



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 10 December 2019

Session 5



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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
34th 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 (Etrick, 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:

Detective Chief Superintendent Gary Cunningham (Police Scotland)
Constable Charlie Everitt (National Wildlife Crime Unit)
Ross Ewing (British Association for Shooting and Conservation)
Joanne Fairman (Animal and Plant Health Agency)
Liz Ferrell (Scottish Environment LINK)
Mike Flynn (Scottish SPCA)
Les George (Scottish Gamekeepers Association)
Robbie Kernahan (Scottish Natural Heritage)
Eddie Palmer (Scottish Badgers)
Karen Ramoo (Scottish Land & Estates)
Sara Shaw (Crown Office and Procurator Fiscal Service)
Colin Smyth (South Scotland) (Lab) (Committee Substitute)
Ian Thomson (RSPB Scotland)
Dr Ruth Tingay (Raptor Persecution UK)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 10 December 2019

[The Convener opened the meeting at 09:45]

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

The Convener (Gillian Martin): Welcome to the 34th meeting in 2019 of the Environment, Climate Change and Land Reform Committee. Before we move to our first agenda item, I remind everyone to switch off their mobile phones or put them on silent, as they may affect the broadcasting system.

I highlight to our panellists that you do not have to press any buttons on the console. Broadcasting does all that for you. All that you need do is speak.

Agenda item 1 is evidence at stage 1 on the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill. The first panel will focus on wildlife crime issues that are connected with the bill. I am delighted to welcome Ian Thomson, head of investigations, RSPB Scotland; Karen Ramoo, policy adviser, Scottish Land & Estates; Ross Ewing, political and press officer, British Association for Shooting and Conservation Scotland; Dr Ruth Tingay, raptor ecologist, Raptor Persecution UK; Eddie Palmer, chairman, Scottish Badgers; Les George, gamekeeper and Scottish Gamekeepers Association committee member; and Liz Ferrell, Scottish Environment LINK wildlife crime sub-group convener and Scottish officer, Bat Conservation Trust. Good morning to you all.

We will move to questions. As we have a panel, we will not necessarily direct questions to each of you. If, as we discuss the various themes, you want to answer or give your point of view on anything, just raise your hand in the air. We will note that and get to you eventually.

I will start off by asking about the evidence base for increasing penalties for wildlife crime. What are the wildlife crime trends? How are the available penalties being used? Are there instances where those penalties have been considered insufficient? If anyone wants to come in and give us a view on what has been happening to date, I would be very grateful.

Liz Ferrell (Scottish Environment LINK): I will give the example of the freshwater pearl mussel. There was an incident on the River Lyon relating

to a hydro scheme that was designed to service 600 homes. It is reckoned that the scheme did about 100 years' worth of damage, with hundreds of freshwater pearl mussels being killed. They are critically endangered globally, and there is an important population in Scotland. The basic repair to that catchment is reckoned to be almost £1 million, yet the company involved was fined £4,000 in total. As such, the deterrent is just not there.

In relation to the Bat Conservation Trust, the most common offence is to do with small or medium-sized developers. Bats are not factored into projects, which leads to corners being cut. Licensed bat workers have made us aware of examples in which they have carried out surveys for developers only for the developers to take the results of where they found bats and—basically—get rid of that evidence, then get in a different ecologist to do another survey that showed that no bats are present.

The Convener: Are the penalties for doing that almost factored in?

Liz Ferrell: Yes. It is cheaper to not get a survey done. The cost of a bat survey and mitigation could easily go up to £10,000, for a larger-scale project, and a fine for roost destruction—this is an example from Scotland—might be £900. Similarly, in 2014, a senior employee of a lettings company who blocked off a soprano pipistrelle roost with 500 bats in it was fined just £240, which is not even a day rate for an ecologist to do a survey.

Ian Thomson (RSPB Scotland): One of the biggest issues with establishing trends in wildlife crime is that most of the crime is unseen and undetected. Just looking at an annual body count, for example, gives us no idea what is actually going on, because we are dealing with a sample of an unknown amount.

When it comes to measuring the impact of criminality, it is much better to use methods such as population surveys and so on. For example, the hen harrier population in Scotland declined by something like 27 per cent between 2004 and 2016. Similarly, the satellite tagging review that was commissioned by the Scottish Government four years ago showed that a third of young tagged golden eagles were disappearing in a suspicious fashion in areas that were being managed for grouse shooting. However, that review involved only tagged birds. If you extrapolate that into the actual number that are likely to be being illegally killed, you come to quite a staggering figure.

We have to accept that wildlife crime happens in places where it is not witnessed, and it is easy for the individuals who undertake it to cover up the

evidence. They are obviously not going to leave a poisoned or shot bird lying around for hillwalkers, the police or whoever to stumble across. We have to look at the issue very much in that context.

Karen Ramoo (Scottish Land & Estates): It is important that we have current statistics when we are assessing wildlife crime. The fact that we have not had an annual wildlife crime report from the Government in the past three years is unhelpful—I think that the previous one came out in 2015. In addition, raptor maps are usually released annually, but we have not seen those recently either. However, when we consider the work that the partnership for action against wildlife crime in Scotland—PAWS—group has done, we can see that there has been a reduction in most types of wildlife crime.

The main issue in relation to wildlife crime involves poaching and hare coursing, which are still at high levels. Those crimes are linked to other crimes, including serious organised crimes, which have serious impacts on rural communities.

Again, I stress that it is crucial to have up-to-date data so that action can be targeted.

The Convener: Ian Thomson said that the exact level of crime cannot be known, because much of it is unseen and unprosecuted, but do you accept that an increase in penalties might result in additional decreases in wildlife crime?

Karen Ramoo: Yes, I accept that they could act as a deterrent.

Ross Ewing (British Association for Shooting and Conservation): For the reasons that Ian Thomson highlighted, the recorded numbers of wildlife crimes in Scotland are a sample of the amount of crime that is going on. However, the figures show that there were 255 recorded incidents in 2013-14 and 231 in 2016-17, which shows that there has been a slight decrease in the overall number of recorded wildlife crimes. However, wildlife crime is still at a substantial level. That means that there is a need to impose additional penalties in order to bring down those figures even more. My organisation supports that, but I echo what Karen Ramoo said about hare coursing and other poaching-type offences, including people hunting with dogs illegally. In my office, we have received a number of phone calls about those offences happening in places such as Angus and the north-east. That is reflected in the statistics. There has been a sharp rise in hunting-with-dogs offences, which have gone from 29 in 2013-14 to 42 in 2015-6. That is a real issue for us, and it is important to highlight the fact that that kind of crime is going on. Those are not necessarily the crimes that we hear about, but they are just as important as incidents of raptor persecution and other crimes.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I want to check and test what Ian Thomson said. What I heard—I might have misunderstood him—was that surveys would be used to establish levels of criminality. I am getting a nod. I am very alarmed by that. It is perfectly proper to use surveys to provide intelligence, but that is different from measuring criminality.

I share the concern about raptors, so I am not coming from another position, but the depletion of species is not occurring simply because of crime. I will give an example. When I was a lad, there were lots of kestrels around; now there are very few. I do not think that the problem is wildlife crime; I think that other factors are the problem.

I want to be clear that Ian Thomson has in his mind the distinction in relation to using surveys as intelligence that says that the numbers have gone down, so we need to look for crimes and other causes. I want to ensure that we agree on that.

Ian Thomson: Absolutely. Population surveys are the first level of evidence on what is happening to raptors—

Stewart Stevenson: I am sorry, but I will come straight back on that, because I do not accept that they are evidence in the context of wildlife crime. Is it not intelligence that leads you to the need to gather evidence rather than intelligence intrinsically being evidence in its own right?

Ian Thomson: I was going to say that surveys are the first layer of evidence in trying to understand what is happening to a population. For example, a survey of hen harriers was carried out in 2010 throughout the United Kingdom. The national surveys are co-funded by the statutory nature conservation agencies in the four countries. Another survey was carried out in 2016. That survey showed a substantial decline in the hen harrier population. If we consider that in the context of an overwhelming weight of peer-reviewed science that looked for the reasons why hen harriers were declining and established that targeted and deliberate persecution on grouse moors was one of the key drivers of the decline, we start to build a much clearer picture. That is a much clearer picture than we will get from one dead harrier with shotgun pellets in it being found on a grouse moor.

Stewart Stevenson: This is my final question on this issue, convener.

The Convener: Good.

Stewart Stevenson: Forgive me, but does the survey not tell us that we need to look for the evidence?

Ian Thomson: Yes—absolutely.

Stewart Stevenson: A survey is not intrinsically evidence.

Ian Thomson: No, but we have to consider everything together.

Stewart Stevenson: That is fine. As long as we share that viewpoint, I am quite content.

Ian Thomson: Yes—absolutely.

The Convener: I want to return to getting answers to my initial question.

Eddie Palmer (Scottish Badgers): It is rather complacent to think that wildlife crime is going down. We are talking about what is discovered and prosecuted, which is a different issue. The Government's wildlife crime reports give a not very easy-to-read account. We know of incidents in which things have happened to badger setts. In order for them to be accepted and investigated as crimes and to get them to court, an extremely long and laborious process is involved, and that rarely happens.

It could be that more incidents are reported to us as a charity by the public, but the numbers of incidents that come to us are going up each year. The figure for 2019 is markedly greater than that for 2018. There are various issues. It is very difficult to get a case involving a damaged badger sett to court because getting evidence to give credence to what the police would say is difficult. There might be evidence that a badger sett has been dug out completely, but it is extremely difficult to find a perpetrator and evidence against them. However, it cannot be said that badger setts are not being dug out. That is the issue.

The trouble is that few cases have gone to court over the past few years. I think that, in the Crown Office and Procurator Fiscal Service, eight badger cases have been prosecuted in five years, as opposed to maybe 60 incidents a year that might be crimes. I accept that they would not all be classified as crimes, but that figure is quite worrying.

With regard to the sort of figures that Liz Ferrell quoted, the only example that I can think of is from some time ago, when a developer built a house too near a badger sett up in the north of Scotland, having been told not to do it. That broke the licence conditions, and the developer duly went to court and was fined £800. That might seem quite a lot, but the extra house that had been built was sold for £300,000. The anecdotal evidence that we pick up is that the large developers keep to the rules. We deal more with issues that are to do with badger setts than we do with issues that are to do with badgers. You will hear more about badger crime from the Scottish SPCA, as we rarely deal with it.

I am sorry, but I have lost my drift.

10:00

The Convener: Okay. I will come to Liz Ferrell, and then Colin Smyth has questions.

Liz Ferrell: It is a brief point. Scottish Environment LINK does not believe that wildlife crime is decreasing. Eddie Palmer gave figures relating specifically to badgers. We consistently provide information for the Scottish Government's annual wildlife crime report. For bats, we average about 139 cases of wildlife crime a year and that is showing no sign of decreasing. To pick up on what Ian Thomson said, it is likely that there is lots of underrecording in remote parts of Scotland.

Colin Smyth (South Scotland) (Lab): I turn to the issue of how wildlife crimes have been categorised in the bill. Are the proposed penalties and procedures proportionate?

Ross Ewing: It is important to be mindful that, in essence, two tiers of wildlife crime penalties will be introduced. Tier 1 will have a maximum penalty of five years in prison and/or a fine with no limit and, for tier 2, which is for lesser crimes, the maximum is one year in prison and/or a fine with a limit of £40,000. The tier 2 penalties are for issues to do with damage to habitats, nests and things like that. The important thing is that a bit of due diligence needs to be exercised by the procurator fiscal in that regard. That is because there are different kinds of damage to nests or habitats, and some types of damage are more severe than others. A little bit of common sense needs to be applied in deciding whether a crime is a tier 1 or tier 2 offence. If someone burns a vast swathe of moorland and kills absolutely everything on it, that is damage to habitat and would therefore be a tier 2 offence but, actually, the ramifications are so serious that it would probably merit being a tier 1 offence.

