



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs, Islands and Natural Environment Committee

Wednesday 23 November 2022

Session 6



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RURAL AFFAIRS, ISLANDS AND NATURAL ENVIRONMENT COMMITTEE
31st 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 (Etrick, Roxburgh and Berwickshire) (Con)

*Jenni Minto (Argyll and Bute) (SNP)

*Mercedes Villalba (North East Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Peter Clark (British Association for Shooting and Conservation)

Ross Ewing (Scottish Land & Estates)

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

Alex Hogg (Scottish Gamekeepers Association)

Kirsty Jenkins (OneKind)

Robbie Marsland (League Against Cruel Sports)

Jake Swindells (Scottish Countryside Alliance)

Detective Sergeant Billy 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 23 November 2022

[The Convener opened the meeting at 09:00]

Hunting with Dogs (Scotland) Bill

The Convener (Finlay Carson): Good morning, everyone, and welcome to the 31st meeting in 2022 of the Rural Affairs, Islands and Natural Environment Committee. I remind members who are using electronic devices to turn them to silent, please.

Our first item of business is a round-table discussion on the Hunting with Dogs (Scotland) Bill. The round-table format is a bit different from that of our usual evidence sessions; the purpose is to enable us to hear a wide range of views at the same time. We have five or six topics to explore with our witnesses, and I intend to allow about 15 minutes per topic, but some topics might be covered as the conversation develops.

I ask people to keep their questions and answers as succinct as possible, to give everyone the maximum opportunity to contribute. Do not feel that you have to contribute to the discussion on every topic if you do not want to say something that is significantly different from what we have already heard.

I remind everyone that this session is on rough shooting specifically rather than the two-dog limit in isolation. The committee feels that the objectives of the rest of the bill are quite clear, but a significant number of people have expressed concerns about rough shooting, which is why we are having this discussion. Please try to keep the conversation to rough shooting.

I think that it would be a good idea if we all introduced ourselves quickly. Please keep the introduction to your name and organisation, constituency or region, so that we can get fired into the questions quickly.

I am Finlay Carson, the committee's convener and the constituency MSP for Galloway and West Dumfries.

Ross Ewing (Scottish Land & Estates): Good morning, everybody. I am director of moorland at Scottish Land & Estates.

Beatrice Wishart (Shetland Islands) (LD): I am the MSP for Shetland Islands.

Robbie Marsland (League Against Cruel Sports): I am the director of the League against Cruel Sports in Scotland.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): I am the MSP for Perthshire South and Kinross-shire.

Detective Sergeant Billy Telford (Police Scotland): I am wildlife crime co-ordinator for Police Scotland.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): I am the MSP for Ettrick, Roxburgh and Berwickshire.

Jenni Minto (Argyll and Bute) (SNP): I am the MSP for Argyll and Bute.

Alex Hogg (Scottish Gamekeepers Association): I am chairman of the Scottish Gamekeepers Association. I am also a working gamekeeper—I have been working for 40 years.

Ariane Burgess (Highlands and Islands) (Green): I am an MSP for the Highlands and Islands.

Jake Swindells (Scottish Countryside Alliance): I am director of the Scottish Countryside Alliance.

Karen Adam (Banffshire and Buchan Coast) (SNP): I am the MSP for Banffshire and Buchan Coast.

Kirsty Jenkins (OneKind): I am policy officer for OneKind.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): I am the MSP for Na h-Eileanan an Iar.

Peter Clark (British Association for Shooting and Conservation): Good morning. I am public affairs manager for the British Association for Shooting and Conservation.

Mercedes Villalba (North East Scotland) (Lab): I am a Labour Party list MSP for the North East Scotland region.

The Convener: Last but not least is Mike Flynn, who is joining us remotely.

Chief Superintendent Mike Flynn (Scottish Society for Prevention of Cruelty to Animals): I am chief superintendent at the Scottish Society for Prevention of Cruelty to Animals.

The Convener: Thank you. You are all very welcome.

I will kick off with a nice, simple question. Will the panellists give us their opinions of the meaning of "rough shooting"? I will go to Ross Ewing first.

Ross Ewing: Thank you, convener. Broadly, three things define rough shooting. The first is that, typically, a mixed quarry is being shot. What I

mean by that is that there will generally be a mix of game birds such as pheasant, partridge and woodcock, and there might also be wild mammals, which are sometimes termed “ground game”. Those are the two types of quarry that you might expect to encounter on a rough shoot.

Another thing that generally characterises rough shooting is that you usually have a gun or guns walking up terrain to try to flush the quarry. The quarry can be flushed in two broad ways—by using either dogs or, sometimes, people, if a bird gets up in front of someone.

Rough shooting is not necessarily about controlling wildlife. We have heard that a lot in previous evidence sessions. It is done predominantly to harvest food, with a one-for-the-pot ethos. It is very important to get across that, generally, rough shooting is not about the management of wildlife.

I partake in rough shoots. I shoot 10 times a year in rough shoots in Mr Fairlie’s constituency. Generally, people get a lot of enjoyment out of them; they are very social occasions.

Broadly, rough shooting is characterised by the three things that I have set out.

Peter Clark: I echo what Ross Ewing has said. Rough shooting involves a mixed quarry, and it takes place across the countryside. I point out that, during a rough shoot, there is no chasing or killing of wild mammals with dogs; dogs are used purely for flushing. It is a very humane way of carrying out wildlife management.

As Ross Ewing said, rough shooting is an important activity in providing for the pot. That is true in relation to food miles, and it is a very ethical way of providing food for the pot.

Alasdair Allan: Could you elaborate on what you have said? Is it more normal for quarry to be walked up? What proportion of rough shoots involve people walking up the quarry, rather than dogs?

Ross Ewing: I have never been on a rough shoot in which that has not been the case. It has always involved people with guns walking in a line. The most simple or minimalistic form of rough shooting involves one person walking up some terrain with their dogs.

I will use my shoots as an example. There are usually about eight guns, and three or four of us have dogs. We walk in a line through terrain to try to—exactly as Peter Clark said—flush the quarry, which will then be shot. My shoots in Perthshire usually involve ground game; we shoot wild mammals. We do that for two reasons. First, hare, in particular, is very tasty—I quite enjoy eating it. Secondly, there is sometimes evidence that hares are doing damage to regenerative woodland, for

example, and there is sometimes a need to maintain hare populations.

Rough shoots are always characterised by people with guns walking in a line or by someone with a gun walking on their own up some terrain.

Jake Swindells: Ross Ewing has eloquently described a rough shoot. As he said, rough shooting is not just about controlling wildlife. Although I completely agree with that, there is an element of wildlife control to it. Many rough shoots are what they say that they are: they take place over rough ground and terrain where wildlife would not normally be able to be controlled successfully using lamps or other means. One element of rough shooting is the ability to walk across rough ground, using dogs to flush, in order to control certain species that cause damage, such as rabbits and hares.

The Convener: I will bring in Detective Sergeant Telford from Police Scotland. Are you clear about what rough shooting is? Given that the bill is about providing clarity, are you confident that you will not have to make decisions on whether a crime is being committed based on your opinion of what rough shooting is? Are you comfortable with the current definition of rough shooting?

Detective Sergeant Telford: I have had to do some research into rough shooting, which I do not have much experience of. In relation to alleged or suspected criminality, if more than two dogs are used—I am not saying whether that is right or wrong—that might create some challenges and confusion in establishing which dogs have been involved in which acts and who had control of which dogs. There could be an opportunity for people who undertook illegal acts, such as illegal fox hunting with multiple dogs, to falsely claim that they were rough shooting.

The Convener: There is certainly an issue about forming a pack. That was one of the descriptions that we heard from the bill team last week. In your opinion, what would it mean to form a pack?

Detective Sergeant Telford: I think that that is where it will come down to opinion. Obviously, there is the dictionary definition but, in real-life terms, that is not necessarily always going to be totally relevant. It will probably come down to a judgment through looking at the evidence, forming an opinion, and speaking to experts. Ultimately, if somebody was charged, that would have to be tested in court. There is potentially always going to be the question: is it or is it not?

Jake Swindells: As an ex-police officer, I completely understand what DS Telford is talking about, and I understand the complications that you face when it comes to rough shooting.

I have a couple of concerns. First, if the bill goes through as it is, it will be very easy and commonplace for people who are, in principle, against the killing of animals to be able to disrupt a perfectly legal day. For instance, if what was going on in a wood was not clear, an allegation might be made, and the police would be duty bound to investigate that. Generally, that would probably mean stopping a legitimate and lawful activity, and that would have the knock-on effect of preventing wildlife management from taking place. That is the first point on which to seek clarification.

My second point is about confusion. The bill team alluded to rough shooting being used as a loophole. I want to dig into that. Generally, if people are illegally hunting rabbits in fields, they are likely to use long dogs, which are not used on a rough shoot. If people are trying to flush a fox with a pack, they use hounds. On a rough shoot, people use spaniels, Labradors and occasionally hunt, point and retrieve breeds. There is very little scope to mix those up or to use one of them as a loophole.

