



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 3 December 2019

Session 5



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Tuesday 3 December 2019

CONTENTS

Col.

ANIMALS AND WILDLIFE (PENALTIES, PROTECTIONS AND POWERS) (SCOTLAND) BILL: STAGE 1..... 1

**ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
33rd Meeting 2019, Session 5**

CONVENER

*Gillian Martin (Aberdeenshire East) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)
Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)
*Angus MacDonald (Falkirk East) (SNP)
*Mark Ruskell (Mid Scotland and Fife) (Green)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Libby Anderson (OneKind)
Scott Blair (UK Centre for Animal Law)
Howard Bridges (Edinburgh Dog and Cat Home)
Runa Hanaghan (Dogs Trust)
Robbie Marsland (League Against Cruel Sports)
Gillian Mawdsley (Law Society of Scotland)
Penny Middleton (NFU Scotland)
Mike Radford (University of Aberdeen)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 3 December 2019

[The Convener opened the meeting at 09:03]

Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill: Stage 1

The Convener (Gillian Martin): Welcome to the Environment, Climate Change and Land Reform Committee's 33rd meeting in 2019. I remind everyone to switch off their mobile phones or put them on silent, as they might otherwise affect the broadcasting system.

Agenda item 1 is to take evidence at stage 1 on the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill. The first of two panels today will focus on the legislative framework in the bill. I am delighted to welcome: Mike Radford, who is a reader at the University of Aberdeen; Gillian Mawdsley, who is secretary to the criminal law committee of the Law Society of Scotland; and Scott Blair, who is an advocate for the UK Centre for Animal Law. Good morning to you all, and thank you for coming to the meeting.

I want to kick off with questions on the proposed increase in maximum sentences for animal welfare offences. Will you outline the evidence base and the rationale for the proposed increases in penalties in the bill, including current trends for the specified offences and the rationale for specific maximum penalties?

Mike Radford (University of Aberdeen): The rationale is that the maximum penalty is not appropriate for the most serious offences. It is as simple as that. The number of cases that would be involved is relatively small, but they are the most serious. In particular, there has long been an argument that offences that involve either a large number of animals or unnecessary suffering being caused for money or for pleasure are more serious and the current maximum penalties for such offences are inappropriate.

Finlay Carson (Galloway and West Dumfries) (Con): Does the scope of the bill go far enough? We are looking at the maximum penalties being increased for some animal cruelty issues, but that is not happening in relation to other offences under the Animal Health and Welfare (Scotland) Act 2006, such as those in section 20, "Mutilation", section 21, "Cruel operations", section 22,

"Administration of poisons etc", and section 24, "Ensuring welfare of animals". Those offences will not be subject to an increase in the maximum fine or sentence, although they could involve serious animal welfare issues. Why are they not included in the new legislation?

Mike Radford: Those are old offences. They existed before the 2006 act. In fact, most of them go back to the Protection of Animals (Scotland) Act 1912. Few of them, with the possible exception of the poison offence, are brought. All such cases could also be covered by the welfare or unnecessary suffering offences.

Finlay Carson: I want to ask about what is excluded from the scope of the bill. It does not cover licensing of animal breeding, pet sales or sanctuaries. Further, there is currently on-going consultation on a bill on sheep worrying. Would it be better to have one piece of legislation that covered all those issues, rather than little bits of legislation that might lead, in the long term, to improvements in animal welfare?

Mike Radford: The 2006 act is an umbrella piece of legislation. It relates to all protected animals—that is, vertebrates other than man that meet one of three conditions, which are that they must be of a kind that is commonly domesticated in the British islands, under the permanent or temporary control of man or not living in a wild state.

On licensing, the Scottish Government has had a consultation on bringing in new legislation on the licensing regime. England did that last year. The licensing regime is an administrative regulatory regime. Nothing will prevent somebody who is in breach of any new licensing regulations from also being prosecuted for a welfare offence or an unnecessary suffering offence under the 2006 act. The new regulations will be complementary rather than in opposition to existing legislation.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I wonder whether you might be able to point us towards any academic research on a particular issue that touches on this discussion. Sentences are about penalising the guilty—and, to some extent, in the case of a fine, they are about compensating the criminal justice system for the cost of the prosecution. However, it is also said that they constitute deterrents. Is there any academic research that shows us the balance in the criminal's mind between the deterrence that comes from the thought that they might get caught and the deterrence that comes from the punishment that follows being convicted? That is a debate that can be had more generally, but, since we are talking about increasing sentences today, I think that it would be appropriate to seek some clarity from academic research.

Mike Radford: There is no such academic research from the United Kingdom that I can point you to. However, it is important to understand that, when it comes to unnecessary suffering—what used to be called cruelty—the vast majority of prosecutions arise from negligence. In other words, the suffering is unintentional—essentially, it involves people not looking after their animals properly.

Clearly, matters are serious if a lot of animals are involved, but such offences are of a completely different nature from those that arise out of deliberate cruelty and unnecessary suffering where a large number of animals are involved or where people are making significant amounts of money—the committee will be aware of the issue of puppy smuggling and puppy farming—in relation to which the penalty clearly does not fit the crime and the potential benefit that people are getting from it.

It is also important to view how the legislation works as a whole. The 2006 act includes provisions on care notices. The difference between the welfare offence and the unnecessary suffering offence is that the latter occurs only after the animal has suffered. The welfare offence can be a protective provision, in that it allows enforcement authorities to intervene at an early stage, either to get the animal out of the situation or to put the situation right. Those who are appointed under the 2006 act can issue a care notice, which identifies the problem, tells the person how long they have got to put things right and what they have got to do. In Scotland, unlike in England, a failure to comply with a care notice is an offence in itself.

The bill would make the system more flexible at both ends. At one end, it would increase the maximum sentences for the most serious offences; at the other end, the proposal to introduce fixed penalty notices would allow a sanction short of prosecution where there is a failure to comply with the care notice.

Gillian Mawdsley (Law Society of Scotland): I am not sure that this is necessarily the point that you are asking about but, taking a broader view and speaking from a criminal law perspective, I make the point that deterrence is a major factor and an increase in the sentencing available will offer the judiciary greater powers over what the sentence is.

It is important always to think of deterrence in the context of the sentence that is pronounced in any case that is successfully prosecuted, and to look at the factors that come into that. I highlight in that respect the importance of sentencing being appropriate and commensurate in the overall criminal scheme; any sentence is about setting an appropriate tariff and that tariff being known about.

That is as much about education and training as it is about the judiciary. I see that as the role of the Scottish Sentencing Council, which is committed to producing sentencing guidelines. That is very important. There are sentencing guidelines in England and, in my experience, they do a lot to educate the judiciary, who might deal with only one case from time to time, to get a sentence right and make it appropriate and in line with the response to other serious criminal offending.

When we consider deterrence, we need to take a step back and look at other factors in the bigger criminal picture. The sentence should be appropriate, but it should also carry sufficient penalty for deterrence.

Mr Radford talked about money being made from crime. Clearly the legislation has a role in relation to the proceeds of crime. Confiscating the proceeds of crime is an important deterrent because, frequently—this is my experience—criminals are concerned not about the conviction affecting them and their being put in prison but about the impact on the family picture and the wider profitability and affluence that has come from the criminal activity.

That might not be the answer to your question about deterrence, but such factors have to be looked at, as does the opportunity that the bill provides to increase sentences and give a range of options, so that a judge is not restricted to imposing a summary sentence and so on.

Scott Blair (UK Centre for Animal Law): I will make two brief comments on what has been said. On the previous point about sentencing, one of the points that the UK Centre for Animal Law made in its submission to the committee is that there appears to be a view, if not a basis in evidence, that prosecution, detection and conviction in relation to wildlife offences is particularly difficult.

09:15

If the penalties are set relatively low, we get into a somewhat circular situation where the crimes are difficult to investigate and prosecute and the penalties are not very high, so from the prosecutor's perspective there is not much incentive to go forward. Conversely, for those who commit offences against wildlife, that means that there is not much of a deterrent. We therefore welcome the proposal to increase maximum sentences for wildlife offences, because that seems to reflect the concerns about the difficulties that arise.

As a practising lawyer, I can understand the attraction to consolidating all the animal legislation into one statute. Having all your law in one place makes it a lot easier to find. As Mike Radford said, the difficulty with that is that the purposes of our

various regimes are different. Some are criminal law regimes and some are protective welfare regimes. Licensing is a particular interest of mine and I have recently been involved in some of the work on a form of dog breeding law, puppy farming law and Lucy's law, so I hope that I am fairly well versed in that distinct area of administrative law, over which a local authority should more properly have control.

