

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 21 December 2005

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

34th Meeting 2005, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Mr Mark Ruskell (Mid Scotland and Fife) (Green)

COMMITTEE MEMBERS

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Rob Gibson (Highlands and Islands) (SNP)

*Richard Lochhead (North East Scotland) (SNP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Mr Alasdair Morrison (Western Isles) (Lab)

*Nora Radcliffe (Gordon) (LD)

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

Trish Godman (West Renfrewshire) (Lab)

Jim Mather (Highlands and Islands) (SNP)

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

Eleanor Scott (Highlands and Islands) (Green)

*attended

THE FOLLOWING GAVE EVIDENCE:

Gillian Bain (Convention of Scottish Local Authorities)

Douglas Batchelor (League Against Cruel Sports)

Superintendent Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals)

Mark Fuchter (HM Revenue and Customs)

Alex Hogg (Scottish Gamekeepers Association)

Hugh Rose (British Deer Society)

Stuart Shearlaw (Central Scotland Police)

Dr Colin Shedden (British Association for Shooting and Conservation)

Alan Stewart (Association of Chief Police Officers in Scotland)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Christine Lambourne

LOCATION

Committee Room 2

Scottish Parliament

Environment and Rural Development Committee

Wednesday 21 December 2005

[THE CONVENER *opened the meeting at 10:20*]

Items in Private

The Convener (Sarah Boyack): I welcome members, the public and the press to the meeting. I invite everybody to turn their mobile phones to silent mode, so that there are no more beeps in the room. I intimate apologies from Elaine Smith, who is attending the Public Petitions Committee this morning. She may be with us later.

Under item 1, I invite members to consider taking item 4, which is consideration of the committee's forward work programme, in private. We will further discuss our proposed inquiries, which will involve us discussing individual witnesses. We will make our decisions public shortly, but it would be helpful to discuss them in private first. Are colleagues happy with that?

Members indicated agreement.

The Convener: I also invite colleagues to consider in private the evidence that has been received to date on the Animal Health and Welfare (Scotland) Bill at our next meeting, which will be on 11 January, and to consider the draft stage 1 report in private at subsequent meetings. Are colleagues happy with that?

Members indicated agreement.

Animal Health and Welfare (Scotland) Bill: Stage 1

10:21

The Convener: The main item today is the Animal Health and Welfare (Scotland) Bill. This is the fifth of our six planned evidence sessions for stage 1 consideration of the bill. As the lead committee, we have the job of considering the bill's provisions and reporting to the Parliament whether we recommend that the general principles of the bill be agreed to. In our evidence sessions, we are working our way through a number of witnesses who have expertise in different sections of the bill and through people who have an interest in the issues that the bill raises.

We called for written evidence and received a large number of submissions, all of which are on the committee's web page, so members of the public can see them. Our call for evidence is now closed and all the submissions are in.

Without further ado, I welcome panel 1, which consists of Alex Hogg, chair of the Scottish Gamekeepers Association; Dr Colin Shedden, director of the British Association for Shooting and Conservation; Douglas Batchelor, chief executive of the League Against Cruel Sports; and Hugh Rose, the Scottish secretary of the British Deer Society. Thank you for the evidence that you submitted in advance. Committee members have read it, which will help us to explore the issues that you raised. We will not have opening statements. Which colleague wishes to kick off this session?

Rob Gibson (Highlands and Islands) (SNP): First, I will address the BASC submission, with regard to protected animals. You suggest that the bill could create a problem in the case of animals that are commonly domesticated but which also live in a wild state—for example, deer, rats, rabbits and water fowl. Could you expand on your evidence?

Dr Colin Shedden (British Association for Shooting and Conservation): Our evidence is similar to that put forward by other parties, some of which share our views and some of which do not. We think that there is uncertainty as to the current definition. We recognise that it is the intention to include within the bill a wide range of animals that could suffer from adverse welfare impacts, which of course we recognise. However, we would like clarification as to whether we are talking about all animals that are commonly domesticated—that would include rabbits, which are the classic example—or whether we are looking at a more refined definition of animals that have been domesticated.

In correspondence with the Executive on the subject, a helpful sentence was given to me:

"Kinds of animals which are to be considered commonly domesticated in the British Islands are those whose collective behaviour, life cycle, or physiology has been altered as a result of their breeding and living conditions being under human control ... for multiple generations."

That is a useful clarification from my point of view, but I do not remember seeing it in any of the bill's accompanying documents. It may be worth considering that information from officials as further explanation of the term "domesticated animals". It certainly helps to clarify matters from our point of view.

Rob Gibson: But we do not have such a statement in the bill.

Dr Shedden: Exactly.

Rob Gibson: That is where the problem lies. What are the practical consequences of trying to define more precisely what domestic animals are? Given our previous evidence, that is difficult for us.

Dr Shedden: The main problem is that a wide range of animals that live in the wild are of a species that has been commonly domesticated in the past. Rabbits are the classic example. It is a question of clarifying which species live in the wild and, if they exist in a wild state, whether they are completely separate from those animals that have protected status.

Secondly, one of the bill documents mentions that rats are vermin, so they are excluded from protected animal status. That opens up a whole new can of worms for organisations such as ours, which in some situations would regard squirrels or mink as being vermin. We need to be clear about which animals are vermin and which species fall under the commonly domesticated heading.

Rob Gibson: That still makes for a complicated picture.

Dr Shedden: I am sorry to have to draw that to your attention.

Rob Gibson: There might be other members of the panel who wish to comment.

Douglas Batchelor (League Against Cruel Sports): There is a general principle at stake. Just as people ran into difficulties under the Dangerous Dogs Act 1991, if we define cruelty as something that is done to particular species rather than as the carrying out of certain acts, we will run into all sorts of problems, because cruelty is an act of man; it does not depend on the type of animal to which it is done. We would favour a definition that was much more about what the human being who was involved in the transaction was doing, as opposed to a definition that sought to include or exclude specific species of animals.

Rob Gibson: I have a follow-up question, to which other panel members might wish to respond. Last week, one of our vet witnesses said that there was an issue about deer being fenced in. That does not apply only to farmed deer—parts of some estates are fenced to keep the deer in a particular place or to exclude them from areas in which there are trees, for example.

Hugh Rose (British Deer Society): The difference between a wild deer and a tame deer can boil down to something as simple as closing a gate. Deer can be encouraged to go into a deer trap. While they can come and go freely they are wild deer, but as soon as the gate is closed they become protected animals, as is the case with any other animal.

The status of deer that are kept in the large enclosures that are sometimes called deer parks is that they are close to being wild animals, provided that they are treated as such. However, if such deer were to starve to death for lack of food, the person who owned the deer park would be culpable for failing to feed them because the fact that they were fenced in meant that they could not act as wild animals and migrate to food in another place. If that person infected them with a disease, he would be equally culpable under a different section of the bill.

Rob Gibson: Does anyone else have a view on that?

Alex Hogg (Scottish Gamekeepers Association): I have been thinking about the situation of deer, which is similar to that of the birds on our bird tables. The committee has probably been told that already. Although we try to help birds through the winter by feeding them, they are still wild animals.

Rob Gibson: But there might be a commercial reason for helping deer through the winter. That is not likely to be the case with the birds on the bird table.

Alex Hogg: A gamekeeper or a stalker often just wants to ease the winter burden of a shortage of food. He does not necessarily help deer for commercial reasons.

Hugh Rose: We are discussing animal welfare and the motivation is quite irrelevant. Whether one feeds blue tits because one likes to see a lot of blue tits or one feeds pheasants because one wants to have more pheasants to shoot, the motivation is totally irrelevant.

Rob Gibson: I do not know about that. One could transfer the scenario to stocked trout lochs, as another of my colleagues has suggested. There would still be a problem of definition if one fed the free-swimming fish in such a loch, which could not

escape into the wild. What would the situation be in such a case?

Alex Hogg: That depends on what the definition of a trout loch is. We have a loch on the estate the area of which is more than 100 acres. When the trout in that loch are released, they will immediately fend for themselves because there is so much insect life. They are about the only animal that can do that when they are released into the wild. However, the situation would be different if they were released into an area of water that was 10yd by 10yd. This is a grey area.

Rob Gibson: Yes, it is a grey area.

The Convener: Do any other colleagues want to come in on that issue?

Mr Ted Brocklebank (Mid Scotland and Fife)

(Con): I have a point on the issue, but I also want to move on from it.

10:30

The Convener: Maureen, did you want to ask something?

Maureen Macmillan (Highlands and Islands) (Lab): No.

The Convener: Douglas Batchelor can wrap up the issue.