Jim Fairlie: Briefly—Jake Swindells has just touched on this—from the police’s point of view, if you arrived on a shoot and there were eight dogs, but they were all Labradors and spaniels, would you be able to make a judgment?

Detective Sergeant Telford: We would not necessarily need to take action at that point. We would speak to experts and gather together all the information that we have, in order to make a judgment about whether it was a legitimate rough shoot or someone’s posing of an illegal act as a rough shoot. We would take into consideration the breed of dog and so forth. We would look to speak to experts.

Jim Fairlie: Would you base your consideration on what you found when you were asked to go out to an event?

Detective Sergeant Telford: Yes. We would look at everything. We would gather as much information as we could.

Robbie Marsland: I back up Billy Telford’s observation about the danger that, if multiple dogs are in use, that could be formed into what I would describe as a smokescreen for illegal hunting. That has been illegal in Scotland for more than 20 years.

The reason why we are all sitting here today is that Lord Bonomy concluded that flushing to guns, which is an exception in the current law, has been exploited and used as a smokescreen to allow illegal hunting to happen, and that there was a need to strengthen the existing law. What is in front of us is the strengthening of the existing law. We need to consider whether there are potential loopholes in the legislation or in amendments to

the legislation that would enable a mounted hunt to say that it was acting legally, because mounted hunts have been saying that they have been flushing to guns, and that is one of the exceptions in the Protection of Wild Mammals (Scotland) Act 2002. It has been shown that that has been a subterfuge and a smokescreen. As I said, that is why we are here today.

Throughout the process, my watchword is to look at the proposed legislation and the proposed amendments through the eye of somebody who would like to find a way around them, as we have had clear evidence that people have tried to find a way around the legislation for 20 years. Therefore, any suggestion that we should enable rough shooting with more than two dogs worries me because, as soon as people are allowed out in the countryside with a pack of hounds and they have that smokescreen, reason or loophole, it would be very easy to claim that that is what they are doing. That is the concern of the League Against Cruel Sports, and that is the way that we are looking at all of the bill.

09:15

The discussion has been more and more about rough shooting and less and less about traditional mounted hunting, which is what we are all here to ensure that we really stop, and which is what we thought we had stopped 20 years ago. We always ought to come back to the question of whether the bill will stop traditional mounted hunting, because that is why we are here and that is what we want to do. As I understand it, that is why the Government introduced the bill. That is the focus that I will always bring to this discussion.

Rachael Hamilton: I would like to ask DS Telford how many activities—I was not sure what to call them—he has been called out to that fit the description that Robbie Marsland gives of rough shooting being used as a smokescreen.

I also have a question for Alex Hogg. Is that description of rough shooting being used as a smokescreen a reflection of what you see it being used for? The SGA submission states that people attend rough shooting with

“the intent ... for the dogs to flush the game for the guns to shoot.”

Is there some sort of interpretation here that is not true?

Alex Hogg: There is probably a wee mix-up. As a rule, a rabbit lives near its burrow or just outside in rushes or near a wood, so it is never far from safety. Therefore, when a rabbit bolts, it makes for cover and is within cover in seconds, whereas a hare lives in the open all the time, and it can be hunted with dogs. We need to separate the two

species and ensure that rabbits are not caught up in what we are aiming for.

Detective Sergeant Telford: I cannot give you exact figures on the number of incidents that have been reported to us whereby illegal acts have been carried out in the guise of a rough shoot, but I certainly do not recall any such incidents being reported to us.

The Convener: Do you recall any time that rough shooting has been used as an excuse for illegal activity?

Detective Sergeant Telford: No.

The Convener: Okay. Ross Ewing wants to comment. I will then bring in Robbie Marsland and Jim Fairlie.

Ross Ewing: I back up what has been said thus far. Jake Swindells eloquently described why it would be difficult for a rough shoot to masquerade as something that was potentially illegal. We need to reflect for a second on the aim of the bill, which is to minimise the risk of wild mammals being caught and killed by dogs in the course of hunting.

To be honest, what has happened here is mission creep. In seeking to try to close the loopholes in the legislation at the moment, the Scottish Government has quite illegitimately impacted on something that was never meant to be within the scope of the bill. We now have a situation in which a lot of people are very worried about the potential implications of the bill for an activity that was never meant to fall within its scope, as I said. I back up the point that Jake Swindells made. It is not realistic to suggest that a mounted hunt could masquerade as a rough shoot in any sense whatsoever.

The Convener: I will bring Jim Fairlie in now, because he indicated that he wants to ask a question.

Jim Fairlie: I would rather hear what other folk have to say, convener.

The Convener: Okay. I will bring Robbie Marsland in first.

Robbie Marsland: I return to the question that Rachael Hamilton asked and Billy Telford answered. Before the 2002 act, no mounted hunt ever went flushing to guns—they never did that. Mounted hunts went hunting traditionally. They wanted to do that because it was important to them, and I understand that. However, that activity was, in effect, banned by the 2002 legislation and, in the very next season, for the first time ever, Scottish mounted hunts declared that they would flush to guns.

The answer to the question about whether there have ever been concerns about rough shooting is no. As I said, however, my worry is that the bill will

introduce new ways of doing things and, in my parlance, new loopholes. I do not think that that is the intention by any means, but any opportunity for someone to use the provisions as a smokescreen for performing an illegal activity would be very worrying.

I went into this thinking that I knew very little about rough shooting, which would not be a surprise to anyone. I thought that the provisions would not be a problem because, as Ross Ewing said, we could never say that people on horseback were rough shooting. However, the more that I heard about it, the more I thought that the definition of rough shooting is very broad. We have even heard different descriptions of it in today's meeting.

What would be to prevent someone on horseback and a man who was waving a gun around from saying that they had decided to go rough shooting? What is the difference between that and people saying that they had decided to flush to guns for the first time, as happened in 2002? We must exercise caution and not allow such loopholes to be created by the bill.

The Convener: I will bring in Jim Fairlie and then Rachael Hamilton, who has a supplementary question.

Jim Fairlie: You can go to Rachael first, convener, because I am keen to hear from other people.

Rachael Hamilton: What kinds of dog are taken on rough shoots? Who is in control of them? Are they in control?

Alex Hogg: They are gun dogs such as Labradors and spaniels. They are hunt, point and retrieve dogs. The type of dog for hunting foxes would be hounds, and that is a totally different ball game. The two cannot be mixed up.

The Convener: A number of people have their hands up. I will try to bring everyone in in order. Jim Fairlie has indicated that he is content for the moment, so I will bring in Alasdair Allan next, to be followed by Mercedes Villalba and Jake Swindells.

Alasdair Allan: My question is for DS Telford, who has raised some interesting questions.

DS Telford, I realise that you are not here to say what the law should be, but we have discussed whether some of the complications that you have talked about would exist if a limit of two dogs was applied to rough shoots so that there could only be two dogs at a shoot. Whether that proposal is right or wrong, I am interested to know, given that we have discussed it, whether you think that it would be a simpler and more enforceable solution.

Jim Fairlie: To complicate that even more, if six people were out shooting who were 50m or 60m

apart and they had two dogs each, would you have the capacity to differentiate them? If so, how would you do that?

Detective Sergeant Telford: Police Scotland is impartial, so I will comment only on the ease of gathering evidence and so forth. If there were only two dogs, that would ultimately make it more straightforward, because it would reduce any concern about whether a pack had formed. If there was a line of separate dogs, we would need to make an assessment of whether a pack had formed.

If, in an alleged incident, we knew right off the bat that there was a significant distance between the pairs of dogs, that would be fine. However, I suspect that where the dogs were would not necessarily be as cut and dried as that, which is where the complications would come in.

However, we will work with whatever legislation is in place and we will gather evidence accordingly.

The Convener: The bill team leader, Leia Fitzgerald, told us last week that, even if the dogs formed a pack—we are not sure what the definition of that is—it would be fine as long as the owners tried to separate them. However, the offence would surely have been committed. It is a bit like saying to someone, “I caught you speeding at 70mph, but it is okay as long as you slow down.” She implied that it would be fine if the dogs formed a pack as long as they were separated, but the offence would have been committed.

Detective Sergeant Telford: Off the top of my head, I note that we would need to look at whether those who were involved had taken reasonable measures, but that gets us into debating the definition of “reasonable”. We would need to look at whether they had taken suitable measures to prevent a pack from forming in the first place. I suppose that we would need to consider every case on its merits. They should certainly have taken measures to prevent that from happening instead of just saying, “Oh, they have formed a pack,” and trying to pull them back without having implemented such measures.

Mike Flynn: Going back to the original question about our views on rough shooting, my view is that it is a sport or pastime, as has been referred to. It is an enjoyable social event. It is not seen as being essential in relation to other stuff that is going on. If that changes, I will have sympathy with Mr Telford and his colleagues at Police Scotland, because it will not be clear. When we look back at some of the cases that have happened, we can see that the law breakers—not lawful members of the public—will try to use any potential loophole.

