



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 29 October 2014



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**CONTENTS**

	<b>Col.</b>
<b>SUBORDINATE LEGISLATION.....</b>	<b>1</b>
South Arran Marine Conservation Order 2014 (SSI 2014/260) .....	1
<b>“WILDLIFE CRIME IN SCOTLAND—2013 ANNUAL REPORT” .....</b>	<b>2</b>

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**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**  
**26<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

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

**DEPUTY CONVENER**

\*Graeme Dey (Angus South) (SNP)

**COMMITTEE MEMBERS**

\*Claudia Beamish (South Scotland) (Lab)

\*Nigel Don (Angus North and Mearns) (SNP)

\*Alex Fergusson (Galloway and West Dumfries) (Con)

\*Cara Hilton (Dunfermline) (Lab)

\*Jim Hume (South Scotland) (LD)

\*Angus MacDonald (Falkirk East) (SNP)

\*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Detective Chief Superintendent Robbie Allan (Police Scotland)

Assistant Chief Constable Malcolm Graham (Police Scotland)

Patrick Hughes (Crown Office and Procurator Fiscal Service)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Adam Smith Room (CR5)



## Scottish Parliament

### Rural Affairs, Climate Change and Environment Committee

*Wednesday 29 October 2014*

*[The Convener opened the meeting at 10:04]*

### Subordinate Legislation

#### South Arran Marine Conservation Order 2014 (SSI 2014/260)

**The Convener (Rob Gibson):** Good morning and welcome to the 26th meeting this year of the Rural Affairs, Climate Change and Environment Committee. I remind everybody—including people in the public gallery—that mobile phones and other electronic devices should be switched off because they can interfere with the sound system. Witnesses and committee members may use tablets to access meeting papers and so on.

Agenda item 1 is subordinate legislation. The committee is asked to consider the South Arran Marine Conservation Order 2014. Members should note that no motion to annul has been received in relation to the instrument. I refer members to the clerk's paper and ask whether there are any comments about the subordinate legislation.

The subject of marine protected areas is extremely sensitive, and one of the policy objectives of the order has been hastened in order to try to curb one fishing vessel that has broken the voluntary agreement not to trawl in the maerl beds on that fishing ground. That is why the order will take effect immediately rather than after the usual 28 days. We understand why that has happened, and I put on record that we are glad about the vigilance with regard to maerl beds given the difficulties in policing them. We will be interested to see how they recover in due course.

**Nigel Don (Angus North and Mearns) (SNP):** We do not usually worry about these things, but the advantage of using negative procedure for such instruments is that they can be introduced immediately. We sometimes feel that it is important to use affirmative procedure because it gives us more time to scrutinise legislation, but there are times when we do not need more time but just need to get on with it.

**The Convener:** If there are no other comments from members, are we agreed that we do not wish to make any recommendations in relation to the order?

**Members indicated agreement.**

## “Wildlife Crime in Scotland— 2013 Annual Report”

10:07

**The Convener:** Item 2 is the Scottish Government publication “Wildlife Crime in Scotland—2013 Annual Report”. The committee will take evidence on the annual report for 2013 from Police Scotland and the Lord Advocate's office. The committee will follow it up with an evidence session with the minister next week. We welcome Assistant Chief Constable Malcolm Graham, from the major crime and public protection division of Police Scotland; Detective Chief Superintendent Robbie Allan, the wildlife crime portfolio holder at Police Scotland; and Patrick Hughes, the head of the wildlife and environmental crime unit at the Crown Office and Procurator Fiscal Service. Good morning.

Let us kick off with some issues related to the data in the report. I recognise that you need a good number of years' data to be able to draw any conclusions about the relative merits of the work. There has been a suggestion that the data could be clearer. Why is the 2013-14 data not yet available, and why does the report use a mixture of calendar-year and financial-year information?

**Assistant Chief Constable Malcolm Graham (Police Scotland):** The main answer to that question is that it is a Scottish Government report and the Scottish Government is responsible for the reporting period that it covers. It is also safe to say that it is very much a work in progress. The committee will be aware that the first such report was produced last year, and this year's report has sought to build on that. If you are asking whether the data could be more consistent throughout the report and whether it could be more timely in the future, the answer to both those questions is yes. Indeed, some of the data to which you refer would be available, but the challenge is that the report attempts to draw together data from a variety of sources and source organisations. Therefore, to get a degree of comparability and consistency, the Government decided to look at a calendar year, although some of the data, particularly that from the police, works on the financial year, which is consistent with all the data that the police produce.

**Patrick Hughes (Crown Office and Procurator Fiscal Service):** The only thing that I would add is that the report focuses specifically on a calendar year, so its main focus should be on the data that relates to the calendar year 2013. The data that the Crown Office has provided relates to 2013. That is true for some other data in the report but not all of it. You asked why data is provided for financial or accounting years. Obviously, that depends on the organisation that

provides it. The report provides data that goes back over a number of years and, again, that is for financial and accounting years. My understanding is that the data has been presented to assist understanding and provide some kind of context.

The annual report will be a recurring event, and the expectation in future will be that all the data will focus on calendar years. As we build up a database, we will be able to compare one calendar year against another, which will help considerably. I think that we are all conscious that there is room for improvement in the presentation and clarity of the data, to aid with understanding.

I should say that we have agreed with the Scottish Government that our technical staff will have a meeting, ideally within the next month, to clarify the extent to which the statistics that we use can be brought into line with each other. That would mean that the report for next year will, we hope, be presentationally easier to understand.

**The Convener:** In order to get a clearer picture of trends in the data, have you thought about disaggregating categories so that poaching offences can be seen as a separate category?

**Patrick Hughes:** The Crown Office data does not do that. At present, there is no proposal from the Crown Office to disaggregate data that relates to poaching as opposed to other wildlife offences. Part of the difficulty is that, although a definition of wildlife crime has now been agreed through the partnership for action against wildlife crime Scotland—it is unlawful acts or omissions that have an effect on any wild animal or environment—and we are working with that, a great deal of the legislation that applies in the field has in essence been inherited from previous eras.

The committee will know that a consolidation statute was recently passed that brought together and harmonised as much as possible the various statutes that we had. However, although some wildlife offences are directed at the welfare of an animal and the need to protect endangered species, others are inherited from previous game acts, such as the Deer (Scotland) Act 1996, and are much more focused on poaching. The various statutory provisions have a different impact on the Crown, depending on the nature of the crime. To answer the question, the Crown Office does not propose to disaggregate the data.

**The Convener:** I now understand why, but we thought to ask, because that is clearly something that hits the headlines separately, and people perhaps understand the concept of poaching in a way.

If members have no more questions on data—there might be more as we proceed—we will move on to detection of wildlife crime.

**Jim Hume (South Scotland) (LD):** Good morning to all. Obviously, you know what you know and you do not know what you do not know, if that makes sense. I want to explore what the data means and look at trends. For example, with wildlife crime relating to pearl mussels, when a river watcher started watching the rivers, they found more crimes. In 2012, there were two crimes relating to pearl mussels, but the figure was eight in 2013, six of which were discovered by the river watcher through a survey that had not taken place before. The same is true with other animals. The Scottish raptor study group considers that we know only about the “tip of the iceberg” of raptor crime. It would be interesting to find out from you whether you have any estimate for the proportions of different types of wildlife crimes that go undetected. If the detection figures are low—which they probably are—is it meaningful to look at trends from year to year, considering also that the research is changing year on year?

10:15

**Assistant Chief Constable Graham:** I do not want to get myself muddled up with analogies of known knowns and known unknowns, but it is safe to say that there are quite a number of known unknowns in the world of wildlife crime investigation, as there are in relation to many other crimes that are reported to the police or crimes that we have to seek proactively. Wildlife crime falls into both those categories. Some of them will be found only by the police or other agencies proactively seeking them, as has been mentioned, but a number of them are recorded as a result of being reported to us by members of the public, following which further inquiry takes place.

The known unknown is that there is a reasonable proportion of wildlife crime that will not be reported to the police. We accept that. Some of the interpretation that can be put on the figures is that an increase in reporting can be seen as an improvement in our ability to detect that the crimes are happening. It is always difficult to get beneath that and to say what proportion of any increase is down to improved scrutiny or monitoring. We often need to consider cases individually or in groups, as they occur. We can perhaps attribute a specific finding to a specific bit of activity in a particular area, and we have some examples of where that has happened.

As for the numbers of reported crimes—you used the term “tip of the iceberg”—I can only put a feel on that from all the intelligence sources that the police use and all the information that we get from the other groups that we work with. I do not have the sense that we are dealing with the tip of the iceberg, but I do have a sense that there are undoubtedly crimes that are not reported to the

police and therefore go unrecorded. I could not judge what level that is at, but it does not feel as if we are getting only the tip of the iceberg.