Douglas Batchelor: The previous chairman of the Countryside Alliance—I am almost quoting him, which is quite unusual for me—made the moral point that, when man interacts with an animal, he owes it a duty of care at that point. If we take the example of shutting the gate of the deer park and consciously influencing the environment in which an animal lives, we are starting to take responsibility for that animal. The bill implies that duty of care, which is sound logical reasoning, and we support it. Once we start to do such things, we become involved in the equation and the animal is no longer truly wild.

The Convener: The SGA submission says that, for an animal to be protected, it should have to satisfy all the criteria—it should have to be “commonly domesticated”, “under the control of man” and not living wild. However, in the bill, it seems as though the animal would be defined as protected if any one of those criteria were satisfied. Do other members of the panel have different views on that?

Dr Shedden: Our submission suggests alternative wording for the bill, such as using the word “or” to join paragraphs (a) and (b) of section 15. There are different ways of looking at the issue and different legal interpretations. I am seeking to secure clarity in the bill so that we can advise those who are interacting with wild animals—and who might, through trapping or snaring, be

restraining them temporarily—of exactly what they are dealing with. In each case, those people do their utmost to ensure that the animal's welfare is not compromised before it is released or humanely dispatched. However, we need clarity so that we can advise our members exactly what the provisions of the bill will mean and what they will imply for them.

Douglas Batchelor: We support the individual conditions but not the concept of linking them all together so that all three tests have to be passed. That would allow far too many loopholes to be created.

Hugh Rose: The British Deer Society deals only with deer. The critical issue is the conditions under which the deer is living—whether the deer is free to roam and to what extent. If the deer is in a 10,000 acre park, it is nearly free to roam, but if, for some reason, there was no water in that 10,000 acres, the deer would be a protected animal from which water was being withheld.

The Convener: Whoever was running the park would be responsible at that point.

Hugh Rose: Yes. The animal would not be meeting all three of the criteria. We would have to consider the conditions under which the animal was being kept. If someone did not treat a tame rabbit that had myxomatosis, they would be guilty, but if they did not search Arthur's Seat for rabbits with myxomatosis and put them down humanely, they would not be guilty.

The Convener: I wonder whether Alex Hogg would like to come back on that, as he will be implementing the provisions of the bill.

Alex Hogg: The whole of Scotland is going to be managed by man, so are we going to be held responsible for golden eagles or the golden plover? Where do we draw the line between a wild animal and a tame or domesticated one?

The Convener: I suppose that that relates to any one of the three criteria. A golden eagle would not be commonly domesticated and it would not ordinarily be under the control of man, unless it was kept for show purposes. Perhaps we need to test with the minister the idea that species might not be a sufficient criterion to use in a definition. The panellists have given us examples of species that would be totally protected and some that seem to cross the boundaries depending on who is looking after them at which time. I sense that we need a bit more clarity. The issue might be how the bill should be interpreted. We have been given a range of ways in which people would like us to interpret it, but we should all interpret it in the same way. We will have to feed those ideas back to the minister and clarify the matter, so that we know before we debate the detail of the bill what the minister intends and whether that fits with the

comments that people have made. I want to let that run a bit, because what constitutes a wild animal seems to be a big issue.

Ted, do you want to move us on?

Mr Brocklebank: I want first to make an observation in connection with the definition of a wild animal. It relates to the wildcat, which is specifically mentioned as not being protected. It is not a domestic cat but, as we know, increasingly it is breeding with domestic cats, so that it is now difficult to know what is a wildcat in the wild. That raises the issue of what a wildcat is. Is it the original, traditional Scottish wildcat, or is it a creature that is the result of breeding with domestic cats and is running feral? We need to address that issue.

Section 26 provides a definition of abandonment. I want to explore how the witnesses define abandonment. There seems to be a particular difficulty in respect of the release of pheasants from breeding cages. The SGA and others believe that they are discharging a duty of care by feeding the pheasants, letting them out gradually and leaving them in the wild. However, the League Against Cruel Sports, which Douglas Batchelor represents, argues that only 40 per cent of the birds are shot and many die in other ways and that, consequently, the definition of abandonment could come into play in relation to released pheasants.

Douglas Batchelor: The point of principle is that, if an animal is to be released into the wild, the preparation for release should be such that it has a reasonable prospect of survival. The figures that we quote in our submission come from the shooting organisations. They say that approximately 40 per cent of the released birds are shot and that the rest die from a mixture of disease, predation, accidents and so on. A very small number of birds survive beyond the end of the shooting season.

We take the simple view that, if 60 per cent or thereabouts of the animals are dying, insufficient provision has been made for their welfare in the rearing and releasing process. No one in a commercial farming business would accept a 60 per cent casualty rate. We think that something is seriously wrong and that there is a difference between release and abandonment that is evidenced by the level of loss to which I have referred. That is why we think that it is entirely right for the abandonment provisions to be retained in the bill. When losses are at such a level, release is abandonment, because there is no prospect of survival.

Hugh Rose: That is extremely woolly thinking by the League Against Cruel Sports. Very few young wild animals survive to maturity. I am

talking not about sporting species, but other species. If 90 per cent of blue tits did not die before they were a year old, we would be overrun with blue tits.

Alex Hogg: We are as careful and attentive as possible when releasing our pheasants into the wild. I disagree with the figures that Douglas Batchelor has cited. There is a 40 per cent return on the shooting. Perhaps 30 per cent of pheasants are lost to vermin and for other reasons. At the end of the season, I always have perhaps 25 per cent of the birds left, which I continue to feed until the spring. Those are the figures with which we work.

Dr Shedden: On the more general point of abandonment, I know that Mr Batchelor's submission refers on two occasions to gates being opened and to release pens. That implies that the gamekeeper decides when the birds are mature enough to be released. It suggests that one day they are contained and are effectively livestock and that the next they are released into the wild. A release pen works in a totally different way from that. A parallel can be made with the process that is used by organisations that release birds such as birds of prey for restocking. The release pen is open at the top, so it is the birds that decide when they are mature and able to fly. That is when they can get out of the release pen.

In effect, the birds decide when they have reached a state of maturity that enables them to enter the wild state. It is not a case of a gamekeeper opening a gate and saying, "Right, off you go." A perfectly natural trickle-release system is employed. The care that is invested in the birds that have been released is phenomenal. They are incredibly valuable to the gamekeeper and to the estates or syndicates that release them. Let us not lose track of the fact that the birds are very valuable as a shooting resource, with a going rate of between £25 and £30 per bird.

Alex Hogg: It is worth pointing out that the millions of tonnes of wheat—I am not sure of the exact figure—that are produced in Britain each year help to sustain many other wee birds through the winter. In addition, many estates now plant massive game crops with lots of seeds in them for finches and things. All of that happens in the shooting world.

Douglas Batchelor: Our submission refers to Roger Draycott's Game Conservancy Trust paper of 2002, which discusses the survivability of game birds that are reared in that intensive way and then released. One problem is that such birds are far less successful at surviving and breeding than birds that have been bred in the normal way in the wild. Our concern is that such birds are not so much released as genuinely abandoned. The RSPB has criticised the release of red-leg

partridges because they will not survive in some of the climates into which they are released—it is a known fact that they are not suited to that environment.

It is important that the bill contains a measure on abandonment. If such birds have reasonable prospects of survival, it can be argued that their welfare is being properly looked after. However, if they die in appalling numbers, they must have been released in the sure and certain knowledge that they would not survive. That must be cruel.

Mr Brocklebank: I am given to understand that, even after they have released the birds, many gamekeepers continue to put out feed for them and many such birds continue to come back for a period to feed by the breeding cages. It is not the case that gamekeepers simply write off the birds the minute that they have been released. Surely it is in the gamekeeper's interest to ensure that as many of the birds survive as possible.

Douglas Batchelor: We agree with you on that. However, the bill trips into a difficulty with the point at which such birds are deemed to be wild. In effect, the birds are dependent on their gamekeepers in exactly the way that you have described well beyond the point of release. As the committee heard in evidence earlier, the birds can be dependent right through to the end of the winter or the following spring. As such birds would not survive in reasonable numbers without that level of attention, it would be misleading to classify them as wild. They should come within the scope of the bill while they are being looked after in that way.

Mr Brocklebank: However, is it not true that such birds are just as wild as the red deer that come down to be fed potatoes during a hard winter? Such animals are dependent to some extent on the gamekeeper or stalker keeping them fed. Surely the pheasants are wild in exactly the same sense, in that, when they need support, they come to a gathering point to be fed.

Douglas Batchelor: I totally agree with you. The argument is difficult, but everyone says that they need to feed such birds to ensure reasonable survival rates after release. Given that such birds become at least partially dependent on that interaction, the bill should not classify them as wild such that the person could not be held responsible for what happened to them. If people claim ownership of commercially valuable birds even after their release, surely they should have responsibility for them under the bill. People cannot have it both ways: they cannot say that they look after the animal but are not responsible for it. That does not make sense. If something needs to be done, it should be done humanely, but the person should be responsible for what they do and be ready to be held to account for any failure to do that properly.

