



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Rural Affairs, Islands and Natural Environment Committee

**Wednesday 30 November 2022**

**Session 6**



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## Wednesday 30 November 2022

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### **RURAL AFFAIRS, ISLANDS AND NATURAL ENVIRONMENT COMMITTEE** **32<sup>nd</sup> Meeting 2022, Session 6**

#### **CONVENER**

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

#### **DEPUTY CONVENER**

\*Beatrice Wishart (Shetland Islands) (LD)

#### **COMMITTEE MEMBERS**

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

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

\*Ariane Burgess (Highlands and Islands) (Green)

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

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

\*Jenni Minto (Argyll and Bute) (SNP)

\*Mercedes Villalba (North East Scotland) (Lab)

\*attended

#### **THE FOLLOWING ALSO PARTICIPATED:**

Hugh Dignon (Scottish Government)

Alastair Douglas (Scottish Government)

Màiri McAllan (Minister for Environment and Land Reform)

Sheila Voas (Scottish Government)

#### **CLERK TO THE COMMITTEE**

Emma Johnston

#### **LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Rural Affairs, Islands and Natural Environment Committee

Wednesday 30 November 2022

[The Convener opened the meeting at 09:00]

### Hunting with Dogs (Scotland) Bill

**The Convener (Finlay Carson):** Good morning, and welcome to the 32nd meeting in 2022 of the Rural Affairs, Islands and Natural Environment Committee. Before we begin, I remind members who are using electronic devices to switch them to silent.

Item 1 is an evidence session with the Minister for Environment and Land Reform on the Hunting with Dogs (Scotland) Bill. We have one hour scheduled for the session.

I welcome to the meeting Màiri McAllan, the Minister for Environment and Land Reform; Hugh Dignon, head of the wildlife and flood management unit; Leia Fitzgerald, bill team leader; and Amy Hogarth, solicitor.

I invite the minister to make an opening statement.

**The Minister for Environment and Land Reform (Màiri McAllan):** Thank you, convener. Good morning, everyone, and thank you for having me. I am pleased to be able to come here today to discuss the interplay between the bill and the activities that are often collectively described as rough shooting.

I begin with a comment on the inclusion of rough shooting in the bill by correcting any suggestion that rough shooting was overlooked or not considered by the Scottish Government. The bill is ultimately about regulating the use of dogs to hunt wild mammals in the countryside and it applies across the piece to those who would use dogs while hunting. In fact, it is a strength of the bill that it does not differentiate between the types of hunting that are permitted under exception. Instead, it sets out the conditions under which dogs would need to be used while hunting. Rough shooting and related types of hunting have always been part of the bill. Indeed, that is why the bill has contained an exception for game shooting since it was published.

Having said that, I will move on to discuss the issue of clarity. In giving evidence to the committee, Lord Bonomy remarked that the bill is

“a very well-crafted piece of legislation”

and that

“It makes everything much clearer and simpler”.—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 15 June 2022; c 41.]

However, I recognise that some people are seeking further clarity on exactly how the bill interacts with rough shooting, and I will try to add to the already considerable and helpful evidence that the committee has taken on that to date. Of course, as ever, I am open to suggestions about how provisions could be strengthened if any member feels that that is required.

In the time that I have left, allow me to set out my position on the interplay between the bill and rough shooting, starting with what constitutes an activity under the bill, something that I know has been discussed. Under the bill, a person is undertaking an activity if they are using a dog to

“search for, stalk or flush from cover a wild mammal”

as part of an exception from the general rule against hunting with dogs. In the case of rough shooting, that exception would come under section 6, which is entitled “Exception: falconry, game shooting and deer stalking”.

The effect of section 6 is that an individual can undertake an activity using up to two dogs. The provisions do not prevent multiple people from undertaking separate activities in the same location, but they set out clearly how they must conduct themselves when undertaking that activity. As well as the two-dog limit, those conditions are: taking “reasonable steps” to

“ensure that any dog used in the activity does not join with others to form a pack of more than two”;

that

“any dog used ... is under control”;

and that they have the landowner’s permission, and so on. As with other types of hunting, all that applies to ensure that dogs do not form packs and do not chase and kill wild mammals.

The committee has heard much evidence that the dog breeds that are generally used in rough shooting do not form packs, that they will not chase animals, that they are well trained and under control and, interestingly, would not return to a rough shoot if they breached any of the provisions. I have heard that clearly at the committee’s evidence sessions, and that gives me confidence that rough shoots should have no difficulty in complying with the law. Indeed, although some adjustment might be required, many already practise what will be required under the bill.

I know that a lot of this was discussed at the committee’s round-table meeting and that there was understanding among many about what the

regulations in the bill mean for rough shooting in practice. However, when the committee got through what I thought was a really helpful session, it got to the nub of the issue, which is the risk of vexatious complaints. I do not want such complaints to happen. I am happy to work with shooting organisations to produce guidance on that and make it available to anyone who has an interest.

Alongside that, the committee heard helpful evidence from Police Scotland about its role in gathering evidence. I believe that Detective Sergeant Billy Telford said that for claims, vexatious or otherwise, the police would consider the breed of dog, the distance between the dogs and what reasonable steps had been taken to separate any dogs that had joined up. He said that they would discuss those things with witnesses and consult experts, and that they might seize phones.

Ultimately, I believe that the risk of ill-intentioned or vexatious claims about the conduct of rough shoots can be managed, including via the good relationship between the shooting industry and the police, as was discussed at the committee's round table. The risk of vexatious claims does not, in my view, justify acting in a way that could undermine the bill by opening a loophole to those who would seek to exploit it. I am sure that the rough shooting community would not want to be embroiled in such a situation.

In conclusion, I have set out the consistent intent of the bill, how it applies practically to most of what I have found to be termed rough shooting, how any vexatious claims could be managed, and how the risk of such claims does not justify creating a loophole in the legislation. Having said that, we are not yet at stage 2 and I remain happy to consider whether there is anything that I can do with the bill to clarify my position. Indeed, I will consider all amendments ahead of stage 2.

**The Convener:** I will kick off by looking at the balance between the impact of the bill on people who undertake legal shooting activities and making sure that there is clarity on enforcement against illegal activities. We all know that animal welfare is a primary reason for and objective of the bill, and we want to make sure that that objective is met. The committee is not aware of any evidence that the welfare of rabbits has ever been a consideration, but we understand that rabbits are included as part of stopping hare coursing.

Since rabbit welfare was never raised prior to the bill being introduced, nor has it been raised since its introduction or in evidence on animal welfare, why can we not include a recklessness element in the bill along with the condition on landowner's permission, to satisfy the level of evidence that would be required for a conviction of

hare coursing? We heard from DS Telford that such an element would assist greatly when it came to poaching. Why is there not an exclusion for rough shooting, which, as you have said minister, can be clearly identified, to get rid of some of the unintended consequences?

**Màiri McAllan:** That question contains a number of aspects, so you will have to forgive me, because I will have to unpack them in turn. I will try to be as quick as possible.

You mentioned evidence for the inclusion of the welfare of rabbits. Since the introduction of the bill, I have been clear that the purpose of including rabbits is twofold. One reason is about the welfare of rabbits, and the other is about avoiding the taking of rabbits being used as a cover for hare coursing.

On the evidence on welfare, Mike Flynn said:

"A lot of people think that, in all these sorts of activities, the dog kills the animal instantly. You might get away with that with mice or rats, but it is definitely not the case with foxes or even rabbits. Not all of them are instantly killed and, in any case, they also experience the fear of being chased."—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 15 June 2022; c 15.]

That goes to the heart of the bill. A rabbit is a sentient being and, if we protect hares, we ought to treat rabbits similarly. Kirsty Jenkins of OneKind made that point at the round table last week.

The second reason why we included rabbits is to make sure that they can no longer be used as a cover for hare coursing. At the round table, when Rachael Hamilton asked DS Telford about that, he said:

"In relation to the enforcement of hare coursing offences, the addition of rabbits would aid police investigations."

Rachael Hamilton then asked:

"Is that based on evidence?"—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 23 November 2022; c 35.]

DS Telford's response was to say yes.

That is my position. Equally, I would say that removing rabbits from the scope of the bill would not take rough shooting outwith the bill's remit, because animals such as foxes and hares would still be shot in that way, and they would still be protected under the bill.

The second part of your question was about the suggestion of including a recklessness element and landowner's permission. The Scottish Countryside Alliance talked about that, and it is something that I have considered and, as I said, I keep considering it. I am not going to stand in the way of making the bill better; I want it to succeed.

However, I have to make two points on that. First, the words "recklessness" and "deliberately"

were the exact terms that Lord Bonomy advised us should not be contained in the new act if we are to avoid subjectivity that is not helpful. The other point that I would make is that landowner permission will be required under the bill, and it does not address the welfare element.

**The Convener:** Given that we are looking specifically at rough shooting, if your understanding of rough shooting is correct, do you know of any circumstances in which a dog would chase and kill a rabbit?

**Màiri McAllan:** Are you asking whether I know of any circumstances in which that has happened or whether I can envisage it happening?

**The Convener:** You quoted Mike Flynn on dogs chasing rabbits or catching and killing them, and he implied that the killing was not instant. Are you aware of that ever happening during rough shooting? The evidence that we have heard suggests that that absolutely does not happen—that rabbits are not chased and that they absolutely are not caught and killed by dogs.

**Màiri McAllan:** I have certainly heard a great deal of evidence about the behaviour of gun dogs, their control and how well trained they are, which gives me confidence that they will be able to comply with the requirement not to do that. On whether I can envisage a scenario in which it could happen, of course it could happen. Mike Flynn, who has decades of experience with the Scottish Society for the Prevention of Cruelty to Animals, has given evidence to the committee that it can happen.

**The Convener:** Mike Flynn said that he thinks that it can happen; he did not say that there was any evidence that dogs are chasing, catching and killing rabbits during rough shooting. Again, we are looking specifically at rough shooting. If it is so clearly defined, why is there not an exemption? That is the point that I am driving at.

**Màiri McAllan:** My colleague Hugh Dignon wants to come in on that, and then I will come back to you.

**Hugh Dignon (Scottish Government):** It is fair to say that Mike Flynn was talking specifically about the coursing of hares and rabbits. However, as the minister has pointed out, if we took rabbits out of the bill, it would create a much wider loophole that could be exploited by anybody who would like to use more than two dogs and claim that they were in pursuit of rabbits. That would be a clear loophole for people with another agenda.

There are therefore two separate elements to that. There is clearly an on-going concern about the welfare of rabbits and coursing, but there is also a need for the bill to be consistent in ensuring that rabbits are not excluded from the bill, thereby

creating a loophole for those who would want one to exploit.

**The Convener:** Do you believe that rough shooting could ever be confused with hare coursing or traditional fox hunting?

**Màiri McAllan:** Hugh Dignon might also want to come back in on that, but I believe that the bill seeks to regulate across the piece the way in which dogs are used in the course of hunting in the countryside, and consistency on that is important.

**Ariane Burgess (Highlands and Islands) (Green):** I would like to pick up on a point that Chief Superintendent Mike Flynn made last week. He questioned why rough shooting should be given special treatment by allowing people to use more dogs than could be used for what he termed as “essential pest control”. I heard your opening statement, minister, but I just want to ask the question. I understand your need to balance the right of people to conduct legal shooting activities against animal welfare, but how would widening the exception for rough shooting, which is a form of hunting for sport, be compatible with the Government’s stated purpose of achieving the highest possible standards of animal welfare?