Because the numbers are so small in many of the recorded crime categories, it is very difficult to consider trend analysis with any validity. In some cases, the numbers can be as low as five, 10, 15 or 20 for certain types of crime against particular animals, so it is very difficult to do a year-on-year comparison and to put any validity behind it, given that much of what we are speaking about may be unknown. The trend analysis must therefore come with some caveats.

**Jim Hume:** That is interesting. I am glad that you are saying that you do not feel that the numbers are just the tip of the iceberg. I realise that that is just a feeling, but you are in a perfect position to get that feel for the numbers. That is reassuring in some respects.

It would be interesting to explore where you think we can improve our information, whether by using the experience of amateur naturalists or perhaps through some scientific studies of wildlife populations. Is that happening at the moment? Can that happen more? I am sure that this is not the case, but is it a matter of being purely reactionary when somebody reports something, so that you go out and look, or is there some proactivity, where you work with some groups already?

**Detective Chief Superintendent Robbie Allan (Police Scotland):** Absolutely: we will work proactively with as many partners as we can bring on board to paint that picture for us.

One of the big things that we do is to raise awareness, ensuring that what is reported to us actually comes to us. I refer to the modern technology involving the use of apps and so on for people who come across wildlife crime.

We attend all the various study groups and other groups and we link in with them so that we can understand what the whole picture looks like, so that we are informed by the intelligence that we receive—the different reports that come into us—and so that we can paint a full picture. I agree that the numbers are not the tip of the iceberg. That is our current assessment. We are getting a fair flavour of the wildlife crime that is going on, although there is undoubtedly an unreported number of crimes.

**Nigel Don:** Can I pick up on that? I feel that I am the wrong generation for this app thing, but if I were to take a walk through the countryside, as I do very often, and find myself looking at something very suspicious—although I would not know what suspicious is; maybe you could educate me on that—

**The Convener:** Not at great length in the committee, please. It would need a special seminar.

**Nigel Don:** —would I be able to download an app that would enable me to take a photograph, send it to the right place and maybe even get back the right questions that I should be asking about what to observe?

**Detective Chief Superintendent Allan:** Yes. We have started a bit of work on that. We hope that it will involve photographs and it will locate you at the time you took the photo. That is the most important part. If a dead animal was found and there was any suspicion about how it had died, the app would be the perfect way of reporting it. It would be instant and it would come straight to us, and we could start to put in appropriate measures on the back of that.

We need to embrace modern technology to make it as easy as possible for anyone to make reports to us.

**The Convener:** Graeme Dey has a question on wildlife crime reports and proceedings.

**Graeme Dey (Angus South) (SNP):** Good morning. I will deal with what we do know—or appear to know. According to table 1a in the report, 1,554 wildlife crimes were recorded between 2008 and 2013, yet according to table 9, proceedings were taken in only around 19 per cent of those instances. I think that the figure for 2012–13 is about 23 per cent. If those figures are accurate, what message does that send to perpetrators of wildlife crime? It appears that the message is even if you are caught, there is a three in four chance that proceedings will not be taken against you.

**Patrick Hughes:** One point to be clear on regarding the data in the report is that different terminology is used throughout it. You will see, for example, reference to incidents being reported to the police. Not every incident that is reported will, on further investigation, cause suspicion among the police; in incidents where police do have suspicions, they will not always have a case with corroborated evidence that they believe they can report to the procurator fiscal; and even if the police pass that hurdle, the procurator fiscal might not believe that the evidence is strong enough to take to court. Finally, cases that get to court can result in acquittals. That is the first thing that I would say about the data. We have to bear in mind that because data comes from various bodies, we are not always looking at exactly the same thing when we talk about cases, crimes or incidents.

As has been recognised for some time now, wildlife crime presents certain special issues that do not appear in other forms of crime. In 2008,

there was a joint inquiry led by the police inspectorate and the Crown Inspectorate of Prosecution in Scotland, and an issue was identified with the legislation, which was addressed significantly by the Wildlife and Natural Environment (Scotland) Act 2011.

Another factor is the sheer difficulty caused by the fact that because some crimes are committed so far into the countryside there is a real problem with gathering evidence. With crime in urban environments, there will by definition always be a much larger supply of potential witnesses and as a result there is much greater scope for data gathering. However, those advantages in the system for fighting crime do not apply to wildlife crime. There are issues with wildlife crime that do not apply to other sorts of crime.

That said, since the report from the inspectorates came out, proactive steps have been taken to tackle wildlife crime effectively, and the Crown Office now has a team of specialised prosecutors who deal with both environmental and wildlife crimes. Those crimes are effectively ring fenced from other forms of crime to allow those prosecutors to focus on them and to build up a stock of expertise.

I agree that the figures give some cause for concern when looked at in bare black and white, but I certainly do not claim to be complacent, and I do not think that anyone who deals with wildlife crime is. What I would say is that the issue is being addressed proactively and that it is a high priority for the Crown and the police, and we are getting a great deal of assistance from other partners through the partnership against wildlife crime Scotland. I hope that that answer assists you.

**Assistant Chief Constable Graham:** I would echo what Patrick Hughes has said in some respects. With different types of wildlife crime, there are different levels of success in detecting who the offenders are. Crimes that are reported to the police when the offender is present, such as fish poaching or cases of salmon or trout being unlawfully obtained, are far more frequently solved than other crimes such as those against wild birds that we might proactively identify or which might be reported to us. It is very rare for crimes against wild birds to be identified while they are taking place, and it is rare for anyone to make a report to the police that identifies an offender or indeed gives any clue about the offender's identity. Our experience, therefore, is that our ability to detect such crimes is lessened.

I also echo the comments that were made about our commitment and the fact that our technical and investigative ability to detect crimes continues to improve. In our wildlife crime investigations, we have brought to bear and now routinely deploy a

number of techniques that have been generated through other types of police investigation into serious crime. We conduct forensic examinations at the point where we recover any evidence, whether that be a wild animal or a crime scene, and applying the same crime scene forensic protocols that we would apply to other serious crimes has started to yield a different level of evidence than would have been the case in the past.

We are looking increasingly at the use of intelligence, which has been successful in detecting other serious or organised crime, and we hope that that will also yield some improvements in our ability to detect offenders. Finally, we are looking at any other technical means that we can legitimately use to identify offenders and crimes, and we hope that there will be an increase not only in the number of detections but the number of crimes identified if there are crimes that are happening but which are not being recorded.

**Graeme Dey:** Can we be optimistic that, in the years to come, wildlife reports will show an improvement in those figures?

**Assistant Chief Constable Graham:** That brings us back to members' previous questions. It all depends on what "improvement" means. We will certainly see an improvement in the quality of the data, because we still have some way to go to ensure the comparability and consistency of data provided by different organisations. As has been said, we have put some plans in place to ensure that we do that in good time for next year's reporting period.

Whether improving figures means a reduction or an increase in the crimes recorded, we still need to be more specific about different crime types. We need to specify some of the areas where we think it most likely that crimes are being underrecorded, and those are the areas where we or other organisations will have to go out and proactively seek such crimes or where, as is more likely, we will have to put more resources towards proactively finding out about crimes. Those figures are likely to go up, but there are other areas where that will not happen and where the figures are likely to be consistent.

**Graeme Dey:** I was referring more to the figures that I highlighted at the start. I accept all the caveats that you have both added about the figures, but the fact is that in a lot of other areas of recorded crime a proceedings rate of 23 per cent would not be regarded as very successful. What I am getting at is whether, accepting all the difficulties that you face, we can look forward to seeing evidence in years to come of greater success in detecting wildlife crime and a message being sent out that if such crime is detected, it will be punished and punished hard.



10:30

**Patrick Hughes:** I am optimistic that over the course of the next years there will be an improvement across the board in the detection and prosecution of wildlife crime. I point out, though, that wildlife crime is a priority and that the prosecutors who deal with it are specialists who all have years of experience and participate in training courses. Apart from environmental crime, which overlaps with wildlife crime to an extent, this is the only kind of work that those prosecutors do; they have built up expertise in it and get good results in court.

I appreciate the point that you are making, and I would respond by saying that I expect more cases to be taken up and more convictions secured. However, my caveat is that from the Crown's point of view an acquittal is not seen as a loss; indeed, the Crown does not consider that it wins or loses cases. We put evidence into court because we believe that there is a justified basis for seeking a conviction and we try to persuade the court that a conviction is in the public interest. However, convictions in this country are returned because the court is satisfied beyond a reasonable doubt, and in some cases the court is simply not satisfied in that respect.

Of course, that answer is not necessarily the wrong one. To be candid, I think that evidence can look very persuasive in one direction at the start of the case when it is in black and white and on paper, but when people are actually in court and are asked whether they are sure about this or that, they sometimes make mistakes. I appreciate that you want more of an evidence base for success in wildlife crime cases; indeed, I agree with you, and I am optimistic that that evidence base will emerge in the upcoming years. However, the simple fact that an acquittal is recorded in a case is not necessarily seen from our point of view as a negative outcome.