Alex Hogg: Surely that situation is comparable to what the RSPB does when it releases red kites that have been nurtured and fed. The RSPB tells the public, "Come and see these wild red kites." Those birds are also helped along, so that is the same sort of scenario.

Maureen Macmillan: Would you say that such pheasants belong to the estate?

Alex Hogg: They belong to whoever owns the ground on which they are shot or even to the poacher if he gets one on the road. It depends on where they are shot.

Hugh Rose: People can own the shooting rights for a piece of land, but they do not own the wild animal. The definition of a wild animal is that it is not owned. If a poacher kills a deer illegally, the deer belongs to him. He may have taken it illegally, but it belongs to him until a court declares it forfeit. A court has to declare the deer forfeit—a policeman cannot take it off the poacher or he would be stealing the poacher's illegally taken deer. I hope that that makes the situation clear. The position for game birds is the same as it is for deer: they are wild and belong to no one until they are taken. The rights to take the deer over land are owned, not the deer themselves.

10:45

The Convener: Can I ask a quick supplementary question to Maureen Macmillan's question about abandonment? I understand that a code of practice is proposed on the rearing of game birds. To what extent will that help to clarify the situation? On the one hand, Douglas Batchelor is arguing that an unacceptably high number of birds die once they are released; on the other hand, Alex Hogg is arguing that the birds are looked after when they are sent out and are sometimes given supplementary feeding. To what extent will the code of practice help to draw lines between abandonment and release into the wild? Will the code of practice help us, or do we need to consider including provisions in the bill?

Dr Shedden: The existing game farmers' code of practice relates to the game-rearing process up to the release period. More generic advice is available from several organisations on the best way to ensure that birds are released on a trickle feeding system and are cared for in the wild for the remainder of the season and beyond. Most, if not all, gamekeepers continue to provide food for birds—not just for pheasants, but for wild birds as well—in key areas throughout the year.

I have a practical point to make in respect of Douglas Batchelor's comment about gamekeepers having a degree of responsibility for the birds once they have been released. On any individual estate, there can be three categories of pheasant: birds

that have been released in the current year; birds that have been released on neighbouring estates, which have strayed across; and wild birds. It would be almost impossible—if not impossible—to differentiate birds that have been released in the current year from the wild birds, as they look and behave in a similar manner. They are wild and are legally accepted as being wild once they have left the release pen.

Alex Hogg: There is a code of good shooting practice that you can get information on, which defines much of the stuff that you are asking about.

The Convener: Does Douglas Batchelor have a view on whether the abandonment section plus a code of practice on the rearing of game birds would be workable for the bill?

Douglas Batchelor: Not as it is currently drafted. Dr Shedden is correct: the current codes of practice do not go beyond release. We think that abandonment is a really big issue that needs to be addressed in the bill rather than through an industry-level agreement about what normally happens. The problem is what normally happens, which is not good enough.

Nora Radcliffe (Gordon) (LD): Is there a code of practice concerning the maintenance of habitat and that sort of thing on estates? That is a matter of adequate provision for the welfare of the birds. If an estate owner is doing things to maintain a reasonable habitat for the birds to survive in, that could be argued to be adequate provision for their welfare. It is a grey area.

Alex Hogg: That is in the code of good shooting practice. Most estates create biodiversity for pheasant or grouse shooting.

Nora Radcliffe: And in a deer park, they would ensure that there was a water supply—that sort of thing.

Alex Hogg *indicated agreement.*

The Convener: That sounds like an issue that we will have to tease out with the minister. We have a range of views on how the bill could be interpreted and implemented; we need to work out how all those things link together and what the minister intends for the bill.

Hugh Rose: An important issue is the rehabilitation of wild animals. That affects deer, although more in England than in Scotland. The release of an unfit animal into the wild would be prejudicial to its welfare. I am not an expert on hedgehogs, but I imagine that an example would be the release into the wild of hedgehogs that were below the required body-weight threshold, which would not be fit to survive the winter. Deer have been released totally inappropriately, with plasters still fitted, and have starved to death. That

is not a big issue in Scotland, but it is quite a big issue in the home counties around London.

Maureen Macmillan: I want to move on to mutilation and tail docking in particular.

Obviously, members of the panel will have views on whether docking working dogs' tails is appropriate. Perhaps they should say what they want to say about the matter and we can then consider it in more detail.

Dr Shedden: The general view of sporting shooting organisations is that it is necessary to dock the tails of certain breeds of dog that work in thick, dense cover to prevent future damage and welfare problems. The committee has discussed why the tails of some breeds of dog are docked and the tails of others are not. Questions have been asked about Labradors, which are working dogs. People have asked why their tails are not docked.

We must be clear that we are talking about Labrador retrievers, which are specifically trained to find and retrieve birds that have been shot. Consequently, they do not work in dense cover to the same extent that smaller breeds, such as spaniels, do. Spaniels and some of the other continental hunt, point and retrieve breeds are particularly vulnerable to damage to the tips of their tails because they work in dense gorse or bramble cover. Unless such damage is attended to quickly, it can lead progressively to long-term welfare problems for the dog. That is why spaniels' tails are docked—rather than it being for any tax reasons back in the 18th century. People who have worked with spaniels have recognised that it is beneficial to the adult animal for the spaniel to have its tail docked at an early stage.

Douglas Batchelor: We are against such practices. We believe that the basic principle that should be applied is that if the circumstances in which a dog is being used endanger its welfare, it should not be used in those circumstances. The same principle should apply to certain mutilations of game birds that are carried out during intensive rearing. There are problems with overintensive rearing that can lead to cannibalism, to stop which preventive measures are used. We believe that a much better approach is to use far less intensive production measures. Rather than mutilating an animal simply because there is a problem with how it is being used, the circumstances in which it is kept should be altered.

Hugh Rose: I have something to say that might help the committee. Many lambs' tails are removed soon after the lamb is born by putting a ring around the tail to constrict the blood supply. That is a prophylactic measure—it is taken for health reasons. It stops blowflies laying their eggs

on dirty tails, and is a common practice throughout the world.

The Convener: We have debated that matter with previous witnesses.

Hugh Rose: The measure stops the lamb being eaten alive by blowflies. Is there any difference between doing that and docking a dog's tail to stop it being damaged by hunting in thick cover?

The Convener: Potentially, on the face of the bill.

Maureen Macmillan: The problem is that we have not received enough evidence that a spaniel's tail, for example, would necessarily be badly hurt by the spaniel going into thick cover. It seems to be traditional to dock spaniels' tails because their tails would be damaged if they are not docked. Questions have been asked about why their ears—which could get torn in thick cover—are not cut off, for example. It seems to some of us that the matter should be debated. Something should not continue to be done simply because it has always been done.

Dr Shedden: Ears are not cut off simply because they do not get damaged to the same extent that tails do. A spaniel's tail will wag at an incredibly fast rate, especially when the spaniel is excited and is working in cover. Trying to keep spaniels—even well-trained spaniels—out of cover is remarkably difficult.

The cocker spaniel was given its name because it was bred to hunt out woodcock in dense cover. That is what spaniels do. People who have worked with spaniels for the past 150 or 200 years have docked their tails to prevent long-term damage to, and long-term implications for, them when they are adult dogs.

Alex Hogg: If everybody in this room cares about the welfare of animals, they should consider what I am about to say. When the tails of our spaniel puppies are docked, usually a third will be taken off. What happens is almost like a child receiving an injection—things are over and done within seconds and they go back to their mum. However, having a dog with a broken tail is absolutely horrendous. It goes through great pain, and it cannot stop wagging its tail. You cannae say to it, "Don't wag your tail." I had a Great Dane that broke its tail, and we had to put a pipe over the tail. There was blood up the walls. It was horrendous for the poor dog. The vet should have cut her tail off right back to the stump when the dog broke her tail in the middle.

A lot of vets deal with pet animals in the cities; they do not come into contact with working dogs so much. It is from such vets that we hear more of the anti-docking opinion. I phoned an old vet who told me that when a working dog gets its tail

docked as a puppy, it gets its dew claws done as well. That prevents a lot of injuries later. The old vet told me that healing the dew claws of an adult dog is very difficult.

Maureen Macmillan: You have had experience of a dog with a broken tail. Would that happen to a spaniel? I imagine that a spaniel would get the feathers of its tail caught in brambles.

Alex Hogg: Spaniels rip their tails and because the blood supply to the tail is not great, it does not want to heal. A spaniel's tail is very awkward to heal. The dog will not keep its tail still; it wags it constantly. Things are done for a reason in the country; they are not done for the fun of it.

Maureen Macmillan: That is very interesting evidence.

