



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Environment, Climate Change and Land Reform Committee

Tuesday 18 April 2017

Session 5



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**Tuesday 18 April 2017**

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**ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE**  
**12<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Graeme Dey (Angus South) (SNP)

**DEPUTY CONVENER**

\*Maurice Golden (West Scotland) (Con)

**COMMITTEE MEMBERS**

\*Claudia Beamish (South Scotland) (Lab)  
\*Alexander Burnett (Aberdeenshire West) (Con)  
\*Finlay Carson (Galloway and West Dumfries) (Con)  
\*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)  
\*Emma Harper (South Scotland) (SNP)  
\*Richard Lyle (Uddingston and Bellshill) (SNP)  
\*Angus MacDonald (Falkirk East) (SNP)  
\*Mark Ruskell (Mid Scotland and Fife) (Green)  
David Stewart (Highlands and Islands) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Andrea Hudspeth (Tayside Raptor Study)  
David Johnstone (Scottish Land & Estates)  
Robbie Kernahan (Scottish Natural Heritage)  
Duncan Orr-Ewing (RSPB Scotland)  
Andy Smith (Scottish Gamekeepers Association)  
Logan Steele

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Robert Burns Room (CR1)



**Scottish Parliament**  
**Environment, Climate Change  
and Land Reform Committee**

*Tuesday 18 April 2017*

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

**Interests**

**The Convener (Graeme Dey):** Good morning. Welcome to the 12th meeting in 2017 of the Environment, Climate Change and Land Reform Committee. The committee has received apologies from David Stewart.

Before we move to the first item on the agenda, I remind everyone to ensure that their mobile phones are on silent for the duration of the meeting.

I welcome Richard Lyle to the committee and invite him to declare any interests that he might have that are relevant to the work of the committee.

**Richard Lyle (Uddingston and Bellshill) (SNP):** Thank you, convener. It is good to be back. I refer members to my entry in the register of members' interests. I believe that I have no other interests that I need to register.

**The Convener:** Thank you. Welcome to the committee.

**Decision on Taking Business in  
Private**

10:05

**The Convener:** Under the second item on the agenda, I seek the committee's agreement to take items 4 and 5 in private. Are we agreed?

**Members** *indicated agreement.*

## Petition

### Game Bird Hunting (Licensing) (PE1615)

10:05

**The Convener:** Under agenda item 3, we will take evidence from two panels on petition PE1615, by Logan Steele, on behalf of the Scottish raptor study group, on a state-regulated licensing system for game bird hunting in Scotland. On our first panel, we have: the petitioner, Logan Steele; and Andrea Hudspeth, treasurer and raptor surveyor of the Tayside raptor study group. Good morning to both of you.

Mr Steele, can you outline for us the issues around raptor persecution that prompted you to bring forward this proposal for a licensing system?

**Logan Steele:** Sadly, raptor persecution has been endemic in Scotland for some time. Scottish raptor study groups, along with other agencies, have discussed matters and negotiated with those in the shooting industry but, over many decades, we appear to have made very little progress. There is now an element of frustration on the part of the Scottish raptor study groups. Several ongoing scientific peer-reviewed reports detail the absence of key raptor species on ground that is predominantly used for driven grouse shooting. In a nutshell, that is why we lodged this petition and why we are here today.

**Maurice Golden (West Scotland) (Con):** What evidence is there, specifically from the past few years, that the problem exists? Are there specific geographical hot spots for the issue?

**Logan Steele:** The evidence that you need is contained in several scientific reports that have been produced in the past 18 months. The north-east Scotland peregrine population in moorland has been reviewed, and that has indicated a decline on driven grouse moors. A report on the hen harrier population in the north-east of Scotland, of which I was co-author, evidences a decline in hen harriers on driven grouse moors. A report on red kites in the Black Isle, which was published last October, clearly indicates that the red kite population is hemmed in there, due to raptor persecution. The recent golden eagle survey report brought good news, as it showed a recovery in the population of those birds. However, on driven grouse moors in the north-east of Scotland and on the southern uplands, golden eagles have a low occupancy rate, where they are found.

That is the evidence. I know that people are inclined to point to body counts as an indicator of raptor persecution, but the numbers go up and

down depending on chance findings of birds-of-prey offences in various locations.

**Maurice Golden:** For clarity, are you suggesting that the issue around raptor persecution is entirely linked to driven grouse moors?

**Logan Steele:** Raptor persecution is found right across Scotland, but it is particularly intense on driven grouse moors. That is because the industry that drives driven grouse moors requires a large surplus of birds at the end of each season for the guests to shoot. Without that surplus of birds, the industry would not exist. Therefore, all legal and illegal means are taken to reduce the number of predators that could prey on the surplus of birds. Legal means include killing them—you can kill and trap stoats, weasels, foxes and crows, for example. However, on driven grouse moors, some estates are now persecuting birds of prey because they threaten their business model, as I said.

**The Convener:** I would like to clarify something. When you talk about the peer-reviewed evidence that is available, how far back does the period that that covers go? How far back do you feel that it is appropriate for it to go, if it is still to be relevant to the current situation?

**Logan Steele:** That is a good question.

**Andrea Hudspeth (Tayside Raptor Study):** Raptor study groups have been collecting data since the 1980s, so we have numbers and trends that we can see. If we go back to some of the papers, we can see that, over the past decade or so, management has become more intense, and that seems to go hand in hand with raptor persecution. Papers have been generated since the 1980s up to the present day.

**Logan Steele:** I am responsible for co-ordinating the monitoring of golden eagles west of the A9 within Tayside. My data set goes back to 1983. Every year, we visit the same sites and we build up layer upon layer of data. That is one example of a piece of science.

**The Convener:** I am trying to get at what has prompted and is driving the matter. Is it a concern that the situation has worsened over, let us say, the past six years, or would you go back to the early 2000s, when we could point to significant problems in particular parts of the country, although there might not be so significant a problem in those parts of the country now?

**Logan Steele:** It is driven primarily by the intensification of driven grouse shooting. More and more grouse moors are becoming intensified. It is becoming quite a good business model. Some people are investing money in buying driven grouse moors and forcing the bags up. The more that can be shot off a moor, the higher the value is

perceived to be and the more the owner can charge guests the following year.

Driven grouse shooting has become a business and, to be frank, raptors are seen as an impediment to that business. The cabinet secretary herself said that it is a risk to business that raptors are on the ground and legitimately taking food.

**The Convener:** So it is about the present day and a worsening situation, from your perspective.

**Logan Steele:** We know that it is worsening because we can look back at the history. There are data sets going back many years and we can see an intensification. As Andrea Hudspeth said, going back through many years of species surveys, we can also see a continual decline or non-recovery in some areas.

**The Convener:** That is useful.

**Andrea Hudspeth:** We also now have improved technology for tracking birds' movements, so we have satellite tagging data as well. There have been some high-profile cases of golden eagles and hen harriers going missing. Having more evidence and data through that new technology has also led us to our position.

**The Convener:** Thank you very much.

**Angus MacDonald (Falkirk East) (SNP):** There is some disagreement about the environmental impact of game bird hunting. Your petition refers to

"the potentially adverse environmental impact of gamebird hunting".

Will you give us the evidence on the extent of those impacts?

**Logan Steele:** Driven grouse moors need to be brought up to an optimum level to generate lots of red grouse, so hill tracks are being put out on the tops of the moors. We are also seeing deep peat burning. Some of you might have seen reports about the huge fire that took place on the Moy estate recently. There was also a big fire up near the top of Dalnaspidal. Huge acreages of heather are burned. Best practice would suggest that burning be done in small strips, but we are finding that, in some instances, huge areas of moorland are torched. We are finding that medicated grit is being laid out for birds. It is coated with an intense chemical and there is a question as to whether that is going into the food chain.

Those are some examples of the impact. Severe water run-off is also causing pollution problems in localised areas.

**Angus MacDonald:** As you will be aware, in the Scottish moorland group's evidence to the Public Petitions Committee when the matter was

considered last year, Tim Baynes said that management of grouse moorland makes

"a positive net contribution to the environment"—[*Official Report, Public Petitions Committee, 8 December 2016; c 5.*]

What is your view on that statement?

**Logan Steele:** There is an argument that, where there are driven grouse moors, there is a greater increase in the number of waders, such as golden plover and curlew. That is right: if we remove all the predators, through legal and illegal means, there will be an increase in the number of birds that do not threaten red grouse stocks—golden plover and curlew are mentioned specifically. However, the Public and Corporate Economic Consultants—PACEC—report that was published in 2014 indicated that 180,000 woodcock and 130,000 snipe were killed in the United Kingdom in 2012-13. Interest in and concern for waders is appropriate, but it is not shown in other areas.

10:15

**The Convener:** Can I take you back to peat burning and the muirburn code? I do not seek to put words in your mouth, but I want to run an issue by you. It has been suggested to me that one activity that takes place is that, rather than hen harriers being directly persecuted, slopes that provide habitat for hen harriers are being burned, contrary to the muirburn code. If the habitat is removed, the hen harriers are removed, too. Are you aware or conscious of that?

**Logan Steele:** Yes, I am aware of slopes where peregrine have nested that have been burnt out and of heather slopes where harriers have been breeding—or have showed a degree of interest in breeding—that have been torched.

Andrea Hudspeth and I have a particularly unpleasant example. I monitor a pair of golden eagles that have five eyries, of which four are in one glen and one—a very old eyrie—is in another glen. In one particular year, the pair of golden eagles went from the traditional glen over into the neighbouring glen and started showing interest in a rock where an eyrie would be built. However, the whole hill was torched. We have photographic evidence of that. That is an extreme example of what happens on some driven grouse moors.

**The Convener:** When an instance such as that occurs, does the raptor study group engage with the landowners who are responsible? Do you seek to find out why the landowners are doing it, and do you ever get an answer?

**Andrea Hudspeth:** That example is a good case in point, as we have not met the landowners. The estate that Logan Steele referred to is run by

a management company. I have never come across the owner and do not know who owns the estate. The only people who I can talk to on the ground are the gamekeepers, who have been less than friendly and have not wanted to engage in conversations.