**The Convener:** We have a supplementary question from Dave Thompson.

**Dave Thompson (Skye, Lochaber and Badenoch) (SNP):** I have just a quick question. I know that you are all busy people; the Police Service is busy and the Procurator Fiscal Service is busy. In my many years as a trading standards officer, I had experience of very sound cases going in but being sent back to us marked "No proceedings". I suspect that one reason for that was that the cases were often very complicated. Moreover, I believe that, with the PF service being so busy, it was sometimes easier for such cases to be pushed to the side. After all, there is huge pressure on fiscals across the country.

My question has been partly answered by Mr Hughes's comment that wildlife crime is a high

priority and Mr Graham's comment that he classified it with other serious crimes. However, given that wildlife crimes are very difficult to detect and prove, does that warrant your taking a more positive view generally when wildlife crime cases come before you, either when they are reported to the police or when they get to the procurator fiscal, to ensure that they are not just looked at in the round? Should it be recognised that because of the difficulty in detecting and proving wildlife crime an extra effort should be made to ensure that they come before the court?

**Patrick Hughes:** If I can, I will answer that in two parts. First, I stress that wildlife crimes are treated as a priority and that the prosecutors who deal with them are passionate about securing outcomes that are in the public interest. Frankly, I am not sure what previous experience you might have had of cases that perhaps ought to have been taken up but were not, but I assure the committee that there is no question of cases being discontinued or not being taken up because of a lack of prosecutorial resources. That simply does not happen. I make it very clear that when these cases can be taken up, they are, and that when a case can be pursued to a final outcome in the court, that is what happens.

Are we conscious of any extra effort that could be made? I think that extra effort is already being made. There is great value to us and to the police in our participation in PAW Scotland. As you have said, we are busy and the temptation is to focus on the things that have come through the door or which have landed on our desks, but the task for us as a unit—and, indeed, as a justice system—is to keep the bigger picture in focus. We benefit from going along to the PAW Scotland meetings because we engage with other stakeholders in the field who convey to us their interests and what they think should be priorities for us. For example, there was a particular area in which there was real concern that the criminal law must be apt to deal with matters, and that was conveyed through PAW Scotland. We have also learned through PAW Scotland that we can make better use of forensic techniques to ensure that issues that we have had with cases in the past do not arise in the future. The extra effort is already being made and is producing results.

**Detective Chief Superintendent Allan:** I echo those points. I have probably had the same experiences that Malcolm Graham has had as an investigating police officer during my police service, and I would say that a big difference has been made to the investigation of wildlife crime by having a dedicated unit within the Crown Office. Wildlife crime investigators throughout Scotland now have one place to go to for advice, consultation and support, and we also all meet as an enforcement group. That allows us to share

good practice in building a case in certain types of offences as well as what has worked in a particular area, and we are getting back one consistent voice instead of different procurators fiscal having different interpretations or one having a bigger workload than another. We are starting to get consistency, which I hope will result in consistency of investigation. We will improve our investigations as we go, with a consistent message coming back from the Crown Office about what it is looking for in order to secure convictions.

**Assistant Chief Constable Graham:** Dave Thompson asked whether we could take a more positive view. I think that we take a very positive view of the status of the investigations within the context of the wide range of priorities that the police are responsible for across Scotland, and we do take specific measures. That is not to say that wildlife crime investigation is a priority that outstrips all others—that is not the case at all. However, there are specific structures and a focus on the wildlife crime inquiries, and they have had good results.

I am happy to share with the committee certain figures that I have brought along. Although we seek to report people to the Crown Office with a view to prosecution, other preventative efforts can result from our identifying perpetrators in the wider prevention work that we are carrying out to reduce the overall number of crimes. The overall average for wildlife crimes that were detected for the five years up to 2013-14 is 58 per cent, which, in comparison with many other crime types, is very high. For the year to date, the figure sits at 66 per cent, which is a high overall detection rate compared with the detection rates for a large number of other crimes in Scotland. Although we could do more, I think that that is a positive endorsement of all of our efforts to identify who is committing these crimes.

**Dave Thompson:** That is very encouraging.

**Alex Fergusson (Galloway and West Dumfries) (Con):** It is encouraging and reassuring to get those responses to Mr Thompson's question—which, if he looks ahead in his papers, he will realise would have been asked by me a little bit later.

**Dave Thompson:** I always like to help you.

**Alex Fergusson:** Yes, you often do, Mr Thompson, but that is by the by.

My next question is for the Crown Office and Procurator Fiscal Service. Considering the reassuring answers that you have just given us, why—in the past two years, certainly—have around a fifth of the cases that have been reported by Police Scotland been marked for no further action? I am particularly reassured by the fact that

you said that you are not interested in just getting convictions—you are not motivated by some league table or by the percentages of gains against losses. However, that almost increases the validity of my question: why are 20 per cent of reported cases marked for no further action?

**Patrick Hughes:** Essentially, cases can be marked for no further action for a number of reasons. In the table that was produced this year and the one that was produced last year—they are both in the same format—you will see that there are figures for cases that were marked for no proceedings. There is then a figure in brackets next to that which represents the cases in which there was no prosecutorial discretion in the matter.

This year, there are fewer cases in which prosecutorial discretion was exercised not to take up the matter. There were two matters in 2013 in which a case could have been taken up but the Crown exercised its discretion not to do so. Both those decisions were made on the overall circumstances of the case and the offenders. In one case, the accused person had significant mental health difficulties and other criminal proceedings were pending against them that would inevitably result in a much heavier sentence than he was going to receive for the offence that I am talking about.

In the cases in which prosecutorial discretion is exercised not to take up the case, that decision is made taking into account all the factors and, in effect, carrying out a balancing exercise, but you will see that the bulk of cases are ones in which there is no prosecutorial discretion, which means that, when a case arrives, it is simply not possible for it to be taken to court. There are a number of reasons for that and they are listed in the report.

The most frequent reason is that the cases are time barred. There are strict time bars for proceedings to be taken to court and sometimes the case is received after the time bar, or it is received too close to the time bar to take it to court competently. The other reason for not taking up a case is insufficient evidence. Sufficiency of evidence is a difficult question. It is a question that prosecutors, reporting agencies and the courts find quite difficult. A large number of appeal court decisions are made when the assessment of sufficiency of evidence by judges in the lower courts is reassessed by the appeal court. It is sometimes found that the initial court has mischaracterised the sufficiency of evidence.

In not all but most wildlife crimes there is a requirement for corroboration. Corroboration in its truest sense can come from two sources, one of which can be circumstantial evidence. What will constitute corroboration from one case to the next is not always clear. In some cases, you will not

know until you are in court whether the corroboration that you have is what you think it is.

Another big factor with wildlife crimes is how they look initially and how they look on further investigation. We might think that we have a wildlife crime but, because of the various caveats that surround the various forms of wildlife crime and the various exceptions that can apply to them, it might be that, on further investigation, it turns out that a crime has not been committed or there is insufficient evidence to take the case to court. All those decisions are made in a relatively short amount of time. The reporting agencies that investigate crime, such as the police, the Scottish Society for Prevention of Cruelty to Animals and others, are keen to get cases to us as quickly as possible, so they have to make an assessment of the case at a very early stage. It then has to be provided to us. That assessment is not always borne out. Even if it looks as if it will be borne out initially, further investigation that is done to make sure that the case is as strong as it can be before it goes to court sometimes indicates that there is simply not sufficient evidence. That is the explanation for the no-take-up rate.

**Alex Fergusson:** Thank you for that detailed explanation. Is that a similar percentage to the figure for other forms of crime or is there some reason for an exception in the case of wildlife crime?

**Patrick Hughes:** The short answer to that is that I cannot say. I have not conducted an analysis of our statistics against those of the broader COPFS. I could probably answer that question in writing but not today.

The statistics that were prepared for the annual report are unique. No other unit does them, because no other unit is subject to the same reporting requirements, so there will not be an immediate read-over from our statistics to everyone else's. However, the no-take-up rate can be clarified. I cannot say today whether it is at the same level as it is for other types of crime or whether it is higher or lower. If there is a divergence, I again simply point out that wildlife crime is subject to a large number of exceptions and different characteristics that do not apply in many other areas of criminal law.

One big issue with wildlife crime is that many wildlife activities are not crimes at certain times or if certain conditions are met. In comparison with crimes against property or crimes of violence, which are always crimes and would have been crimes in the code of Hammurabi in Babylon, wildlife crimes come in and out of the criminal category, if you see what I mean. I will make a note to provide the committee with that information.

10:45

**Alex Fergusson:** If you could do that, it would be useful.

**The Convener:** It would be very helpful indeed—thank you.

Graeme Dey has a brief question about the time bar.

**Graeme Dey:** It is just for the purposes of clarity. Mr Hughes, you said that the time bar is often a factor. Is the time bar for wildlife crime—or for some instances of it—different from that for other crimes? If it is not, can you explain why the time bar is a factor in this area and not in others?

