



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs, Islands and Natural Environment Committee

Wednesday 22 June 2022

Session 6



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RURAL AFFAIRS, ISLANDS AND NATURAL ENVIRONMENT COMMITTEE
21st Meeting 2022, Session 6

CONVENER

*Finlay Carson (Galloway and West Dumfries) (Con)

DEPUTY CONVENER

*Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)

*Alasdair Allan (Na h-Eileanan an Iar) (SNP)

*Ariane Burgess (Highlands and Islands) (Green)

*Jim Fairlie (Perthshire South and Kinross-shire) (SNP)

*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

*Jenni Minto (Argyll and Bute) (SNP)

*Mercedes Villalba (North East Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Clancy OBE (Law Society of Scotland)

Professor Russel Griggs OBE

Robbie Kernahan (NatureScot)

Sara Shaw (Crown Office and Procurator Fiscal Service)

Detective Sergeant William Telford (Police Scotland)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs, Islands and Natural Environment Committee

Wednesday 22 June 2022

[The Convener opened the meeting at 09:33]

Decision on Taking Business in Private

The Convener (Finlay Carson): Good morning, and welcome to the 21st meeting in 2022 of the Rural Affairs, Islands and Natural Environment Committee. I remind members who are using electronic devices to switch them to silent.

Our first item of business is a decision on whether to take item 4 in private. Do we agree to take item 4 in private?

Members indicated agreement.

Hunting with Dogs (Scotland) Bill: Stage 1

09:33

The Convener: Our second item of business is an evidence session on the Hunting with Dogs (Scotland) Bill. I welcome our panel, who will focus on prosecution and policing perspectives. Michael Clancy OBE is director of law reform at the Law Society of Scotland; William Telford is a detective sergeant from Police Scotland; Sara Shaw is principal procurator fiscal depute at the Crown Office and Procurator Fiscal Service; and Robbie Kernahan is director of green economy from NatureScot.

We will take questions until about 11 o'clock, and I will kick off. We have heard from witnesses the difficulties that they have experienced or perceived when investigating and prosecuting alleged offences under the Protection of Wild Mammals (Scotland) Act 2002. Will the amended offences in sections 1 and 2 of the bill provide greater clarity and ease? Will you give us your overview of whether those offences will be clearer and easier to enforce?

Detective Sergeant William Telford (Police Scotland): The bill improves on the Protection of Wild Mammals (Scotland) Act 2002. However, a big thing for us is the terminology. There is still an opportunity to amend the bill to make offences easier to enforce.

The term "deliberate" is removed in the bill. That is welcome, because it confused matters. However, a fairly standard excuse for hare coursing, for example, is that the offenders will claim that they just let their dog off for exercise or to do the toilet and it chased a hare of its own free will, outwith their control. We can find it difficult to disprove that. Police Scotland thinks that, in order to negate such excuses, there might be a benefit to the bill saying that someone wilfully, intentionally or recklessly allowed their dog to do that.

Sara Shaw (Crown Office and Procurator Fiscal Service): Good morning. As William Telford mentioned, the bill seeks to clarify the concerns previously expressed about the language in the current legislation, as embodied in Lord Bonomy's report and expressed by other organisations. There seems to be greater clarity of language and, importantly, consistency in the expressions that are used in the bill. So, overall, it appears to be an improved position.

As has already been mentioned, the word "deliberately" has been removed, which adds some clarity to the offence under section 1 of the

bill. There are additional improvements, such as the definition of “cover”. I note that some of the definitions remain the same and some terms are not defined, such as “to search for”, “stalk” and “to flush from cover”. I assume that that is because it was considered unnecessary to define those terms.

The Convener: Michael Clancy, we have heard that one reason for introducing the bill is to close loopholes. Does it go far enough?

Michael Clancy OBE (Law Society of Scotland): That is an interesting question, and the proof of the pudding will, of course, be in the eating. On whether the bill closes loopholes, it depends on what you mean by a loophole, which might be one person’s perspective of a perfectly respectable defence.

On changes of definition, we were concerned about the use of the phrase “using a dog”. Section 1(4) tells us:

“a person is ‘using a dog’ when the hunting of a wild mammal by that person involves the use of a dog, even if the dog is not under that person’s control or direction”.

I am not even entirely sure that one is “using a dog” when hunting. I reflect on the term in the 2002 act, which was “hunting with a dog”. There are issues with what the term “using a dog” means when the dog

“is not under that person’s control or direction”.

One might say that it was an easy defence to say, “I was not in control of the dog when it took off and chased a hare.” That might be a perfectly feasible defence, but others might think of it as a loophole.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): I have a supplementary question on the point that Mr Telford made about the removal of the word “deliberate”. Last week, Lord Bonyon said that the bill is clear and simple and that we should “avoid unduly complicating” it. How would changing the words in the bill or extending its scope affect ordinary dog walkers?

Detective Sergeant Telford: A differentiation between people who are hare coursing and average dog walkers who are taking reasonable steps to keep the dogs under control can be factored in. If the word “reckless” was included, we would have to define it.

Hare coursers will typically set themselves up so as to find the hare. For example, they will line up along a field with the dogs and will then walk them until they find the hare, which, in essence, has nowhere to go and is flushed out. That could be factored in. It is not something that an average dog walker will do, so I would say that that act in itself is reckless. We might not be able to prove that people are deliberately hare coursing, but that

act is reckless and not something that your average dog walker will do.

Rachael Hamilton: I am quite concerned about this, convener. I have seen hare coursers. They scarpered before anybody got there, which means that nobody had seen them. It was pitch black and they had torches. The problem with hare coursing is that the police cannot catch the offenders because they are fleet of foot. Although people might not necessarily walk their dogs at night in the middle of nowhere, the bill would still need to be clear about protecting ordinary dog walkers.

The Convener: Mr Telford, how often do you and your colleagues turn up to an incident of hare coursing and have to stop and ask what the chances are of it leading to a prosecution because there are too many opportunities for the criminals to come up with an excuse? Under the bill, would the number of times that that happens reduce because the law is clear? Would it be more likely that, when you take a case to the procurator fiscal, it would be progressed?

Detective Sergeant Telford: Under the bill, there will be greater opportunity to get arrests and, potentially, convictions. The inclusion of rabbits in the definition of “mammal” will aid that, because, to an extent, it will negate the false excuse of hare coursers that they were hunting rabbits.

More often than not, a hare coursing incident will be reported to us and nobody will be arrested. That is not only down to problems with the current legislation. First and foremost, it is about chasing the people who are involved. Quite often, by the time that we find the place, they have gone. For example, over the past month, seven suspected hare coursing incidents have been reported to police, and crimes have been recorded for three of those. In the other four, we did not have sufficient evidence to say that a crime had occurred.

It is one thing to say that there is a certain number of recorded crimes of hare coursing, but there are potentially many more incidents that we cannot definitively say were hare coursing and record as such. However, it is certainly a prevalent crime type.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): Good morning, folks. Unfortunately, I will—pardon the pun—take us down a rabbit hole. Am I right in thinking, on the basis of my own experience, that hare coursers have a particular type of dog?

Detective Sergeant Telford: Yes.

Jim Fairlie: So, somebody who is out walking a poodle is highly unlikely to be hare coursing, but it is far more likely that somebody with a lurcher or greyhound will be doing so. Does the bill need to

specify a particular type, or types, of dog that are ordinarily used in hare coursing?

09:45

Detective Sergeant Telford: As you said, a select number of dog types are used for hare coursing, so specifying those types would certainly make enforcement more straightforward for the police.

Jim Fairlie: However, from a legislative point of view, where do we draw the line? A collie crossed with a greyhound could make a good hunting dog.

Detective Sergeant Telford: Yes, exactly; there would be challenges.

Jim Fairlie: As I said, I am taking us down a rabbit hole.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): Detective Sergeant Telford, we have already covered some of these issues, but one criticism that the police have made of the 2002 act is about the number and complexity of the exceptions to the offence of deliberately hunting. Can you say more about that? Does the bill rectify that problem of the number of exceptions?

Detective Sergeant Telford: There are not many exceptions in the bill; there are only three and they are pretty clear and straightforward. I do not think that there is any ambiguity in those exceptions, so that is an improvement.

Alasdair Allan: Does the Law Society have a view on that?

Michael Clancy: I think that the exceptions are quite clear. Some of them replicate provisions that are in the 2002 act.

I was just thinking about the point that Rachael Hamilton raised about innocent dog walkers, so I will say in passing that people are not criminals until they are convicted of an offence. They might be suspected or alleged criminals, but they are not actually criminals until they are convicted.

However, one could imagine creating a statutory defence—for example, for a dog walker whose dog runs off to chase an animal—because there are already statutory defences in the bill that revolve around the exceptions. You could have a statutory defence for a person who is walking one of those dogs that the member identified as not being the kind of dog that chases after hares, or for a person who is simply walking their domestic dog for the purposes of exercising the animal.

Generally speaking, however, the exceptions fit the bill. I have a point to raise on the environmental exception, if I am allowed to proceed on that basis. However, you might have questions to put on that later, so I do not want to

hold up the committee at this point, if it is not appropriate.

The Convener: Yes, we are probably going to come on to that later.

Alasdair, do you have further questions on the offences?

Alasdair Allan: Yes, I have questions on the wider question of offences. Moving on to the issue of rabbits, a number of people have raised the issue of a dog—of its own volition—chasing a rabbit. I will perhaps not pursue that area too much further, other than to ask whether people have a view on the inclusion of rabbits under the definition of “wild mammal” and, if so, whether people are content that the bill still allows for adequate pest control. That question goes first to William Telford. Are you content that the bill allows you to make that distinction?

Detective Sergeant Telford: Yes, Police Scotland welcomes the inclusion of rabbits, because it would, to an extent, negate the excuse that the dogs were hunting rabbits rather than hares.

Alasdair Allan: Does Sara Shaw want to come in on that?

Sara Shaw: It is a useful inclusion in the bill. Section 1 would permit prosecution. Currently, if the COPFS receives a report of alleged hare coursing and it turns out to have been a rabbit that was involved, we can raise proceedings under section 11G of the Wildlife and Countryside Act 1981. That is not to say that that would be appropriate or possible in every scenario where rabbits are mentioned, but that is an option in appropriate cases. The benefit of raising a prosecution under section 1 of the bill in respect of a rabbit or rabbits would be the penalties that the bill would make available, which are additional to those in the 2002 act.

Alasdair Allan: I want to look at that from another perspective and ask Robbie Kernahan from NatureScot about the misuse of the law on hare coursing and the distinction that is to be made between that and the legitimate pest control of rabbits. Is that distinction sufficiently clear and workable in the bill? Basically, would the bill allow for adequate pest control?

Robbie Kernahan (NatureScot): Good morning. It is nice to see you. My starting point is to welcome the policy intention behind the bill. NatureScot sees the bill as providing clarity, purpose and a process of tightening or removing loopholes to better protect welfare, which we have touched on. That can only be a good thing from our perspective, and we hope that it leads to better enforcement of the law.

In answer to your question, Alasdair, I do not think that there is anything in the bill that prevents effective control for a variety of purposes. We can talk about the exceptions in due course, but there is nothing in the bill that would prevent legitimate effective wildlife management control.

The Convener: Ariane Burgess has a supplementary question on offences. Ariane, please could you also ask your question on exemptions?

Ariane Burgess (Highlands and Islands) (Green): Good morning. I am sorry that I cannot be there in person today. I appreciate your coming to the committee to add your perspectives on the bill.