I understand what Mr Hogg says about the dogs that are used for rough shooting, but the bill says “dogs”; it does not differentiate between separate breeds. I therefore have genuine concerns.

Jake Swindells: I have a number of concerns that relate primarily to some of Robbie Marsland’s comments. Admittedly, he said that he has little to no experience of rough shooting, but he seems to take every opportunity to beat the hunting of foxes with hounds over the head. However, I am not sure that we are in the right evidence session for that.

Rachael Hamilton asked about which dogs are normally on rough shoots and their obedience levels. As Alex Hogg rightly said, they include spaniels and Labradors, and there are even some terriers in beating lines. I know terriers that are very good at flushing and even at picking up. The issue of obedience levels was also raised by Mike Flynn in one of the six earlier evidence sessions.

I will give you an idea of the level of training. Rough shooting is completely different from hunting with a pack of hounds and hunting separately while working one, two or three dogs. I have an 18-month-old cocker spaniel called Myrtle, who is primarily a deer dog. She is a very cute little thing and is absolutely phenomenal at deer stalking. She is ridiculously well trained, as are most dogs that go on those shoots. They are trained individually, so a lot of time and effort is put into them.

If Myrtle starts to do something that I do not want her to do, I can stop her instantly, and that is the case with most of the dogs on those shoots. If someone turns up with a dog that does not do that, I can say categorically that they will not be invited back to that shoot. Gamekeepers and land managers have a job to do and a reputation to uphold, particularly if it is their livelihood. They will not tolerate dogs that run in and chase.

I control rabbits as well. I shot for more 30 years, I worked dogs for more than 30 years, and I have also been involved in training police dogs. As Alex Hogg rightly said, if you go into a field full of rabbits—I have often done that, having been a rabbit controller as part of my general duties—the field will empty after you fire one shot under a lamp, because the rabbits will be virtually next to their holes. They do not stray far from them. The scenarios are completely different, and I would like to get that on the record.

Mercedes Villalba: Alex Hogg talked about the different breeds of dog that are used in different activities to flush different kinds of prey. Are foxes ever flushed on a rough shoot?

Alex Hogg: At odd times that will happen, and quite often they will be shot, if it is safe to do so. However, the flushing is normally accidental and

not intentional. They get up out of the cover, and in order to conserve, for example, curlews, we will shoot a fox in the course of a walk—aye.

Mercedes Villalba: Would foxes be included in the definition of ground game?

09:30

Ross Ewing: For obvious reasons, a person would never eat fox. It would not taste good. The main rationale and motivation for controlling foxes is for biodiversity, as Alex Hogg said. It is all about managing predation. People would never eat fox in any circumstance but, as Alex said, foxes can be controlled. A lot of rough shoots will do that if there is evidence of fox predation. We do that on my shoot. If a dog fox has moved in, we will often control it to reduce its impact on ground-nesting birds, not least woodcock.

Mercedes Villalba: Does it follow that the absence of hounds does not necessarily rule out foxes having been flushed and killed in that activity?

Ross Ewing: There are no circumstances in which a dog would be able to kill a fox on a rough shoot. That would simply never happen. The fox would probably be disturbed well before the dog had even got there, because foxes are very attuned. The fox would be flushed and, if a gun was close by and near enough to be used to shoot it, it would be shot. There is absolutely no chance whatsoever of a dog killing a fox. For all the reasons that Jake Swindells set out in relation to the training of gun dogs and because it is simply not in their nature to try to rip a fox apart, that simply would not happen.

Peter Clark: I echo what Jake Swindells and Ross Ewing have said. It would be dangerous if a dog ran out and chased a rabbit and, as Jake said, a person would simply not be asked back if that happened. Their dog would be regarded as being out of control. I know that, if I took a dog along to a shoot and it behaved in that way, I would be asked to leave. It would not be acceptable.

I go back to the point that Alex Hogg made about ground-nesting birds. Numbers of capercaillie, which is Scotland's iconic bird species, are declining significantly. We have to be mindful that, if we remove the tools with which we can control fox numbers and predators against endangered species, we will risk losing those birds through their being driven to extinction. We have to be careful, take a measured approach and have those tools at our disposal to protect endangered species such as the capercaillie.

Jake Swindells: On many of the rough shoots that I have been on, people have said that, if a fox breaks cover, it should not be shot. There is a

level of restraint on many rough shoots. They are not bloodbaths or blood sports, as some people might describe them. There is respect and a level of restraint on many of those shoots.

Alex Hogg: In a dog trial, when a rabbit is shot and brought back to the judges, the first thing that the judges will do is feel for any damage to the rabbit's ribs. If the gun dog has chomped its ribs at all, the dog will be put on a lead and sent home. That is how soft mouthed they are. The last thing that people want to do is to breed a gun dog that will kill game, for example. These are totally different times.

Ross Ewing: It is important that we clarify something. The Scottish Government has a policy intention, which is absolutely fine, but what we have heard in the discussion reveals that rough shooting will be impacted in a negative way. The Scottish Government has an obligation to act proportionately in trying to close the loopholes, which is completely legitimate, but it needs to do so in a way that does not impact on other, legitimate countryside activities that have never been within the scope of the bill.

Ariane Burgess: It is interesting that we are talking about rough shooting as it is done now. We are trying to establish whether, if we pass the bill, rough shooting could be used as a smokescreen, as Robbie Marsland said. Rough shooting could be carried out in a different way, not by people who are genuinely rough shooting but by people who want to use it as a loophole.

I want to pick up a thread of conversation about intent that happened a wee while ago with Billy Telford. We need to consider the person, the intent, the activity and the role of dogs. Is it possible to establish intent? How is it established? Is there a way to ascertain that people were planning to do something? Surely, if people are going to use rough shooting as a loophole, they will have to plan a bit in order to get the dogs, which are no longer spaniels or Labradors but hounds, to gather in a place. Something will need to be pulled together in order to do that. Anything that you can say about intent would be helpful.

Detective Sergeant Telford: We would want to gather as much evidence and information as possible. It would not simply be a case of getting the bare minimum of evidence to libel or disprove the charge.

Speaking off the top of my head, I would say that the breed of dog would be a consideration, but that is not to say, as you are perhaps suggesting, that people might change the breed of dog that they would use because they intended to create a smokescreen. We might also have the opportunity to seize phones. We would use as

many investigative tools as were available to us to establish or disprove any offence.

Rachael Hamilton: I am slightly confused. I thought that Alex Hogg said that rough shooters would never go out with hounds. Would you ever use hounds?

Alex Hogg: No.

Ariane Burgess: The point is that, although people might not use hounds now and Mr Hogg would never use a hound, somebody might do so once the legislation comes into play. We are not talking about how people are doing this at the moment.

I totally get the “one for the pot” idea. That is all well and good, but when the legislation comes in, it might be used by people who consciously choose to find a way through it by saying, “We’re on a rough shoot.” That is what they will plan to do, and they will not be people who genuinely want to do rough shooting, but people who want to have a mounted hunt.

Detective Sergeant Telford: We have talked about evidence and so forth, but we will still be able to use common sense and a degree of judgment to ask whether, in the balance of probability, an activity is a legitimate rough shoot or something else. That commonsense approach will take into account the types of dogs that are used, too.

Jim Fairlie: We have just touched on exactly the questions that I was going to ask. The legitimacy of what BASC, the SGA and so on do is not in question here; the issue is the people who come behind them and see a potential loophole in the proposed legislation as it stands. Robbie Marsland is absolutely correct to say that there never used to be such a thing as flushing to dogs or guns in fox hunting, but now there is. There is a potential loophole in that respect.

My question is for the guys on the panel who are involved in shooting. If the Government’s position remains and the limit is two dogs, will you still be able to rough shoot?

Ross Ewing: I can speak only from the perspective of the shoot that I am part of in Perthshire, which is in your constituency. I would have reservations, because we would have to significantly alter how we did the rough shooting in order to comply. I think that that could be quite damaging, because I do not think that the shoot would feel comfortable running more than two dogs overall during the day. We would leave ourselves open to vexatious allegations if we did so, to be frank.

Jim Fairlie: I understand that you feel that you might be open to vexatious allegations, but could your shoot still function with two dogs?

Ross Ewing: Not to the level that it functions now. That is the important point: we, as a shoot, have done absolutely nothing wrong. To be honest, I do not see why we are being, in a sense, punished for the potential actions of others. I think that the obligation should be on the Scottish Government to find another way of dealing with the issue without impacting on activities that have hitherto been perfectly legitimate.

Jim Fairlie: I would have thought that laws were always made on the basis of those who would abuse them rather than those who would keep them.

I also ask the same question of the SGA and Jake Swindells. Would you be able to have a rough shoot with a two-dog limit?

Alex Hogg: It would be difficult. For example, the dogs would get tired, and there would be all the different training that you would want to do and all the things that you would need to make the day happen. The dogs work so hard through cover that you would never believe. Just try walking through, say, thick rushes: the dogs have to hunt like mad to produce what we want. A two-dog limit would curtail things a lot.

The Convener: I will bring Jake Swindells in, and then we must move on.