**Patrick Hughes:** Wildlife crime is based almost entirely on statute and most statutes have their own time bars. The time bar can vary depending on which statutory offence is being dealt with. Most of the offences that we deal with have a six-month time bar. That means that a citation must be served on the accused within a six-month period, and that will be deemed to be the commencement of the proceedings.

One of the most important statutes under which we prosecute, particularly with regard to wild birds, is the Wildlife and Countryside Act 1981. In that act, although not in others, there is what is, in effect, a saving provision. Normally, the six months runs from the date of the offence. Under the 1981 act, because of the nature of wildlife crime, the six-month time bar can be certified to run from the period when the prosecutor considers that he or she has enough evidence.

Essentially, that means that, for some cases, the case can land with the Crown and more than six months will pass while investigations are still being instructed. Because of that certificate procedure, there is still scope for a case to be followed up. That is particularly useful with DNA cases; I am thinking of one particular case that is not a wildlife crime but an animal welfare crime, which is another aspect that our unit deals with, although not quite in the same way.

It has been the case in the past that, when a criminal offence has been committed, there is initially, for various reasons, simply no prospect of a conviction, because of a lack of evidence. Subsequently, however, DNA analysis is conducted that provides sufficient evidence. Under the saving provision in the 1981 act, that prosecution is still competent. Under other statutes, it is not, because they have a rigid six-month time bar.

To answer your question, there is a general time bar of six months with a limited exception for the Wildlife and Countryside Act 1981.

**Claudia Beamish (South Scotland) (Lab):**

Good morning to you all. Do any of you have any further comments on the present status of the law on corroboration and the possible changes to it? It may or may not be appropriate for you to comment on that in your professional roles. I am thinking in particular of the remoteness of much wildlife crime and whether any changes with regard to the armoury of evidence might be helpful.

**Assistant Chief Constable Graham:** I am very happy to offer a view. One caveat is that I have spent quite a lot of time discussing the issue with and providing evidence to another committee of the Scottish Parliament, which I have gone back to on a number of occasions in relation to the proposals in the Criminal Justice (Scotland) Bill.

Police Scotland's position is on record: we support the proposed changes to the law of corroboration. We laid out a large number of cases in which we felt that the changes would provide a greater balance in assessing evidence and allow access to justice for individuals in certain categories of crime.

We did not use wildlife crimes as examples in that respect, and I have not thought in great detail about the nature of the specific laws on wildlife crime or whether the proposed changes would be of particular assistance. All the information that we provided demonstrated that we understood carefully the position that safeguards must be in place to ensure that, when evidence is presented to court, it is viewed in a balanced way, recognising all the rights of people who are accused of crimes.

That is a long way of saying that I would be reserved in offering a strong view in relation specifically to wildlife offences without having the opportunity to look in more detail at the essential facts that would be required to be proved for each of the offences and how that information is laid out in statute. I would want to do that before coming to a position on the matter. If it would be useful, I would be happy to consider the issue and to write to the committee in due course.

**The Convener:** Thank you. We are trying to get to grips with something that I think we will be looking at every year, so you are helping us to get a good grounding on the matter and helping the public to understand the issues better.

Turning to raptor crimes and the additional measures that have been introduced, we know that some changes were proposed in 2013, including a restriction on the use of general licences; a review of wildlife crime penalties to establish whether the 1981 act is a sufficient deterrent; and the encouragement of law enforcement to use all investigative tools for the

investigation of wildlife crimes, supported by the Lord Advocate.

Does Police Scotland already have evidence of offences that might fall into that category that have occurred since 1 January 2014? Has that information been passed to Scottish Natural Heritage?

**Detective Chief Superintendent Allan:** I have been very much involved in consulting Scottish Natural Heritage on how the process will work with regard to restrictions and general licences. We have set up a structure whereby we will meet SNH on a monthly basis. At that meeting, Police Scotland will inform and notify SNH of any crimes that fit the proposed criteria. SNH will take that information and make an assessment based on it. The first meeting will take place in the first week of November, and it will apply retrospectively to all offences since 1 January.

It is not for the police to determine whether the crimes fit the criteria that SNH would use for the restriction, but we have in place a process whereby that information can be passed on. I have signed the information-sharing protocol with SNH in order to allow that to happen.

**The Convener:** Okay. Can we get any further details about the review of wildlife crime penalties? Has there been any discussion about those?

**Detective Chief Superintendent Allan:** Patrick Hughes and I are part of the review committee. The most recent meeting was last week—we are at a very early stage in the process. A report is to be with the minister in a certain timescale.

The work is still very much in the consultation phase, and a number of different aspects are currently being considered. It is probably not appropriate for me to try to pre-empt what will come out of the process, but suffice it to say that Police Scotland and the Crown are very much involved in the process.

**The Convener:** Police Scotland has stated that the force

"will use the appropriate investigative tools at their disposal to investigate crime scenes."

What does that mean? Does it specifically include, for example, the admissibility of video evidence in Scotland?

**Assistant Chief Constable Graham:** There are two sides to that question. The first concerns our overall approach to how we assess scenes and conduct investigations. I will ask DCS Allan to provide some detail on the developments to which I referred earlier, which are aimed at bringing together all the best practice from dealing with other types of crime with some specific measures on wildlife crime.

There is a specific issue around the use of video evidence, which I can cover. Discussion has been continuing about how video evidence might be obtained. To be clear, if the police obtain any video evidence, and if it comes from a specific directed camera, that would be covered by the Regulation of Investigatory Powers (Scotland) Act 2000. As a public authority, Police Scotland is required to take cognisance of the Human Rights Act 1998 as regards the intrusion that any such activity would have into individuals' lives—and not just the individual whom we might be specifically targeting.

The requirements under the European convention on human rights regarding the human rights of individuals are codified through the 1998 domestic legislation. The police are required to authorise such activity in a way that is inspected later, on a regular basis, through the Office of Surveillance Commissioners. Such activity is scrutinised very heavily, and rightly so, as those tactics can potentially intrude on people's private lives and, collaterally, on the lives of other people in instances where information might be gathered.

The test that is used in authorising such techniques on the part of the police is one of proportionality and necessity. That is laid out in law. The authorisation levels for such activity vary, but it would go from superintendent, as a minimum level for what are deemed to be the least intrusive tactics, up to chief constable or indeed beyond, in some circumstances. In such cases, very careful consideration is made of proportionality, the nature of the crime and how serious an impact it has. That is often assessed in relation to the impact on an individual in terms of violence or the impact on their life. There is also an assessment of economic and social impact. As for necessity, that aspect of the test is based on the availability of other means to investigate the crime and on how those other means have perhaps already been used or exhausted in the particular circumstances or analogous circumstances.

What I am trying to say is that there are some very stringent tests to be met before such tactics should be deployed. It is quite right that that is the case. Therefore, the police will not routinely be deploying that type of tactic to wildlife crime investigations. That is not to say that I would rule it out in any circumstances, but it is less likely that the tests that I have laid out will be met for many of the crimes that we are discussing.

There are circumstances where other organisations have gathered video evidence that has come to our attention. The admissibility of that in court is a matter for the Crown to consider, but I would have a concern that, if it came to our attention that organisations were specifically seeking to use video evidence to capture the

identity of perpetrators of wildlife crime and so on, as a public authority we would not be in a position to endorse that.

Closed-circuit television cameras are set up for a variety of reasons, such as monitoring premises or sites. From time to time, they might capture evidence of crimes, which can then be used.

I hope that that covers some of the issues on the use of technical evidence.

**The Convener:** I was about to ask you about the difference between what you have described and CCTV, but we can see that the relationships are far more stringent.

We would like to ask a little bit more about filming and so on. Graeme Dey can start on that.

**Graeme Dey:** I seek clarity on one point. If a member of the public filmed a serious assault in the street on their phone, that would obviously assist the police in their inquiries. If a farmer is out on his land and sees people taking part in hare coursing, and he films it on his camera, could the police use that? Could it be used as evidence or considered as evidence by the prosecution service?

**Assistant Chief Constable Graham:** Yes, absolutely. That is a very different set of circumstances from setting out proactively to film either a specific area or a specific individual covertly, without their knowledge, which is why it is deemed to be different in the law.

The representative from the Crown Office might wish to offer a view.

11:00

**Patrick Hughes:** I agree entirely with that. Graeme Dey's example presents no evidential difficulties at all. The farmer is entirely within his rights, because he is on his own land. He is using a camera to capture something that he has seen for himself, and he can speak to that evidence in court in due course.

A difficulty can arise when a person is on someone else's land. As members know, access to land is possible in Scotland as a matter of statutory right. The statute makes clear on what basis a person can be on someone else's land. Therefore, if a person gathers evidence, or if evidence comes into their possession, it is important that their own position—the basis on which they are on the land—is in accordance with the terms of the statute.