09:15

**Màiri McAllan:** I heard Mike Flynn make that point last week. It is a reasonable point among many points about why we should not create an exemption here. As Hugh Dignon said, we would risk creating a glaring loophole in the bill. Mike Flynn’s point was about consistency and the fact that it would be imbalanced and disproportionate to put greater restrictions on those who are seeking to protect their livestock from predation than on those who pursue sports. That is not me making a comment about people pursuing sports and their reason for doing so; it about me saying that I want a bill that applies consistently across the piece, and that is the only way to do it properly.

The other point to make is that we are talking about the risk of creating a loophole and I believe that, if the shooting industry and the folks who you had at your round-table meeting were taken outwith the scope of the bill, they would not want to find themselves being part of a cover for illegal hunting in future when the bill has been passed. They are law-abiding people who are undertaking an activity in the countryside, and I am asking them to make minimal adaptations in order to comply with the bill. That will mean that, in the aftermath of the bill passing, they will not find themselves besmirched by any attempts to circumvent the law.

**Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con):** What evidence does the Scottish Government have that rough shooting is connected to rabbit welfare issues?

**Màiri McAllan:** I can come back to you on that. Again, I point to what DS Telford said to you during your exchange with him. You asked him if the provision was based on evidence and he said yes. I am also pointing to comments including those from Mike Flynn and from Kirsty Jenkins of OneKind, who said that rabbits are sentient beings who are capable of suffering the same panic when they are chased and the same pain when they are killed as any other animal. I believe that we should treat rabbits on similar terms to those we apply to hares. I can come back to Rachael Hamilton with a written response on that if she wishes.

**Rachael Hamilton:** Thank you.

**Mercedes Villalba (North East Scotland) (Lab):** Minister, you mentioned earlier that the fear of being chased is part of the animal welfare concern, and I understand that the aim of the bill is to balance animal welfare with wildlife control. Why is there an exception for hunting with dogs in section 6, where the primary purpose is sport rather than wildlife control? How does the inclusion of that exception serve that balance?

**Màiri McAllan:** Rough shooting and falconry are legal activities in Scotland, and—in the course of pursuing the Government's aim with the bill—I am not in the business of going in by the back door to try to close down activities that are otherwise legal. That is not the purpose of the bill and it would be an arbitrary stretch of the bill if we were to do that, so I need to make sure that we avoid it.

**Jim Fairlie (Perthshire South and Kinross-shire) (SNP):** Minister, last week, Robbie Marsland made the point that the purpose of not making the exemption for rough shoots is not about what is happening now and the legal way in which shoots are conducted now, but is about who might try to tag on to that and call something a rough shoot. During that evidence session, I became more comfortable with the way in which the bill is going on that basis. It is not about what is happening now—as you have just said, the people who conduct shoots at the moment do it in an effective and legal manner. We are talking about what would happen if people started to use such an exemption after the bill was implemented. Would that also be your concern?

**Màiri McAllan:** Yes. It is part of the concern. My job is first to regulate the way in which dogs are used in hunting in the countryside, but it is certainly a consideration that consistency with that is important to avoid future loopholes. I have tried to say that from the beginning. This work is about

closing the loopholes in the Protection of Wild Mammals (Scotland) Act 2002 and making sure that more do not open up, so that we can finally end unlawful hunting in Scotland. Equally, the shooting industry clearly has an interest in not getting into a situation in which its perfectly legal activity is found to be the guise under which unlawful hunting is pursued.

**Karen Adam (Banffshire and Buchan Coast) (SNP):** I, too, thought that last week's round table was extremely helpful, and I was satisfied by the comments about how well the hunts are run, how seriously they take the safety of everyone who is involved and, in particular, how they have trained the dogs exceptionally well. It really comes down to what you said in your opening statement about the real concern being the risk of vexatious complaints that might be made that would disrupt hunts if there needed to be investigations. I asked DS Telford if he thought that it would be helpful to warn the police that a rough shoot was going to take place, and he said that it would. What are your thoughts on that?

**Màiri McAllan:** I observed that part of the discussion and I thought that it was an interesting one. Mercedes Villalba also raised that point.

That might be an option for getting around the risk of vexatious complaints, if the shooting industry felt that it was really problematic. However, I bear in mind what the Scottish Countryside Alliance said about how that could be bureaucratic, and I genuinely want to see the bill take a proportionate approach.

I do not believe that the bill creates or exacerbates the risk of vexatious complaints. For example, these provisions are already in place in England and Wales, and I am not aware of any rise in the number of vexatious complaints there. Of course, if that was a risk and something that the shooting industry was particularly concerned about, I would be pleased to work with it to discuss how we might avoid that.

**Alasdair Allan (Na h-Eileanan an Iar) (SNP):** You touched on the issue of loopholes, and I am aware of where you think the dangers might lie. How did you weigh up the concern that was expressed on animal welfare grounds about the dangers of such loopholes? You already mentioned your concern about how some groups might adapt their behaviour to get around the aims of the bill. Could you say a little bit more about that? Could you also say whether you are still satisfied that the arrangements that are set out in the bill that allow for multiple dogs, although not in a pack—and the interpretation of those provisions—are adequate to meet the animal welfare concerns of the bill?

**Màiri McAllan:** Yes, I am. It is balanced. I have always had confidence that the two-dog limit was a reasonable way of ensuring that element of control, which then ensures that the risk of animals being chased and killed in the countryside is reduced. That is the core purpose of the two-dog limit.

The challenge then is not about the concept of the two-dog limit but about folks understanding exactly how it applies in each situation. That is what we and the committee have worked hard to make clear throughout all your evidence sessions.

I know that my colleagues have spoken with the committee and set out how the two-dog limit applies under the bill. I tend to try to put it into my own non-official layperson's language to make sure that it is absolutely clear. You can go out on a rough shoot, and the activity that you are undertaking is the flushing, searching for and stalking. The two-dog limit applies to that activity. Say, for example, that the bill team went on a rough shoot. Leia Fitzgerald and I could go out and, if I had two dogs, she could come with me and shoot the quarry that I flushed, as long as she did not have her own dogs. If three of us went out, providing that there were only two dogs between the three of us, the ones who did not have dogs could shoot the quarry that was flushed. There are different permutations, but I think that we are getting to the point at which it is clearer.

**Hugh Dignon:** The minister has already made the point that the evidence that we heard from the shooting community about the level of control over and training of the dogs and what happens on rough shoots also reassures us that the welfare risks are sufficiently managed by the way in which we are talking about rough shoots and the interaction with the bill.

**Rachael Hamilton:** For the record, how do you define a rough shoot?

**Màiri McAllan:** That is a good question. My experience in introducing the bill tells me that there is no single definition and that it would be a vexed activity to try to make a definitive definition. There are many permutations of what people think constitutes a rough shoot and my team and I have worked hard to speak to as many people as possible to get the widest possible view on what constitutes a rough shoot. However, it coalesces around an activity in which a line of people moves across ground with dogs who flush the quarry that is to be shot and retrieved, often for sport and sometimes for food. I know that the committee discussed this at the round table, but there is also sometimes a wildlife management element to it.

There is no one definition, however, and I guard against seeking one.

**Rachael Hamilton:** What does your team suggest are the types of dogs that people who go rough shooting use?

**Màiri McAllan:** Gun dogs such as Labradors, spaniels and so on.

**Rachael Hamilton:** You have also said that those dogs tend to be trained and under the control of the person who goes out with them.

**Màiri McAllan:** Yes. I have heard a huge amount of evidence about how well trained they are, how controlled they are, how they do not form packs and how they do not chase. Alex Hogg talked about how soft mouthed they are, and I have my own Labrador who is very soft mouthed.

**Rachael Hamilton:** I am thinking of vexatious complaints. Earlier you described yourself and Leia Fitzgerald going out rough shooting—you might also invite Hugh Dignon—and said that you would only be able to take two dogs. Do you think that it is fair and proportionate to curtail rural activities, given that you said in your opening remarks that you are confident that individuals who do this activity conduct themselves in the right way by getting landowner permission and having their dogs under control?

**Màiri McAllan:** Yes, I do. First, it is important to have consistency across the bill and the various types of hunting. Secondly, the changes that might require to be made to some activities that are regarded as rough shooting are minimal and proportionate. Many people already comply with those things that we will be asking them to comply with. The changes are minimal and proportionate and everything that I have heard gives me confidence that it will not be difficult to ensure that those well-trained dogs do what will be required under the new regulations.

**Rachael Hamilton:** A few meetings ago, we heard from Hugh Dignon that the team looked at YouTube videos and googled what rough shooting is. You said that rough shooting is part of the bill and that it had not been overlooked, yet we have had to hold three committee meetings on it because it does seem to have been overlooked. Do you know how rough shooting works? Jim Fairlie talked about quartering and dogs forming a pack. Have you had any experience of that? Have you watched it on YouTube? Do you think that there is a high likelihood that somebody would shoot quarry that another person's dog had stalked and flushed?

**Màiri McAllan:** I do not think that my experience is particularly relevant to my role as a minister taking the bill through Parliament. However, I represent a rural constituency, I live in the heart of the countryside and I observe these things as a matter of course through living where I do.

On the point about YouTube, the only YouTube video on the activity that I have watched is the one that the British Association for Shooting and Conservation helpfully produced and invited me to watch at the Parliament. I suspect that that is the video that my colleagues were referring to.

09:30

However, we have undertaken substantial stakeholder engagement—as we would with any aspect of the bill. I appreciate that we are talking about rough shooting, but I was just reflecting last night that, since Lord Bonyon published his report on the 2002 act in 2016, this issue and the bill as a whole have been intensely scrutinised: we had Lord Bonyon in front of the Environment, Climate Change and Land Reform Committee in 2017; there was a public consultation in 2018; a second consultation in 2021; the committee’s own call for evidence on the bill earlier this year; five public and three private committee sessions at stage 1; a stage 1 report; and further correspondence between me and the committee. We then had the debate, the bill was agreed to at stage 1, and today is the third session that you have held specifically on rough shooting, so there has been a huge amount of stakeholder consultation and a great deal of scrutiny.

**Rachael Hamilton:** Thank you for reminding me of that. I do not know how many times rough shooting has been mentioned within all the sessions that you have described, other than the last three. However, I also want to ask you about vexatious claims around using rough shooting as a cover for hare coursing. What type of dogs do hare coursers use?

**Màiri McAllan:** I think that that was discussed at your last session in which the committee was told that they included lurchers, whippets and other dogs of that kind.

**Rachael Hamilton:** Do you believe that Police Scotland will increase the number of prosecutions for hare coursing? Currently, there are a lot of reports of hare coursing but a lack of prosecutions. DS Telford said last week that he would provide us with evidence, but he could not provide us with evidence on the number of reports, because there is no such thing as a rural marker for hare coursing. How will the Scottish Government, in aiming to ensure high standards of animal welfare, follow the progress of the bill in relation to its aim to prosecute more people who are hare coursing?

**Màiri McAllan:** Thank you for the question. On the first part of it, yes, I believe that there will be an improvement—I certainly hope that there will be. As we have discussed in relation to including rabbits, Police Scotland and others have told us that, when they are trying to gather evidence on

hare coursing, they find that shooting rabbits is often used as a guise. Therefore, it should follow that, by bringing rabbits within the scope of the bill, that guise will no longer exist, which will ease the detection of crime on the part of Police Scotland.

In terms of the impact of the bill, as with other bits of legislation, the Scottish Government will track its success and the impact that it has. I do not know whether there is anything specific on the face of the bill in that regard, but the Government will always track the impact of what it does.