Jake Swindells: It is an interesting question. It depends on what your definition of “function” is. If you take your car into a garage, ask them to do a full service on it and give them one spanner, the garage will be able to function, but it is unlikely that you will get something positive out of it at the end. If the bill passes as it is, rough shooting as it is practised now will end.

Jim Fairlie: So, you would need more than two dogs—

The Convener: Sorry, Jim, no.

Jim Fairlie: Hold on a wee second. This is really important. If the—

The Convener: Jim, could you stop, please?

Jake, you can finish and then we will move on to Peter Clark.

Jake Swindells: I rough shoot. I had two dogs at one point and I now have one. I used to walk up the hedgerows, let the dogs flush and shoot. That is rough shooting.

Rough shooting is also going out in exactly the way that Ross Ewing described. Yes, rough shooting could still function—if I go out with my one or two dogs, it has minimal impact and no conservation benefit whatever—but it will cease to function as Ross Ewing described it.

Peter Clark: As Ross Ewing said, rough shooting will cease to function as it is. The way that the bill is drafted causes concerns among our members. It creates ambiguity. As I read it, I would not be able to go out in the way that I do currently. A lot of that is echoed by the way that Ross Ewing described how a rough shoot functions. Rough shooting will be hindered and curtailed by the bill.

The Convener: We move to questions from Alasdair Allan on another topic that we want to delve into a bit more deeply.

Alasdair Allan: The Government has offered some clarification on the proposal to permit two dogs per person on a shoot. I am curious to know what your view is of those clarifications.

In addition, as we have discussed, one of the alternatives to that is to have two dogs per shoot as a whole. Although the witnesses have mentioned this, I would be interested to know what the implications of that would be for a rough shoot. Would it be possible to have a shoot with a limit of two dogs for the shoot as a whole? Would that restrict what you do on wildlife control or would it merely restrict the shoot as a social event?

Ross Ewing: To be frank, Mr Allan, both would be impacted. Although I can see that the clarifications have been given in the spirit of trying to be helpful, there is a fundamental misunderstanding about how gun dogs behave. It is not the case that, if you are working with two or three dogs in front of you, they work in a line going forward. They move around. They go left, they go right and they cover other dogs' ground.

The thing that I am most concerned about with the proposal is that, if you had more than two dogs working in a well-covered copse, the shoot would become open to vexatious allegations. It is quite conceivable that someone who had an anti-shooting agenda might phone up the police and say that they had seen more than two dogs go into the wood, that they had seen a hare come out and that it should be investigated.

Alasdair Allan: However, you would not be open to vexatious allegations in the hypothetical situation in which you had only two dogs.

Ross Ewing: Yes, but I am saying that, in the vast majority of cases, two dogs would not be sufficient for rough shoots. I have been on many rough shoots in the 24 years that I have been on this earth and I cannot ever recall a situation in which we have had just two dogs working. It does not happen.

Ariane Burgess: We heard earlier about the types of dogs that are used. Surely you would have a range of dogs, such as Labradors and spaniels. We have talked about the loophole and how it might be used. However, people who were

fox hunting would have hounds, so that would be a clear indication and a way for the police to see the difference between a rough shoot being used as a smokescreen and a genuine rough shoot. Potentially, you could tell it by the type of dog.

Ross Ewing: Yes, as things stand at the moment, that is one of the differences between the two.

Ariane Burgess: I do not know enough about dogs, but would it be possible in the future to train Labradors or spaniels—*[Interruption.]* That is what I am wondering, but from the expression on your faces, I guess that the answer is definitely not. There is an issue that we really need to get into. We are talking about dogs that will work as a pack. Could dogs that are owned by and in the control of separate people on a rough shoot potentially form a pack?

Ross Ewing: It depends. The dogs are trained to do fundamentally different things, so I suppose that it is not about whether they form a pack; it is about what that pack—if that is what you call a group of dogs that are working together—is actually doing. In the case of a Labrador or a spaniel, the clear objective is to flush and, if you shoot, to retrieve. It is fundamentally different for hounds, which are trained for a completely different reason. Let us be real—we all know what that is. Therefore, I think that there is a plausible distinction between the two, based on the type of dog that is used.

09:45

Ariane Burgess: So, the provisions could be enforced by saying that there is a difference between the types of dogs.

Ross Ewing: Potentially, yes.

Ariane Burgess: Maybe it is not such a worrying issue after all that this is in the bill.

Ross Ewing: I think that it depends on the definition, which would need to be looked at. The definition of "rough shooting" would be crucial as part of all that. However, you raise an interesting point.

The Convener: My view on rough shooting is that dogs are used to flush and not to chase. If a dog chases, you put it on the lead, you take it home and you do not get invited back again. It is clear and simple. Well, it is clear to me, but the bill does not appear to be clear, based on the definitions.

Mercedes Villalba: If I have understood Mr Ewing's contribution correctly, earlier he explained that the purpose of rough shooting is not necessarily about controlling wildlife but is more to

do with enjoyment and, potentially, providing food. Will the bill prevent that?

Ross Ewing: Yes, in its current form, it will prevent enjoyment, but for those shoots that have—

Mercedes Villalba: In what way will having only two dogs prevent enjoyment?

Ross Ewing: For example, if, on the back of the bill, my shoot took the decision to use only two dogs, I can tell you that we would flush far fewer birds, hares and rabbits than we currently do on a shoot. In some places, in some parts of the ground, I am not convinced that we would actually put up any quarry whatsoever. The result would be a wholesale loss of enjoyment in the day, and, if there is a management aspect—we control the hares for the purpose of management on the ground to prevent grazing—that would also suffer. The farmer on whose land we shoot would also suffer as a direct consequence of the bill's provisions.

Mercedes Villalba: Is the enjoyment directly linked to the yield?

Ross Ewing: Not necessarily. From my perspective, it helps if I shoot something because I quite enjoy the eating aspect, which is what underpins it for me. However, it is not a one-way thing—other people have different appreciations of rough shooting. Some people just like going out and whether they shoot something is irrelevant; others go out with the intention of shooting something for food or to manage wildlife.

Mercedes Villalba: Would that be possible with just one or two dogs?

Ross Ewing: Do you mean would it be possible to shoot something?

Mercedes Villalba: Yes.

Ross Ewing: You might get something, but it would be considerably less than what you currently get on a normal rough shoot.

The Convener: I will pull this back a bit and remind everybody that there is not a two-dog limit on rough shooting. That is the issue and one of the reasons why we are here. The minister has said that you are allowed to use more than two dogs, but the issue is about how the use of those two dogs is defined and how, ultimately, that can limit rough shooting. Bear in mind that we are not talking about a two-dog limit, because the minister has made it clear that you can use more than two dogs.

Mercedes Villalba: Mr Ewing did say that he would consider reducing the shoot to only two dogs due to fears about vexatious accusations.

Ross Ewing: Yes, which is an unintended consequence of the bill. I would not feel comfortable having more dogs.

Mercedes Villalba: I just wanted to establish, which I think we have, whether some form of enjoyment and killing could take place, and it sounds like it could.

Ross Ewing: It could, but to a far lesser extent. As I said at the outset, rough shooting was not the proposed target of the legislation, so it seems unfair and disproportionate that I and the people on my shoot, for example, have to suffer as a result of the actions of others. [*Interruption.*] Yes, suffer—it is part of my enjoyment and I stand by those words.

The Convener: I will bring in Billy Telford.

Detective Sergeant Telford: What enforcement measures would you expect in relation to the two dogs?

Ross Ewing: I imagine that if you got a call from a member of the public saying that there were more than two dogs working, the police would be called out, and I presume that they would investigate. I imagine that that would result in the shutting down of the shoot on that day.

Ariane Burgess: Mercedes Villalba asked about two dogs. Ross, you talked about the fact that you would lose enjoyment. However, why would you have to reduce the number if we have established that the types of dogs that you use on a rough shoot are not hounds that hunt in packs? Why would you have to reduce the number of dogs?

I heard laughter when I asked whether a Labrador could be trained to work in a pack. If you are using dogs that could never ever—I should not say “never ever”. If you are using dogs that would be unlikely to be used in a pack, surely having a number of dogs at your rough shoot is fine, because they are not hounds that hunt or kill in a pack.

The Convener: Ross, I will not let you answer that, because the answer was in the question that Ariane asked, and we have heard your view on that issue.

Alex Hogg: There could be welfare issues here, because our whole *raison d'être* is to retrieve anything that might be wounded on the shoot. You would walk 10 miles to make sure that it had been retrieved properly.

I can give you an example: I have a wee black cocker called Maggie, and we were at the grouse last week. There was a cock grouse cowered in behind the butts. The picker-up was there with six Labradors, but they did not find the grouse, so I said, “On you go, Maggie,” and she found it. I felt

so damn good that I had stopped any suffering, got the bird back and done everything right. That is what we might cut into if we restrict it to two dogs; we need options, because one dog might not have as good a nose as another dog. There are all those sorts of reasons.

