



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Rural Affairs and Islands Committee

Wednesday 1 November 2023

Session 6



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RURAL AFFAIRS AND ISLANDS COMMITTEE

27th Meeting 2023, Session 6

CONVENER

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

DEPUTY CONVENER

Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

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

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

*Ariane Burgess (Highlands and Islands) (Green)

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

*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)

*Rhoda Grant (Highlands and Islands) (Lab)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Hugh Dignon (Scottish Government)

Gillian Martin (Minister for Energy and the Environment)

Liam McArthur (Orkney Islands) (LD) (Committee Substitute)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
Rural Affairs and Islands
Committee

Wednesday 1 November 2023

[The Convener opened the meeting at 09:11]

Decision on Taking Business in
Private

The Convener (Finlay Carson): Good morning, and welcome to the 27th meeting in 2023 of the Rural Affairs and Islands Committee. We have received apologies from Beatrice Wishart, who is unable to attend the meeting due to another parliamentary engagement. I welcome to the meeting Liam McArthur MSP, who will be substituting for Ms Wishart. Rhoda Grant and Jim Fairlie are attending remotely. I ask those members who are using electronic devices to turn them to silent.

Our first item of business is a decision on whether to take items 3 and 4 in private. Are we all agreed?

Members *indicated agreement.*

Wildlife Management and
Muirburn (Scotland) Bill: Stage 1

09:12

The Convener: Item 2 on our agenda is an evidence session on the Wildlife Management and Muirburn (Scotland) Bill. I welcome to the meeting Gillian Martin, the Minister for Energy and the Environment, and her officials: Hugh Dignon, head of the wildlife management unit; Leia Fitzgerald, team leader in the wildlife legislation team; and Norman Munro, a Scottish Government solicitor. We have 90 minutes scheduled for the session and I invite the minister to make an opening statement.

The Minister for Energy and the Environment (Gillian Martin): Thank you for inviting me to give more evidence on the bill. I wrote to the committee in August, saying that I intend to introduce amendments at stage 2 of the Wildlife Management and Muirburn (Scotland) Bill to ban the use of snares. I also intend to lodge amendments for a limited extension to the current powers of the Scottish Society for Prevention of Cruelty to Animals to investigate wildlife crime. Scotland already has strict rules governing the use of snares. However, I cannot ignore the weight of evidence that snares can and do lead to high levels of suffering. Their indiscriminate nature also means that non-target animals are frequently caught, including protected species such as badgers. I do not believe that further regulation would address those fundamental issues, and I believe that a ban on the use of snares is needed. I have, however, only very recently received proposals from land management groups for a licensing regime. I think that that came in on Monday night—I have not had time to consider that proposal fully but will respond in due course.

Regarding the SSPCA's powers, my amendments will allow inspectors who are already investigating animal welfare offences to use their existing powers to seize and secure any evidence of related wildlife crimes. That will aid the detection of offences by allowing evidence to be gathered without delay.

To be clear, Police Scotland will retain primacy over the investigation of all wildlife offences. These are important issues but they are also very emotive and I have not made those decisions lightly. I have listened closely to stakeholders and have carefully considered all available evidence, including the independent reviews of snaring and the SSPCA's powers.

The Convener: Thank you, minister. I will kick off the questioning by asking about the evidence that the Scottish Government has gathered as part

of its decision making into the proposed snaring ban. First, what evidence do you have regarding the impact that the snaring ban would have on animal welfare?

09:15

Gillian Martin: Most immediately, you will know that a consultation was launched. I believe that the consultation results have been shared with the committee. There has been a long lead-up to this from the point of view of evidence gathering. The Wildlife and Countryside Act 1981 requires there to be a statutory review of snaring every five years. We have set up a statutory review group, and the Scottish Government is working with the Crown Office and Procurator Fiscal Service, Police Scotland, NatureScot and Science & Advice for Scottish Agriculture. We will be looking at snaring on a regular basis, as I have outlined.

We also requested that the Scottish Animal Welfare Commission conduct a review of the welfare implications of snaring. I know that SAWC has given evidence to the committee. I do not know whether it has given you any evidence so far on snaring, but I have here some of the conclusions and recommendations from its report. It talks about the sentience of animals and the capacity of animals to experience pain and other negative impacts from snaring, including psychological impacts. It said that non-target species, including some protected species, were routinely caught in snares, and suffer and may die. Animals go through not only the physical impact of the snare but the psychological distress, particularly when they are left for many hours caught in a snare, where they could be exposed to other predator attacks and are out in an exposed area and subject to the weather. They do not have access to food, they could be away from their young or they could be young animals that are away from their mother. There are all those impacts, too.

SAWC concluded that snares cause significant welfare harms to members of target and non-target species and recommended that the sale of snares and their use by the public and industry be banned in Scotland on animal welfare grounds. We are not proposing to ban the sale of snares but we propose to ban their use.

The Convener: The Wildlife and Countryside Act 1981 already outlaws setting snares that would cause unnecessary suffering. It is also an offence to set a snare in a position that could cause harm to wild birds or non-target species. How would another piece of legislation make any difference? It is generally understood that it is poachers and people who are intent on breaking the law who use snares incorrectly, and not

gamekeepers, who set out specifically to control predators, for example.

Gillian Martin: I understand that. You are right. The 1981 act contains a lot of conditions and sets out a statutory obligation for the use and deployment of snares to be reviewed. However, even when snares are used in strict accordance with the 1981 act, they pose a high risk to non-target species, including other wildlife and domestic animals. I am sure that the committee will have heard that domestic cats often get caught in snares. SAWC found in its study that the proportion of non-target species caught in snares is estimated to be between 21 and 69 per cent. Gamekeepers could set snares in accordance with the 1981 act and do so according to the training that has been given, but they will still catch non-target species. Further, the way in which snares are set means that they are left for a period of time, so an animal is suffering for quite a long time.

We have updated the snaring regulations multiple times since they were introduced. You will remember the Wildlife and Natural Environment (Scotland) Act 2011, and we were both on the committee when we considered the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020, which contained snaring regulations. The Government feels that none of those provisions has been strong enough or has been able to fully address the animal welfare issues that snaring poses, no matter who sets the snares.

The Convener: Snares now have to have licence numbers on them. In your evidence gathering, have you done research into how many either licensed or illegally set snares are causing an issue? That is important. Are we finding that there is still a high incidence of humane control devices causing animal welfare issues? Do the instances that you have mentioned, which have involved domestic cats and so on, tend to be from snares that have been set illegally?

Gillian Martin: I do not know how we could find that out.

The Convener: There are licence numbers on the snares.

Gillian Martin: I know how many licences have been given, but I do not have a breakdown of where unintended species were caught with illegal snares. I do not know whether my officials have that information, but I certainly do not have such a breakdown in front of me. If we hold that information, I could write to the committee with it, but I do not have that specific and granular detail in front of me.

The Convener: I will just press that a little bit more. You suggest that there is evidence of

widespread animal welfare issues because of the use of snares. When someone makes a complaint about a snare and that is investigated—I presume that that is what the evidence is based on—the number on the snare will indicate who holds the licence for it. When you report a high level of animal welfare issues, is that as a result of legally set, licensed snares or illegally set snares?

Gillian Martin: You have already asked that question and I have said that I do not have that granular level of detail. If we have such detail or can find it, you have my assurance that I will write to the committee with it.

The Convener: That is quite important, because it would give us an indication of whether the current legislation, in the form of the 1981 act, is working or whether people who are intent on breaking the law continue to do so.

Gillian Martin: Many animal welfare agencies support the banning of snares for animal welfare reasons, regardless of who sets them. The British Veterinary Association is one such body, and it is very much respected on animal health and welfare issues. I believe that it supplied evidence to the committee, and it certainly supplied evidence for the consultation. Studies have been carried out at United Kingdom level, too. For example, in 2010, the Department for Environment, Food and Rural Affairs conducted a large study that has informed much of our historical thinking about non-target species.