That issue is not entirely clear. Each kind of wildlife crime has different levels of severity. I am not entirely sure that it is workable to assign the penalties on the basis that tier 1 is when someone kills an animal and tier 2 is when someone destroys its nest, for example. As I said, a bit of due diligence will have to be done in deciding what happened.

Les George (Scottish Gamekeepers Association): From a gamekeeper's point of view, the proposed five-year jail term is a game changer. Most gamekeepers will not be able to pay £40,000, and a jail term is not just a jail term for a gamekeeper—you lose your job, your house and your living, really. You will never be a gamekeeper again if you are convicted. You will not be able to have firearms again, so you will be out of the job altogether. That is a huge thing. It is a huge deterrent.

Karen Ramoo: I support what Les George and Ross Ewing have said. The proposed penalties are huge deterrents. To go back to Ross Ewing's point, I do not know whether we will touch more on this later, but impact statements should come into play to assess the level of impact that the crimes have and what that means for various species. There needs to be consideration of the whole ecological impact that a certain wildlife crime could have on certain populations in a certain area.

To pick up on what Les George said, the penalties as a whole will act as a real deterrent. It is not just a case of a fine or jail sentence; it is potentially the end of somebody's career. SLE is very supportive of the proposed penalties.

Finlay Carson (Galloway and West Dumfries) (Con): On deterrence, is not it the case that under current legislation a gamekeeper who was convicted would potentially lose his job and the likelihood of being employed as a gamekeeper in the future? Therefore, all we are talking about is whether a gamekeeper can afford £40,000 or a lesser fine. Are not the penalties severe enough now? Is what is proposed really a deterrent?

Les George: A five-year jail term will mean that more people will go to jail than has been previously been the case. To extrapolate, that means more people being out of a job and out of a house, with no way of supporting their family.

Ian Thomson: One issue is that the courts hardly ever impose the maximum penalty. For many years, the courts have been able to impose a £5,000 fine and/or a six-month custodial sentence for many wildlife offences. Only one custodial penalty has been given in Scotland to an individual for raptor persecution offences since the Wildlife and Countryside Act 1981 came into force. When that individual was convicted, back at the beginning of 2015, we all thought that the sentence would be a game changer and that raptor persecution would suddenly cease to be an issue. That has not happened.

In a recent case in the Borders, an individual was convicted of multiple offences. The courts can impose a custodial penalty for each offence, so those of us who were closely involved in that case were convinced that there was a high chance of a custodial penalty. However, a community order was given.

Is that down to direction? Obviously, the courts are independent, but we do not see the big penalties being given: usually, what the courts impose is a mere fraction of what is available to them. That is a reason why some wildlife crimes have continued unabated for so long.

The Convener: Les George, what is your view of a situation in which a gamekeeper feels under

pressure from their employer to do something that breaches the law? Does that happen?

Les George: No—I would say that that is not the case.

The Convener: So, is it right to say that the gamekeeper is responsible?

Les George: Yes. Everyone is responsible for their own actions. That is how it is. If you do the crime, you do the time.

The Convener: Should the landowner be completely exonerated?

Les George: There can be vicarious liability; there have been a couple of cases of that. That is a matter for the police.

The Convener: We will come on to vicarious liability in a wee while.

Dr Ruth Tingay (Raptor Persecution UK): I would like to follow up on Ian Thomson's point about how the maximum sentence is rarely given. Of course, that is a matter for the courts, but a bigger issue is that it does not really matter what the penalty is, because the penalty alone will not act as a deterrent; the risk of being caught is far more important. If the criminal considers that the risk of being caught is pretty slim they will commit the crime, because the risk is such that it is worth doing so. Therefore, a much bigger effort is needed on the enforcement side. I am not saying that that is easy. We all know how difficult it is to investigate wildlife crimes, especially in remote areas. However, the two must go side by side; it is no good having one without the other.

Liz Ferrell: Scottish Environment LINK thinks that the bill does not go far enough to protect habitats, and we think that the bill should provide for more wildlife offences, such as those that involve raptors and badgers, to be triable either way. We welcome the increased penalties for offences that involve bats, with the option to use the upper courts and the potential to impose unlimited fines.

However, there is no consistency. A bat should not appear to be more important in law than a hen harrier, and I am sure that other witnesses can provide evidence for why badgers' resting places and breeding sites should receive more protection.

Ross Ewing: Some important points have been made around the room. I noticed that there is, on the committee's question paper, a point about banned pesticides. I point out that there is no legitimate reason to have those pesticides in Scotland. At the moment, I do not know on which tier an offence in that regard would be; I am minded to say that it should be a tier 1 offence. South of the border, the situation is different, but up here there is no need to have them.

The Convener: The presence of the pesticides would be evidence enough.

Ross Ewing: Indeed; my argument is that there is no need to have illegal pesticides, so those who do should bear the full brunt of the law.

Karen Ramoo: I fully agree that penalties alone will not act as a deterrent. There must be education about wildlife crime and the impact that it can have, and there must be awareness of the maximum penalties that can be applied to a person who commits a wildlife crime. More training and support on detection for the police are also important. However, a consistent approach being taken to tackling wildlife crime will act as a deterrent, in itself. This goes back to the point that Ian Thomson made: when a case is brought to court when someone has committed a crime, it should be shown that they will feel the full force of the law.

Mark Ruskell (Mid Scotland and Fife) (Green): The bill obviously deals with custodial sentences and fines, but how effective have other sanctions been, for example, suspension of general licences on estates or community payback orders, which have already been mentioned as not being effective? Are there any thoughts from around the table on how the suite of other available sanctions have worked—or not—in deterring wildlife crime?

Dr Tingay: The general licence restriction is very interesting. There have been only four or five cases since the sanction came into force. We have seen that once the general licence has been removed, the estate can simply apply for an individual licence to carry out the same act of killing so-called pest birds, but under slightly more scrutiny from Scottish Natural Heritage. That just means that they have a bit more paperwork to do: it is not a sanction at all.

Mark Ruskell: Has that happened in the examples in which a general licence has been withdrawn?

Dr Tingay: I know that two estates have applied for individual licences. After one of those estates got an individual licence, further alleged offences were uncovered and the individual licence was removed from the estate, pending an investigation by the police. I do not know how far that investigation has gone: clearly, however, the general licence restriction was not a deterrent.

Ian Thomson: On that, it strikes me that imposition of a general licence restriction is a tortuous process, and that delays between offences being confirmed by police investigations on landholdings and a general licence restriction being imposed mean that it is currently taking years to implement the restrictions. I agree that a

general licence restriction hardly seems like a penalty.

It can also be argued that such a restriction does not benefit biodiversity, because it is widely acknowledged that some control of generalist predators, such as corvids, can be of conservation benefit, and that, if that ability were to be removed, the wildlife in the area would be penalised as much as the managers of the estate on which the offences were committed. A much more effective sanction would be to remove the motivation for committing such crimes, which is invariably to benefit grouse shooting. The right to shoot grouse being removed for a year or a couple of years would be much more robust and effective.

Ross Ewing: I disagree with Ruth Tingay and Ian Thomson on the effectiveness of the restriction of general licences. It is important not to underestimate the pivotal role that general licences play on shooting estates in Scotland, where they are an integral part of what the estates do. Restricting a general licence will make it very difficult for estates to carry out an integral function.

10:15

Ruth Tingay mentioned applications for individual licences—there is a litany of species for which individual licences would need to be applied for. Moreover, an estate's having a restriction against it reflects very badly on it, and information about that is publicly available online. I know a number of people who would probably not visit an estate that had a restriction purely on the basis that they would know that wildlife crime was probably being committed there.

The other thing to note about the restriction of general licences is that it takes place under the civil burden of proof—there is no need to surpass the criminal burden of proof, as there would be otherwise. That is a really useful tool. Currently, the police and SNH meet every three months. Perhaps if they met more regularly to review the situation, that might result in a few more restrictions being put in place. As a result, restrictions might act as more of a deterrent.

The Convener: Does Stewart Stevenson have questions?

Stewart Stevenson: Are you bringing me in to ask about fixed-penalty notices?

The Convener: Mark Ruskell is indicating that he wants to come back in, so I will bring you in, in a minute.

Mark Ruskell: Have business that have general license restrictions been affected by them? Have they gone bust?

Ross Ewing: BASC has done research into that. We carried out a big survey, to which we had about 900 respondents, to find out what the financial implications might be of removing general licences. The survey showed that there would be financial implications if people were not able to use general licences effectively. That suggests that restricting general licences will have implications for people. You cannot get away from that.

Ian Thomson: The problem is the time that it takes to impose restrictions. Also, as Ruth Tingay said, further allegations of wildlife crimes have been made at one of the five estates on which the sanction has already been imposed, which suggests to me that it is not a particularly effective penalty.

I understand and agree with some of what Ross Ewing said. The fact that a civil burden of proof is required is very important, given the challenges that I think we all acknowledge exist in investigating wildlife crime, particularly in getting sufficient admissible evidence to undertake a criminal prosecution. However, I do not believe that, thus far, even the threat of a general license restriction is stopping wildlife crime, and the statistics, such as they are, support that view.

Stewart Stevenson: Fixed-penalty notices or, more to the point, the power to introduce regulations to create fixed-penalty notices, is right at the top of the bill in section 2, so it is obviously quite an important part of it. That will deal with the opposite end of the scale—it will introduce a way of penalising offenders for minor issues. Are we satisfied that the penalties would be used appropriately? The regulations, which we do not currently have, will give us the details about fixed-notice penalties. However, as a matter of principle, are they a good way of discouraging people at the bottom end of the offending scale from establishing a career of offending?

Liz Ferrell: Scottish Environment LINK does not object to fixed-penalty notices. They have their place, but we would want clear guidance on their use, to set clear limits and to give assurance that they would not be used when the severity of the crime is such that prosecution would be the more appropriate action.

Karen Ramoo: SLE does not have any objection to fixed-penalty notices. We do not have much experience of them, so we do not fully understand how they would work, but in principle we consider that they would be a good approach to dealing with minor crimes.

Like Scottish Environment LINK, we consider that clear guidance on use of fixed-penalty notices would be really useful. Also—this is probably a minor point—fixed-penalty notices are used

elsewhere in society, so it would be good to have better understanding of their use, including their effects in respect of repeat offending. A bit more work on that would be helpful.

Mark Ruskell: Impact statements have been mentioned. I was struck by the examples of badgers and freshwater pearl mussels. Are impact statements being used effectively? Do they need to be put on a legislative footing?

Eddie Palmer: Scottish Badgers has no experience of impact statements, but we consider that they would be useful. Badgers have semi-permanent homes. If its home is wrecked or damaged, a clan will tend to break up and disappear, and its sett will stop being a breeding sett. Such damage has an extremely important wider effect, but that has not yet been played out in court because of the lack of prosecutions.

Ian Thomson: In RSPB Scotland's experience, when there have been prosecutions in which impact statements have been used, they have assisted the process. The Crown Office is probably better placed to answer the question directly, but the RSPB is certainly keen to see the conservation impact of such crimes being recognised in sentencing guidance for courts.

Karen Ramoo: Scottish Land & Estates fully supports the use of impact assessments. We would like to see them being used more systematically—for example, there could be more monitoring of how frequently they are used. We have no objections to their being considered in the bill, because the approach that they embody would be welcome.

Les George: If we are already using such statements, why go down the route of legislating for them? That seems to be a pointless exercise.

Liz Ferrell: Impact assessments are not used consistently. For example, a developer who pleaded guilty to six charges of destruction of bat roosts was given a total fine of just over £300. As I said earlier, the costs of doing a bat survey are way above that. However, in another case of bat crime—the case is not absolutely like for like—in which an impact statement was used, the perpetrator was fined £7,500, which is a significant difference.