Douglas Batchelor: I want to return to the point of principle: we recognise that there are circumstances in which it is dangerous to use an animal. Sending a sheepdog after a sheep that is halfway up a cliff is putting the dog at risk. It may not break its tail, but it might fall off the cliff. It is the same analogy. People who work with animals owe them a duty of care; they should not use animals in circumstances in which the animal might be damaged.

Maureen Macmillan: I would like to follow up on the definition of working dogs. How do we ensure that only genuine working dogs have their tails docked and not the breed as a whole?

Alex Hogg: I leave it to a vet's discretion. A local vet will know the gamekeeper and will know whether most of a litter of pups will go to working homes or not.

Dr Shedden: Most genuine breeders of working dogs look for good working homes for them. They know the dog's temperament and they know that the dogs are happiest when they have regular exercise through work—it is what they are bred for. Most breeders look to ensure that dogs go to working homes rather than become domestic pets.

Hugh Rose: I want to reinforce something that Alex Hogg just said. Vets are responsible people. They have to make decisions about when to treat animals or when to mutilate them. They will sometimes have to amputate a tail or a leg. Thirty years ago, the removal of deer's antlers when they are in velvet was addressed by Parliament. In the far east, removing deer's antlers in velvet is a commercial enterprise; they are used in Chinese medicine, for example. Such removal is not allowed in this country, but vets have the authority to remove an antler in velvet if that is required for the animal's welfare. I submit that that practice could perfectly well be extended to the docking of dogs' tails.

Mr Mark Ruskell (Mid Scotland and Fife)

(Green): We heard interesting evidence last week from the Dogs Trust that breeds of dog that have a particularly thick, heavy tail are more prone to damage in a working situation. Would you class spaniels as one of those breeds?

Dr Shedden: I am used to spaniels and to some of the hunt, point and retrieve breeds. A spaniel's tail is quite thick at the base, but as it feathers out towards the end, it becomes rather fine on a full spaniel tail, which you do not see that often. The same applies to some of the hunt, point and retrieve breeds. The thickest and heaviest tails will be found in species that are usually undocked, such as Labradors.

11:00

Douglas Batchelor: Other evidence before the committee from the Royal College of Veterinary Surgeons shows that veterinary surgeons are firmly opposed on principle to such mutilation, unless it is done in the interests of a particular dog, as opposed to a particular breed. Surely vets are best placed to judge whether docking is cruel or not cruel, and they judge that it is cruel.

Mr Ruskell: I will move on to an animal health issue. Evidence was presented to us suggesting that there are concerns about the release of farmed game birds into a wild or semi-wild environment, especially in relation to avian flu. What is your opinion of the biosecurity and animal health issues that are connected with the rearing of game birds and their release into the environment?

Dr Shedden: Our view is consistent with the contingency plan that the Executive has produced, which is that there should be no plans for widespread culling of birds. If there is an outbreak of avian flu and people are concerned about biosecurity, we might need to do something about large numbers of game birds on particular estates, but it is recognised that the number of game birds on any estate is dwarfed by the number of wild birds, be they wild duck, which are implicated in the potential transmission of highly pathogenic avian influenza, or pigeons, crows, starlings, thrushes and others.

Saying that game birds on estates are a serious threat ignores the fact that a considerably greater number of wild birds are present. The Executive's contingency plan does not consider that a widespread cull of wild birds, including game birds, would be appropriate. Biosecurity can be managed for game birds that are reared and released if there is a high risk of avian influenza, but remarkably little can be done about wild birds. To a certain extent, the wild bird situation totally dwarfs the game bird situation.

Douglas Batchelor: Our minds were concentrated by the outbreak of Newcastle disease, or fowl pest, in Surrey and Sussex earlier this year, which occurred in partially released pheasants. It proved extraordinarily difficult to control, although fortunately it was controlled.

When people have examined avian flu and the game-shooting industry, they have found several problems. First, quite naturally, the way in which the birds are reared produces a concentration of birds outdoors before they are released that is roughly equivalent to the whole outdoor poultry industry. Significant numbers of birds are kept close together and may be able to mix with wild birds, although that is less risky. The minute they are released, they go out as a flock, albeit with ever-widening boundaries. One of the reasons why they are fed is to keep them roughly where people want to shoot them. That produces an unnatural concentration of birds, which start to mix with wild birds, so operating in that way increases the risks significantly.

Control orders have just been published on controlling birds while they are being intensively reared, but the minute they are released, they are out of control. You can have an outdoor flock with a fuzzy boundary with nobody apparently controlling it and, under the bill, the birds would allegedly be wild. If, heaven forbid, we should end up with an avian flu outbreak, the situation will be difficult to control. The situation with released mallards is much worse, because the areas of highest risk are on water and at feeding points. Some of the birds released on to flight ponds feed on the ponds and mix with wild birds. That is a clearly identifiable area of risk. The whole industry is short of records on who does what and where and how an outbreak would be controlled, and the areas of responsibility are not clear. We do not want a situation in which we do not know who to look at, what to look at and where to go.

The problem is the fuzzy boundaries between what is and is not wild under the bill. We are flagging up the fact that we must be careful. The risk might not be huge, but it could be significant if something happened. The duties of care and who is responsible in such a situation should be spelled out, so that people cannot walk away and say, "It's wild, so it's not my problem."

Mr Ruskell: Is that an issue for the code of practice? I thought that the issue was more the disease risk for farmed birds, but you say that birds that are released into a wild or semi-wild state are a concern. Is something about the duty of care to birds in that semi-wild state needed in the bill, or would the code of practice or licensing cover it?

Douglas Batchelor: All those issues are involved. People have not realised that the

number of outdoor game birds is roughly equivalent to the number of outdoor poultry; in those terms, the industry is huge, yet it has little regulation or control. The definition in the bill would make such birds wild and so would place them outside control, unlike farmed birds, which are under control.

We suggest that ministers should take powers in the bill to allow release only under licence, if they believe on the basis of a veterinary risk assessment that the risk of release is significant. The powers in the bill would allow ministers to say that birds cannot be released and must be housed, but if the problem occurs after release, ministers have no powers. We suggest that ministers should have powers to say that birds will not be released if the risk of a problem after release is thought to be significant.

Mr Ruskell: What are the views of Alex Hogg and Colin Shedden on appropriate regulation and licensing?

Alex Hogg: Vets have told us that they are concerned about pheasant poults that are reared from one day old to six weeks old by game farmers—some gamekeepers also do it privately—who will have to be registered. When we spoke to vets about releasing birds into the wild, they said that because the birds are so dispersed, they become like wild birds, so there is no disease contamination. If I were a committee member concerned about avian flu, I would be much more worried about the thousands of seagulls and wildfowl roosting on the public water supply from which we drink.

Dr Shedden: I acknowledge the concerns that have been expressed, especially about Newcastle disease. If that were identified relatively early, when the birds were contained, it could be addressed. Such diseases are monitored and clear contingency plans are in place.

As for licensing shoots to provide further control, the fact that massive problems have not occurred and the good biosecurity that the gamekeeping industry undertakes to address disease concerns mean that the industry has a good record. We are aware of the potential risk of avian influenza; Alex Hogg and I are working with the Executive on those matters. The immediate risk is probably transmission from outside the UK and the European Union by migratory birds, which is being dealt with. If an incident arose at a critical time for release, the responsible attitude would be that birds should not be released at that time, but we must consider each situation as it arises. The contingency plan does not recommend licensing of all game shoots or widespread culling of birds—wild or otherwise.

Mr Ruskell: So you would not like the best practice of many estates to be put into a definitive code of practice or licensing regime. You think that that would be too formal.

Dr Shedden: The best practice is the code of good shooting practice, which makes strong recommendations on aspects of disease, although it does not touch on avian influenza. If game birds were implicated in the transmission of avian influenza, we would consider clear guidance on the best way to proceed. However, we in the UK do not have that yet.

Nora Radcliffe: I will return to tail docking, because we have experts present.

Are enough working dogs left undocked to provide us with a reasonable estimate of the rate of injury that there would be if working dogs were not docked? If working dogs' tails get damaged, what happens to animals such as foxes, which go into the same sort of deep cover? How many foxes do you come across with damaged tails?

Alex Hogg: I have come across quite a few foxes with no tail or half a tail, but I think that their tails were chewed off when they were wee cubs. However, a fox does not wag its tail.

Nora Radcliffe: So the wagging is the problem.

Alex Hogg: Yes.

Douglas Batchelor: My comments relate to an issue that we discussed earlier. We are saying that the game bird industry is just another poultry industry and that trying to define it differently creates a host of problems. Why should we not treat game birds in exactly the same way as we treat outdoor poultry? All the same welfare rules should apply. We see no reason for there to be a difference between the two types of industry, simply because one lot of birds is sent to the slaughterhouse and the other is turned out.

The Convener: As members have no further questions, I thank our four witnesses. The session has been quite lively, but we needed to hear the differing views and to explore your experiences. We will raise the issues of clarity and species definition with the minister. Thank you for submitting your written evidence in advance and for appearing before the committee today.