Peter Clark: That goes back to the point that Ross Ewing made; rough shooting is an important part of the social fabric of rural Scotland, and it boosts mental health and wellbeing in the countryside. There is nothing better than getting out in the fresh air, being among people and doing a walked-up shoot.

Rough shooting is also a cost-effective way of shooting and a conduit for beginners to get into shooting. We have to be mindful of that for the next generation, particularly in Alex Hogg's profession. For gamekeeping, rough shooting is an important way of getting people into shooting, and it is a humane way of shooting. It is important that we respect the fact that it is a way for people to get into shooting at a beginner level. That is how I got into it, and I know that it is how Ross Ewing and Jake Swindells did, too, so it is important that it is protected and is not hindered by the bill.

Mercedes Villalba: On that point, do we have any data on the proportion of rural residents who take part in rough shooting?

Peter Clark: If I may briefly answer that from a BASC point of view, I know that we have 11,000 members in Scotland. I do not have specific data on that, but I would be happy to try to find that information for you and to write to the committee with it.

Alasdair Allan: I have a brief observation. I understand the points that people are making about retrieving birds but, to be clear, the bill is not about birds—it is about mammals. As interesting and useful as those points are, the bill would not touch on them, as far as I understand.

The Convener: We will move on.

Beatrice Wishart: We have touched on—

The Convener: I apologise, Beatrice—I missed out Kirsty Jenkins. Kirsty, would you like to come in?

Kirsty Jenkins: I want to come back to the main purpose of the bill. The minister has said several times that the bill is in pursuit of the highest standards of animal welfare while allowing legitimate control. It is not entirely clear to me how an exception for sport sits within that, but that exception exists. I do not see why rough shooting should be treated any differently from any other activity under section 6 of the bill, and we seem to be getting away from that main purpose of the bill.

The Convener: I have a question. Have you any evidence that there have been any animal welfare incidents whatsoever relating to rough shooting?

Kirsty Jenkins: I have heard you mention that before; you mentioned that nobody has said anything about rabbits. We supported the inclusion of rabbits in the bill from the beginning. We were not asked specifically about rabbits, and we perhaps did not anticipate that the inclusion of rough shooting would start to be questioned in the way that it has been, which is why we did not speak more specifically about rabbits.

A rabbit is a sentient wild animal. Rabbits will suffer in the same way as any other wild animal when they are hunted, flushed, shot or whatever, so, of course, we have the same concerns for rabbits that we have for other wild animals.

The Convener: Again, the issue is about chasing. The minister has repeatedly said that the bill is about chasing, catching and killing a wild mammal. That does not happen on a rough shoot. If a dog were to chase—rather than flush—a rabbit, and catch it and kill it, that dog would be removed, because dogs should be highly trained.

I dispute the idea that rough shooting should play any part in the bill, other than as an exemption, to ensure that a perfectly legal pastime that is carried out to the highest animal welfare standards is not inadvertently caught by the bill, the purpose of which is specifically to stop dogs chasing, catching and killing mammals.

Kirsty Jenkins: That takes us back to the point that the exceptions to the bill should be as few as possible and as narrowly defined as possible, to avoid loopholes and situations in which wild animals might suffer.

The Convener: I certainly agree with that point.

Beatrice Wishart: We have already touched on enforcement. My question, which is for Billy Telford, is about the interpretation of section 6 that the Scottish Government has offered. At last week's meeting, the Government clarified that in some circumstances it might be unlawful for a person to shoot quarry that another person's dog has flushed. What is your view on that?

Detective Sergeant Telford: To be honest, I am not entirely clear about how that will work in reality if a dog belongs to one person and someone else has control of it.

Beatrice Wishart: Okay. Does anyone else want to comment?

The Convener: Perhaps I can bring in Mercedes Villalba here, as she has a supplementary on the police's understanding of the issue.

Mercedes Villalba: Last week—it might have been earlier; the discussions are all merging together—we heard that the use of dogs will be tied to a specific activity. That is the intention—that is, the revised intention—of the bill. If I have correctly understood the evidence that we have heard, it seems to be the Government’s intention that, if a person shoots a wild mammal that has been flushed by someone else’s dog, they will not fall foul of the legislation, as long as only one or two dogs flushed the mammal. That is because, for the purpose of that activity, it can be claimed that those dogs are owned by the shooter.

Mr Telford, do you see issues with the idea that dog ownership is interchangeable, depending on the activity and the time? How would that function?

Detective Sergeant Telford: That relates back to Ms Wishart’s question. I will need to clarify the position if the idea becomes embedded in the legislation, but my understanding is that it is about the control of the dog, rather than the ownership. If someone is using another person’s dogs, it will be determined that they are in control of them. That is my understanding.

I know that there is an element of speculation to this, but I do see a potential issue if multiple dogs are present and a pack forms. There might be discrepancies, or the potential for false claims that the dogs that undertook the act of flushing were in the control of a particular person, or that two separate dogs from two different people were involved. That is a potential issue if a number of dogs are there. Does that answer your question?

Mercedes Villalba: Yes, although I think that there is still some confusion.

The Convener: I have to say that that is slightly different from what we heard last week. Let me offer a scenario—and I will bring in Jim Fairlie afterwards, as he has another scenario in mind.

Two people, each with two dogs, are out on a walk with me on a rough shoot, but I am the only person with a gun. The four dogs go in. They act separately, because they are Labradors, and they hunt in undergrowth. They are all laid out; in effect, they are working together, but they are not covering the same area. The four dogs flush a rabbit and I shoot it.

I am not in control of those dogs, but the bill’s wording is “using a dog”, and the dogs were used to flush to me. As four dogs were involved, I am breaking the law. I have a gun, but in that instance, I am not in control of the dogs that are flushing. Those four dogs are working the game—the rabbit—towards me. That is a grey area.

10:00

Jim Fairlie: Under its definition of rough shooting, the BASC says:

“Virtually all the quarry species listed can be walked-up (i.e. where the shooters flush out the quarry as they walk through the cover)”.

As Police Scotland will be responsible for enforcing the legislation, would you have a concern about your ability to interpret the following scenario? Five guys are out on a shoot, and each has a dog or a couple of dogs. They are well spaced out as they walk; in fact, they have enough space between them not to form a pack but it still allows them to enjoy the rough shoot. If somebody came to you and said, “These people were walking through a wood; they had a certain number of dogs; and a rabbit or a hare was shot,” would Police Scotland be able to interpret that scenario?

Detective Sergeant Telford: Yes, if the information available to us made it clear that that was what had happened.

Jim Fairlie: What would you use to interpret that scenario? Would it be the kind of dogs or the environment?

Detective Sergeant Telford: It would be all of those things. For example, we might be told that there was a line of persons with two dogs, equally spaced, but, by the time that we got there, that might not necessarily be the case. Everyone might be together, and we would not necessarily know which two dogs were with which person, and where they had been. All those things would be taken into account, plus witness statements, common sense and information about the kind of dogs, the kind of land and so on. We would pull together as much information as we could.

Jim Fairlie: This is purely off the top of my head, but what if you were having to investigate what Ross Ewing has called a “vexatious allegation” and you got there and found, say, Alex Hogg and Ross and you said to them, “Right, gather up your dogs”? If you could clearly see Alex calling two dogs and Ross calling two dogs, and the dogs going back to them, would that be part of your determination?

Detective Sergeant Telford: Yes, I think that it would, because it would show that, although that might not have been what had happened, there was still an intention to go out there and there were people in control of specific dogs. That would certainly be a consideration.

Jim Fairlie: That kind of gets to the point of it, does it not? Rough shooting would still be allowed if more than two dogs were used, as long as those dogs did not form a pack and each person had no

more than two dogs under their control. How would that sit with you, Ross?

Ross Ewing: I would still have concerns, because, despite the fact that the bill is meant to bring clarity, the average member of the public would not necessarily be able to tell the difference between a dog that is working as part of a pack and one that is not.

Jim Fairlie: However, it is not the average member of the public that you would have to convince, but an officer of the law, who would be there and would have a specific understanding of what you were trying to do.

Ross Ewing: It all comes back to how such incidents are flagged up in the first instance. If someone is not able to clearly tell whether something is illegal, that represents a failure in the legislation's clarity. Everybody, not just the police, needs to be clear about what constitutes an illegal activity.

To be frank, I am still not clear about these things in my own mind, which is why I take a very precautionary approach in my shoot. If the bill were to be passed, I would have severe reservations about using more than two dogs on the shoot, because that could be open to vexatious allegations, and what constitutes an illegal activity is not clear. There is too much of a grey area.

Jim Fairlie: But if you were subject to a vexatious allegation, and Billy Telford and his crew arrived and ascertained very quickly that you had not done anything illegal, what would be the problem?

Ross Ewing: I would hope that they would be able to do that, but the point is that it would still result in disruption to the shoot day, and that would be the result and a manifestation of the bill's not being clear in the first instance. If someone felt compelled to make a report, it would disrupt the shoot day, and I would have to stop the activity to answer police questions and be interviewed. An appeal for information might follow on the back of that, too. It would just create a whole load of bureaucracy that should not be needed in the first place.