It would be difficult to have the one statute, or even a couple of statutes, to cover all those areas. It is far better if they are seen as different but complementary. One example that comes to mind from licensing law is the Civic Government (Scotland) Act 1982—I am sure members will be familiar with that to some extent—which covers areas such as taxi licensing. A breach of the licensing provisions under that act is also a criminal offence and can be prosecuted under criminal law. That system has worked well for years. Likewise, and in so far as we are also looking at reforming our animal licensing law, a system whereby licensing offences are civil matters for the licensing authority and criminal matters for the fiscal is a well-established and understandable model.

Mark Ruskell (Mid Scotland and Fife) (Green): I am interested in that point, because the bill does not seek to extend sentences for licensing breaches but covers other areas.

The bill could have updated the definition of animal sentence. Do you have any thoughts on that? Is the bill the appropriate place to put that, or are there other ways of updating the definition?

Mike Radford: That requires separate legislation. I gave evidence to the Westminster Environment, Food and Rural Affairs Committee a couple of years ago when the Department for Environment, Food and Rural Affairs produced its ill-fated sentence provision. The issue needs a separate piece of legislation.

Leaving aside what sentence means, which animals it applies to and so on, the issue is still alive as far as DEFRA is concerned. The provision would have made a significant difference in the sense that, until now, animal welfare legislation has focused on those who are directly responsible for animals. The proposed provision would have imposed a duty on the Government. If we are going forward in that way—as I hope that we will do—it would require a materially different sort of provision.

I want to follow up on what Scott Blair was saying about licensing. There is the fallback of prosecuting for failure to adhere to licensing provisions. However, in practice, the majority of issues are dealt with administratively by changing licence conditions or revoking licences. That is the

point of the licensing system: it can be regulated and enforced administratively rather than under criminal law.

Finlay Carson: Your answers have been useful, but they have led me to want more information about other types of penalty.

You talked about different penalties. In practice, how effective are the community payback orders and disqualification orders that are currently available? Will the bill tighten up their use?

What are your thoughts on automatic bans? At the moment, someone can be banned from keeping animals, but there does not appear to be much consistency on the part of the courts in making banning orders. Should there be an automatic ban on keeping animals for people who are convicted of the most serious animal welfare crimes?

Gillian Mawdsley: Community payback orders have been available for some time. They are perhaps particularly important in the context of the presumption against short sentences that was legislated for recently, which, as you know, means that it is unlikely that a sentence of under 12 months will be imposed.

The advantage of a community payback order is that some of the offences that we are talking about are such that unpaid work in the community might well be a payback. That is not a light sentence, given the commitment that is required from people who might have to fit the activity around work. I am not sure where community payback orders have been imposed, but I think that if they are imposed appropriately they can be effective and are in line with the policies that the Government is promoting.

An automatic ban could be appropriate and effective, as part of a sentencing regime. My only reservation is that it would of course always be subject to the appropriate appeal mechanisms, which are clearly laid out. My two colleagues can probably say more about when the sanction of disqualification is appropriate. A sanction that in effect takes away someone's livelihood seems to me to be appropriate on occasion.

Scott Blair: I endorse that final point. Anyone who immerses themselves in the wealth of material that shows just how cruel people can be towards vulnerable creatures will feel a real sense of repugnance—that is the feeling in my mind and I am sure it is the feeling in members' minds. There is certainly scope for a system of automatic bans, to reflect society's view that some things are simply beyond the pale.

This might not be a very good parallel, but I will draw it anyway. We have a system of protection of children in our country, in which the ultimate sanction is that a person's children are taken away

from them and perhaps freed up for adoption. That might be to do with parenting skills or cruelty—every case is different. When we are dealing with cases of plain cruelty, intentional abuse of animals or just reckless disregard for animals' interests, it is difficult to escape the view that automatic bans have a role to play and would be broadly supported by most members of society.

Mike Radford: It is unfortunate that disqualification orders are not in the bill. The bill's title includes the word "penalties", and a disqualification order is clearly a penalty. It is not a punishment, and it is not to be confused with any other sanction that is imposed on a person. Imprisonment, fines and other sanctions that are available to the court are punishments, whereas disqualification orders are intended to protect animals and are, in my view, a penalty, not a punishment. It is unfortunate that the bill says nothing about them.

Disqualification orders predate the 2006 act, but the 2006 act makes available a much greater range of orders. If a compulsory disqualification order were to be imposed, we would need to know precisely what was being disqualified. The idea behind the inclusion in the 2006 act of a lot of variations on the disqualification order was that there would be more flexibility for an order to fit the offence, whatever it was.

The problem is that a court already has to give reasons for not imposing a disqualification order. For the more serious offences, if it is not compulsory to impose such an order, there should—at the very least—be a very strong presumption in favour of it. The problem with compulsory orders is always that, in difficult cases, they could end up being disproportionate, particularly if somebody's livelihood is affected. However, there should be a very strong presumption that there will be a disqualification order. In addition, if the court decides not to impose one, it should be under a duty to give a reasoned and thorough opinion on that, which should be appealable.

It is also important that there is a register of those orders. At the moment, there is no collective view of orders, so we do not know who is getting them, and we cannot look at the consistency between courts. It used to be said that people would know about disqualification orders because neighbours would know, and because they would be reported in the local press, which was full of court cases. Populations are much more mobile now, so neighbours probably will not know, and there is not a local press in the way that there used to be. As such, there is simply not an informed view of when disqualification orders are being imposed, what is being imposed and who gets them.

Claudia Beamish (South Scotland) (Lab): Although I have a substantive question, I will first ask Mr Radford about something that he just said. If I heard correctly, he said that negligence was an "unintentional" issue. From my layperson's perspective, if a person—an adult who has responsibilities—treats an animal in a negligent way, I do not understand why the word "unintentional" comes in. I have read about a lot of the cases that came forward in evidence, which were very disturbing. Will Mr Radford briefly say more about that?

Mike Radford: Yes. In the criminal law, there are strict liability offences—such as parking and speeding—whereby the person's state of mind at the time is irrelevant. More serious offences divide into two types, whereby there is either an objective mental element, which is about the reasonable person test, or a subjective one, which is about the intention of the person. For example, the conduct and result of manslaughter and murder are the same; the difference between the offences is the mental element.

Around the world, a lot of cruelty, or unnecessary suffering, offences are restricted to where it can be shown beyond reasonable doubt that the person intended the animal to suffer, which—clearly—is a high threshold. The vast majority of prosecutions for unnecessary suffering do not arise from cases involving people who intend to cause it—rather, those people do not look after their animal properly and, generally, its condition deteriorates over a period of time. That may happen because of ignorance, and, in many cases, it is not just the animal who is not being looked after properly; the lives of those people are in some chaos and they are, in fact, not looking after themselves properly either. It is probably not appropriate that such people be sent to prison. Those offences are much fewer now, because of the welfare offence.

The problem prior to 2006 was that an offence arose only after the animal had suffered. That did not actually protect the animal; it simply made the person accountable after the event. The beauty of the welfare offence is that, along with the care notices, it allows for intervention before the animal has reached the point of suffering. For example, if somebody is not feeding their dog properly, its condition will deteriorate over a period of time, and, if they do not take advice from enforcement authorities, steps can now be taken to get the animal away from that situation. That is a very different situation from that of a person who is deliberately causing unnecessary suffering.

Claudia Beamish: Thank you. That is helpful. I am keenly conscious of the time.

The Convener: Can you keep your questions short, because we have only 15 minutes?

09:30

Claudia Beamish: Do the panellists have any comments on the need for any further interventions to support the application of appropriate penalties or to support broader compliance with the law, such as sentencing guidelines, enforcement, public awareness interventions or changes to the powers of agencies such as the Scottish SPCA? In light of the time that we have, not all the panellists have to answer that question, but if they wish to comment, that would be most welcome.

Gillian Mawdsley: I will pick up the first part of the question and leave the issue of changes to powers.

I refer to the answer that I gave earlier. All changes to criminal sentencing are part of the awareness of the judiciary—the Crown Office and the defence—of what the likely sentence should be and are about pitching that within the criminal framework. As was discussed earlier, we are very reliant on organisations and people who really understand animals making that known. There is also the obligation of education of all those parties, which is part of legal education.