Hugh Rose: Before you dismiss us, I would like to ask a question. We were asked to submit evidence on the consultation process for the bill. We had severe reservations about that process, which I included in my written evidence to members.

The Convener: We have that.

Hugh Rose: Will the issue be dealt with at a later stage?

The Convener: It will be part of the evidence that the committee will consider.

Hugh Rose: Thank you.

The Convener: There will be a two-minute break, to allow the second panel of witnesses to come forward.

11:12

Meeting suspended.

11:13

On resuming—

The Convener: I welcome the second panel of witnesses. The panel is quite large because we want to get expertise on a range of issues. We are particularly interested in the panel's views on implementation of the bill and enforcement issues.

I introduce Gillian Bain, who is the senior animal health and welfare officer at Highland Council and is representing the Convention of Scottish Local Authorities; Stuart Shearlaw, who is the senior inspector at central Scotland police animal health and welfare department; Alan Stewart, who is the wildlife and environment officer for Tayside police and is representing the Association of Chief Police Officers in Scotland; Superintendent Mike Flynn, who is with the Scottish Society for the Prevention of Cruelty to Animals; and Mark Fuchter, who is head of prohibitions and restrictions policy for HM Revenue and Customs. I thank all of you for submitting written evidence in advance. I suspect that we will have a large number of questions to ask you this morning.

Richard Lochhead (North East Scotland) (SNP): My first question is on the evidence that we received on enforcement from the central Scotland police animal health and welfare department. In its comments on part 1 of the bill, it states:

"It is our opinion that greater energy and resources should be channelled into prevention of disease being imported into the country."

It is clear that the desire to prevent animal diseases from coming into Scotland is a major aspect of the debate. I ask for your comments on the view that I quoted, which is shared by many organisations.

11:15

Stuart Shearlaw (Central Scotland Police): I made that comment, so maybe it is best if I start. I was referring to the evidence that Quality Meat Scotland gave the committee. The representative from that organisation said that, when he went to Ireland, he noticed huge posters telling people not to bring in illegal foods. In my experience, airports in the United Kingdom do not give prominence to

advice about what the public should and should not do. As an island nation, we have the opportunity to prevent materials from coming into the country. Many other countries do not have that opportunity.

Mark Fuchter (HM Revenue and Customs): The responsibility for posters about third-country imports and what passengers can bring back from countries outside the European Union is the responsibility of HM Revenue and Customs. We have a large number of posters on display at the main Scottish airports that deal with arriving traffic, but it is important to make a distinction between passengers who arrive from outside the EU and passengers who arrive from EU member states. The design of some airports is such that people in the latter group will not see the posters because they are targeted at third-country traffic.

We are doing a number of other things as well. I do not know whether members have seen the television filler that we produced with the Department for Environment, Food and Rural Affairs, but we are doing a lot of work at two levels to raise public awareness about the threat of imported disease from illegal imports of products of animal origin—that is, illegal meat and similar things. With DEFRA, we are targeting the indigenous UK population through the TV filler and various other campaigns. There are adverts on the back of magazines and we put flyers in airline ticket wallets, although often nowadays people do not get an airline ticket but just a number.

We have invested in our leaflets and I was pleased to see that they were available at the airport that I came through last night. We had them translated into the key languages of the countries that are the origin of most of the products that we seize and the countries that are deemed to represent the highest risk. That work needs to be finessed and we are constantly looking to raise our game, but we do put the leaflets, in the right language, in the seat pockets on aircraft. Of course, we cannot do all that alone and we need the co-operation of the airlines. Under a recent change to EU regulations, the airlines are working closely with colleagues at the Department for Transport to ensure that we get the right information to travellers.

I could go on, but perhaps I should stop.

The Convener: That is probably enough.

Richard Lochhead: I am quickly rereading your written evidence. The committee has received a lot of criticism of the lack of effort to try to stop illegal imports and other channels by which animal diseases might come into the country. What level of resources have you deployed in Scotland since the outbreak of foot-and-mouth disease in 2001, over and above what was previously planned?

What are the figures for seizures of illegal imports in Scotland since 2001?

Mark Fuchter: There are several parts to my answer. So far, we have made—I think—more than 3,000 seizures of products of animal origin: illegal meat and related products that are covered by the regulations. Those seizures were made either from travellers who fly back to Scotland directly or from those who come on what we call interline flights—they come to Scotland on domestic flights but they began their journey in a third country.

We deploy more than 100 staff throughout the United Kingdom, but that is a misleading figure because we deploy to risk: we target staff according to a veterinary risk assessment that identifies countries by relative disease risk. I cannot give the exact number of staff years that we have spent in Scotland since 11 April 2003—although I could probably provide that information in writing if that would be helpful—but the point is that we target throughout the UK. Flights from high-risk countries are targeted every day.

Richard Lochhead: I will move on to my second theme.

A couple of weeks ago, I had an enjoyable afternoon with an SSPCA inspector on his rounds in north-east Scotland. The organisation does a grand job. In the few hours that I was with the inspector, we discussed a range of interesting issues, one of which was the potential for giving the SSPCA more powers. I had not appreciated that it has so few powers in relation to inspections and the actions that it can take. Inspectors from the SSPCA identify situations that need action from the authorities, but they often have to work in partnership with the police, which places demands on police resources.

Once the bill is enacted, I presume that the burden on the various agencies that are involved in animal welfare could increase. Can a case be made for giving the SSPCA more powers? Perhaps the SSPCA representative could begin by saying whether the organisation wants that, after which the other agencies and organisations could say whether it is a good idea.

Superintendent Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals): Thanks very much for your comments. The SSPCA has produced a separate briefing on its existing role, which we can give to committee members after the meeting. At present, we have no statutory powers whatever, but we are recognised as a specialist reporting agency to the Crown Office and Procurator Fiscal Service. We can put cases to procurators fiscal in our own right, without using the police or local authorities.

However, on many occasions, we work in conjunction with the police and local authorities.

For the past two and a half years, we have had a written protocol with all police forces through Tayside police, which holds the Association of Chief Police Officers in Scotland brief on the issue. The protocol states what we will do for the police and what the police will do for us. We are developing similar protocols with COSLA and the state veterinary service. The idea is to make the system more accountable, to clarify who does what and to stop much of the duplication of work that goes on.

The present system has served us well, but we strongly welcome the policy intention to give us certain limited powers, which would clarify many issues in the eyes of the court.

Alan Stewart (Association of Chief Police Officers in Scotland): We already carry out joint investigations with the SSPCA and other bodies in relation to wildlife crime. I do not see the proposals as different from that.

As my written evidence states, the most effective and professional investigations are those that involve several organisations, as that gives a range of experience. Organisations other than the police already have powers. The police do not object to the SSPCA getting more powers.

The bill will not create a phenomenal amount of extra work for the police, but any extra work that is involved will help to make the police more professional and efficient. Until fairly recently—15 or so years ago—the police did not play a great part in the investigation of wildlife crime, despite having statutory responsibility for doing so. The situation is pretty much the same with animal welfare legislation. Relatively few police officers have a good grasp of the legislation. That situation needs to improve, which I hope will happen through the bill.

Stuart Shearlaw: Given that the Executive has suggested that it is reluctant to give local authorities extra finances to implement the bill, it would be difficult for us to have a good stab at enforcing it properly without the SSPCA being involved in some way.

Gillian Bain (Convention of Scottish Local Authorities): As Mike Flynn said, COSLA has been working with the SSPCA to develop a memorandum of understanding. A lot of work is going on. Local authorities look forward to taking on the extra remit, but we will need the finances to back it up and the assistance of bodies such as the SSPCA.

Richard Lochhead: If the SSPCA were given more powers, what kind of powers would you like

to get? What would make everything more efficient and effective?

Mike Flynn: The proposed powers are in the section that covers the right to seize animals that are injured or in distress. The crucial thing to say is that if we did not get the powers, we would continue to act as a reporting agency to the Crown. Technically, we can take a prosecution against someone only if they are happy for us to take the prosecution against them. If someone does not give us the animal, they do not get our veterinary evidence. In 90 per cent of cases, people readily allow us to take the animal to the vet to get the evidence. The procedures follow on from there. If the bill were passed and it became known that the SSPCA did not have the right to do that, everything would fall back on the police and local authorities.

Nora Radcliffe: One important aspect of implementation will be the way in which inspectors are trained. Does the panel have a comment on training and the way in which it will be taken forward?

Gillian Bain: There is a perception that many local authority staff have absolutely no training, but it is not correct. Many staff members have the Trading Standards Institute's animal health and welfare certificate. The certificate is aimed specifically at local authority animal health and welfare inspectors—and it may have to change to adapt to the new powers that are to be introduced north and south of the border.