I want to pick up on a statement in the written evidence from the National Working Terrier Federation, which I raised with Barrie Wade from that organisation a couple of weeks ago. Its evidence states that

“It is commonplace on a shoot day to use more than 2 dogs while flushing game from cover ... We do not believe that the intention of the Bill is to restrict, control or interfere with normal shooting practices”.

However, the bill does restrict the number of dogs to two for game shooting and to one for flushing game. When I questioned Barrie on that, he admitted that

“you might be using three spaniels to flush ground game. If part of that ground game is rabbits, and if rabbits are part of the act, you are committing an offence.”—[*Official Report*, 8 June 2022; c 4.]

I want to ask Michael Clancy and Sara Shaw whether they believe that the bill as worded will restrict normal shooting practices so that flushing to guns by using more than two dogs—whether you are flushing rabbits, foxes or other wild mammals—will be a prosecutable offence.

Michael Clancy OBE: The answer to your question is yes. The bill is quite clear that it permits flushing with one dog and hunting with two. I do not see how that is unclear in any way.

Sara Shaw: The bill is clear about when an offence would be committed and when hunting with dogs falls within an exception. It is difficult to say exactly how that will play out in practice. Obviously, each case turns on its own facts and circumstances, and I cannot comment on how the law can be applied in each case. However, with regard to the offences and the exceptions, the bill appears to be relatively clear compared with the current legislation.

Ariane Burgess: Thank you for that response. I will move on to questions about the exceptions in sections 3 and 5 to 7 of the bill. Last week, Chief Superintendent Mike Flynn from the Scottish

Society for the Prevention of Cruelty to Animals stated:

“The purpose of the majority of the bill is to close the loopholes in the act”.

He related that, under the 2002 act,

“every badger baiter has said that they were after foxes, and every hare coursing has said that they were after rabbits”.

He also stated that many terms

“have to be defined better”

and that

“the licensing provisions have to be specified and fleshed out if NatureScot is to have a reasonable chance of doing a good licensing job.”—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 15 June 2022; c 11.]

Do the witnesses agree with those statements? Will the bill close loopholes and remove ambiguities despite its many exceptions and its licensing scheme?

Michael Clancy OBE: The exceptions in the bill have, in many respects, had manifestations in previous legislation, including, of course, the 2002 act, although not in the schematic way in which they are approached in the bill. That lends a significant amount of clarity to the bill and allows for people to understand clearly what the exceptions are. If the Government were to publish easy-read guidance alongside the bill, that might be an additional help. That is our principal point on the matter.

There are issues with some of the exceptions when one gets into them. I will highlight one that I thought was particularly problematic: the exception for environmental benefit. In particular, I will focus on the definition of “invasive non-native species”, which means a species

“which is included on the Scottish list of species of special concern”.

That is defined as:

“the list of species in the Annex to Commission Implementing Regulation (EU) 2016/1141”,

which has been implemented in our law by a piece of Brexit legislation that allows for that annex, which is the European Union list of species, to be adopted as the Scottish list of species.

I do not know whether any members of the committee have looked at that list but, to be honest, it is not entirely clear when one looks at it because it includes not only mammals but fish and plants. We could do better to explain what species we are talking about. Certainly, having to trawl through all the Latin classification names was quite a chore. I did it yesterday—that shows you how much time I have on my hands to do such things. Trying to track down what a *Corvus splendens* is was a chore. We all know that it is a

“splendid crow” but what is it doing there? The same goes for Reeves muntjac. I am not sure that many people would have the time, energy or inclination to examine that fully.

That is a point where the bill’s apparent clarity falls down by adhering to the European Union exit regulation, which is not appropriate. I refer to the Invasive Non-native Species (EU Exit) (Scotland) (Amendment etc) Regulations 2020.

It would be easier to ask NatureScot about the licensing point. It seems that NatureScot does a lot of licensing, and I am sure that it is well skilled in identifying how to license and the questions to ask to make sure that the licence fits with the law. If you do not mind, I would divert my attention on that point to NatureScot for a more authoritative answer.

10:00

Ariane Burgess: Thank you for flagging up the species list; that sounds like an onerous task. I turn to Robbie Kernahan. I do not know whether I need to recap my question, but it picked up on Chief Superintendent Flynn’s statements that many terms

“have to be defined better”

and that

“the licensing provisions have to be specified and fleshed out if NatureScot is to have a reasonable chance of doing a good licensing job.”—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 15 June 2022; c 11.]

Could you talk about the clarity in those exceptions?

Robbie Kernahan: I fully understand the point that Mike Flynn made last week. There are two aspects to the issue. One is the exceptions that are in the bill, and let us be honest, the more exceptions that there are, the less exceptional they become. We appreciate the clarity that they provide but recognise that there is still a lot of work to do to translate the legislation into clear guidance for practitioners, which is key to all this.

The second point about the licensing regime, which also flows from some of the exceptions, is that making sure that the bill is practicable and enabled is key. I have heard a lot of concerns from practitioners and others about the need to get the licensing regime right. By way of introduction, we issue between 4,500 and 5,000 individual species licences on an annual basis, so we have a lot of experience in providing and enabling a targeted risk-based approach to licensing that is in line with the principles of better regulation, and trying to do that in a proportionate and transparent way.

Picking up on ways of working in relation to wildlife management, we have advocated for a

long time that we work together and share the responsibility to come up with a licensing regime that is accessible, fair, clear, practicable and, more importantly, to come back to the policy intention behind the bill, consistent and enforceable. We will work through that as needs be, and we might come to discuss more of the detail therein about how prescriptive we want the licences to be, because there is a balance to be struck between providing that clarity and ensuring that we have flexibility and a licensing regime that can allow effective control of mammals when they cause specific problems to public interests.

Ariane Burgess: Does anyone else want to come in on that?

Detective Sergeant Telford: From Police Scotland’s perspective, we did not have any major issues with the exceptions in relation to the definitions. One point is that the term “reasonable steps” is used regularly—for example, section 3(3)(c) states that

“reasonable steps are taken to ensure that any dog used in the activity does not join with others to form a pack of more than two dogs”.

We feel that the term “reasonable steps” is a wee bit subjective, so we would welcome an amendment to that or some clarity via a supplementary document to detail what “reasonable steps” may be.

Police Scotland would welcome being involved in drawing up the licensing scheme, so that we can offer opinions on what would make the scheme practical in relation to enforcement.

Ariane Burgess: It is great when you get specific like that. Thanks very much. I will turn to the environmental benefit exceptions. Michael Clancy has touched on the specifics of the species list, but some witnesses, notably RSPB Scotland and Scottish Badgers, have in written evidence questioned the need for the exception and licences in connection to environmental benefit, and the League Against Cruel Sports highlighted the concern, which is shared by many, that that exception will be exploited and used as a smokescreen for traditional hunting with dogs. If we retain that exception and licensing scheme, do you believe that those sections would benefit from clearer definitions of terms such as

“significant or long-term environmental benefit”

and from guidance on how to determine whether each case meets those criteria?

Sara Shaw: I do not have a particular view to offer on the definition of terms such as

“significant or long-term environmental benefit”.

That seems fairly clear on the face of it. Any difficulty in applying that in practice will come to

light in a practical scenario, when a case is before a court and someone is seeking to rely on that exception.

From the prosecutor's perspective, I do not think that I have anything to offer in terms of taking issue with there being no particular definition in the bill.

I have highlighted elsewhere terms that are used frequently. I am not suggesting that they need to be defined; I am just observing that they are not currently defined. That includes the terms "search for", "stalk", "flush" and "retrieve". There have been issues in some prosecutions around definitions of terms in the earlier legislation, so I am simply highlighting that there is still terminology that is repeated frequently throughout this bill that is not given a definition. That is perhaps a point to be considered.

Jim Fairlie: We have moved forward a wee bit quicker than I was thinking we would. To take a wee step back, I will quickly ask Michael Clancy for clarification on part 1, section 1 of the bill, which says:

"A person commits an offence if ... the person hunts a wild mammal using a dog".

From the Law Society's point of view, is there clarity on the difference between a person who is walking a dog and a person who is using a dog? Do you have a concern about that specification?

Michael Clancy OBE: I think that we set out in our written submission that we have a concern that clarification might be necessary to improve understanding and, consequently, enforcement, of section 1 in relation to the difference between walking a dog and using a dog. In the bill, there is the use of the phrase "using a dog" when the hunting of a wild animal by that person involves the use of a dog. As I said earlier, the 2002 act referred to "hunting with" a dog, so we move into slightly new territory with the phraseology of "using a dog". I have no doubt that the courts will be able to zero in on that phraseology if it causes any difficulty in bringing forward cases—

Jim Fairlie: Sorry, can I interrupt you for one wee second? I am really conscious of time; I may bring William Telford into this as well. I want this to be really quick—I am sorry.

Let us imagine that William Telford goes out and finds three guys coming out of the back of a white van with three lurchers and the guys say, "Yeah, we were just walking our dogs." Does the court have the discretion to say, "No. We find, on the balance of probability, that you were coursing hares"? Can the law do that?

Michael Clancy OBE: The responsibility for prosecution is with the Crown Office and

Procurator Fiscal Service. The Crown has to prove an offence beyond reasonable doubt, so it is not—

Jim Fairlie: Can I suggest, just for time purposes, that this may be a question that Sara Shaw should consider?

Michael Clancy OBE: By all means.

Sara Shaw: Michael Clancy is absolutely right that the Crown needs to prove its case beyond reasonable doubt, with corroborated evidence. We need to prove that a crime is being committed and be able to prove who has committed that crime—and the crime is defined, in this instance, by what is in the legislation. The Crown will have to have reference to the wording of the legislation and look at the evidence that is presented in the police report and consider whether the test is met and whether a prosecution can be brought.

I cannot comment on whether the scenario that you have described would lend itself to a prosecution, because I do not have sufficient detail. Possibly it would; possibly it would not. There are circumstantial cases in which there is a sufficiency of evidence and circumstantial cases in which there is not. I do not know whether that quite answers your point.

Jim Fairlie: It seems to highlight that we need something that is a bit more robust. Would that be fair? We are trying to get at the distinction between somebody who is out walking the dog when the dog takes off and starts chasing a rabbit or hare and somebody who deliberately sets out with a dog to hunt animals.

Clearly, as William Telford said, there is a loophole—it is easy for someone to say that they were just walking their dog and it took off to chase a hare. However, I know that guys go out with lurchers and greyhounds in a specific way.

Can we find another way of making that part of the law more robust without including rabbits? That is what I'm trying to get to.

Sara Shaw: There may well be a way to do that. I agree that there is merit in considering the use of the words "intentional or reckless" when it comes to how the offence can be committed. The inclusion of the word "reckless", as well as the concept of intent, allows for certain scenarios that might present in practice to be brought within the ambit of the offence, whereas they currently might not if it was left simply as being intentional. I appreciate that the word "intentional" is not used, but it is implied in the wording of the bill.

In his report, Lord Bonomy highlighted that the standard for recklessness is high—it is not mere carelessness—so there is a distinction to be made between "intentional", "reckless" and other scenarios that do not quite fall into the ambit of criminal conduct.

Jim Fairlie: Okay—that gives us something to think about.

I come to Robbie Kernahan. Is NatureScot content with the exception for environmental benefit, from the perspective of your wildlife management schemes? People can get a licence for up to two years for environmental benefit but, as the bill stands, they will have 14 days in which to control a fox that is killing lambs. What is your perspective on that?

Robbie Kernahan: On the scope for environmental benefit, I do not have much to add. For our purposes, although we can continue to provide clarity on the need for the removal of invasive non-native species and how those are defined, the scope of the bill is clear on the need to allow the use of dogs for biodiversity benefits, and we are comfortable with it.