**Logan Steele:** We tend to have good relationships with the large majority of people who work on the ground. We work well with crofters, shepherds, farmers and lots of gamekeepers. However, where there is driven grouse moor management, we find an issue with the people, who are loth to engage and—as Andrea said—are quite cold and unwelcoming. We have tried to make approaches to them, but that has been futile.

**The Convener:** Is the issue with all grouse moors, or is it just the ones that are most intensively managed?

**Logan Steele:** The issue is with intensive driven grouse moors where the business model generates a large volume of surplus birds to be killed. There is not a problem with walk-up grouse moors; they are generally fine because the business model is that the guests walk up a hill and shoot grouse that flush from their feet. The guests tend to be happy with their experience of the day on the hill and the odd bird for the bag, which is different from driven grouse shooting, in which guests try to shoot huge numbers and get big bags of birds.

**Mark Ruskell (Mid Scotland and Fife) (Green):** We had evidence from the Game and Wildlife Conservation Trust that listed all the legislation, regulation and voluntary codes of conduct that relate to game bird shooting. It is not a coherent licensing scheme in itself, but it represents a range of forms of separate regulation that apply to the sector. Why is the current system of regulation not working? Is it a matter of the regulations not being suitable, or is it about the policing and enforcement of the regulations?

**Andrea Hudspeth:** Enforcement is a big issue. Unfortunately, we do not have the time or the resources to put in the checks and balances. As you said, a lot of the codes of practice are voluntary and, if nobody is checking, that is where the current system does not work. I am sure that there are lots of people out there who look at the codes of practice and follow them, but there are others who take a few chances and contravene some of the regulations, to their economic advantage. Without the resources, it is very difficult to police such things in remote and rural areas.

Indeed, that is the problem that we are finding. We are out there with no back-up, so to speak; we are witnessing the fact that procedures are not

being followed, but we do not have any back-up to corroborate what we are seeing. We certainly feel that there needs to be extra regulation, which must be backed up with proper enforcement.

**Logan Steele:** Does that answer your question?

**Mark Ruskell:** I just wanted to tease out a little more the current state of the regulations and the legal frameworks that we have and whether they are adequate. Policing and enforcement are a separate issue, but are you content that the current legal frameworks should, if enforced, protect raptor species in the environment?

**Logan Steele:** The legal framework that we have is good. Many previous Governments brought in new legislation and new actions, of which vicarious liability has perhaps been the most high profile. However, enforcement of the law is a major issue, for the reasons that Andrea Hudspeth mentioned, including the need for two independent witnesses to corroborate the offence.

Although a good suite of legal tools is in place, it is still inadequate for cracking down on the driven grouse moor element, who, quite frankly, do not seem to be too concerned and are running fast and loose with the law. After all, the chances of their being caught are very small, their chances of prosecution are very small and the chances of a successful conviction are smaller still. My view is that although those people are very much aware of the legal tools that exist, they are happy to take the risk.

**Mark Ruskell:** So you think that a licensing scheme would allow existing laws to be enforced. Am I right in saying that what you are looking for is not even more stringent protection of raptors, because that protection already exists in law, but a way of enforcing that?

**Logan Steele:** Yes. Of course, it is not up to us, but we would like licensing to be introduced on a civil rather than criminal basis. That is where things are falling down. There is plenty of good legislation in place but, as Andrea Hudspeth pointed out, the problem at the moment lies with getting evidence and getting a conviction in law.

**Andrea Hudspeth:** When you look at the review of licensing systems elsewhere in Europe, you will see that, in other countries, hunting and conservation go hand in hand in legislation. We see an opportunity to have further legislation that places a requirement on the management of hunting estates to provide environmental benefits. We hope that such an approach would help not only with raptor persecution but with ensuring that wider environmental benefits are attached.

**Kate Forbes (Skye, Lochaber and Badenoch) (SNP):** Some of the regulations are relatively recent—in particular those on vicarious liability,

under which there have been, I believe, only two convictions. Could it be argued that the regulations need time to settle down and to be used more before additional regulation and legislation are introduced?

**Logan Steele:** I am sad to say that raptor persecution has been going on for decades, and that the introduction of vicarious liability has not led to a diminution in the number of offences. Against that, there has been an increase in intensive grouse moor management.

If I had a pound for every time I had been offered a new initiative or action, or been told, "Let's give this time", I would be a rich man. Vicarious liability is a very valuable and powerful tool, but it is just one more offer of hope that I have been given over the years, but we have science that shows that there has, in the six years since it came out, been no diminution in killing of birds of prey.

**Andrea Hudspeth:** I would say that we are running out of time for some populations—you have only to look at the status of the hen harrier in England. We certainly do not want to get into that situation in Scotland, so we need to act now because we really do not have much time. As Kate Forbes said, there have been only two successful prosecutions for vicarious liability. How much time do we think we can give it?

**Kate Forbes:** This brings us back to the difficulties with enforcement, which Mark Ruskell highlighted. You have touched briefly on your view that a licensing system would make it easier to have better enforcement. Can you expand a little on that? After all, there have been only two convictions, and there is a need, for example, for two witnesses in finding dead birds, so it has been very difficult to prove cases.

**Logan Steele:** I draw a parallel with Scottish Natural Heritage's withdrawal of general licences. As the committee might be aware, SNH has withdrawn the general licence from two estates; that was not done on the basis of criminal evidence but on the basis of civil evidence. I would very much like to see any system that is introduced being based on the same principle. That would make a big step change in levels of enforcement.

**The Convener:** Concerns have been expressed by some people—one might say that they would say this—that if a regime is not drawn up carefully, estates could be victims of being set up.

**Logan Steele:** I have heard that being said. It would be down to the drafting of the licensing requirements. I suppose that, ultimately, people can express that fear, but I like to think that requirements in any regulations that are drawn up

would remove that fear. However, I can understand their concern.

We are here today because of the inaction of the driven grouse sector and its inability to clean itself up. The sector is now concerned about the possible implications of a licensing regulation, but it has had a long time to clean up its act. It has been dragged kicking and screaming to the stage that we are at today, where we are having to talk about spending a huge amount of time and resource to get a small criminal element to stop breaking the law. I have some sympathy with the view that the convener mentioned; however, equally, the sector has had it within its gift to sort out the issue, but up to now has not done so.

**The Convener:** I have a further devil's advocate's question. You have touched on the existence of licensing regimes elsewhere in Europe, but those countries still have raptor persecution issues, to some degree. That is not a reason not to introduce a licensing system, but do you accept that simply introducing a licensing regime would not necessarily put an end to raptor persecution?

**Logan Steele:** A licensing regime would not put an end to persecution, but it would reduce it considerably, although there will always be somebody somewhere on some remote estate who raises their rifle to an eagle or a harrier. Licensing will not entirely stamp that out.

Scottish Land & Estates submitted a paper to the committee just before the meeting, highlighting the fact that thousands of raptors are being killed in Europe, and quoted a BirdLife International report from 2011. Its highlighting is factually incorrect: the killings that are taking place in big numbers are on Malta and Cyprus, and it is not high numbers of raptors that are being killed, but high numbers of birds in general. There is a slight misunderstanding.

**The Convener:** Okay. Let us move on.

**Emma Harper (South Scotland) (SNP):** Logan Steele told the Public Petitions Committee that he is

"not against game bird shooting"

and has

"no wish to ban it".—[*Official Report, Public Petitions Committee, 27 October 2016; c 15.*]

I am interested in exploring what the solution would be in a system of state-regulated game bird licensing. You have talked a bit about civil licensing. Would there be licensing for all game bird hunting? Who would require a licence? What might be required in order to obtain a licence? What would be the terms and conditions? Who would administer and enforce the licensing?

**Logan Steele:** One option is that the shoot manager would be licensed. In Europe, licensing is done on the estates, whether they are private or public, and individuals are also licensed. Any regulation here would be introduced with the involvement of all interested parties, but our thought is that the shoot manager would be licensed. For example, on a driven grouse moor or whatever, the shoot manager would be responsible for what happens. The system would be monitored through the relevant Government agency, which is currently Scottish Natural Heritage, which would be responsible for overseeing activity.

I do not feel that I have answered your question in its entirety. Were there any other points?

**Emma Harper:** Yes. I assume that SNH would monitor or process the scheme, which raises issues of logistics and finance, and everything around those.

**Logan Steele:** Yes: indeed it does.

**Emma Harper:** I assume that you are suggesting that the scheme would address the problem of illegal activity. As the convener said, it would not stamp out illegal activity.

**Logan Steele:** A licensing scheme would not address the matter entirely but it would, I hope, reduce persecution to a far lower level than it is currently at.

You mentioned finance. It is interesting that quite a lot of the 14 countries in Europe that were reviewed by SNH for its report on the issue charge for a licence or permit to hunt, and in many cases that money goes a long way towards offsetting the cost of running a licensing system. Such a charge might offset the impact of the extra cost on SNH.

10:30

**Emma Harper:** I have one more question. I have spoken recently to many people in the south-west who are concerned about there being an increase in the number of hen harriers, not a reduction. They say that the hen harriers are affecting other species—for example, lapwings, which are not to be seen on the ground any more. What are your thoughts about that? People are saying one thing, evidence says another. The evidence needs to be definitive about whether the number of birds is increasing or decreasing, irrespective of whether they are raptors or lapwings, or other birds.

**Andrea Hudspeth:** That is what I was just about to come in on. In many systems in Europe, bag data is collected and populations of birds in general in an area are studied far more. That gives an idea of what can be hunted sustainably, natural fluctuations in populations and so on. We hope

that such a system would mean that there would be a co-ordinated approach to working out populations of different species.

To answer your question about lapwings, there is no association between harriers and the taking of lapwings. I do not think that hen harriers would have a detrimental effect on the populations of lapwings.

**Emma Harper:** I was assuming that the hen harriers go after eggs.

**Logan Steele:** No—hen harriers predominantly take small prey, such as grouse chicks and small voles. They take other small pasturing birds, but they do not take eggs.

There is a general feeling in the countryside that there are too many raptors, including buzzards and harriers. However, the environment controls the raptor population—it is not the other way around. Evidence in some local surveys indicates that some raptor numbers are starting to decline; for example, buzzard numbers have restored to a natural population level, but we are seeing some regional declines. There is concern that buzzards are breeding and numbers are increasing beyond all recognition, but that is not entirely correct.