Training will have to cover some new areas, such as the seizing of animals, which local authorities do not undertake at present, and various exotic species. Whether that is done by species or by means of an initial across-the-board briefing, several stages will be involved. We hope that bodies such as the state veterinary service will make a big input into the training. To be consistent, all of us—the police, local authorities and the SSPCA—will have to work in the same way.

Nora Radcliffe: So adequate training courses are in place?

Gillian Bain: Yes.

Nora Radcliffe: Is there adequate capacity?

Gillian Bain: Certainly there are a fair number of local authority inspectors, but it is difficult to know what the workload will be. At the moment, we get complaints that relate to animal welfare. Unfortunately, we have to say, "Sorry, this is not within our remit. Please contact the SSPCA or the police." When the bill comes into force, there will be a big demand: no doubt everyone will pursue convictions, especially if they happen to be involved in a neighbour dispute. I hope that, over

time, the situation will calm down slightly. It is difficult to predict whether there is adequate capacity, though.

Mike Flynn: All the inspectors the SSPCA recruits have a background of dealing with animals. We can teach them the legislation and the legal procedures, but we cannot teach them empathy with animals. For the SSPCA, if it lives and breathes, we deal with it. Last year, we dealt with everything from a spectacled cayman in Leith to a venomous snake in the Borders and with all types of livestock. We have the facilities to deal with any kind of creature.

We also put in the necessary training; people go on specialist courses so that they can deal with birds of prey, reptiles and so on. We have a five-month training course, which basically comprises legislation and procedures. To become what we call fully qualified, inspectors have to take three sets of exams in their first four and a half years in the job.

Mr Ruskell: Should the bill define the competencies of an inspector?

Mike Flynn: That would be hard. When one thinks of the number of species and issues involved, it would be hard to specify a competency for every one of them. COSLA or any other body that deals with the hands-on aspect of animal welfare should ensure that their staff are trained. Training is also important from a health and safety point of view. If someone has to go into a house where venomous snakes are located, they have to know what they are doing; if not, it could be fatal for them.

11:30

Gillian Bain: I agree that local authorities have to be sure that their staff are adequately trained for the purposes of both health and safety and being fit to do the job with respect to any subject. That holds true for animal health and welfare.

Mr Ruskell: So you do not see a need for legislation to define that?

Gillian Bain: It would be difficult, certainly in the initial stages. There could perhaps be an exam, but we must also take account of experience, including practical experience, degrees and various other courses that people have sat in the past.

Superintendent Flynn: A lot of this is down to the duty of care of the employer. We must ensure that our inspectors are always aware of what they may do. Rather than requiring definitions in the bill, we are already covered by health and safety and duty of care legislation. If we failed to ensure that people had the required training, we would be culpable.

The Convener: I see that both Nora Radcliffe and Maureen Macmillan would like to continue on this theme.

Nora Radcliffe: In fact, I would like to move the discussion on—if everyone has said all that they want to say about training.

The Convener: Did you have a supplementary point to make, Maureen?

Maureen Macmillan: My point is not specifically on training.

The Convener: Nora Radcliffe will go first, then.

Nora Radcliffe: There has been a suggestion that the bill should give inspectors the power to issue care notices if they find animals that are being inadequately looked after. What views does the panel have on that sort of intermediate level of intervention?

Superintendent Flynn: That is an essential point. The bill introduces a whole new concept. Under the Protection of Animals (Scotland) Act 1912, unnecessary suffering must be a factor: the minute someone turns up and provides evidence of unnecessary suffering, the offence exists. The bill introduces a duty of care. We cannot just say to someone, "That animal has not been looked after, so I'm going to take it away from you and we'll take you to court." How can that be proved to a court?

One proposal, which I think was addressed by Mike Radford in previous evidence, is a care notice. A person might be told that, in view of the approaching winter, keeping a particular animal in its accommodation would be detrimental to its health. They would be given a set period in which to comply with advice to put on a roof, or whatever else was necessary. Only when they failed to comply with the advice would further proceedings be taken. Proceedings are taken straight away if the animal is suffering, but if it is just a matter of the animal potentially suffering, people must be given a chance to remedy the situation before any action is taken.

Stuart Shearlaw: The Welfare of Farmed Animals (Scotland) Regulations 2000 currently allow state veterinary service veterinary officers to issue notices requiring action to be taken to prevent animals suffering. We would like that to be extended to local authorities and other inspectors authorised under the bill. That would be a good step forward. Those provisions also provide a better evidential trail, as Mike Flynn has already pointed out.

Gillian Bain: The Welfare of Farmed Animals (Scotland) Regulations 2000 do not in fact provide powers to act later—after the initial stage, when no action was taken. Instead of having that end line, it

should be possible to take the appropriate action later if necessary.

Maureen Macmillan: I would like to take a step back. I am not quite clear about the interaction between the organisations that the witnesses represent. I get the impression that most people phone the SSPCA if they see a problem with an animal. Is that the case?

Gillian Bain: We get quite a number of calls. We are currently limited, however, to farmed animals, animals in transit, animals at markets or matters concerning a licensed establishment. We would refer other matters to the police or to the SSPCA.

Maureen Macmillan: I was wanting to know more about what the SSPCA does. How much liaison do you have with local councils? You have spoken about your liaison with the police, Superintendent Flynn. Do you have similar liaison with councils, with HM Revenue and Customs and so on?

Superintendent Flynn: We work with all organisations. I was out with HM Revenue and Customs at Rosyth docks three weeks ago. It is usually when a specific job is being targeted that such organisations want our expertise or—more importantly in that recent case—we want their expertise.

To answer your question, we took 96,697 calls from members of the public last year, regarding practically everything. We would normally contact the local authority if we knew that there was a licensing issue or a farm animal welfare issue. We often have to use the police, but it depends on the identity of the alleged perpetrator of the activity in question. Whenever we think the person concerned will be known to the police, we contact the police. The same is the case with the police: if they know someone has been involved in an animal cruelty case, they will contact us. There is a lot of crossover between our organisations.

Mr Ruskell: As far as the bill is concerned, do you think that certain activities that will not be licensed or registered should be, or that activities that will be licensed should be registered? Is the balance in the bill appropriate?

Gillian Bain: We are concerned about some animal sanctuaries in our area, and I believe that the situation is the same throughout the country. Sanctuaries, particularly those that look after small animals, are not controlled in any way. COSLA believes that they should be licensed.

Mr Ruskell: So they should be licensed, not registered?

Gillian Bain: That is right. The bill appears to cover larger sanctuaries but, as many agree, they are not necessarily a problem. We are more

concerned about small sanctuaries that simply start up without putting any financial thought into what they can do, accommodation and so on.

Maureen Macmillan: On a point of clarification, by small sanctuaries, do you mean sanctuaries that look after small animals or small-scale sanctuaries that take in a few animals?

Gillian Bain: The sanctuaries that give us problems often look after rabbits, ferrets and guinea pigs.

Mr Ruskell: Do any of the other witnesses have views on the matter?

Stuart Shearlaw: In my submission, I say that I would like animal gatherings to be licensed; indeed, I think that is what most of us want. Moreover, many illegal gatherings or movements of animals can create huge biosecurity risks, and there should be greater regulation along the lines of the regulations that livestock markets have to follow. The activities that I have in mind are currently unregulated and take place on premises that operate under the guise of farms; however, these farmers handle huge numbers of animals without following any regulations other than basic farming regulations.

Mr Ruskell: So you want such activities to be licensed, not registered?

Stuart Shearlaw: Yes.

Alan Stewart: I do not think that the police will be expected to inspect premises, but if another organisation that was carrying out an inspection needed the police's help for any reason, I am sure that that could be facilitated.

Superintendent Flynn: We have highlighted many licensing issues, of which sanctuaries is a major one. I believe that the policy intention is to license or register the 50 largest sanctuaries. However, Gillian Bain is right to say that the problems are caused by smaller sanctuaries. For example, a couple of years ago, we took 79 cats out of a domestic house in Bonnybridge, and the vet destroyed 68 of them the same day because of disease. Quite a lot of money was involved in that operation.

Many small sanctuaries start off with the very best of intentions, but then get snowed under with animals. They do not have proper veterinary policies or policies for putting down injured or diseased animals. On that point, I should make it clear that we believe that livery stables should also be licensed.

We are concerned that, because the Executive has made it clear that it will not give local authorities more money, they will reduce the number of inspections they carry out. For example, they might decide to inspect pet shops

every 18 months or two years instead of every year. Too much can go wrong in that time. Moreover, I do not think that it is enough to register sanctuaries; they should be subject to a licensing and inspection regime. If the first inspection is properly carried out, subsequent inspections could be spaced out. However, if gerbil or guinea pig sanctuaries, for example, are inspected only every three or five years, inspectors will not see the same animals. Those animals simply do not live that long. I am not suggesting that we have some overly bureaucratic system, but despite the owner's good will, animals in sanctuaries go through a lot of suffering through ignorance and lack of funds.