As I highlighted in our response to the Judicial Institute for Scotland, there is a definite need for sentencing guidelines—I referred to that earlier—because they set out parameters. Obviously, judges do not need to observe them, but having such guidelines would make things very clear. That is an area of our law that needs education, training and awareness, and that involves publicity for cases that have been successfully prosecuted. It is about education generally, the education of children, and respecting animals. A number of organisations that are interested in animal welfare have a role in that and, once the bill is passed, we will all have a role in making people aware and ensuring that information is out there. There is no point in increasing penalties unless people are aware that they will be applied when appropriate.

Scott Blair: I will pick up a point that Gillian Mawdsley made. I know that this theme is close to A-Law's heart. There is an increasing amount of international research that demonstrates links between cruelty towards humans and cruelty towards animals and that shows that behaviours that are learned very early in life can carry through to later life. All of us can probably remember things going on in our own school days, such as someone pulling the legs off spiders in the schoolyard. We look back on such things with horror and think, "How could that have happened?" That was the culture—I hope that it is not the culture anymore.

We also have the paradoxical view of animals being fluffy, Disney-like creatures. Children are fed

a lot of wrong information about animals, and they need to understand that animals are sentient and can suffer, and that they can enjoy pleasure and experience pain like the rest of us. If those messages are implanted in children early on, the criminal law will have a lesser role to play because some of the more concerning acts of cruelty that we see may simply not take place.

In that wider context, another area that is perhaps worth exploring is joined-up thinking about people who have been convicted of animal cruelty offences and the extent to which that might be a risk factor for the authorities to consider in relation to what else is going on in those people's lives and homes.

I will give a brief example. In some American states, if an animal is brought to a vet for treatment and the injuries are unexplained, the vet has a duty to contact the local social services department to put that on record with a view to perhaps triggering further inquiry into the person's circumstances.

As Mr Radford said, part of the problem can be that people are in difficulty. If they are in difficulty in their own life, that might impact on others, including children and vulnerable people as well as animals. Perhaps there is an opportunity to have joined-up thinking, with education at an early stage and agencies that have become aware of criminal animal cruelty reporting to other agencies that may have a relevant interest.

Mike Radford: The SSPCA could give the committee more information about that when the committee takes evidence from it, because it has been at the forefront of that issue.

The Convener: We need to move on. I want to pick up on the aspect of the bill about rehoming without a court order. Will you outline why that is necessary and what the impacts are likely to be on welfare, perhaps making a distinction between agricultural livestock and domestic pets?

Mike Radford: The answer to that follows on directly from what Mr Blair said about the nature of animals. The offences that we are talking about are not just another criminal offence; they involve living, feeling creatures. The problem is twofold. In the context of agricultural animals, large numbers of animals can be involved. Who is responsible for them and where can they be kept? It may well be that they are coming up to slaughter weight and need to be disposed of as quickly as possible for economic reasons.

With companion animals and the like, by the nature of such cases, the animals have had an unfortunate experience and have been looked after poorly. At present, if an owner does not voluntarily give up ownership of the animal, it has to be held by an agency, which is most commonly

the SSPCA. The agency has to pay for that, and it blocks up kennels so that other animals cannot be brought in. That situation can often worsen already inherent behavioural and other problems that have arisen from the way in which an animal has been treated.

The Convener: There is a real issue with puppies, for example.

Mike Radford: Absolutely.

The Convener: They might have to be kept in that situation until they are adult dogs, so they will not have socialisation. Is that another reason for the measure?

Scott Blair: Absolutely. I am a dog owner and I suspect that some members may have a dog or certainly experience of dogs. If, like me, you have had experience of raising a dog from puppyhood, you will know that the early stage in their life is absolutely crucial in two ways. We often hear people saying, "My dog isn't good with other dogs," which is usually indicative of the fact that the dog has not been properly socialised with other dogs. That is a classic issue in puppy farming scenarios, where breeding bitches are kept in cages without contact with other dogs.

It is equally important for a puppy in the early stages of life to be handled appropriately by humans to encourage the inherent bond between canines and humans. If that is not done, you end up with a dog that is aggressive towards people. In the scenario in which a puppy farm is raided and dogs are recovered—including adults used for breeding and puppies—they might have to sit in some kind of limbo for months and months. I readily accept that the SSPCA does what it can in that scenario, but there is nothing better than a proper new home, particularly for a puppy, because some of the damage that might have been done can be mitigated or steps can be taken to bring on the puppy and socialise it appropriately.

We can benefit society if we stem the problems that arise from problem dogs—although I would say that the problem is the owners—that have not been socialised properly early on in life. If we simply hold them in the limbo of the legal system until the owner agrees to the transfer—or perhaps does not and the case ends up in an appeal process—the wider public benefit is simply lost. We may have rescued a puppy, but we have not given it the life that it deserves.

The Convener: There is a question about both sides of the issue. How do we balance the rights of the animal with the rights of the owner in such situations? There is an issue of the process of the law. We could have a situation in which an owner is not prosecuted but loses a herd of cows or animals that they were rearing to sell.

Mike Radford: The bill addresses that issue, in that the animals can be disposed of only if the owner does not seek to have the notice overturned. There is protection, in that animals will not simply be disposed of without the owner being made aware of that. The owner has a limited period of three weeks to do that, which seems to me to be entirely appropriate.

They have to be informed of what is intended, and the provisions of the notice in the bill are pretty detailed.

It seems to me that, in addition to the practical issues that Mr Blair has identified, there is an issue of principle here. The role of the law and the courts is to protect the vulnerable. By definition, if an animal's condition is so poor that it has been taken into possession, the principle should be that it is put into the best position possible as soon as possible. That should not automatically override the owner's rights, but it should be given priority. The onus should be on the owner to argue against that—the current position is that the cards are stacked in the owner's favour.

The Convener: We have to move on. Stewart Stevenson, could you deal with the two themes that you wanted to ask about in the one go?

Stewart Stevenson: I will seek to do that.

On compensation, section 11 of the bill inserts new section 32H into the 2006 act. Proposed new section 32H(3) sets out that the value of the compensation will be the greater of the value at the point at which the animal was taken away from its owner and the value at the end of the process of determining compensation. I wonder why that second provision exists at all, given that interventions such as veterinary treatment would increase the value of the animal. Why should the compensation value not simply be the value of the animal in the condition that it is in when it is taken away from the owner, however poor that might be, bearing in mind that it is being taken away for welfare reasons? I make the observation that that amount should be less any expenses, but that is a separate issue. The expenses could be substantially less than the increase in value; in fact, in some circumstances, the value could be close to nil.

Mike Radford: You make a very good point.

Stewart Stevenson: That is an adequate answer for my purposes. I always read the words in the bill.

The other issue is that the compensation is determined before any criminal justice case might have begun its formal process. Should compensation be paid to someone who is going to go into the criminal justice system? When the animal exists purely because of the criminal

actions of the individual, should that individual get any compensation whatsoever? In other words, should the decision about compensation not follow the completion of any criminal justice process and potentially be determined to be zero, regardless of what the bill, as it is currently drafted, says?

Mike Radford: You make a second very good point.

Stewart Stevenson: In that case, let us move on to fixed-penalty notices, because I know that we are short of time.

I have seen fixed-penalty notices being used very effectively to deal with low-level street crime, such as drunkenness on a Saturday night. In relation to what the bill says about fixed-penalty notices, I am unclear—perhaps because I have not read the relevant part of the bill thoroughly enough—whether the SSPCA can administer them or whether a constable has to do that. Should both options be possible? Given that the SSPCA has powers to take animals into possession, is the way in which the bill is constructed sensible and a good addition to the law?

Mike Radford: Yes, it is a good addition to the law. A person who has been appointed under the 2006 act can administer fixed-penalty notices, and I understand that most SSPCA inspectors have been granted powers under that act.

As I said earlier, the proposed arrangement makes the regime much more flexible at both ends—the serious end and the less serious end. I see fixed-penalty notices being particularly valuable when somebody is not complying with a care notice but it would be disproportionate to prosecute them. However, a record must be kept of who has been given such notices.

09:45

Angus MacDonald (Falkirk East) (SNP): We saw broad support in our consultation for the introduction of a Scottish Finn's law. It is perhaps worth noting that a small number of respondents suggested that the bill should go further and mandate harsher penalties for attacks on service animals. One respondent suggested that there is a case for introducing a new offence of intentionally or recklessly causing injury to a service animal. Do the proposals in the bill for a Scottish Finn's law represent an appropriate mechanism for increasing protection for service animals? What are the implications of the change?

Scott Blair: I drafted the A-Law response on this point and what struck me when I embarked on this was the level of violence that is out there towards service animals, including horses, which I find extraordinary. I ride myself, I am around

horses, and the idea of anyone hitting or punching a horse strikes me as bizarre, but it goes on and there are many examples of it. The issue relates to more than just dogs and affects any type of service animal, so there has to be a clear recognition of what we are talking about.