**The Convener:** I would like you to clarify something for me. Are you looking for a one-size-fits-all national system or do you favour a system such as the one in Germany—I think—where there is local variation across the country? I am asking from the point of view that we all know that there are hot spots in Scotland. Are you looking for a system that could be tweaked locally to address that, or for a nationwide system?

**Logan Steele:** I am not bold enough to predict what the system would look like. That would be up to the architects of whatever licensing regime is drawn up. However, you make a good point. There are five key hot spots for raptor persecution, so when the architects of the licensing regulations are drawing them up, some recognition might be given to that.

You are right that Germany has a national system on top of which local governments can apply enhanced regulation. That might be a good way to go.

**The Convener:** Would such enhancement work in the Cairngorm national park, for example?

**Logan Steele:** I think that licensing against persecution should be uniform across Scotland. It might be tweaked locally, but I cannot imagine what sort of tweaking would be required to limit or stop the killing of raptors that would not apply everywhere in Scotland. It is a good point and one that is probably worth delving into more deeply, but I would not be too binary and say it should be this or that. We need to be open-minded and to

speak with all stakeholders so that we come up with something that works for everybody.

**Andrea Hudspeth:** Any system that has collection of data built into it will be helpful in terms of looking at populations of birds and whether there are different levels in different areas, and so on.

**The Convener:** Have you thought about the resourcing of such a scheme? Stakeholders, Parliament and its committees are very good at finding things for agencies to do, but agencies must have the resources, and we all know that SNH's budget has been stretched. Do you see it as being a self-financing licensing regime?

**Logan Steele:** Again, I do not want to be too prescriptive, but most of the European models are cost-neutral in that the cost of the licensing tends to cover the costs of the extra work. We would not want an additional financial burden to be placed on SNH for administering the scheme.

The people who enjoy the benefits of shooting should pay to cover the administration cost. In the 14 European countries that were surveyed, some money goes back into active conservation management. That goes back to Andrea Hudspeth's point that in Europe there tends to be a culture of hunting, whereas in Scotland and the UK the culture tends to be shooting—which is an interesting dichotomy. The European system seems to work well in some of the 14 countries that have been highlighted.

**Claudia Beamish (South Scotland) (Lab):** Good morning to you both. Can either of you pinpoint the main ways in which your proposed system will contribute robustly to addressing the problems that we have heard about? A summary would be helpful.

**Logan Steele:** We might, for example, in one of the five hotspots where we continually find instances of illegality, find meat laid out that is laced with poison, or birds disappearing from specific areas. Best practice in muirburning, for example, may not be being adhered to, so we could find an increased number of nest failures or areas of suitable habitat being burnt out. Such evidence is not proof of crime, but if we had a civil burden of proof, we could find lots of evidence of illegality, yet have no smoking gun—as it were—to find. I am trying to get to a layering up of evidence of such instances.

**Andrea Hudspeth:** If the system that we propose is to be self-financing, part of the finance would go towards enforcement using people on the ground. At the moment, not many people proactively go out to look for wildlife crime—the police force does not have the resources. A system of regulation that has to be enforced will require people to go out to check that correct

procedures are being followed. We hope that the knowledge that people are watching and can make spot checks would be a deterrent.

**Logan Steele:** Some European countries have a force of conservation officers—France, for example, has more than 1,000 officers, which is funded partly by money that is raised from licensing. We could, arguably, have in the five hotspots a paid-for cost-neutral force of environmental police officers who would take more interest in wildlife crime than the normal bobby who is busy with other matters.

**Claudia Beamish:** You have highlighted that it is difficult to find whether a crime has been committed, and that there are different burdens of proof for civil and criminal law. How might terms and conditions lead to withdrawal of a licence? It is a difficult question, but it would be helpful if you could give a sense of how that would work.

**Logan Steele:** What do you mean by “terms and conditions”?

**Claudia Beamish:** A licence would have terms and conditions; you gave the example of licensing the shoot manager as a way forward. If terms and conditions were not honoured, what would be the process whereby a licence could be removed?

**Logan Steele:** That would not be not entirely up to us, but we would like licensing in which a number of land-management techniques are adopted and adhered to. For example, a few months ago I saw a whole hillside being torched, against the Moorland Forum's best practice. Other instances of illegality in which there would not be enough evidence to bring a criminal prosecution could include an estate putting in hill tracks without adhering properly to regulation, deep peat burning, or moors being drained rather than wetted properly. Such examples do not adhere to best practice. Does that answer your question?

**Claudia Beamish:** That is helpful. Thank you.

**Mark Ruskell:** You mentioned the role of SNH in running the potential licensing regime. Do you envisage a role for the Scottish SPCA?

**Logan Steele:** I would like the Scottish SPCA to be brought in so that its skills and expertise could perhaps be used to fill gaps where rural police do not have enough reach or time. That would be very helpful. I fully appreciate that that is on the cabinet secretary's desk at the moment. The Scottish SPCA has a special skill set that could be brought to bear.

**Finlay Carson (Galloway and West Dumfries) (Con):** Good morning. I have a few questions.

Given the concerns that Emma Harper and others have raised, have you considered the

environmental, economic and community impacts of such a licensing system?

**Logan Steele:** Would you explain what you mean by that?

**Finlay Carson:** We have heard from Emma Harper that some people have concerns that there might be an impact on raptor numbers. What work and investigations have you done on what the environmental and cultural impacts of the licensing would be?

**Logan Steele:** I would turn that question on its head and ask the shooting industry what impact it has had on green tourism. We know that £1.4 billion is spent each year on green tourism—that is an SNH figure—and that green tourism employs 39,000 people. I would ask the shooting industry what impact it has had when it has undertaken driven grouse shooting and what impact that has had on other people who could legitimately enjoy a business in the same area.

**Finlay Carson:** I am sure that the shooting industry will deal with that in the next session, but have you done any work to look at what the negative impacts might be? There are always two sides to every story.

**Andrea Hudspeth:** The raptor study group is voluntary. We all have other jobs, and we go out and do the work in our own time. We perform a very important function in collecting all the data. We do that voluntarily, and we give that data to SNH, the rare breeding birds panel and so on. I do not think that any of us would have the time or expertise to undertake a study such as that which you are suggesting. We would probably ask that the Government look into having an independent body to do such an investigation. The economics of the matter—whether we are talking about green tourism or the shooting industry—need to be investigated further, and we would expect that to be done as part of the review of the system.

**The Convener:** I will follow up Mr Carson's point. Let us forget about a formal study. You have put a lot of thought into the petition and have clearly provided answers to a lot of the criticisms that have been made of what you have proposed. One criticism that has been made—rightly or wrongly—is that, if the proposal was introduced, some estates might back away from driven grouse shooting. That would have an economic impact on the locality and gamekeepers would, allegedly, lose their jobs. How do you respond to that? I presume that you have thought about that.

**Logan Steele:** Yes, we have. We are not against shooting, and we are not asking for grouse shooting to stop. We would be more than happy if intensive driven grouse shooting reverted to walk-up shooting. Keepers would still be employed, there would still be the usual infrastructure, and

revenue would still come in from guests in the shoulder season. Therefore, we do not see there being a major impact. All that we are asking for is the illegal element of grouse shooting to stop and therefore every stratum to obey the law. We would still see keepers being employed, estates, estate houses, guests coming, and hotels.

**The Convener:** Okay. We just needed to get that clear.

**Logan Steele:** It is a good point.

**Finlay Carson:** To carry on from the question that I asked, what other pros and cons do you see in a licensing system? I understand that, in Europe, many licensing systems are based on hunting licences for hunting on public rather than private land. Have you thought about that?

What would happen if, for example, a tagged eagle disappeared from a certain estate? Would that result in that estate losing its licence? What would happen if that bird turned up somewhere else in the country a year later? How would that sort of thing be enforced?

**Logan Steele:** Again, it is not for us to draw up the minutiae and details, but I would not see a satellite-tagged golden eagle disappearing over one of the five hotspots and there being a ban. The police would be involved, there would be a criminal investigation and the police would look for evidence. On the balance of that, if the police did not find the dead body or the satellite tag, I would not see there being a straight banning of shooting licences. There would need to be a tiered approach and a number of instances over a period of time before action was taken.

**Finlay Carson:** Why would that process be different from what we currently have in place? Why would a licensing system make that process any different?

10:45

**Logan Steele:** A licensing system would make a difference because any action would be taken on the civil burden of proof, not the criminal one. Where there is evidence of illegality and we went to the civil burden of proof, that would take us to a situation far more quickly and easily than one requiring a criminal burden of proof, which we know is very difficult to achieve.

**Finlay Carson:** Can you address the point about the licences in Europe being based generally on public rather than private land?

**Logan Steele:** Yes. The review looked at 14 European countries where the licensing applies to both public and private land. The review makes it quite clear in the summary document that legislation can work across both private and public

land. Again, though, that is for only the 14 European countries, and what happens in Scotland would be unique to Scotland. However, a lot of best practice can be drawn from the 14 countries with regard to what is appropriate for the Scottish setting.

**The Convener:** You think that it would be feasible and practical to look at what happens elsewhere and pick and mix options.

**Logan Steele:** Possibly. That would be quite a good starting point, but we are different from everybody else and there would be a lot of local input. A lot of the laws in the 14 countries are based on historical cultures of hunting that are different from what happens in Scotland, but looking at what happens in the 14 countries would be a good starting point.

**Kate Forbes:** A number of times, you have suggested using what happens in Europe as a model for a licensing system here. However, the SNH report makes it clear that there is still raptor persecution in European countries, where the situation is obviously not perfect. Do you accept that point?

**Andrea Hudspeth:** Yes, but the case studies show that raptor persecution has been reduced in a lot of European countries and that only a handful of countries still have a severe problem with raptor persecution. As Logan Steele said, there will always be that element of criminality and we will never get rid of it completely. However, in the Spanish example, BirdLife International partners have worked with the Government and have made great inroads in tackling raptor persecution. That shows that when people work together and are on the same page, they can achieve great things. That is our hope, because we want to work with all the other stakeholders and come up with a system that works for everyone.