Mr Ruskell: That raises the question of appropriate regulation; after all, it is not desirable to place too great a financial burden on sanctuaries because that might affect animal welfare. You have said that you want such places to be licensed, not registered. What sort of licensing process and what kind of period between inspections would be appropriate for small sanctuaries?

Superintendent Flynn: Local authorities would oversee licensing. We would not initially be involved in the process, although we would help in any way we could.

The initial licence inspection could, for example, ensure that a sanctuary has the proper policies in place. If it cannot afford the £10 or £50 licence fee, what will happen the first time one of its animals needs £200-worth of veterinary treatment? Such situations occur more in wildlife sanctuaries, which receive animals that have been involved in road traffic accidents, gulls with broken wings and so on. Many such places do not have proper policies to ensure that animals that have certain conditions are taken to a vet—and are put down if the vet feels that that should happen. We have come across do-it-yourself repair jobs on animals in sanctuaries. That is totally unacceptable, but our job is hard because we are dealing with people who do not intend to be cruel but are trying to do their best. Finances also probably have to come into it for the Convention of Scottish Local Authorities, which will carry out the inspections.

Gillian Bain: COSLA supports the extension of the licence period because of the administration costs that are involved in licensing, but we want to be able to inspect premises at other times and not just every three years. As Mike Flynn said, things can go downhill quickly. I have visited a riding establishment to find that it is a totally different place one year after the previous visit—the change had occurred in the space of 12 months.

The Convener: Okay. We can reflect on that.

Rob Gibson: I want to go back to an earlier debate. The cost of providing inspection and of policing many of the issues that are addressed in the bill will perhaps be far greater than has been estimated. Does HM Revenue and Customs have staff in place to deal with the arrival of non-scheduled flights at small airports, for example? Do you have the range of staff that ought to be available in the north of Scotland, or have there been cutbacks?

Mark Fuchter: It is common knowledge that, in the 1990s, we closed offices and removed staff from some locations in the far north. We argue that what we have seen since then is a far more efficient operation. If intelligence tells us that there is a risk on a flight coming into an airfield anywhere in the UK, we will attend. Over time, we have established that it is not efficient to have static staff based at airports at which there is simply no risk of anything stopping for which we are responsible.

Rob Gibson: We have recently had non-scheduled flights from the Central Intelligence Agency going through Wick. Who knows whether they were carrying anything like that? The proof of the pudding will be in the eating.

For the police, part of the bill relates to wildlife crime in respect of protection of raptors and so on. We heard earlier that not many officers are involved in enforcing the Nature Conservation (Scotland) Act 2004 or understand the detail of the Animal Health and Welfare (Scotland) Bill. Surely more resources—money and staff—need to be made available, given that the increase in the number of cases that are dealt with by the SSPCA each year is bound to impinge on police time.

Alan Stewart: That increase impinges on police time, although I do not know whether such cases will impinge more on police time when the bill is passed.

Each police officer in Scotland has at least basic training in a raft of legislation, and a number of officers in each force have greater experience in certain subjects—specialisms—on which they can call. Legislation is available on the computers in their offices and a CD-ROM has been developed with money from the Executive. As with any other crime, if officers are not absolutely sure at the start what they are dealing with, it does not take long to get the information that they need to deal with the situation effectively. That information must be accessible during the night, when the SSPCA and local authorities are not available. During the day, the officers could ask the SSPCA and local authorities for advice and help or to undertake a joint investigation.

I do not see knowledge of the detail of the bill as a major problem, and I hope that enforcement will not cost much more than it has in past years.

Rob Gibson: It is up to us to find out whether enforcement will cost more. I accept what you say, but we have to interrogate the financial provisions for the bill. Does anyone else have thoughts on that?

11:45

Gillian Bain: The bill will certainly result in an increased workload for local authorities, so it could have significant effects on finances. The COSLA submission gives examples; we are talking about costs of perhaps £43,000 a time. I know that when one authority down south seized cattle—I am not sure whether they were seized legally or illegally—the costs amounted to about £80,000 even before the case came anywhere near a court. The costs can be substantial. In the case of livestock, the poorer the condition of the animals, the lower are the chances of recouping costs by selling them.

Stuart Shearlaw: It should also be remembered that the duty of care depends on an individual's personal opinion of whether an animal is suffering. As enforcers, the police will be required to investigate reports that animals are suffering. That duty of care does not exist to the same extent at the moment, so personal opinions do not come into it in the same way just now. Potentially, the workload of local authorities, the police and the SSPCA will increase dramatically.

The Convener: Dog fighting is mentioned in the ACPOS submission and was referred to by witnesses at our previous meeting. Should it be a specific offence to have in one's possession a recording or photo of any such fight? In ACPOS's view, should such an offence be included in the bill?

Alan Stewart: I feel strongly that a provision should be added to the bill to make it an offence for a person to have photographs or video recordings of animal fights. Such recordings or photographs can be put to many uses by the criminal; I see no legal justification for possessing them apart from for training purposes. That would be another way to stamp down on the people who are involved in organising animal fights.

Superintendent Flynn: I totally agree with Alan Stewart. The average dog fight probably has about six people, including a referee, two handlers and two or three witnesses. However, a video will be made of the fight, so that people who do not know the outcome can go into the backrooms of pubs to gamble on it. More crucially, when we found evidence several years ago that dog fights were being organised between Scotland and Ireland, we found that a promotional video had been produced

to allow people to match up dogs by showing how their dogs fought last time. Like Alan Stewart, I can see no legitimate reason for possessing such material.

The Convener: I think that promotion is captured under the bill, but recordings and photographs are not mentioned specifically. There seems to be fairly strong agreement that they should be mentioned.

Two more members have questions. We will hear first from Ted Brocklebank, who has not asked any questions of this panel of witnesses.

Mr Brocklebank: Most of my questions have been dealt with, but I want to tidy up two little issues with Mike Flynn, the first of which relates to the sanctuaries that he mentioned. The SSPCA submission makes a strong point about the Executive's proposal not to introduce until 2008 secondary legislation on animal sanctuaries. Is that far too slow, and is that for the reasons that you outlined earlier in connection with what can go wrong in sanctuaries?

Superintendent Flynn: That is exactly the reason why. We currently have problems with small animal sanctuaries, so we would like that issue to be addressed sooner rather than later.

Mr Brocklebank: The other issue that I want to ask about is unnecessary suffering. Again, the SSPCA submission criticises the fact that the bill

"does not explicitly offer as full protection to animals subject to mental suffering as the 1912 Act does."

However, the submission does not spell out what is meant by "mental suffering". Can we have an example?

Superintendent Flynn: We have simply compared the bill with the Protection of Animals (Scotland) Act 1912, which stipulates that it is an offence to terrify an animal. To terrify an animal means to put it into a state of mental suffering. Over the past five to seven years, we have had three cases in which sheriffs have deemed, on veterinary evidence, that wild animals that had been held captive in a way that did not allow them to express their natural behaviour had been terrified. Those cases were successfully prosecuted. However, as the bill does not mention "terrify", it will potentially reduce the importance that is given to the mental suffering of animals.

Mr Brocklebank: Should wording that is similar to that in the 1912 act be added to the bill to strengthen it?

Superintendent Flynn: Yes. The explanatory notes state that such is the intention, but that intention should be stated in the bill itself.

The Convener: Three members now want to ask further questions. I will allow them all to do so if they restrict their questions to one topic.

Richard Lochhead: I return to the fear that Scotland could be left exposed to illegal importation of meat products, so I direct this question to HM Revenue and Customs. You say in your written evidence:

"We use trained dogs and handlers to search for illegally imported prohibited or restricted goods including drugs, cash, tobacco and products of animal origin."

My understanding is that you withdrew all your dogs from Scotland and that they are now based in Manchester.

Mark Fuchter: The kennels here were closed and we centralised our kennelling facilities. However, that is not the same as withdrawing provision. The dogs are deployed flexibly, as are the humans, and are able to be kennelled overnight in mobile kennels. Our dogs have been centralised, which affects the south-west of England as much as it affects Scotland.

Richard Lochhead: I accept that, but House of Commons committees have been calling for the dogs to be reinstated in Scotland. That has been ignored by your department and the dogs and their handlers are still based in Manchester and, I think, Hull. Can you assure the committee that Scotland's ports, airports and so on receive adequate cover in terms of proper detection of illegal meat imports? How many dog days are there in Scotland? How many handlers visit Scotland?

Mark Fuchter: I do not have such information with me. I am sorry for that, but I came here to talk about the bill and our dogs have no role in the context of the bill—we will have no enforcement powers under the bill.