If that is not the case, the answer will depend on the circumstances. Scots law does not have a rigid exclusionary principle. Members might have heard the expression "the fruit of the poisoned tree", which refers to what is—or was—an American

doctrine whereby any evidence that has been produced by some illegality is completely out and there is no possibility of introducing it. Scots law has never taken that approach and adopts a balancing exercise, which takes into account all circumstances. The first question would be whether evidence has been obtained regularly or irregularly. Mr Dey's example is one of evidence that has been regularly obtained. Evidence that is used by the police under RIPSA is also regularly obtained—there is no need to justify it.

If evidence has been irregularly obtained, it might be that the irregularity can be justified. However, it might not be able to be justified. As Malcolm Graham said, there can be no endorsement of any course of conduct that tries to circumvent the provisions of RIPSA. I should make clear that RIPSA applies only to public authorities such as the police. For our purposes, the police are the only reporting agency that is in a position to use RIPSA.

**Graeme Dey:** Thank you. That was useful.

**Claudia Beamish:** If my understanding is right, the police did not follow the Crown Office and Procurator Fiscal Service in having a single unit that deals with wildlife crime. I understand that there are wildlife crime officers, who are spread throughout Scotland, as they obviously need to be. Is that correct? What is the reason for the approach? Of course, we have Police Scotland now.

**Assistant Chief Constable Graham:** I will ask DCS Allan to provide detail about the structure that is in place now and why; I can talk more broadly. We do not have a national unit in Scotland. There is a national wildlife crime unit for the United Kingdom, which is based in Scotland, so we play a big part in supporting the unit, as does the Scottish Government. We work closely with the unit.

We have a national structure for Police Scotland, which is led by DCS Allan but which is deliberately decentralised into local policing divisions, because we think that that is the best way of delivering what we seek to achieve on wildlife crime.

**Detective Chief Superintendent Allan:** On the structure that sits under me now, we have direct links into each of the 14 divisions, at two levels. At management and strategic level, the chief inspector or superintendent is the lead in the division; there is also a wildlife crime liaison officer in each division. Five wildlife crime liaison officers are full time; the others are not full time but perform the wildlife crime liaison role in the division. We also have a national co-ordinator, who works for me.

The overarching governance structure gives us national co-ordination and investigations and solutions that are delivered locally, which is where such activity is best undertaken. Investigators in the divisions have easy access to the more specialist techniques, advice and guidance that they might need to seek outwith the division—that support can be provided to them very easily. Given Scotland's geography, we think that a closed, tight task force or small unit would not give us the coverage or the local focus and accountability that we need in the context of wildlife crime. We think that the structure that we have is the best one for dealing with wildlife crime in Scotland.

**Claudia Beamish:** That clarification was helpful. Are you able to say what proportion of the part-time wildlife crime liaison officers' time is spent on wildlife crime? You could perhaps let us know in writing.

How does the current resourcing compare with the position before the formation of Police Scotland?

**Detective Chief Superintendent Allan:** There was a wildlife crime liaison officer in each legacy force, so there were eight such officers—again, they were not all full time. We can speak to the officers who are not full time and establish how much of their time is taken up with their wildlife crime duties. Basically, they do what needs to be done as part of that role. I meet them quarterly and am in constant communication with them through the co-ordinator, and none of them has ever said that they are not in a position to do the work that is needed in their wildlife crime liaison role. I am happy that what they have to do is commensurate with their role.

On top of that liaison structure, we have 110 officers in Scotland who have received training on wildlife crime, although I admit that it is to a varying degree. Those officers support the liaison officers in each of the 14 divisions, and they are the ones to whom we would go in the first instance in a wildlife crime investigation. We are going to put some structure around the training. We are at an advanced stage in developing a training course on wildlife crime, which will be delivered to those officers. We think that that will help to raise the standard of investigations.

We have a co-ordination structure and a governance structure, and we have 110 dedicated officers on the front line in relation to wildlife crime.

**Assistant Chief Constable Graham:** May I add an important point? There has been a focus on the structure, which is understandable, because a lot of the people who we have been talking about are dedicated to co-ordinating and improving our organisation's ability to investigate and prevent

wildlife crime. The important point is that we are not focusing all our attention on the 150-odd people that we have been talking about. We have more than 17,234 police officers in Scotland, as members of the committee are well aware, and the vast majority of the wildlife crimes that are reported—there are about 300 a year—are investigated by the front-line police officers who are on duty when the crime is reported. In some cases, the inquiries remain with those officers, and in others they will be allocated to detective officers to investigate, as happens with other more complex or serious cases.

I emphasise that our approach is not based only on the dedicated full-time and part-time wildlife crime liaison officers—in my experience, the part-time officers spend a substantial proportion of their time in their wildlife crime liaison officer role. We deem that every front-line officer who responds to reports of crime needs to be aware of and able to deal with the issue and investigate reports thoroughly. That is important when we consider the spread of crime across the country.

**Claudia Beamish:** We have not talked about urban wildlife crime. Does what you said about officers apply in urban areas, too?

**Assistant Chief Constable Graham:** Yes. I have not been explicit about that but I take it as read that we are talking about urban as well as rural areas. There are different types of wildlife crime in the local policing divisions across Police Scotland, many of which include urban and rural areas. Some types of wildlife crime are more likely to occur in urban areas, and officers in such areas are attuned to that.

**The Convener:** There are a couple of supplementary questions.

**Graeme Dey:** If I may expand on that point, I guess that the role of community police officers will be hugely important. I mean not just community police officers who are based in rural areas, but those in urban areas, because rural crime is often committed by people who live in urban areas. I suspect that the development of relationships in communities that lead to an environment in which intelligence comes forward is quite useful. I say that as a representative of Angus, which the old eastern division of Tayside Police covered.

To row back from that a little, I spent a day with the wildlife crime officer in that area, which was hugely informative in coming to terms with the difficulties that you face in detecting crime. With the creation of Police Scotland, what effort went into taking experience and best practice in areas such as Angus and ensuring that they were shared across Scotland?

**Detective Chief Superintendent Allan:** That was the real focus for the role of the co-ordinator—the dedicated person who sits underneath me in the central national structure. Basically, we take on information from not just Angus—I know about some of the instances that you are talking about—but all the previous legacy arrangements that were in place, the partnerships that were set up and all the different working arrangements. We are trying to pull all that together.

Obviously, one size does not fit all, but there is absolutely merit in finding out what other wildlife crime liaison officers have done in various areas, picking the good bits and saying, “That actually works for me. I can do that in my area. I’ve got a similar group that I can interact with.”

Some of that stuff can be done locally. With my role, I can do the national interaction and engagement at a more strategic level, but those local arrangements are absolutely paramount in what we are trying to do. We can share information through the national co-ordinator role and through my quarterly meetings with the wildlife crime liaison officers. We are therefore definitely picking the best of what is out there.

**Nigel Don:** I want to move fractionally north in Angus—Graeme Dey covers the western glens in Angus and I cover the northern glens.

You have spoken a lot about intelligence, but I suspect that, if we really want to know what is happening in those areas, which concerns both Graeme Dey and me, police officers on the ground would need to talk to the community on a day-by-day and week-by-week basis. It seems to me that that is tremendously difficult to do, not because it is difficult to talk to people but because it is very time consuming. Do you really have the resources in such areas to get out there and find out what is going on rather than just responding?

**Assistant Chief Constable Graham:** You are right. It is not tremendously difficult to get police officers to go out and speak to people, but it is clear that we cannot do that everywhere at the same time. There are people out there who are doing that in your communities. I know for a fact that people are doing that in the community that you represent, because we have done a specific piece of work around intelligence that we received in quite high-profile circumstances. Much of that intelligence was received from officers on the ground speaking to people who work on the land and feeding that intelligence back, which allowed us to support it. That is happening on the ground.

Would that happen more if we had more people? The honest answer to that is yes, it would. However, earlier in the session, we covered the issue that Police Scotland has a great number of

priorities to focus on and respond to, among which wildlife crime sits. We put in place a proportionate response to ensure that officers in any area are directed towards such activity.

**The Convener:** Angus MacDonald has a little tie-up question about statistics.

**Angus MacDonald (Falkirk East) (SNP):** Before we move on to other aspects of the report, I am keen to explore briefly the penalties for wildlife crime. We are discussing a Scottish Government report. Why does it not include any information on the penalties for wildlife crime? Is that information freely available? Could it be included in future reports?

**Patrick Hughes:** The short answer is that I am not entirely clear why that data is not in the report. The data probably can be ascertained from Scottish Government justice analysts.

I am afraid that that answer probably does not assist too much. I do not know why that information is not in the report, but I think that it can be obtained. If the committee expressed a desire that it should be obtained, it could be provided.

**Angus MacDonald:** Thank you. We can raise the issue with the minister next week and press him to ensure that the information is included in future reports.