There is a large body of material from England about attacks on service animals and, in particular, about public order offences where horses or dogs are deployed. There is a paradox, I think, whereby a person can be committing an offence, such as breach of the peace, disorderly behaviour or assaulting a police officer, but if a service animal becomes engaged with them, they are entitled to say, "The suffering was necessary because I was defending myself". That is simply incoherent, in my view, so the bill is a valuable way of addressing the current anomaly in Scotland.

You asked about the impact of the change. I think that there has to be appropriate sentencing. If someone commits this offence in the context of public disorder, for example, there might be an issue as to whether it is an aggravating factor in the overall circumstances of the public order offence. In any event, there is merit in having an independent penalty to make it clear that animals have rights—in a sense; this is a controversial area—or at least that we have duties towards them, and that that includes those who assault animals in the course of their behaviour. It is simply not appropriate.

As for making the offence wider, the difficulty that one always has is the question of why we single out certain members of society for particular treatment. In the last days of the death penalty, the sentence of death was handed out only to those who killed police or prison officers and so on. That was one of the anomalies that people brought forward to say, "This is another reason why we cannot support this; it produces arbitrary distinctions."

My view—it is very much a personal view—is that there is an argument for a higher penalty for attacks on service animals, simply because of the deterrence element. I am not aware of any widespread body of evidence or opinion out there that reflects that view at this time, but there is certainly a clear body of opinion and evidence that supports something resembling Finn's law, and the model in the bill very much reflects that body of opinion.

Mike Radford: I support Finn's law. Like Mr Blair, I think that it should go beyond dogs and include any service animal that has been trained and is being used in the service of the public.

I invite the committee to consider taking the approach further to include assistance animals. There is a particular issue in that regard—we are

talking mostly about attacks on dogs—because the nature of a person’s disability might mean that they are unable to see or be aware of the danger and take avoiding action, as a normal dog walker could. Secondly, the nature of such an attack can result in the dog not being fit to carry on their role, and clearly that has implications for the dog and for the person whom the dog is assisting. It is a really serious issue, and though there are relatively few such instances, the number does not lessen their importance.

The Convener: I apologise to members who wanted to come in on the back of that answer, but we are running out of time. We will move on to wildlife crime.

Claudia Beamish: The panel has already looked at the increase in penalties. Are there any comments about serious wildlife crime? I am interested in the implications for the investigation of wildlife crime of changes in the bill such as the change in statutory time limits and the potential ability of the police to authorise covert video surveillance.

I am making all my points at once, because we are short of time—I apologise; we are always told to ask one question at a time. To achieve the aim of increasing deterrence, might other work or measures be required, such as the use of vicarious liability, resources for investigations and enforcement or other recommendations of the Poustie review? I have thrown a lot in, but answers on any of those issues will be most valued.

Scott Blair: I have a comment on vicarious liability. With wildlife crime, one is typically dealing with large areas of land that are under the management of an entity such as a company or trust that employs stalkers, keepers and other persons to manage the land. That is an industrial activity, albeit one that is carried out in the rural environment, and there are parallels in other areas of the law where persons who employ other persons to perform a role in the context of a business are often vicariously liable, both civilly and criminally—this used to be the case under the Factories Act 1961 and it is the case under the Health and Safety at Work etc Act 1974.

My view is that there is no distinction in principle to justify maintaining the view—if there ever was this view—that vicarious responsibility has no role or a limited role in the rural environment. That strikes me as anomalous. The issue has been seen against the background of a time when people who worked the land were independent contractors who came in and provided services to the landowner. That might have had some validity in the days of the Victorian estates, but it does not have validity any more with regard to large estates that are managed either as a means of producing

game for the table or as sporting estates, where there is much money to be made. My respectful submission is that, if there is much money to be made, there has to be vicarious responsibility on the part of the people who are in overall management of the site, as is the case with regard to industrial matters.

Of course, that must be subject to the usual defences of reasonable diligence and due diligence being taken, to cover situations in which members of the estate break the law despite the best efforts of the estate management team to ensure that that does not happen.

There are so many parallels in our laws, from liquor licensing through to health and safety legislation, where vicarious liability applies. It is anomalous that the proposition is not accepted in a general sense in the area of law that we are talking about.

Claudia Beamish: Is it your view that there would have to be a direct prosecution of the alleged perpetrator, or would evidence of an alleged crime be sufficient?

Scott Blair: Yes, evidence of an alleged crime would be sufficient. There are precedents with regard to alcohol licensing, which is an area of my practice. Provisions in the Licensing (Scotland) Act 2005 make clear that if, for example, a shop assistant has sold alcohol to a child, one can go against the shop owner, not necessarily the assistant; the real issue would be with the owner, not the assistant. Our law has precedents that already work on that basis.

Claudia Beamish: That is helpful; thank you.

The Convener: Are there any other comments before we wrap up? We have only a couple of minutes.

Gillian Mawdsley: I want to make a point about vicarious liability in the criminal context. A common driving offence is that of causing or permitting the uninsured use of a vehicle, which is a contravention of section 143 of the Road Traffic Act 1988. The issue of vicarious liability is involved when the person who is the owner of the car is the one with the insurance but the person who is driving does not have insurance. That is quite a successful prosecution method, because of the issue of whose fault it is that there is no insurance.

The Convener: Mark Ruskell has a final question.

Mark Ruskell: Earlier, Claudia Beamish asked about the powers of the SSPCA. Do you see a mismatch between the SSPCA’s powers in relation to domestic animals and its lack of powers in relation to gathering evidence on wildlife crime?

Mike Radford: There is an issue there, and I am sure that the SSPCA will be happy to give you evidence on that.

Mark Ruskell: What is your view?

Mike Radford: My view is that the SSPCA should be given more powers and that it should be treated as a public body, so that it would be subject to judicial review in the same way as other public bodies are.

The Convener: I thank our witnesses for their evidence. It has been helpful. I am sorry that we have run out of time.

We will suspend briefly to allow for a change of witnesses.

09:55

Meeting suspended.

10:01

On resuming—

The Convener: The round-table evidence session that we are about to embark on focuses on animal welfare issues in the bill. Before we begin, I remind people that there is no need to mention individual cases or names of people. Please speak in general terms, in case we get ourselves into bother. I am sure that everyone knows that; it is just a friendly reminder.

I welcome Libby Anderson, policy adviser at OneKind; Runa Hanaghan, deputy veterinary director at the Dogs Trust; Howard Bridges, chief executive officer of the Edinburgh Dog and Cat Home; Robbie Marsland, director of the Scotland branch of the League Against Cruel Sports; and Penny Middleton, policy manager for animal health and welfare with NFU Scotland.

I will start by asking for general views on the rationale for the increases to penalties in the bill, and I invite witnesses to chime in on why the provisions in the bill are necessary.

Libby Anderson (OneKind): I am always happy to kick off.

First, I think that the case has been made over several years that the penalties have fallen behind those in other countries and particularly other European countries. There was also a strong view that the punishment element of sentencing—I note that Stewart Stevenson referred earlier to the different elements of sentencing—was very much a public focus. OneKind's view is that there is a role for that, and that we should have equivalence with other jurisdictions. We are also pleased that the penalties for wildlife offences are coming up to the same level as those for offences relating to the

welfare of domestic animals. We think that that is important.

I stress that OneKind's view is that efficacy of sentencing is important, and that we should not focus only on punishment and revenge, as it were. We want justice, but we also want prevention of offences and protection for animals.

The Convener: I presume that you also want there to be the right mix of approaches to give courts the flexibility to decide on the efficacy of the things that can be deployed—I am mixing up my words, but I mean that courts should have a suite of options.

Libby Anderson: Yes. The fact is that, with judicial policy and the available penalties, community payback orders are much more commonly used in relation to the offences that we are talking about. Those orders have been recognised as a useful tool, but there is an issue about the measures that are attached to them. Unpaid work, which Gillian Mawdsley referred to, is the most common measure that is attached, but there are several. Another one is supervision by a social worker. Of course, a skilled criminal justice social worker with knowledge of animal welfare issues would probably be able to help an offender to consider their behaviour. Another potential measure is to require a convicted person to attend various programmes that are similar to domestic violence programmes such as the Caledonian men's programme.

As you know from our submission, we believe that retraining and teaching people empathy and understanding for animals could have longer-term and more far-reaching effects in changing people's behaviour. The committee might like to come back to that later.