**Logan Steele:** A few years ago in Spain a farmer laid out poisoned bait and killed six imperial eagles, which are really rare birds. Following that, there was a huge increase in public awareness and a freephone number was set up amid a lot of dialogue and information. That initiative turned a spotlight on the issue and has resulted in 30 convictions. The farmer in question was given a hefty sentence that involved not just imprisonment but a financial penalty, because there was an obligation on him to provide money to try to replace the number of imperial eagles that he had killed. The Spanish have been quite innovative in applying a monetary value to each bird of prey. When a bird of prey gets killed, they can fall on the economic value of the bird rather than saying, "Well, it's just six imperial eagles."

**The Convener:** Thank you for your evidence.

I suspend the meeting briefly to switch over to the next panel, which will also include Mr Steele.

10:48

*Meeting suspended.*

10:57

*On resuming—*

**The Convener:** I welcome everyone back to the meeting. We continue our discussions with stakeholders on petition PE1615 by Logan Steele, on behalf of the Scottish raptor study group, on the state-regulated licensing of game bird shooting in Scotland. We are now joined by Duncan Orr-Ewing of RSPB Scotland, David Johnstone of Scottish Land & Estates, Andy Smith of the Scottish Gamekeepers Association, Robbie Kernahan of Scottish Natural Heritage and—again—Logan Steele. Welcome to the committee, gentlemen.

Do the panellists who have just joined us have any general comment to make on Logan Steele's earlier comments on raptor persecution and whether there is a specific problem in areas of the country where there is intensive game bird shooting? Is the problem as widespread as some have suggested or is it created by a small, rogue element?

**Duncan Orr-Ewing (RSPB Scotland):** I will take the last point first. For a number of years, the RSPB has catalogued confirmed instances of crimes against raptors in Scotland and we produce an annual report on the illegal killing of birds of prey. Over the last 20 years we have identified 779 confirmed incidents on 200 landholdings in Scotland. We think it is a widespread problem, although our main concern relates to areas of land that are managed for driven grouse shooting, where the illegal killing of birds of prey seems to be part of the business model for a number of places.

We think that the situation is as bad as it has ever been. The recent SNH scientific advisory committee review of moorland management has also indicated an intensification of the management of such areas in recent years, predicated on trying to increase grouse bags to very high levels.

**David Johnstone (Scottish Land & Estates):** It will come as no surprise that I do not accept the presumption of the discussion. The Government's statistics clearly show that in the last five or six years there has been a decline in birds-of-prey crime.

I caveat my remarks by saying that as an organisation we do not condone wildlife crime of

any sort in any shape or form, whether that involves raptors or other wildlife.

We have been working extraordinarily hard with the Government in the partnership for action against wildlife crime working group to identify the issues, deal with them and make recommendations to ensure best practice. I am sure that we are going to come on to discuss much of the legislation that has already been changed and how it is working. I simply do not accept what Duncan Orr-Ewing has said.

11:00

**The Convener:** I will play devil's advocate, Mr Johnstone. The Government figures that you refer to might be skewed by virtue of the fact that the increased regulatory regime that has been introduced might lead those who are carrying out the crimes to hide the evidence. I have never understood the logic of murdering a bird of prey and leaving it to be found—the evidence of the crime. Is it possible that, given the introduction of vicarious liability, general licences and so on, we are simply not seeing the evidence of those crimes because people are hiding it?

**David Johnstone:** No. Since the Scottish Parliament came into power and introduced the right to roam legislation there are more people wandering around the countryside, with access to cameras, social media and everything else. The level of scrutiny has never been higher—the police have the ability to access and enter premises without a warrant and the RSPB has hidden cameras filming what is going on. The estates are absolutely clear and aware of that. They are bringing in expertise and lawyers to address the issue and tell their employees exactly what the law is, how it is to be enforced and how they have to behave. It is unequivocal. Everyone knows exactly what they have to do and what the law is. The improvement is marked.

**The Convener:** Okay.

**Andy Smith (Scottish Gamekeepers Association):** We, too, do not condone any wildlife crime. As I have said to the committee before, if any of our members is found guilty of any wildlife crime they are expelled from our association. We do not want such crime and it does not fit with what we are trying to do.

Once again, we hear that the problem is endemic across Scotland and that it is happening on intensively driven grouse moors. As David Johnstone was saying, the Scottish Government figures that were published recently show a massive drop—26 per cent—in bird-of-prey crimes in the last 12 months. There was a 40 per cent drop in bird-of-prey crimes in the last three years

and an 85 per cent drop in poisoning cases between 2010 and 2016.

We acknowledge that there was a problem, which goes back to the RSPB's 20-year plan. The RSPB continues to bring that out, but the figures have gone down since then.

As to whether the killing of raptor species is endemic, according to the British Trust for Ornithology, buzzard numbers are up 23 per cent, ravens—although they are not raptors—are up 41 per cent, red kites are now off the endangered list and sea eagles have been reintroduced and their numbers are increasing. If such crime was endemic and happening all over Scotland, you would not have buzzards and ravens all over Scotland as we currently do.

**The Convener:** Although both the SGA and SLE utterly condemn such activities, you do not represent everyone out there and you cannot control your membership. There is no doubt that there is a problem that needs to be addressed.

**Andy Smith:** Given what David Johnstone said earlier, and as I know from my experience, you have to ensure that everyone knows that vicarious liability is a big thing. There are courses all over the place and there will not be many keepers who have not been on a vicarious liability course at some stage in their career. We try and make sure that everyone at the local estate goes on one. Most estates take that on board.

**David Johnstone:** It is being addressed.

**Logan Steele:** I challenge the assertions by those speakers. They talk about a decline in prosecutions and in the number of dead bodies but that does not reflect reality. Four scientific reports have come out in the last 18 months for kites, hen harriers, peregrines and golden eagles. The populations are in decline; they are not recovering and are still suffering from historic lows. To say that it is not an issue with the evidence of that body count is to ignore reality.

Very shortly we will hear the results of the satellite tag survey, which will also be quite interesting.

**The Convener:** With respect, we have heard all the polarised views. What is SNH's view of the situation?

**Robbie Kernahan (Scottish Natural Heritage):** Good morning. My starting point is probably slightly different from everyone else's. Generally, in Scotland, we have quite a positive message about the recovery of raptor populations from those all-time lows. It is certainly a national picture.

However, that is not to say that there are not issues. Certainly, some of the concerns about the

intensification of moorland management prompted our scientific advisory committee to have a review two years ago. Without wanting to go through that chapter and verse, I can say that there is no doubt that the on-going issue of raptor persecution is inhibiting the recovery of populations in some parts of the country.

**The Convener:** Okay, thank you. Let us move this along. Mark Ruskell has a question.

**Mark Ruskell:** What is the core issue here? Is it about raptor persecution, in isolation, or is it about the intensive, high-density game bird systems that we have? You seemed to imply there that there is a wider issue with those systems.

**Robbie Kernahan:** We have touched this morning on a range of things about the management of driven grouse moors. Some of those concerns are what prompted the SNH scientific advisory committee review about what evidence there is to suggest that such intensification of land use is having a detrimental impact on biodiversity generally. The review did not come up with any clear-cut conclusions, but there are some issues in there, of which raptor persecution is one. We have heard about muirburn, illegal hill tracks, deer management and mountain hares. There is a range of things that were of sufficient concern to prompt the review, which made a number of recommendations for further work, some of which is on-going.

We are here today to talk about the licensing of game bird shooting, but that is just symptomatic of some of the concerns that exist about land use and how intensively grouse moors are being managed.

**Mark Ruskell:** Perhaps we could hear some other views about that from the industry and the conservationists.

**David Johnstone:** About the intensification level?

**Mark Ruskell:** Yes.

**David Johnstone:** In the previous session, we heard a bit about intensification being labelled as the area of greatest concern. Some of the estates have put in the highest calibre of good management to ensure that all the employees who work on the estate are fully aware of everything that is going on. They have taken on what happened in the Wildlife and Natural Environment (Scotland) Act 2011, with vicarious liability and all the rest of it, and they conduct regular seminars with staff, at which outside professionals are brought in to explain, chapter and verse, exactly what needs to be done.

If we go back 15 years ago or so, before the previous act was introduced, some of the contracts between employers and employees

would not even have existed on a bit of paper but would have been done on a handshake. Now they are very carefully laid out and the rules and regulations, and what people cannot do, are crystal clear. Best practice has improved dramatically over the past four or five years, and we are seeing the result of that filtering through.

**Mark Ruskell:** Could that be the basis of a licensing regime?

**David Johnstone:** No—with licensing you are talking about something completely different.

**Mark Ruskell:** You state that there is already compliance with the various regulatory regimes. Is that like a licensing regime?

**David Johnstone:** The regulatory regimes that have come about—through the WANE act and so on—have created good practice and gone beyond that to ensure adherence to the good practice. With a licensing regime, you are talking about bringing in a different level of proof—the civil burden of proof—which would have a much more dramatic effect on the ability of businesses and shoots to operate efficiently and safely without risking their investments.

**Mark Ruskell:** However, you have stated that training and accreditation already happens within estates. How hard would it be for you to then move to a licensing regime that in effect reflects the regulations that you say the majority of estates are already—

**David Johnstone:** With a licensing regime, you are talking about not the criminal burden of proof but the burden of probability, and removing the ability for that business to trade. If the business loses its ability to trade, it is finished. The estate can just no longer take part in a business. The risk of running that business is altered considerably. It does not matter whether a sporting business is upland grass shooting, lowland pheasant shooting or anything else; there is a period of time during which the business brings in the customers and interfaces with them. If an issue rears up at the start of the season, the business loses the whole season; all the income is gone, everything is finished and the business is no longer viable.

**Mark Ruskell:** I am struggling to understand why those businesses would be at risk. We heard evidence about all the regulations and laws, and about the good practice that estates are following, and you have explained how you are putting in place the training and the appropriate record keeping to ensure that that is done. What would be the risk of your failing to meet the requirements of the licensing regime, if you are meeting the legal terms and conditions and following the good practice that already exists? I am struggling to see what the extra burden is, or what the risk is, to a business that is already fully compliant.