The Convener: Liam McArthur has a supplementary question.

Liam McArthur (Orkney Islands) (LD): Good morning, minister. I was on the predecessor committee that scrutinised and helped to pass the Wildlife and Natural Environment (Scotland) Act 2011, which introduced licensing tags on snares. At that stage, the feeling was that that would give us visibility on the effect of snares that were being set legally and in accordance with the legislation, as opposed to those that might be set by poachers, as the convener was suggesting. If that level of granular detail is not available, I would have real concerns.

I understand that the BVA, of which I am an honorary member, and other organisations have long campaigned for the banning of snares. However, as a Parliament and as a committee, we should be concerned about how effective any ban is likely to be if we are simply banning legally set snares, which are not causing welfare problems, but leaving poachers to continue snaring, which is what they will do. As you said, minister, there is no way to ban the means of making snares, and the Government is not proposing to do so, so it is fairly safe to assume that those home-made snares will continue. If we do not have granular detail on the

snares that are legally, as opposed to illegally, set, that will have an impact on animal welfare, which goes to the very heart of what we are discussing here.

Gillian Martin: I have figures in front of me about things such as the amount of convictions associated with the issue, but I do not have that granular detail. With the greatest respect, if I had it I would tell you. That does not mean that it does not exist. We will have a look into that and will report back to the committee.

The Convener: Thank you. There is a brief supplementary on that from Rachael Hamilton.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): No, I do not have a supplementary on that.

The Convener: Okay. We will go to Alasdair Allan.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): Could you say a little bit about the circumstances in which you think, from the evidence that you have, that snaring is still used legally and about the arguments that are put forward for its being used legally? Also, you mentioned that you would like to see a ban on the use but not the sale of snares. Could you say a bit more about the reasoning behind that?

Gillian Martin: Currently, snares are used in Scotland for the target species of foxes—obviously, they are a predator—and rabbits and brown hares, which are often viewed as pests. Under the regulations from 1994, it is illegal

“to deliberately or recklessly capture, injure or kill a wild animal of a ... protected species such as a wild cat”

or, obviously, a badger, unless a licence has been granted by NatureScot.

However, the use of snaring is actually quite low because shooting is the main means used by people who want, for example, to keep down the number of foxes on their land because they are a predator. The vast majority of control measures involve shooting, which is seen as a humane way of dealing with animals that are considered to be pests or predators that can impact on the livelihood of farmers, for example.

Your second question, Dr Allan, was about the sale of snares.

Alasdair Allan: Yes. Why is the bill framed as it is?

Gillian Martin: Quite a lot of snares can be made from materials that are not necessarily bought. I understand that there is an argument for banning the sale as well, particularly when we take into account that some of the people who have been in touch with me wanting to have a licensing

scheme are advocating the use of snares that they call humane cable restraints. Those are not snares that people make; they are professionally produced and they are bought.

At the moment, our position is that we will ban the use of snares, but it is early days. I will be interested to see what the committee recommends in that regard and whether it thinks that banning the sale of snares is something that it would usefully want to see.

The Convener: You said that quite a lot of snares are home made. What is “quite a lot”?

Gillian Martin: The evidence is that a lot of snares are made rather than bought.

The Convener: Are those home-made snares legal at the moment?

Gillian Martin: If they are used in accordance with the 1981 act, which dictates how they can be used, then yes.

The Convener: So, we are back to the granularity of this again. Do we know roughly, or do you have any indication of, how many of the professional practitioners use home-made snares or use bought snares that have licence tags on them? That is quite important when we try to work out where the animal welfare issues are.

Gillian Martin: We have established that I do not have that granular detail, but Hugh Dignon might want to add something.

The Convener: You said “quite a lot”, so you must have an indication.

Hugh Dignon (Scottish Government): We are not saying that home-made snares are not legal. Home-made snares can be perfectly legal. They can be used in accordance with the law and in accordance with a licence—they can have the identification number on them and so on. The issue is that perfectly legal snares, set in accordance with the law, can still have an adverse welfare impact. That is why it is difficult to pick out the difference between an illegally set snare and the welfare impacts that it might have and a legally set snare and the welfare impacts that it might have. That is where the difficulty lies in separating out those two pieces of data.

09:30

The Convener: Okay, but when we hear a phrase such as “quite a lot”, there must be figures out there behind that assumption. That is something else that we would quite like to hear before stage 1.

Hugh Dignon: Our view on how many are made is based largely on anecdotal evidence. When we have talked to people—land managers

and gamekeepers—they have said, “Well, I just make them because it’s an efficient way to do it. I know how to do it and I can make them in accordance with the law.” We also know that there are snares on sale, so we assume that there is a mix of them in use. However, for us, the key thing has always been—whether they are made or bought—whether they comply with the law, and we do not have any evidence to say that there is significant non-compliance with the law.

Rachael Hamilton: On a point of order, convener. I am very concerned that we are making allegations against a certain group of people here. There is evidence in the papers that we have today to say that poachers may use illegal snares. That is very worrying, because the Scottish Gamekeepers Association has been critical of people using illegal snares. It is concerning that we have a civil servant making such allegations to the committee without evidence.

The Convener: I do not think that that was a point of order; it was more an intervention and a comment based on your opinion. However, that is on the record now.

Gillian Martin: I will just comment on the back of what Hugh Dignon said. The illegality is about how snares can be used and whether they are used in accordance with the 1981 act. It is not illegal to make a snare. You cannot call a snare that has been made by somebody who knows what they are doing and has been making snares for decades an illegal snare. There is one type of snare that is currently banned, which is the self-locking snare. The sale of self-locking snares is banned, so you could call that type of snare illegal. You could also say that there is illegal snaring activity because it is not in accordance with the 1981 act, but it is not illegal to make a home-made snare.

The Convener: Thank you very much.

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): This was not going to be my question, but I will comment in order to bring all of this to a point. There is quite extensive qualitative evidence—it has been really helpful to hear that qualitative evidence this morning and to read it in our meeting papers. However, quantitative evidence has always been difficult to gather. We will ask questions later about enforcement, but enforcement has notoriously been extremely difficult; therefore, it has been extremely difficult to gather that quantitative data.

I would be very grateful if the minister, when she is responding to the committee as promised with some of that granular data, could provide a list of the quantitative data that is collated, because that would cut through some of the comments. Some of the points that have been made are absolutely

critical. An SGA member—a practitioner of many years who cares immensely about animal welfare and biodiversity—who is doing the right thing does not want to get lumped in with those who are not doing the right thing, although that is not what anybody is suggesting. That quantitative evidence might really help to cut through some of those comments.

My question is about conservation and biodiversity. All of us are very conscious that, in order to reach net zero targets, we need to really improve our biodiversity. Unfortunately, that requires quite significant predator control. Will the minister comment on the evidence around our approach to biodiversity, the role of predator control in that, and whether she thinks that some predator control can be conducted only through snaring, as some have suggested?

Gillian Martin: I know that the committee has been looking at and is keen to ask questions about the possibility of research for biodiversity reasons. We have heard from major organisations that carry out that sort of research and are concerned about biodiversity. Bodies such as the Woodland Trust, and particularly the RSPB, own quite a lot of land in Scotland and have said that they do not use snaring for predator control to protect ground-nesting birds of the type that we know are under threat from foxes that might steal their eggs or attack their nest sites.

Conservation bodies such as the RSPB and the Woodland Trust, which do not use snares and are actively advocating for a ban on their use, are confident that there are other tools that can be used to manage the conservation aspect of their work and are content that those methods are effective. I find it quite compelling that the organisation that cares about ground-nesting birds and was set up with an obligation to conserve Scotland's native bird species—RSPB Scotland—owns a significant amount of land that it uses to protect those species but does not use snaring. It does not use snaring because there are other, more effective, methods and because of animal welfare concerns.

The Convener: While we are on the subject of conservation and biodiversity, I have a question. You will have asked for NatureScot's opinion. Has NatureScot said whether banning snares would have a positive or negative impact on the preservation of ground-nesting birds?

