a new element of SNH's brief. Will there be provision for periodic reporting on how successfully the monitoring is going? If so, whom will that be to?

Stewart Stevenson: Quis custodiet ipsos custodes?

Annabelle Ewing: I could not have said it better myself.

The Convener: What is the Gaelic for that?

Stewart Stevenson: It is the Roman saying, "Who guards the guards?"

The basic answer is that SNH is accountable to ministers and ministers are accountable to Parliament. Monitoring will be covered in SNH's annual reports and, as those are laid before Parliament, it will be open to Parliament and individual members to pursue matters relating to the stewardship of SNH's oversight of deer practice.

Elaine Murray: I recall a discussion about this matter when the WANE bill was going through Parliament. As you mentioned, minister, there was quite a bit of evidence from people who thought that the responsibilities should be statutory. If someone is not taking their responsibilities seriously—they are not getting involved in deer management groups and so on—they will not be contravening the legislation, and what can SNH do? That was the concern of the previous committee. When you were on the other side of the table, you brought up, I think, the issue of homeowners who might have deer straying on to their land. What can they do?

You raised the issue of accidents being caused because of deer crossing roads. That happens frequently on one road in my constituency, where deer cross at a bend and people cannot see them until it is too late. What is the land manager expected to do to prevent that sort of thing from happening?

Stewart Stevenson: The question is a three-for-one offer, obviously.

There are a range of legal sanctions that SNH could take. The ultimate one is a referral to the procurator fiscal, but the hope would be that earlier interventions—discussion of the management practices of an individual who has responsibilities for managing deer—would deliver an accord.

It might be worth drawing the committee's attention to this "Best Practice Guidance" document, which is a substantial piece of work and contains a wide range of quite detailed instructions about things that can be done. It is largely informed by practitioners, who use it to share best practice with others in the business.

On the legal sanctions, various steps can be taken. First, SNH becomes involved with the owner and seeks to work with them. Then, SNH seeks to intervene in the situation, which could involve it facilitating negotiation to reach a decision, which could include instigating a deer panel or a voluntary control agreement. Finally, SNH implements a control scheme and, if necessary, emergency action can be taken. If those steps do not work, legal action can be taken. However, I stress that, if legal action is taken, it will be because a lot of steps have failed before that point. I would like to think that the success of the legislation will mean that we will never be in the situation of having to take legal action. Perhaps I am just an optimist. The saying is that a pessimist is an optimist who is better informed, so we shall see how that goes.

The point about landowners is important. Clearly, deer can be found anywhere. Indeed, they are found on the outskirts of many of our cities. I

visited urban deer on the outskirts of Easterhouse in Glasgow over the summer or more recently. It is important that we do not place a duty on everyone who may end up with deer. We are seeking to place the duty on deer managers who manage land that they expect large numbers of deer to be on.

Transport Scotland and others record deer-vehicle accidents. I do not have it in front of me, but the most recent figure that I recall seeing for such accidents was 150. I suspect that that grossly understates the number of interactions between deer and vehicles.

Through the code, we seek to raise awareness of the need to consider fencing in certain places. If high concentrations of deer are crossing busy roads, fencing can play a role in directing deer elsewhere. There have been recent incidents involving deer from the Easterhouse cohort on the M8 in Glasgow. I am told that they were not red deer but roe deer. Therefore, we seek to ensure that drivers are aware of deer, which includes ensuring that there is signage on roads where there is a high risk of deer. Such signage is in place in many parts of Scotland.

The Convener: Is there any guidance to landowners in the code of practice on the erection of fences? I know that new fences have been erected at the side of some roads that have been improved. For example, I passed some on Monday near Achnashellach. Is that done at the expense of the public roads authorities or of landowners?

Stewart Stevenson: I suspect that it will vary. I am not familiar with the fences at Achnashellach, but deer fences are a difficult issue because they may have an effect on other wildlife as well. In particular, there is a well-understood tension between capercaillie and deer fences. There is Scottish Government fencing policy in the best practice guidance. I ask Alastair MacGugan whether he can find that for me.

Alastair MacGugan (Scottish Natural Heritage): It is still being developed.

Stewart Stevenson: Oh, it is one that is still being developed—that is the answer to that. There is so much in the best practice guidance.

It is perhaps appropriate to say at this point that the work that has gone into the guidance, which very much reflects what practitioners do, is so highly regarded that it has been picked up by the Deer Initiative in England and, so far, expressions of interest in using the guidance have come from Australia, South Africa, the Netherlands and Japan. In addition, Mexico and Norway want it translated into their own languages. The guidance is therefore a substantial start, and there will be further work on fencing policy. I thought that the

committee might be interested to know that the guidance is attracting such widespread interest.