The most important thing, Mr Fairlie, is that everybody—members of the public, the police and people involved in the activity—needs to understand very clearly what constitutes an illegal activity. Although the bill is intended to bring clarity of expression, it actually brings ambiguity to a perfectly legitimate activity that was never intended to be its focus.

The Convener: Part 1 of the bill says quite clearly:

“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 (and related expressions are to be construed accordingly).”

It is quite clear that it would be very difficult indeed to continue rough shooting in circumstances other than when there were only two dogs, exception or not.

I will move on now, with a question from Mercedes Villalba.

Mercedes Villalba: I have a quick follow-up question for DS Telford just to give me a bit more of an understanding of the practicalities of enforcement. I am not sure how you envision things working in practice now, or how you envision them working in the future, but would you tend not to “join” but to “visit” rough shoots, or would you say that you “dropped into” them? Would they come into your frame of work only if there was an accusation of some illegality? How does it work?

Detective Sergeant Telford: We do not tend to do any proactive visits to rough shoots or anything like that, and we would not necessarily be aware of when they are happening. I do not know whether that will necessarily change in future, but we do not really do that.

Mercedes Villalba: So, those on a rough shoot could voluntarily notify you that it was taking place if there were any concerns about accusations being made.

Ross Ewing: Can I respond to that, if I may? What have we done wrong to merit this? Why should I have to declare, on behalf of my shoot, that we will be doing X, Y and Z today when there is no evidence whatever to suggest that we have ever been on the wrong side of the law?

Mercedes Villalba: Just for your peace of mind, I suppose.

Ross Ewing: That is fine, but I do not think it is proportionate for the Scottish Government to intervene in that way.

Jake Swindells: It is very thoughtful of you to think about our peace of mind, Ms Villalba, but I genuinely think that we have an issue with that. Ross Ewing must have been reading my notes given that, in the past five minutes, he has covered most of the things that I wanted to bring up.

This is still not clear to me, and I hope that it is clear to somebody in here who can explain it to me, but what is “a pack”? How is it defined? If there are three dogs in a beating line, two of which belong to one person and one to the next, when do they become “a pack”? If Detective Sergeant Telford turns up and tries to investigate, having not been there at the time of the alleged offence—

which could have happened when three dogs were in a 10m vicinity—it will be very difficult for Police Scotland’s officers to investigate something that they had not witnessed happening in the middle of a thick wood or an embankment of whin bushes, when something ran out and they have only somebody’s say-so that some dogs were working together.

The bill needs to define what “a pack” is. It is all very well saying that people can walk in line with guns and a dog or two dogs each, if they are 10m apart, but what if they have to go round a tree or a bush and they are now 8m apart, and their dogs start working in front of them and close the gap by a couple of metres? Is that then defined as “a pack”? There are too many grey areas. The minister has said that the bill was brought into being to bring utter clarity, but it does not do so. Instead, it creates grey areas in something that should not have been affected.

Peter Clark: With regard to proportionality and having heard the conversations going around today, I think that it would be very concerning for our members if the police were called out and potentially disrupted a shoot day. If that is to be a consequence of the bill as drafted, it gives me and other stakeholders significant concern. We need to home in on this point to ensure that people can go out and shoot with confidence. I do not think that the bill in its current form offers that opportunity.

Jenni Minto: Thank you all for your evidence so far.

I want to return to the bill’s title—the Hunting with Dogs (Scotland) Bill—and its references to “hunting a wild mammal using a dog”.

All the definitions that we have heard on rough shooting today have used the word “flushing”, not “hunting”. You might have inadvertently used the word “hunting” yourself, convener, when you were giving the example of your four Labs, but you then corrected yourself.

As I understand it—and please correct me if I am wrong—the exception in section 3 allows someone to

“search for, stalk or flush from cover”.

That is basically what we are talking about as rough shooting. I would like clarification that my understanding of that is correct.

The other area that I want to ask about relates to something that Jake Swindells has just said about the definition of “a pack”. Again, section 3 requires 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”.

To me, that implies that “a pack” is more than two dogs—in other words, three dogs.

DS Telford, it would be interesting to get your thoughts on the reference to “reasonable steps”, and I would also like to hear views on that from Robbie Marsland and from one of the witnesses who are shooters, whether it be Ross Ewing or Jake Swindells.

Detective Sergeant Telford: That is a fair question. We raised that point at the first evidence session on the bill and requested some clarity on what those “reasonable steps” would be. In the absence of a clear definition, we would need to rely on common sense. For example, could we determine whether somebody had made any legitimate efforts to call back the dogs? We would need to look at that, based on the circumstances, but a clear definition would be welcome.

Jenni Minto: Would there be a concern that if a definition was too narrow, it could have unexpected consequences?

Detective Sergeant Telford: That is the balance to be struck. Definitions give us clarity, but at the same time they restrict us. I do not know what a way round that would be. We would have to look at all the circumstances to determine whether “reasonable steps” had been taken, looking at distance from other dogs, the use of vocal commands and so forth. We would need to assess everything that we could, in the absence of any clear definition.

The Convener: I call Rachael Hamilton.

Jenni Minto: I am sorry, convener, but I was hoping to hear from Robbie Marsland.

The Convener: Sorry—I will bring in Robbie first.

Robbie Marsland: I said at the outset that I do not know very much about rough shooting, but I have certainly learned a lot during this session. I have learned that rough shooting is done primarily for enjoyment and the pot, and I agree with Kirsty Jenkins that that seems to be at odds with a desire to have the highest welfare standards.

I have also learned that it is possible to continue rough shooting in a restricted way, with two dogs. I have heard from all sides that that would be possible, if at a reduced level. As you can imagine, as the director of the League Against Cruel Sports, I would welcome that. I see the use of two dogs in such circumstances as one of the compromises that we would be willing to accept.

I have also heard that Police Scotland thinks that its officers would, in circumstances where there were more than two dogs, be able to understand whether an offence was being committed. We have heard about distance and

vocal commands, and the use of common sense. I sometimes worry about common sense being one of the criteria, because, when it is applied to what is going on with mounted hunts, it becomes a matter of conjecture.

Those are the things that I have learned. The bill, as it is currently drafted, would enable rough shooting to continue at a restricted level. Those people who are doing it feel aggrieved by that restriction, but I think that their grievance should be directed at the mounted hunts, which have, for 20 years now, used other methods and loopholes. If there is a danger of this provision becoming such a loophole, I think that such a restriction is something that we would all expect and, in some ways, welcome.

Rachael Hamilton: I have a really daft question for DC Telford. Have you ever been called out to a report that an animal has been ripped apart by more than two or three—or however many—dogs that are with a dog walker?

10:15

Detective Sergeant Telford: You are asking about a dog walker. I cannot remember any specific instances off the top of my head, but I think that we probably have been called out to such incidents.

Rachael Hamilton: What happens in such a case? Does it tend to involve somebody who is hare coursing, or does it tend to be a genuine mistake? For example, someone might have taken reasonable steps to control their dog but, unfortunately, if the dog was not trained, they might have been unable to control it. You might therefore say, “We understand; it happens.”

Detective Sergeant Telford: There have been cases on both sides. There have been incidents of dog walkers whose dogs have run off and killed animals. I cannot recall any specific incidents but, in those circumstances, we would try to establish whether the dog walker took reasonable steps. Were they negligent in relation to where they were walking? We take into account all those things.

We also get hare coursers using the excuse that they just let their dog off the lead to do the toilet or get exercise, or they say that, up until that point, the dog had been chasing rabbits. I suspect that, if we could prove that dogs had killed a hare and if we suspected that the people were hare coursers, we would look to gather evidence to libel charges, rather than just accept that there had been an accident. We would do that if there was a dead hare and other evidence to suggest that the people were hare coursers.

Rachael Hamilton: What kind of dogs do hare coursers use to chase hares?

Detective Sergeant Telford: Typically, lurchers are used—that sort of dog.

Rachael Hamilton: The latest figures show that there were 100 prosecutions relating to hare coursing in Scotland. That figure is higher than I expected it to be, because I know that although there are a lot of reports, it is often not possible to prove that the offence of hare coursing has taken place.

I want to ask about the exception for a bird of prey killing

“as soon as reasonably possible”.

Is—

The Convener: I am afraid that that issue veers away from rough shooting.

Rachael Hamilton: No worries.

The Convener: We want to stick specifically to rough shooting, or we could be here until next week.

It was quite clear from the evidence that we took from the bill team and the minister that they have been caught out by the issues relating to rough shooting. I do not speak for most people, but I think that most people understand that the legislation on hare coursing needs to be strengthened. Including rabbits in the definition appears to be the simplest solution. In my opinion, the Government bill team did not appreciate what rough shooting is. Last week, we heard from Hugh Dignon that he had watched some YouTube videos, but he had not done so until after the issue had been highlighted.

If I remember correctly, Police Scotland suggested that it was not quite sure about the implications relating to rough shooting. DS Telford, in your opinion, are there better ways of catching hare coursers that will not lead to the unintended consequences of banning rough shooting as we know it?