Gillian Martin: Will you take evidence from NatureScot? We have been working closely with NatureScot and other agencies, which is one reason why we are lodging this amendment. NatureScot has not given any opinion to suggest that snaring should be kept for biodiversity or conservation reasons.

The Convener: Has NatureScot commented on whether that would have a negative or positive impact on predator control?

Gillian Martin: That is a question for NatureScot.

The Convener: You have taken advice.

Gillian Martin: You are asking me for NatureScot's opinion, but I am not from NatureScot.

The Convener: So, you have not received any advice from NatureScot about that part of the bill.

Gillian Martin: We have spoken to NatureScot, but you are asking a very specific and focused question about whether NatureScot has said that banning the use of snares would improve biodiversity. I do not have a one-sentence answer for that, because I have not posed that question directly to NatureScot. Perhaps you might want to do that.

Ariane Burgess (Highlands and Islands) (Green): I am really delighted that you are seeking to mitigate impacts on ground-nesting birds. The committee has also heard concerns about the impact that the date of the muirburn season can have on bird breeding. The dates set out in the draft bill would allow muirburn to take place up to 15 April, by which time the bird breeding season will already have begun because the breeding season is shifting earlier each year due to climate change. Can you confirm that the spring end of the muirburn season will be set to either 15 or 31 March, on a precautionary basis, to take account of the need to protect birds from nest destruction?

Gillian Martin: I was not expecting questions about muirburn.

The Convener: I do not think that that question is appropriate for this session with the minister.

Gillian Martin: I can certainly follow that up with Ms Burgess afterwards. Forgive me, but I am focusing on snaring today.

Ariane Burgess: Thank you, minister.

I have a supplementary question that goes back to animal welfare, because we have leapt ahead in our order of questions. Thank you for what you have been saying. It is clear that animal welfare organisations, no matter the language used, are saying that cable restraints cause the same threat to animal welfare as do snares. We have heard evidence from Scottish Badgers and you have mentioned other bodies. How can we hold our heads up regarding Scotland's animal welfare standards if we allow those indiscriminate devices to be used? They cause devastating injuries and extreme stress to any animal, from otters to badgers and, as you mentioned, pets. Are you able to confirm for the record today that humane

cable restraints are, in fact, the same as snares, with the same potential risks to animal welfare? Can you also confirm the Government's intention to follow Wales in implementing a full ban?

Gillian Martin: As I have written to the committee to say, we are proposing an amendment that includes a ban on snares, and we would include the other devices that you referenced in that. As far as we are concerned, the definition of snares includes what are called humane cable restraints. However, I must caveat that because, in order to be fair to the people who would like us to have a licensing scheme for the use of snares in certain circumstances, I have given them an assurance that I would consider their proposals for a licensing scheme. I got their proposals on Monday night and I will take time to look at them.

As it stands, though, we wrote to the committee to say that we would ban the use of snares because we have not been convinced so far that snares, even with modifications such as dual swivels, larger loops and breakaway joints, do not have significant animal welfare implications. Animals caught in such restraints might not exhibit the same physical damage as you would see from a more traditional snare, but, as I have said before, they are trapped for hours; they are still caught by the neck, although not as tightly as they would be with a traditional snare; they are stressed and exhausted; they cannot access food and water over that time; they could be subject to extreme weather; they could be subject to other predator attacks; the psychological distress that they undergo will have shock implications for them; and they will suffer over that period of time. That is why we have made the recommendation to ban snares.

The issue is about the welfare considerations for animals caught in these snares, whether they are target species or not—many non-target species are caught in snares, and they would be caught in any type of snare, whether it was a humane cable restraint with swivels or whatever. With the best will in the world, even the most professional and diligent operator of those snares may not be present within an hour or so of that happening, because the snares are set over a large piece of land, so it could be many hours until they are able to release an animal that is a member of a non-target species or humanely dispose of an animal that is a target species.

Those are not just my views. The DEFRA study that was carried out in 2010 made reference to those snares as well. It demonstrated that a lot of the non-target species—the larger species such as badgers—were not able to break away from those humane cable restraints. Under the agreement on international humane trapping

standards, which sets out criteria for rating traps by species and method of use, restraining traps such as snares are rated according to injuries that are indicative of poor welfare—that includes any type of snare. That is what I keep coming back to.

As I said, I gave my assurance that I would look at the proposals that Scottish Land & Estates put forward for a licence scheme, and it was only on Monday night that those proposals came through. However, as it stands, we are aiming to ban the use of snares, including the ones that are for sale with the modifications that I have outlined.

The Convener: We are in the unfortunate position that, given that the amendments dealing with these issues will be dealt with at stage 2, we will have only a limited time in which to scrutinise the issues. You said that you would look at the potential for a licensing scheme. When should we expect a response on that proposal? Will that be before the committee has to complete its stage 1 report and, ultimately, before the stage 1 debate?

Gillian Martin: I can give you a commitment today. Convener, I do not like to ask you questions, but I presume that your stage 1 report will be drafted in the next few weeks.

09:45

The Convener: That depends on whether we get the information from the Government on the position that it will take.

Gillian Martin: I can give you an undertaking: if you let me know when the committee is deliberating on its stage 1 report, I will get that decision to you.

The Convener: The clerks will be in touch, but we have a provisional date of 29 November for the stage 1 debate. Obviously, we need to complete our report before then and the Government has to respond to that.

Gillian Martin: You have my assurance that I will make a decision on whether there will be a complete ban on snares or a licensing scheme. You will have that information ahead of making your deliberations for your stage 1 report.

The Convener: That is helpful. Finally on this subject, with regard to evidence, livelihoods in the rural economy are a major concern. What research or evidence gathering have you undertaken to look at the working practices of gamekeepers, given the concern that banning snares would be removing another tool from the toolbox, which could lead to an increased need for shooting? I understand that, in some circumstances, terrain and conditions make some areas unsuitable for controlling predators in other ways.

Gillian Martin: I think that I was given this portfolio in mid-June. The day after I appeared before the committee to give stage 1 evidence, I met with Scottish Land & Estates and agreed to give it and other stakeholders that are involved in land management, particularly on shooting estates, an opportunity to have a round-table meeting with me, specifically on humane cable restraints. That round-table meeting took place in St Andrews house at the end of September. It lasted for a good hour to 90 minutes, during which time stakeholders were able to put forward quite a lot of detail with regard to what you are talking about. I have been in touch with those stakeholders and I have been able to have meetings with them whenever they have asked for them.

On engagement prior to that, I have a list of the ministerial meetings with stakeholders on the bill and I can forward that to the committee, if the convener would like that. I met with Scottish Land & Estates on 28 June and with RSPB on 20 July. I had a round-table meeting on humane cable restraints on 26 September, which included quite a lot of stakeholders. I met with the British Association for Shooting and Conservation on 3 October, NFU Scotland on 17 October and OneKind on 24 October, and I had a further meeting with RSPB Scotland on 20 September. I have made myself available to any group that wants to advocate one way or the other with regard to snares and working practices for groups such as RSPB Scotland, gamekeepers or anybody involved with the management of shooting estates.

I hope that all those bodies would say that I have made myself available. I have watched the evidence that this committee has taken—I watched it very thoroughly before my first appearance at the committee—and I have continued to engage with all those groups. However, well before I was given this appointment, in June, my officials were working on the bill and with all those stakeholders.

Rachael Hamilton: Minister, on the basis of what you have just said about looking at a licensing scheme and the correspondence that we have received this morning from SLE, can I take it that the Scottish Government is not set on a full ban on snares?

Gillian Martin: I gave a commitment to SLE and other partners off the back of the round-table meeting, at which they were advocating for a licensing scheme and the use of humane cable restraints in some situations. I offered them the opportunity to provide me with the detail of what they would want to see in a licensing scheme. I got that detail only on Monday night—48 hours ago. Given that I made the offer to them to look at

what they proposed, it is incumbent on me to do so, and I and my officials are still looking at it.