On consistency of licensing timescales, my starting point is that it is far easier for us to be consistent when it comes to defining a licensable purpose and exercising the discretion that we may have as a regulator to decide on the most appropriate licensing period for any circumstance.

However, I come back to the policy intention, which is to restrict such exceptions. Let us be honest: the licences are derogations in that they enable people to do things that would otherwise be an offence. Striking the right balance between prescription—reducing the likelihood of relying on those licences—and flexibility is key for us.

Jim Fairlie: We will come on to licensing in more detail, but are you comfortable with the difference between the exception for environmental benefit and licensing for ordinary wildlife management, as the bill stands at the moment?

Robbie Kernahan: Yes.

Jim Fairlie: Thank you.

The Convener: I have a quick question before I bring in Alasdair Allan. On many weekends, there are mixed shoots. Farmers invite folk from the rural community, who bring their Labradors, which hunt, retrieve and flush pheasants or whatever to the gun. In such a circumstance, half a dozen or more handlers, if you like, may be out enjoying that day quite legally. The vast majority of country pursuits are still legal.

My question is for William Telford. Given that some organisations want to stop all shooting as a sport, is there any risk on a mixed shoot in which more than two dogs—maybe five or six, with handlers—are used to flush pheasants, that if the dogs flushed a fox or a rabbit, that would give rise to doubt as to whether their pursuit was legal?

10:15

Detective Sergeant Telford: That is a difficult one. That is where intent would come into it, and it might be difficult to differentiate. That opportunity is always going to be there, if dogs are flushing game legally but encounter a mammal and chase it. That risk is there. I do not know whether that is necessarily addressed by the bill.

The Convener: That is really concerning, because there are organisations out there that want to stop any sort of sport that involves the killing of an animal, whether that is a pheasant or a rabbit.

From your experience, you will know that, for example, if Labradors or terriers are sent into the rough to raise pheasants, for example, there is a good chance of getting rabbits, which will be shot. Currently, that is legal. Is there a chance that, on every Saturday on which there is a mixed shoot on a farm, an organisation such as the League Against Cruel Sports or OneKind will be on the phone to say that five dogs are in the rough and are hunting without a licence? Is that another difficulty that we will face in the future, as the bill stands?

Detective Sergeant Telford: That may well happen. We will not know until the new regime is introduced. If that was the case, Police Scotland—we are impartial—would review all the circumstances, including intent, and would base a decision on that.

The Convener: The last thing that we want is a law that has first to be tested in the courts, including on appeal. We want laws that are fit for purpose.

Sara Shaw, I ask you the same question. Will the concept of intent cause a difficulty for you? If not daily, every week, as I have said, people will use dogs for the shooting of game such as pheasants. It is inevitable that that will cause rabbits and, potentially, other mammals to come in front of a gun.

Sara Shaw: Whether an activity falls within one of the exceptions very much depends on the facts and circumstances of each scenario. Otherwise, it will be an offence under the bill. As prosecutors, we take each case on its merits. The scenario that you have outlined is a possibility. Whether that can be better addressed in the legislation, I do not know. However, there is certainly scope there for a grey area.

The Convener: Jim Fairlie has a brief question.

Jim Fairlie: In the scenario that Finlay Carson has laid out, would a dog not have to chase and kill that rabbit for it to be an offence? Generally, if a Labrador or a spaniel is flushing, as soon as the bird goes up, their nose will be back on the

ground. They will not necessarily chase and kill the bird. If they are flushing, will it be an offence if they do not chase the rabbit?

Sara Shaw: It is difficult to give a specific answer. It would all come down to exactly what had happened. We would need to look at the evidence and the terms of the bill—or the act, assuming that it comes into force—and then consider whether an offence had been committed.

The Convener: Michael Clancy would like to comment on that point.

Michael Clancy: The bill makes it clear that the killing of an animal is not a requirement for hunting, which

“includes, in particular, searching for and coursing”.

The bill does not say anything about subsequently killing. On that point, there is no dubiety.

On the point about whether the courts have to interpret legislation, that is what courts are for. It is not as if this Parliament—or, indeed, any Parliament—has enacted legislation that is not subject to interpretation by the courts. That is part of the process of making sure that the law is enforced. We would all love our laws to be crystal clear all the time, but the fact is that people are human, and humans do not have that all-encompassing knowledge to make everything crystal clear from the start. We have to revisit legislation to take account of the different circumstances that Sara Shaw pointed out.

The Convener: Thank you. That is helpful. Alasdair Allan has a brief supplementary question on exceptions, after which we will move to licensing.

Alasdair Allan: The example of the dog that slips the lead has been raised a few times. You must be tired of hearing about that particular dog, but is it fair to say that the use of the word “use” in the bill deals with some of the question marks? Prosecutors would be interested in the intentions of the human rather than the intentions of the dog. Does “use” encompass that clearly? If it is not a tautology, does the use of the word “use” make it clear in the bill that the examples that we have talked about on numerous occasions, such as that of a dog slipping the lead, are to do with the intentions of the dog, not the intentions of the owner, and that, therefore, the owner would not be prosecuted for that? Is “use” an adequate way of dealing with the problem that we have been talking about?

Detective Sergeant Telford: I think that the definition is clear, but the challenges remain in proving that.

Sara Shaw: On the face of it, I think that the bill sets out a clear offence. It is entirely possible that

we will encounter difficulty in applying the wording in practice, but I cannot comment on whether that will arise.

As has been mentioned, section 1(4) provides a definition of “using a dog”, which is useful. There is a definition of “using a dog” in the 2002 act, but it is not as specific. I think that I am correct in saying that it includes hunting with more than one dog. A different approach is taken in the bill. It is more specific about what “using a dog” means and seeks to encompass the activity of persons who might not be directly controlling or directing the dogs. A broad definition is provided in order to encompass a number of participants in any activity.

Alasdair Allan: But it does not cover the intentions of the dog.

Sara Shaw: No.

The Convener: We will move our focus to licensing, which is covered by sections 4, 8 and 9 of the bill.

Rachael Hamilton: Before I ask about licensing, I would like to get some clarity—in writing, if necessary—from the Crown Office and Police Scotland regarding the concern about use of the term “reasonable steps” in section 3(3)(c). Lord Bonyon said that the courts would have no trouble with that expression. Why are the courts unable to manage that expression, which is widely found in statute?

I will move on to licensing. Detective Sergeant Telford, Lord Bonyon noted that, with or without licensing,

“The same difficulties of proof and enforcement would remain.”

With regard to enforcement and proof, what is your view of the licensing provisions that are set out in the bill?

Detective Sergeant Telford: All that Police Scotland could say about what is outlined in the bill is that it seems fair enough. It would be difficult to provide any further comment until we actually see the licensing scheme, which will have to be very detailed in order to allow us to enforce breaches of it. That is probably where our involvement would be more relevant, and we would be keen to be involved in drawing that out.

We would certainly want a really clear definition to be provided of the area that the licence is to be applied to. Are we talking about grid references? What are we talking about? For enforcement purposes, we would need that sort of thing to be really clear.

Rachael Hamilton: To use Michael Clancy’s phrase, when it comes to that, the proof of the pudding will be in the eating. We have heard that

there could be issues with the movement of animals from A to B. Animals do not see boundaries or marches, which is where the difficulty lies with regard to the role that NatureScot will play in licensing.

I will ask you some quick-fire questions. Lord Bonyon suggested amending the 2002 act, coupled with a code of practice for hunts and the introduction of monitors. A code of practice was introduced, but not the monitors. Is there any evidence that that approach has worked or, indeed, that such a combination of approaches could work?

Detective Sergeant Telford: I could not answer that. At this stage, I do not know, but I can certainly find out and send a reply to you, along with the other details that you requested.

Rachael Hamilton: Surely you will have some examples of what there has been in terms of enforcement since the first act.

Detective Sergeant Telford: Sorry—could you clarify the question?

Rachael Hamilton: The code of conduct was introduced. How has enforcement worked for Police Scotland so far?

Detective Sergeant Telford: In relation to the code of conduct?

Rachael Hamilton: Yes.

Detective Sergeant Telford: I do not know. I would need to find out and get back to you on that.

Rachael Hamilton: Okay.

In England and Wales, the number of prosecutions has been no greater, proportionately, than it has been in Scotland. What specific changes do you see in the bill that would make prosecutions easier, in terms of the way in which offences and exceptions are defined?

Detective Sergeant Telford: I think that the removal of the word “deliberate” will create less confusion. In addition, as I said earlier, the inclusion of rabbits will negate any hare coursing or false hare coursing excuses. Those are the most significant features.

Rachael Hamilton: The bill may lead to greater use of firearms in the countryside, as land managers try to deal with predation in the absence of dogs. Is that a concern for you? Have you considered that?

Detective Sergeant Telford: Police Scotland will always react to any relevant offences. We have a firearms licensing team and a rural crime team, so if issues arise, we will deal with them accordingly.

There have been firearms in the rural community for 100 years, so a majority of people in the agricultural community know how to use them responsibly and legally. Therefore, I do not think that there is any undue concern at this stage or any evidence that would cause concern.

Rachael Hamilton: You note in your written evidence that the bill contains no provision for “police powers to arrest or search”.

Can you explain why the general powers that are available to Police Scotland and those powers that are set out in the schedule to the bill could be a problem?

Detective Sergeant Telford: Yes—we were just looking for a bit of clarity around that, as there is nothing in the bill. At present, the powers that are afforded by the Protection of Wild Mammals (Scotland) Act 2002 and the Wildlife and Countryside Act 1981, and other wildlife crime legislation, are really effective. That legislation affords us a power to search persons, which is key in gaining evidence of offences.

To go back to hare coursing, for example, that power allows us to take people’s phones in order to get potential evidence, such as footage, from them. We hope that the powers that we will be afforded in the bill will be similar to those in the current legislation.

Rachael Hamilton: Robbie Kernahan said that NatureScot issues thousands of licences per year. With regard to the 14-day licence, it will be interesting to hear, in the next part of the questioning, how that will play out and what will be required of NatureScot.

In the context of the resource that will be required from Police Scotland and its current resources for enforcement, have you considered that a general licence, with conditions and reporting requirements, would be a better way of conducting such a scheme?

Detective Sergeant Telford: It is not something that we have considered, to be honest.

Rachael Hamilton: Okay. Thank you.

10:30

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning. What sort of role do you see Police Scotland having with regard to licensed activities? Would you expect to be notified beforehand? Would that be part of the collaboration that you would want to see?

Detective Sergeant Telford: I do not necessarily think so. Again, we would like to discuss that with NatureScot and so forth when the scheme has been drawn up.

At present, we have a close working relationship with NatureScot, so we have such discussions as things emerge. We do not always need to know exactly what the licensing conditions are in relation to A, B or C. If issues arise, we can—and do—contact NatureScot; likewise, it will discuss matters with us. That avenue of conversation is already there, so we do not necessarily need to be overly intrusive.

Karen Adam: That is helpful. There are elements of trust with regard to how people would generally go about their business and conduct those hunts.

Detective Sergeant Telford: Yes.

Karen Adam: You answered my next question to some extent in your response to Rachael Hamilton's question, when you touched on the need for collaboration when it comes to policing and prosecution regarding the licensing. Can you give us any examples of what you would like to see within that?

Detective Sergeant Telford: Off the top of my head, I would say that we need ease of communication and information sharing, which, to be honest, we already have with the partner agencies—it is already there.

A very detailed licensing scheme is key. I appreciate that there are challenges around dogs moving from A to B, so it may not be easy to define areas. However, for enforcement purposes, we need something that is pretty black and white, and detailed.