The Convener: Thank you. We will probably follow up the issue with a progress report at some point. Jim Hume has a question.

Jim Hume: First, I am sure that Mr Stevenson is aware that high fences are also bad for black grouse.

Stewart Stevenson: Indeed.

Jim Hume: Such fences are also very expensive, so they would be a cost to someone's purse, whether public or private.

I am interested in the differentiation of deer in the code of practice. We have native species and non-native species. The latter category includes sika deer in particular, but muntjac deer are getting closer—some have already crossed the border. Is there enough to differentiate between the non-native invasive types, as I would describe sika, and the native species—red and roe? We will not mention reindeer at this time of year.

Stewart Stevenson: Of course, we have reindeer on the Cairngorms, albeit that they are supervised.

In our guidance, we have separate sections for red deer, roe deer, fallow deer and sika deer. We then have a further section that covers non-native species and makes some of the points about their variety. It talks about the social structures and gives advice on handling the animals, on drugs that are administered to them and on what to do in the case of escape.

It is a concise document—two sides of A4—but it gives pointers to many other pieces of information. We are not neglecting to look at other species, such as muntjac, as well as the four with which we are relatively familiar.

Jim Hume: That is fine. Thank you.

The Convener: I want to return to one subject that the minister mentioned: the creation of local jobs through the code of practice. In particular, a question has been raised with me about the Forestry Commission, which manages deer and the processing of their cull. Is that processing done in local abattoirs, or is there a contract to take much of the potential venison out of the Highlands, part of which I represent? It has been suggested to me that local processing of venison would create jobs.

Stewart Stevenson: I am not sure that I have sufficient information on the Forestry Commission's activities to give you the detailed answer that you will want so, if you permit me, I will revert to you and the committee. I do not think that any of the officials can help.

There is a substantial part in the guidance on carcase preparation and the process of delivering a newly shot deer to somebody's plate to ensure that, at every step in the process, we have appropriate behaviours that mean that it is delivered in a safe and nutritious form. Many of us love to have them on our plate, as well as admiring them when we see them on the hills.

The Convener: There being no further questions, we move on to agenda item 4, which is consideration of motion S4M-01540, which calls on the committee to recommend approval of the Scottish Natural Heritage code of practice on deer management.

The motion will be moved with an opportunity for a formal debate on the code, which can procedurally last up to 90 minutes. In practice, most of the issues will have been covered just now. The minister will introduce the debate and propose the motion. It should be noted that officials cannot now take part in the formal debate. I invite the minister to speak to and move the motion.

Stewart Stevenson: I will restrict myself to moving the motion formally.

I move,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Scottish Natural Heritage Code of Practice on Deer Management be approved.

Motion agreed to.

The Convener: Thank you. We will report to the Parliament accordingly. I thank the minister and his officials for their attendance.

**Cattle Identification (Scotland)
Amendment Regulations 2011 (SSI
2011/412)**

**Seed Fees (Scotland) Regulations 2011
(SSI 2011/413)**

**Seed Potatoes (Fees) (Scotland)
Amendment Regulations 2011 (SSI
2011/414)**

**Common Agricultural Policy Schemes
(Cross-Compliance) (Scotland)
Regulations 2011 (SSI 2011/415)**

**Common Agricultural Policy Single Farm
Payment and Support Schemes (Scotland)
Regulations 2011 (SSI 2011/416)**

**Deer (Close Seasons) (Scotland) Order
2011 (SSI 2011/417)**

**Nature Conservation (Scotland) Act 2004
(Authorised Operations) Order 2011 (SSI
2011/419)**

The Convener: We move on swiftly to agenda item 5, which is consideration of seven negative instruments. Members should note that no motions to annul have been received. I refer members to paper RACCE/S4/11/15/3.

Does the committee agree that it does not wish to make any recommendations in relation to the instruments?

Members *indicated agreement.*

**Pollution Prevention and Control
(Designation of Industrial Emissions
Directive) (Scotland) Order 2011 (SSI
2011/423)**

The Convener: Agenda item 6 is consideration of an instrument that is not subject to any parliamentary procedure. I refer members to paper RACCE/S4/11/15/4.

If no member has any comment, I seek the committee's agreement to note the instrument.

Members *indicated agreement.*

The Convener: That ends the public part of our meeting. I thank those who were in the public gallery. We will move into private for the next item.

11:01

Meeting continued in private until 11:37.

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e-format first available
ISBN 978-1-4061-8003-9

Revised e-format available
ISBN 978-1-4061-8017-6

Printed in Scotland by APS Group Scotland