**David Johnstone:** The risk with a licence, as I understand it, is that there is to be a lower burden of proof, so that if something untoward is found to be happening in an area where shooting is going on, the licence for that area can be removed. That does not mean that the people in that area would have been convicted or thought to have done anything wrong, but their ability to trade would be gone and that changes dramatically the risk for operating that business. Running a shooting business is difficult, as there are finite margins, and things that change the risk profile will make people think twice.

**Mark Ruskell:** If that lower burden of proof still has to be based on evidence, and if you already have systems in place to ensure compliance with existing regulations and laws, I still do not see what the risk is. You seem to be saying, "There would be a risk of us getting caught."

**David Johnstone:** No, it is not a risk of getting caught. The risk has been discussed previously; for example, if somebody interfered with a Larsen trap on the estate and the licence was removed because of damage to that Larsen trap, even if the estate had nothing to do with it, business would stop while things were being sorted out, because the licence would be suspended. That is a huge risk to bear from activity by somebody else, when the estate itself has done nothing wrong. That is the difference here. It is to do with changing the burden of proof.

**Duncan Orr-Ewing:** The illegal killing of birds of prey is part of a package of issues that are causing concern at the moment about the way in which large swathes of upland Scotland are managed. The SNH scientific advisory committee review of moorland management has highlighted how, in recent decades, the intensification of grouse moor management in particular has caused that concern. Part of the issue is that, unlike other natural resources management in relation to game bird hunting, we have no real assertion of the public interest.

We have been considering the deer issue fairly recently, and we have the Deer (Scotland) Act 1996 and the deer code, which sets out the public interest. The codes that David Johnstone and others are referring to are largely voluntary codes that the sporting sector promotes and encourages adherence to, but out on the ground I am afraid that the picture that you see is very different, and a lot of those voluntary codes are simply not being adhered to. The muirburn code is one example, and we have heard of some bad practice in that area. The code of shooting practice is another example, and with the illegal activities that are going on, we see a lack of adherence to that. There is also the code that Scottish Land & Estates and the GWCT drew up with Scottish

Natural Heritage in 2014 on the culling of mountain hares, following public concerns on that issue. Again, when you are out on the ground, you see lack of adherence to those so-called industry standards. We need a code that better defines the public interest and sets out clearly what that looks like and what the expectations of the industry will be, linked to a licensing system.

**The Convener:** Even if one accepts that the Scottish Land & Estates members are following those codes, Mr Johnstone's organisation does not represent all the landowners in Scotland. Roughly speaking, how much of the land in Scotland is managed outwith your membership?

**David Johnstone:** Blimey.

**The Convener:** It is a bit of an unfair question, but I am trying to get a feel for this.

**David Johnstone:** That is a good question. We probably represent about 70 per cent of estates in Scotland, but if I tried to say how that relates to landmass I would be guessing. The majority of land would come under our membership, I would imagine.

**The Convener:** But roughly a third is not, so even if your good influence is brought to bear on your membership, there is still a third of the land out there—

11:15

**David Johnstone:** Even within that third of landowners who are outwith our membership, good practice is being exhibited. We accept that within any industry, in whatever walk of life, there are people who are bad eggs who will do stuff that is illegal. However, I do not recognise the idea that it is endemic. I think that it has become the exception. The culture within the landowning community has completely changed over the years.

**The Convener:** Okay. Thank you. I recognise that the question was unfair, but—

**David Johnstone:** I can work it out and get back to you if you want.

**The Convener:** It would be useful to have that information, I think. We will return to Mr Ruskell's question.

**Andy Smith:** You obviously have a list of some of the requirements that are not codes but are actually legislation—their cover is quite widespread. Two of the big things in Scotland that do not require a massive civil burden of proof are the firearms legislation and the general licence, which is issued through the Wildlife and Countryside Act 1981 and through SNH. They are both contained in legislation and they already have a civil burden of proof.

The police will remove firearms from a gamekeeper if he is suspected of any wildlife crime. That is akin to a joiner having his tools removed from him; it is the same sort of thing and is a pretty hefty sentence in itself. We have a very stringent firearms policy and getting a firearm in this country is not an easy thing to do—you have to go through a lot of processes.

Similarly, and more recently, general licences have been removed purely on suspicion—although there might be suspicion with evidence. The general licence is another tool that can be taken away from us. That can then lead to individuals being under the spotlight. I think that I am right in saying that they can reapply but they are absolutely under the spotlight. That in itself is a massive, massive tool.

I do not know whether licensing would make that any different. We have that in place already and I do not think that licensing would make a big difference. If you go down the licensing route, you could have a licence purely on a game bird shoot. I should point out some of the things that have already happened to our members, which we have recorded.

We have had traps being sprung regularly, in both upland and lowland areas. Snares have been removed and untagged snares have been hung on estate fences. Every operator of a snare has to go through a training course; every operator of a snare is registered with the police; and every snare has to bear an identification number. There is regulation on snaring.

We have had stoat traps damaged and tampered with and we have had traps broken with stones. Fires have been started deliberately. You spoke about muirburn earlier. We accept that things can go horribly wrong, but some people go out there to perhaps point the finger.

Rabbit boxes have been vandalised. We have had one keeper in an upland situation who has had hidden cameras placed on the front door of his house, checking his family going in and out. That is unacceptable. That is being worked on just now. We have had vandalism all over the place. I have experienced it. I am a keeper quite close to the town and I have had my traps vandalised; I have had magpies released from traps. Perhaps some people think that that is going to happen.

One estate has given its gamekeeping staff personal vehicle and handheld cameras to make sure that they are within cover, within the law. There is a lot going on and there are a lot of things that can happen out there. If you go down the total licensing route and you link licensing to that, that is happening already and it will continue to happen.

We already see on social media what a number of people do—I am not pointing a finger at anybody but, with respect, some of the raptor groups point a finger at people and say, “Go out and check.” When you go into scrutiny, they are telling people to go out and check what is happening. That is happening. I can give you—

**The Convener:** But, with respect, Mr Steele has already acknowledged the possibility. He discussed his petition earlier and has indicated that something would have to be built into a licensing regime that took account of the possibility of estates being set up. I think that everybody around the table recognises that there is a risk and that it would have to be catered for if a licensing regime were to be introduced.

**Andy Smith:** Definitely. Yes.

**The Convener:** Does anyone else want to follow up on Mark Ruskell’s question?

**Claudia Beamish:** I want to get a better understanding about the forms of game bird hunting. In the earlier session, Logan Steele mentioned the intensification process. Correct me if I am wrong, but I understand that that has, in his view, increased in some areas in recent years. As well as the driven grouse moors, there are the walk-up grouse moors. Can anyone shed any light on why the intensification process has increased so much? Are walk-up grouse moor businesses much less productive in profit terms? Why are those developments happening? Is one form better for wildlife and the environment more generally?

**David Johnstone:** The main forms of game bird shooting in Scotland are the grouse, the partridge and the pheasant shooting. We are mostly talking about grouse shooting here. Walk-up grouse shooting is a more low-key affair, with considerably less employment of gamekeeping staff, whose numbers would be dramatically reduced, and the beaters, the pickers up and everyone else who comes out on the day. Therefore, a lot less revenue comes into the area where the shooting takes place. Considerably less income comes into hotels and so on during the shooting period. Businesses are a lot smaller, and there is a lot less employment in pretty fragile rural areas; that would be particularly true with Brexit and the future changes to subsidies.

There is no doubt but that turnover is considerably greater in moors that shoot driven grouse. That does not necessarily mean that those activities are profitable in themselves, because the grouse moors often do not make a profit. The assumption is that they are profitable, but sometimes the businesses make quite considerable losses. However, people are prepared to invest that money in the communities

to ensure that they are viable and that they survive.

On the environment side, the studies at Otterburn have shown that kept grouse moors are good for curlews, lapwings and other species, because they benefit from the predator control of stoats, weasels, foxes and so on.

**The Convener:** Do they need to be managed as intensively as they appear to be managed? Is there not a happy medium to be struck?

**David Johnstone:** I suppose that that depends on the clientele who are looking to come and shoot. The short answer is that yes, some places need to be managed intensively to ensure that they achieve the surplus wanted by the people who are coming to Scotland and spending their income on tourism.

**The Convener:** Is that not the root of the problem? Does that not lead to the removal of birds of prey, because they cannot coexist alongside that level of intensity?

**David Johnstone:** I am sorry, but you can have birds of prey existing alongside that level of intensity. We are coming to the heart of the argument. Last year's RSPB survey showed that the golden eagle population is going up. Grouse moor owners up in the north-east are taking part in the heads up for hen harriers campaign. I think that 325,000 hectares or so are covered and the owners are signed up and asking for cameras to be put on nests to view exactly what is going on and what is causing the problems in order to address what is happening.

**Duncan Orr-Ewing:** I need to correct that. The national golden eagle survey does not at all paint that picture. The results for area A, which is the Cairngorms national park, Angus glens and that part of eastern Scotland, show that just over a third of all known golden eagle territories in that part of the world are occupied and that the potential for golden eagle recovery is massive. Various studies point firmly at the illegal persecution of golden eagles in that area as the main problem driving their low population status.

The other point about the driven grouse system is that it is unique in world terms. Many external observers from Europe and elsewhere who see it say that it just would not be allowed in their countries, because it is not part of their culture of hunting. Logan Steele alluded to the fact that we have a tradition of sporting in this country, rather than a culture of hunting.

The culture of sporting relies on having very high bag numbers of grouse. In some cases, we are seeing autumn densities of over 300 per square kilometre for grouse moor owners and their clients to shoot. In England the densities are even

higher. Those high densities have been brought about by a range of factors: primarily medication of grouse, but also increased muirburn and heavier duty predatory control through the employment of more gamekeepers per square kilometre to control predators.

One thing that emerges from the SNH review of game bird licensing in other European countries is that such high-intensity game bird hunting models do not exist in those countries. That is part of the root of our problems.