**Hugh Dignon:** We publish an annual report on wildlife crime. It can sometimes be difficult to isolate wildlife crime from other offences that may have been committed alongside it, but I think that the police are getting better at that. There is a clearer focus on wildlife crime, so we get better data on it, but it is still not as good as we would like it to be. We will certainly be monitoring the data in relation to hare coursing. There are quite a significant number of complaints about it, and a lot of farmers object very strongly to hare coursing taking place on their land.

**Rachael Hamilton:** On that point, would you be willing to consider an amendment that would look at improved data gathering in relation to isolating specific wildlife crimes and rural crimes, with a commitment to reporting to the Scottish Parliament about those crimes?

**Màiri McAllan:** I will consider all amendments ahead of stage 2.

**Alasdair Allan:** One of the issues that has been raised in the past has been the definition of a pack and how a pack might be identified. Are you still content with the working definition that you have of what constitutes a pack?

**Màiri McAllan:** Yes, I am. I am just leafing through my notes, because I had pulled out that exact part of the bill.

As we know, the bill has the two-dog limit and, in each of the exceptions, the bill speaks to

“reasonable steps”

being

“taken to ensure that any dog involved in the activity does not join with others to form a pack of more than two dogs”.

Therefore, for the purposes of the bill, a “pack” will mean more than two dogs.

**Alasdair Allan:** In that case, would you say that nothing needs to be added to the bill to make the matter clearer in your view?

**Màiri McAllan:** Not in my view, but, as I said, I would consider amendments ahead of stage 2.

**Alasdair Allan:** Thank you.

**Jenni Minto (Argyll and Bute) (SNP):** When Hugh Dignon most recently gave evidence, we asked about a person using two dogs alongside another person using two dogs, and how those dogs might criss-cross. Will you confirm for the record again how you see the bill ensuring that the activity is connected with the right person? If the four dogs belonging to the two people are working together, how do you see the bill supporting or otherwise that activity?

**Màiri McAllan:** Hugh Dignon might want to come in afterwards, but, from my perspective, we have section 1(4) of the bill, which is about the issue of “using a dog”. Section 1(4) defines who will be regarded as having used a dog if an offence is committed. Essentially, it is an anti-avoidance provision, so that, if you are involved in unlawful hunting, you cannot claim to have not committed an offence simply because you were not controlling the dogs. It means that you are treated as having used a dog even if it was not under your “control or direction”.

With regard to practical examples of what that would mean, in traditional fox hunting, it is obvious that that would include those who are following the hunt as well as those one or two individuals who are controlling the pack. In rough shooting, it means that, if you shoot someone else’s quarry, flushed with their dogs, you are regarded as having been part of that activity.

To draw out the examples, if Leia Fitzgerald and I go rough shooting, each with our own dog or two dogs, as long as we use the dogs separately to flush separate quarry and comply with the conditions in section 6, that will be fine. If Leia is using two dogs, she could not shoot a rabbit that was flushed by me, if I had one dog or two dogs. That is because we would be treated as using all four dogs for the purposes of section 1(4) of the bill.

However, Leia, Hugh and I could lawfully go out with two dogs, with Leia controlling the dogs and Hugh and I without dogs but shooting the quarry. There are different permutations, but that is how the provision works. It is there to make sure that there is no avoidance of being involved in the offence because the person was not directing the dogs.

**Jenni Minto:** Thank you, minister. The evidence that we received during the round-table meeting last week showed that there needs to be direct control of the dogs and, if a dog started to chase, the control that the dog handler had would result in that dog stopping. Is that right?

**Màiri McAllan:** That is absolutely right—control is a fundamental part of the bill. I know that we are here to talk about rough shooting, but the bill as a whole is supposed to be about control being

important and its being readily obvious when control had been lost. The two-dog limit allows that to be much more easily picked up.

**The Convener:** That just adds more confusion and again makes me think that what you define as rough shooting is not what it is. You suggested that somebody with a gun and somebody with dogs would have to be associated with each other. In practice, on a rough shoot, there might be five people with guns and eight, nine or 10 people, each with two dogs, who are not associated with the shooters. However, ultimately, the shooters require the dogs to work to flush the rabbits or the game. Will you explain again whether the scenario in which there is one person with a gun who does not have any dogs and two people—the beaters, if you like—who have two dogs each is illegal?

**Màiri McAllan:** Two dogs per activity is the rule. If the activity is stalking, flushing or searching, however many people are working with the individual who has two dogs, the whole group is regarded as having the two-dog limit.

**The Convener:** Would my scenario—two beaters with two dogs each, and one person with a gun—be legal?

**Màiri McAllan:** No. That would be four dogs for one activity. If they worked separately and pursued individual quarry, or if the dogs did not work together, that would be fine.

**The Convener:** The thing is that, in a rough shoot, there could be four dogs working through a piece of rough ground and flushing every piece of prey that comes in front of them. If there was one person outside that group who was shooting from under cover, those dogs would ultimately be working towards the gun, but they would not belong to the guy with the gun; they would belong to the beaters, who were flushing.

**Màiri McAllan:** There could be one beater with two dogs.

**The Convener:** In my scenario, there are two beaters with two dogs each.

**Màiri McAllan:** I have said that that would be unlawful.

**The Convener:** Okay, but that scenario often plays out on a rough shoot.

**Màiri McAllan:** In those circumstances, that would be part of the minimal adaptation that would be required.

**The Convener:** I will say where I am struggling. We have heard about how intrinsically different fox hunting and hare coursing are and how we can identify those behaviours because of the different dogs that are used and the different behaviours of the dogs. If that is so clear, surely it would be easy to construct an exemption to identify what rough

shooting is. Police Scotland would then not have to work out how many beaters there were on a shoot, how many people had guns, which dogs were doing what and whether they were working together, or whatever. Ultimately, doing that would take the police away from ensuring that easily identified areas of illegal activity are being identified and prosecuted.

**Màiri McAllan:** The crux of your point goes back to an exemption that would take rough shooting outwith the scope of the bill. It would be extremely difficult to define rough shooting, but that is a minor point compared with the much bigger points that we have already rehearsed—namely, that a glaring loophole would be created in the bill where the two-dog limit would then apply to everybody else, including farmers trying to protect their lambs from predation, but not to people—

**The Convener:** Can you give us some examples of when a clearly defined rough shoot, as you understand it, could be identified as hare coursing or illegal fox hunting? When could that happen?

**Màiri McAllan:** Those are utterly hypothetical questions. Ultimately, it is for the police, whom I have confidence in, to observe what is happening in the countryside and determine what it is. Of course, I want that to be as clear as possible, but I will not entertain increasingly hypothetical situations.

**The Convener:** One reason why you said that the bill is important is to prevent activity that might happen in the future. Surely that is hypothetical.

**Màiri McAllan:** Of course, in some ways that is hypothetical, but, equally, nobody talked about flushing to guns prior to 2002. We have proof that, after the 2002 act—I know that this was discussed in your round-table session—that became a cover for illegal hunting, so there is form in that regard.

**The Convener:** My question was: where do you think that cover for illegal activities could be used or rough shooting could be used for cover?

**Màiri McAllan:** I am sorry, but I do not understand the question.

**The Convener:** You suggested that the two-dog limit will not have an exemption for rough shooting because, in the future, that might be used as a cover for illegal hunting activity. In what circumstances might rough shooting, as we currently know it, be used as a cover for something illegal?

**Màiri McAllan:** I am not sure that I can answer that.

**Hugh Dignon:** If there was no limit on the number of dogs that could be associated with a

rough shoot, you could envisage a scenario in which a couple of people could take 10 dogs out with guns and say that they were out rough shooting. On the face of it, that could be exactly the same as a foot pack that operates. As we know, the only difference would most likely be in the breed of dog. We also know that to try to define something purely on the basis of the breed of dog would be problematic.

**The Convener:** But you are expecting the police to do that.

09:45

**Hugh Dignon:** We are not asking the police to do that. The police have said that they will look at that as part of forming their overall picture, but we are not seeking to define an activity by virtue of the breed of dog that is employed. We know that that would be pushed at: people would use cross-breeds, hybrids, new breeds of dogs and so on. Therefore, that would not be a satisfactory way of proceeding.

Even though rough shooting does not currently look like someone taking a pack of dogs out in pursuit of a fox, we can see how an exemption for rough shooting could be pushed to the very limit, so that that is, in fact, what happens.

**The Convener:** I call Alasdair Allan, to be followed by Karen Adam.

**Jim Fairlie:** Convener, I think that you were supposed to call me after Jenni Minto, but then you came in and—

**The Convener:** Okay. I will go to Alasdair Allan on that point. I can then come back to—

**Jim Fairlie:** My question is on that point.

**The Convener:** I will go to Alasdair Allan first and then come back to you, Jim.

**Alasdair Allan:** I have no idea, but we might both be about to make the same point, for all I know.

You have run through a series of scenarios in your evidence, minister, and gone through them one by one. Some of them are hypothetical, as you have said.

We have had evidence from some stakeholders that referred to the potential difficulties that the police have indicated that they might face in distinguishing between some of those scenarios. In weighing up how the bill was put together, did you consider the option of going in the other direction? This is not a position that I am advocating, I hasten to add, but did you consider having the limit simply set at two dogs per shoot?

**Màiri McAllan:** For me, that would create an inconsistency in policy terms, but I can understand

and see why that would be an easier situation for the police evidence-wise. Although I will not put words in the mouth of Police Scotland, I suspect that its concerns about the position as it stands, some of which were expressed last week, relate to the belief that a two-dog limit per event would be easier for the police. Would that be proportionate for the rough shooters? I do not think that it would. Would it create inconsistencies in the bill? Yes. However, things would certainly be easier evidentially.

**Jim Fairlie:** I will try to rewind back to where we were. First, however, I emphasise the point about the purpose of the bill not being to stop hunting altogether or the ability for rough shooters to continue to carry out their activities, which they will do perfectly legitimately—with minor adaptations.

Last week, Ross Ewing gave what I think was a genuine position on the point that the general public might not understand the position. The bill will be announced in the public domain as “Hunting with dogs has now been banned.” Is there something that the Government can do to update the right of responsible access so that people understand that rough shooting is a legitimate thing to do in the countryside and does not fall within the bill, unless somebody is going to use it as a loophole? Is there something that the Government can do at a later stage to ensure that the public understand what the position of the bill is?

**Màiri McAllan:** Yes—absolutely. I have tried to do that from the start. From the inception of the bill, I have been very clear that it is about closing the loopholes of the past and preventing others from opening them. It is about ensuring that what has been unlawful for 20 years no longer continues, while farmers, environmentalists and conservationists still access and use dogs in the countryside. That has been part of the messaging from the Government from the beginning.

I am committed to that on-going dialogue and explanation of what is expected, not least on what people can expect in the case of vexatious complaints. I have said that I would be happy to work with the industry to provide guidance and messaging about what people should expect and when to expect it. However, I think it was you, Jim, who said in response to the points that Scottish Land & Estates made that, as regards the criminal law, it is ultimately not about what the public perceive or about their view; the criminal law is ultimately for law enforcement, which is very well adapted to making such judgments and observing actions in the countryside.

**Jim Fairlie:** That is absolutely correct. On that specific point, I will quote Detective Sergeant Billy Telford. He said:

“We have talked about evidence and so forth, but we will still be able to use common sense and a degree of judgment to ask whether, in the balance of probability, an activity is a legitimate ... shoot or something else. That commonsense approach will take into account the types of dogs that are used, too.”—[*Official Report, Rural Affairs, Islands and Natural Environment Committee*, 23 November 2022; c 13.]