The Convener: At the other end of the scale is the organised crime element and serious crimes that require the flexibility of custodial sentences.

Libby Anderson: I could not agree more, which is why we support the higher penalties.

Runa Hanaghan (Dogs Trust): I echo Libby Anderson's thoughts on higher penalties. The presumption against 12-month sentences means that the current penalties might not deter people from doing something again.

I also agree with Libby Anderson that we need to be able to reach for support and assistance for people who are struggling. We have heard evidence previously about people whose cases were brought due to negligence and how education and understanding can be accessed and brought through the system.

On organised crime, our organisation is close to that issue and understands the effects of puppy smuggling and puppy farming. The seriousness of

what the animals endure during the process that they go through for profit is appalling. We want sentencing to be brought up to a level that reflects the seriousness of the crimes that people are committing.

Finlay Carson: I declare an interest as a member of the National Farmers Union Scotland. I do so because I want to direct my question to Penny Middleton. It is about other types of penalty. We have heard about other methods of punishment. In relation to animal welfare issues, what is your opinion of how effective the use of community payback orders and disqualification orders is in agriculture? Does the bill go far enough with that sort of penalty?

Penny Middleton (NFU Scotland): For some of the more serious cases, the use of disqualification orders would be appropriate and effective.

On the level of penalties, we need appropriate penalties to deter people, but the first port of call for a farmer who commits an animal welfare offence would be to penalise them under the cross-compliance system. That is a much simpler system, because there is no burden of proof. Some of the fines that people get through the cross-compliance system are significantly higher than some of the penalties that we are talking about under the bill. I see that as a bigger deterrent on the farming side.

Finlay Carson: What are the other witnesses' thoughts on community payback and disqualification orders?

Runa Hanaghan: Disqualification orders are important, because there are people who might not learn or be empathic towards animals, the processes that can happen and how some animals can suffer.

With disqualification orders, it would be valuable to have a recognised body that holds the information and can share it across various elements of society so that the legislation can be better enforced and upheld.

Libby Anderson: As was mentioned in the discussion with the previous panel, there is room for a register of disqualification orders, because it is hard for enforcement agencies to know whether they already exist.

We expect disqualification orders to be considered as part of the process after conviction, because the 2006 act already requires that. However, there is no open understanding of the reasons why a disqualification order is not given. In our submission, we suggest that an explanation should be given in open court. There might be reasons why disqualification is not necessary, but the presumption should be that that must be considered. Perhaps there should be an automatic

ban, but cases will vary. There should certainly be automatic consideration of disqualification and then, if such an order is not given, there should be an explanation of why that is.

Mark Ruskell: The bill is about sentencing, but I want to ask about what we need alongside that to ensure that there are successful prosecutions. Is there a need for sentencing guidelines? Are there issues with resourcing certain bodies? Should the functions of certain bodies, such as the SSPCA, be extended? Are there issues with the process that the Crown Office goes through in deciding whether to take forward a case?

Robbie Marsland (League Against Cruel Sports): I would like to pick up on the admissibility of video evidence from non-governmental organisations, because I am afraid that I do not understand it. I have been looking at the issue for the past five years. The League Against Cruel Sports first looked at it in relation to fox hunting, but it is relevant to many of the issues that we are looking at. It was explained to me that NGO video evidence is not admissible in a Scottish court, and I know that RSPB Scotland has had difficulties on that front. Notwithstanding that, the league has successfully submitted video evidence to two courts in Scotland, and I was pleased that that evidence was admissible in those cases. I have had an explanation of why that was the case, but I still do not understand it. I am quite close to the matter, and I think that there are others who do not quite understand the system.

Mark Ruskell: Will the bill change the position on admissibility, given that we would be looking at higher sentences?

Robbie Marsland: It seems to me that it is a decision for the fiscal. As I said, I have never really understood why one decision differs from another. There are ways in which it has been explained to me, but I cannot see how the explanation relates back to the law.

Mark Ruskell: Are there other points on what changes need to be made in the bill to bring about successful prosecutions?

Libby Anderson: On admissibility, as I understand it, the police would be able to use surveillance techniques, because the increased sentences would mean that the standards under the Regulation of Investigatory Powers (Scotland) Act 2000 would be met. However, I did not get the impression that the provisions would be extended to NGOs. Like Robbie Marsland's organisation, OneKind has experience of observing what appeared to us to be offences, but the video footage was not found to be admissible. It was all bound up with issues relating to access to land and whether we were conducting surveillance. It is still a very murky area.

On the other part of Mark Ruskell's questions, a number of people have mentioned the extension of the SSPCA's powers to investigate wildlife offences, which we support whole-heartedly. It has 60 trained inspectors who are very knowledgeable about gathering evidence and about all the legislation, and that resource should be harnessed. I understand that the offer is still open.

Runa Hanaghan: We feel that the SSPCA should have more powers to assist with cases, but people from that organisation will be best placed to answer questions on that.

Claudia Beamish: It has been highlighted to me that there could be a conflict of interest in relation to the SSPCA. I make that point in a completely neutral way. We will be taking evidence from the SSPCA next week, but are there any quick comments on that? What would be the purpose of that?

Howard Bridges (Edinburgh Dog and Cat Home): What would be the conflict?

Claudia Beamish: I ask the question because, in the previous parliamentary session, some people said that it could be seen as a conflict of interest. I do not understand why, and I have never managed to tease that out. I see that nobody has any comments.

The Convener: We could ask the SSPCA if it has heard those views.

Claudia Beamish: Okay.

The Convener: Stewart Stevenson has a quick question.

10:15

Stewart Stevenson: We are talking about sentencing and I immediately thought about fixed-penalty notices, particularly in relation to what Libby Anderson and Runa Hanaghan said. Libby made the point that community sentences can often be useful in helping people to reset their attitudes and behaviour towards animals. Does that lead to any worry about FPNs, which are, of course, short of criminal sentences? Are there any issues, given that FPNs are offered and have to be accepted before they can be applied? Might we be allowing some people who need assistance towards better behaviours to drop out of the system because we offer them FPNs? I am not expressing a personal view; I think that they are of use, but I want to test whether that is correct in light of what Libby and Runa said on the sentencing issue.

Libby Anderson: The bill allows for regulations to be made to create the fixed-penalty notice regime and those will need to be scrutinised carefully when they are brought forward. Our

unequivocal position is that FPNs must be used only for minor technical offences. They would not be appropriate if there is any suggestion or belief that an animal has suffered unnecessarily. That said, in terms of the wider regime and the burdens on local authorities, who will have a major role in using FPNs—I believe that they are very much in favour of them—if their use increases enforcement overall and makes people more mindful of their obligations, we definitely support that. However, FPNs are certainly not applicable to the more serious offences in which an animal has suffered.

Stewart Stevenson: So your view is that FPNs would be appropriate only where there is a welfare issue that has not yet led to an adverse outcome.

Libby Anderson: I am sorry, but that is not exactly our view.

Stewart Stevenson: That is why I am teasing out the matter to see where you stand. I want us all to be clear. Equally, did I hear you suggest that when the regulations for FPNs are drawn up the penalty offered need not be financial? It might be a penalty of another character.

Libby Anderson: That had not occurred to me, but it is an interesting suggestion. If there is a welfare issue, the care notice is the route to go. Mike Radford described very clearly how those operate. I cannot see FPNs being appropriate for welfare offences, but I will let others comment.

Runa Hanaghan: I absolutely agree. I like Stewart Stevenson's point that FPNs do not always give people access to interventions that might help to support them and manage a future problem. As has been pointed out, FPNs should be held on a register so that they can be viewed and understood if the situation escalates. Those would be really valuable things to have in the system.

Finlay Carson: I want to go back to the penalties under the Animal Health and Welfare (Scotland) Act 2006 and ask whether the current penalties are appropriate for animal offences other than those that are included in the bill. As I mentioned to the previous panel, we are talking about mutilation, poisoning, abandonment and so on.

On the scope of the animals that are included, what are your thoughts on how the 2006 act deals with fish and other marine animals? Is the scope in the bill wide enough and appropriate?

Runa Hanaghan: From a professional veterinary perspective, it is quite a scope when we think about all the different species that we are talking about. The Dogs Trust has raised the issue of the other elements contained in the 2006 act and making sure that things such as mutilation, cruel operations and poisons are brought under

the umbrella of the bill. It is important that the sentencing guidelines for such behaviours come within the area of welfare and unnecessary suffering that we are discussing today and that they are brought up to the same level.