The Convener: We will move on to questions about NatureScot's position, starting with Jim Fairlie.

Jim Fairlie: I return to Robbie Kernahan. Regarding NatureScot's position as the proposed licensing authority, what resources will it require in order to fulfil its role? Is there adequate provision in that regard in the financial memorandum?

I would point out that, in previous evidence sessions, people said that they were generally content with NatureScot being the licensing authority. As you said, you have issued thousands of licences. However, there were some concerns among the rural pursuits groups and farming groups about whether NatureScot staff would have a full understanding of the circumstances under which they were trying to manage particular species of wildlife, especially foxes.

Robbie Kernahan: As we move on to licensing, it is interesting to think about how NatureScot can balance and manage all the expectations that are placed on us. Again, my starting point is that we have been dealing with species licences to try to prevent serious damage to a range of interests for quite a long time.

There is a question around how we try to put together a licensing scheme that will satisfy Police Scotland's desire for absolute clarity, certainty and prescription, in order that it can work out whether offences have been committed, versus the flexibility that practitioners need to be able to make on-site decisions in a fairly dynamic way as circumstances arise.

We have a good track record in how we manage serious damage to livestock from ravens and other protected species—for example, where there are issues with badgers or protected birds. I think that we are in a good place to continue those conversations once the parliamentary process has concluded. We will then see the nature of the bill and we will know what we have to work with in order to design a scheme. Again, members should take some reassurance from me that we will commit to a shared approach, working together with all the relevant parties to try to come up with a licensing regime that is proportionate.

I return to some of our frustrations about our current lack of knowledge, which, in turn, brings us back to whether we can resource the work. We do not fully understand the demand; we do not really know what the demand for licensing solutions will be. I would hazard a guess that the majority of effective mammalian control, and certainly fox control, is carried out without reliance on some of the packs that we have heard the committee discuss over the past two or three weeks. I would hazard a guess that 90 per cent of fox control is actually undertaken effectively using shooting, both during the day and at night, as well as by snaring.

I suspect that what we are talking about here is a relatively small proportion of fox control, but we will not really understand that until we start to receive the demand. At that point, we can continue to evolve our approach, looking at what we think is adaptive and proportionate. We need to get that burden right, because a lot of things—defining damage, for example—are in the eye of the beholder.

The Convener: The Scottish Government has said that it will publish guidance. On the back of Jim Fairlie's question, I note that that will be critical to how the licensing system works. Have you been involved in putting that guidance together? If not, will you be involved? Do you have any idea when the guidance notes will be published before the bill becomes an act? Do you know whether the guidance will be consulted on?

Robbie Kernahan: On the detail, we have been involved in discussions with Scottish Government colleagues up to this point. As we go through the parliamentary process, it may well be that the licensing regime will have to evolve in relation to whatever comes by way of amendments. We will

work within the legislative constraints to design a licensing scheme that best meets people's expectations, and we can only really do that in consultation, as we have heard from practitioner groups and others who have a stake in the area.

I cannot put a definitive timeline on that at this point, but I am happy to come back to the committee if you would like some more clarity on it.

The Convener: Thank you. It would certainly be helpful to get an idea of the consultation timescale.

Jim Fairlie: Robbie, I made a point to you earlier about the timescale for a licence. Rachael Hamilton mentioned a period of 14 days, as opposed to two years, for environmental licences—someone would have 14 days in which to deal with a fox. From the point of view of a practitioner or land manager, a 14-day timescale for trying to deal with a predatory fox is too prescriptive and too tight. They already know that the fox is coming out of the woods. Are they going to wait until it starts killing lambs? I could go through all the scenarios, but you know them all, so I do not need to translate them for you again.

How do you feel about the licence for fox control, in particular? I do not share Rachael Hamilton's point of view that we need more guns in the countryside, because walked packs can do the job anyway. What is your view on having an extended seasonal licence or an annual licence for specific walked packs to try to control foxes in particular areas?

Robbie Kernahan: As a licensing authority and a regulator, NatureScot has quite a lot of discretion to decide how we want to implement the licensing scheme. We can be very specific and tight about that, within a specific seasonal window, if that is the desired direction of travel. However, I suspect that that would constrain quite a lot of the flexibility from which practitioners currently benefit.

My understanding is that the policy intention behind the bill is to try to reduce reliance on the use of more than two dogs as far as we are able to do so. At the opposite end of that spectrum, we can issue a general licence with specific conditions attached to it, which would allow for a more flexible approach to something that is quite well established and commonplace, while clearly setting out conditions for how we would expect people to operate. As something between those two approaches, we could have a class licence, which witnesses in the previous couple of evidence sessions mentioned. Under that scheme, we would license a trusted operator to act in a certain way and report back to us.

A range of licensing solutions are available and, at this point, I would not necessarily want to pin my colours to the mast regarding the exact

solution. As a licensing service, NatureScot is constantly seeking to improve, based on evidence and feedback. Whatever we decide to implement by way of a licensing scheme on day 1, when the bill receives royal assent, it will not necessarily tie us to that approach ad infinitum.

As the committee has heard from other witnesses today, we, as a licensing authority, will need to learn as we go, because the bill is new territory for us. We will need to work closely with practitioner groups to help to design something that is going to work for them, while securing the safeguards that we know the bill is aimed at putting in place.

Jim Fairlie: A lot of the stuff that we have talked about has been based on hunting foxes with dogs, which is where a lot of the controversy has been centred. However, we heard this morning from Sara Shaw and William Telford that the controversy also spreads into other areas. What impact will the scheme have on the wider review of species licensing to which the Scottish Government has committed?

Robbie Kernahan: As part of the Bute house agreement, there was a commitment to look afresh at how NatureScot discharges its licensing functions. That is probably because we regularly trip up against questions about how transparent and proportionate we are, and against the complexity of operating under heavily amended legislation.

The Wildlife and Countryside Act 1981, which provides the majority of our licensing functions, is complicated and complex, and the licensing tests do not necessarily reflect what is in the Protection of Badgers Act 1992, which is different from what is in the Conservation (Natural Habitats, &c) Regulations 1994 and the Deer (Scotland) Act 1996. There are subtle differences in the various laws regarding the tests that need to be applied for different purposes and for different species. That is confusing.

Returning to the bill, I note that NatureScot, as a licensing authority, will need to be absolutely satisfied that there is a clear licensable purpose—that there is evidence that there is something that we need to allow—and that there is no satisfactory alternative. The types of questions that we would pose to applicants who were suffering damages would include what alternatives they had implemented before relying on something that would otherwise be an offence.

Jim Fairlie: I want to pursue that point—I promise that I will be quick, convener. I have previous experience of licensing. I have gone through the process, proved the damage and the effect and got the licence. From then on, it became very easy.

We already know that foxes predate lambs during lambing time. I have asked this question in previous sessions. Is a farmer going to have to go to NatureScot with pictures of dead lambs with their tails and ears off in order to prove that a fox has killed them? Alternatively, will you be comfortable in saying that we know that foxes kill lambs and that, prior to lambing, there could be a good reason for a licence?

Robbie Kernahan: Again, I put my cards on the table. There is no doubt at all that the predation of livestock by foxes takes place. We are quite clear about that. That is a licensable purpose, which is why the phrase

“preventing serious damage to livestock”

is in the bill.

The burden of proof that will be required to evidence that is part of a discussion that we need to have in putting together a licensing scheme. We can take a very light touch with it and be quite enabling. Let us be honest—we want to prevent damage rather than reacting to damage that is occurring, because such damage incurs quite a lot of financial loss and trauma for those people who suffer it.

Those are the types of conversations in which we will need to be clear with applicants about where the burden of proof lies with them, in order that they can demonstrate clear and evidential need.

Jim Fairlie: Okay. Thank you.

The Convener: I will bring in Ariane Burgess next. I remind members that we have about 15 minutes left to ask a further 10 questions, so I ask everyone to keep their questions nice and succinct.

Ariane Burgess: I have some more questions for Robbie Kernahan.

Robbie, you started to go through the types of things that you will ask people to demonstrate when they apply for a licence. In the discussions that I have had with people on the bill, I have heard that we have a situation where people are killing foxes to protect land year after year without any long-term improvement and with no reduction in the local fox population and no increase in lamb retention rates. Last week, we heard from OneKind and the League Against Cruel Sports that they oppose licensing schemes because they fear that such schemes will create new loopholes that will allow the continuation of hunting with dogs for sport.

If a licensing scheme is to be retained, I would be interested to hear what you think about it being aligned with the international principles for ethical wildlife control. Groups and organisations such as

those that I have just mentioned have called for that. In order to obtain a licence, applicants would have to demonstrate that they were complying with those principles. What are your thoughts about that?

10:45

Robbie Kernahan: I agree entirely with the principle that we want our licensing—[*Inaudible.*] There needs to be some means by which we can monitor the licensing regime, receive feedback on it and continue to refine it to ensure that it delivers what it says on the tin.

The question is whether NatureScot issuing licences at certain times of the year, in a certain way or using certain methods would address the problem, whether that is damage to livestock, damage to arable crops or difficulties with protecting ground-nesting birds. We need to be clear that the licensing regime is effective, which requires a certain amount of adaptive management to learn by experience. We have that for the licensing regimes for other species, for which we continually try to receive information and improve the process from a practitioner point of view, a conservation point of view and, certainly, a welfare perspective, which is an integral part of the matter.

We are fairly well aligned with the ethical principles through the shared approach that we worked up and published in conjunction with partners. The first point in that is to ask whether we need to modify human behaviour. That is the type of question that we ask in a licensing regime. We ask what other satisfactory alternatives an applicant has explored before relying on something that would otherwise be illegal. We ask whether they have used any non-lethal methods or any other methods that might involve killing mammals that do not rely on something that would otherwise be an offence. I referred to snaring and shooting as perfectly legitimate means of effective fox control. We would ask applicants to demonstrate why they are not effective in their circumstances.

The Convener: We move on to questions about the prohibition of trail hunting.

Beatrice Wishart (Shetland Islands) (LD): Good morning. My questions are probably for William Telford. I understand that the trail hunting prohibition has been introduced to take pre-emptive action to prevent trail hunting from becoming established in Scotland. What are your views on whether it will assist with the policing and prosecution of hunting with dogs?

I will roll in my second question. I would be interested to hear your views on the exception to allow the training of dogs to follow an animal-

based scent. What are the implications of that for the training of police dogs, for example?

Detective Sergeant Telford: I suppose that making trail hunting illegal will limit the opportunities for people who want to undertake illegal fox hunting and disguise it as a legal act. However, that alone is not necessarily a reason to make trail hunting illegal. The evidence does not indicate that what little trail hunting there is in Scotland is used as a guise for criminality, although I believe that it is at times in England.

Police Scotland has a bit of concern about the implications for the training of dogs. There is an exemption that allows dogs to be trained using animal-based scents provided that no more than two dogs are trained at once. Cadaver dogs in Police Scotland and, I presume, other emergency services are trained using animal-based scents, and often up to six dogs are trained at once. The provisions could therefore create logistical issues for us. We are keen that some sort of exemption is built in for emergency dogs.

The Convener: We will move on to questions on enforcement, which is covered in part 3 of the bill.

Jenni Minto (Argyll and Bute) (SNP): I thank the witnesses for coming along. I have a quick question that might require a longer answer. I am interested in the witnesses' views on the enforcement powers in the bill. Does the bill provide adequate, effective and proportionate powers for policing and prosecution?