The police are already on board with how the bill is going to work. However, I understand the concern of Ross Ewing and others that the public might not understand it as well as we do. The convener’s point about being taken down so many rabbit holes—pardon the pun—of all the permutations that could or could not happen is what the shooting fraternity is coming back with in asking what will happen.

I understand that there is no way of legislating for all the possible scenarios but, given the way in which shoots are currently conducted, they will be able to manage themselves. Their concern is that the police will be called out every other day on some basis or other. There has to be an understanding that common sense will be applied and that the relationship between the police and the shooting community has to be a strong one. Do you accept that?

**Màiri McAllan:** Yes, and I accept that that is already the case. A lot of that is underpinned by the strict regulation of firearms, for example. There is a relationship between the police and those whom they know have firearms and undertake shooting activity in their areas.

I am not going to pretend that Police Scotland has said that everything is cut and dried and straightforward. Specifically, I know that Mr Telford raised some issues about the two-dog limit, which Alasdair Allan raised. However, there will always be challenges with evidence in a rural setting, because of its very nature. The same applies to gathering evidence in a domestic setting: that is not easily corroborated, and things happen out of view. However, I was very pleased with the explanation that came forward from DS Telford about what the police would consider in order to build the picture: the breed of dog; the distance between the dogs; what reasonable steps had been taken to separate any dogs that had joined together; consultations with witnesses; discussions with experts; the seizure of phones; and common sense, which you mentioned.

**Karen Adam:** The bill is mainly about animal welfare. Different types of hunt use different breeds of dog in different ways. We have heard how people manage and train those animals, and about how differently they behave. What are the differing concerns for animal welfare in different hunting scenarios? Does that make sense?

**Màiri McAllan:** Yes, it makes sense.

Obviously, there are different degrees of concern about the different activities, for a range of reasons, including the ways that dogs are trained, what they are trained to do, how well controlled they are and what the oversight is like for each type of hunting.

However, my point is that I am not differentiating between the types of hunting. To do so just creates uncertainty. Rather than treat them differently, I want a consistent approach that is ultimately about regulating the use of dogs in the course of hunting in the Scottish countryside—no regardless of how they are used, but as a consistent thread through the bill, so that it applies to all dogs that are used in the course of hunting rather than in different types of hunting. Breaking that down would be fraught with opportunities for loopholes.

**Karen Adam:** That is really helpful. Thank you. I note that we hope to close the loopholes that were created in the past legislation because it was not as broad.

**Màiri McAllan:** Absolutely, and I come back to the point that was made by Lord Bonomy, who is an expert in the problems of the former bill. His view was that this bill was “well-crafted” and made things “simpler” and “clearer”.

**The Convener:** Jim Fairlie will lead on topic 2.

**Jim Fairlie:** I think that we have already more or less covered that topic, which is about the Scottish Government’s current thinking around how to interpret the section 6 provisions on game and rough shooting.

**The Convener:** Yes—we have, so I will go to Mercedes Villalba.

**Mercedes Villalba:** My question around enforcement was also probably covered earlier by Karen Adam.

In certain circumstances, if a group of people are organising an event, they are required to notify the police. At last week’s round-table meeting, we spoke briefly about the possibility of a kind of voluntary notification for people who are concerned about potential vexatious allegations. They could self-report ahead of time, to make the local police aware of their activities, which would facilitate any sort of drop-in. Would the Scottish Government look at facilitating a measure such as that in guidance later on, rather than on the face of the bill? Could you outline any other measures to aid enforcement that you are considering?

**Màiri McAllan:** Absolutely. Thank you for the question, Mercedes. I was interested when you mentioned that last week, at the round-table meeting. It was an interesting point for me because, in that very conducive evidence session, we managed to get clarity on what was expected

during a rough shoot. I think that we managed to understand the conditions that would be expected, and we went through how some parts of the legislation would not require much change and others would require a bit of adaptation.

Despite accepting that, it all appeared to boil down to concern, especially from BASC’s point of view, about vexatious complaints. If that is a concern for the shooting industry, again, I am happy to work with its representatives on how to mitigate the risk of that. I have already said that I have not seen any evidence of that risk increasing as a result of the changes in England and Wales. I do not know how receptive the shooting industry would be to more bureaucracy, but, if its representatives come to me and say that they are very concerned about vexatious complaints, we would consider such a measure in order to mitigate that.

**Beatrice Wishart (Shetland Islands) (LD):** We have talked a lot about the clarification of potential enforcement issues. Can you explain to us what discussions you have had with Police Scotland about enforcement and the different scenarios that we heard about last week?

**Màiri McAllan:** I have not spoken with Police Scotland since the committee’s round-table meeting; I am not sure whether officials have done so. We have been in contact with Police Scotland since the bill was introduced and we have been able to clarify certain points—for example, about the training of police dogs. I think that you raised that point in the stage 1 debate. We will continue to discuss with Police Scotland how to create the best possible enforcement situation. This is an odd situation whereby we are having this helpful but nonetheless extraordinary evidence session. I will certainly engage on that again prior to stage 2 proceedings.

**Beatrice Wishart:** Obviously, as you picked up from last week’s discussion, there is concern about vexatious reports. If the police received a complaint, could they close down an activity that was taking place?

**Màiri McAllan:** That would be a question for the police. I am not proposing any enforcement powers within the bill that are additional to those that already exist in legislation to manage those activities in the countryside. Ultimately, how the police respond to complaints—vexatious or otherwise—is always a matter for them.

**The Convener:** On that topic, if there was a suggestion of illegal activity within a rough shoot and the police were called, would you expect the police to stop the shoot to allow them to undertake an investigation, or would you expect that shoot to proceed? What is your view on that?

**Màiri McAllan:** Scottish ministers will not direct Police Scotland on how to conduct its investigations.

**The Convener:** Should that not be clearer in the legislation?

**Màiri McAllan:** In response to Beatrice Wishart, I set out the fact that the investigative powers of the police are not changed by the bill. They are as they currently stand within pieces of legislation such as those around the regulation of firearms. I am not going to deliberate on how Police Scotland does its job.

10:00

**The Convener:** On firearms, if illegal activity were identified at a rough shoot, would you expect the police to temporarily seize the firearms of those involved?

**Màiri McAllan:** Again, that would be done in accordance with existing legislation that regulates the use and the removal of firearms in certain circumstances. This bill makes no difference to that.

**The Convener:** Okay—so, you do not know whether that would be the case.

**Màiri McAllan:** It is not a case of not knowing. I am part of the Executive and I am not going to direct Police Scotland on how to conduct its activities.

**Rachael Hamilton:** I have a supplementary question about the idea of rough shooting being used as a cover for hare coursing. Can the minister tell the committee at what time of the day and at what time of the year hare coursing happens?

**Màiri McAllan:** I do not have an answer to that, I am afraid. I am not an expert in—

**Rachael Hamilton:** Would it happen at the same time as rough shooting? Is that why you think it could be a cover for that activity?

**Màiri McAllan:** Hugh Dignon has just made a good point to me, which is that we have never said that it would be a cover for that—rough shooting.

**Hugh Dignon:** Hare coursing takes place primarily at night, and we are not saying that rough shooting would be a cover for that. We are saying—

**Rachael Hamilton:** So, what is it a cover for?

**Hugh Dignon:** Sorry?

**Rachael Hamilton:** What is it that you are saying? The idea of it being a cover has been referenced many times. What is rough shooting a cover for?

**Hugh Dignon:** At present, rough shooting is not a cover for anything.

**Rachael Hamilton:** What could it be a cover for?

**Hugh Dignon:** If there were no limit on the number of dogs and the only way that a person could take more than two dogs out to the countryside in pursuit of some animal was through the use of an exemption that said that rough shooters could do that, people who were engaged in any number of activities could take those dogs out and say that they were rough shooting.

**Rachael Hamilton:** So, which activities?

**Hugh Dignon:** Hunting foxes, for one.

**Rachael Hamilton:** Right. You are saying that people who rough shoot would go out with hounds.

**Hugh Dignon:** I am saying that, unless an exemption for rough shooting applied only to certain breeds of dog, people could take hounds with them for other purposes. However, we know that trying to limit an exemption in that way would be problematic.

**Rachael Hamilton:** So, how will the prosecutions of hare coursing increase if it is not specifically being looked at? How does that relate to the inclusion of rabbits in the bill?

**Hugh Dignon:** At present, people who are going hare coursing sometimes claim that they are going after rabbits, which is currently lawful. Bringing rabbits within the bill would make going after rabbits illegal, so those hare coursers would not be able to claim that they were out after rabbits.

**Rachael Hamilton:** Okay, so rough shooting is not a cover for hare coursing, because you said that hare coursing happens at night.

**Hugh Dignon:** As far as I know. I think that it happens primarily at night.

**Rachael Hamilton:** And rough shooting does not.

**Hugh Dignon:** Again, as far as I know.

**Rachael Hamilton:** Minister, with regard to the points about the investigative powers of Police Scotland, have you had a conversation with Police Scotland about the potential for increased numbers of complaints—vexatious or otherwise—with regard to Police Scotland's role and ability to carry out what the Government wants it to do, which is to stop whatever it is that you are trying to stop through the bill? Does Police Scotland have the ability to do what is being asked of it, given the cuts in its budget?

**Màiri McAllan:** Convener, again, there are a number of questions in there, and I am finding it increasingly difficult to follow exactly what it is that Rachael Hamilton is trying to ask.

As I said, we have had on-going engagement with Police Scotland. We will continue to engage with Police Scotland as issues arise. At your round-table discussion last week, when the operation of the bill as it pertains to rough shooting was explained, the issue of vexatious complaints was raised by BASC and others, and my officials and I will engage with Police Scotland on that, likely before the formal move to stage 2.

On enforcement, investigative powers and police funding, I have confidence in Police Scotland's ability to fulfil the requirements. Detective Sergeant Telford said that he has views on how the bill could be better but that, ultimately, Police Scotland will work with whatever is passed.

**Rachael Hamilton:** When will the guidance that you mentioned be produced, so that there is more clarity? Will we see it before stage 3?

I apologise for not being clear with regard to the intention of my questions. I find it difficult to understand the drafting of the bill, so it has been difficult to articulate questions.

**Màiri McAllan:** It is not a problem at all. I hope that this session and the additional questions on rough shooting have provided clarity. There are inherent complications in producing a piece of law of this type. That is probably why a well-intentioned piece of work in 2002 ended up creating loopholes for the next 20 years. None of us should pretend that this is not a complicated area of law. However, I go back to Lord Bonyon's view that what we have produced is a great deal simpler and clearer than what is there at the moment.

I have not said that I will produce guidance; I have said that I would be happy to discuss the production of guidance with the shooting industry, if that is something that would help in that bedding-in period that was discussed at last week's round-table meeting.

**The Convener:** Jenni Minto, do you have any further questions on the flushing aspect?

**Jenni Minto:** I have no further questions, and I think that the minister has already been here for six minutes longer than scheduled.

**The Convener:** I will bring in Mercedes Villalba.

**Mercedes Villalba:** Thank you for your time today, minister. I have a quick follow-up question on the discussion that you had with Alasdair Allan earlier about the definition of "pack". I believe that you said that, for the purposes of the bill, more than two dogs would be taken to be a pack. Is the

number of dogs the only factor in the definition of a pack, or will activity also be a consideration?