**The Convener:** That would be useful.

11:15

**Dave Thompson:** Mr Hughes mentioned that animal welfare is also one of his unit's responsibilities. When I was in local government, I was responsible for animal health issues in the Highland area. In 2000 or 2001, or thereabouts, I was heavily involved with the foot-and-mouth disease outbreak, for example. How much co-operation is there between the police and local authority animal health officers? I know that not all councils appoint dedicated animal health officers—some designate that role to their trading standards officers, for example. However, there are a number of dedicated animal health inspectors—we had a couple in Highland Council.

The police and local authorities have dual responsibilities under the Animal Health and Welfare (Scotland) Act 2006, and every constable is authorised to enforce anything in relation to the act. How do the police and local authorities co-operate in relation to their responsibilities? Would there be any merit in looking into and possibly consolidating some of those responsibilities? Would it be useful if Police Scotland had full responsibility? Dedicated animal health officers across Scotland would be an additional resource that could, I would have thought, fit in fairly well

with what the police are doing generally. Has there been any thought on or discussion about that? If not, is there any merit in looking into it?

**Patrick Hughes:** To be perfectly honest, that is not something that I had considered before coming here today. The majority of animal welfare cases that we see are reported to us by Police Scotland, although some come from the SSPCA, which is another reporting agency. The involvement of local authority animal health inspectors takes place before our involvement. They generally assist the police and provide evidence. They then effectively become witnesses in the case.

On whether there is scope to combine the role, the short answer is that I would want to give that more thought. I am conscious that I would be expressing an opinion on the hoof, and I would not want to commit any other organisations that may not agree with that approach.

**Dave Thompson:** I am referring not just to welfare issues, but to broader animal disease issues. I would welcome your giving some thought to the matter.

Do the police have anything to add?

**Assistant Chief Constable Graham:** Likewise, I am not aware that we are involved in any discussions on that matter, although I am sure that it would be worth looking at. Without wanting to jump in and express a view, I would be happy for that to happen. Perhaps we could do that through the PAW network, which has been mentioned already. As a general principle, we will work closely with any agency or organisation that supports our aims.

**The Convener:** Whether it is PAW, hoof or wing, we return to wildlife crime incidents in 2014.

**Dave Thompson:** I am particularly interested in the Ross-shire incident in which red kites and buzzards were killed. At the weekend, there were a number of media reports following a press statement by Police Scotland, which stated that the deaths appeared to be accidental rather than deliberate.

You will be well aware that the incident has caused a lot of consternation, not just in my constituency and in the convener's constituency, but all over Scotland and more widely. Can you give us further information and elaborate a wee bit on the statement that was made at the weekend?

**Assistant Chief Constable Graham:** I welcome the opportunity to do so. I will perhaps provide a bit of clarification before I ask DCS Allan to provide a bit more detail about the conduct of the investigation.



I think that you said that the birds had not been targeted and that the deaths were accidental, but that certainly was not the nature of the press release that we put out. We were very careful to say that the assessment was that the birds that died had not been deliberately targeted, but that did not imply that it was necessarily an accident, which in my view would take away any need for a criminal investigation. That is not the case.

Given the large amount of speculation—much of which is not helpful in progressing the investigation—we tried to put some more information into the public domain to clarify our best assessment of the intent that lay behind the acts that we are investigating. As a result of everything that we have done in combination with a number of other agencies that are very active in the field and which supported our press release, we wanted to say that it did not appear that the activity sought deliberately to target the birds that were killed. However, that does not mean that a criminal act does not lie behind what happened.

**Dave Thompson:** That is very interesting. In essence, you are saying that the birds were collateral damage. If pest control measures were applied, they would have been targeted at something. What evidence do you have about what was targeted? You are saying that the birds were not targeted, but what was targeted? What evidence is there that the targets were hit? I am not aware that there was much evidence of other birds or other species being found dead in any great numbers.

**Assistant Chief Constable Graham:** It is a combination of all the circumstances. We are doing our best to put into the public domain as much information as we can about the findings. I am sure that you and other members will be aware that this is a very important live investigation, so we need to be cautious about the amount of information that we reveal about the findings that we have gathered as a result of the investigation to date. That is why we released that particular statement.

I am not able to go into precise detail about all the other findings, because I hope that, in future, that information can still be part of a case, if we are able to identify the perpetrator or perpetrators and the circumstances. I would not want anything that I say now on the public record potentially to work against later proceedings in some way. I hope that the information that we have been able to put out has been helpful.

I ask DCS Allan to cover in a bit more detail the rigour of the investigation and the scrutiny that there has been. That will not prejudice any future proceedings, but I hope that it will give some reassurance about how seriously the incident has been treated.

**Detective Chief Superintendent Allan:** As ACC Graham has said, we tried to provide as much information as we could to the public because it is such a high-profile inquiry. There had been a consistent clamour for more and more information and, unfortunately, there had also been a lot of unhelpful speculation.

Throughout the statement, we reiterated that this is an active criminal investigation. Our previous press releases outlined that an illegal poison had been used. All that we were trying to do was give the public and everyone concerned some understanding of the assessment of what happened.

I have been up in Inverness myself on at least two occasions and we have undertaken a full review of the inquiry. My background is very much investigative, and not always relating to wildlife crime.

Mr Graham talked about some of the tactics that we are taking from other investigation areas into wildlife crime investigations. We adopted some of those in the Black Isle inquiry, and we undertook a full review of that inquiry. We stripped it bare and went through every aspect adopted by the senior investigating officer in relation to the investigative strategy, the media strategy and the forensic strategy that lay underneath the investigation.

Our partners RSPB Scotland and the SSPCA were also involved in that process. We stripped the process right back and attempted to exploit every opportunity to gather evidence that was available to us. Thereafter, we identified the priorities for the investigation going forward. Depending on the available evidence, witness statements and intelligence, that constant review and updating continue. I still have oversight of the investigation going forward. It has been our highest-profile case in 2014.

**Dave Thompson:** It has been going on for some time. However, as time goes on, it will become more difficult for you to get the evidence that you need to solve the case, and there are lots of local concerns and rumours about what might have happened. For instance, there are real concerns about the amount of time that it took you to decide to enter premises to look for evidence and about the particular places that were targeted. Can you say anything about that?

**Detective Chief Superintendent Allan:** I cannot go into the specifics. In our investigations, we need to operate within the law and be absolutely certain about our facts and what we are doing. That will dictate our activity and our investigative strategy, especially concerning searches and so on.

Whether you are talking about the timescale now or back at the time when the crime happened,

this was always going to be a difficult inquiry. The circumstances made it difficult—a number of such inquiries have been difficult. However, I am comfortable that we have done everything that we could have done. The bottom line is that we did not have a series of witnesses standing watching the crime happen; we have a tragic set of circumstances in which 16 birds have been poisoned in the area, and we are trying to secure evidence to prove who was responsible.

We have had great support from all our partners, and there is a significant reward on offer as we try to get the last piece of the jigsaw that we need to pull the case together. So far, we are as frustrated as anyone that we have not been able to do that. We are also as frustrated as anyone about the rumour and speculation, but we cannot do a lot about that—that is, unfortunately, the nature of the situation. If we put out press releases, there is rumour and speculation; if we do not put out press releases, there is rumour and speculation. That is just where we are at the moment, unfortunately.

**The Convener:** I must press you a little further. I think that the press release makes it more difficult for us to see what is going on. The press release states that

“the birds, 12 red kites and four buzzards, were most likely not targeted deliberately but instead were the victims of pest control measures.”

Can you elaborate on the phrase “pest control measures”?

**Detective Chief Superintendent Allan:** We believe that illegal poison was placed in the area and resulted in the deaths of those birds, but we do not believe that the poison was put there to kill the birds.

**The Convener:** I repeat the question that Dave Thompson asked: why were no crows or other birds found?

**Detective Chief Superintendent Allan:** We relied on the expert assessment of some of our partners. When we got to the crime scene, it was not exactly the same as it was the day before or the day before that. The scene changed over a period of time. That is not to say that there was not some activity at the scene that we were not aware of—I am speculating—but, taking into account all the circumstances and everything that we have assessed along with our partners, the assessment is that the birds were not targeted on that occasion.

**Graeme Dey:** My question is on a related matter on which I would value the police's opinion. The Government is talking about introducing a pesticides disposal scheme—in essence, an amnesty for that appalling poison carbofuran. Of how much assistance would it be to you, in your

job of dealing with wildlife crime, if people had the opportunity to dispose of that terrible poison?

11:30

**Detective Chief Superintendent Allan:** The Black Isle incident shows that very small amounts of any of these types of illegal poisons, which have been illegal for so long, have absolutely catastrophic consequences and we should do anything that we can do to get rid of them. We just need to get them out of our society. They should not be there.

I am aware of the discussions and the proposals around them, which Police Scotland is fully supportive of and very much on-side with.

**Assistant Chief Constable Graham:** There will be a practical effect. Because of the volume of poisons that have not been disposed of and are still being stored, in cases in which we find illegal poisons it is difficult to draw a conclusion that matches them to any particular criminal act. We cannot necessarily draw evidence from that.