Detective Sergeant Telford: The powers that are afforded under part 3 in relation to premises outwith a domestic dwelling-house are similar to the powers that are afforded under the Protection of Wild Mammals (Scotland) Act 2002. There does not seem to be any reference in the bill to powers to arrest or search persons, so, in my response to the call for views, I sought clarification on that point. There is criticism of the 2002 act, but the powers that are afforded in that legislation are really effective, so we would like the full range of powers to also be available in this bill.

Jenni Minto: I have been thinking about consistency with other acts. Legislation on the protection of livestock was upgraded at the end of the previous parliamentary session and the beginning of this session. Are the provisions in the bill consistent with those in previous acts?

Detective Sergeant Telford: Very much so. The powers that are afforded across wildlife legislation—including the Protection of Badgers Act 1992, the Wildlife and Countryside Act 1981 and the Protection of Wild Mammals (Scotland) Act 2002—are very consistent, which makes enforcement more straightforward, because we do not have to think about which powers we have

under different pieces of legislation. That consistency is a valuable tool for wildlife crime officers on the ground who enforce the legislation.

Jenni Minto: Michael Clancy, in the Law Society's written evidence, you made some comments about a lack of definition of "consent or connivance", and you questioned the three-year prosecution window. Is there anything that you would like to add to that?

Michael Clancy OBE: I do not think so. In fact, when I looked at the three-year period in preparation for the meeting, I saw that earlier legislation includes similar time limits, so I stand by what the Law Society's criminal law committee said, but I will ask my colleagues who deal with the criminal law committee whether a supplementary letter to this committee might be in order.

The Convener: Robbie Kernahan indicated that he would like to comment on the previous question.

Robbie Kernahan: I just want to come back to the point about trail hunting before we leave it entirely. It would be remiss of me not to make it quite clear that use of dogs is an integral part of wildlife management, and that, from our perspective, we need to ensure that the use of dogs is still permissible for very specific things. At the moment, a condition of any night shooting licence that we issue in relation to wild deer is that the stalker or hunter must have a dog available to them for follow-up. In order to enable such provisions, we need to allow dogs to be trained for that purpose. The use of dogs—for deer management purposes and, indeed, for specialist tracking to deal with invasive non-natives—is key for us in order to realise our vision for a nature-rich future. I want to ensure that that is on the committee's radar, although I know that it is. It is important that we retain the ability to use dogs for those purposes.

Jenni Minto: Does Sara Shaw have any comments about the enforcement sections of the bill?

Sara Shaw: I do not have anything in particular to add to what William Telford said. From discussions with Scottish Government colleagues, I am aware that there is consistency with the Animal Health and Welfare (Scotland) Act 2006, which is to be welcomed.

Alasdair Allan: While we are speaking about the business of enforcement, I want to ask whether the witnesses are content with what the bill says about potential restrictions on individuals keeping a dog or a horse. Could Sara Shaw or William Telford say anything about that?

Sara Shaw: Do you mean in respect of deprivation orders?

Alasdair Allan: Yes—sorry.

Detective Sergeant Telford: Police Scotland has one suggestion in addition to the deprivation order, which is that certain people should not be permitted to reside in the same house as a dog. That would negate the excuse that the dog belongs to the person's wife or son, for example, which is an excuse that we encounter.

Sara Shaw: I simply welcome the option to have a court impose a deprivation order following conviction. Obviously, sentencing is entirely a matter for the court, but that is a useful tool or option.

Alasdair Allan: I have a question for Robbie Kernahan. I appreciate that it is not quite on the same subject, but it has been put to the committee that there might be an increase in the number of guns in the countryside as a result of the legislation. I know that you have touched on that issue, but can you say more about whether that is actually likely, in your view?

Robbie Kernahan: Again, it is difficult to be specific without fully understanding the demand from a licensing perspective. However, interestingly enough, an issue that we regularly deal with is the lack of firearms holders in agricultural settings. We have an ageing farming population and certainly an ageing crofting population, who are perhaps not as active in managing wildlife with firearms as they once were. Therefore, with regard to managing wildlife conflicts, we are very aware of that capacity to deal with some of the issues that the bill addresses. For a variety of wildlife management reasons, we still need a strong base of skilled practitioners who know what they are doing.

The Convener: I have a question for Michael Clancy. The Law Society's written evidence mentions the ancillary powers under part 4 of the bill. Regulations made under section 21 may

"make different provisions for different purposes"

and

"modify any enactment (including this Act)."

Even I, as someone who is not a lawyer, would suggest that that is a very wide power that could allow ministers to make modifications to the legislation without parliamentary scrutiny. Could you comment further on that?

Michael Clancy OBE: Yes. We have a general on-going concern about ministerial powers to make regulations. Regulations made under section 21 of the bill will

"make different provisions for different purposes",

which is a pretty ordinary provision. However, the provision to allow ministers to

"modify any enactment (including this Act)"

is quite broad. Although that is contained to regulations that are made under that section—that is, changes that are

"incidental, supplementary, consequential, transitional, transitory or saving"

provisions—it is, nevertheless, very broad. We suggest that, at the very least, Scottish ministers should be required to consult on such regulations with such persons as they consider appropriate.

Rachael Hamilton: I have some quick questions on the back of Alasdair Allan's questions. What facilities and storage do the police have for the purposes of seizing a horse or storing a quad bike, and who pays for that?

My second question, which is about spurious allegations, is for most of the witnesses. Robbie Marsland spoke about field investigators. In the case of an allegation from a field investigator, for example, would a licence be revoked on sight or on conviction? If a farmer suffers loss of livelihood, should there be compensation? NatureScot will know how general licences work, but there is nothing in the bill that suggests that there could be compensation or that there could be a method for appealing against a conviction. Robbie Kernahan, do you want to take that question with regard to how general licences operate?

Robbie Kernahan: Yes, I am happy to respond to that. From a regulator's point of view, we have quite a lot of discretion with regard to how we discharge our licensing function. In general, we issue licences based on trust and confidence. Therefore, if we, as a regulator, begin to lose trust and confidence in how a licence is being complied with, we can revoke it and remove it. That does not have to be done on the basis of any criminal issues. Indeed, we have experience of doing exactly that on the balance of probability that an offence has been committed.

As colleagues have mentioned, we already have relationships with Police Scotland, and we keep in touch about potential offences and how we will reflect on those as a regulator. We are well versed in how conditions are prescribed in licences and what we might want to do by way of follow-up. If we need to, we can talk about compliance and monitoring as part of the licensing scheme.

Generally, we do not engage with the issue of compensation in relation to any losses as a result of wildlife management or predation. Although we engage with practitioners on mitigation and we have schemes to incentivise people to live with wildlife, we very rarely compensate specifically for loss.

11:00

Rachael Hamilton: That is interesting. Does anyone want to comment on my question about resource facilities?

Detective Sergeant Telford: We have provision for the seizure of quad bikes. We seize vehicles regularly, so there is provision for uplifting vehicles that are in storage. Horses are perhaps a different matter; provisions would need to be put in place. I imagine that, if we were to seize horses, that would not happen regularly. Obviously, the priority would be the welfare of the animal. We need to look at that.

Rachael Hamilton: You would need to consider where the horse would go after that.

Detective Sergeant Telford: That is right. We seize dogs, so there are arrangements and funding sources in that regard.

The Convener: On the decision not to provide for vicarious liability or to reverse the burden of proof, Police Scotland said that it is not in favour of such provisions, but it did not give any reason. Could you give us the reason why you do not think that having provisions on vicarious liability or reversing the burden of proof in the bill would be a good tool to have in your toolbox, so to speak?

Detective Sergeant Telford: In relation to vicarious liability, we feel that the list of potentially relevant persons who would be liable for prosecution is suitably detailed.

The Convener: I ask Michael Clancy for his views on those points.

Michael Clancy OBE: Lord Bonomy went into that issue in some depth in his report. Given that we are short of time, perhaps we could write to you about vicarious liability and reverse burden. We are not in favour of reversing the burden; it should be the prosecution's obligation to prove beyond reasonable doubt. I will leave it there for the moment.

The Convener: Sara Shaw, do you have any comments about clarity and whether such provisions would make it easier for you, or do you not have a position on that?

Sara Shaw: Not necessarily. I note that in the policy memorandum it was not considered that there was an evidential basis for introducing an offence of vicarious liability. Based on the provision in section 2(1), it was considered that that offence addressed the area of vicarious liability, although not directly.

The Convener: We have run over our time slightly. I thank the witnesses for their attendance. The evidence that we have heard today has been most helpful and will help us to form our stage 1 report.

I suspend the meeting briefly to allow the witnesses to leave and to allow for a short comfort break.

11:03

Meeting suspended.

11:10

On resuming—

Aquaculture Regulatory Review

The Convener: Welcome back, everybody. Our next agenda item is consideration of the Scottish Government's aquaculture regulatory review. I welcome to the meeting Professor Russel Griggs OBE, whose "A Review of the Aquaculture Regulatory Process in Scotland" and recommendations for change were the first stage of the review process. We have questions that will take us to about 10 past 12. I will kick off. On the basis of your engagement with the industry and communities, what are your views on the current relationship with stakeholders and the level of trust in the decision-making process?

Professor Russel Griggs OBE: In simple terms, on the basis of a number of factors, I would say that the situation is not very good. The industry has developed since 1970. It began as a little cottage industry, and it has grown, certainly in parts, into a sophisticated industry that requires sophisticated decision making. Over time, as the industry has become more complex, each of the partners involved has developed their own issues.

As I said in my report, it is the only review that I have done in which nobody—I mean nobody—has wanted to retain the status quo. The relationship between some of the stakeholders had reached a point at which it was not just about trust of organisations but trust of individuals inside organisations.

The issues relate to a load of things. Whether those things are true does not really matter, because they are perceived as being true. Therefore, I thought throughout the review that the one thing that we must do is put in place a system that tries to restore trust. Part of that is about making it robust enough for everybody's voice to be heard in it. However, on the basis of it being a simple three-part process—the Government makes policy, regulators and planning authorities put that policy in place and industry and other stakeholders comply—the issue is how you change any part of that process.

I suspect that the easiest way to describe the strength of feeling is that, on a couple of occasions, the two civil servants who accompanied me in the review had to cover their ears because of some of the comments that were being made.

The Convener: Obviously, you have years of experience of big industry and communities and so on, and you are well aware of the pressures on communities with regard to renewable energy in

the south of Scotland. Is it a similar situation for communities where there are fish farms? Is there scope for it to improve, or do we need to start to make improvements now to ensure that communities and industries thrive?

Professor Griggs: That is a very big question, if I may say so. Let me try to answer that in parts. One of the challenges for all communities at the moment is in deciding what the voice of the community is. That is becoming more complex and more difficult as we go on. As you know, over the past six months, there has been a debate about second homes and people who do not live in communities for the whole year. Therefore, I suppose that you can now say that there is an economically active part of a community and an economically inactive part. The issue is about which voice should have the biggest say in community decisions—not just on renewables or, indeed, fish farms, but on a load of things.

From the work that I did on the review, it is clear that the "anti" voice in some places is very well funded and resourced, unlike the local voice, perhaps. Therefore, there is a need to bring some balance to that situation so that we understand that, when we are listening to voices, it is not the loudest voice that should get its way but the voice that speaks on the basis of evidence. There is no doubt that the communities that are involved in fish farming have benefited economically and that they will continue to do so, as they go forward.

11:15

Some of the people who do not want fish farms come at the matter from a very different view, which is much more to do with their view of what rural life should be. It is interesting to note that that might not be the way of life that the people who have lived in a community for decades would put in place.