In the Poustie review, sheriffs and procurators fiscal said that having impact statements available to them before sentencing was helpful for giving them background information on what Ian Thomson has just described as the “conservation impact” of such crimes—for example, what the killing of a pair of hen harriers will mean in the wider context.

Colin Smyth: Earlier, Les George touched on vicarious liability. I am keen to hear the panel's

views on how effectively the existing provisions on that are being used and whether they should be extended to cover other wildlife crimes.

Liz Ferrell: Scottish Environment LINK supports any measures that will help to tackle wildlife crime. We would like to see the concept of vicarious liability being extended to crimes against other species. However, there is variation on that among our members. We do not have an argument in favour of imposing vicarious liability for crimes against bats. Proving the link between a company and an activity is a lot easier in cases in which developers are being prosecuted for offences involving bats than it is in cases of raptor persecution. However, I know that the RSPB has had issues with such cases, so perhaps it might like to come in on that point.

The Convener: I will bring in Ruth Tingay first, and then we will hear from Ian Thomson of the RSPB.

Dr Tingay: There is a huge amount of frustration about how ineffective the principle of vicarious liability has been in raptor persecution cases. Since the legislation came into force, there have been only two successful prosecutions. There have been a number of other cases in which vicarious liability could have been applied but was not, and there has been an awful lot of secrecy about why that was so. For example, when I have asked the Crown Office or SNH for an explanation of a decision in a particular case, I have been told that it is not in the public interest to give one, which makes no sense to me at all.

Ian Thomson: The provisions on vicarious liability that were introduced at the beginning of 2012, as part of the Wildlife and Natural Environment (Scotland) Act 2011, and the discussion that took place in the lead-up to that had an immediate positive effect. Although, as I mentioned earlier, I am nervous about talking about trends in wildlife crime, there was a clear turn away from the use of illegal poisons, which everybody welcomed. It is difficult to disaggregate the impact of vicarious liability from the impact of increasing use of satellite transmitters on birds of prey, because satellite transmitters make poisoning much more detectable, but the fact that vicarious liability was introduced around about the same time led to a pretty significant deterrent effect.

However, that effect is now wearing off. As Dr Tingay said, there have been only a couple of vicarious liability prosecutions. The first challenge is that identifying who is potentially vicariously liable is very difficult, given the complexities of land ownership and the fact that identifying who owns land is difficult. Another big challenge is that prosecutions of gamekeepers, for example, are very rare, but the Crown Office seems to need a

successful prosecution of a gamekeeper in order to then prosecute a landowner. The legislation does not say that that is a necessity, but that seems to be the case. The Crown Office can probably clarify that point later.

Ross Ewing: I agree with some of what Ian Thomson has said, particularly about the initial impact of vicarious liability. We argue that estates continue to feel the burden of vicarious liability and, as a result, they have very much sharpened up their act by ensuring that all the correct administrative procedures are in place. Vicarious liability has been a really strong deterrent against wildlife crime, which has led to a reduction in the number of poisoning offences, for example, as Ian Thomson pointed out. We feel that it has been very effective and that landowners are complying with the legislation. As we have heard, whether a gamekeeper or anyone else is committing wildlife crimes, it is the responsibility of the individual to take things forward. Through the vicarious liability legislation, we are ensuring that on estates, from top to bottom, there is a zero tolerance policy for wildlife crime. Our organisation has seen that on the ground.

Karen Ramoo: I very much echo what Ross Ewing has said. SLE feels that vicarious liability has played an important part in improving systems on estates. The Poustie report made the point that vicarious liability has made landowners more aware of their responsibilities, so it is very much playing a part in the bigger picture.

Stewart Stevenson: I want to come back to Ruth Tingay's point about secrecy. Vicarious liability is about the owner or manager taking responsibility for what goes on by having and enforcing a system of oversight in order to prevent wildlife crime. In Ruth Tingay's opinion, would many of the specific measures that a manager might put in place be compromised if they were disclosed? For example, there might be a scheme whereby cameras are installed at particular points of risk by the landowner in an attempt to detect activities, and it would not be in the interest of the owner—the enforcer of the scheme—or, indeed, of wildlife, if the details were to be disclosed. I am not inviting Dr Tingay to say that the whole scheme should be disclosed, but there is a proper place for secrecy in how owners and managers discharge their responsibilities in relation to vicarious liability.

Dr Tingay: It would be brilliant if landowners were installing cameras. That would save us a lot of trouble. I do not think that that is happening widely, but that is beside the point.

Stewart Stevenson: Forgive me but, as a layperson, I was seeking only to identify an example. I did not mean to give an exhaustive list of actions that might be taken.

10:30

Dr Tingay: I get your point. I think that you are right in that some landowners will not want to reveal the measures they have taken, and why should they? They do not need to. However, I am talking about secrecy around the decision making.

There is a perfectly apt defence to a vicarious liability challenge. If the landowner can show that he or she has shown all due diligence, which is what the legislation requires, then all the Crown Office has to say, in a public statement, is: "We have investigated and we have found that the landowner has undertaken full due diligence." We would accept that, but we do not even get that; we do not even know whether a case has been investigated at all. The shutters come down completely and we are not told anything at all.

Eddie Palmer: Some more guidance about vicarious liability would be useful. A couple of years ago, there was an situation where there was a clear line between an agent, a farmer and a forestry contractor. The forestry contractor totally wrecked a badger sett, a licence was never on site, and everyone was blaming everyone else for it. I do not know whether the police or the Crown Office decided that it was not worth going ahead, but the evidence appeared to be very clear in that case.

Les George: You need to be very careful about rolling vicarious liability out to other sections. We fear that it would have a detrimental effect on fox control. If farmers who have someone in killing foxes on their land thought they were in any way responsible for the person killing the foxes, they might stop fox control, which would be very bad for waders and ground-nesting birds. The farmer would probably not take the risk. They would just say, "We are going to stop that," which would be really bad.

Ian Thomson: If it were limited to protected species—otter, pine marten and badger, for example—that would not be an issue. Foxes are a permissible species to kill anyway, but if vicarious liability provisions were extended to cover protection of those other species, that would not be an issue.

Les George: Presumably, you would want to do it for fox snaring. Snaring is an issue. If you are going to snare things, you will have bycatch. You release it, but it is a risk for the farmer.

Colin Smyth: Karen Ramoo mentioned the Poustie review, which is obviously the basis of much of what is in the bill about penalties for wildlife crime. Are there other review recommendations that could be addressed in the bill?

Ross Ewing: I seem to recall that firearm and shotgun restrictions were mentioned. At the moment, under legislation governed by Westminster, firearm and shotgun certificates can be restricted if there is a threat to public safety. If we were to bring in legislation whereby someone's shotgun or firearm certificate could be revoked if they were known to have committed incidents of wildlife crime—that would be something on which we would need to work with colleagues down south—it would be a very prudent deterrent indeed. As has been mentioned, it is very difficult for anyone who has committed wildlife crime to get a job, especially if they work in conservation, as gamekeepers do, but adding that additional measure—actually revoking a shotgun or firearm certificate—would probably be very sensible. In my mind, if someone is committing wildlife crime, it is very bad, and I would argue that it could be a threat to public safety at some point.

Les George: To be fair, that is already happening. As soon as a case is brought, the police take the firearms away from whoever is in the loop, so it is already happening.

The Convener: Is the person denied a shotgun licence in the future?

Les George: They are not denied a licence in the future, but they are denied one until they are proven innocent.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Poustie also recommended intervention programmes and empathy training. I know that there is currently no resource for those, but should they be part of community payback orders?

Karen Ramoo: I was going to pick up on that. I would personally be very supportive of that. We believe that custodial sentences could also involve retraining or empathy courses. When you get a speeding penalty, for example, you go on an awareness course. It is about that whole thing of teaching and educating people about their wrongdoing, and trying to right that.

One of the other recommendations from the Poustie report was about a more systematic approach to the use of impact assessments. In addition, it said that there would be merit in developing sentencing guidelines in order to enhance the consistency and transparency of wildlife crime sentencing. We would push for those things as well.

Finlay Carson: We have heard about increasing penalties, which most people seem to be in support of. However, there is very little point in increasing penalties if we do not increase the number of people who are convicted. It would be a bit like increasing the fine for speeding in a rural

area, but with one policeman covering 100 square miles, so nobody would be likely to be caught.

I want to look at the scope for expanding investigations and enforcement. One possibility might be an increase in the statutory time limits on evidence gathering. Although that proposal has been broadly welcomed, we do not know whether there is any evidence of cases that have failed because of the time limits on gathering evidence. Therefore, I would like to hear the panel's opinion on changing the statutory time limits on investigations into wildlife crime.

Ian Thomson: If a suspect is going to be identified in a raptor persecution investigation, it is normally within the first two to three weeks. By and large, raptor persecution happens in places where potential suspects are likely to be known; that is, there is a narrow group of people who are likely to be responsible. Unless a sufficiency of evidence is found very early on in the investigation, a case will not proceed, regardless of whatever public appeals for information there are. It is very much down to the police and the Crown Office how much administrative time they require in order to proceed a case, but I do not think that changing statutory time limits would have any impact on the practical, on-the-ground investigation.

Eddie Palmer: Investigations into incidents that might be deemed crimes can run on for a long time—it is not unusual for it to be nine or 12 months before hearing about anything. I know the trouble that police officers can have in getting people in for interview, in terms of making the arrangements, dealing with their own leave and things like that. Ian Thomson might well be right, although I cannot prove that, but the suggestion is something to be wary about. I think that, at times, there are resource problems.

Ross Ewing: I will touch on issues such as hare coursing, which I spoke about already. It is inherently difficult to catch the individuals that undertake such activity. Generally, we find that they tend to be repeat offenders, so allowing a little bit more time in order to get a multitude of offences could be advantageous in those scenarios. With reference to hare coursing, it could be a positive step.

Karen Ramoo: We are unaware of instances where a time limit impacted on prosecution. It is about separating out whether the time limit is causing problems in relation to taking a case forward, evidence collecting and getting that to prosecution level, or whether it is more of a police resource issue. It is important to separate those two things out. If it is a resourcing issue, that should be dealt with elsewhere.

Finlay Carson: Thanks. I want to look at the potential impact of a five-year custodial penalty

allowing some wildlife crimes to be treated as serious crimes, which would open the door to allow police officers to install covert cameras. Generally, that would still be done on a case-by-case basis. What is the panel's general feeling about the installation of covert cameras? Might that have a positive impact on the way that the police can identify criminals?

Karen Ramoo: We fully support enabling the police to use and manage surveillance cameras, although of course that should be strictly under the procedures in the Regulation of Investigatory Powers (Scotland) Act 2000. Where there is an indication that wildlife crime might be happening, there is a strong case for using cameras. They could act as a real deterrent and, we hope, lead to more prosecutions if wildlife crime is taking place.

The Convener: Liz.

Les George: I—

The Convener: I said "Liz", but I will go for Les and then I will take Liz. On you go.

Les George: Sorry.

I do not have a problem with the police using covert cameras, but that needs to be handled sensitively. I have some personal issues with cameras, because I have had them pointed at my house. That was reported to the police, who had nothing to do with it; it was other individuals. My wife and child were filmed. Will it encourage vigilante camera users if people think that it is okay to do that? It is perfectly fine if the police are using cameras, but it will encourage others to do illegal camera work.

Liz Ferrell: Scottish Environment LINK does not have an informed opinion on the issue. However, anything that helps to increase the number of prosecutions is welcome.

Finlay Carson: On Les George's point, at the moment, the police have to meet an information threshold before they consider the installation of video surveillance equipment. If that threshold is reduced and the police are more inclined to install cameras, might that reduce the need for vigilante groups, as Les George put it, to install cameras?

Les George: I do not think that it will help in that way. It will encourage people to go out on their own to film other people, when they should not be doing that.

