



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Rural Affairs and Islands Committee

**Wednesday 8 November 2023**

**Session 6**



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**RURAL AFFAIRS AND ISLANDS COMMITTEE**

**28<sup>th</sup> Meeting 2023, Session 6**

**CONVENER**

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

**DEPUTY CONVENER**

\*Beatrice Wishart (Shetland Islands) (LD)

**COMMITTEE MEMBERS**

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

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

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

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

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

\*Rhoda Grant (Highlands and Islands) (Lab)

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

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Libby Anderson (Scottish Animal Welfare Commission)

Iain Batho (Crown Office and Procurator Fiscal Service)

Chris Brown (Asda)

Susan Davies (Independent Taskforce on SSPCA Powers)

Bob Elliot (OneKind)

Glynn Evans (British Association for Shooting and Conservation)

Ross Ewing (Scottish Land & Estates)

Jessica Findlay (NatureScot)

Chief Superintendent Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals)

Conor Kelly (Scottish Gamekeepers Association)

Chief Inspector Kevin Kelly (National Wildlife Crime Unit)

Calum Kippen (Scottish Gamekeepers Association)

Detective Sergeant David Lynn (Police Scotland)

Ross MacLeod (Game and Wildlife Conservation Trust)

Penny Middleton (National Farmers Union Scotland)

Ian Thomson (RSPB Scotland)

Sophie Throup (Morrisons)

**CLERK TO THE COMMITTEE**

Emma Johnston

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Rural Affairs and Islands Committee

Wednesday 8 November 2023

*[The Convener opened the meeting at 09:00]*

#### Decision on Taking Business in Private

**The Convener (Finlay Carson):** Good morning, and welcome to the 28th meeting in 2023 of the Rural Affairs and Islands Committee.

Before we begin, I remind all members using electronic devices to please turn them to silent.

Our first item of business is a decision on whether we should take the review of evidence heard during our pre-legislative scrutiny of future agriculture policy in private at our next meeting. Do we agree to do so?

**Members indicated agreement.**

## Future Agriculture Policy

**The Convener:** Our next item of business is an evidence session on future agriculture policy with representatives of major supermarkets in Scotland.

First, I put on record that we asked Tesco, Co-op and Aldi to join us for the session and clearly explained the reasons behind having it. Nonetheless, very disappointingly, those three supermarkets declined our invitation.

I am delighted to welcome to the meeting Chris Brown, who is the sustainable business director at Asda, and Sophie Throup, who is the technical and sustainability director of manufacturing at Morrisons. Thank you for joining us.

We have approximately an hour for questions. I will kick off. What is your view of how the food supply chain typically operates in the United Kingdom and the role of major retailers such as yourselves in it? I will kick off with Chris Brown.

**Chris Brown (Asda):** I would think that the overall perspective would be that it is a very successful food supply chain. The UK food industry has faced several challenges in the past 20 years, from bovine spongiform encephalopathy to foot-and-mouth disease, and yet, in general, the food shelves in our shops have been well stocked and products have been available. Although there might not have been a complete range, I am sure that you, as policy makers, have not been challenged about the availability of food in most cases.

We have proven to be very robust and responsive to what is happening in the supply chain and to changes in customer purchasing habits and patterns. We also managed to get through a global pandemic.

**The Convener:** Will you elaborate on how the food supply chain operates in practice, from the field to the plate?

**Chris Brown:** That varies according to the supply chain. In some instances, such as in relation to livestock, we operate through our processor, which, in Scotland, is ABP, with its plant at Perth. It takes food from farmers who supply deadweight. In some instances, it comes in through auction markets.

If we take the example of potatoes, Asda operates its own potato packing plant, which is supplied by two major grower groups, the Scottish Potato Co-op and Tay Growers, which make up more than 90 per cent of the supply into that packhouse. Overseas, we deal with farmer co-operatives and the large brands. There is no one size that fits all in that regard.

It also depends on what the supply chain and the suppliers want. We try to adapt to meet their requirements.