The role of our detector dogs in relation to products of animal origin is rather complicated. We use a number of techniques to tackle products of animal origin and drugs; dogs are one of the enforcement tools that we use, but I do not have numbers for the amount of dog days or hours on duty. All I can say is that dogs are not the only answer in terms of other prohibited and restricted goods. On the south-west border of the United States of America, I have seen dogs being used particularly well in a narrow way, just as happens at Heathrow airport, but I do not want to say that dogs are limited. I do not accept that we are ignoring the will of any UK select committee in relation to any aspect and I am not aware that anything had been put in such terms.

We deploy resources against risk; dogs are one tool with which we tackle risk in relation to drugs, firearms, weapons of mass destruction or products of animal origin. Our seizure figures and the way

in which we have turned around our performance in Scotland in the past five years speak for themselves. There have been high numbers of seizures and, in relation to products of animal origin, we believe that we are starting to make some impact on students and the oil-rig communities, from whom we tend to make the most seizures. The message of the posters that we talked about earlier appears to be getting through. Our message is that we understand that people might want to bring certain foodstuffs into the country, but they cannot because those foodstuffs are banned at European level. However, we are not complacent.

I could write to the committee with more detailed information about dog deployment. I can, however, say that after we had invested a fortune in training one dog—it costs about £60,000—it was discovered that that dog was not as vibrant as others. Lethargic would be the wrong word, but we heard a lot about tail wagging and so on. The dog did not come up to muster, so we had to cut our dog numbers by one. We have relatively few dogs compared with a country such as the USA; one dog is 10 per cent of our capacity, but we are still the only European member state that has deployed dogs. I do not want to suggest that everything is down to dogs; equally I do not want to suggest that we are flying in the face of instructions from elsewhere.

Mr Ruskell: I want to ask HM Revenue and Customs about primates. The Executive intends to ban the keeping of primates in Scotland. You said in your submission that, if a primate comes into Scotland with the relevant paperwork under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, there is nothing that you can do to prevent that import taking place. Does that mean that you will not be able to enforce the bill and that you can implement only the import regulations that are covered by CITES?

Mark Fuchter: We would need to talk that through fully with our policy counterparts in the Executive. As things stand, if DEFRA as the licensing authority and the management authority, and the Joint Nature Conservation Committee as the scientific authority, approved an application for an import permit for a primate, there could be a contradiction in the law. However, I understand that there is time to work through that and to clarify whether the situation is as we understand it to be from the legal advice that we got in preparation for this meeting.

Mr Ruskell: If someone wanted to import a primate into this country, would there be practical differences to be sorted out between the regime that applied here and that which applied in England and Wales? With DEFRA, is it a question of proving that there is a duty of care?

Mark Fuchter: I am not qualified in this area. As I understand it, a component of the decision that DEFRA will make in granting an import permit will be to do with the degree to which the species is endangered. I understand that the JNCC will take a view on whether the premises to which the animal is going are fully satisfactory from a care and welfare point of view. If DEFRA and the JNCC are prepared to grant an import permit, in law we would not be able to stop that import going ahead. There is perhaps a role for the state veterinary service or some other body in ensuring that the new powers that will be brought in by the bills in England and Wales and in Scotland are lined up together.

The Convener: We might have a bit of time to get the problem fixed.

Mark Fuchter: My understanding is that it is early days. I do not think that the officials have all been brought together.

Mr Ruskell: I assume that if a primate was imported into England or Wales and the duty of care requirement for England and Wales had been met, the primate could then be shipped up to Scotland, which would get round the Executive's ban on bringing primates into Scotland.

Mark Fuchter: We would press colleagues in DEFRA and in the Executive for a unified UK position. If there were one rule in England and Wales and a different rule in Scotland, that would make it extremely difficult for us to enforce the external border. Any external border controls would quickly be evaded, the regime would fall into disrepute and everyone would waste resources.

Mr Ruskell: Perhaps we can follow that up with the minister.

The Convener: Yes. There is an issue about bringing such animals through the external border. There is then a question of how that animal would be looked after. Initially, when the animal entered the UK, the CITES criteria would have to be met; thereafter, the conditions in our legislation and in the UK Parliament legislation would have to be satisfied. We can take that up with the minister. It does not sound as if that is a face-of-the-bill issue, but it is definitely a management issue for the different agencies involved.

Nora Radcliffe gets the final question.

Nora Radcliffe: I want to ask witnesses about their experience of taking prosecutions to court. I understand that in every court area there are procurators fiscal who have specialist knowledge of animal welfare matters. Are there enough procurators fiscal with such expertise or is there a case for increasing capacity in the Crown Office and Procurator Fiscal Service in that area?

Alan Stewart: Each area has fiscals who deal with environmental cases and I think that, broadly, such matters would fall under their remit. In Perth, we would certainly pass on such cases to the environmental fiscal. There is at least one such fiscal in each area but—of course—they keep moving about, just as people in other forms of employment do. There is probably scope to increase and perhaps even to double the number of such fiscals. On one of the training days at the Scottish Police College the fiscals and the police work together on environmental issues. It is really a matter for COPFS, but as far as the police are concerned, we would welcome far more environmental procurators fiscal.

Superintendent Flynn: As Alan Stewart said, specialist fiscals are appointed to deal with environmental or wildlife crimes. There are two in Lothian and Borders and at least one in every other region. However, no specialist fiscals are appointed to handle the cases on animal suffering that we routinely deal with. Although handling of such cases is very much at the whim of COPFS, we get an excellent service from the procurators fiscal.

Gillian Bain: The more remote areas have only one procurator fiscal to cover every subject that comes up, so I am not sure that the fiscals in such areas are specialists.

Nora Radcliffe: I assume that they would have access to advice from colleagues who have specialist knowledge.

Gillian Bain: They certainly tend to use the local authorities quite a lot to get assistance. They have built up rapports with the councils.

The Convener: The issue was raised during one of our previous evidence sessions. We wrote to the Crown Office and Procurator Fiscal Service; members should have a copy of the letter that came back. We were told that a recent initiative is the formation of a multi-agency group on wildlife and habitat offences, which will be chaired by COPFS and will include the SSPCA. Although the work of the group might not be directly relevant to the bill, it is hoped that there will be crossover. It sounds as though an eye must be kept on that matter.

12:00

Nora Radcliffe: That needs to be considered as a follow-up issue when the bill is passed.

The Convener: A number of issues relating to implementation of the bill, publicity and information will need to be considered. We have not discussed the responsibility of individual members of the public to ensure that they obey the duty of care. The committee might want to think about a range

of follow-up issues once we have dealt with the contents of the bill.

I do not think that members want to say anything else. I therefore thank the witnesses. Your written submissions have been useful and your verbal evidence has also helped. A number of issues have been raised that we will take up with the minister in January. It has been particularly good to go over resourcing issues and implementation issues to do with enforcement and licensing.

We will have a two-minute suspension.

12:01

Meeting suspended.

12:04

On resuming—

Subordinate Legislation

Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Regulations 2005 (SSI 2005/599)

Smoke Control Areas (Authorised Fuels) (Scotland) Amendment Regulations 2005 (SSI 2005/614)

Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2005 (SSI 2005/615)

The Convener: Under agenda item 3, we have three instruments to consider under the negative procedure: the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Regulations 2005 (SSI 2005/599); the Smoke Control Areas (Authorised Fuels) (Scotland) Amendment Regulations 2005 (SSI 2005/614); and the Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2005 (SSI 2005/615). The Subordinate Legislation Committee considered the instruments and has made no comment on them.

Do members have any comments to make on the instruments? We shall deal first with SSI 2005/599.

Mr Ruskell: I welcome SSI 2005/599, but the regulations deal with individual crops, foods and feeding stuffs and individual pesticides that are being applied and leaving residues on crops. There is, however, also an issue about the cocktail effect of the interaction of different pesticides that leave residues that are individually below the maximum residue limits. A number of scientists are investigating such effects, but we do not have regulations that deal with them. That is a serious matter.

I would be content to write to the minister to ask about the investigations that the Executive is making into cocktail effects, and the regulations that it is considering on that. SSI 2005/599 clearly deals with individual pesticides on individual crops, foods and feeding stuffs, but not with multiple effects.

The Convener: We can do that, although I take it that you are not suggesting that we not approve the regulations.

Mr Ruskell: No.

The Convener: The suggestion is that we obtain more information about what is being done about the interactions between different

pesticides. Members are happy with that suggestion.

I thought briefly about the extent to which the other two instruments relate to the biomass work that we will do in the new year and the extent to which there is a crossover with renewables. I do not want to delay SSI 2005/599, but I wonder whether we could ask the minister about how the interaction works.

Members have no other comments. Is the committee content with the instruments and happy to make no recommendations to Parliament?

Members indicated agreement.

The Convener: We move into private session, as we agreed to do under agenda item 1.

12:07

Meeting continued in private until 12:40.

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