Do I think that communities get enough say in that process? No, I do not. That is why I recommend in my report that a social contract needs to be built into whatever we take forward, including figuring out how much the industry will pay to get licences, if that is what we want to call them. The greater part of that money must go back to the communities; they should not get just the jobs and the bits of infrastructure.

The Convener: You mentioned some communities being well funded, but my issue is always about whether evidence on that is well founded. "Funding" and "founding" are two similar words that can drive a different outcome. Are there plans to put the right mechanisms in place, so that we have peer-reviewed evidence, rather than a polarised argument?

Professor Griggs: As you know, among my recommendations is that, in the process, there should be a scientific body that reviews all evidence. As I did the work and talked to about 90 organisations and to people, I saw an array of scientific evidence that would take you from one end of the spectrum, which says that there is nothing going on at all, to the other end, which says that the world is about to end. Therefore, we need somebody in the middle to judge that.

However, the point about scientific evidence is different to the point that you are making about communities. Because communities now comprise various types of people—including people who have lived in a place all their life and want to work, and people who have come to live there for different reasons—we need to strike a balance in listening to those voices. When I say that some parts of the communities are well resourced, I mean that, in a couple of communities that I looked at, the reporter who was gathering the evidence was ambushed by the bits of the community that did not want the fish farm, because they were well organised. The bits of the community that did want it were not well enough organised.

Therefore, there are two issues. There is the scientific evidence, which we need someone in the centre to look at. However, as we start to look at everything from fish farming to second homes and rural housing—on which Rachael Hamilton and I might exchange volubly in a minute—there is a much wider social debate to be had about how we deal with community input and whom we listen to. It is a very challenging subject; it is not easy. There are two bits. The scientific bit that I looked at is straightforward, but the social impacts of how we change our communities, or how we regard their changing nature, is a different issue.

Ariane Burgess: Professor Griggs, I am joining the meeting virtually and am very sorry that I cannot be with you in person today. I was interested to hear your perspective on community. I thank you for doing all that work.

I have been speaking to coastal communities as well—I speak to people who earn their living by catching crabs and lobsters. The coast is where people in those communities swim, where their children play and where tourists, who also bring money into the local economy, come to enjoy diving and water sports. It is interesting that you were talking about who the community is. Some people do not want fish farms even if they would receive payment, because many of them would see that as being bought off.

You have recommended a single consenting document, but that seems not to include a mechanism for communities to reject the imposition of a new or expanded industrial fish

farm in their local waters. I would like to hear your thoughts on the principle that coastal communities should have a say in where fish farms are located.

Professor Griggs: I might not have put it properly, but, in my recommendation on who gets involved in consenting process, the community would have to be statutorily consulted. As I said in one of my previous answers, the community must decide what that voice is. We have to have a long debate about how we will do that, but I believe strongly in the community giving a view. The challenge with communities is how we listen to the different voices within them.

I spoke to many coastal community groups as I went through my work on the review. The way that fish farming is developing, especially fin-fish farming—we will put shellfish and seaweed farming to one side—means that it will become much bigger but much less intrusive in coastal waters because most of it will be done on land and it will probably only be in their last year or so that fish are out in the sea.

I say in my report that I had not visited a fish farm for 20 years until I started to undertake the review. My goodness—was I shocked when I visited some of the new fish farms. They are sophisticated pieces of technical infrastructure in which the majority of the fishes' development is done on land and only the last part is done in the sea. That is very different from the traditional fin-fish farms that were set up from the 1970s onwards. I guess that, with the wonderful view of hindsight, the industry would accept that not all those farms are in optimal positions. That is why one of the other recommendations in the report is that we look at where fish farms are currently and decide for the future whether they are in the right places.

Ariane Burgess: Thank you for that reassurance. In conversation with coastal communities, I have been told that they feel that they would not be recognised. It is good to hear that you are concerned about them and want to ensure that they have a voice.

Professor Griggs: Let us be precise: the community should have a voice, but it is for the community to decide what that voice says.

Karen Adam: Good morning, Professor Griggs. What are your main observations on the key issues with the current regulatory framework?

Professor Griggs: I have been doing this for a while. If you examine any planning or development process, you will see that there is no doubt that the best way to do things is to start before you do them. If you want to do something, get all the interested parties round the table before you even get to filling in the application form so that we can decide what are the issues with which we will all

have to deal as we go forward. That has the sexy name of multilateral pre-consultation—which it is not, but that is what it is called. It has worked effectively in relation to, for example, offshore wind.

The way that the matter is approached at the moment is to leave everybody to do their own bits. That does not work because they do them sequentially. They do not have to do that, but they tend to. The developer can talk to only one of the interested partners until he wants to talk to another one.

I will give you my view about the only way such processes can work, especially when they are complicated, as the one in question is, and especially when they do not happen often. Aquaculture applications do not come to planners, the Scottish Environment Protection Agency or anybody else every day of the week; there are probably three or four a year. Therefore, it is not something on which people are building up expertise because they do it all the time.

The best way to approach the matter at the beginning is for the developer to get everybody round a table in a managed format to say what they want and to ask what issues will need to be resolved, whether they can be resolved and what will have to be done to resolve them. Developers will tell you that having a “no” as early as they can get it is as good as having a “yes” as early as they can get it.

Like many other bits of the planning system, aquaculture planning is not joined up. It is not, however, difficult; it is not rocket science to join it up. It is challenging and needs more work, but its being joined up would get much better end results, such that when the application goes in, all the parties round the table are more or less agreed on it. Therefore, applications should go through the system more smoothly; at the moment, there is a lot of back and forth.

If you are interested, I have some numbers that show that all parts of the system are way over their statutory obligations on how long it should take to do things, so they are missing by miles—not just by the odd day—the targets that they have set themselves. That is because we take a piecemeal approach. Somebody will go and speak to the planning department, then to SEPA and then to NatureScot, and then NatureScot might speak to SEPA or the planning department, so there is no continuity or cohesion within the process.

Karen Adam: You touched on communication. When it comes to investors and stakeholders, are you saying that it might not necessarily be about the communication that people bring forward but about their understanding of the framework.

Maybe there is misunderstanding or miscommunication.

Professor Griggs: That is right. For example, SEPA might have a scientific view on one thing, but the developer might have a different scientific view. We need to take the two scientific views together and find out what the right one is: we need there to be a party that does that.

It is about people talking to each other. It is simple stuff. It is just about people sitting around a table, discussing a subject, looking at the pros and cons and figuring out what the ways of taking things forward are and where the challenges are—where we have to do more work—and where things are quite simple.

The poor planning authorities, for whom I feel sorry in all of this, were given that to do some years ago. However, aquaculture is not on land but in water. In planning terms, what goes on in water is very different to what goes on on land. Some planning authorities have, going back, had relevant resources and expertise, but that is going away as time goes on, because people retire.

It is not that any of the bodies is doing its job badly, if I can put it that way, but that they would do a lot better if they talked to each other and communicated around the same table.

Karen Adam: You mentioned the situation with resources and expertise. Is that due to there being a lack of office holders, or are there other issues?

Professor Griggs: Yes and no. I am not being difficult. As time has gone on, the people who specialise in, for example, offshore fish farming retire. They are not necessarily replaced, because that kind of planning is often not done in a council’s planning department. The council will probably recruit somebody who has a more general knowledge of planning, rather than somebody to do that type of work, who might sit at their desk for a year before something came up under their expertise. There is a mixture of it not being done often enough, so that the appropriate level of expertise is not built up, and many experts, of whom there are still some about, retiring, but people are not coming in to replace them.

In my report, I have tried hard to say that I am not criticising the planning officials: it is not their fault. It is just to do with the way that the system works, which is why that work needs to be taken out.

As the former chief executive of SEPA said to me in an interview, the applications are very important, because they generally relate to tens of millions of pounds of investment. To let some junior member of staff deal with them in a non-cohesive way does not seem sensible, so we need to lift them out and to make sure that the more

experienced and knowledgeable people do that. They are very different and there are not many of them.

The Convener: Is there potential reluctance among big companies to invest because of uncertainty? We have heard that there is a lack of resources not just in planning but in technical expertise, when it comes to our marine environment. We saw that in relation to the Clyde cod boxes, for example. Is that a big constraint, and does it need to be addressed, given the importance of salmon farming to our economy? Should the Government step up to the mark and provide more funding to resource the process better?

Professor Griggs: The industry would do that. My recommendations say that, if we were to move to a system that is similar to that in Norway, in which people buy a licence for 25 years, for which they pay a lot of money up front, a portion of that money would go back into resourcing the process. One of our challenges, at the moment, is that we need to pay for that—and the industry is happy to pay.

In direct answer to your question, if the situation went on for some time and did not get any better, the two Norwegian and one Faroese big international businesses would start to look at how they do things, because they are investing a lot of money. Recently, the Faroese business wanted to invest £700 million, I think, in the Scottish aquaculture industry over the coming years.

The businesses are not running away—I am not saying that at all. They want to build the industry here, but we need to construct it in a better way. We are all parties in this. This goes back to the point that people in communities make; it is not just about the industry. The industry, the community, the regulators and, indeed, the Government all have a say in what goes on in what is becoming a much more complicated area.

11:30

Of course, the group that we have not talked about is the customers who buy the salmon, mussels and so on. The customers are imposing more environmental restraints on how they want the industry to produce. Fish farms already have long lists of audits and so on that they must complete.

However, I think that there is quite a straightforward way out of that. The industry is up for making more investment—it wants to grow. At the moment, the situation is complicated and frustrating, which is the message that we need to take away. As was eloquently said at the beginning, we need to restore trust between all the parties. They do not have to like each other, but

we have to restore trust between them to ensure that, as they develop and consider each application that comes in, they take a collegiate approach to the process of consolidating or, perhaps, shutting down farms that were not in the best locations in the first place.

Ariane Burgess: You have just touched on the fact that the aquaculture industry has a target to double production by 2030 through expansion of open-net salmon farming. However, I have been talking to concerned environmental non-governmental organisations and communities who stress that there is no evidence, from Scotland or anywhere else, that open-net farming is or can be environmentally sustainable. On the contrary, we know that effluent from open-cage farms is discharged and dumped untreated into the sea; toxic chemicals that are used to kill sea lice are also discharged into our marine environment; and tens of thousands of wild wrasse are taken from the wild to clean the sea lice off the salmon and are then killed. That is to say nothing of the emissions from importing salmon feed from across the world or the impact on wild salmon populations here due to sea lice, fish escapees and disease.

Do you recognise the fact that the industry's environmental impacts are not sustainable? I use the word in an environmental rather than the economic sense. Have you seen any evidence to suggest that open-net farms could reduce pollution, sea lice and fish escapees to close to zero?

Professor Griggs: I will go back to what I said earlier. A great deal of the science is based on how salmon farming was, not on how it is going to be and how it is now. We need to build up a scientific base that looks at where the industry is going, which is that it is very sophisticated and technical; a lot of it is done on land and, eventually, only a small part of it will be done offshore. When we have done that—I am not a scientist—we will find that many of the issues that have been raised, although they will not totally go away, might well be manageable and allow us to look forward. If I may put it this way, I do not think that it is an insoluble problem.

Bringing it all on to the land is not a sensible way to go at all, because the parts of the world that are looking at doing that have dreadful problems with disease and their carbon footprint is astronomical. In all honesty, the reason why Scottish salmon does well and has a premium is because part of its life is spent in Scottish waters. If you grew salmon in a big concrete tank, there would be no advantage in Scottish salmon over salmon that had been bred near the M25. Therefore, we must be careful about that, because that might be the end of the Scottish salmon industry.