Ross Ewing: Like everyone who has spoken on the issue so far, BASC is supportive of the measure. However, I echo the sentiments that have been expressed about privacy issues. The use of cameras is contentious. I am not entirely convinced that some of the camera work that has been done to date by non-statutory bodies has been particularly sensitive. There is a fundamental

requirement for the process to be sensitive and carried out with much due diligence in order to make it workable. However, we see a small number of wildlife offences referred to the procurator fiscal, and it would be good to see more. The proposals will absolutely help with that.

Ian Thomson: RSPB Scotland has on occasion deployed cameras in the countryside focused on things such as traps or nest sites. Some of the video footage that we have captured has been deemed inadmissible in prosecutions, and on other occasions it has been deemed admissible. In a case back in 2013, I think, the Crown Office decided that it could not rely on the evidence that we had captured, which was of an individual allegedly shooting a hen harrier off a nest, as part of a prosecution. The explanation of that is very much for the Crown Office, but one has to ask whether a camera pointing at a hen harrier's nest site—it is a schedule 1 species, so nobody should be going anywhere near the nest without a licence—is surveillance or monitoring a nest.

We have to be careful about the issue. Is it being suggested that the police will put cameras at nest sites just to monitor a pair of birds on the off chance that somebody might come along and do something bad? Given that there are 460 pairs of hen harriers in Scotland, I doubt that the police have the resources to do that. Therefore, there is absolutely a place for cameras to be deployed by other agencies as long as they are not imposing on people's right to privacy under article 8 of the European convention on human rights. The situation that Les George outlined is completely unacceptable. It is absolutely crossing a line if people's dwellings and family are being filmed. However, putting a camera at a nest is an entirely different proposition.

Rachael Hamilton: Are there any further issues that need to be addressed in combination with the maximum penalties—for example, resourcing enforcement or raising awareness of those increased penalties—in order for the bill to achieve its purpose of deterring wildlife crimes?

10:45

Liz Ferrell: Scottish Environment LINK members would be happy to sit around the table and be part of that awareness raising. I think that we all have a duty to do that. Certainly, the Bat Conservation Trust, the RSPB, Scottish Badgers and others would be happy to get the word out.

In previous submissions, we have said that there needs to be more resourcing for the police. If we are going to do this properly, the implementation is important. We can change the law and increase boundaries, but enforcement has to be factored in, too.

Mark Ruskell: I would like to ask the witnesses for their views on the powers of the SSPCA. It has powers in relation to domestic animals, but it does not have powers in relation to wildlife.

Do the witnesses have any reflections on the special constables pilot scheme that has been running in the Cairngorms to try to tackle wildlife crime? Has that been an effective way forward, or would the SSPCA having powers in relation to domestic animals be a useful addition to the powers that the police already have?

The Convener: That is the last question from a member, so this is the last chance that people have to speak before we wind up.

Dr Tingay: The special constables project in the Cairngorms has been a complete disaster. We are still waiting for a formal report, but we know from a parliamentary question—which was asked by Mark Ruskell—that no wildlife crimes were reported by those special constables during the period in which the project was running, even though we know that wildlife crimes took place in the park during that time. I am not quite sure how the effectiveness of the project will be measured by the Scottish Government. However, in terms of reporting crimes, there is nothing to report.

Eddie Palmer: On the powers of the SSPCA, it is the organisation that is managing to get some badger baiters into court, because of its concentration on dog fighting. Scottish Badgers sits between the police, who do what they do, and the SSPCA, which does a lot of work on the ground. I know that the police co-operate with the SSPCA with regard to the SSPCA having to enter houses, for example. However, the data and the statistics on that are mixed and confused, and we get caught in the middle at times. The situation at the moment is unsatisfactory.

Les George: There is no need to give the SSPCA more powers. In relation to the case that is being brought in Angus at the moment, the present arrangements worked perfectly fine. If you are going to do these things, you need to resource the police. The police are impartial, but the other groups are not—they have their own agendas. The police should handle these things, not the other organisations.

Ian Thomson: At the moment, the SSPCA, as a specialist reporting agency, has the ability to report crimes under the Wildlife and Countryside (Scotland) Act 1981, but it may enter land only under the terms of the Animal Health and Welfare (Scotland) Act 1987—in other words, it may do so only if an animal is actively suffering. Our interpretation of that is that, if, for example, the SSPCA receives a report of a bird having been caught in an illegal pole trap, it can go and seize that trap and that bird, but it is not allowed to

check for other identical illegal pole traps or dead animals caught in those traps in the same area.

A few years ago, a common gull was caught in an illegal trap that had been set on a grouse moor in Aberdeenshire. There was a line of 10 similar traps across the hillside, but the suspect was able to remove them before the police could come to visit. If the SSPCA had the powers to search, it could have recovered further evidence. We feel that it is important that the idea is at least explored.

The Convener: We have run out of time but, because I am a nice person, I am going to let my deputy convener come in with one very short question.

Finlay Carson: It involves what we are talking about. It seems that the SSPCA already has powers in respect of animal welfare, and there is a question about why it should not have equivalent powers in respect of wildlife. We have heard concerns about the accountability of organisations other than the police. Does anyone have concerns about the governance or the accountability of organisations such as the SSPCA when it comes to additional powers to enforce the law and gather evidence under the new legislation?

Dr Tingay: I have no concerns about that at all. The SSPCA is an official reporting agency and it does a brilliant job in relation to domestic animals. Why would it not do the same in relation to wildlife?

The Convener: On that note, we will suspend briefly to allow for a change of witnesses.

10:50

Meeting suspended.

10:57

On resuming—

The Convener: Our second round table on the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill at stage 1 will focus on enforcement and prosecution. I am delighted to welcome: Mike Flynn, chief superintendent, Scottish SPCA; Detective Chief Superintendent Gary Cunningham, specialist crime division, Police Scotland; Constable Charlie Everitt, Scottish investigative support officer, UK National Wildlife Crime Unit; Robbie Kernahan, head of wildlife management, Scottish Natural Heritage; Joanne Fairman, head of regulatory affairs, Animal and Plant Health Agency; and Sara Shaw, head of wildlife and environmental crime unit, Crown Office and Procurator Fiscal Service.

Good morning to you all. A number of you were in the public gallery when the first panel was giving

evidence and will have heard me ask the witnesses about the evidence base for the proposed increases to penalties and trends in animal welfare offences. Of course, we must talk about historical offences rather than on-going cases, for reasons that you all understand. Who wants to kick off by talking about trends in offences and the need for increased penalties?

Mike Flynn (Scottish SPCA): I can give a couple of recent examples. Sentencing guidelines recommend that sentences of less than 12 months should not be given. Two sheriffs who jailed people for nine months and 10 months respectively, commented that their powers are not enough and that the offences were serious enough to justify such measures.

The Convener: Do you think that there is a desire for flexibility on the part of sheriffs?

Mike Flynn: I think that sheriffs would welcome it. You must remember that, even if the maximum sentence is five years, it is entirely up to the sheriff whether to impose a sentence of six weeks, two and a half years or whatever. A lot of the people who we deal with do not see a six-month prison sentence as a deterrent. In the dog-fighting and puppy-farming arenas, we come across a lot of people who have been jailed many, many times for other offences; jail is an occupational hazard for them. For someone who does six months in jail for puppy farming and then comes out and still has the £20,000 that they made in one month, a six-month sentence is not a big deterrent.

11:00

Stewart Stevenson: Is there not also an issue for the Crown Office, in that longer sentences can be imposed only if a case is raised as a solemn case rather than a summary case? It is not just that sheriffs do not have enough powers; there is also the need for the prosecutor to bring forward solemn cases, so that the case can ultimately result in a long sentence.

Sara Shaw (Crown Office and Procurator Fiscal Service): Each case is considered on its own facts and circumstances and an assessment is made of the appropriate forum for prosecution. You are right to say that there needs to be a solemn prosecution if we want to open up the maximum penalty to the court. However, although the bill introduces that potential, we will still consider each case and raise proceedings in the appropriate forum, according to the particular circumstances of the case.

The Convener: We have talked about organised crime. Some offences are part of a much bigger enterprise, and the individual who goes to jail might have a larger organisation behind them.

Mike Flynn: That is certainly the case. There are lots of documented cases of that, especially in the dog fighting and puppy trade industries.

Robbie Kernahan (Scottish Natural Heritage): It can only be a good thing to take the opportunity to improve consistency in relation to wildlife and welfare offences. The clear rationale for the bill is the need to increase penalties for the most serious crimes, so the introduction of flexibility and the option for each case to have a tailored solution makes perfect sense.

Joanne Fairman (Animal and Plant Health Agency): I second that. We are the regulator for a lot of the welfare issues, because the enforcement is done by our enforcement partners. The committee must remember that we get to a prosecution and sentencing after all other interventions have been put in place. We build up to a prosecution; it is not the endgame. If we reach the point at which we think that prosecution is required, we need the court to have the ability to impose a bigger sentence, because we are talking about people who genuinely need a stiff sentence to make them get out of the business or change their behaviour.

We have shown that the system that we have has not changed behaviours over the past five or 10 years, so we need to do something different to deter people who will not otherwise abide by the law.

The Convener: The other part of my question was about trends in animal welfare crime. Has there been an increase in such crimes over the piece?

Detective Chief Superintendent Gary Cunningham (Police Scotland): That is a difficult question to answer. The statistics show that, last year, there was a 30.9 per cent decrease in wildlife crime, with a 6 or 7 per cent decrease in detection rates. However, we are not sighted enough on the volume of crime out there; the statistics show only what we come across or detect. Sometimes when a raptor disappears we cannot prove that there has been a crime—we might suspect criminality, but we are not in a position to prove, to Scottish crime recording standards, that a crime has taken place.

Therefore, when you are looking at the volume of crime, you should not make decisions on the basis of comparing percentages and trends over the years. We need to fully understand the problem that we have with wildlife crime across the board. That understanding will come through better intelligence, better partnership working and better assessment of our response to incidents. Only then will we get a flavour of where the issues lie. If we look across the board, we see that raptor crime is the main issue that we face just now.

The Convener: Volume is not the most important thing. One instance is enough.

Detective Chief Superintendent Cunningham: Exactly.

Rachael Hamilton: The Law Society of Scotland made the point that there needs to be a “rationale justifying the differentiation in the varying penalties.”

Will the panel comment on how the penalties for the different levels of crime could be made clearer?

Mike Flynn: Sheriffs take into account the severity of the crime and the impact that it has on the animals or the people involved. The fiscal certainly takes that into account when marking up the case. It is then down to the evidence that is presented to the court and it is up to the sheriff.

Where it has fallen down, which is more on the financial side, is in the puppy trade. An accused who was found guilty was fined £2,600 for his involvement in the puppy trade and £500 for selling the puppies in a public place. He openly said in court that he had made more than £1.2 million in a year and a half, so where is the deterrent in those fines? His motive was profit; he had no interest whatsoever in animal welfare. That kind of thing also needs to be taken into account. Given the right evidence, the fiscal service does a fantastic job in presenting it to the courts. The profit issue is why it deserves a higher penalty.

Overall, the number of cases that we report to the fiscal is dropping year on year, because we do more intervention and we do it sooner. The majority of cases are about ignorance and neglect, but far more intentional cruelty is coming to light. Recently, there have been more badger incidents because, as soon as we start getting involved with those people, we become aware of their cohort and colleagues, and we also get evidence on them. We see some really serious cases. The Mark Cuthbert case—he got 10 months in jail—was one of the most barbaric that I have ever come across. He fraudulently got cats that were offered by people as free to a good home and fed them to his dogs. That is the kind of depravity that we are dealing with these days.

Constable Charlie Everitt (National Wildlife Crime Unit): The Crown Office will be able to exercise discretion with regard to, say, the killing of a wild bird, whether it be, at different ends of the scale, a blue tit or a golden eagle. In addition, impact statements highlight the conservation concerns about the respective victim species, and that will help to differentiate the severity that must apply.