**Màiri McAllan:** The number of dogs is the principal factor, but, of course, they would not be considered a pack if they were on opposite sides of a field, so the activity is relevant, as the dogs would have to be together.

**The Convener:** That brings us to the end of this question session. I appreciate you and your team coming to the committee, minister. I hope that, by stage 3, we will not have a bill that requires students of the future to look at the loopholes, as you had to do. I am sure that we can get to a stage at which the bill is clear and Parliament can accept it.

We will suspend the meeting for 10 minutes to allow the witnesses to change over.

10:08

*Meeting suspended.*

10:13

*On resuming—*

## Avian Flu in Scotland

**The Convener:** Agenda item 2 is an evidence-taking session on avian flu in Scotland. We have scheduled an hour for this item, and I welcome to the meeting Sheila Voas, the chief veterinary officer, and Alastair Douglas, the head of the animal disease control branch, from the Scottish Government.

Would you like to make an opening statement, Sheila?

**Sheila Voas (Scottish Government):** Yes. In terms of avian flu, this year has been unprecedented—and that is not a word that I use lightly. We said the same last year, but this year has been much worse.

This year, in Scotland, we have confirmed eight premises with avian flu; six were commercial premises and one was a very small commercial premises. I should put that into context by pointing out that 125 premises have been confirmed in England. As a result, although the situation in Scotland is bad, it is nowhere near as bad as the situation in other parts of Great Britain.

Avian flu is a viral disease of birds. It is similar to, but not the same as, the virus that causes flu in other species, including humans, and it is predominantly spread by wild birds. It gets into poultry flocks and has a devastating effect on them. If avian flu gets into a poultry flock, we require the compulsory slaughter of all the birds in the flock to prevent the disease from spreading further, either within poultry flocks or back into wild bird populations.

That is probably enough of an introduction. I am happy to answer any questions.

**The Convener:** Thank you.

It is important that we understand the seriousness of the outbreak in Scotland and the risk to Scottish producers. In previous weeks, we have heard evidence on the wild bird population and the devastating impact on, for example, goose numbers along the Solway Firth. What is the tie-up between the intensity of the disease in the wild bird population in Scotland and the potential knock-on effect on commercial flocks?

**Sheila Voas:** The disease is spread by wild birds, particularly water birds, which spend the summer in their Arctic breeding grounds where they mix with populations from other parts of the world. When they are in the Arctic, the viruses mix and can change, which means that, each year, there is a different strain.

The birds then come back to their overwintering grounds such as the Solway, the Angus basin or other parts of the country. Waterfowl can survive with the virus for a period of time, and they excrete the virus in their faeces, which can be picked up by poultry. The main route of incursion into poultry is generally contact—often indirect contact—with wild bird faeces.

**The Convener:** We have heard of a mounting toll of geese and gulls in Findhorn Bay. Should we be concerned about that?

**Sheila Voas:** To an extent, yes. We monitor wild bird die-offs. We encourage members of the public to report, we have agreements with wardens and people in the Wildfowl & Wetlands Trust and NatureScot works with us to ensure that we are notified of die-offs. When that happens, animals will be tested. Administratively, the season runs from 1 October and, so far, we have had 19 confirmed positive wild birds; however, that is about half the number of birds that have been submitted, so avian flu is not the only cause of death out there. It is a small number; in England and Wales, the figure is 300 plus. The figure here is a small percentage, but it is still of concern.

**The Convener:** You talked about the migration of birds. We know that Covid is worse in the winter and that the virus is supposed to decline in the summer, because of temperatures. Does avian flu have the same profile? Are we likely to see an increase in transmission of bird flu just because of the nature of the virus during winter or in the spring?

**Sheila Voas:** Yes, exactly. Flu viruses generally like cold and damp conditions, so they survive much better in the winter and will spread and remain infective for longer than in the summer, when ultraviolet sunshine, high temperatures and dryness—if we get a dry summer—kill them.

We normally say that the flu season runs from October through to about March. Last year was unusual in that we continued to get cases throughout the summer in GB; indeed, in Scotland, we had a case in Orkney in July.

**The Convener:** That was helpful.

**Ariane Burgess:** Good morning. What work have you been doing to gather evidence of farm-to-farm transfer of highly pathogenic avian influenza in Scotland?

**Sheila Voas:** We carry out full epidemiological investigations on every premises that is confirmed. The investigations can take a bit of time so, at the moment, the findings are preliminary, but there has been no evidence of farm-to-farm transfer.

Some of the cases that we were investigating involved a group of farms, so we were interested in seeing whether human farm-to-farm movements

were the problem. However, it looks as though the explanation might be lapses in biosecurity, including buildings not being totally secured from rodents or wild birds.

**Ariane Burgess:** Can you say a little bit more about that? Do you mean that there might have been lapses in biosecurity on farms that are part of one farm organisation?

**Sheila Voas:** Yes, they were within a farm cluster.

What I did not say previously is that, of the cases that we have had, five of the six commercial premises involved are under one ownership group, and all of the birds have been housed since early October. Only one of the six commercial premises was truly free range at the point of housing, while, in the other five premises, the virus found its way from the outside environment into the house where the birds were.

There is some evidence that less virus is needed to start and sustain an infection when birds are housed than when they are outside. Again, there are parallels with Covid, with which being outside—in a football stadium, say—was safer than being inside, in a dance hall.

**Ariane Burgess:** Can you say a little bit more about the lapses in biosecurity that might have taken place on those five farms?

**Sheila Voas:** Yes. The preliminary epidemiology suggests that there was a rodent problem in some of the premises, that there were potential problems with vehicles going between farms and that the foot dips, cleansing and disinfectant points were not as effective as they could have been.

**Ariane Burgess:** Do personnel move from one farm to another?

**Sheila Voas:** The staff who do the day-to-day care are dedicated, but there is some management movement.

**Mercedes Villalba:** I have a question about the effect of the disease on different types of birds. Is the virus equally lethal to wild birds and poultry? If it is more lethal to one than the other, is that to do with breeding, the birds' immune systems or the use of antibiotics? Why does the virus have a different impact on different birds?

**Sheila Voas:** Because it is a viral disease, there is no use of antibiotics.

Different types of bird have different susceptibility to the virus. Waterfowl are generally the natural host for flu viruses, so they tend to be somewhat resistant to them. They get the virus and multiply it a bit, but they are still able to move and fly; turkeys, however, are at the other

extreme, because they get pretty sick and die as soon as they get the virus.

One sign of avian flu in captive populations is a rapidly increasing mortality rate. In one case that we had, we went from five dead overnight to 19 dead, then 100 dead and then about 3,000 dead, all in the space of four or five days. That case involved chickens, though, not turkeys, but turkeys are even worse.

**Alasdair Allan:** I do not want to minimise the extent of the outbreak, given its impact, not least on wild birds, but can you say a wee bit more about that? Can you also say more about the comparison between—and the geographic concentration of—the outbreaks in Scotland and England?

**Sheila Voas:** It all started off in England with an outbreak in East Anglia, which is probably not surprising, given that the area has the highest poultry concentration in England. Since then, it has spread over much of England—although, interestingly, it has not spread much to Cumbria or Northumberland.

This year, in Scotland, we have had outbreaks in two backyard flocks in Orkney, a very small producer on Lewis with about 300 birds and one free-range flock in Ayrshire. The other five commercial flocks where there were outbreaks have been in Aberdeenshire, and those are the cases that are linked.

I have a map that shows the density of the outbreaks, which I am happy to pass around the table. It might be interesting to have a look at it. The figures are slightly out of date—they are from the end of last week—but the map demonstrates that there is very little comparison between Scotland and England.

**Alasdair Allan:** Does the pattern of distribution in Scotland lend itself to making things harder or easier to control?

**Sheila Voas:** We have some clusters of poultry, particularly in the north-east and the Borders, but we do not have the same level of density of poultry populations elsewhere. Given that it does not spread from one premises to another, the single most important thing is that people maintain as good biosecurity as they can.

**Rachael Hamilton:** As a result of freedom of information requests, reports have been obtained of a number of culls. How many culls have there been in Scotland?

**Sheila Voas:** We have killed birds on all the infected premises—the total number across Scotland is 224,000. These are round numbers. To put that into context, I would point out that, in England, 1.673 million turkeys and 2.003 million

chickens have been killed, as well as ducks and geese.

**Rachael Hamilton:** What is that as a percentage of the total flock in Scotland?

**Sheila Voas:** Oh, gosh—it is about 1 or 1.5 per cent.

**Rachael Hamilton:** How does that compare with the level in England?

**Sheila Voas:** In England, the figure is about 2.5 or 3 per cent.

**Rachael Hamilton:** So, England is not far in front of us. It is just that the density there is greater.

**Sheila Voas:** Well, the difference between 1.5 per cent and 3 per cent is significant.

**Rachael Hamilton:** As you have said, the density of the stock is greater in England.

To date, how many species have been infected with avian flu?

**Sheila Voas:** In Scotland, among commercial species, only poultry have been infected. Among wild birds, 20 to 25 species have been infected. The figure changes almost on a daily basis, because we are continually taking samples from wild birds and getting them analysed.

**Rachael Hamilton:** You said that, so far, Northumberland and Cumbria have not been affected. I have a question about how the disease spreads between wild and domestic birds. Why do you think that avian flu has not spread in those areas, which have coastal parts?

Robert Thompson of NFU Scotland has said that avian flu does not stop at the border; in fact, he said that it does not stop at Carlisle. I am sure, too, that you are familiar with what he has said about the need for Scotland to be put on an equal footing in terms of restrictions. However, a question will be asked about that later, so I will not ask it now. Why have there not been clusters in Northumberland and Cumbria, given the size of the wild bird population in those areas?

**Sheila Voas:** There are two different facets to that, one of which is to do with migratory patterns. Although we tend to think of the Arctic summer grounds for geese as being a soup for virus, the birds that come back to Scotland tend to come from Iceland, Greenland and Svalbard—in other words, the north-western part of the Arctic—whereas a lot of the birds that come into eastern England come from eastern Europe: Baltic countries such as Estonia and Latvia as well as Siberia. Therefore, there might be a difference in the virus that they are carrying.

There is also good evidence that some of the problems that are being experienced in England are being caused by virus that has survived over the summer. Last year, we did not have anywhere near the same number of problems that England had. The assumption is that the other part of the jigsaw is that there is simply less virus around in Scotland, even though we have substantial numbers of wild birds.

**Rachael Hamilton:** Can you clarify whether it is the same virus and which virus it is?

10:30

**Sheila Voas:** It is H5N1. Flu viruses are classified according to their haemagglutinin in the H number and the N number. That gives a broad categorisation; like human flu viruses, however, these viruses are constantly adapting and evolving. In short, H5N1 is the broad type, but there can be lots of different changes.

We do genetic analysis and gene sequencing to understand pathways, how the disease transmits and how it adapts. That is why we are relatively comfortable with saying that some of what is happening in England is a spillover from last year instead of it all being new introductions this year.

**Mercedes Villalba:** Why are we seeing such different numbers in different parts of the UK? To what extent is that down to more effective biosecurity measures, the density of the population of birds or—and I do not know whether this applies in this case as it did with Covid—our being behind the curve, which means that it will be coming here, too?

**Sheila Voas:** We could certainly be behind the curve. We are continually monitoring what is happening so that, if we need to take further measures, we can.