Rachael Hamilton: That was useful. Thank you.

Will the Government seek to carry out an impact assessment on humane cable restraints? Will there be any evidence to suggest a difference between, say, different types of trap use to inform the Government of how efficient or effective different types of trapping are? I am thinking of the difference between live trapping with humane cable restraints and the current Scottish code-compliant snare.

Gillian Martin: There are a number of different impact assessments. Which particular impact assessment would Ms Hamilton—

Rachael Hamilton: It is up to the Government to decide what the impact assessment would be. For example, there is evidence that ground-nesting birds might be affected by the proposed Government use of a humane cable restraint. That has already been covered in terms of biodiversity and conservation. We also need to consider how many predators are being captured and how efficient those possibilities are. We need to look at the comparison between each one.

Gillian Martin: I completely take on board the convener's point about scrutiny, and I have said that we will lodge amendments.

Let me go back to our reasons for not putting a ban on snaring in the original draft. We did not do so because of the work that Rachael Hamilton is asking us to do; we were approached by stakeholders who were advocating for us to look at humane cable restraints. That is what we have been doing over the summer: we have been working with those stakeholders and others, we have been taking advice, and we have put out a consultation on that specific issue.

In good faith, I have not steamed ahead and said, "We are not even going to look at that—there is going to be a full ban." From June to November, we have been doing everything associated with arriving at a final position. We had the round-table meeting and I offered to look at what stakeholders would like to see in a licensing scheme, but that information came back to me only on Monday.

Rachael Hamilton: I appreciate that.

Gillian Martin: A great deal of work is being done, Ms Hamilton, to allow stakeholders the opportunity to advocate for a particular type of snare still being used in a licensed way. It is my job to listen to everyone and to make a balanced decision on the basis of interaction with all stakeholders. That is what my officials and I have been doing over the summer. I appreciate that it has put your scrutiny back, but instead of having

everything in the bill from the get-go and setting out our stall by saying, “We’re going to ban snares,” we have said to stakeholders who have been advocating for humane cable restraints that we would look at that and do all the work that you have suggested. That is what we have done.

Rachael Hamilton: I am sorry, but I am still slightly confused. Regardless of whether there is a proposal for a licensing scheme in front of you, the fact is that you were working on this issue throughout the summer. If you have already done the work, why is that information not available now? For example, are live-capture traps efficient in capturing predators? Is it possible to shoot from live-capture traps in thick cover or challenging topography? Are live-capture traps on a par with humane cable restraints? Has a business and regulatory impact assessment been done in terms of jobs and livelihoods, and what about the impact on ground-nesting birds? Those are the questions.

Gillian Martin: Let me go back to my initial point in my statement. Regardless of proposals that have been put to us about licensing—which we need to dig into, and which we need to take time to consider—we believe that more humane methods of wildlife control, such as shooting and trapping, are available to land managers here as they are in other countries across Europe. The Welsh Government and Parliament have also made a decision on that.

I am confident that a ban on the use of snares would not prevent anyone from undertaking necessary wildlife management. As I have mentioned, there are other landowners involved in conservation who do not believe that snaring is necessary. Snares are already used only in very limited circumstances under the current legislation; they cannot be used in situations where they might attract other species or where species that they are not intended to trap might unintentionally get caught. That still happens, regardless of the professionalism of the individual who sets the snare.

That is my starting point. Had we not had calls from SLE to consider humane cable restraints, we would have put that in the bill. That would have been our starting point, and I would have dealt with all of that in the initial evidence session. We are taking the time, however, to do all the work required in that respect.

My starting point is that I am not at all convinced that we can continue with snares in Scotland because of the animal welfare issues with any kind of snare. There are other methods that have been used successfully in other countries in Europe, and we might need to adapt and use those methods, which are effective.

Rachael Hamilton: Can—

The Convener: I am sorry, but we are going to have to move on.

You have talked about the use of snares in very limited circumstances, minister. Can you provide us with information that will give us some proper background on how many foxes are currently controlled using snares and how many are currently shot or controlled using other methods?

Gillian Martin: It is a question of whether we have that data. I do not know how we would know how many foxes have been shot as a result of being caught in a snare—I do not know what record keeping would be involved in that.

The Convener: You said that snares were used only in very limited circumstances.

Gillian Martin: Yes. I was saying they are allowed to be used only in certain—very limited—circumstances by law.

The Convener: Those circumstances are limited, but it would be good if the committee could get an idea of how many foxes or other predators were currently controlled using snares. It would give us a better idea of the impact of removing that tool from the box.

Gillian Martin: I think that you are looking for data that the Government might not hold. If a snare has been set, there might be nothing in it, or a fox might be found in it the next morning and then shot. I imagine that the gamekeeper would keep a log of that.

Hugh Dignon: There is no requirement on anyone to report on the shooting or snaring of foxes. Anything that we do involves our taking a proactive look, and it is difficult to get that sort of data. However, I can say that the number of licensed snare operators is quite small—I think that it is below 2,000—and that is an indication that snaring is very much a minority way of controlling foxes as predators.

The Convener: Once again, instead of anecdotal comments, it would be good to get a better idea—

Gillian Martin: Convener, with the greatest respect, are you saying that we should have put obligations on land managers to report how many foxes they shoot as a result of using snares? We did not do that.

The Convener: No. All that I am trying to do is clarify things and put them in perspective. You have commented that there is very limited use of snares, but I do not know what “very limited” means compared with the number of foxes that are shot or controlled in other ways. I want to get a better understanding of what “very limited” is. Is it, say, 5 or 10 per cent?

Gillian Martin: Hugh Dignon has just said that fewer than 2,000—

The Convener:—people are using snares.

Gillian Martin: Yes—that is the data that we have. If there is any data beyond or below that at a granular level, I will provide it to the committee. However, I go back to what we have just been saying: there is no way of knowing these things, because there is no recording mechanism and it is not legally incumbent on anybody to report what animal was caught in a snare, when it happened and what was done with it.

10:00

The Convener: We will move on to questions from Jim Fairlie.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): Good morning, minister, and my apologies—I am not feeling great, so this might take me just a second or two.

I am going to come back to your point about the limited use of snares. My understanding is that some estates will not use them at all while, on other estates, the majority of foxes will be taken by snares, depending on topography and what have you. With regard to the potential for controlling foxes, in particular, what other methods of control will estates, or farms that struggle with shooting, use to help them to control predators? Have other European countries banned the use of snares? If so, how did they get over not using them?

Gillian Martin: Thank you, Mr Fairlie. I hope that you feel better soon. It sounded like that was a struggle.

I can outline the different types of predator control that will be available if snares are banned. The appropriate method of control depends on a number of factors, including the legal status of the predator, the topography of the land and the kind of livestock that is being protected. Mr Fairlie was absolutely correct about that.

The method most used at the moment is shooting, including at night—that is the predominant method for controlling foxes in particular. Trapping is also available, including live-capture traps. Dogs can be used to flush foxes to guns for the protection of livestock, as per the Hunting with Dogs (Scotland) Act 2023.

Farmers and land managers can take other steps to protect their livestock, including a lot of the things that they do already, such as housing their livestock during vulnerable periods; using fences, including electric ones, to protect their livestock; and diversionary feeding if they have an issue with a particular predator. Those are the

non-capture and non-lethal methods; the humane lethal method that is used is shooting.

Mr Fairlie asked what other countries do. I cannot remember exactly what happens in every country, but I have been given a helpful list. In Europe, snares are banned in most European Union countries; indeed, Germany, which is a big hunting nation—it is probably second only to Scotland for game shooting—has banned snaring. A couple of countries including Spain and France have not yet banned snares, but the majority of EU countries have. Of course, Mr Fairlie will also be aware that our colleagues in the Welsh Parliament and Government recently banned snares completely.

Jim Fairlie: Thank you, minister.