Joanne Fairman: In our evidence, there are cases of people who are out to make money

regardless of the welfare of the animals—whether that is fighting dogs or imported puppies—and they are intentionally in it for the profit.

The other side that we see is on-farm welfare. Those cases are different, because, more often than not, the people who get themselves into problems with on-farm welfare have seen a decline in their health or finances, found themselves in that position without setting out to be in it and, all of a sudden, cannot see a way out of it. They get entrenched. Those cases are more difficult because, although they can be serious and the animals can be harmed, there has been no intent. It is about whether the people make the right interventions to get themselves out of that position when they are suggested to them. The distinction is in the intent.

The Convener: Those might be situations in which a person is not coping.

Joanne Fairman: Yes.

Stewart Stevenson: I want to go back briefly to DCS Cunningham with an operational question.

Are you getting enough intelligence to populate your general intelligence resources from all the many agencies and charities that are involved in this particular area? If not, is there anything that could reasonably be done, apart from saying that your doors are open to getting more intelligence?

Detective Chief Superintendent Cunningham: That is a good question and a great point. I do not believe that we have an intelligence-sharing protocol in place between all the different agencies and partners that are involved in wildlife crime. Police Scotland has a large database, as do some other agencies, but we are not at the right level with sharing information. The intelligence picture could be greatly enhanced to allow us to focus on where the issues are in Scotland, and to build cases and focus interventions, initiatives or operations on those areas.

Do not get me wrong—the partnerships are strong and we are continuing to build them. Everyone has a clear focus on the ultimate goal, which is to prevent wildlife crime and catch those who are responsible, but I think that there are opportunities for better sharing of information and intelligence. That will allow us to better assess the risk and target the problem.

Stewart Stevenson: Economic criminals such as puppy farmers are likely to be involved in more general criminal behaviour, so wildlife or welfare intelligence that comes to you might have pay-offs in other parts of the criminal justice system.

Detective Chief Superintendent Cunningham: Yes—in relation to serious and organised crime.

The Convener: How can we get better information sharing? Do we need an information technology solution or is it a question of providing more resources?

Detective Chief Superintendent Cunningham: It is a case of continuing partnership working and having conversations about where we can get information that might assist with joint operations. Such work is on-going, but I do not have a specific solution. We need to have conversations about how we can address the issue. We could maybe set up a short-life working group to assess the best way forward. If we had intelligence on a particular individual or a particular crime, we could have meetings with the partners to discuss that intelligence. I think that information-sharing protocols are in place with Scottish Natural Heritage. We need to consider how we can build on those and extend that to the other partners.

Finlay Carson: I want to follow up on that and on what Mike Flynn said about puppy farming. Does the bill need to be amended to further address the drivers of animal welfare offences so that it covers, for example, the proceeds of crime, the ability to impose sentences that include education for offenders and the prevention of offending in the first place? Could more be done through the bill to address the drivers of animal cruelty?

Mike Flynn: I am not sure whether I am giving the right answer but, to go back to Mr Stevenson's point, when it comes to puppy farming, the police have been fantastic in using the serious and organised crime squad to pursue the proceeds of crime with some of the individuals we have dealt with. The interventions units have been extremely helpful, too. On the domestic side, there is great link-up at a local level.

Detective Chief Superintendent Cunningham: We also have a disruptions unit that is set up to work closely with the partners.

Finlay Carson: So there is nothing that we ought to include in the bill that would increase our ability to address the drivers of animal welfare offences. You are quite content with the bill in that respect.

Detective Chief Superintendent Cunningham: Yes.

Finlay Carson: I want to ask about the effectiveness of other types of penalty that are used at the moment. It has been suggested that we need more flexibility. We have heard in evidence that the use of disqualification orders is a bit random and that they could be used more systematically, and we know that there are disqualification orders and dog control orders that have not worked particularly well. Is there a need for a register of disqualification orders and other

information about people who have been convicted of wildlife offences to support enforcement?

The Convener: Joanne Fairman is nodding.

Joanne Fairman: I would say that there is a need for that.

To go back to the question about intelligence, we have all begun to dip our toes in work in that area. We have intelligence—we have Food Standards Scotland and we are working at Gartcosh—but the intelligence that we have is only as good as the information that is provided. There is no magic bullet, but the issue comes down to resources. We are all given funding to do the job that we are asked to do, and it is sometimes difficult for the staff to take their blinkers off and look at the wider picture. The potential exists to look more strategically at threats that go across departments. That might make it easier to share the information.

On disqualification, an issue that has come up recently in our area is the ability to know who has received a disqualification order. We get such information from some of the local authorities and from the SSPCA, but it would be useful to have it in one place. Having such a source of intelligence would be a good starting point.

The difficulty that we had previously with disqualification orders is that although we might have disqualified one individual, they would simply pass on the animals to a family member—in other words, we did not solve the problem. There needs to be greater consistency and the disqualification process should be strengthened to stop the activity continuing under a different name.

Mike Flynn: Disqualification orders are regularly breached. On the domestic animals side, every year we will get a warning from the Royal Society for the Prevention of Cruelty to Animals to tell us that somebody who is banned in, say, Manchester has moved up our way, and vice versa.

There is no enforcement or follow up. Someone is banned for five or 10 years and nobody checks on it. There is no central register—the information will be somewhere in the depths of the police national computer system. Although a police constable going to someone's door for whatever reason will know that they have got a warrant out for them and are potentially violent, they will not know that that person is banned from keeping dogs. You could walk into the house and there would be five dogs there, but nobody would know about it.

We have spoken for a long time about getting a register that authorised agencies can access without any risk to individuals.

11:15

The Convener: It would also be helpful for the public. If you are going somewhere to purchase a pet, for example, and you know that there is a register, you can check the register.

Mike Flynn: The previous time that this was talked about the discussion was about whether the register should be open or just for enforcement agencies. If it was open, you could get vigilantes trying to find out who is banned and causing trouble.

The Convener: One of our witnesses at last week's meeting talked about articles in newspapers. They were asking for a publicly available register, but you are saying that that might have unintended consequences.

Mike Flynn: For that aspect, yes, but I am going back seven or eight years, when a local authority gave a pet shop licence to a person who had not declared that they had been banned. If you are banned from keeping animals, you will not get a pet shop licence. This person did not declare it and there was no record of it, so the local authority, through no fault of its own, issued a pet shop licence.

Stewart Stevenson: We will come to fixed penalty notices later, but I just wanted to ask at this point whether it would be appropriate to ensure that fixed penalty notices were part of the register system, so that the existence of a pattern of low-level behaviour was clear at the appropriate point. That may be a question that answers itself.

Mike Flynn: That is a very good point. Fixed penalty notices should never apply when an animal has suffered; they should apply to technical offences, of which there are thousands. The question is, if a local authority APHA wanted to go to prosecution, would the procurator fiscal take it? Let us take, for example, a livestock haulier not cleaning his wagon out between loads. If you put that to the procurator fiscal, and no animal has suffered, the chances are that it would be an ideal case for a fixed penalty notice. We have consistently said that people should not get a fixed penalty notice for the same thing every week.

Stewart Stevenson: We will come back to FPNs. I am just on the narrow issue of whether they should be put on a register.

Mike Flynn: Yes.

Mark Ruskell: The panel has already started to explore the links between violent crime and animal welfare offences. Could other approaches to prevention and enforcement be pursued here? The committee heard last week that in some countries, incidents of suspected animal abuse can be reported to social workers. How is this area evolving?

Mike Flynn: The Links Group was set up to involve all partners. Going back to the police point of view, it is about information sharing under proper protocols. It is even linked in to dentists spotting domestic violence and so on. Who should they report that to? Should it be reported to the police? It is more about information sharing where appropriate.

Mark Ruskell: Are there concerns about information sharing between different agencies?

Detective Chief Superintendent Cunningham: No, not if it comes down to child welfare or adult protection. I think that we are confident about that information being shared automatically. We have to have that mindset when we are dealing with wildlife crime. What is the individual's mental state if they are capable of carrying out these acts? Should we consider a wider piece of work with health professionals? Should we get proper assessments done and look at the wider family dynamic? All that is very important.

Robbie Kernahan: In relation to wildlife crime, Scottish Natural Heritage and Police Scotland have a very good relationship when it comes to sharing all our relevant information and intelligence. Whether it is on impacts, populations or specific individuals, our information sharing is fairly well developed. In the partnership against wildlife crime, there are groups set up to look at specific topics. However, because of the on-going polarised debate about land use, and specifically raptor persecution, and because of the lack of trust, some of the intelligence sharing and media protocols do not work as well as they should.

Mark Ruskell: How might the bill impact on the Crown Office and Procurator Fiscal Service's decision making?

Sara Shaw: Do you mean the extended time period for investigating and reporting offences?

Mark Ruskell: How do you see all the provisions in the bill impacting on your decision making?

Sara Shaw: The Crown Office and Procurator Fiscal Service will continue to consider all reports of cases that have been received. It will consider whether a crime has been committed, whether there is sufficient admissible evidence of that crime, whether there is evidence of the perpetrator, and whether proceedings are in the public interest. We will continue to take decisions on the same basis that we currently do. Obviously, factors can affect how wildlife crime is dealt with, such as the detection of where the crime took place. There can sometimes be delays, and there can be complexities in pursuing forensic evidence and examining items when the crime has come to light. If there is a delay in detecting a crime or the

evidence is complex, the extended time period within which a prosecution can be brought will be useful.

Mark Ruskell: Does the increase in sentencing options affect the public interest test on whether to pursue a case?

Sara Shaw: The penalties do not directly affect the public interest test. The option of opening up the potential to prosecute at either the summary level or the solemn level allows the Crown to take full account of all the facts and circumstances of a case, to take account of the seriousness of the offending and the circumstances of the alleged offender, and to be able to ensure that the forum in which a prosecution is brought reflects the seriousness of the offending. Obviously, in considering the forum, we will have an eye to the potential outcome. If prosecution at the solemn level was appropriate, those maximum penalties would be opened up as an option for the court for more serious offending.

Mark Ruskell: Does the increase in maximum penalties require new sentencing guidelines?

Sara Shaw: It would not be appropriate for me to comment on sentencing. I am aware that the Scottish Sentencing Council has considered guidelines for wildlife and environmental offences, and I understand that those are still in progress.

Mark Ruskell: Are there any other views on that? Earlier, we had a discussion about impact statements, the severity of crimes and the wider impacts. Is the reconsideration of sentencing guidelines required?

Mike Flynn: Recommendations are included in veterinary reports that would be displayed to the courts anyway in light of the severity of the impact on the animal. With puppy farming, I am sure that the police evaluate whether to go for the proceeds of crime that have been made from the activity.

Rachael Hamilton: How common is it to be able to use intelligence to link organised crime and puppy farming, or domestic abuse and animal cruelty, for example?

Detective Chief Superintendent Cunningham: It is simply a case of ensuring that sufficient intelligence is brought into our systems to make an assessment. Making the link between puppy farming and organised crime is really quite simple. It depends on the individuals who are considered and researched, the financial gain, the set-ups, and on linking into other police forces that will share their intelligence. That is quite easily done. We can then draw pictures of individuals, their motives, and how they behave towards other people. That could bring in domestic violence.

I do not know whether that answers your question.

Rachael Hamilton: It does. That links into the severity of the penalty, which we talked about earlier. I just wonder how often that comes into play. Obviously, it will depend on the intelligence that you have available.

Mike Flynn: It is very common for there to be a link, not in relation to wildlife offences but in relation to domestic animals or badger baiting. We always rely on help from Police Scotland if we are dealing with a known dangerous person. We approach Police Scotland for assistance on the day and, as soon as the police know who the target person is, we find out whether they have been a client of the police in the past. It all goes from there.