Detective Sergeant Telford: On hare coursing, during the initial consultation period, we suggested that the phrase “and reckless” could be added to negate the argument that someone just let their dog off the lead for exercise. Ultimately, if we could see that people were lined up in a row walking through a field, we could say that that was a reckless act that looked pretty deliberate—even if we could not prove that it was deliberate—because there would always be a high chance that that would expose a hare and that the dogs would chase it. Police Scotland thought that that phrase would be a valuable addition.

The Convener: Now that we have heard additional evidence on rough shooting, do you think that the inclusion of rabbits in the definition and the implications of that for rough shooting

were not thought through enough by the Government, and that that is why we are sitting around this table? Are further amendments needed to make your job easier?

Detective Sergeant Telford: You make a good point about rabbits. I respect that they were added to make our enforcement powers as they relate to hare coursing more straightforward, but it potentially creates problems with rough shooting. I recognise that.

Kirsty Jenkins: I want to clarify that rabbits are included in the bill for two reasons. One is to help with detecting illegal hare coursing, and the other is because rabbits are sentient wild animals, and so are included for their own protection. That point is getting a little bit lost.

Jake Swindells: Detective Sergeant Telford, I will make a point for you to consider; perhaps you can help me out with it. On convictions for using long dogs on rabbits—for hare poaching or coursing—you mentioned recklessness, which I think would be a beneficial addition. Recklessness would not necessarily lead to a conviction for hare coursing, but, coupled with the idea of needing permission to be on the land, would it strengthen what you could do to gain a conviction for poaching?

Detective Sergeant Telford: Yes, I think that it would.

Rachael Hamilton: You made a point about lurchers. Would any other breed of dog be used?

Detective Sergeant Telford: It is fairly specific and only a few breeds—lurchers, greyhounds, whippets and a couple of other breeds—are used.

Ariane Burgess: I am aware that—*[Inaudible.]*—and I wanted to see whether he wants to come in on anything. We have not heard from him yet and I want to afford him the opportunity to speak to anything that has come up. I noticed some of his expressions, and I would love to hear his perspective.

The Convener: I am quite sure that Mike Flynn is more than capable of indicating if he wishes to speak. I appreciate your intervening, but I will bring him in if he has a comment to make. Mike, do you wish to comment?

Chief Superintendent Flynn: As has been said many times, rough shooting is done primarily for people's enjoyment—it is a sport, in my opinion. Yes, it will control some species, but, as has been mentioned a couple of times, there are sections that deal with pest control or conservation. Why should rough shooting, or any sport, be ranked above essential pest control? If a farmer has an infestation, they could apply for a licence for that purpose. I do not see why those doing rough shooting, or any other sport, should have a higher

threshold—or more dogs—than someone who is dealing with an issue for an essential purpose and who has to have the scrutiny of a licence. That is where I sit on that issue. However, there are obviously issues going on.

I still feel that the police will be given an impossible task. Regardless of how vexatious a complaint is, if the maximum is two dogs and the police turn up and there are two dogs, that is within the law. Enforcement would be made impossible if they had to work out whether there were three dogs, a pack or dogs that were joining other dogs and working together. That does not seem workable.

My response to Ross Ewing and Jake Swindells is that everyone I know who is involved in rough shooting is a law-abiding citizen, but as soon as it becomes a loophole, those who are not law abiding will use it as an excuse, which will tarnish everybody who does it lawfully.

The Convener: That was helpful.

Jim Fairlie: I have one comment to make—and it is purely a comment—in response to Robbie Marsland and Mike Flynn. Last week, the bill team stated quite categorically that the purpose of the bill is not to curtail hunting. The bill has to be about what the bill is about, but the bill team said that the purpose of the bill is not to stop people legitimately hunting. We need to make it clear that that is outwith the scope of this conversation.

Ross Ewing: I want to raise a point on that issue, too, because I am mindful that it will potentially come up in the next few years in the Parliament. Obviously, there are questions raised by the SSPCA's capacity to investigate wildlife crime, and consideration is being given as to whether the SSPCA should be afforded statutory powers. For exactly the reasons that the chief superintendent set out, I would have difficulties with the SSPCA having an investigatory role. It is fair to say, and I will ask—

The Convener: Okay—

Ross Ewing: Do you want me to leave it?

The Convener: Yes. That is outwith the scope of today's conversation.

Mercedes Villalba: I have a quick comment on Jim Fairlie's point about the purpose of the bill. I accept that point, but we need to be mindful of the effect of the bill, and we are hearing that the effect will be changes to current practices. It is important that we acknowledge and explore that.

Jim Fairlie: I fully accept that, but we need to be clear that the bill team stated last week that the bill is not about curtailing people's ability to hunt—people should still be allowed to hunt.

The Convener: We will move on to the final questions, which are from Karen Adam.

Karen Adam: I have learned a lot today, so I thank everybody for all their points, comments and questions. The discussion has been really helpful.

I keep going back to animal welfare and the purpose of the bill, which is to stop mammals being chased down, ripped apart and killed. What I am hearing about rough shooting is that those who do it already abide by high animal welfare standards, and they do not want animals to be ripped apart or punctured—anything that would ruin their enjoyment of eating the mammal. Rough shooting is not within the scope of the bill, but we understand that there could be unintended consequences, which we are looking into. I am hearing that there will not be a limit of two dogs for rough shoots, but there are concerns about perceptions, vexatious complaints and so on.

To be honest, I have a lot of confidence in the police, and I think that we are not giving them enough kudos for what they do or for their understanding. It is not just common sense but, if I was to turn up at a rough shoot, I would know if there was a pack of hounds chasing down animals to rip them apart, and I would know the difference between that and dogs retrieving whole animals or birds. I think that the police have a great relationship with people in the countryside, particularly gun owners—I know that local police near me know people who own guns and who shoot in the area.

I am kind of getting to the point of my question. In relation to vexatious comments and things like that, if there is no breaking of the law, there is nothing to be concerned about in that regard. It is the animal welfare issues that we are pinning down here. My question is for DS Telford and is about relationships between the police and people in the countryside. Am I correct in thinking that the police are trained to spot animal welfare issues and to know the difference between rough shooting and a hunt?

Detective Sergeant Telford: It is nice to be appreciated, so thank you very much.

We have a cadre of approximately 160 wildlife crime officers across the country and, in each of the 13 territorial divisions of Police Scotland, there is a wildlife crime liaison officer, who has an overview within that division. I have overview nationally.

With normal response policing and among uniformed community officers, there inevitably is not that expert knowledge, because it is a very niche crime, but I would certainly like to think that, among wildlife crime officers, there is that knowledge. However, even if someone has good knowledge of the crime types, the modus operandi

and so forth, there are challenges with anything that involves hunting with multiple dogs in a rural area with limited witnesses. That is nothing to do with the bill and whether it is right or wrong. There are challenges, but we have to work with those.

10:30

Karen Adam: I have a follow-up question. If the police were forewarned of rough shoots taking place in the area, would that be helpful?

Detective Sergeant Telford: I suppose that there would be a benefit to doing that. We would have to look at what we were doing with that information. Would we be using it to proactively engage with the rough shoots? If so, as Ross Ewing said, we would have to make sure that we maintained good relationships. We do not want legitimate rough shoots to feel as though they are being persecuted.

There is definitely something in that suggestion, but there would need to be further discussion and work on building relationships. The issue is that only legitimate rough shoots would welcome us. People who were using the shoot as a guise for something else would probably not notify us.

Karen Adam: That would be a tell-tale sign.

Detective Sergeant Telford: Yes.

The Convener: We have rapidly run out of time, but I would still like to bring in a few people, starting with Robbie Marsland.

Robbie Marsland: I want to address the phrase “vexatious complaints”, which has been used all morning. It seems to me that we are discussing the issue as though all complaints are vexatious. There is a difference between a vexatious complaint and a complaint. In my experience, the police recognise a vexatious complaint—I think that we all do. That is the reason why, when the League Against Cruel Sports submits evidence to the police, we are meticulous; Billy Telford can testify to that. With our video evidence, mapping and witness statements, we certainly do not make vexatious complaints.

I just want to make that distinction: there are complaints and there are vexatious complaints, and vexatious complaints do not usually work.

Ross Ewing: I will follow on from what Mr Marsland has said. It is worth everyone being mindful that there are groups of people out there who take it upon themselves to disrupt legitimate countryside activities. They can be hunt saboteurs but, increasingly, those people also infringe on the shooting of game such as grouse, pheasant, partridge or whatever. They are starting to infringe on a much wider scale. We need to be mindful of that.

In your question, Ms Adam, you indicated that rough shooting would not necessarily be curtailed. I take issue with that because, if someone wanted to run three dogs on a rough shoot, as people often do now, they would not be able to do so. Similarly, someone who wanted to put a number of dogs through vegetation would have to limit the number to two if they wanted to be absolutely safe.