I just want to follow up on a couple of those points with you. Are you looking for far more non-lethal predator control to be done going forward?

Gillian Martin: To be honest, that is up to land managers. I am not promoting any type of control over the others. Effectively, what I am saying is that we propose to ban one method of control: snaring.

Depending on their circumstances, land managers might want to ramp up lethal controls such as shooting or might look at other non-lethal methods, or they might want to use other types of traps. That is entirely up to them; a suite of available options is open to them.

It has been pointed out to me that, in some cases, shooting is not always an option, and I understand that, but other traps can be used that do not have the same animal welfare impacts. Believe me, Mr Fairlie, there are groups out there that would like us to consider banning those traps, too, but we have said that we will consider only snares. We need to leave land managers the tools to trap animals in other ways that have fewer animal welfare implications.

For the moment, we propose to ban snares and leave the other suite of methods available. It is not the case that I am advocating non-lethal methods over lethal ones; all the methods are available to land managers, who can make the decision whether to use them.

Jim Fairlie: So, as I said right at the start, there will be specific circumstances when shooting will not be possible, depending on the area.

You mentioned hunting with dogs. I have been contacted by the Atholl and Breadalbane estates about difficulties in getting a licence through NatureScot—it is proving to be very tricky. If we are to see a ban on snares and therefore have to rely on shooting, we should at least ensure that there are some methods to control predators in particular areas. That will not apply across the

country—I accept that—but, in certain specific areas, it will be very difficult to control animals without snares. You talked about a suite of methods, minister, but if we take snaring away, it will be helpful if the potential exists to have a licence in certain areas.

Liam McArthur: I, too, send Jim Fairlie my wishes for a speedy recovery. Just following up on his question, has the Government developed or built up any evidence on the effectiveness of some of the alternatives?

Minister, you are absolutely right that a suite of measures is being used—that was certainly the evidence that we got during the passage of the Wildlife and Natural Environment (Scotland) Act 2011. However, even then, as Jim said, the argument was made that, in certain terrain, snaring was seen as the only effective, viable option. In a sense, it is a last resort rather than a first resort. My understanding is that live-capture traps have been deployed and their effectiveness in capturing foxes is debatable. I appreciate that there is a suite of measures, but I wonder whether you or your officials have built up an evidence base on that.

Gillian Martin: I will bring in Hugh Dignon, because he has been working on the drafting of the proposed amendments and he did some work on that area before the bill was as it is at the moment.

Hugh Dignon: Shooting is clearly the main option. It is the main option now and we think that it will continue to be.

We are not saying that live-capture traps are really a viable way of controlling foxes in the countryside. They are used in urban environments to catch foxes and they are also used for other purposes, such as to catch feral cats or rabbits, but we are not saying that they are really, for most people, a viable alternative to shooting or snaring.

For most people, shooting will be the main option. We accept that, in some circumstances and in some areas, shooting is not as effective, but we have not come across anywhere where people say there is nowhere that they can shoot. We understand that there are places where people may prefer to snare because that is a more effective use of manpower, but we have not come across anywhere where people say that they absolutely cannot shoot at all.

We accept that the bill will limit some people's options, but we are weighing that against the welfare implications. It is that sort of balance.

Liam McArthur: That is very helpful. On shooting, I know that, in relation to goose management, for example, and some of the issues that have been faced in places such as Orkney,

anxiety has been raised about the potential risk from having more people shooting across more types of ground. Has the Government done any analysis or assessment of the potential risks from increasing the level of shooting and how those could be managed?

Gillian Martin: Mr McArthur will know that gun control regulations in Scotland are extremely tight in terms of who can get a licence to have a shotgun and what they have to do to secure it and use it. I come back to the fact that the people who are undertaking that land management are professional people. I do not think that we will see an uptick in Joe Bloggs having a shotgun.

Liam McArthur: I was not suggesting that. If you have a situation where shooting is being deployed more routinely because snaring is no longer an option, you are potentially undertaking it in terrain where it is not felt to be ideal. It is not the skill set of the people who are undertaking the activity that is being called into question; it is simply that the amount of shooting would be greater than it is at the moment. I wondered whether a risk assessment had been carried out on that.

Gillian Martin: The main thing that has been put to us by the cohort of individuals and organisations that would like to retain snaring has not been about their having to do more shooting and the risk associated with that. The argument that has been put to us is that shooting will take more people, so it comes from an economic or business point of view. That is the main reason why they want to retain snaring. It is not about a risk associated with more shooting; it is that it will require more people to be out shooting foxes if they cannot go round the estate and set snares and then go back in eight hours' time or whatever, which is less labour intensive.

Kate Forbes: I have a brief question. Minister, you have very kindly said that you will share data. It is important that we put on the record that that needs to be reasonable data—what the Government might reasonably have. Of course, with any change to the law there would be a requirement to monitor its effectiveness and so on. Is the Government considering what kind of data it would collate and how it would monitor the effect of this change? Given the conversations about predator control, in particular, and Jim Fairlie's point around the well-documented challenges and dangers of shooting in some circumstances, it is important that the committee is assured that the Government will monitor the situation with quantitative data.

Gillian Martin: The monitoring aspect, to my knowledge, also came up during the passage of the Hunting with Dogs (Scotland) Bill, so how we are going to monitor the effectiveness of the bill is

a reasonable question. Obviously, the Scottish Government will monitor the effectiveness of any legislation that it introduces. Also, committees can do post-legislative scrutiny, and it is within the gift of the committee to do its scrutiny.

The Government and the agencies will obviously monitor the effectiveness of what they are doing. We have routine tranches of work that are done on things such as the impact on biodiversity—the state of nature report, for example. NatureScot has the task of monitoring biodiversity and species management. The Scottish Government also has strong relationships with land managers, and, if the bill is passed, I will continue to have conversations with stakeholders about the effectiveness of the laws that the Parliament has put through and where there are issues that we might be able to look at.

10:15

Jim Fairlie just brought up the issue of licensing under the Hunting with Dogs (Scotland) Act 2023. I will take that away. I should have said to him before he went that he is welcome to write to me about that issue. In the same way, the Government will continue to listen to people who are impacted by the legislation that we pass.

I guess that data collection will relate to biodiversity as well, but it will be about the conversations that we will have with stakeholders over the time in which that legislation is put in place.

Rachael Hamilton: I ask you again whether you believe that live-capture traps are effective. The Game and Wildlife Conservation Trust worked on the issue over a number of recent years. It set traps across estates and no foxes were captured. Do you believe, after your many conversations with gamekeepers, that the Government's proposals will remove some of the last tools in the box?

Gillian Martin: You talk about my many conversations with gamekeepers. The gamekeepers I have spoken to have advocated for the retention of snares and have made the point that the other traps that are available are not as effective as snares. Nobody is saying that there is a trapping method that is as effective as snaring, but the reason why we are introducing a ban is that snaring has significant animal welfare concerns attached to it. We are not proposing the banning of snares for no reason or to make life difficult for people who are working hard to manage their land. We are proposing it because, over many years, there has been a great deal of evidence to suggest that snaring is inhumane and causes unnecessary animal suffering.

Rachael Hamilton: I totally agree, but I have to press the matter. The GWCT found in its work that no fox had been trapped over a number of years, so how will jobs be created? Surely jobs will be lost. You said that jobs will be created.

Gillian Martin: Ms Hamilton, nobody is saying that any trap of the type that you are alluding to is going to capture foxes; we are saying that the majority of foxes that are killed are dealt with by shooting. That method is available. Traps are available for other species where they are more effective. A range of options is available to people, which, if the ban goes through, will not include snares for the reasons that I have outlined, which are mainly animal welfare considerations.

Rachael Hamilton: That does not make sense to me because, if predators cannot be controlled, jobs will be lost.

Alasdair Allan: Will the concept of vicarious liability apply to snaring offences under the proposed legislation? If so, how?