Robbie Kernahan: I want to make a principled point relating to Mark Ruskell's question about sentencing guidelines. Increased maximum penalties will, I hope, inevitably help in relation to compliance, deterrence, risks and consequences. Fundamentally, quite a lot of people struggle with the lack of transparency in sentencing. Last week and this morning, we have heard about the lack of transparency, so it can only be a good thing to have sentencing guidance that people can better understand.

Mark Ruskell: Is there any inconsistency?

Robbie Kernahan: From reading the committee's papers and from the evidence that we have heard today, we know about the lack of consistency for offences that might be relatively comparable in terms of the impacts that they have. I think that guidance would help.

Joanne Fairman: We had a similar problem in England. Every year, we publish a report that shows what action local authorities have taken in relation to offences under animal health and welfare legislation. The reports include information on the individuals and the sentences that they received. For a period of time, we decided that we would slim down the reports and include only the number of offences. However, we had a call to put the other information back in, because the reports were one of the source documents that the judiciary used to compare the offences and the sentences that were given. The offences that we are talking about are not that frequent compared with other cases that are seen within the judicial system day to day, so it was very difficult for the judiciary to think about where to get the information. People would say, "I've got this before me, but I've never done one of these before. What shall I do?" In England, the reports have proved to be a good source document to go to for reference.

Finlay Carson: I want to be sure that the bill will do all the things that we want it to do. We have heard of people who carry out illegal razor clam fishing being prosecuted. They do not get

prosecuted for carrying out the illegal activity, because that is too difficult to prove; they get prosecuted for tax evasion or for breaching health and safety. That might also be the case for puppy farming. We do not always address the issue directly. It is like Al Capone going to prison for tax evasion rather than for gun crime or whatever. Are the witnesses confident that the bill includes everything that is needed to address the real issues that we face?

Detective Chief Superintendent Cunningham: Yes, absolutely. It comes down to the investigative standard and approach. The crimes that we are talking about will always be difficult to solve, and it will be difficult to prove that a particular individual is responsible. That comes back to how we shape our investigations to ensure that a professional approach is applied across the whole nation. Police Scotland, with the different partners that have been mentioned, does that. The bill is fit for purpose in that respect. It is just a case of there being difficult investigations at times. We should not just take things from day 1 of an investigation; as you said, we need to look at all the different options in order to disrupt the individuals who are responsible. If we get them for a minor offence but cannot prove that they were involved in the wider or larger offence, we will go after them for the minor offence. As far as I am aware, the bill is fit for purpose.

The Convener: I have questions about rehoming without a court order. I have spoken to Mike Flynn about the issue in relation to a particular incident in my constituency. The bill proposes that a court order will not be needed in order to rehome or sell on animals. What impact will that have on the welfare of animals and on organisations such as local authorities, Police Scotland and the SSPCA?

Mike Flynn: The SSPCA believes that the bill would be a groundbreaking piece of legislation. You have mentioned two aspects. The welfare of animals is totally compromised if they are kept waiting in kennels for up to 23 months. Currently, if a person does not voluntarily relinquish an animal, it must be kept until the determination of the court case.

We do not hold on to animals if a report is not going to the fiscal; we hold on to them only when a case is pending. The worst case that we have had in recent years was the one lasting 23 months, which I mentioned. In that case, 57 dogs were held for 21 months. If that had been a police case and they had asked us to look after the animals, on commercial terms, that would have cost the police £440,000. It is £15 per dog per kennel per day.

11:30

It is about the welfare of the animals. We have the best kennels and staff imaginable, but the kennels are no place for a dog to be brought up. In the case in your constituency, convener, some of the dogs that we seized were pregnant bitches and they actually gave birth in our kennels. Those dogs were more than a year old before they saw the light of day, so to speak. We built new sensory gardens and other such things to try to stimulate them and give them some of the experiences that they should have had. However, if a one-year-old dog has only ever known kennels, that is not good for its welfare.

The Convener: You have touched on the costs to the SSPCA of keeping animals for such periods. The proposals in the bill will release a lot of money for you to do the other work that you are supposed to be doing.

Mike Flynn: I have two important points on that. We estimate that, in just under two years, it has cost us £1.5 million to care for animals that have been involved in court cases. I mentioned two big cases. In August 2018, if you had gone to our Glasgow dog and cat home, which has 160 kennels, you would have found that we had two dogs for rehoming and that every other kennel had a dog in it waiting for a case to go to court. That was just because of the backlog and the court system.

Constable Everitt: To back up Mike Flynn's point, one of the difficulties in seizing dogs from hare coursers is the cost of keeping those dogs. As Mike Flynn said, we support anything that alleviates those costs.

The Convener: My next question is perhaps more for Joanne Fairman. It is about the balance between safeguarding animal welfare and the rights and interests of the owners of animals. Do you want to talk about that, Joanne? There might be an issue where someone has got into a situation and has found that their animal has been seized.

Joanne Fairman: As Mike Flynn said, homing dogs and keeping them in kennels is difficult, but we are regularly faced with herds of 80 head of cattle that we can see deteriorating. Our vets go out time and again, perhaps to put down animals that are dying. Our vets are sort of powerless. They try to work with the owner to sell some of the animals so that he can recoup some money before they become worthless. It is about the welfare of the animals, but it is also about the welfare of the vets because, clearly, that situation places an emotional strain on them. They know that local authorities are not necessarily resourced to take in and look after animals. The animals will need handling every day—they will need feeding and

watering. It is difficult to find somewhere to put the animals, especially because we have to comply with disease control measures before we move them anywhere.

There is a balance, but we sometimes get to the point at which, despite all the best persuasion and cajoling, we have to seize the animals. We give care notices that explicitly tell people what they need to do. We engage with neighbours and farming networks to try to help people before we get to that point. However, the point comes when we can see that nothing else will happen and we have to seize the animals. At that point, the decision is made that the animals' rights have to come before the rights of somebody who thinks that they can farm and do what they like regardless of the need to look after their animals.

The Convener: Is the three-week appeal period appropriate?

Joanne Fairman: It is too long, because of the need for care and the cost to the local authority. That deters the local authorities. For example, we had a case involving 80 animals in which the appeal was protracted—it did not even happen in three weeks. The cost to the local authority as a result was phenomenal. In that sort of situation, the local authority does not get that money back because, by that point, there is usually no money.

The Convener: You are saying that the period now is too long, so the three-week period is appropriate.

Joanne Fairman: Sorry—yes, it is.

Once a local authority experiences such difficulties, it will be reluctant to take on any more cases.

It becomes a catch-22 situation: we will sometimes take someone to court and be asked, "If it was that bad, why did you not seize the animals?" We are forced to say, "It was bad but we could not seize the animals" because it came down to the monetary factor, which is a real pity.

The Convener: Or that it came down to capacity.

Joanne Fairman: Yes.

The Convener: Does anyone else have thoughts on that? Are you confident that all the processes that you will need for any sales, rehoming or, sadly, euthanising of animals as a result of this new power to seize animals without a court order are in place?

Mike Flynn: From our point of view, certainly.

Finlay Carson: We have discussed with other panels the difference between domestic animals and commercial working animals and companion animals. Are there potential difficulties when it

comes, for example, to how the SSPCA deals with complaints from the public regarding a working dog or a domestic dog? There are different levels: if a member of the general public were to look at a sheepdog that has been out working on the hill, they might think that it looks like it needs a trim and it is a bit muddy and dirty, so how do you deal with that? It is probably okay, because it is a working dog, and it would be different for a domestic dog that is not used to being out in the wet and the cold. Are there potential problems when it comes to decisions that the police or the SSPCA have to make regarding the welfare of animals, working or otherwise?

Mike Flynn: Not really. From our side, on the example you gave, a perfectly healthy working border collie is a perfectly healthy working border collie. Our guys know what to look for. Any time we are looking at a more serious offence of causing unnecessary suffering, it is always certified by a veterinary surgeon that the animal has suffered. With a soggy, knackered-looking border collie that has been working all day, you will not get a certificate—"as fit as a butcher's dog" will be the determination. Every case is an individual case.

Rachael Hamilton: I want to ask about the time that it takes for appeal. There is evidence to suggest that that, and the time for further appeal to the Court of Session, is too long. How could that be expedited, which would help the whole process? It is down to the time that cases take in the courts. Perhaps there could be prioritisation of some cases.

The Convener: Do you mean in relation to the three-week period?

Rachael Hamilton: Yes. If the time that it is taking to deal with an appeal and possible further appeal to the Court of Session is rolling over the three-week period, perhaps it should be recognised that there should be prioritisation of specific cases. Joanne Fairman gave the example of 80 cows and the suffering that was caused.

The Convener: I am not sure that I understand. At the moment, under the bill it would not be necessary to have a court order to rehome animals or sell them on.

Rachael Hamilton: We have gathered evidence about the time that it takes to appeal through the courts.

The Convener: Would anyone like to comment on that?

Mike Flynn: The court process is very underfunded. So many sheriff courts have been cut over the past couple of years that it is difficult to actually get into court. The Crown Office and Procurator Fiscal Service marks a case as being

for proceedings, but then it is then over to the Scottish Courts and Tribunals Service to facilitate availability of a court. The accused person might then say that he cannot get legal representation or has just fired his lawyer. There is delay after delay, during which time animals are being kept at incredible cost to the local authority, the APHA or the SSPCA, with all the welfare issues that are involved.

The Convener: So, if that appeals process does not happen within three weeks, the welfare issues will be dealt with because you would be able to move the animals on.

Mike Flynn: That is why we welcome the proposal 100 per cent.

The Convener: We will move on to compensation. Stewart Stevenson has some questions about that.

Stewart Stevenson: First, if you will forgive me for doing so, I will ask a question on the back of what has just been said. On appeals, the bill lists

"The grounds on which an appeal to the court may be made",

and there are only three grounds, which are

"that the decision ... (a) is based on an error of fact, (b) is wrong in law, (c) is unreasonable".

The appeal has to be lodged within three weeks. Is the test of whether the decision "is unreasonable" reasonable?

Mike Flynn: We would be in a position to defend a decision because, as I said, we seize animals with the support of veterinary surgeons. If such a case were to go to appeal we would be able to provide the sheriff with our reasons for having seized the animals—for example, that a vet said that the animals had suffered or could not stay in the situation that they were in.

Stewart Stevenson: Let us look at the reasonableness aspect. There is only a three-week period for a person to appeal a decision, and there are only three grounds on which one can appeal. Does that mean that it is not very likely that many appeals will be successful?

Mike Flynn: That is my estimation. At the moment, more than half the people from whom we remove animals relinquish them voluntarily. Others are informed that our action could end up with a civil case against them being taken to court, but they do not care because that will not cost them anything. Many of the people whom we deal with want to stick two fingers up at the police in court anyway, so they are unlikely to comply with requirements. However, having to think, "Wait a minute—I'm going to have to take action here and pay for legal representation", would put a lot of them off. There should be no appeal, and we

would then kick into the three-week period after which the animals could be disposed of.

Stewart Stevenson: Right. I will now move on to the point that the convener wished me to pursue.

Compensation is covered at considerable length in the bill. Is what is there fit for purpose? My colleague Finlay Carson raised the difference between companion animals and animals that are owned for commercial purposes. Does the bill strike the right balance in determining the proper compensation that should be granted to the previous owner of an animal?

Mike Flynn: The SSPCA supports the proposals on that. We have been criticised for saying that we reckon that the compensation provisions are there just to comply with expectations on human rights. Anyone who removes an animal—whether it is us or anyone else—is seen as depriving a person of their property. It is not recognised that animals are sentient beings: it is just that someone is being deprived of something—their dog is just like their telly or whatever. In accordance with that way of thinking, if the person is found to be not guilty, they should be compensated for the value of their property.

However, it is important that the level of compensation reflects the value of the animal at the time when it was seized. For example, we or the APHA might seize a herd of cattle, each of which is worth £50, but might have to wait a year for the court case to begin. After that, if the cattle were still said to be worth only £50 each, we might ask what the farmer had done wrong, because they had not improved. The level of compensation should be based on the value at the time of seizure.