**The Convener:** We will come back to that.

**Andy Smith:** May I come in on intensification? If we were to go back to the 1920s or 1930s, we would see that that was when grouse shooting was at its absolute highest. That was probably when persecution was at its highest. You would probably find that, over the years, the numbers have reduced. A number of grouse moors do not exist anymore. The numbers are up just now, and that could be down to the good practice by the keepers who are employed there, who are working well to do that.

Wildlife tourism was noted earlier. We have keepers on intensified—if you want to use that word—or well-managed grouse moors who have wildlife tour businesses come to show their clients wildlife on a grouse moor, including raptors. That is happening with some of our members up north.

**The Convener:** Let us move the discussion on. Emma Harper has a question.

**Emma Harper:** I am interested in the environmental, economic, community or cultural impact that a licensing system would have if it was introduced. We talked about that earlier. I am interested in the economic impact because I am aware that it can cost a lot of money to shoot birds. I think that it costs £70 pounds a brace—a brace is two birds—and a minimum is required. In addition, David Johnstone said that there are finite margins for estates. Can you help us to understand what the economic impact would be if we introduced a licensing system? I have seen that some estates can make lots of money: £10,000 to £30,000 per shoot or in a day. Is that because the season is really short? What would the impact of a licensing system be?

**Andy Smith:** The Angus glens were alluded to earlier. We did a report on that area—it may not have been scientific but we did it for our benefit. In the three glens over the wintertime, somewhere in the region of £1 million was made. That report was for our benefit, to show that grouse shooting has an economic impact on jobs and all the rest of it that goes with any working estate. There is a knock-on effect on everything.

**David Johnstone:** I should clarify that that is not profit. We are not talking about profit. The economics of running a shoot, whether it is upland, lowland or wherever else, are that staff who are employed—the gamekeepers and so on—are employed throughout the full 12 months. There are also the add-on costs of the maintenance of houses, the feed that comes in if you are on low ground, and all the rest of it. Throughout the year, a considerable amount of money goes out. You then have a period when people come in to shoot and pay whatever price you are talking about. Sometimes it costs a little bit more for driven grouse shooting.

When you add it all up at the end of the day, there is a very large turnover that filters through an area to hotels, schools, local shops and all the rest of it, but the actual profit for the business itself is marginal. These places are not making huge sums of money out of what they do, but the turnover and therefore the knock-on benefits to the wider communities can be remarkable in places.

In our area, for example, the low ground shoot in the neighbouring valley has led to the hotel in the middle of town being completely rebuilt and transformed on the back of the local shooting. They are now able to fill the hotel for 80 bed nights throughout the winter; previously, the hotel would have been dead and might well have been shut, as keeping it open was just not viable. That sort of thing regenerates the whole town, and it has a considerable effect.

11:30

**Duncan Orr-Ewing:** As Logan Steele was hinting at earlier, we also need to look at the opportunity costs of this activity. Essentially, we have been running a particular model for driven grouse shooting for nearly 200 years; the Scottish Government now has slightly different priorities and we are looking at, for example, more diversified rural economies, native woodland expansion and the management of peatland areas for climate change reasons. However, the fact is that large areas of upland Scotland have in effect been sterilised—“sterilised” is probably an extreme term, but you get the point—and are focused on one particular land use, which in this case is driven grouse shooting. You will not achieve those other objectives or the delivery of the Scottish biodiversity strategy if so much land continues to be focused on one particular land use.

**The Convener:** That brings us to Angus MacDonald’s question.

**Angus MacDonald:** I will stick with the environmental impact and follow on from the point that Duncan Orr-Ewing has just made. I think that the panel will have heard Logan Steele detail what

he believes to be the adverse environmental impacts that are associated with game bird hunting and its management, and I am keen to hear the views of SLE and the SGA, in particular, on those comments.

**David Johnstone:** Are you asking about sustainability? I think that that is a key element of your question.

**Angus MacDonald:** I am asking about sustainability and the environmental impact.

**David Johnstone:** The key element of running any sporting enterprise, whether it be grouse shooting or anything else, is sustainability, because it has to be able to come back year after year. As a result, conservation comes right at the top of the list in the ethos of running a sporting estate—and when I say “conservation”, I mean the benefit not just to game bird species but to the wider environment. I think that it is a very good use of the grouse moors in that part of the country, and it provides not only economic benefits but the environmental benefits that go with them. You will have seen that lapwings and curlews have been moved on to the endangered list—or what is called the red list—in the RSPB survey, and my understanding is that, according to some of the surveys down at Otterburn, those birds are doing very well on kept grouse moors. As a result, what is happening on those grouse moors is having diverse benefits.

**Angus MacDonald:** Does the SGA have any comment?

**Andy Smith:** The SNH and the Scottish Environment Protection Agency published a report in 2011—“The State of Scotland’s Soil”—which grades soil threats. Muirburn, which we have heard a lot about, gets a score of three. That is a lower score than forestry, which gets a score of seven, and development, which gets eight. As far as erosion and landslides are concerned, muirburn gets a score of five, which is on a par with grazing but is a lot less than agricultural cultivation, which gets a score of 18.

You have a point on muirburn, but that report shows that it might not be the root of all evil that it has been made out to be. Indeed, it can be very beneficial not just for grouse but waders, which as we have heard are red listed and will undoubtedly benefit from the management of keepers on moors.

**The Convener:** But muirburn is beneficial only if it is carried out within the constraints of the muirburn code. If you burn deep peat, burn outwith the seven-year cycle or, indeed, burn slopes that should not be burned because doing so removes the habitat of hen harriers, it will have a detrimental effect.

**Andy Smith:** I totally agree, but I hope that none of our members are doing that. I do not know whether they are, so I cannot comment on that. The issue, then, is enforcement, which has also been alluded to, and perhaps SNH or whoever needs to look at some kind of enforcement alongside the muirburn code.

**The Convener:** But that suggests that the voluntary approach is not working and that further action, whether it be licensing or whatever, needs to be taken in certain parts of the country.

**Andy Smith:** In that case, instead of taking a blanket approach, you should perhaps target where you know the problems lie. If you know that there is a problem in a particular area or glen, you should target that area or glen. If you know that something is happening in a particular place, should everyone get the rod of iron? I am quite certain that if the raptor persecution group came across a particular incident involving a raptor, the police would target their investigations on the area in question.

**The Convener:** Perhaps Robbie Kernahan can tell us where the balance sits between the environmental benefits and disbenefits of intensive grouse management. Is it beneficial, non-beneficial or what?

**Robbie Kernahan:** It is only fair to recognise that well-managed estates can provide huge financial benefits. We know the benefits of pest and predator control to species of conservation concern; we also know the type of land management that takes place in our uplands and that the burning, the managed grazing and so on provide biodiversity benefits. Indeed, we have recognised that for a long time now; our managing of these habitats in the transitional phase is almost unique to Scotland and has been internationally recognised. However, although there are biodiversity benefits in upland management and keeping, the question is: at what point do those benefits change when the intensification of land management persists? That is not an easy question to answer.

I will return to some of the points that have been made about the existing legal framework and the purpose of our report. When we were first commissioned to undertake a review of what happens in other European countries it was very much in recognition of the fact that the legal framework in Scotland includes the transposition of the EU's birds directive into the Wildlife and Countryside Act 1981. In operating under that framework, we issue about 3,000 licences a year under various licensing regimes in Scotland. In doing so, we try to apply the principles of better regulation and we try to be targeted, proportionate and risk based. I suspect that, if there were any appetite for introducing an additional regulatory

system, those would be the principles that we would try to adhere to.

**The Convener:** Okay. That takes us on to Kate Forbes's questions.

**Kate Forbes:** We have had quite a wide-reaching conversation about the current regulatory regime, but what are the next steps with regard to regulating to prevent the crimes that happen? It has been pointed out that we can never have a perfect system, because crime will always exist, but I presume that we want to move towards a situation in which the number of raptors is increasing and there is no persecution. In that case, what are your views on the current regulatory regime? Where is it failing and where might it be improved?

**Duncan Orr-Ewing:** Scotland is recognised as having good wildlife protection laws in general. As we have heard, the issue is enforcement of the good laws that the Scottish Parliament has put in place; it was mentioned earlier that consideration is being given to increasing the Scottish SPCA's powers slightly, and we think that that would help with the enforcement side of things.

However, as the SNH review has shown, Scotland is unique among the European countries that have been studied in not having an effective licensing system for game birds. Our concerns are mostly about driven grouse shooting, the intensification of management and the business model that involves the illegal killing of birds of prey. However, we recognise that it might not be possible to design a system that focuses on just that form of hunting and that a system might have to encompass all forms of game bird hunting.

We suggest that a licensing system be attached to the kind of statutory code that we have for other forms of natural resources management, which should define clearly the public interest and what the people who manage the land need to adhere to with regard to hare culling, muirburn and the other issues that have been raised at this forum as public interest concerns.

It is also worth noting that the SNH review states that the European Commission has called for

"well-regulated hunting' and stipulated that the essential characteristics of sustainable hunting include: hunting within the framework of a management plan; temporary or permanent 'no take' zones; full compliance with the law",

none of which we have, as well as

"awareness raising and training both of hunters and environmentalists".

We have that partially, as we heard earlier, but some countries have formal tests in which hunters have to identify, for example, quarry species. It also called for

“willingness to assess impacts of hunting and to adapt sustainable practices where problems are identified”

—we do not have that entirely—and

“collection of good quality data”.

Most countries have compulsory bag returns, and their equivalents of SNH collect bag data that informs and helps to set hunting quotas and identifies whether species should be hunted, but we do not have that in place, either. There is therefore quite a bit of work to be done here. Certainly, the RSPB’s view is that all those issues are best encapsulated in a formal licensing regime.

**The Convener:** I have a question for David Johnstone. If we have a significant raptor persecution problem, how do we address it? If we do not have a licensing regime, what else can be done?

**David Johnstone:** As has been said, there is quite a different style of hunting in Europe involving individuals going out into the countryside. A lot of the hunting is on public land, which is why there are licensing systems. The idea behind that is to ensure that people hunt species sustainably and do not overexploit them.

We have a very different model in Scotland, whereby people come to shoot driven birds, for example, which is well run by the industry. However, there are problems with raptor persecution that we are working on strongly with the PAW Scotland working group. We have no issue at all with strengthening PAW and we are looking at how we can make things better by introducing regional PAW groups to get better relationships with the industry.