Gillian Martin: Vicarious liability applies when a person who is working for an organisation does something. It is not just they who are liable; it is also the person who employs them. It is usually applied in situations where the person who is held liable has the power to control the actions of the person who has committed an offence. For example, if a gamekeeper is setting a trap, it might be because the person who employs that gamekeeper has asked them to do that. That is vicarious liability.

The Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020, which I mentioned earlier, already extended vicarious liability to include certain snaring offences, including setting an illegal self-locking snare; positioning snares in such a way as to cause unnecessary animal suffering; and using snares to purposely trap protected animals such as badgers or otters. Given that Parliament has recently added vicarious liability to those already illegal situations and offences, it would be reasonable for it to remain in place in relation to relevant new snaring offences in the bill.

I am still considering my final position on whether the status quo is enough in that respect, and I have not arrived at a final position on vicarious liability with regard to any new offences.

Alasdair Allan: I appreciate what you are saying about the fact that a final decision is still to be made, but, on vicarious liability, what likely consequences might there be under the legislation? For example, if someone on a farm or an estate uses a snare illegally, what might the options be for consequences? Could something be done in relation to support under agricultural payments, for example?

Gillian Martin: I guess that, given the fact that the bill in which the issue is embedded is about the licensing of shooting estates, the issue that we are discussing would be an offence in the same way as any of the other things that we have mentioned in relation to the bill would be. That means that there would be an investigation and police involvement, and NatureScot could suspend someone's licence if a wildlife crime had been committed. That is one of the reasons why I have not arrived at a final position on vicarious liability, because that might be a sufficient deterrent without involving it. Hugh Dignon might have views on that, but that is certainly my position at the moment.

Hugh Dignon: Dr Allan, I am not sure whether you are referring to cross-compliance issues or—

Alasdair Allan: I do not know how the example that I gave relates to the present law and how it relates to the proposed new law, but what might be the consequences for a land manager more generally? Would vicarious liability be taken into consideration in relation to agricultural payments and so on?

Hugh Dignon: I am not sure that we have an answer to that, but we can certainly check with our agriculture colleagues and see what the rules are around payments and the implications for vicarious liability offences. I will write back to you on that.

Alasdair Allan: You mentioned the fact that most European countries have banned snares altogether. What have you learned from those examples, whether they relate to vicarious liability or anything else? My understanding is that the United Kingdom is one of only six countries left in Europe that even has the option of snaring. What lessons have you learned from other places?

Gillian Martin: In Scotland, we are proud of our regulations on animal welfare, and we are a nation that cares very much about animal welfare. So, when you point out that we are one of only six countries that still have snares, it is clear that we are lagging behind. There has been a debate about the issue for a long time and we have not taken action on the complete banning of snares, although we have obviously had regulations in place and we have had reviews of them.

We have reached the point at which we need to be in line with most European neighbours. A lot of those nations have big economic sectors around hunting. I mentioned Germany, in particular, and regions such as the Black Forest have adapted to banning snares by ramping up the other methods of predator control, particularly shooting. It is worth remembering that those countries probably have more predators, but we can learn from what they have done, which I think gives us a bit of comfort.

Other nations that have significant economic activity associated with hunting and shooting have been able to adapt to the use of other methods effectively.

The Convener: How many vicarious liability charges have been brought for snaring offences?

Gillian Martin: I do not think that any such charges have been brought.

The Convener: Would that suggest that it is not practitioners and landowners who are committing snaring offences and that it tends to be poachers?

Gillian Martin: There will be a myriad of reasons for the fact that there have not been any such charges. As I said, I have not settled on a position on a new offence with regard to vicarious liability, but I do know that no charges have been brought.

The Convener: We will move on to another section of the bill—I am conscious of the time.

We will move to questions on additional powers for the SSPCA from Ariane Burgess.

Ariane Burgess: Minister, I would be interested in hearing what the scope of the SSPCA's new powers would be under the proposals and what evidence has satisfied you that that expansion would support enforcement with regard to wildlife crime.

Gillian Martin: I will talk about the evidence that meant that we felt that we had to do something. I think that I mentioned that in the previous evidence session.

The issue was brought to my attention in the previous parliamentary session, when we were considering what became the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020. The SSPCA said that it could attend a situation in which a live animal was caught in an illegally set trap, deal with that situation and report it to the procurator fiscal or the police but that, despite the fact that it could see more illegally set traps that had dead animals or no animals in them, it could not take those traps as evidence and report them to the police. Basically, if the animal in the trap was alive, it was within the SSPCA's powers to act, but, if the animal was already dead, it could not do anything.

The SSPCA could be called to such situations ahead of the police being able to get there. So, in effect, it had the potential to present evidence for a case to be made in order to assist the police and the procurator fiscal but, given its powers, it could not act. We looked at this issue over the summer and we have spoken to a lot of stakeholders, including the police and the SSPCA.

The SSPCA will be able to—let me get this right—use the powers to

“search for, search or examine things if they suspect with reasonable cause that evidence will be found in or on that thing”

and

“seize and detain potential evidence or things”

that provide evidence of the participation in or commission of a relevant offence. Relevant offences are offences that are set out in part 1 of the Wildlife and Countryside Act 1981 or, in this case, in the Wildlife Management and Muirburn (Scotland) Bill. The Scottish SPCA can use those powers only in situations on land or non-domestic property in which it is already responding to a case under its existing powers under the Animal Health and Welfare (Scotland) Act 2006. Therefore, the SSPCA cannot go looking for things. If it is already responding to a case, it will be able to seize evidence and give it to the police as soon as possible. It will then be up to the police and the procurator fiscal's office to decide whether what has been done constitutes a crime.

Jim Fairlie: The Government set up a task force to look at the potential for increased powers for the SSPCA. I think that the Government has rejected the recommendation on increased partnership working. Will that recommendation still be progressed alongside the Government's proposals?

Gillian Martin: There will be partnership working. The powers that I have just outlined are to deal with the problematic gap in evidence gathering. However, from discussions with the police and the procurator fiscal's office, in particular, we have decided to limit those powers in the way that I have described.

There will be partnership working between the three agencies. There already is partnership working between them. If the bill is passed, protocols will be put in place between the police and the SSPCA on how the new functions in the powers should work, including what reporting mechanisms there will be and how the agencies can work together effectively. That will ensure that there is partnership working. It might not be exactly to the letter of what the task force said or the partnership working that it advocated, but there will still be enhanced partnership working between the police, the procurator fiscal and the SSPCA, in line with the powers that I have outlined.

10:30

Jim Fairlie: Okay. Thank you.

The Convener: Minister, you will recall that there was some discussion about whether, under the proposed new powers, the actions of an SSPCA inspector would be defined as an official

investigation of a relevant offence, which could trigger a suspension or revocation of a licence, when the main body—NatureScot or whatever—was not convinced that an offence had been committed. Will you update us on your position on that? Could the SSPCA be classed as starting an official investigation?

Gillian Martin: I heard those concerns in June, when I came to speak to you about what will constitute an investigation that might trigger action with regard to a licence. I think that some of those points were well made. It is incumbent on the legislation to make clear what constitutes an investigation.

We are looking at a few options, but I am currently minded to make that when something has a crime number. I take the concerns that were raised very seriously. What is an investigation? NatureScot needs clarity on that and so do stakeholders. Legislation should provide clarity. One of the options that I am looking at—and I am leaning towards this—is that an investigation may trigger a suspension of a licence or whatever by NatureScot when it has a crime number associated with it.

That goes back to having confidence in the approach. The SSPCA will assist the police in relation to evidence gathering but, when it comes down to it, an investigation will be a police investigation.

The Convener: Okay. In effect, you are redefining our understanding of, or what the bill suggests is, an official investigation.

Gillian Martin: Well, that is the power of scrutiny, is it not? We are at stage 1. The committee has made some points to me. I have been thinking about them, and some of those issues will be taken into consideration in the passage of the bill. I went away from the meeting in June and considered the points that were put to me. I want people to have confidence in the licensing schemes and the arrangements involving NatureScot, and I have suggested the definition that I am most minded to bring forward.