As I have said, we have slightly different populations of overwintering waterfowl and a less high density of poultry in different areas of Scotland. The problems that we saw last summer were largely with seabirds, but they do not tend to interact and come inland; gannets, guillemots and cormorants are normally coastal birds that, in the winter, take themselves back out to sea again. Poultry do not tend to access shores, beaches or the Bass Rock, for instance.

There are a number of factors, and I do not think that any one, in particular, is responsible. It is possible that, in the next few weeks, the picture in Scotland will deteriorate, in which case we will need to take further action.

**Alasdair Allan:** We all accept that avian flu does not stop at political borders, but you are making persuasive arguments as to why the situation at the moment appears to be a bit

different in Scotland than it is in the rest of the UK—or in England, anyway. How are you keeping in touch with colleagues in England to ensure that you have an advance picture of what might come to Scotland?

**Sheila Voas:** We have twice-weekly CVO stocktake meetings on a Monday and a Thursday morning as a matter of routine, at which we discuss new outbreaks and understand what is happening.

It is not so much that the disease is likely to spread from England to Scotland. Once the wildfowl reach their overwintering grounds, a cold snap will make them move again, and as it is very unlikely that England will be colder than we are, they will tend not to come north again. However, we are monitoring the weather further north. If it becomes very cold in Norway or Iceland, that might drive even more birds south to us, thereby increasing the risk.

The chances of disease spreading northwards from England are slim, though not impossible. However, we are continuing to talk about it. Indeed, it is because we communicate well and regularly that I know what is happening in England with gene sequencing and where the English think they have recrudescence of disease rather than new introductions from wild birds.

**The Convener:** You talked about the disease being worse in turkeys. Yesterday, at the Westminster hearing, we heard that there are about 8 million turkeys in the UK and about 50 per cent of the free-range turkeys—about 1 million birds—have died or been slaughtered. What is the picture like in Scotland? Do we have a large industry? I suppose that it does not matter whether it is large, because it would be devastating for the people involved in it. Do we have many outdoor flocks of turkeys and chickens that might be destined for the Christmas market?

**Sheila Voas:** We do not have many turkeys at all. We have a few tens of thousands. They tend to be seasonal producers—people who keep a few hundred turkeys for the local market in Scotland—unlike the commercial turkey production in England.

For the purposes of disease control, 1.67 million turkeys have been slaughtered in England. In context, about 10 million turkeys would normally be slaughtered for the Christmas market—a proportion of which are slaughtered early in the year and frozen. Turkey may be scarcer, but I am not concerned that there will not be any turkey around this Christmas.

**Karen Adam:** I thank Sheila for her evidence, which has been helpful. In my constituency, Banffshire and Buchan Coast, avian flu has had a bad impact on coastal areas and seabirds, in

particular. I visited Troup Head during the summer, where the impact has been devastating, particularly on the birds' breeding patterns, which can affect the numbers of birds in the area for many years to come.

You said that it is very unlikely that coastal birds would be carrying avian flu to poultry farms. However, people in the area have been on high alert, as there has been a breakout. My constituents fear that and are very concerned about it. On their behalf, I ask what is the likelihood that avian flu will break out in poultry farms in the area and cause devastation? They are also wondering why there is no mandatory housing order. Could you explain why that is, to try to alleviate some of their fears?

**Sheila Voas:** I totally understand that your constituents and most poultry farmers are very worried about that. However, biosecurity is the single most important thing that people can focus on. Housing is one of the tools that we have in the box. We have not yet gone down the mandatory housing route, but that is not to say that we would not do that.

However, we need to offset that against the pattern that we are seeing and the evidence that housing may be a risk factor, because lower doses of avian flu can take hold and spread in birds that are housed in comparison to birds that are kept outside. I would not rule out mandatory housing, but it will depend on a whole number of factors such as birds' migrating patterns, what wild birds we are seeing, what the outbreaks are and the epidemiological reports. For example, the outbreaks in the company that is in your part of the woods have all been in birds that have been housed. Those birds were voluntarily housed—they would normally have been free range—but they were brought inside and then picked up the disease a number of weeks later.

The single most important thing that we can do is communicate good biosecurity practices to those who are involved. Sometimes, it is the little things. For example, storing bales of bedding outside, where wild birds have access to them, and then taking those inside and removing the wrappers would spread whatever is on the top of those wrappers around. There are things that we can do before we go to housing, but that is not to say that housing would not come into it.

**Rachael Hamilton:** I have been asked to ask you what the basis is for the Government's decision not to require mandatory housing at this time. However, I think that that is wrapped up in a whole load of other issues that relate to my curiosity about what is currently in place regarding the biosecurity measures that you are talking about. Have those measures been formalised in terms of zoning? Can you talk us through that and

why you think that what is currently in place is sufficient in terms of what farmers are doing, considering what Karen Adam has just said? My colleague David Duguid has also been very concerned about what is happening in Aberdeenshire and, indeed, the prevalence of bird flu on the Moray Firth.

**Sheila Voas:** All the Administrations across the UK brought in an avian flu prevention zone in early October, which mandated that people must improve biosecurity. There is some good guidance about things that people can and should be doing in order to improve biosecurity and, importantly, how they can do that.

Colleagues in the Animal and Plant Health Agency have been offering advice to different groups who have contacted them. I, with Alastair Douglas and APHA, had a meeting with the company that has been badly infected, and we went through what we had found and explained where we thought the deficits were and what could be improved.

Biosecurity is certainly key. A number of years ago, the European Food Safety Authority carried out a risk assessment that demonstrated that biosecurity improved things by a factor of 44, while housing improved things by a factor of 2. Given that you might need less virus in housed birds to cause a problem, housing is the last issue to address. It gives added protection when everything else is right, but it will not, in itself, solve the problem.

There are difficulties with housing. We can require mandatory housing if we believe that it will improve the health of birds, but housing itself causes welfare problems, particularly in smaller and backyard flocks that are not set up to be kept inside. There is always a balance between those who have sheds that are used to house 30,000 to 40,000 birds and those who have 20,000 birds but have no way of keeping them inside.

**Rachael Hamilton:** Just to be clear, are the biosecurity measures exactly the same as those in England?

**Sheila Voas:** Yes.

**Rachael Hamilton:** And do they have steps?

**Sheila Voas:** No. Biosecurity is an interesting issue. Everybody should be practising the best biosecurity they can all the time, regardless of what is happening. The prevention zone is a way of mandating and encouraging people to think more carefully about what they are doing, but, in every case that we have seen, there have been significant biosecurity lapses.

**Rachael Hamilton:** I have one more small question—

**The Convener:** It will have to be very small.

**Rachael Hamilton:** How does biosecurity work if there is interaction between wild and domestic birds?

**Sheila Voas:** Normally, you would not have that kind of direct interaction. Most poultry farms do not have geese and ducks on their ranges as a matter of course. If they do, there is always the option to house voluntarily, because they will not be able to keep them off.

Biosecurity measures will include bird scarers or using people, dogs or whatever to keep wild birds away from the ranges. The fact is that ranges are not huge; even a shed with 32,000 poultry is not particularly large, and a dog going round it a couple of times a day should, in most areas, be enough to keep the wild birds off.

Obviously, the risk is patchy. If you have a pond in the middle of your range—which we would strongly advise people either not to have or to fence off—it might be attractive to wild birds, which will therefore increase the risk. However, that is an individual risk for an individual farm, and the individual farmer can take mitigating actions in that respect. As the housing order would cover the whole of Scotland, there is a balance to bear in mind with regard to the number of cases, the epidemiology and what else can be done.

**The Convener:** Do you have any indication of the number of farmers who are housing voluntarily and the number who have decided not to? What is the balance in that respect?

**Sheila Voas:** I cannot tell you exactly, but we believe that it is about 10 per cent.

**The Convener:** So, 10 per cent are housing voluntarily.

**Sheila Voas:** Yes, but that is an estimate based on our talks with the egg marketing inspectors.

**The Convener:** Okay. I call Mercedes Villalba.

**Mercedes Villalba:** You have said that, in some premises where the disease has been identified, biosecurity lapses have been identified, too. What steps are available to the Scottish Government to bring those premises up to standard? How are those premises being supported to improve their biosecurity?

10:45

**Sheila Voas:** When we discover a lapse, we discuss it with the owner. However, by the time that avian flu is discovered, it is often too late to save that crop of birds. However, information is given for future years and about how the situation can be improved. We have also done communications with the industry generally, and

colleagues in APHA and, indeed, the poultry marketing inspectors who work in my team will also offer advice on biosecurity during routine inspections, to try to get people to think more critically instead of just accepting what they have always done.

**Jenni Minto:** Thank you for your evidence, Sheila Voas. My question was on the housing criteria that you decide upon, and you have covered that in many of your responses so far. I am also interested in the combined meetings that you have with the chief veterinary officers from across Great Britain and in whether you use the same targets, balances or numbers in each of the criteria. Is that consistent across the nations?

**Sheila Voas:** It is relatively consistent, but it is not an absolute, because it is not the case that, if you get 12 outbreaks, you will house the birds or, if there is suddenly a cold snap, you will require something different. However, we talk about it, and there is an animal disease policy group—we are all members of it, including Alastair Douglas—which is where policy decisions are discussed across the UK.

That does not mean that we always come to the same policy decision, but it is a place for critical challenge so that, if England disagrees with what we are doing, it can challenge that and put forward an argument. Likewise, if I think that Wales has housed the birds too early, I can challenge them and ask for input on that. Therefore, it is partly about co-operation, but it is also about being a critical friend to each other. It can be quite lonely being a vet and not having too many people you can talk to, so it is also a sort of support group in which we can bounce ideas off each other.

**Jenni Minto:** You talked about migrating birds coming from eastern Europe and from further north—from Greenland and Iceland. What connections do you have with our critical friends in Europe?

**Sheila Voas:** We continue to monitor the pattern across Europe. The international disease monitoring group produces monthly reports, but it also carries out preliminary outbreak assessments for new things. That includes avian influenza, but the group also scans the horizon for foot-and-mouth disease, African swine fever and other diseases, so that gives us early warning of what is happening across Europe. From that, we can look at trade patterns, particularly for other diseases, to see whether that puts us at an increased risk.

We work with the Met Office to look at long-term weather, including wind direction, and we work with an ornithological expert panel to assess wild bird species—what the interactions are likely to be and where they are coming from—and we layer that into the information about which species we

have seen with disease. Therefore, it is a bit of a spider's web, which is why I cannot say, "This is the trigger." There is an element of, "We will know."

The other factor is that, in Scotland, our wild birds tend to hang around longer than elsewhere in GB, or the UK, so, potentially, at the other end of the season, we might want to keep measures in place for longer and it is important that we do not penalise our producers unnecessarily, because there is only a finite period during which housed birds can still be marketed as free range.

**Jim Fairlie:** It is nice to see you both. I have a supplementary question on what Jenni Minto just raised. I clearly remember the foot-and-mouth disease outbreak in 2001 and the differences between the different countries. For me—I want your opinion on this—Scotland, England, Northern Ireland and Wales having the independence to make their own decisions was important. I get the fact that cross-border collaboration and discussion happen all the time, but how important is it to be able to make such decisions independently in your own area?

**Sheila Voas:** It is important, because it allows us to fine-tune things to suit our local situation. Although a housing order is in place across the whole of England, Northumbria and Cumbria could have been excluded from that because the position there is not very different from that in Scotland. However, we are stuck with the jurisdictions that we have, and being able to look at things through a lens that says what is right for a particular area means that we can do the best for our producers, markets and consumers.