Stewart Stevenson: If there were welfare issues, I presume that the animals' value would rise once they were moved into a regime in which they were being cared for and their welfare was being addressed.

Mike Flynn: Exactly.

Stewart Stevenson: Are you—or is anyone else in the room, for that matter—satisfied that calculating compensation will be done properly?

Mike Flynn: We have been involved in such cases in the past. In our experience, calculating the value of commercial livestock is not really a problem.

Stewart Stevenson: Sure.

Mike Flynn: We would go to a professional auctioneer or valuer, who would say, for example, that a flock of sheep is worth £20,000. That would be the value at which we would sell them.

Stewart Stevenson: What about companion animals?

Mike Flynn: That is where things become more difficult. We have been involved in puppy farming cases in which people have been prosecuted for selling bulldog pups at £2,500 each when, in reality, they were not worth even £200 each because of all their genetic defects. In such cases, the nearest figure that we have been able to propose, and so the maximum compensation that we would pay, would be the Kennel Club's average price for a French bulldog, or whatever breed, in good condition.

Stewart Stevenson: Forgive me, but in a sense, we are talking about commercial animals that will become companion animals. However, should a private individual who has a companion animal in situ and is then deprived of it be compensated in any meaningful way?

Mike Flynn: There is an argument that such an animal would never be seized in the first place if it was a perfectly healthy pet that had been well loved. However, in such cases there might be veterinary evidence that a crime had been committed, which casts a different light on matters. I know that OneKind has raised concerns about cases in which we might be seen as having taken away Mrs McGinty's cat, if I can put it in that way. However, there has to be some provision for such cases. Later, we will issue a briefing about a case in which it turned out that a spaniel called Flo had been poisoned by a qualified veterinary nurse. It took more than four years to get that case to court—during which time the dog had to sit in kennels, which would have been horrible for her.

Stewart Stevenson: I am sure that it was, but the bill provides that a dog in that situation can be moved on in three weeks.

Mike Flynn: That will be the case under the bill: that case was based on what happens as things stand.

11:45

Stewart Stevenson: That situation is different. I am talking about the very narrow circumstances in which, before the legal process is complete, the animal is removed from its current owner and passed to a new owner, possibly for commercial value. Are we satisfied that the commercial value can be identified? The court could decide that compensation not be given, under proposed section 32K of the Animal Health and Welfare (Scotland) Act 2006, but that would come much later. It has to be decided within 21 days, or nearby, what the animal is worth. How do we do that for a companion animal? We need to be able to justify the cost to the general public, who might be concerned.

Mike Flynn: Again, we would have to base compensation on the average price of such an animal, taking into consideration what the vet said about its condition. We might say that a particular dog, for example, would generally be worth £100, but the vet has said that it needs whatever amount spent on treatment. Compensating an individual who owns a companion animal would be quite difficult, not in terms of the financial aspect but in terms of the emotional aspect—although why would a person who was emotionally attached to an animal neglect it?

Stewart Stevenson: Indeed.

Angus MacDonald (Falkirk East) (SNP): The consultation has shown broad support for the introduction of a Scottish Finn's law. Last week's panel was also firmly in support of that, as expected. Are the proposals in the bill for a Scottish Finn's law an appropriate mechanism to increase protection of service animals? Has the current law acted as a barrier to prosecuting and penalising people who have been responsible for attacks on service animals?

Mike Flynn: We fully support the introduction of a Finn's law. I have been involved with police and military dogs for more than 30 years, and the thought of one of those dogs being attacked when it is carrying out its duty to protect the public is abhorrent to me. I have always been surprised that, when a police dog has been injured, charges are not brought under section 19 of the Animal Health and Welfare (Scotland) Act 2006. Kicking a dog is kicking a dog, whether it is a police dog or not, but the courts have not dealt with such cases correctly.

Such attacks happen mainly in England. In Scotland, they are rare: there are not a lot of attacks on service animals, as far as I am aware, although my colleagues might know about that. I have heard of instances, but they were not like the horrendous examples that I have heard about happening down south.

Detective Chief Superintendent Cunningham: I agree that we have had a minimal number of examples, so it is difficult to form an opinion. I think that the last one was when an individual punched a police horse. Nothing else has come to my attention; I do not know whether Charlie Everitt has heard anything different.

Constable Everitt: Nothing has come to my attention, but my personal view is that Finn's law looks good and is applicable to Scotland.

The Convener: That attacks have not happened does not mean that there should not be a law in place.

Angus MacDonald: It is good to hear that there have been few incidents, but it would certainly be good to have the law in black and white.

Last week's panel argued to broaden the definition of service animals to encompass assistance animals, such as guide dogs. Do panellists agree with that argument?

Detective Chief Superintendent Cunningham: I agree that it would be good to widen the definition in that way. Anybody who harms assistance animals should have the full force of the law against them.

The Convener: We will move on. Does Mark Ruskell want to ask about Finn's law, or are you happy that it has been covered by Angus MacDonald's questions?

Mark Ruskell: That depends on time, convener. I will be guided by you on that.

The Convener: We do not have much time, but we might come back to the issue. Stewart Stevenson has questions about fixed-penalty notices. Please keep your eye in the clock.

Stewart Stevenson: I will start with a technical question, to which there might be no answer, or the question might more properly be for the minister. The part of the bill that covers FPNs is the second biggest part of the bill. Section 2(8) says that

"Regulations under subsection (1) may modify any enactment (including this Act)."

Subsection 1 makes provision for fixed penalty notices. Does anyone think that that is a very broad provision?

Joanne Fairman: The provision needs to be broad because we cannot and would not use fixed penalty notices for everything that could be imagined. The provision gives us the ability to work through the system and figure out for which offences it would be appropriate to use FPNs. We do not know what the future brings; there could be things that we have not yet thought about that could be dealt with through fixed penalty notices. It has been left open to us to investigate further and choose the appropriate penalty.

Stewart Stevenson: Okay. I am not sure that the provision, as drafted, is restricted to animal welfare. That is for another day.

Robbie Kernahan: The bill will introduce fixed penalty notices to the Animal Health and Welfare (Scotland) Act 2006, but the Scottish Government has also begun focused consultation on extending some of the powers to offences in the Wildlife and Countryside Act 1981, the Deer (Scotland) Act 1996 and the Protection of Badgers Act 1992. The introduction of flexibility at both ends of the regulatory spectrum makes sense for us. There

are also administrative and technical offences associated with wildlife for which fixed penalty notices would be beneficial.

Stewart Stevenson: That is the question: do the witnesses think that it is appropriate to have fixed penalty notices as part of criminal law?

Constable Everitt: FPNs are very appropriate for minor technical offences, as your earlier witnesses suggested. Fixed penalty notices are not uncommon in police work—we use them principally in dealing with road traffic offences. There is precedent and there are other areas related to wildlife crime where FPNs are used; for example, Marine Scotland can issue fixed penalty notices in its line of work. They are appropriate for the minor end of wildlife crime, in particular for technical offences, when one would not necessarily consider reporting to the Crown Office. They would provide an alternative disposal to officers.

Colin Smyth: Earlier, several panel members questioned the categorisation of some crimes in the bill. For example, there was a feeling that a crime that impacted on the resting place of an animal, such as destruction of a badger sett, should be categorised as a serious crime. What does the panel think about the rationale for categorisation of crimes?

Robbie Kernahan: That is an interesting question. The proposals aim to tidy things up, but some inconsistencies remain. Some proposals are linked to underlying legislation. It can be a serious crime to destroy the resting places of European protected species, but we do not have the same provisions for badgers or wild birds. There are questions that are not entirely addressed in the bill about the consistency of approach for categorising different types of offence.

Colin Smyth: I suspect that I might get the same answer to this question as Mark Ruskell got to his question. He was asking about animal welfare, whereas I am asking about wildlife crime, but the question is whether the bill's provisions, such as those on increased sentences and the extension of the time limit for prosecution, will increase the likelihood of bringing a prosecution. I suppose that the difference with wildlife crime, and therefore what my question is really about, is vicarious liability. Will the bill make the prosecution of vicarious liability more or less likely?

Sara Shaw: I do not think that the provisions in the bill will make prosecutions under the vicarious liability provisions of the Wildlife and Countryside Act 1981 any more or less likely. As I have said, each case is considered on its own merits. When we receive a case, we will consider whether we can raise a prosecution.

The ability to prosecute at either summary or solemn level opens up a choice of forum that we do not have at the moment. Currently, if the offending were to be of a particular level or character so as to justify proceedings at sheriff and jury level, that option is not open to the Crown. Otherwise, the considerations that inform our decisions about prosecution—whether a crime has been committed; whether there is sufficient admissible evidence; whether a prosecution is in the public interest—remain unchanged by the bill.

Colin Smyth: How effectively are penalties other than custodial sentences and fines—such as community payback orders—being used in relation to wildlife crime?

The Convener: Does anyone want to come in on that?

Rachael Hamilton: Can I help out here?

The Convener: Are you going to answer Colin Smyth's question? [*Laughter.*]

Rachael Hamilton: No. I will go back to the categorisation point. In the previous panel, Ross Ewing of BASC mentioned that the illegal use of pesticides could become a tier 1 offence. It is already an offence. Is there any comment regarding the levels of categorisation? If that was categorised more effectively, would it make prosecution easier? Does the panel have any more detail on that?

The Convener: Do our representatives from Police Scotland want to come in on that?

Detective Chief Superintendent Cunningham: Charlie Everitt has more expertise on pesticide use.

Constable Everitt: When we talk about making prosecutions easier, it comes down to the level of evidence. Whether it is pesticide or proving another crime, that is what dictates a prosecution.

Colin Smyth: There is a general feeling from some people who are feeding into the evidence base that, if the crime is seen as serious, it is more likely to attract a higher sentence and more effort will go into effectively investigating that crime and prosecuting it. Is that not just human nature? Given the huge pressure on time and resources for prosecutors and police, if something is seen as a more serious crime—rather than one for which the punishment is a small fine or a rap on the knuckles—more effort will go into bringing that to court and getting a prosecution.

Constable Everitt: That would raise its priority. I have argued that the killing of a golden eagle is not a serious crime at the moment, because it is triable only at summary level. We cannot take it to the top two levels in the country. The Crown Office might have liked to take the Black Isle case, in

which double figures of red kites and buzzards were poisoned, up to a higher level. Without a doubt, a higher penalty puts it into the serious crime bracket. We can consider the resources appropriately.

Mike Flynn: I have one comment on Colin Smyth's point. An increase in the time bar for wildlife crime would be great and welcome. In a lot of the domestic animal crime, we bang on a door and the evidence is there, but it can take months before any evidence comes to light regarding wildlife crime. If it has been going on for three or four months, by the time we start the investigation, we have run out of time. A longer time bar would help in tackling wildlife crime.

Constable Everitt: I support that. The Poustie report looked for harmonisation across wildlife legislation, yet, if we look at the Animal Health and Welfare (Scotland) Act 2006 and the Protection of Wild Mammals (Scotland) Act 2002—hare coursing and foxhunting come under that—we have to provide a six-month period for the Crown Office to issue proceedings. If there is video evidence to be looked through, often by the person who filmed it, that can take a month before it is reported to the police. Our video experts must complete a forensic analysis of the available evidence. That is cramming a lot into the time. By today's standards, it is not appropriate to try and fit all that inside six months. Police Scotland have had cases that have been really squeezed and have not had the full benefit of the evidence that was presented to the Crown Office, because the staff have not had the time to prepare it.

Other legislation—the Protection of Badgers Act 1992, the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats, &c) Regulations 1994—has a three-year time bar, which is sufficient for bringing prosecutions. Standardisation of the time bar for all wildlife crime would be welcome.

The Convener: That leads nicely to questions from Mark Ruskell about the enforcement of investigations.