Karen Adam: That would not be a legal requirement. It would be something that—

Ross Ewing: It would be a legal requirement in that you could not use more than two dogs to flush an animal from cover to then be shot.

Karen Adam: If the other dog belonged to somebody else, that would be a completely different scenario.

Ross Ewing: No—my understanding is that the limit relates to any two dogs that result in the killing act that comes later.

The Convener: Okay. I will bring in Jake Swindells.

Jake Swindells: In relation to DS Telford's comments on reporting, the committee may or may not be aware that Police Scotland now has a facility for people to report when they are night shooting. Quite often, if people see a lamp in an area, they have concerns, and if they hear gunshots at night, they phone the police. The police used to have a system whereby you would call in to report that you were going on a shoot. I have done that many times. Unfortunately, I have been put on hold for a significant period of time so, given the staffing levels that Police Scotland is suffering at the minute, it might not be appropriate to have to do that for every rough shoot. On a Saturday, there might be upwards of 400, 500 or 600 rough shoots across Scotland, and it would be problematic for Police Scotland to deal with those extra calls to report a rough shoot.

Peter Clark: Jake Swindells has covered the point that I was going to make. However, I note that the shooting community has a very good working relationship with the police, which is underpinned by firearms regulations. People must have shotgun certificates, and that underpins the good working relationship and a lot of the trust that we have.

The Convener: The bill is about providing clarity and creating a safer route for people who commit wildlife crimes to be successfully prosecuted. Everybody wants to see that—it is unacceptable for them not to be prosecuted to the full extent of the law.

However, will what is on the table at the moment protect people who legitimately take part in country sport? The bill is not here to ban country

sport or pest control, for example. Does what is in the bill as it stands give you enough confidence that it will allow you to prosecute those who break those laws, or does the bill need to be substantially amended?

I will ask one final question. Should there be something in the bill about breeds? If we said that only certain breeds of dog were allowed to be used in rough shooting and so on, would that work?

Detective Sergeant Telford: At face value, yes. However, Mr Fairlie made a valuable point during a previous evidence session. The problem is that there are opportunities—in relation to crossbreeds and so on—to get around that. However, at face value, there would be a benefit to that. How it was managed and defined would need to be worked on, but I think that that would be of benefit, because only a handful of breeds are used for hare coursing.

The Convener: A list would almost certainly exclude animals that we would later want to include so, rather than having a list, it might assist if the bill says that flushing for rough shooting purposes needs to be done with a dog that is widely recognised as having, and is trained for, that purpose.

Detective Sergeant Telford: I think that that would assist.

The Convener: Does the bill need to be amended to make it easier for Police Scotland to protect those who are not committing crimes and to prosecute those who are?

Detective Sergeant Telford: I think so, given some of the issues that I raised in relation to being able to gather evidence and, in particular, in relation to rough shooting.

Jake Swindells: I will add a word of caution. Although that would probably assist if a long dog such as a lurcher was used, in some beating lines, many terriers are used—they are very good at flushing game—so, we would need to avoid being too restrictive.

The Convener: Okay.

Mercedes Villalba: I have a question about enforcement—I will be guided by the convener if he feels that it does not fit here.

We have discussed the enforcement of the section 6 exception relating to no more than two dogs being used for sporting activity, and we have been talking today about rough shooting and how it might be difficult to ascertain which dogs were used, who was using them and so on.

If that limit was removed, would there not be enforcement issues, because activities would take place with more than two dogs? Would there not

be issues around enforcing the limit in non-sporting areas, such as mounted hunts? Would there not be confusion?

I guess that what I am getting at is that, although we have heard that there are enforcement issues relating to the limit in this instance, if it was not there, would there not be other enforcement issues?

Detective Sergeant Telford: Yes, I suppose that there would be. There is no easy fix, and I am glad that I am not the one writing the bill. I do not quite know how to answer that, but I suppose that if there was no two-dog limit—if the issue around the number was removed—there would still be the issue of packs potentially forming, so there would be challenges in that respect, too.

Mercedes Villalba: Thank you.

The Convener: Before closing the session, I will bring in Jim Fairlie and then Rachael Hamilton, unless anybody else has any burning points to make at the end.

Rachael Hamilton: The pressure is on DS Telford today, but it is his job to enforce the law.

The policy memorandum to the bill says:

“Including rabbits in the definition of wild mammal will aid in the detection and enforcement of hare coursing offences by removing this activity as a potential cover.”

If the Government is hell-bent on including rabbits in the definition of “wild mammal” but prosecution rates for hare coursing offences do not improve—it is obviously very difficult to prosecute at the moment—should that issue be considered in the post-legislative process? Should figures be presented to Scottish ministers regarding that issue? Should the committee consider the matter if the bill does not work, with hare coursers still not found to be breaking the law?

Detective Sergeant Telford: That is not really for me to say.

Rachael Hamilton: It is your job to ensure that people who break the law are found guilty of doing so, and one of the reasons why the bill has been introduced is to aid the enforcement of hare coursing offences. That is stated categorically.

Detective Sergeant Telford: I might have picked up your question incorrectly. In relation to the enforcement of hare coursing offences, the addition of rabbits would aid police investigations.

Rachael Hamilton: Is that based on evidence?

Detective Sergeant Telford: I would say that it is.

Rachael Hamilton: Can you give that evidence to the committee? I have not seen it, so it would be good to have it.

Detective Sergeant Telford: It is—

Rachael Hamilton: Sorry—it is just for the purpose of amendments; that is all.

The Convener: If I got it right, your question is whether there should be some reporting mechanism to suggest whether the legislation is working in the way that it should be.

Rachael Hamilton: And the evidence for it.

The Convener: The question on how reporting will work is probably more for the Government than it is for Police Scotland.

Rachael Hamilton: No worries.

The Convener: It is worth putting the issue on the record, so thank you.

Jim Fairlie has a question.

Jim Fairlie: Or is it Rachael? [*Laughter.*] She skipped me earlier, but it does not matter.

Contrary to what Robbie Marsland has said, I am a great believer in common sense. I think that common sense is a great thing, but I understand that it can leave loopholes.

I am also alive to the point that Mercedes Villalba made. The limit will make it a lot easier for the police because they can be certain that, if there are more than two dogs, laws could potentially be broken.

As Peter Clark said, the working relationship between Police Scotland and the shooting community is very strong, on the basis that we all have guns. The police know who the shooters are because they have already gone through that process with them. If the two-dog rule remains, there will surely be a bedding-in period during which the police will know who the shooters are—in my area, the police know who does the rough shooting. If vexatious claims are made against someone, there might be a period during which that has to be ironed out, but the police will get to know who is having shooting days in the countryside and who is breaking the law.

If the two-dog rule stands—with your understanding of what happens in the countryside and of the people whom you deal with—will you be able to use your common sense to take a view on whether any law has been broken? If no law has been broken, you will be comfortable with letting the activity continue. Why would it be difficult for the shooting community to take that on board, because the police also want to stop illegal activities that happen in the countryside? That is surely the ideal compromise.

The Convener: Do you want to comment, Billy?

Detective Sergeant Telford: It is difficult to comment generally, because we obviously need to

consider all the circumstances at the time. There might be issues. I do not know whether this is common with rough shooting, but people with firearms coming from outwith the area might create a problem.

Jim Fairlie: Whoever organised the shoot would surely be within that locality.

The Convener: That is probably a difficult question to answer. Once again, we know the direction that you are moving in, Jim.

Ross Ewing has a very brief comment. Any other stakeholders who would like to comment on that point should please indicate so now, but we are 15 minutes over our time for this session, unfortunately.

Ross Ewing: In relation to what Mr Fairlie said, from our perspective, the central issue is that the bill will regulate aspects of rough shooting quite unreasonably—it is less about the peripheral stuff. It is our view that rough shooting will be impacted disproportionately in a way that is not consistent with the principles of better regulation.

Peter Clark: We need to decouple the two things. Fundamentally, the way in which the bill is drafted creates ambiguity. That is what needs to be addressed.

Alex Hogg: I will make one point. Let us imagine that everybody here had a couple of spaniels at their heel right now and that we all got up to leave but none of the dogs was on a lead. Can you imagine the mayhem and trying to suss out what was going on? You would have no control over it—everybody would be making for the door, and dogs would be everywhere. Something to mind is that it is awfully hard—what is said is not what you find in real life.

The Convener: I will bring in Robbie Marsland very briefly.

Robbie Marsland: I just want to thank the committee for organising this round-table session; it is very much appreciated. It has sometimes felt a bit lonely, and like things are out of my control, when I have sat in the public gallery. I think that everybody here will agree that this has been an excellent opportunity, so thank you very much.

The Convener: Thank you—I appreciate your putting that on the record. As a committee, we appreciate the responses that we have received. The call for further evidence came with very little notice, so we appreciate the witnesses' time. We especially thank those who have travelled some distance to be with us.

It is really important that we scrutinise the bill properly to ensure that the final legislation is fit for purpose. We will reflect on our discussions and

the evidence that we heard today ahead of lodging stage 2 amendments to the bill.

10:46

Meeting continued in private until 12:36.

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