Perhaps I am less worried than you are about where we are because, given where the industry wants to go technically over the next decade—with regard to how it controls pollution and does a great deal more on land with very sophisticated production units that produce salmon up to a certain size before they are moved offshore—a great deal of what you are talking about, although it will not be totally eradicated, will reach a point where it is environmentally manageable.

Beatrice Wishart: You have alluded to how sophisticated and technical modern-day salmon farming already is. A key recommendation of the review was that there should be a single consenting process. Can you give examples of what lessons we can take from the Norwegian one-stop-shop approach? Can you give us an example of what the Norwegians do that we do not do? Will you expand on how you see the new process working in practice and say who should take overall responsibility?

Professor Griggs: The Norwegian one-stop shop is quite interesting because it is not really a one-stop shop; it is a one-person shop. That person takes the application in and then speaks to all the other people who he needs to speak to. That model is great from a developer's point of view, because the application is passed to one person and they deal with it, but that person brings in all the other parts of the Norwegian Government and regulatory system that they need to, and that means that the developer gets it back in, say, one form.

In my report, I said that the single consenting approach needs to be managed. The role would logically be placed in part of Marine Scotland, which would be tasked with taking applications as they came in and gathering local planners and regulators to consider each application as it came in. That would make it a much more managed process, because one person would be in charge, but it would not prevent all the other parties from doing what they needed to.

In my view, that would be slightly better than the Norwegian process, because the application would not disappear into a system somewhere, and the process would be managed with all parties involved working together. Sitting round the same table is exactly what the regulators and industry want to do.

The single consenting document comes from all the people involved, including the community, sitting round a table and discussing what will be done. That is important for two reasons. First, when something is consented, it is important that people understand what has been consented, what can be changed and what cannot be changed without going back through the loop. The document is not only about getting the application

through, but about telling the developer, the community and regulators what has been agreed. As technology and science advance, it will allow those involved to move forward without coming back through the loop, but it will also set out the things that they will have to come back and ask about if they want to change. That would give more certainty and clarity, not only to the developer but to the planning authority and regulator, about what has been agreed.

I envisage that a new part of Marine Scotland would take on that role. To be slightly flippant, quite strange people would need to be put into that. They would need to be an interesting mix in that they need to really understand the aquaculture industry—it cannot just be someone who does the job on an odd day, as Karen Adam said—and they need to have that wonderful ability to understand rural communities. More than anything, rural communities worry about somebody 250 miles away making decisions for them and deciding something that they do not want to happen. Therefore, whoever manages the process has to be clever and understand rural communities. It will be their job to ensure that all parts of the process work.

There is no disagreement about the single consenting process, but the clear message that comes back from everyone is that whoever manages it has to be an expert in communities and in the aquaculture industry. There are not many people like that about, but I am content that they exist. They would gather all the people round the table. The model is similar to the Norwegian one, but I think that it would be slightly better.

Beatrice Wishart: I will just say that this applies not just to rural communities but to island communities.

Professor Griggs: Indeed.

Jim Fairlie: I have a quick supplementary question on your point about bringing everybody together in a one-stop shop. In your introduction, you said that one side of the argument is more organised than the other. Could it potentially stifle the growth of the industry in Scotland if one side got more organised through that one-stop shop? I am sorry to use the phrase that you challenged; it is not a one-stop shop.

Professor Griggs: No, I do not think so, because part of the role of the person who is sitting in the middle—the ringmaster, shall we call them—is to ensure that the right voice of the community is heard, and they would do that by going out into the community. The convener knows that, at the moment, I spend all my life finding out what communities think and, although that is challenging, there are ways to find out what a community's proper voice is on a subject.

However, we do not do that well enough on aquaculture. In the future, there will be a lot of community engagement and consultation at the outset to find out what the correct voice is, if that is the right way to put it. I do not think that it will be about whoever turns up and makes the loudest noise; it will be about the benefits for and the impact on the community, and they will be explained clearly.

Wind farm operators probably do a lot better now at consulting communities than they did 10 or 15 years ago, and the process with aquaculture could be done in a similar vein. It is about good management, which is why it is critical that the person who manages the applications understands communities.

Jenni Minto: Thank you for coming along, Professor Griggs. I have listened very closely to what you have said. I live on an island and represent Argyll and Bute, and I am struck by the differing views from across the community. You and the convener were absolutely right when you said that there needs to be a person who can listen to both sides and restore trust.

Over the past year, we have taken evidence on what happens in our seas. You made the point that water is different to land, and many of my constituents on the industry side as well as those in the community and environmental NGOs have said that, too. I have been trying to understand how the flows of water impact fish farms and the cumulative effect of that. I would also like to know how the different planning authorities link together. Can you expand a bit on those issues?

Professor Griggs: That is an interesting point for a number of reasons.

My goodness. More papers have been written on the issue than on anything else—I have books on the topic—but nobody is gathering together all the science to give an opinion on it. There is a debate about how much of it is a local issue and how much is a national one, and we do not know, to be perfectly honest. We could take the view of the wild salmon body or go in other various directions, but all we know is that fish farming is one of 11 things that could have impacted on wild salmon and, on a bad day, the figures show that it has had an impact up to a level of only about 10 per cent, so we need to understand what impact the other 10 things are having.

It comes back to having somebody or something that takes all the science and evidence and gives advice. I do not understand all the flows that you are talking about—I am not a scientist and that is not my job—but somebody needs to. As it happens, areas of the west coast of Scotland have flows that are particular to that coastline and cannot be seen anywhere else, so should those

areas be treated differently from other parts? The science is critical to ensure that we understand the situation better.

Each coastal community, rightly, goes away, does its own bit of work and comes up with data, but every time that happens, there will be three other studies that show something slightly different. We need a body that brings all the scientific data together so that we can understand it. The way in which water flows is interesting. Some years ago, in another part of my life, we had the wonderful news that we would do everything by wave energy—that is fine, but it depends on the wave. A lot of science is still needed.

Jenni Minto: You raised a point about how the technology is changing and how that can perhaps be made more obvious and more accessible.

11:45

Professor Griggs: It is changing. We visited a new plant in Oban. I think that a very clever and positive thing is going to be done there: it is going to be turned into a visitor centre, so that locals and visitors can visit it to see how it all works. That is quite interesting.

I hear what is said about coastal communities. As you would when doing this, I spend a lot of time with people on rigid inflatable boats, going out into the ocean. When such people are not driving people such as me about the ocean, they drive a lot of tourists about, and they have a different view. They say that fish farming is very positive and that, in general, the tourists are interested in what is going on and how it is done, although there will always be some who are not. The industry should make things much more visible and transparent so that people can go and see what is happening. I think that I said in the report that the industry has not done a great job over the years of selling itself or how it does things to the wider community.

Jenni Minto: You have made an important and clear point. We have seen that approach in the way that wind farms have operated and with the whisky distilleries in my constituency sharing their technology and how things have changed. That is helpful.

Should I move on to the other fish types, convener?

The Convener: Yes—but briefly, please.

Jenni Minto: We have talked about fin fish, but there are also connections with shellfish and seaweed. What are your thoughts on those industries?

Professor Griggs: I think that they are different. The fin-fish business is now a very sophisticated

and heavily invested in international business. It is interesting that our shellfish sector is starting to grow a bit more, because a lot of the bigger companies in Orkney are buying shellfish farms on the islands to give them some scale. The challenge in the shellfish sector is that there is not the margin in it that there is in salmon farming to give people the opportunity to invest in sophisticated technology to take it forward.

There are issues for the shellfish sector, but they are not great issues. It could expand but, if we consider where it has gone and compare it with the fin-fish sector over the past 10 or 15 years, we do not see the same technological growth. I am not saying that it has not changed, but it has not changed to the same degree. Until it gets to the point at which it can charge a price point that is similar to that in the fin-fish sector, it will not make the margin for that. That is simply a commercial fact of life.

I find seaweed fascinating. It is as though people are still klondiking for gold out there—not just in respect of how they do it, but in respect of what all the end uses are. We have to remember that we are talking about a huge scale. I think that I said in my report—I apologise if I misremember the number—that, to get 1,000 tonnes of wet seaweed farmed, you need a farm of 7km by 5km. That is a huge bit of ocean. That is because seaweed is farmed flat. It does not go down; it is entwined on bits of horizontal rope. The structure of that means that it needs to take up such areas.

With seaweed, I do not think that there will be any constraints other than sea hazards. I know that a number of people have raised the issue of where the fishermen will go if something that is 7km by 5km is sitting near one of the islands and how they will get round that. That is more of a practical issue. However, if you speak to the people in the seaweed industry, you will find that they want it to grow, but they are not talking about astronomic numbers yet, until they have figured out what to do. There is a long way to go in the seaweed sector before any of us round this table can decide what it will look like and what we would want to do in respect of consenting to help it on the way.

I will always remember my trip to the seaweed farm, because I was in a force 8 gale out in the middle of the Atlantic, so it was quite choppy.

The Convener: We might be able to look forward to something of that order in September. Let us hope that the visit is not delayed any further into the autumn.

Rachael Hamilton: How might the new regulatory framework improve the reduction in sea lice infestations, decrease the numbers of fish that are dying and maintain the genetic integrity of wild

salmon? What are your thoughts on how the Scottish Government responded to the recommendations that the Rural Economy and Connectivity Committee made in session 5? How will the welfare issues improve with a single consenting process for new applications, as is suggested in your review?

Professor Griggs: The key point in my recommendations is the bit before the single consenting process, which is the creation of a framework.

When lawyers go to court, they know what they can and cannot do because it is all tied up in case law. When we drive our cars, we do so within a framework of rules and regulations. That is put in place before I want to take and pass my driving test. Currently, we do not have a framework for how we operate fish farming or aquaculture in Scotland. That is why we need a framework before the consenting process. In the framework, we would set targets over a 10-year period not only for the volume of fish that we could farm—we would have to put some environmental constraints around that—but on sea lice and a host of other things that are listed in my report. That is the Government's job, not the regulator's job, because that is policy.

The framework would say that we want to have a fish farming industry but that we understand that it has challenges. It would set out the constraints that we will put round the industry. That would make a single consenting process much easier, because, when an application was submitted, the authorities would look at the framework and determine whether it complied with the framework. If it did not, the applicants would have a lot of work to do.

That is why I clearly said in my report that there should be a three-stage process. You need the framework before you get to the consenting process. If you just put the consenting process in place without the framework, we will still be wandering around looking at millions of bits of science because we are arguing about them. The framework would decide what was the good and bad science on sea lice and other issues, so that it could include the good science.

The way that the industry is going technically will reduce many of the issues that have been talked about in the meeting. All the stuff—I am using a technical term—goes on in sea water at the moment. If you can cut down the amount of time that the salmon have to be in sea water, that will greatly reduce the issues. As part of the framework—the industry is up for this as well—we should set targets for how long salmon should spend at sea. Currently, that is fairly open ended—it can be two to three years. The industry would like to get that down to one year. That will

take some time and a bit more sophistication to address but it is getting there rapidly. That will address some of your points, Rachael. It will reduce the number of sea lice and the amount of chemicals that we need to put into the water.

I do not know whether that will be perfect—we will need to follow the science—but the way that the industry is going technically will reduce much of what currently happens. I return to the point that, when it comes to the fin-fish sector—forget the other two for a minute—we must stop looking behind us and look ahead, because the industry is developing technically and in how it works. We have to make decisions on that basis, not on the basis of what happened 20, 15 or even five years ago. If we do that, we will start to get a different perspective. That will still not stop some people not wanting the industry, but that is a different view; that has nothing to do with me. However, if you look forward, the risks that have been identified over the past years will lessen because of how we approach fish farming.