Finlay Carson: What about widening the scope and including other animals? We all immediately think of dogs and cats, but what about fish, for example?

Libby Anderson: First, I will comment on the issue of offences. I originally thought that the abandonment offence should be an offence of unnecessary suffering rather than a welfare offence as set out in the 2006 act. That is still my view, because abandonment can lead to severe unnecessary suffering, although I acknowledge that, as was said earlier, section 19 of the 2006 act would be applicable. However, you make a good point.

The scope of the bill covers fish, because they are vertebrates. OneKind suggests that the scope should be extended to cover decapod crustaceans, which would include lobsters, crabs and prawns, and cephalopods, which would include octopuses and squids. The 2006 act probably came a little bit too early for the evidence of their sentience and ability to suffer to be established in everybody's mind, but there has been a great deal of research that shows that they have such capacity. They need protection, because they are used in restaurants, the food trade, zoos and aquariums. Therefore, we welcome consideration of extending the scope. There is provision to do that by regulation under section 16 of the 2006 act, but this is a good time to air the issue.

The Convener: I will move on to the part of the bill about rehoming without a court order, which I asked the previous panellists about. At the moment, a court order is required in order to rehome animals, but the bill proposes a power to rehome or sell off animals without a court order.

On the one hand, we have the rights of the owners of the animals; on the other hand, we have the rights of the animals involved. Does anyone have views on striking the right balance between those rights?

Runa Hanaghan: From the stance of an organisation that has kennels and shelters and that rehomes animals, I think that the three-week timeframe is appropriate. It would be lovely if it was not as long as that, but the guidelines that have been set out allow for the human element, so that people can appeal and manage the situation.

It seems that, at this stage of the process, animals are seen as property and are held while people wait for a trial. Actually, they are sentient beings and it is very important that we consider

their welfare through the process. Allowing them to move forwards, be rehomed and managed better so that they are not hanging on in a shelter environment for a lengthy time until the court convenes and decides on sentencing is an important factor in this.

The Convener: We have talked about the socialisation of animals, particularly puppies, as a big area of concern while the animals are in limbo. I certainly know of a case that has lasted two years. What are the views of the Edinburgh Dog and Cat Home and the Dogs Trust of the impact on animals of being in limbo?

Howard Bridges: There is obviously a cost involved to the charity, but the welfare of the animals is put at great risk because of the length of time involved. In some cases, they can be kept in kennels for up to one or two years. We would prefer to rehome dogs and cats as quickly as possible—that is the only way forward as far as we are concerned.

We support the three-week timescale and we agree with Runa Hanaghan that shortening that would be all well and good. There is certainly an impact on animals and the staff who have to care for them day to day.

Runa Hanaghan: The point about younger animals, including puppies, is important. If they are brought into a kennel environment early, they could be waiting a year or so before sentencing occurs, and dogs have a huge socialisation period in the first four months of their lives. That is being restricted and the dogs will be institutionalised in a kennel environment instead of understanding the wider world in a better way.

The Convener: Obviously, the provision would have an impact from an agricultural point of view. Would Penny Middleton like to comment?

Penny Middleton: Any decision to seize farm animals is a very big one to take. It is not as easy to care for and kennel agricultural animals, and you could be talking about large numbers of animals. The issue of what you are actually going to do with those animals, should you seize them, can be an extremely difficult barrier. If you have to hold them for long periods of time, the limbo period can make it even more difficult. There may be animals that are coming to the age at which they should be going to slaughter or at which various management practices are required.

You need to have a clear plan in your head as to what you are going to do with farm animals when you seize them. It is important to know your pathway, and to have a quick resolution. The only slight concern that we have is the fact that, when there are serious welfare problems on a farm, a mental health aspect in relation to the farmer is often behind them. As such, it is about making

sure that the farmer understands what is happening and is given the opportunity to properly engage with what happens to those animals.

The Convener: You have all mentioned the financial impact of caring for animals on charities, which could be using that income in other ways. However, there is also a financial impact on local authorities if they have to care for agricultural animals in a limbo situation.

Penny Middleton: Yes. Obviously, there is a huge cost involved in taking over and caring for farm animals. Although local authorities often try to do it in situ, they still have to pay somebody to come in and feed and care for the animals. If the owner is not co-operative, that might put them in a difficult situation. There tends to be a very difficult, big and brave decision before you are talking about actually seizing farm animals. However, it helps if you have a clear pathway of how you will handle those animals.

The Convener: Before I move to questions from Finlay Carson on this theme, I will bring in the compensation element. Stewart Stevenson brought it up with the previous panel; he may want to revise some of the questions that he asked in order to get a view from this panel.

Stewart Stevenson: Yes—we will also try to get as concise a set of answers. The key question is whether it is appropriate to allow the increase in the value of an animal, post its being seized from its current keeper, to be included in the calculation of the compensation. That was the fundamental question to which I got an unambiguous answer from the previous panel.

Let me also relate that to a more general question from another domain of criminal justice. Heroin is a legal drug; however, almost all heroin is held illegally. We do not compensate heroin dealers, and so why should we compensate people who have animals illegally? Why should we do it at all?

The Convener: Would anyone like to answer, on any of those points?

Runa Hanaghan: I heard Stewart Stevenson's point about the compensation value, before and after, at the earlier session, and I appreciate it. From a charitable perspective, when we are involved in such cases, a lot of resource is placed into the animals that come into our care. As such, if you consider the value as the outcome, it may well be that the animals have increased in value at the end of a period of care, rather than their having had that value at the beginning of that period. It is a hard question to answer. We understand Stewart Stevenson's point—which was well made—that the value at the beginning of the process of three weeks, and at the end of the process of three weeks, can be very different.

The Convener: It comes back to the issue of a person being innocent until proven guilty, particularly if they are in a situation in which they have livestock and there is a process so that those animals are not kept in a situation in which there are welfare issues. If a person is not convicted at the end of the process, it has to be taken into account that their business has not gone down the tubes meanwhile, does it not?

Libby Anderson: In fairness, compensation for commercial animals ought to cover that adequately. Of course, it is legal to keep animals. The mischief that is being addressed is when things go wrong, rather than the keeping of the animals in the first place, which is to be encouraged.

10:30

However, for me, the question throws up the tension between commercial animals that are bred and reared to be sold and therefore have a clear commercial value, and domestic animals that are kept as pets. As far as I can see, the bill will cover all pets. We might say that, as a matter of principle, being able to remove them is desirable, and in many circumstances, we want to extend the protection to all animals. However, a difficult dynamic is involved when we are talking about a relationship of love, care and companionship with a pet, which, arguably, cannot be compensated for. Even bad owners very often love their pets—they just make mistakes or are careless.

I understand that the intention is for the bill to be primarily used for commercial situations involving livestock and traded or trafficked puppies—those are the examples that are normally given. In those cases, it will be possible to manage the compensation in order to achieve an appropriate level and ensure that people are not rewarded for their carelessness. However, if the provision is used for domestic pets, it would be very difficult to estimate the compensation.

Stewart Stevenson: Of course, the bill says that the court can determine that no compensation be paid in any event.

Libby Anderson: Indeed.

Penny Middleton: As has been suggested, the question relates more to livestock. Obviously, if someone takes in poor-quality livestock and feeds them up, they will be of higher value at the end of that. Our position is that it probably should be the value of the animal at the time of seizure that is compensated for. There are costs associated with improving the standard of the animals. I suppose that that could fall under the provision about the "reasonable costs" of keeping the animals and could be taken into account in valuing the animal at the end of the process—more could be taken off

to account for the expense involved in getting the animal to a higher value. However, the simplest and fairest approach would probably be to use the value at the time of seizure.

Claudia Beamish: I think that Runa Hanaghan said that animals are sentient beings and not property. That is an interesting remark, and I am simply trying to understand it. It connects to Stewart Stevenson's question about whether compensation is really appropriate for a puppy farmer. That has not been answered, although I understand that there are many reasons why it would not be. A drug dealer is not compensated for their property, because it is illegal property, and surely puppy farming is illegal. I would like to tease out those issues a bit further.

Finlay Carson: Puppy farming is not illegal.

Claudia Beamish: Okay, but it will be when Christine Grahame has done her member's bill on that.

Stewart Stevenson: It is illegal if it is unlicensed.

Finlay Carson: Not necessarily.

Claudia Beamish: I understood that it was, but I stand corrected.