**Jim Fairlie:** That is exactly the point that I was making—you have hit the nail on the head. In 2001, Scotland had a complete national shutdown because of foot-and-mouth disease, which devastated the industry. I remember that clearly, and it was a living hell. However, in 2007 there was a much smaller outbreak that could be contained in pockets. Is having independence crucial in making such decisions?

**Sheila Voas:** Yes. Foot-and-mouth disease is very different from avian flu, however.

**Jim Fairlie:** I understand that.

**Sheila Voas:** Foot-and-mouth disease spreads largely by animal movements. When we had the big outbreak in 2001, animal movements spread the disease around and we had pockets of it in Scotland. In 2007, it was contained to the south-east of England, which meant that we were able to make a case that Scotland should be treated differently. We were able to remove restrictions more quickly, starting with the islands and moving to the mainland. We also got back more quickly our ability to trade internationally.

**The Convener:** On the discussions that you have with CVOs from elsewhere, there is a call from some quarters for the Scottish Government to practise the precautionary principle. We have heard some of the reasons for that being about achieving a balance. What are the views of the CVOs from other areas of the UK? Do you deal with matters in isolation? You have said that you share information, but you make decisions individually.

Also, is there an ability to bring in housing orders only in certain areas within England or Scotland? For example, could you impose such an order for the north-east of Scotland and not for Dumfries and Galloway?

**Sheila Voas:** To take the second point first, yes we can. However, in the north-east of Scotland, all the flocks recently affected by avian flu have been housed ones. Had they all been free-range flocks that were out on their ranges, our decision might well have been different. We can make such orders differentially, but we still need evidence to enable us to do so.

Decision making comes down to the CVO in the individual country. However, my colleagues are supportive of the decision that we have made in Scotland. The justification in Northern Ireland was to consider the island of Ireland as being one group. In England, Christine Middlemiss was content, and they went with an order before everyone else. She was supportive of the fact that we did not have the evidence to justify doing the same here. Ultimately, I will advise the cabinet secretary and the decision for Scotland will be based on Scottish evidence, while factoring in what others are saying.

**The Convener:** I guess that there are pros and cons to using either an individual or a UK-wide basis for decision making.

**Sheila Voas:** Yes, absolutely. Making a UK-wide decision is definitely easier: it avoids criticism and makes it simple for people to understand what they have to do. However, it is not necessarily the right thing to do. At the other end of the season, we could be in a position where we do not want to lift the order and then only Scottish eggs rather than those from across the whole of the UK would have to be marketed as barn eggs, for example.

**Karen Adam:** Hearing your evidence has been really helpful. Committee members are now a bit more familiar with, and have a better understanding of, viruses and precautionary measures such as washing our hands and wearing masks than might have been the case two or three years ago. How effective are such things? How precautionary are they? How much depends on communication with poultry farmers and their ability to carry out the measures?

**Sheila Voas:** The biosecurity gives a factor of 44 in improvement: that is, rather than have 45 flocks infected if there were absolutely no biosecurity, pristine biosecurity will take the number of infected flocks down to 1. That alone is really important. Of course, levels of biosecurity will put the number somewhere in between. Housing, in comparison, will stop one out of two, if it is done—so there is a real differential.

I am sorry—I have forgotten the second part of your question.

**Karen Adam:** I was asking how much the effectiveness of the measures depends on communication and farmers carrying them out.

**Sheila Voas:** The approach is effective only if we can communicate effectively with the industry, because ultimately it is the people on the farms who need to practise the biosecurity and do all the different things.

APHA, which delivers for Scotland on the ground, has run webinars and so on for the industry to attend, and we have targeted particular companies. The egg marketing inspectors are talking about biosecurity when they go out. We are trying hard to reach producers, but ultimately it depends on the producer wanting to take measures and seeing the advantage of doing so, given that all the measures mean that things take a little longer than they do if someone just walks into a shed from outside in their ordinary wellies, without dipping the wellies or wearing a boiler suit and so on.

**Karen Adam:** That is helpful. As the local MSP, I want to ensure that that is communicated across the area as directly as possible and that farmers can be signposted to where they can get help and support to carry out measures.

**Sheila Voas:** I would not want anyone to go away thinking that I am blaming the company in your area. There have been biosecurity failings, but people were trying to do the right thing, as they saw it. It is important that we do not start slinging blame around. Failings should be regarded as an opportunity to help people to do things better in the future; we do not want to penalise them.

**Karen Adam:** Absolutely.

**The Convener:** I will bring in Alasdair Allan.

**Alasdair Allan:** To be honest, some of the questions that I was going to ask have been covered, but let me ask Sheila Voas to say something briefly about the effectiveness of different prevention measures. I am not asking you to set out a scale of effectiveness. However, you mentioned culls and other options. What are the other options, apart from housing?

**Sheila Voas:** Culling is the measure that we currently have. Vaccines are being developed, but up until now we have not been able to use vaccines, because that would have badly impacted on our ability to trade in poultry and poultry products.

Vaccines themselves—just like human flu vaccines—are not easy. The virus changes very quickly, so repeated vaccination is needed for different strains, or different permutations of the same strain. Also, birds need to get two injections, several weeks apart, which makes vaccination expensive. A broiler chicken—your average chicken—is slaughtered and on the table at five weeks old, so vaccination is just not practical. Work is going on to look at how vaccines can be developed and administered more easily.

The other difficulty with the current vaccines is that they are suppressive and not curative. Again, as with Covid vaccines and humans, they reduce the signs that the birds show and they reduce the amount of virus that the birds excrete, but they do not stop the virus. That is why trade becomes impacted: it is very difficult to differentiate between a bird that has been infected naturally and one that has been vaccinated.

Vaccination is on the horizon, but it is not yet ready to use, I am sad to say.

**Alasdair Allan:** Thank you.

**The Convener:** If we started using vaccines, the disease status of the whole of the UK and Northern Ireland would be affected and there would be an impact on exports.

At the risk of going off on a tangent, there is a suggestion that, given the short lifespan of chickens for food production—I think that the longest is about four months—there is an opportunity to use gene editing to quickly bring in a type of chicken that is more resistant to avian flu. Have you looked at that?

11:00

**Sheila Voas:** The Roslin institute is looking at susceptibility to flu viruses with the aim of breeding chickens that are more resistant. I would need to check where that research is at, but I do not think that it is in any way close to the commercial stage. However, it might be a possibility in the future.

**Ariane Burgess:** Alasdair Allan asked about different prevention measures. In that regard, has anyone has actively looked for the HPAI virus in outflow water from infected poultry premises and in nearby aquatic environments?

**Sheila Voas:** I am not aware of that being done. I would need to check, because a lot of science is

being done. I ask Alastair Douglas whether he is aware of anybody doing that.

**Alastair Douglas (Scottish Government):** I am not, but I know that the FluMap project is potentially looking at some of the environmental factors as part of considering the wider impact on wild birds. We can look into that and get back to the committee.

**Sheila Voas:** FluMap involves a consortium of scientists who are looking particularly at avian influenza. We can come back to you with that information.

**Ariane Burgess:** That would be helpful. Thank you.

I am also interested in whether it is possible that wild birds might contract HPAI from infected poultry operations or infected released game birds. I understand that the virus is present in pheasants that are raised in France and that we bring pheasants to Scotland every year and then release them. Is it possible that that could be adding to the pressure of the virus in Scotland?

**Sheila Voas:** Theoretically, yes. This year, we did not actually import pheasants from France, because of the avian flu situation there. Pheasants are one of the species that are very susceptible to the virus so, generally, by the time that they get sick, they die very quickly afterwards. It would therefore be very surprising for someone not to know that there was virus in them. People are not allowed to release pheasants if the birds are not well and, equally, pheasants cannot be released in the zones surrounding infected premises. Therefore, no pheasants that have the virus should be released, but that is not to say that, once they are out in the environment, they might not succumb to virus that is already there and then potentially multiply it and spread it back. However, that would be an unusual situation.

You asked about spread from poultry premises to wild birds. The reason why, as soon as disease is suspected, birds must be shut inside and then culled and disposed of by incineration or rendering is to prevent a virus from getting back out into the environment in substantial quantities. I cannot say for certain that no virus could escape, but it should be a very small amount, and the general scientific consensus is that it would not significantly add to what is there in the background anyway.

**Ariane Burgess:** You said that people are not allowed to release pheasants if the birds are carrying the virus and are sick. How is that monitored?

**Sheila Voas:** It is monitored only through the birds becoming sick and dying. Because they are so susceptible, there is no routine testing before

they are released. If they were carrying the virus, they would be sick and it would be obvious.

**Ariane Burgess:** You say that people are not allowed to release sick birds, but how do we track the behaviour of the people who have pheasants and their decision to release the birds or not?

**Sheila Voas:** As with many of the things that we do that could potentially be enforced by local authorities, the actual enforcement relies on people doing the right thing. In the same way, we rely on people within zones not moving, applying for a licence or doing other things. There is some enforcement, but I would be lying if I said that we go out and check all of them daily to make sure that they are still in pens.

**The Convener:** We can be confident in saying that nobody is releasing sick pheasants, though.

**Sheila Voas:** Nobody is releasing pheasants at this time of year either—they are released in August or early September.

**Jim Fairlie:** Thank you very much for that, Sheila; the evidence that you have given today has been fantastic and hugely helpful. However, I now have about 10 different questions and I will probably not get through them all.

First, I have a constituent whose free-range birds are about six miles away from Loch Leven. He is agitated about having tens of thousands of geese flying across his range daily—they fly across his range to feeding grounds near where I live and back again at night. What can he do with regard to his biosecurity in order to protect his flock? Could he house his birds because of that circumstance, and would that cause him to lose his free range status?

**Sheila Voas:** There are a couple of questions there. The first one is about preventing the geese landing on his range. Geese mostly defecate from the ground, so the biggest risk is around birds landing, rather than from simply flying over—that is not to say that there is no risk from flying over, but it is much less. Things such as putting out bird scarers and bangers, using a cartridge gun and putting a dog around the range several times a day will stop geese landing and keep them away.

There are individual flocks for whom housing might be the right answer, however. Your constituent is at liberty to house his birds, but after a few days, he would indeed lose his free-range status. That said, the differential in price on the market between barn eggs and free-range eggs is not great at the moment, so whether a cost implication exists from his choosing to house would depend on the supermarket contract that he is tied into.

**Jim Fairlie:** Thank you. Sorry—I was reading my notes as you were speaking.

**Sheila Voas:** That is okay. I was trying to think whether I should have answered anything else.

**Jim Fairlie:** No, that was ideal.

One thing concerns me as a former pigeon fancier. I used to send birds to France all the time, and the birds were vaccinated to do such flying even when I was a boy. Does the vaccine prevent racing pigeons from carrying viruses?

**Sheila Voas:** Racing pigeons are generally vaccinated against paramyxovirus, which is a different virus to avian flu—they are usually not vaccinated against the latter.

**Jim Fairlie:** Right. It has been a while since I have raced pigeons.

**Sheila Voas:** They can still go to France and race. There was a problem with Brexit around that in that all lofts had to be registered. However, we now have a computer system called the pigeon loft, of all things—

**Jim Fairlie:** Original.

**Sheila Voas:** Yes. People can register on the system, which allows the appropriate certification to be produced in order to let the pigeons go. If the pigeons were in a zone of about 10km around an infected premise, then they could not go, but other pigeons could.