I cannot comment on the bit of work that the Government has done. It was the Government's choice to do it. I was asked to do my piece of work and I have done it.

Rachael Hamilton: I will ask a quick question on the framework itself. My understanding is that it will take a considerable amount of time to be produced. In the meantime, what are your observations on some of the issues in the industry that I have spoken about? Should priorities or technology be put in place before the framework?

Professor Griggs: That is a very good question. If I am honest, I would be pushing harder in relation to the time that it takes to get the framework in place, because it is very important. However, if we are agreed that there will be a framework—we all seem to be agreed on that—I would hope that, as we start to get applications in and re-evaluate them, we will start to look at what the framework might look like in the future. In many ways, doing one or two applications might help us to form a better framework, because we will take some of those decisions early on. However, we will still have to address things such as the scientific evidence and so on and bring that together.

I have some sympathy with the point of view that things should be done quicker. However, given that we now have a roadway and a direction of travel, I hope that, as the applications come in, what goes on out there will perhaps help to get things to where we want them to be a bit quicker.

The Convener: I will bring in Mercedes Villalba to ask a quick supplementary question before we move on to the next theme.

Mercedes Villalba (North East Scotland) (Lab): My question is at a slight tangent, but, as we were talking about welfare issues and sea lice, I thought that it might be a good moment to bring up wrasse fisheries.

As I understand it, the remit of the report was to review the operation of the regulatory framework for aquaculture from the perspective of other users of the shared marine environment, including wild fisheries. Wrasse fisheries are wild fisheries, and they are entirely economically interdependent with aquaculture. Will you talk the committee through your rationale for not considering that as part of your report?

Professor Griggs: I did consider that as part of my report; we did speak to wrasse fisheries. I suppose that that goes back to Rachael Hamilton's point. When we come to design the framework, we have to put of all that into the pot to decide what we can do. There is a list of things that we would start to consider, and the impact on wild fish, wrasse and everything else would be part of that.

Although Mercedes Villalba might well be right that I did not specifically mention that aspect in my report, it is not that I thought that that was unimportant. As we start to get all the experts round the table to look at what all the issues are, I am sure that that will be one of the issues that will come forward and that we will want to put in it. I am therefore not disregarding that aspect, if I can put it that way.

Mercedes Villalba: That is reassuring.

In relation to wild wrasse fishery, would it be appropriate to introduce stock assessments or limits on catches, given that we are getting reports of extreme declines in wrasse populations?

Professor Griggs: I have no idea; I do not know. I could perhaps do with a good scientist sitting beside me to answer that. Part of the challenge is that we need to go away to look at not only where we need to make the science cohere but where there are gaps in the science. If there are gaps in the science, we need to commission people to go away to do the scientific work to fill in the holes.

Mercedes Villalba: The point that I am angling at—excuse the pun—is that fisheries management plans are required for other species. Therefore, would it not make sense to bring in something for wrasse that is similar to what has been adopted elsewhere in the UK?

Professor Griggs: Pass.

Mercedes Villalba: Okay. No problem.

The Convener: Have you covered your second question?

Mercedes Villalba: Those questions came under theme 3. Do you want me to move on to theme 4?

The Convener: Yes, please move on to your next question.

Mercedes Villalba: Okay—sorry. I will keep it brief.

The precautionary principle is enshrined in Scots law through the European Union (Withdrawal) Act 2018. How relevant is that principle to decision making about environmental harm that is caused by salmon farming?

Professor Griggs: The precautionary principle is a fascinating subject; we could spend all day discussing it. It operates well when the person who is deciding on what a precaution is understands what they are talking about in relation to a particular sector and a specific technology. When a person does not know anything about that, sadly, the precautionary principle generally leads people to take no risk at all, because that is what people do. That is why we have the adaptive principle, which sits somewhere in the middle.

My view is that, if the precautionary principle is put in place by people who understand what they are doing and make a decision that is based on knowledge, understanding, science and so on, it is fine. From speaking to a lot of people when I was doing my work, I would say that the challenge with the precautionary principle is that, if people do not know anything about the issue, it tends to put them at the no-risk end of the spectrum. That is not where they should be, because the precautionary principle is supposed to make people take good decisions on the basis of good knowledge. If they do not have that good knowledge, it is very difficult to make those good decisions. I hope that that answers your question.

12:00

Mercedes Villalba: Thank you. Does anyone else want to come in on theme 4? If not, I can ask my question on theme 5.

The Convener: We will carry on, because we are very short of time.

Karen Adam: Professor Griggs, you spoke a little about seaweed earlier. I find seaweed absolutely fascinating and quite exciting. Although you probably know all this, for the record and for anybody who is watching this meeting, seaweed can be used for human food consumption, animal feed, biofuel, fertiliser, cosmetics, pharmaceuticals, biomaterials for packaging and, in the form of carbon sequestration, for the mitigation of climate change.

I have an interest in seaweed and have been looking into it because one of the local authorities in my constituency commissioned a consultancy company to look at whether seaweed could be a financially viable business, and it recommended that it absolutely is viable for commercial cultivation.

However, you have spoken about the possible clash of interests. We are looking at how things are for the seascape at the moment; when it comes to diversification into other areas, do you think that there is space for commercial cultivation of seaweed? Is there anything that a potential seaweed sector could learn from the fin-fish sector with regard to regulations?

Professor Griggs: I will try to answer your question sensibly. You mentioned that there is an opportunity but also a challenge. Seaweed can be used for a whole host of things, so trying to find the target market has always been a challenge. If the seaweed sector is to develop, it needs to do what the fin-fish sector did. Businesses need to focus on finding their advantage in relation to their location and what they can sell. Once they figure that out, they can develop.

I think that the spatial challenges with seaweed are quite significant. Until we come up with a different way of creating seaweed technologically, we will still have that spatial issue. At the moment, the method is simply putting a bit of seaweed around a rope and allowing it to grow. The other challenge is that, although businesses might produce 1,000 tonnes of wet seaweed, once it is dried, the quantities are reduced.

Like you, Ms Adam, I am very positive about seaweed, but it still has a long journey to make, in a technological sense and in figuring out the best markets and the best type of seaweed that can grow in Scottish waters, because, as was mentioned earlier, that is also to do with water flow. However, you are quite right that that plethora of possible end uses for seaweed is pulling the sector on and on.

The Convener: I will touch briefly on spatial planning. You referred to seaweed, but we also have to consider inshore fisheries with mobile and static gear, as well as renewables and cockle and mussel fisheries. As one of the starting points, do we need to look at the whole spatial planning issue and the pressures that all those different sectors could bring to our inshore marine environment?

Professor Griggs: Yes, we do. Indeed, as I have mentioned in the report, each council is now supposed to produce a marine plan. From what I saw when I was going round, not many have done so, because it is quite challenging and doing so is not without its issues. I think that Orkney and

Shetland have plans, but aquaculture and marine issues are very important in a lot of the other council areas, and the councils still have to do that work.

If we want to do that work, the vehicle for that is already there. Again, it comes back to resource and who the councils would get to do the work, because it is not easy. However, it is not for me to say how you would mix that in with what is already being done with regard to spatial planning on land.

I agree with you entirely, convener. In addition, once we put wave power—which I was talking about earlier—into the mix, it becomes much more complicated. We could end up with a situation in which the waters around our coast are totally unapproachable by anybody. We have to integrate marine planning with the work of local authorities, which were given the task of producing marine plans some time ago.

The Convener: Thank you. We have touched on resources, which naturally leads us to finance. Alasdair Allan has some questions on that.

Alasdair Allan: Are you able to offer a view on any potential additional costs or benefits of the new process as it is set out in your recommendations and on the consenting process? Where might the balance of the costs and benefits lie between the various parties involved?

Professor Griggs: It is quite interesting. There is no doubt—I have made it quite clear—that what I am recommending will cost money; it will not be a cost-neutral exercise. All parties have agreed that we need to take this approach, namely that the industry will pay a licence fee—for however long, whether we move to a Norwegian model whereby people pay a lot of money for 25 years or we adapt that on the basis of what we want to do—and that a portion of that will be allocated to resources to manage the system. That is not just for Marine Scotland, which will manage all of that, but for each local authority.

The conversation that we had with the Convention of Scottish Local Authorities on the costings was interesting, because, uniquely, it thinks that each local authority should decide how to deal with the process in its area—that there should not be a national policy, if I can put it that way, because some local authorities will want to keep the process in-house, some might want to contract it out and some might want to give it back to the Government to deal with.

To get back to your point, we now need to look at how much all the proposals will cost, assuming that they all go ahead. That will form part of what we charge the developer to develop the project. We then have to add in a portion of that—quite a large chunk—to go back as community benefit. Everybody is up for that.

Given the amount of money that companies in the fin-fish sector have to pay for licences in Norway and elsewhere, we are talking about considerable sums of money. How should we collect that? In my opinion, we could do it in two ways: either the Government collects it all and then distributes it again or you get Crown Estate Scotland to do it. Crown Estate Scotland leases some of the land so it already has a process in place for doing that. I am having dinner with Crown Estate Scotland tonight, and I am sure that it will say that that is not what it should be doing. However, my view is that we should not create something new if the system already exists. We need a central body that brings all the money in.

Interestingly enough, to go back to the point at the beginning about trust, local authorities trust that, whatever service we put in, that service will bring the resource back to them for what they are doing. They are not saying, “No, no, no. It all has to come to us.” They understand that, to get A, you have got to do B. B is about creating a sensible way of charging the developer for the project in line with the resource that is needed to make that work well for them and everybody else. It must also provide the community that benefit.

Lastly—I almost forgot, which I must not—to go back to the point that has been made in a myriad of ways round the table today, some of the money must be used to fund the scientific research that we will have to do as we go forward.

Alasdair Allan: You mentioned that there is a kind of circularity in the funding system in Norway. Could you explain that a little bit more?

Professor Griggs: Oh, goodness me!

The Convener: Unfortunately, you will need to be very brief.

Professor Griggs: May I do that off piste, please? It is quite complicated and will take a bit of time.

Alasdair Allan: That would be fine. You can write a letter to the committee.

The Convener: We would absolutely appreciate your views on that. Ariane Burgess has the final question.

Ariane Burgess: I will pick up on what Professor Griggs said about science. You say in your review:

“Those using science must ensure that they have the most current, effective and relevant scientific evidence to defend their arguments against any negative issues raised”—

The Convener: I am sorry to interrupt, Ariane, but we do not have time to go back. We need to get the final question answered and move on.

Ariane Burgess: This is the final question that I need to get answered, convener. Professor Griggs, I want to understand the concern in community groups and non-governmental organisations about the proposed central science evidence base being run and managed by the industry and the Scottish Government. How would you reassure concerned stakeholders that your recommendations will ensure the independence of the science that is used for decision making on aquaculture expansion and regulation?

Professor Griggs: It would be the same independent science that we use for anything else that the Government does. The Scottish Science Advisory Council, which covers all parts of science in the Scottish Government, is very independent. If the science was to be managed by the industry and the Scottish Government, that would not mean that it would not be independent, and I would like to see something like the SSAC, which advises the Government on science generally, being that independent body. It is not about trying to preclude any science; it is about making sure that the science that we consider is the best science that is available. My understanding is that that is what the SSAC is there to do.

The Convener: Unfortunately, we had a lot of supplementary questions that we were not able to bring in, but we intend to carry on with the topic in our next evidence session. We hope to ask the cabinet secretary about your review and the establishment of the short-term project board at our first meeting in September. I have no doubt that our paths will cross again in the future. Thank you for your time, Professor Griggs.

We will move on to our next item, which we will take in private.

12:11

Meeting continued in private until 12:16.

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