Trying to reduce the amount of poison that is out there will have a practical effect. Importantly, it will also send a strong message to people that they have the opportunity to come forward—one that has not been available since the legislation changed for all the different poisons. There have been different pieces of legislation over time, some of which are, in some people's eyes, relatively recent—we are going back to 2006 or 2007. However, the poison has lain there and not been disposed of, and people will therefore have a big opportunity.

Thereafter, we will be in a stronger position to redouble our efforts, in terms of any consequences for people who choose not to take part in the exercise and any conclusion that could be drawn from that. We would be very supportive of such an exercise.

**The Convener:** Your press release mentions work with your partners. Would you include NFUS Scotland and Scottish Land & Estates?

**Assistant Chief Constable Graham:** They are key partners in terms of our day-to-day local policing work. They have both spoken publicly in support of our efforts in the inquiry that we have just discussed, for example. The NFUS is not represented on the main PAW group, although its interests are represented in the formal governance and co-ordination structures.

It is clear that, at times, some groups appear to have competing interests and differences of opinion. The police are a part of the PAW network. We do not sit over it in any sense; we sit alongside those groups, in terms of co-ordination. We seek common areas of interest on which we can work

together, because the prevention of wildlife crime and the identification of those who commit it are, largely, shared interests for all those groups. Everybody has publicly stated that.

**Jim Hume:** An article in *The Press and Journal* on 25 October said:

“Police found that 16 raptors had been killed by banned poisons”,

and a police spokeswoman said that the raptors

“were most likely not targeted deliberately but instead were the victims of pest control measures.”

If a pest control measure involves a banned poison, that is an illegal action. Can you clarify whether *The Press and Journal* was correct to say that it was a banned poison and whether it was a pest control measure?

In any case, how relevant is that? What is the relevance if a person shoots an eagle, for example, and says, “That wasn’t my target. I thought it was a big crow” or something like that? I share the convener’s concerns that the waters have been muddled even more with the press release and/or the way that it has been reported.

**Assistant Chief Constable Graham:** Let me provide clarification on two points. The first is that, in trying to put some information into the public domain that we believe will help avoid the range of speculation that has centred on a number of bodies and individuals in that area and more widely, we are not in any sense trying to de-escalate the seriousness of the criminal act. As members who have heard that speculation will know, it cannot all be true.

Secondly, in a set of circumstances in which there is such a level of public interest and media reporting, it is not unusual for rumours and various pieces of information to float around. I am clear that the police will be aware of them and that we will investigate them in an effort to establish whether they are or are not true. After all, if they are not true, that can assist with the investigation as well.

That was the reason behind putting out the press statement. Our belief was that it would provide some clarification and hold some weight in the public domain if we could steer away from some of the most unhelpful speculation that was directing people towards specific causes of the acts. It was not in any sense trying to make out that it was a less serious or a non-criminal act; we are quite specific about its remaining a criminal investigation. If there is a sense that there has been an attempt to deprioritise the issue or de-escalate its seriousness, I can assure you that that was absolutely not intended. Our efforts to resolve the circumstances and to identify what has

happened and what has been done by whom continue.

**Jim Hume:** I do not think that the question has been fully answered. Was it a banned poison that was used? *The Press and Journal* states that it was, but I do not think that your press release does. If the poison was a banned one, its use would be an illegal act, no matter what the target was. Could the procurator fiscal say what difference it would make if the target was a less-protected animal?

**Detective Chief Superintendent Allan:** It was an illegal poison. That was confirmed as part of our previous media strategy. How that plays out in any prosecution will be very much down to the Crown.

**Patrick Hughes:** I agree entirely with what the police have said. There is no question of the criminality of the incident being reduced or affected by the nature of the release that has been put out, which gives the police’s assessment of the information that is available at this time.

The answer to your question is that it will definitely be considered as a criminal act, and that it will be the same form of criminal act that it was previously understood to be. Every criminal act is composed of two parts: the physical act, which is to say, the committing of the crime; and the mental element, which concerns what is going through the mind of the person who commits the criminal act. The mental element for the sort of crime that we are discussing today can be either intention or recklessness, and the press release indicates that a conviction would likely be sought on the basis of recklessness rather than intention.

**Dave Thompson:** That clearly suggests that the Crown Office and Police Scotland have satisfied themselves that the act was not malicious, but some of the rumours have suggested that the crime was committed maliciously to try to malign other people. You have clearly said that you have satisfied yourselves that you have enough evidence to show that it was not done maliciously and that, rather, it was something that was done recklessly, or even accidentally. Would that be a fair summation of what you have said?

**Assistant Chief Constable Graham:** I do not think that it is, because I do not think that we have satisfied ourselves beyond all doubt. I do not have the press release in front of me—it would appear that members do—but I know that we were careful to ensure that the language that we used was clear about our assessment. Perhaps Robbie Allan can remember the exact words that we used.

**Detective Chief Superintendent Allan:** We said “most likely”. We were not going into a court of law to provide evidence; this was a press release to inform the general public about the

progress of the inquiry. Dave Thompson has mentioned the word “accidental” a few times, but that is a word that I would take issue with. We have never gone down the line of saying that this was accidental. It is a criminal act and, as the Crown has quite clearly pointed out, when we find who is responsible for it the second element will be the only bit of it that will be up for debate. It is a criminal act that has been investigated; it is the same now as it was on day 1, and we will continue to apply as much resource and commitment as we can to that investigation in order to find out who was responsible.

**Assistant Chief Constable Graham:** The words “most likely” are an accurate assessment of where we find ourselves. It is not the case that we have satisfied ourselves beyond all doubt. The investigation continues.

**The Convener:** Thank you for those explanations, which are especially helpful to people in the local area who have great concerns. Given the known death rate of red kites in the Black Isle area since their reintroduction, do you have historic information about where carcasses were found? In other words, has there been a mapping exercise? I believe that between 1999 and 2006 something like 160 or so red kites died in one way or another. Given that, you must have a map of where those carcasses were found. Is that publicly available?

**Detective Chief Superintendent Allan:** Police Scotland will not have that sort of information for every dead red kite. I know that a number of our partners, such as the PAW raptor sub-group, are conducting an on-going exercise to map the various carcasses, but the police do not chart or map every carcass. We focus on those that have been confirmed as having been poisoned or shot—in other words, those that have been killed illegally.

**The Convener:** It is important to put that on the record at the moment. I am sure that that is something that we would be interested in following up in due course when more of that information becomes available.

We now have some questions about one of your partners, the SSPCA.

**Claudia Beamish:** I want to ask about partnerships in general. Page 8 of the annual report states that there is some difficulty with PAW Scotland’s work because of partners

“finding it increasingly difficult to attend the variety of meetings held throughout the year”.

I do not want to put words into anybody’s mouth, but communication is obviously a challenge. I would like to know whether those connections and

communications on important issues are a difficulty.

**Detective Chief Superintendent Allan:** The police are represented on the eight PAW groups; we previously chaired two of them, and I recently took over as chair of the PAW raptor group. Police Scotland is therefore fully engaged with the PAW committee structure, and we are active participants in all of its aspects.

11:45

**Dave Thompson:** I noted that Police Scotland’s submission expressed concerns about the SSPCA being given powers, and raised issues including perceived conflicts of interest. Given that overall resources are scarce, it would appear to be useful to have the SSPCA authorised to do what it needs to do to help you.

That raises the related issue of water bailiffs. My experience of water bailiffs, back in the 1970s—quite some time ago—was on Lewis, where I was living at the time. There were a lot of ructions and a lot of conflict locally about water bailiffs who had been appointed by estates. As the committee will appreciate, water bailiffs have very extensive powers. Some of those folk could have best been described as nothing more than thugs who were appointed from outwith the Highlands—from the central belt and London. There was a lot of intimidation of local people, and of course there was retaliation as well. If you want to read about it, just look at editions of the *West Highland Free Press* and the *Stornoway Gazette* from the time.

We have a situation in which water bailiffs who are appointed by private bodies have extensive powers to deal with matters. The evidence shows that more crimes are detected in relation to salmon, deer and so on than in many other areas of wildlife. What is the difference between a respectable organisation such as the SSPCA having additional powers and strength to help you, and the existing powers of water bailiffs and estates?

**Assistant Chief Constable Graham:** You have raised a number of points, which I will try to cover.

We are very keen to work with the SSPCA as partners. At the moment, the SSPCA brings a lot of expertise and resource to wildlife crime investigation. We have suggested areas in which its powers could be enhanced. However, that anecdote about Dave Thomson’s experience of water bailiffs highlights an issue that concerns us, which is that the SSPCA is not well equipped as an organisation to take on powers of the nature and strength that are proposed in the consultation.

The world has changed quite dramatically in the past few years. When, as an investigating agency,

the police uses its powers to interfere with people's lives in any way—whether that is through the seizure of property, or by preventing people from going about their business or being at liberty—we are subject to strong scrutiny measures and an increasing legislative framework. That directs the way in which we use those powers. Rigorous measures are put in place to capture and record how that is done.