**Jim Fairlie:** Okay. One other thing that slightly concerned me earlier is an issue that I was aware of although the implications had not really dawned on me. The vast majority of turkey producers in Scotland are small-scale producers and they will buy poults for finishing. Where do those poults come from?

**Sheila Voas:** They come from hatcheries in England, in particular, but they will have been in Scotland for long enough that we are comfortable with that. When a turkey flock goes down, if it is a breeding flock that is laying eggs that go on to be hatched, tracings of people and products from the infected premises—be that meat, eggs, poultry litter or feed lorries—are carried out. Eggs for hatching are traced back to the hatchery: if they were laid at a time when we thought the birds might have been infected, they are destroyed; if they were not laid at such a time and the biosecurity in the hatchery is good enough, they are allowed to move under licence. We are comfortable that we have not brought infection here, and our production is seasonal, so I would not expect turkey eggs or poults to come to Scotland until next summer.

**Jim Fairlie:** That is helpful.

Going back to the implications of imposing housing orders, a lot of the stuff that we are hearing just now is about a demand to get the birds housed. Your comment about a factor of 44

versus a factor of 2 was telling. The housing order was the thing that was going to protect the birds. As a livestock keeper myself, I know that biosecurity is always the thing that we have to worry about. It is important that we get across the message that personal biosecurity is far more important than the actual housing, given that, as you say, there is a factor of 44 as against a factor of 2. Are we getting that message across adequately?

**Sheila Voas:** We can always do better, and we are trying to get the message across, but some people are just so worried about it that they are not hearing the detail. It is slightly counterintuitive that, if a producer has birds out on a range where there might be wild birds, housing them is not as protective as getting rid of a rodent problem or stopping wild birds flying into the sheds.

We can always do better. We are trying hard to get the message out, and I would welcome any help from anybody who can help with that, because we can always do more. We are in regular discussion with Robert Thompson, Penny Middleton and others from NFUS, and I also speak to the British Poultry Council, the British Egg Industry Council and the British Free Range Egg Producers Association. In addition, we try to get the message out to backyard keepers, but they are by far the hardest group to get to, because there is no body that disseminates information to them.

**Jim Fairlie:** Okay. My final question is this. If the Government imposed a housing order, would that in itself protect the free range status? I will clarify my thinking here. If you do not mandate an order to house birds, but producers choose to house birds, they would lose their free range status after a few days. If you mandate producers to house the birds, would they maintain their free range status?

**Sheila Voas:** Yes—that is the key difference. If Government requires the housing of birds, free range status can be protected for 16 weeks. A laying hen usually has a lifespan of 60 or 70 weeks, so that is only a small part of it. For broiler crops that are finished within four to five weeks, a producer could potentially have two or three crops of birds that have never been outside and are still marketed as free range. Again, there is a balance to be struck. Housing is not the only answer, but there is a time and a place for it.

**Jim Fairlie:** The problem, from the Government's point of view, is that housing is not necessarily the thing that is going to stop the spread of the outbreak.

**Sheila Voas:** It is not; that is exactly the point. It is not a silver bullet to stop the spread of an outbreak, and it does not come without concerns

about welfare. Birds that have been used to going outside and are suddenly cooped up will do a lot of feather pecking and damage themselves when they do not have the same free access.

I have forgotten what the third point was, but that is probably enough.

**Jim Fairlie:** Yes, that is probably it.

**The Convener:** For clarification, if there is a mandatory housing order, are you saying that the free range status would or would not change?

**Sheila Voas:** It would not change for 16 weeks, which is four months.

**The Convener:** Okay, so there is an extension to what the period would be if the birds were voluntarily housed.

**Sheila Voas:** If producers voluntarily house birds, they can do so for a few days on the advice of their own vet, but they cannot house for a prolonged period and keep their status.

**The Convener:** Thank you. That is a good clarification.

**Beatrice Wishart:** I have a very short question. When you are balancing the question of whether or not a housing order is appropriate, what weight do you put on the implications that it would have for producers and ultimately on the supply chain?

**Sheila Voas:** Ultimately, I make the decision on disease prevention, because that is what the legislation says. If Government requires housing to prevent disease, the status may be maintained. I cannot make a decision on anything else, but, of course, it is at the back of my mind. My heart goes out to producers at the moment; they are having a really horrible time not just with avian flu but with cost increases, contracts and other things.

**Beatrice Wishart:** Thank you.

11:15

**The Convener:** I have a final question, which I hope you can answer. I understand that there has been an easement of marketing rules in England, and I think that there is a derogation that we will be dealing with on 14 December, which would allow the early slaughter and freezing of turkeys and geese, with those products being defrosted before being put on the shelves. We will be considering that, which is one intervention.

When it comes to compensation, at the moment, there are questions about whether the compensation rules around birds being slaughtered are satisfactory, and whether those payments should be made prior to a cull being carried out or afterwards to ease cash flows. We have also placed a lot of emphasis on biosecurity. Should there be support for businesses that need

to put in additional biosecurity, in order to protect the national flock rather than just the individual businesses? Is that something that Government should be considering?

**Sheila Voas:** That is a really difficult one because the disease does not spread from one flock to another. The fact that your neighbour has gone down does not put you at significantly increased risk. Ultimately, biosecurity is something that people should be doing for themselves to protect their own birds, whether those are five birds in the back garden that you think of as pets or half a million birds. It is in the producer's gift to do it, but it is also to his advantage.

On the point about freezing, that was an easement that was put in first in England to allow turkey producers, in particular, to slaughter early and market. The same is happening here for a prescribed period—I think from 28 November to 14 December—to ensure that turkeys are available. It is unlikely to have a major effect here due to the small production that we have.

On compensation, Scotland has always had a different compensation policy to England. In Scotland, we pay compensation at market value from the point at which I confirm disease. The market value is assessed by looking at the price paid for birds over the past couple of months and averaging it. We are actually in a better position in that regard.

By paying from the point of confirmation, which is the point at which the owner has no further control over their flock, we incentivise early reporting, because we do not pay for birds that have died before confirmation.

**The Convener:** That is helpful. We have three very short supplementary questions. We have run out of time, but I will go to Mercedes, then to Rachael and then to Jim Fairlie.

**Mercedes Villalba:** My questions are on a new topic.

**The Convener:** They need to be final, very short supplementaries.

**Mercedes Villalba:** Okay. My questions are on climate change. It has been said that climate change is bringing wildlife into closer proximity to human settlements, which increases the likelihood of diseases such as Covid-19 among human populations. I would be interested in hearing whether there is a similar increased risk with diseases that affect animals, such as avian flu.

**Sheila Voas:** The short answer is yes. Climate change is changing the patterns of migration, in particular, which means that we humans are now either coming into contact with species of animals that we would not have previously or we have longer contact with others. The particular concern

is not avian flu, because it is particularly a disease of the cold and the wet, and climate change is likely to result in the temperature going up. Avian flu is not a good example, but diseases such as West Nile disease, which is spread by midges and mosquitoes, could have a range that extends further north as the climate warms up and habitats become suitable for other species.

**Mercedes Villalba:** What are the long-term measures or mitigations that the Government is looking at to make our animal populations more resilient to climate change?

**The Convener:** That question opens a whole new can of worms that is not related to avian flu. I suggest that you to give us a very brief response, Sheila.

**Sheila Voas:** We are monitoring what is going on elsewhere in the world so that we have early warning. We can vaccinate against some of the diseases but do not routinely do so because they are not a problem here. Vaccination could be available and new vaccines are being developed all the time.

Was that brief enough?

**The Convener:** If you thought that there was more that you could add, I am sure that the committee would welcome your writing to us to highlight some of the main concerns that you have.

**Sheila Voas:** There is probably not a lot else.

**Rachael Hamilton:** I have a question on the current biosecurity measures. You mentioned that whether somebody has five, 500 or 5,000 hens—whatever it might be—there are fines for not adhering to biosecurity measures such as vermin control. Is that correct?

As you said, the measures are successful only if everybody adheres to them. Is there any way of monitoring that? How is it monitored, even if avian flu is not prevalent in a particular region of Scotland? To whom does one report an incident of avian flu? Is it reported through the Department for Environment, Food and Rural Affairs or is there a specific Scottish helpline?

**Sheila Voas:** No, it is a helpline that DEFRA administers for the whole of Great Britain.

**Rachael Hamilton:** Do you monitor that?

**Sheila Voas:** Yes. DEFRA records the data and arranges people to take samples but we get weekly reports from it on how many there are, where they are, what has come back positive and what has come back negative.

**Rachael Hamilton:** Are the numbers of reports higher than the numbers of cases that you have

found? Are there a large number of reports from people who are worried about avian flu?

**Sheila Voas:** There are a larger number of reports than cases that have come back positive, because the reporting system is set up to advise us about the risk to poultry. Once we know that greylag geese on the Solway are positive, we will not sample more of them for a period of, usually, a couple of weeks because we know what the problem is there. Therefore, there will always be more reports than are sampled. The helpline is about sampling and understanding where the disease exists and in what species. It is not about collecting carcasses.

**Rachael Hamilton:** You can imagine that my next question was going to be about the time lag between the reporting and the result, but I will not ask that.

**Sheila Voas:** It is only a couple of days.

**Jim Fairlie:** Sheila, you have been taken through the mill today. Hats off to you.

Has egg production in the country been affected by bird flu?

**Sheila Voas:** Yes, but not as much as it has been affected by price increases and people choosing not to restock when their egg-laying flock is depopulated. I do not have the Scottish figures, but I believe that the GB figures show that the number of hens on the ground is about 1.7 million down from where it was last year purely because people have chosen not to restock because they lose money on egg production. By comparison, avian flu has killed perhaps 1 million birds but a lot of the people whose flocks were affected are going back into production.

**Jim Fairlie:** So, the reports that avian flu is causing the egg shortage are not entirely correct.

**Sheila Voas:** They are not wholly accurate. There is an effect from avian flu but it is not the primary problem. It is a contributing factor.

**Jim Fairlie:** The primary problem is price to producer.

**Sheila Voas:** Yes.

**The Convener:** This is a yes or no question. What role do local authorities have as public health bodies? Do they have a role in inspecting, or where does that role fall?

**Sheila Voas:** Yes, they do. The response to avian flu is a partnership between lots of different bodies. The local authorities are the enforcement agency but, when there is an outbreak, they also help with foot patrols because—I did not say this—we do foot patrols around infected premises to find out what other poultry are there and ensure that it is healthy. That is one of the roles that local

authorities take on but enforcement is their main role.

**The Convener:** Do you have any concerns about the capacity within local authorities to carry out those requirements?

**Sheila Voas:** Our experience is that local authorities are prioritising the work, but they are always telling us that resource is stretched and they have to do it at the expense of something else.

**The Convener:** Sheila, you mentioned that there might be issues with getting the message out. I suggest that, given the considerable interest that there is in avian flu, your contributions at the meeting will have assisted in doing that. Thank you very much for your detailed and fascinating evidence. We all appreciate it, and I am sure that the wider community will do as well.

**Sheila Voas:** Thank you all.

## **United Kingdom Subordinate Legislation**

### **Plant Health (Amendment etc) (EU Exit) Regulations 2020**

11:25

**The Convener:** We will now consider a consent notification relating to a UK statutory instrument. If members have no comments on the notification, are they content with the Scottish Government's decision to consent to the provisions set out in the notification being included in UK, rather than Scottish, subordinate legislation?

**Members** *indicated agreement.*

**The Convener:** That concludes our business in public and we move into private.

11:26

*Meeting continued in private until 12:08.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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