Runa Hanaghan: To clarify, I am not legally trained so, when I talk about property, I suppose that I am trying to marry up the idea of an object that is seized from a house and that can be kept until a court convenes to provide sentencing, with the idea of an animal that is seized. That is a very different piece of property, if that is what we are talking about. An animal is a sentient being, and holding it for a lengthy period can create welfare problems. In essence, the bill is trying to address the welfare of the animals and how they are managed.

I take Claudia Beamish's point. Puppy farming is a very challenging area to address. It is not illegal to have a dog but, given the effects of puppy farming on the dogs that are in the care of certain people who are perhaps related to organised crime and other areas in society, and that the profits far outweigh the value of any animals that are seized, we must consider more closely the penalties to address the issue. That goes back to the penalty element, rather than the compensation element.

I feel that within the parameters of what we are discussing, it is very important to take welfare into account. If people are actively negligent—not doing it unknowingly—then that is puppy farming and it is something we need to define within what the bill introduces. That concern comes through in your questions in the last couple of hours. You are looking at where we are making these decisions. I agree with the point about guidelines around

sentencing, because I think that helps us to weigh up where each of these areas is positioned.

The Convener: Libby, do you want to come in on that?

Libby Anderson: On compensation, I want to briefly reiterate, because what Stewart Stevenson raised is important, that compensation would be forfeited. The bill says that,

"Subject to any order of a convicting court ... the relevant owner's right to compensation is forfeited (in whole or in part)".

The court could provide for that: I think that it is unlikely that compensation would lead to anyone profiting by their negligence or cruelty.

The Convener: Finlay Carson has a quick question before we move on to look at Finn's law.

Finlay Carson: It is clear that there is a range of implications of the proposals for different types of animals, whether they are commercial animals, companion animals or whatever. We want to ensure that a robust process is in place so that selling or rehoming is done safely and appropriately. However, is the panel content that the agencies that would be in receipt of the new powers in the bill are sufficiently accountable and otherwise equipped to use those powers effectively and fairly?

The Convener: Does anyone want to take that on?

Libby Anderson: Yes.

The Convener: That is just a yes.

Runa Hanaghan: I presume that you mean the SSPCA and the ability of its staff. I agree.

The Convener: Any other views on that?

Robbie Marsland: Yes, I agree.

Mark Ruskell: I want to look again at the scope of the bill, because it extends the potential for maximum sentences for crimes where there is unnecessary suffering and fighting, but excludes some other areas. What are your thoughts on that? It does not include poisoning, for example. How appropriate is that catch-all of "unnecessary suffering" and are there other areas? For example, if I poisoned a greyhound, would that be unnecessary suffering, or would it be poisoning?

Libby Anderson: Are you talking specifically about the animal health and welfare section, or are we moving into the wildlife side as well?

Mark Ruskell: Across both those areas.

Libby Anderson: As Mike Radford said, it would be covered by section 19 of the 2006 act, on unnecessary suffering, but it is a fair point. If the poisoning section were used, it would be a

lesser penalty, which would be a matter of concern. The other thing that we noticed in the wildlife section is that the possession of pesticides remains an offence at the lower end of sentencing, although the welfare implications and the public safety and health implications of possessing pesticides are potentially very serious. We think that that sort of penalty needs to be reviewed.

Mark Ruskell: Would that include the conservation impact of using a pesticide or digging out a badger sett, for example? There is an animal welfare implication, but there are wider implications for the environment. I am interested to know whether you think that the provisions in the bill capture those wider impacts and the severity of crimes.

Libby Anderson: The new penalties proposed under the Protection of Badgers Act 1992 and the Wildlife and Countryside Act 1981 are considerably increased, so that the highest sentences will be a five-year maximum sentence and an unlimited fine. It is very varied, as you know, for different categories of offences, but the higher level, which I think would include the digging out of a badger sett, would attract a much higher sentence.

Robbie Marsland: I reiterate what Libby Anderson said about possession of pesticides and the level of sentence that that gets. In our experience, it is not unusual to find caches of pesticides hidden on estates. If those are used in the way that we suspect, it leads to not only a high animal welfare impact but the illegal targeting of protected species. It would be worth considering the level of sentence for possession of pesticides.

Angus MacDonald: The panel will have heard me ask the previous panel a similar question. We saw broad support in the consultation for the introduction of a Scottish Finn's law. It is worth noting that a small number of respondents suggested that the bill should go further and require harsher penalties for attacks on service animals. One respondent suggested that there is a case for introducing a new offence of intentionally or recklessly causing injury to a service animal. Are the proposals in the bill for a Scottish Finn's law an appropriate mechanism for increasing protection for service animals? What implications could the change have?

Howard Bridges: I fully support Finn's law. I suggest that, as well as service dogs and other service animals—we talked about horses earlier—assistance dogs such as guide dogs should be included.

The Convener: The previous panel mentioned that.

Angus MacDonald: I think that Runa Hanaghan's submission on behalf of the Dogs

Trust mentioned extending the law to assistance animals.

Runa Hanaghan: Yes, we fully support that. The point was clearly made by the earlier panel about the huge impact of an incident not only on the person but on the animal, and about the fact that a person cannot always appreciate that there is danger in the area where they are standing with their assistance dog. It is very important to increase the scope of a Scottish Finn's law to consider guide dogs and other assistance animals.

Libby Anderson: Our position is that any animal that is made to suffer by humans deserves equal access to justice. The bill will remove the anomaly whereby service animals were not receiving the same justice.

We are slightly concerned that the definition is too narrow. It is based on the custodian—the police or prison officer—and therefore applies only to police dogs and police horses. I fully support the view that the legislation should be extended to other assistance dogs, which have to put themselves in a position of protecting their owners.

It has been said in some quarters that there should be a more severe penalty for attacking a service or assistance dog. In principle, we believe that the suffering of the animal is the same, whether or not it is a service animal. However, if that view persisted, it would be possible to create a statutory aggravation, so that the penalty for the cruelty to the animal would be the same but with the addition of an applicable statutory aggravation, as there is for a racially motivated crime. That would be one way of addressing public disapproval about attacks on service animals.

10:45

Stewart Stevenson: I wonder whether the test is something slightly different, in that the likelihood of suffering is increased in service animals compared to animals of the same type that are not service animals. We, as humans, are training those animals and putting them in positions of increased danger by our choice rather than the choice of the animal. Although the outcomes might be the same, the animals are not volunteers. They are exposed by human action to the likelihood of increased suffering, and it is that exposure that we as humans choose to make that justifies providing additional protection to those animals. If the bill said something of that character, it would relieve us of considering whether it is the owner or the person in control of the animal that defines whether the animal should be treated in a differential way in respect of sentencing. That occurred to me on the hoof as I was listening and it is probably an incomplete analysis, but what do you think about it?

Libby Anderson: I think that your point is that society owes animals that assist us a greater duty of care, so our care for them must be reflected in the available penalties. That is why the offence could be considered to be an aggravated offence.

Runa Hanaghan: I support Stewart Stevenson's view on that. That is an important point to make.

The Convener: Let us move on to talk about wildlife crime.

Claudia Beamish: From an animal welfare perspective, what are the implications of the proposed increases to penalties for wildlife crime offences?

Robbie Marsland: The key word for me is "deterrent". It comes down to how wildlife crimes are considered by society in general and by our courts and how wildlife is considered by our society. Words such as "pest" are used. Particular animals are described using language that makes things easier and, seemingly, less thought has to be used about controlling those animals than others.

The League Against Cruel Sports is moving into looking at the reform of grouse moors in Scotland, and that has taken us into the issue of the use of general licences. It seems to us that, with the use of fairly low levels of corroboration in evidence, vast swathes of animals are killed because they are deemed to be pests. The word "pest" is used because the animal endangers another animal. Very often, that other animal is a red grouse. The reason why red grouse are protected is to ensure that there are more red grouse to shoot for entertainment. As members can imagine, an organisation that is called the League Against Cruel Sports is not best pleased by that situation. The success of a grouse shooting estate is measured by the number of grouse that are shot on it. That means that it needs to have more grouse, which means that grouse need to be protected from so-called pests.

The League Against Cruel Sports recognises that general licences are permissible under the law, but there are grey areas. A professional whose job is to ensure that there are as many red grouse as possible might look at using methods that go beyond the general licence and become illegal. We welcome any extension of the penalties because of the deterrent effect.