The Convener: Okay. Is a crime number not just something that the police have to give when something is reported? Does it suggest that proceedings or an investigation will be carried out? If my bike is stolen, I will get a crime number for insurance purposes, but that does not mean that there will be an investigation or any determination by the police that a crime has been committed.

Gillian Martin: I am working to arrive at a definition that I am happy with. I have maybe given you a little more information than I should have given at this stage, because we have not settled on that, but we will settle on something that will be a definition.

I do not know whether Hugh Dignon wants to comment.

Hugh Dignon: As I understand it, convener, there are some fairly rigorous standards that the police apply to decide whether something is “crimed”, as they describe it. They need to decide whether the circumstances meet the standards and they are satisfied that a crime has been committed. At that stage, they will give the incident a crime number.

The Convener: In my example of my bike going missing, I will get a crime number without the police doing anything.

Hugh Dignon: In those circumstances, if the police were convinced that the crime had occurred, yes.

Gillian Martin: One of the reasons why the crime number is something that I am quite favourable towards is that it is about giving comfort that the police retain primacy. I think that, in June, there was a suggestion that the police would not have primacy when it came to the investigation of wildlife cases. That is not the case. The crime number is a police procedural point that would indicate very strongly that the police have primacy.

The Convener: During your deliberations, it would be interesting to find out how many times the police have given crime numbers in association with wildlife crime. That would give us an idea of whether that is effective.

Gillian Martin: I will add that to the list of data that you require.

The Convener: I am sure that that is not something that you have at your fingertips, but there will be a record of how many crime numbers have been given out.

Gillian Martin: I will add that to the list, convener.

The Convener: That is helpful.

Rachael Hamilton: I reiterate that, because the SSPCA does not have full criminal investigation powers, it would not be able to recommend to NatureScot that a licence could be suspended.

Gillian Martin: Forgive me if I do not want to tell you to the letter everything that I have not already decided on. We are deliberating on that. I think that you were one of the people who outlined your concerns about the definition of an investigation and whether it is an SSPCA investigation or a police investigation. I am more minded that it be a police investigation. The whole point of giving the SSPCA the extra powers was to make sure that evidence could be gathered in a timeous way that would assist the police and that we would not have a situation in which evidence was available to the

SSPCA but it could do nothing but walk away from it. That is the gap that we are filling here.

Rachael Hamilton: You are absolutely right, because the police said that there could be a tendency for the SSPCA to commence investigations. It is about that grey area around what would constitute a reason to suspend a licence.

Gillian Martin: That is why we have to be absolutely clear. That is right up there on my priority list.

The Convener: I am still concerned that we heard from the police that every call will automatically create a paper trail of some sort.

Gillian Martin: Not everything will be given a crime number.

The Convener: Everything is given a crime number.

Gillian Martin: No, not everything will be given a crime number.

The Convener: Is it not? That is a question rather than a statement.

Gillian Martin: I am almost regretting that I have given you the information about something that we are actively looking at. However, your questions are helpful in that regard. The general point that I want to leave you with is that I am taking the calls for a definition of an investigation very seriously, and I want it to be clear.

The Convener: I am asking on the back of the police officers saying that there is no such thing as an unofficial investigation. If an investigation triggers a potential suspension, a crime number is—

Gillian Martin: Nobody is saying that, as soon as something is being investigated, a licence is suspended. There has to be a consideration and an analysis before that happens. It is not a case of pressing the button and X happening.

The Convener: I guess that it is about who undertakes the investigation as well, whether that is NatureScot or—

Gillian Martin: I think that I have been clear that I would expect the police to be involved in an investigation that would have a consequence with regard to a licence.

The Convener: Thank you.

Alasdair Allan: Minister, you mentioned the primacy of the police in investigations. What conversations has the Scottish Government had with the police and the Crown Office about those issues? There was mention of a proposed compromise around some of the reservations that

had been expressed by them. I am thinking particularly about matters such as powers of entry.

Gillian Martin: Yes. You will notice that there has been a slight shift in some of the proposals around that. That is because we have been having conversations with Police Scotland throughout. I will outline what was asked of us and what we have agreed to.

The SSPCA utilises search powers under section 19 of the Wildlife and Countryside Act 1981 only when it is already on land lawfully—when it is already using the search powers that are afforded to it under that act. When the SSPCA is already on the land, it will respond to time-critical circumstances only when there is significant risk of evidence being lost or compromised through waiting for the police to respond. Any evidence of wildlife crimes is provided to Police Scotland as soon as is practically possible.

The police have primacy over offences under the Wildlife and Countryside Act 1981 and, as such, will progress an investigation. However, in certain circumstances, if it is agreed by Police Scotland and the SSPCA, the SSPCA may report subsequent issues. That goes back to the protocols and partnership working. There will be no powers of arrest or search of persons or the craving of a search warrant provided to the SSPCA. It is very much about the SSPCA assisting the police in a way that fills the gap around evidence gathering, which was an issue for many years.

Karen Adam (Banffshire and Buchan Coast) (SNP): Has the Scottish Government had any conversations with the SSPCA about whether it may need additional resources and training, particularly for inspectors to receive the required authorisations?

Gillian Martin: Training should fall under the protocol agreement between Police Scotland and the SSPCA. They will be working on that protocol and the training will come out of that. The SSPCA is comfortable with that and does not foresee much in the way of resource issues. It is more concerned about the fact that it is almost wasting its resource for wildlife crime, because it could be in a situation in which its inspectors could see evidence but are not able to do anything with it. The SSPCA wants to work with the police to fill that gap and put together a protocol agreement. Officers who have those powers—it will not be every officer—will undergo the training. All that will come out of the protocol.

Karen Adam: Thank you. That is helpful.

Rhoda Grant (Highlands and Islands) (Lab): Could you tell us a wee bit more about what training will be given to make sure that cases do

not fall? The collection of evidence is crucial for court cases. What training will be given to ensure that the evidence is collected in a way that would stand up in a court case?

Gillian Martin: It would be helpful for you to speak to the SSPCA about the training that its officers already get, because it already gathers evidence on wildlife crime. However, the issue has been the nature of the evidence that it has been able to collect and what it has not been allowed to collect. As you know, the SSPCA regularly gives evidence on any matters that are taken forward by the procurator fiscal involving a range of offences including animal welfare, animal cruelty or wildlife crime.

In that regard, the training will be about the protocols that the police and the SSPCA work on in order to make sure that the evidence is gathered, as you rightly put it, professionally, correctly and in a way that does not compromise that. It will make sure that there are protocols about reporting evidence to the police and the channels of communication between the two bodies. The SSPCA is already well versed in collecting evidence that is admissible in cases and it already has a relationship with the procurator fiscal and the police in that regard.

Therefore, the training will build on existing training, and it will be specific officers who will undergo it. It will not be a case of rolling out the training to absolutely every single officer in the SSPCA. Specific officers will be identified, trained and involved in the setting up of the protocols and the partnership working that we have talked about.

10:45

Rhoda Grant: I have one more supplementary question, convener.

Are you convinced that the SSPCA will have the resources to do this? After all, it is pulling out of Caithness; it is closing its premises in the area and is not providing services for abandoned animals, and that makes me somewhat concerned about the resources that it has. Are you clear that this will not impact on other services that it provides to the community as a charity?

Gillian Martin: As you have rightly pointed out, the SSPCA is a charity. It has not asked us for additional money to take these powers on, but you are also right to point out that charities such as the SSPCA are, like a lot of the third sector, finding things difficult at the moment. After all, it relies largely on donations.

One of the main reasons for the issues that the SSPCA is having with regard to rehoming animals and taking them into animal shelters is that the number of animals being dropped on its doorstep

has increased. Because of the cost of living crisis, people are in a horrible situation and are having to make the decision to give up their pets. When I was at the SSPCA's place in Balerno in July—it was not even wintertime—the people there were saying that they had been overwhelmed by the number of animals that distraught people were having to give up simply because they could not afford to feed themselves and their pets. That is even before people have to put the heating on, so I presume that the situation is going to get worse over the winter.