The regulatory framework that has been brought into place is working, though, and has made a marked difference to compliance, understanding and education in the industry. However, there is a lot of work still to be done in that regard, which is where PAW and the wildlife estates Scotland initiative come in. The initiative takes in just over 1 million acres now and includes, for example, management plans for game. However, it is about not just game but all species that exist on estates. That initiative should be strengthened and we have been trying to get the Government to provide more support for it—we would very much encourage the Government to do that. In general, it is about having more good practice and better education out there and getting people to understand exactly what they need to be doing.

**Andy Smith:** Another consideration is the Poustie recommendation for tougher sentencing, which will undoubtedly help as well. If someone knows that they will go to jail if they do something, they will probably think twice before doing it—that makes sense.

We also talked about firearms legislation and perhaps linking wildlife crime in some way to the firearms guidelines. The police will now certainly take guns off people, although they may not revoke their licences, so people may have a licence that is valid for five years but no weapon to do the job. That is something that could be looked at to find a way of deterring those individuals who still go out and do things.

11:45

The general licence has been removed from estates in two or three places, and rightly so. That is another way of looking at the issue. There could be some kind of SNH enforcement officer who could physically go out on to the ground and check what is happening, especially in areas that have already lost their general licence. I agree that PAW is another way of moving things forward. I understand that PAW Highland is doing very well, so that may be something that needs to be rolled out throughout the rest of the country.

**Maurice Golden:** We have heard about a clear differential in the standard of proof between a licensing regime and the status quo. Beyond that, Duncan Orr-Ewing gave a list of management plans, formal tests, assessments and data collections, none of which is predicated on a licensing system, so I am interested in the panel’s views on that list in particular, on policing and enforcement, and on the differential between a licensing system and the current regime. For example, if a licensing regime were introduced but could not be policed effectively to catch any criminal activity—or civil activity, as it would be under a licensing regime—we would be no further forward.

**Duncan Orr-Ewing:** If there is a criminal burden of proof, we clearly have the laws in place and that should proceed through the normal approach by the procurator fiscal. If there is sufficient evidence, it should be heard in court, and we do not have any issue with that. However, we heard earlier that getting that evidence in the first place can be difficult, given that a lot of crimes involving wildlife, particularly crimes involving birds of prey, occur in remote areas where it is easy to conceal evidence. We know that people are using new technology to conceal their activities, by using thermal imaging gear, for example. A lot of that activity is probably happening at night now, rather than during the day, and people are not using techniques that are easily discoverable, such as illegal poisoning.

We have good laws in Scotland for the criminal burden of proof but, underneath that, we have a licensing system that, as we have heard in relation to the open general licence, works on the balance of probabilities. As Logan Steele intimated, it would be a civil burden of proof that would apply,

and there would be a layered approach. We envisage that information would go from SNH to the police and they would weigh up the evidence on the balance of probabilities to see whether it was sufficient to require the removal of a hunting licence, or whatever was in place. We would like to see an inquiry set up by the committee to look into this whole issue and to design a system that is appropriate for Scottish circumstances, which involves all relevant stakeholders, and which is workable in practice. That is how we see it.

**Maurice Golden:** That is purely on the basis of the standard of proof involved. I think that the point has been made on both sides. I was interested in whether there are other aspects of the licensing regime that have particular advantages over the status quo.

**The Convener:** Raptor persecution provokes great passion. Do you accept that there would be a risk of estates being set up by individuals who were fired up about the subject of raptor persecution, and that there would be a danger, if the regime was not structured in such a way as to protect that burden-of-proof element, that estates and land managers could be penalised despite being innocent?

**Duncan Orr-Ewing:** I accept that there is a risk, but I am not sure that any evidence has come to court of people setting up estates in the way in which you describe, convener. Interfering with traps and the like is already a criminal offence. There are criminal offences in place to deal with some of those issues.

**The Convener:** If there were to be a licensing regime, is it possible that individuals might be encouraged to behave in that way? I am merely speculating.

**Duncan Orr-Ewing:** I suspect not. The ultimate sanction would be to remove a licence from someone, which might ultimately result in them not being able to operate their business. We accept that that is a stringent sanction, so the police and SNH would consider the civil burden of proof, as they have done recently with open general licences, which have been removed on the basis of evidence provided by the police. The licensing system would have to work in a similar way. There would still be strong checks and balances in the system.

**Andy Smith:** I was surprised to hear Duncan Orr-Ewing say that he would be very surprised and that people would not do it, because they do it now and there is no licensing system. It is strange to say that evidence has not “come to court”. Although such evidence might not have come to court, it is certainly there. It has got to the point in some places that there is so much damage to property and such illegality that the police have

almost said that there is nothing that they can do about it.

It works in a similar way to raptor crime—out in the countryside, a dog walker comes across a Larsen trap, lets out a magpie and walks on, so no one knows about it. There is a lot of illegal activity happening out there.

I will recount a story about that. Two of our members are farmers in Middleton down in the Borders who shoot birds—there are no driven birds and none are released, but they shoot what is on their ground. They are quite keen to see lapwings and curlews going about the place. Last year, I had phone call from them to say that magpies had been released from the Larsen traps. At this time of the year, magpies will predate on chicks and eggs. The farmers put the Larsen traps out to try and catch the magpies, which they are allowed to do under the general licence.

To cut a long story short, after a trap had twice been released by a dog walker, the farmers put a camera on the trap. The police were involved and the wildlife officer went along to the woman’s house. Interestingly enough, the woman had allowed the magpie out and then reset the trap. The bait for the trap was rabbit. Had a buzzard gone into that trap it could have been a completely different story. If that had happened, those guys could have lost their single farm payment because of the actions of one individual. It did not go to court. I spoke to the wildlife cop later on, because it is a very grey area. There is no specific piece of legislation that applies to releasing a call bird from a Larsen trap—there is plenty about Larsen traps but nothing specific on releasing a bird from them.

There is a lot going on already, without a licensing system. I do not think that a licensing system would help.

**The Convener:** Mr Golden touched on the issue of policing. One of the reasons why we are where we are is the difficulty in getting convictions and solving raptor crime. Hand on heart, can you say that, as well as utterly condemning such activity—as both your organisations have done—your members are as proactively co-operative as they can be when the police are investigating such activities?

**Andy Smith:** I think that we are. No doubt I will be corrected if I am wrong, but in the recent case of the eagle that went missing, the keepers on the estate offered to help look for the bird and their offer was refused.

**David Johnstone:** I was going to expand on that. In that case a satellite tag went missing and it was right that the investigation was conducted. The people on the estate offered to show where the eagle was or where they believed it to be. It has subsequently been filmed, but we do not know

whether it is the same eagle and, ideally, we want to find out what is going on there. However, the level of co-operation and trust there is poor, which reflects badly on the framework.

A minute ago, Duncan Orr-Ewing made a lot of pretty strong accusations about practices that are going on in the countryside. I do not recognise that and I challenge it, as he is accusing our members of conducting all sorts of nefarious activities. If we are going to get to the bottom of the issue and make legislation, it has to be based on hard evidence of what is going on.

**Richard Lyle:** I have listened very intently to your points and I can see where you are both coming from. You related a story about raptor crime. What involvement do poachers have in that?

**Andy Smith:** You would probably be better to ask some of the raptor experts. I imagine that egg thieves are an issue, rather than poachers.

**David Johnstone:** There is value in the collection of eggs for some people.

**Logan Steele:** There is, but that is very much a declining issue.

**Richard Lyle:** I thought that nobody had mentioned that yet, so I raised it.

In evidence to the Public Petitions Committee, Dr Shedden of the British Association of Shooting and Conservation argued that the current regulations in Scotland are “unusually stringent”. In light of the findings of the game bird review, is Dr Shedden correct? If the regulations are unusually stringent, why do we need changes in the law?

**Duncan Orr-Ewing:** Dr Shedden is not correct to say that. We have heard reference several times today to firearms legislation, which is stringent in most of the 14 countries that have been reviewed. What is different is that there is no formal licensing system for hunting of game birds in Scotland, which contrasts with most other forms of natural resources management in Scotland. For example, there are regulations in place for, and authorities that oversee, the management of natural resources such as deer, water and wild fisheries. In the case of water the authority is SEPA, and in the case of wild deer, it is SNH.

The exception to the rule is game bird hunting, as we do not seem to have a licensing system to set the standards to which people who hunt game birds in Scotland should adhere, apart from the voluntary standards that we heard about earlier from the sector. We support voluntary codes, but they are not working. They are not doing enough to combat what we currently see on grouse moors, which is the hard-edged problem of the illegal killing of birds of prey and other unsustainable

management practices. We think that those problems are getting worse, not better.

**David Johnstone:** The Government statistics show that they are not getting worse, but we could argue backwards and forwards over that.

With regard to Richard Lyle’s question, Duncan Orr-Ewing has already said that the regulatory framework is sufficient in this country and I think that it is quite draconian. To take vicarious liability as an example, if an employee—it does not matter whether they are a gamekeeper; they could be anybody—is convicted of or charged with a wildlife crime, the employer is automatically in line for vicarious liability. Whether the prosecution is taken forward is dependent on whether the employer has safeguards in place, such as clearly instructing the employee not to do it. That is a matter for the Crown Office and Procurator Fiscal Service to decide.

Further, there does not have to be a conviction of the employee for the employer to be charged with vicarious liability. Estate owners are very exposed and their heads are on the line. They have to ensure that good practice is adhered to, or they run the risk of being personally liable.

**Richard Lyle:** There are 14 countries with different approaches to hunting, and how we have dealt with it in Scotland has a different history. I am sitting here as an ordinary person looking at the fact that there are regulations in those different countries and asking whether we can get together and have a pick-and-mix approach.

12:00

Earlier on, Mr Steele said that, when he went to talk to some of Mr Johnstone’s members, they did not want to talk to him. We have suggestions of instances of people burning, destroying and doing things that they should not be doing because they want to sustain and improve their business, allegedly. Basically, we have three parties here that are all saying, “Naw, it’s no me. I didn’t do it.” Why can you not all get together, sit down and design regulations? Mr Steele, you want a law, but you have not suggested what should be in it. You are basically saying, “Well, you’re the lawyers. You go and construct it.” If you come to say that you want something, you have to tell us what you want. I cannot see why your three organisations cannot sit down and work out what needs to be done to sustain a very important economic situation in Scotland.