The example of water bailiffs probably illustrates a good reason why we would not want to move towards anything akin to that in another organisation. I take the point that you are not making a comparison with the SSPCA. However, you will see from Police Scotland's written response to the consultation that we would have concerns that the same level of scrutiny, governance and accountability—in a day-to-day sense and an organisational sense—that sit over Police Scotland in its use of various powers and the discretion that it applies, and the independent scrutiny of how we utilise those powers, would not be in place for the SSPCA. Our concerns are based on all the work that we have done recently, for example on how we conduct ourselves as an organisation, or on the issue of people coming into custody or having their liberty taken from them—in other words, not being free to go about their movements. We have presented some cases where that is applicable.

The final point is about the overall resource. You mentioned some types of crime in which there is a higher detection rate. Those include not only salmon and sea trout poaching offences, but poaching in general. However, crime is not exclusive to those areas, and those areas are not exclusively more likely to be detected because of the presence of, for instance, water bailiffs. They are offences that are more easily detectable than some of the other crimes that we have been talking about, because they tend to happen in specific locations that can be easily targeted. They tend to come to the attention of members of the public more readily, as well as of people who are specifically focused on those crimes, such as water bailiffs.

Then there are the other types of offences. We have just had a series of discussions about the events round about Conon Bridge, which are far less likely to be detected. Indeed, I do not think that giving the SSPCA additional powers would lend any additional support to such offences being either detected or recorded in higher numbers.

The SSPCA suggests that it has about 60 officers who it could put to the work, but I do not think that those officers are currently underdeployed or sitting free. In the scheme of the commitments that Police Scotland is able to make, and the numbers of officers that we have, those

additional numbers would not outweigh or counterbalance our concerns about those powers being given to the SSPCA.

We appreciate that there is a difference of view. We have to work through that with the SSPCA and continue all the good work that we do with them, but that difference is based on a foundation of principle and our understanding of where we can most constructively and properly work together.

**Dave Thompson:** Thank you for that. I fully agree that accountability and scrutiny are extremely important, and those issues would need to be looked at very closely if the powers were to be given to the SSPCA. Did I detect in your answer, however, that you might favour similar accountability and scrutiny being applied to the work of water bailiffs?

**Assistant Chief Constable Graham:** We have not looked at that in any great detail. Our experience is that—as you highlighted from your experience—the powers that water bailiffs have and which were used in the past are no longer used routinely. We do not have experience of water bailiffs who think that they are in a position to apprehend people. They understand that both public perceptions and legal perspectives on people being brought into custody and detained have changed dramatically, and rightly so. The scrutiny that needs to be brought to bear when someone is going to be apprehended and not allowed to go about their business is far more rigorous than it was in the past. Our experience is that water bailiffs no longer use those powers; indeed, I can give no example from recent times of such use of powers coming to my attention.

**Detective Chief Superintendent Allan:** As technology has evolved and with the use of mobile phones, Police Scotland's experience is that water bailiffs are much more likely to contact and engage the police at a very early stage. Obviously, they are concerned with incidents that happen at the water's edge and things like that, and they need to assess the risk of becoming involved in the ways that they may have done in the past.

The powers are there, and you may be right that there may be an option to review those powers. However, our experience is that water bailiffs are not using the full powers that they have. That is not to say that they are not effective in what they are doing, because they involve the police at an early stage.

**Dave Thompson:** It is interesting to hear that. As you say, the powers are there, but it may be that different methods are being applied. However, if someone wanted to use the powers, they would be acting legally. Perhaps we as a committee need to look at the issue some time.

**The Convener:** I think that we will look at the matter in relation to the wild fisheries review, which has made some recommendations. The recommendations—I looked up the recommendations of Andrew Thin, Jane Hope and Michelle Francis just now—talk about a need for only modest reforms. We will come to the issue again.

Claudia Beamish has some questions on the SSPCA.

**Claudia Beamish:** I want to go a bit further forward on the point about the SSPCA in relation to the consultation and the Police Scotland submission. I understand that, in Police Scotland's response, an alternative was proposed whereby inspectors would be empowered to seize evidence of wildlife crimes if such evidence was found in the course of their investigations. Correct me if I have that wrong. Is that the case? Secondly, does Police Scotland have any concerns about the SSPCA's existing powers in relation to animal health and welfare legislation?

**Detective Chief Superintendent Allan:** Police Scotland has absolutely no concerns about the current powers and what the SSPCA is trying to do on welfare and care of animals.

We were trying to be constructive in our response to the consultation. As Mr Graham said, there are points that we think need to be made. There are occasions on which the SSPCA is quite legitimately doing the right thing on welfare but then finds that the incident has turned into something else. It seemed sensible to us to ask whether, as a result of such a change in circumstances, the SSPCA could be a bit more pragmatic about what it does about such incidents. Could its powers be extended a little, to enable it to seize evidence and so on at the time? Things get difficult because the forensic examination of that evidence needs to be done by us; the police need to become involved in the process. However, if allowing SSPCA to take the initial action means that we can secure forensic evidence at an early stage and have the opportunity to exploit it, that is the right thing to do.

**The Convener:** If there are no more questions about the SSPCA's powers, we will move on to vicarious liability.

**Nigel Don:** The Wildlife and Natural Environment (Scotland) Act 2011 introduced vicarious liability. Section 24 was drafted to cover employees, agents and persons who provide "relevant services". There was an attempt to ensure that it did not matter who engaged the person who provided relevant services. It was all designed to ensure that there were not ways out whereby people could say that they are not vicariously liable.

I accept that the approach is relatively recent, in prosecutorial terms. Will you talk about the approach and whether the 2011 act covers the ground that you wanted it to cover? Should we add to it? How effective is it at enforcement and prosecutorial level?

**Patrick Hughes:** It is certainly early days for the 2011 act. There are two cases in the court system under the section to which you referred, but both are some way from proceeding to trial.

From experience, my impression is that the 2011 act is comprehensively drafted and is therefore an effective tool that captures a great deal of what is known as special capacities—people who are acting in the capacity of, for example, an employee or person who is providing services. I have no particular concerns about the wording of the act, which I think is fit for purpose. At this stage, I certainly would not propose amendment of it.

The effect of the provision can be fully judged only when cases go to court or are resolved following procedure. In PAW meetings I have had contact with stakeholders who have made it clear to me that it is having a big impact among people who envisage or anticipate that the provision might affect them. Responsible people are very concerned about that.

The provision was introduced in response to a perceived problem, which is that crimes are being committed by employees who are being winked at or, indeed, instructed by people further up the chain. I think that the problem exists, although I hope that it is relatively limited in scope.

The great virtue of the provision is twofold. First, the provision addresses the problem. Secondly, it moves the whole question of protecting wildlife up the priority list for everyone else. People who run the kind of business that we are talking about are very busy and have a lot of calls on their time. From my contacts through PAW, my impression is that everyone is extremely conscious of the provision and the need to take proactive steps to ensure that the issue will never come to their door. My impression is that the provision is effective, certainly at present.

12:00

**Detective Chief Superintendent Allan:** In consultation with the Crown, we have tried to ensure that investigations to do with vicarious liability are as robust as they can be. We have had a couple of cases, and we have tried to share learning about how best to build a case. As Patrick Hughes said, in PAW there is considerable awareness of and debate about vicarious liability. If the 2011 act was intended to focus the minds of people further up the chain, it is certainly doing so.

**Graeme Dey:** I have found today's meeting to be hugely instructive as, I am sure, other committee members have. You have given us an understanding of issues to do with detecting wildlife crime and securing convictions.

Perhaps Police Scotland can enhance our understanding. In the investigations that you carry out, into raptor persecution in particular, is there any evidence that in some instances the action has been perpetrated not by estates and landowners and their employees but by people who want to besmirch the reputation of estates or the wider sector? Does that sort of thing go on, in your experience? If so, to what extent?

**Assistant Chief Constable Graham:** I am not aware that that happens, although I am acutely aware that there is a view that it goes on. I am not aware that we have ever gathered any evidence that supports such a view. Equally, we have not been able to say that it has not happened in the cases that we have not resolved. I think that I am right in saying that in no case in which we have investigated that hypothesis have we been able to demonstrate that that has happened.

**Graeme Dey:** Thank you.

**The Convener:** I thank the witnesses. This has been an important meeting for us. I guess that next year we—and in the future, our successor committees—will have a much better understanding of the processes that we have gone through. Your evidence has been most helpful, and the additional detail that you will provide in writing to us will be of benefit. Thank you for coming.

At our next meeting, on Wednesday 5 November, the committee will take evidence from the minister on "Wildlife Crime in Scotland—2013 Annual Report". We will also take evidence on the draft budget from stakeholders, on forestry.

I wish you all a good afternoon.

*Meeting closed at 12:02.*





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