Mark Ruskell: I am interested in the point about filming and video evidence. Will the increase in maximum sentences lead to more authorisation of video surveillance and does the admissibility of that evidence now change?

12:00

Constable Everitt: Increasing the maximum penalty would certainly allow officers to consider whether surveillance could be used. The bill increases the penalty for someone who is found guilty to imprisonment for five years and the Regulation of Investigatory Powers (Scotland) Act 2000 says that there must be a reasonable

expectation that a three-year sentence will be given. Therefore, increasing the maximum sentence would allow officers to ask whether they could use surveillance for further investigations.

Detective Chief Superintendent Cunningham: We are talking about covert surveillance now and there are two aspects to that: directed surveillance and intrusive surveillance. We have always had an option to use directed surveillance as an investigative approach for any crime that has been reported. The bill would bring the maximum sentence up to five years, which is good because those crimes would then be classified as serious crimes, which would bring in intrusive surveillance.

Directed surveillance, such as having a camera in a set location to try to capture aspects, is slightly less intrusive in people's private lives so we can justify it more easily. Intrusive surveillance is for a serious crime, which, as Charlie Everitt rightly said, requires an expectation of a three-year sentence. On a case-by-case basis, we can then look at whether the use of intrusive means is the only way to identify the individual who is responsible. It would give us another investigative strand towards, hopefully, the prosecution of the individuals responsible.

Police Scotland is trying to educate the numbers of wildlife crime officers who are coming through to make sure that they are aware that we can apply for intrusive surveillance and that there is an expectation that we will do so.

If intelligence is shared with us—the RSPB has done that in the past—that will give us a basis for going to our authorising officers in Police Scotland and saying, "These are the reasons why we think that it is justified." It will also pass the direction of the surveillance commissioners who will look at any impacts under the European convention on human rights. The bill is a good piece of legislation that would provide us with a suite of options and allow us to carry out not only directed covert surveillance, but intrusive covert surveillance.

The Convener: Someone on the previous panel commented that if the police are using surveillance more, it might encourage people who are not the police—the word "vigilante" was used—to use videos to gather evidence. They might think that they were doing a good thing, but they would actually be impacting on people's privacy. What do you make of that?

Detective Chief Superintendent Cunningham: Again, it probably comes down to our media strategy and having an education process. There will be an awareness that surveillance might be used and perhaps members of the public will try to use it—that can all be captured as well. I do not agree that we will get

vigilantes going out and using surveillance. It is about how we deal with the issue and making sure that we take the lead.

At this stage, I do not see many covert surveillance applications being made, because I think that we should look to enhance our intelligence picture first. I keep going back to that point, but without the intelligence, we cannot move to a better investigative standard and justify carrying out covert surveillance. It is about information sharing, identifying those who are responsible, looking at the crime hotspots and working out what the best suite of options and the best tactics are. We would then perhaps sit down with partners to see who can bring what to the table and therefore have a joined-up approach.

Mark Ruskell: Would the bill change the admissibility considerations that the Crown Office would take into account?

Sara Shaw: No, it would not change the admissibility considerations—we still have to consider the law on the admissibility of the evidence and apply the law to the facts and circumstances of each case. As has been explained, the bill would remove an obstacle that is currently in place—there would be the ability to consider the serious crime test—but it would not impact in any sense on the law on the admissibility of evidence.

Mark Ruskell: Thanks. I will move on to the powers of the SSPCA. I am interested in the panellists' views on whether the current powers of the SSPCA are appropriate and whether they should be extended to include wildlife crime, particularly in relation to gathering evidence.

Constable Everitt: In the example that was highlighted by Ian Thomson in the previous session, it would have made complete sense for the SSPCA inspectors to be able to gather evidence and take it to the police for further investigation, and such a power could be welcomed.

It would be welcome if the bill extended the powers under the Animal Health and Welfare (Scotland) Act 2006 so that SSPCA inspectors could enter land for a welfare reason, then go on to exercise powers under the Wildlife and Countryside Act 1981 to gather further evidence, as in the example that was described.

I am not sure exactly what is intended when one talks about the powers under the Wildlife and Countryside Act 1981, but if the SSPCA inspectors were also able to enter land under section 19 of the Wildlife and Countryside Act 1981, that would start causing confusion about who polices wildlife crime, and the public might not know to whom they should report such crimes.

As I said, an extension to the powers of entering land under the Animal Health and Welfare (Scotland) Act 2006 would be welcome.

The Convener: It will be important that everyone works in partnership and is aware of their role.

Mike Flynn: This is my version of groundhog day. Some politicians will be old enough to remember that this started off back in 2010. The proposal was that the SSPCA would assist in any way that we could, but would never take over from Police Scotland. There is an anomaly in section 19(1) of the 1981 act in that we cannot retrieve evidence where we can see that an offence has happened, unless a live animal is present, in which case we can take the evidence under the 2006 act.

As Ian Thomson said earlier, if we look up and see a line of traps, we have to go away and get the police. The police do a fantastic job and we could not do our jobs without them. However, when it comes to wildlife crime, this is a sticking plaster. There are only 100-odd officers on shift patterns covering the whole of Scotland, and there have been occasions when we have been in the situation that I described, phoned the police and there was nobody available.

It is not about us taking over anything. We must remember that the SSPCA does not prosecute. We gather evidence, but it is the Crown Office that prosecutes. The evidence that is required for a wildlife crime is no different from what is required for a domestic animal crime. We put in about 90 cases under the 2006 act last year, but if we were not doing that job, about six domestic animal cases would have been put in by the local authorities and the police.

I am not saying that we will boost the number of prosecutions on wildlife crime. However, after Roseanna Cunningham made her decision in 2017, we wrote and said that the SSPCA would help the Scottish Government in any way whatsoever under any form of animal welfare legislation. Our offer still stands. I think that the current minister did not have all the background on the situation—she has not been long in post.

As I said, the issue has been round the block quite a few times.

The Convener: It comes back to the information-sharing aspect that DCS Cunningham talked about earlier. It is about better information sharing and the ability to work better together.

Detective Chief Superintendent Cunningham: There are definitely options for that. I take on board all Mike Flynn's points. We must have that sidebar, because it has been going on for so many years. There are options such as

putting a police officer into the SSPCA team to work on special investigations, which would bring in police powers. We could see how that works.

There are more discussions around the issue that I would like to be privy to. Over the years, so many papers have been written and opinions given, so we want to see where we can take it to ensure that we get the improvements that are required.

Mark Ruskell: It has been put to us that the SSPCA might have a conflict of interest. Do you recognise that criticism?

Mike Flynn: As I understand it, the conflict, which was raised in 2015, is that we have a policy of opposing snaring. It is based purely on welfare grounds, but people said that if the SSPCA got the powers, how could we be independent on a snaring issue? The police have campaigned about drink driving every year for the past 20-odd years, yet they enforce the law on drink driving every day. If we see a perfectly legally set snare—one that is free running and tagged—we leave it, because it is lawful. We would be breaking the law if we interfered with such a snare. There are obviously already bans on self-locking snares in which animals could become entangled. Our policy might say one thing, but the law is above our policy, so if the law allows it, that is that. As far as I am concerned, there is no conflict of interest. If the law says that something is allowed, it is allowed.

Finlay Carson: I have a question on enforcement and investigation. For the bill to have an increased deterrent effect, what importance does the panel put on increased resources, training and raising public awareness?

Detective Chief Superintendent Cunningham: Those aspects are extremely important. As Mike Flynn said, we have just short of 110 wildlife crime officers around the country and seven full-time and six part-time wildlife crime liaison officers. It is up to Police Scotland to ensure that the officers have the highest level of training in investigations so that, no matter what wildlife crime they are faced with, we have a level of confidence in the officers' professional standards and approach.

There are new courses available and new forensic approaches—forensics are key, which has been missed in previous years. We must develop forensic strategies to support the officers. We also have forensic services moving into that area, so we can call them out to crimes to get their expertise.

There should be a level of confidence for the committee that Police Scotland has captured that. The first course, which was opened by Roseanna Cunningham, was held in January and it will

continue to run twice a year so that we can provide that enhanced training, as well as internet-based training packages for all officers throughout Scotland.

The Convener: I thank the panel for their time. I will suspend the meeting briefly to allow them to leave.

12:10

Meeting suspended.

12:13

On resuming—

Petition

Greyhound Racing (PE1758)

The Convener: The next item on our agenda is consideration of a petition. PE1758 calls on the Scottish Parliament to urge the Scottish Government to put an end to greyhound racing in Scotland.

The petition has been referred to the committee by the Public Petitions Committee on the basis that we are considering the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill. However, as the paper states, that bill has been quite narrowly drafted for two main purposes: to make provisions for existing animal and wildlife offences, including how those offences are dealt with, prosecuted or considered in courts; and to provide inspectors and constables with additional powers to deal with an animal that is taken into possession on welfare grounds, regardless of whether an offence has taken place. That means that, although the petition has been referred to us because we are dealing with the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill, it does not fit in with the scope of that bill.

Do members have any thoughts on options for the petition?

12:15

Mark Ruskell: I recognise that this is an issue of strong public concern, but it is also an issue that has never really had any scrutiny in the Parliament, despite concerns being raised during the passage of the Animal Health and Welfare (Scotland) Act 2006.

Despite the fact that the petition is not an exact fit with the bill that we are dealing with, we recognise that the Scottish Government is currently considering regulations that relate to performance animals. It has not indicated whether greyhound racing will be within the scope of those regulations, but it is likely that greyhound racing might be included as part of that review. Therefore, it would make sense for this committee, as the lead committee with responsibility for animal welfare, to take evidence on the petition from the petitioners and from representatives of the greyhound racing industry. If there are conclusions from that evidence session that would help the Scottish Government to address issues as part of its regulatory review or, indeed, issues that could be passed on to the animal welfare

commission when it is formed, I think that that would be a solid piece of work.

I recognise that the committee has an incredible workload ahead of it and that, therefore, the opportunity for an extended inquiry is limited. Nevertheless, the key points deserve to be raised, and I think that the petitioners, in particular, deserve to have their points of view brought to the Parliament.

Colin Smyth: I agree with that. The animal welfare issues around greyhound racing have been known for some time, but Parliament has not taken them on board or discussed them sufficiently to enable it to come to any conclusions on the issue. There are currently a lot of concerns about the doping of greyhounds, about the issue of euthanasia and about the requirement for large numbers of dogs to be rehomed. A lot of serious concerns have not been addressed. It would be remiss of Parliament not to give the people who have lodged the petition an opportunity to put their case to us—obviously, other people will want to make a different case. As this committee has animal welfare issues within its remit, it is an appropriate place for the issues to be discussed.

I acknowledge the workload of the committee and the amount of other issues that it must consider. Nevertheless, I think that the petitioners should be given an opportunity to put their views to Parliament.

The Convener: I think that we all agree that the issue that the petition deals with does not fit in with the bill. However, the point that the petitioners should be able to air their views is well made, and I do not think that there is any disagreement on that.

The minister has said that the programme for government will

“introduce and reform licensing of animal activities including animal sanctuaries, rehoming centres, breeding and the use of animals in public display or performance.”

The programme for government makes no specific mention of greyhound racing. However, the point has been made that the petitioners should be given space to put their case, so that the issue can be considered, and that this committee is the best place for that to happen.

Do we agree that, ahead of our consideration of the issue of the licensing of animal activities, we should allow space in our work programme to have the petitioners and, potentially, other stakeholders come in so that we can ask them questions and get a full picture of what is involved in this area?

Members indicated agreement.

The Convener: That concludes the committee's business in public today. At its next meeting, on 17 December, the committee expects to hear from the Minister for Rural Affairs and the Natural Environment on the Animals and Wildlife (Protections, Penalties and Powers) (Scotland) Bill.

We will now move into private session.

12:18

Meeting continued in private until 12:36.

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