Vicarious liability is also very important. We heard earlier about a shop assistant selling alcohol to a minor, in which case it is the owner of the off-licence who can be found guilty of an offence. There is a world in which the owner of the off-licence demands that the shop assistant sells alcohol to minors because that can bring in more money. I do not think that that happens in this

context. I have seen many examples of successful prosecutions of countryside professionals whose job is to make sure that there are more grouse, but the levels of sanction are not a deterrent. In a recent case, which I will not name, I was particularly struck by the proceedings and by the reaction of the individual and the reaction of the media. It became quite a media circus. An individual had been prosecuted for a number of wildlife crime offences, and there was a big media turnout on the day of the sentencing. The question was, "Will he go to jail?" because the range of offences was hideous; they were broad and nasty and covered the gamut of wildlife crimes that are possible in that situation.

Two things happened on that day. First, the sheriff made it clear that he felt that he should have been able to give a custodial sentence but could not. He felt that the community order did not reflect the scale of the crime that was committed. Secondly, there was a media hoo-ha outside the court because the media wanted to get a photograph of the individual concerned. The media mistakenly all went around to the back of the court and, when the individual who had just been sentenced came out the front, he danced a jig of relief and satisfaction. I watched him do it. He ran down the road and was followed by the media, and the picture that was published was of the individual putting two fingers up to the photographers.

As somebody working in the world of animal and wildlife welfare, I stood there thinking about what that says about the level of acceptance of deliberate acts of cruelty to animals that are carried out to ensure that there are more of another animal that can be shot for entertainment. I went away that day thinking that that is not right. There should be a deterrent. There should be a feeling that, if I do something wrong in this way, I will go to jail, and if I make my staff do something like that, I should also be at risk of going to jail.

That is why I can only commend the bill for its deterrence impact. I like the flexibility in the bill. It recognises that animal welfare can be affected by negligence. That is a different world, in which we are talking about re-education and learning about socialisation with animals and the way in which we relate to animals. However, if it is your job to kill as many animals as possible, I do not think that we can do much in the way of rehabilitation.

As I say, we welcome the bill more or less as it stands, but lots of steps need to be taken in the public domain to give people a greater understanding of the sentience of all animals and why some animals are declared to be a pest that is simply to be eradicated.

The Convener: Does anyone else want to answer Claudia Beamish's question?

Runa Hanaghan: I do not have a position on the wildlife crime side of things.

Claudia Beamish: We have touched on the SSPCA in relation to powers. As was said earlier, and as we all know, many of these crimes and alleged crimes are committed in remote rural areas. Are there any views on the possible alteration to and increase in the powers of the SSPCA in relation to wildlife crime?

Robbie Marsland: I will speak about the crimes that happen away from the public eye, which I have had a lot of experience of over the years. It is difficult for the police to be there. As a citizen, I know that personal security and property theft are where police priorities lie. They need to do more, but I am not surprised that they do not have the resources to be out in the middle of the countryside looking at issues that they might not even understand.

Fox hunting is not in the remit of the bill, but it is a classic example. It is very difficult to understand what is going on in a fox hunt; it is difficult to understand evidence that would make one suspect wildlife crime. I was shown what looked to me like a pole in the middle of a field, until it was pointed out that there was a hole drilled in the top and a bent 6-inch nail in the bottom right-hand side. Those demonstrated that it was being used either as a decoy position or as a pole trap, which is illegal. I would not have known that, and neither would many police officers, but there are people who would. It is important to make sure that organisations such as the SSPCA, the RSPB and the League Against Cruel Sports have the opportunity to be out there and to report on that to the police. They should not be impeded from doing that.

Mark Ruskell: To what extent would the increase in maximum sentencing change the policing model? A written parliamentary answer recently reported that the trial in the use of special constables in the Cairngorms did not result in any convictions over its two years. What more could the police do on their own? If the sentencing increase comes in, what would happen operationally—would it force a change in thinking or a prioritisation of resources? What is the solution to this issue? Five years could be a deterrent, but only if people are caught, evidence is protected and a prosecution is successful.

Robbie Marsland: The creation of wildlife crime officers is a very good thing. However, the role is voluntary and heaped on top of other responsibilities. The question is asked, "Who wants to be the wildlife crime officer?" and a person answers, "Oh, go on—I will." Their levels of knowledge are variable, as is how much time and effort there is to do the work, as we can imagine. I would much prefer to see a designated wildlife

crime officer who is paid to do the role and who can build up a body of knowledge and experience and so understand that a pole with a hole and a nail is a suspicious item. A voluntary wildlife crime officer would also build that up over a number of years.

Finlay Carson: The bill will increase penalties, fines and potential sentences, which could be argued would put more emphasis on the burden of proof in a case. It is exactly right that, for wildlife crime or identifying rural commercial animals that are suffering, the level of expertise would have to go up a notch and additional resources provided. Increasing penalties and sentences will be irrelevant if we do not have people on the ground. Are there enough resources to make any difference when the bill is introduced?

Robbie Marsland: The level of resource that is of value is what happens in court. The demands on organisations such as mine and on the police in trying to meet the burden of proof are already high. That is because the resources that are available to those who are alleged to be involved allow them often to be represented by people who would never usually be seen in a sheriff court. Again, I will fall back on my experience in relation to fox hunting. The offence that is being dealt with is a summary one, but it is dealt with by a QC. The police and the procurator fiscal know that, so we are not talking about the same levels of evidence as we would be in relation to a summary offence. My personal opinion is that that means that the case has to be stronger than another summary-level case, because of the amount of attention that will be paid to the evidence.

11:00

Finlay Carson: However, I suppose that bringing in new legislation will be irrelevant if we do not have police or members of other agencies there to catch people. It is a bit like reducing the speed limit to 20mph on rural roads. That is probably pointless because, if there is no one there to enforce that law, it will have no effect. Are there any concerns that the bill, which appears to be one that should be welcomed generally, will be pointless if we do not have the resources to police the legislation effectively?

Robbie Marsland: I go back to the idea of deterrence. It will be an effective deterrent.

On the issue of speeding, of course, I always keep to the speed limit. However, if I have seen police operating a speed camera in the area, I might make sure that I am much slower than the speed limit during the following weeks. That is why we welcome the deterrent effect. We believe that vicarious liability would extend that, because it would mean that others were concerned as well.

The Convener: We have run out of time, but Stewart Stevenson has a short question to round off the session.

Stewart Stevenson: I was a bit surprised to hear the suggestion that summary cases have different criminal evidence requirements from solemn cases. I think that the difference is that, in summary cases, the sheriff determines guilt or innocence, and there are more limited sentencing powers, whereas, in solemn cases, it is the jury that determines guilt or innocence, and higher sentences are available. If Mr Marsland knows different, perhaps he can correct me, but I think that the evidence requirements are identical.

Robbie Marsland: I go by personal experience. I have served on three Crown Court juries—two at the Old Bailey—and I have sat for days and days in the sheriff court, watching what goes on. My observation, which is a purely personal one, is that the level of the application of the law is quite different in those two settings.

Stewart Stevenson: I, too, have been on a jury, and I have been in the sheriff court on a large number of occasions. Further, I was a member of the Justice Committee of this Parliament and attended 278 of its meetings. I strongly rebut the idea that the Scottish summary system is in any way inferior to the solemn system. In fact, you are more likely to get an outcome that is less open to challenge if the case is dealt with by a professional adjudicator of guilt or innocence, in the form of the sheriff.

The Convener: We are straying into the remit of another committee. Before we close this evidence session, Claudia Beamish has a final question.

Claudia Beamish: I see that Libby Anderson wants to say something, and it might be more important for her to speak than for me to do so. However, I will just say that, as a layperson—I proved that earlier in the meeting—my understanding is that the opportunities for police surveillance are different in cases involving a serious crime. If that is the case, that is particularly important with regard to wildlife crime. Of course, I am happy to be corrected.

The Convener: Libby Anderson can have the final word.

Libby Anderson: I understand the point that Robbie Marsland made. I note that Stewart Stevenson is correct to say that the standard of proof is the same in summary and solemn procedures, but it might be important to recognise that people's knowledge of the procedures and the sentences that would be available at the time of investigation and enforcement might help to concentrate minds more. When the police and the Crown Office and Procurator Fiscal Service allocate resources, they would be more inclined to

look seriously at an offence that attracts a much higher sentence. That would apply to both animal welfare and wildlife sentences.

On Finlay Carson's point about enforcement, it is true to say that local authorities find the enforcement of the 2006 act to be quite burdensome, as there are no resources attached to it. The fixed-penalty notices and the provisions around the disposal of animals will remove some of that burden. We all accept that the overall effect of the bill will be to raise the level of enforcement.

The Convener: That is a good note to end on.

That concludes the committee's business in public. At our next meeting, on 10 December, we expect to hear further evidence on the bill.

We now move into private session.

11:05

Meeting continued in private until 12:21.

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