However, the SSPCA does not see these new duties and powers as extra work. It is already doing this work, but its hands have been tied as a result of not having powers with regard to animals that are found already dead in traps. The SSPCA does not really see that work as requiring additional resource. That said, though, your question leads me to highlight this important point about how difficult charities—and animal welfare charities, in particular—are finding things at the moment, and for a number of reasons, many of which are associated with the cost of living crisis.

Liam McArthur: As Rhoda Grant has said, the SSPCA has closed its rehoming facility in Caithness, and there has been widespread conjecture about the financial situation that it is in. Orkney has been without an SSPCA inspector for some time now, and I know from speaking to local vets that that has given rise to serious concerns about animal welfare issues.

I appreciate what you have said about the SSPCA insisting that these additional powers do not necessarily require additional resources, but there is some anxiety about there being a patchwork in this respect, with some areas having inspectors who have been well trained to take on the additional powers while, in other areas, the SSPCA has not been able to resource that sort of thing. I think that that will likely have an impact on the public's confidence in the SSPCA taking on these roles. In your discussions with the SSPCA, have you been able to ascertain the extent to which it believes that, in the challenging financial environment, it is going to be able to meet the expectations that are being placed on it across the full gamut of animal welfare?

Gillian Martin: I know the SSPCA well, and I would say that Mike Flynn, whom I meet regularly on a range of animal welfare issues, is the best person to ask whether the SSPCA thinks that it can take on these powers. However, what Mr Flynn, as the representative of the SSPCA, has put to me is that the organisation has found it quite wasteful of its resource to be called to an incident involving a live animal only to find when it gets there that the animal is dead and it has to walk away. It is saying that what is being proposed is

actually a more efficient use of its ability to deal with wildlife crime and to assist the police, particularly when it is first at the scene.

Nobody is suggesting that the SSPCA will replace the police in that regard, because police will still respond to wildlife crime calls. The SSPCA is an agency that people will often call if they see an animal in distress, before they think about phoning the police. It is a complementary provision. The SSPCA has said to us that it does not see resource implications arising from it taking on those powers.

Liam McArthur: Any MSP will tell you that the more casework you do, the more you generate. The point that you make about better use of the existing resource is well made, but it is not unreasonable to suggest that the more the SSPCA goes down this route, the more it will do and the more it will find that it could be doing. Therefore, the anxiety might be that there is diversion away from some of the other animal welfare work that it does to focus more on this. Have you discussed that with the SSPCA?

Gillian Martin: It has not put that to me as being an issue.

The Convener: We have a brief supplementary question from Rachael Hamilton and then a final question from Kate Forbes.

Rachael Hamilton: Our papers state that the Scottish Government consultation threw up some issues around the extension of the powers of the SSPCA. It says that there was

“potential conflict between the SSPCA's campaigning position, on issues such as snaring, and the use of powers to investigate incidents associated with those issues; and perceived lack of accountability for decisions made by charities ... in comparison to police forces”.

Do you share those concerns?

Gillian Martin: No, I do not, because I have been speaking to the SSPCA and Police Scotland about the issue, and my officials have been working closely with them on it. That is why we have arrived at the situation in which the police are comfortable with the powers that they have asked us to outline, which I did in response to Ariane Burgess, and the limitations of those powers.

The most important thing is the protocols that will be generated as a result of the enhanced partnership working between the police and the SSPCA.

The police do not see it as an issue, and the protocols will ensure that it is not an issue. The SSPCA will want to ensure that its involvement in any evidence gathering around wildlife crime is unimpeachable, for reasons that you can imagine. It would like its professionalism to be recognised.

Rachael Hamilton: Are you concerned that the two parties might not come to an agreement on the protocols?

Gillian Martin: No, I am not concerned at all about that.

Rachael Hamilton: What monitoring will you do to ensure that the concerns that were thrown up in the consultation—

Gillian Martin: I will do the same monitoring as I would do for anything that is in my portfolio, including on how legislation that I have taken through is working on the ground. If it is an issue, it will be brought to my attention by Police Scotland or the SSPCA and we will take it from there. However, I do not foresee that. I feel confident that they will be able to work together. The police have put forward their views on what they would like to see, and we have agreed with them, as has the SSPCA.

Rachael Hamilton: So, the minister will monitor the situation by taking information from those who have extended powers—that is marking your own homework.

Gillian Martin: Ms Hamilton, I think that you have been a little bit narrow with regard to what I have said. As with any legislation that goes through, we will continue our engagement with the stakeholders that it affects.

Kate Forbes: This might be the final question, so I thank you for your evidence to date. I will return to my favourite subject, which is enforcement. With regard to the approach that you have outlined, I note that any legal change will only be as effective as the enforcement of that change. In the light of how difficult it has been to monitor and enforce some measures, do you think that the proposal, as it is being worked out, will have a meaningful impact on enforcement?

Gillian Martin: Yes, I absolutely do. In about 2019, when we were taking evidence on the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill, the limitation on the SSPCA's ability to gather evidence was put to us. I was struck by the fact that, when the SSPCA could see evidence of wildlife crime having happened, it had to walk away from that and could not do anything about it.

There is also the potential for evidence to be compromised over a period of time. An SSPCA inspector might phone the police and say that they have seen something but they cannot do anything with it, so the police will need to get there. As you know, however, that allows time for the evidence to be removed or compromised by the weather. Ms Forbes said that her favourite subject is enforcement. One of the reasons why wildlife

crime is still such a scourge in rural Scotland is the difficulty in gathering evidence on it.

It is a matter of plugging the gap. The SSPCA will be called in anyway if someone phones because a live animal has been caught in a trap. Under the proposed new powers, SSPCA inspectors will be able to seize evidence of suspected other wildlife crime in the area involving animals that have perished or other traps that have been illegally laid, and they can help the police to get wildlife crime prosecuted.

Kate Forbes: As the minister might agree, it is critical not to penalise those practitioners who are already concerned about wildlife crimes and who have a duty towards biodiversity and managing land well and effectively.

Gillian Martin: I could not agree more. There are people who are acting completely responsibly and who care about the environment, wildlife and animal welfare who are being tarred with the same brush as the very small number of people perpetrating wildlife crime. I hope that we will look back on all the legislation that we are proposing and say that it has been a good thing for the reputation of people who have been maligned in many cases and tarred with that brush. It is a very good point.

Kate Forbes: And we owe a great debt to gamekeepers.

The Convener: I have a last, technical question. Will the protocol that will need to be in place for the SSPCA and Police Scotland be in place and agreed prior to the bill going through to stage 3? If it is not—if a protocol cannot be agreed—the eventual legislation will still come into force. What happens in that circumstance?

Gillian Martin: As Mr Carson knows, in the same way as we do not tend to have codes of practice as part of the text of a bill, we would not have a working protocol or arrangement between two bodies that were affected by the legislation in the bill itself. The SSPCA and Police Scotland are already working together on it, but the protocol will not form part of the bill.

Hugh Dignon: We do not necessarily need to commence the provisions until all the arrangements for the protocol are in place. That would be one option.

The Convener: That is helpful. At the moment, if we were to agree to pass the bill, the SSPCA would get the additional powers whether or not a protocol was in place. What you have said is really helpful: there may need to be an amendment to suggest that the provisions would not be enacted or enforced until an agreed protocol was in place.

Gillian Martin: I hope that that has been helpful.

The Convener: But is that your understanding? Have I got that right?

Gillian Martin: I have made the point that a protocol would not be part of the text of the bill for scrutiny. If the committee was minded to recommend something around that, we would certainly look at it.

The Convener: Okay.

That is us. Thank you very much for that; I really appreciate it. We may wish to get some more details in a follow-up letter, but we appreciate the time that you have taken this morning.

10:58

Meeting continued in private until 12:22.

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