**Logan Steele:** This is my 40th year of monitoring raptors. We have tried to talk to and negotiate and reason with the shooting industry. If I could go back to 40 years ago in a TARDIS, we would be having the same discussion then. We have tried to move away from the killing of raptors,

and that has brought us here today. I know that, from the outside looking in, that seems a sensible thing to do, but please take it from me that we have talked and talked, and that has got us nowhere.

**Richard Lyle:** I totally agree with you. The point is that you will have to sit down with each other before we have to legislate. You all have a need. Why do you not get together and get something that suits everyone?

**David Johnstone:** The short answer to that is that is exactly what PAWS is designed to do. It is designed to bring the parties together to understand exactly what is going on, discuss and work out the issues, and drive the matter forward. I am sorry, but that has made a difference. That is what we need to strengthen the process. We are all for strengthening the process, working at it, reviewing it, and finding out where it can be improved. We have no problem with that whatsoever.

**The Convener:** My question is for Robbie Kernahan. SNH conducted the review, and it will have crossed your mind that a licensing regime might be brought forward. My question is perhaps slightly unfair, but I will ask it anyway. Having looked at what happens in the 14 countries, have you wondered about Dick Lyle's pick-and-mix suggestion? You could pick things from various regimes and come up with a licensing regime that is robust, brings about improvement and protects estates from potentially being set up.

**Robbie Kernahan:** What is the best way to answer that one? There is no doubt that the review provides a bit of clarity about how some provisions of the birds directive are being interpreted and implemented in other European Union member states. That is a really useful reference point for us in Scotland.

As we have heard, the situation in Scotland is culturally very different from that in other member states, as is the regulatory framework. To pick up on Mr Lyle's point and Colin Shedden's comments, we have the least regulated system in Europe. We can debate whether that is a good thing or a bad thing, but the reality is that state intervention in hunting is not well developed or pronounced in Scotland. We do not have the type of relationship with individual hunters or sporting businesses to understand the data that is generated on sustainable harvests or other data that comes back.

There are pros and cons to each of the models. The report highlights that there is no silver bullet for a licensing regime. If ministers have an appetite for additional regulation, the sensible thing to do would be to speak to all the affected parties and come up with something that best

reflects the needs and demands of Scotland in the 21st century. However, it is not that long ago—following the consultation on what became the Wildlife and Natural Environment (Scotland) Act 2011—that, in seeking to modernise game law, we did away with a licensing regime that required hunters to register. If we are to have legislation that is fit for purpose, we need to ensure that the public interest firmly drives it.

All the systems in the case studies rely on a developed ethos of shared understanding and trust. We have that in Scotland to an extent—that is what general licences are based on. Only when we lose that trust or confidence do we begin to exercise a more informed and interventionist approach to regulation. If we have any appetite in Scotland, that is the direction that we should take.

**Finlay Carson:** I am a bit confused. The consensus seems to be that the legislation that we have is fit for purpose. We have a Government that is taking steps to enforce that legislation. Do we simply need a commitment from the Government to provide the resources to police the situation?

**Duncan Orr-Ewing:** We need both aspects. We have good legislation, but we have inadequate enforcement of it. A proposal has been made to give the SSPCA more powers, which would certainly help, but even that will not be the silver bullet. The evidential process means that it is difficult to bring cases to court. We suggest that a licensing system should sit under that. Some court cases will proceed when the evidence is sufficient but, in the many cases in which the criminal burden of proof is not met, we need a process that sits underneath the evidential process and is complementary to it, such as a licensing system.

We are not against game bird hunting, provided that it is carried out sustainably. However, we feel that the next step should be an inquiry into how a Scottish system of licences for hunting game birds might work in practice and how it would involve all the key stakeholders, including all those who are sitting at this table today. We need a bespoke system that is appropriate for Scottish circumstances.

The PAWS system that David Johnstone referred to is focused on improving enforcement, detection and deterrence in relation to wildlife crime; it is not constructed to look at this kind of licensing issue. It also does not consider some of the sustainability issues that we have talked about, such as the sustainable management of moorland areas that the SNH scientific advisory committee has looked into and which are part of the equation. They might be best dealt with by using a form of statutory code that sits alongside a licensing system.

**The Convener:** I have read the SNH report, and perhaps I missed what I will ask about. Despite the presence of a licensing regime in other countries, raptor persecution is still an issue. Do you have figures that show whether the introduction of licensing regimes in those countries led to a decrease or increase in raptor persecution or had no effect?

**Robbie Kernahan:** From the report, there is an easier tale to tell on the basis of which member states implemented which regime. We have referred to Spain, where there is a clear correlation between increased enforcement and fines and a reduction in raptor persecution. However, we do not have that information for all member states.

I reinforce the point that the key to the success of any licensing regime, whether it is in Scotland or other member states, is a significant commitment to policing and enforcement. Part of the problem that we have in Scotland—whether we operate within the current system or are looking to introduce a new licensing regime and whether we want a civil burden of proof or a criminal burden of proof—is that resources will still be required to make sure that the system works.

**The Convener:** SNH would have a considerable resource requirement.

**Robbie Kernahan:** I cannot predict what a new system might look like but, if SNH was expected to take on additional licensing regime activities, there would be significant resource requirements.

**The Convener:** Mark Ruskell will ask the next question.

**Mark Ruskell:** We have covered some of the areas that I wanted to cover, but I will ask SNH what its view is on the environmental impact of a licensing system for driven grouse shooting. Would it have positive environmental impacts?

**Robbie Kernahan:** The answer depends on the system that is implemented; it is difficult to say yes or no categorically. We are tasked with working within the existing legal framework. We are strengthening that framework where we can, and the example of taking a better regulatory approach to general licensing is a step forward. We have some confidence that we can operate with a civil burden of proof within the existing framework.

The judicial review case that came to court two weeks ago demonstrated that we can currently restrict general licences and operate a much more informed licensing regime, but that is principally just for managing commonplace, well-established activities in relation to the control of corvids. I do not know whether we have an appetite for, or see a benefit from, additional regulation of grouse moor management.

**Mark Ruskell:** You do not have a view on that at this point. Would there be ways of bringing regulations together in one place to streamline the regulatory process for a licensing regime? Would that simplify or complicate matters?

**Robbie Kernahan:** There is no doubt that the Wildlife and Countryside Act 1981 would benefit from consolidation, because it has been amended many times. The existing legal framework is confused because of that, which causes problems with enforcement and taking cases to court. I agree that there might be a benefit in consolidating the legislation, but I do not have a strong view on whether that should include refinements that incorporate new codes or existing best-practice guides.

We are working as effectively as we can within the current system and are being helped by proactive work through PAWS and the moorland forum to develop principles of best practice for moorland management on a host of issues, such as mountain hares and muirburn, where progress is being made. The question is whether that progress is happening at the pace, and having the results, that we all want. Even with legislative change, progress will take time. As Kate Forbes said, even vicarious liability is still relatively new. The issue is therefore the pace and whether we want continued acceleration of progress.

**Mark Ruskell:** I have a final question for clarity. Is it the industry's view that a licensing regime could lead to a ban on driven grouse shooting? Is that also the view of the conservationists? Alternatively, are we talking about reform, improvement and reinforcing best practice?

**Andy Smith:** I do not know whether a licensing regime is absolutely necessary. To go back to what Mr Carson said, we have plenty in place and it should probably be better policed. With regard to Mr Johnstone's side, we are lucky that we have the Crown Office and Procurator Fiscal Service, which is accountable to the Scottish Government and which looks at all the evidence. No matter who the individual is, they have the right to be treated as innocent until proven guilty.

**Mark Ruskell:** Yes, but my question is about whether you fear that a licensing regime could lead to a de facto ban because the bar would be so high for driven grouse moor estates.

**Andy Smith:** That is probably one for David Johnstone to answer.

**David Johnstone:** The short answer is yes. Some of the groups that are looking for changes are against the shooting of driven game and would like it to end, but that would also have a great detrimental effect. There is a risk that lowering the burden of proof, which the first conversation was

about, would lead to driven shooting ceasing in Scotland or being downscaled.

**Mark Ruskell:** What is the conservationists' view?

**Duncan Orr-Ewing:** To be clear, our policy does not support a ban on driven grouse shooting; our policy is about licensing it. We want a process of improving enforcement in the public interest and improving the standards that apply so that they are applied as they are in other forms of natural resources management.

We have heard that game bird shooting is very much the exception to the rule, as other forms of natural resources management are regulated. The SNH report, which studied the licensing systems in 14 countries, states on page 8:

"The countries with the most significant problem with the illegal killing of predatory birds included the UK and Spain".

We certainly believe that a licensing system will help in setting out more clearly the public interest, defining the standards that should apply to the management of driven grouse shooting and tackling some of the long-standing and intractable problems around bird of prey persecution.

Finally, to say that the RSPB is not heavily invested in conflict resolution processes would be wide of the mark. For example, we have been involved in the Langholm demonstration project for many years, one of the outputs of which helped to develop a mechanism for diversionary feeding of hen harriers in order to prevent hen harriers from preying on red grouse chicks, which was highlighted as an industry concern. We now have an effective and highly successful method for that, but are we seeing any of the driven grouse sector using that technique? No, we are not.

**The Convener:** I suspect that some people might disagree with that, but let us not go there.

Several members indicated an interest in particular questions, but I think that we have pretty much covered everything that we were going to cover. Has anyone got final questions that they want to ask?

**Claudia Beamish:** As the petitioner, does Logan Steele have any comment to make on the evidence that we have heard from the second panel?

**Logan Steele:** I have nothing to add to what I said this morning, but thank you for giving me the opportunity to comment.

**The Convener:** On that note, I thank everyone for giving evidence today. It will all be useful in informing our thinking. I thank the witnesses for attending the meeting.

As agreed earlier, the meeting will now continue in private.

12:16

*Meeting continued in private until 13:06.*

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