**The Convener:** I will move on to Sophie. Can I check how to pronounce your surname—is it “Thrope”?

**Sophie Throup (Morrisons):** It is pronounced “Throop”.

**The Convener:** Thank you. Sophie Throup, Will you give Morrisons’ perspective on the supply chain, please?

**Sophie Throup:** Certainly. At Morrisons, we are a little bit different in that we have a big manufacturing business in Scotland as well as supermarkets. One of our manufacturing sites is in Turriff, Aberdeen, where we take in beef and lamb. About 70 per cent of that beef comes from within an hour’s drive, and I think that the numbers are similar for lamb.

The structure that we have at Morrisons means that we buy directly from about 900 Scottish farmers. Beef and lamb then goes directly to our own plants. We source potatoes from about 34 farms through six groups. Those go south of the border to be packed in our processing and packing facilities.

However, we do not manufacture and process everything ourselves. We have long-standing relationships with growers, such as Duncan Farms, which supplies us with all our Scottish eggs. Arla, in Lockerbie, supplies our milk and Lactalis supplies our cheese. We try to think about long-term relationships with companies on the ground, and we use our own processing facilities where possible.

**Alasdair Allan (Na h-Eileanan an Iar) (SNP):** I share the convener’s disappointment that some of the supermarkets have chosen to not turn up. That is not something that I can hold the witnesses responsible for, and I will not.

The figures that I have show that 60 per cent of the market for the food that is being sold in the UK—rather than just Scotland—is in the hands of five retailers. However, in many towns across Scotland, you could replace that number with two or three retailers. Can such a situation go on forever without people asking whether it is entirely healthy?

**Chris Brown:** That strikes me as being data that is related to the grocery market, not the food market. I should have said that one of the things about the food industry is that it is incredibly dynamic and progressive. For example, we have home delivery services and there has been a growth in internet retailing. One third of calories are consumed outside the home and there is also an enormous food market in public procurement.

The retail market is very competitive and it is heavily scrutinised. We are open to that scrutiny and we comply with the grocery code, which applies to supplier relationships.

**Alasdair Allan:** How does the market share compare with that in other European countries?

**Chris Brown:** Off the top of my head, you could look at Australia, where there are two major supermarket chains—Coles and Woolworths.

**Sophie Throup:** To add to that, there is a lot of competition within the grocery sector, which benefits consumers. As we are in a cost of living crisis, we are extremely mindful of how customers can afford to access good British food. At Morrisons, we have a 100 per cent British sourcing policy, which means that we source 100 per cent British fresh meat, milk and eggs and produce when they are in season. In Scotland, we are trying to think about that from a Scottish focus, so 100 per cent of our milk and eggs are Scottish, as well as a high proportion of our beef and lamb. Competition is important for consumers and it is our role as retailers to have a healthy balance. We are trying to support farmers and growers successfully and fairly. For us, a successful food service means having a resilient grower supply base, as well as being mindful of how we can keep food accessible for customers.

**Beatrice Wishart (Shetland Islands) (LD):** Good morning. Are there differences in how the food supply chain typically functions for the main agricultural sectors, such as fruit and veg, meat, dairy and cereals?

**Chris Brown:** The simple answer is yes. We should have said that Sophie Throup and I are in a strange position in that our supermarkets own their own processing facilities. Asda owns its own fruit and vegetable packing houses, and Morrisons has a bigger range of packing houses. Those who supply us come under the auspices of the groceries code, which would be different for other organisations, which might use intermediaries—we are working to a higher standard than some of our competition. That being said, Asda’s milk and dairy products come from Arla, as do Morrisons’, as Sophie Throup said. I have described our potato supply chain. For some commodities, such as wheat, the market becomes much broader and there is a wider range of markets, intermediaries and processors, which makes the supply chains more complicated.

**Sophie Throup:** To add to that, some of that is seasonally dependent, especially the fruit and vegetable sector. Sixty five per cent of Morrisons’ vegetables are UK grown and others are imported. However, we are trying to understand how we can have full, all-year-round supply from the UK and Scotland where possible.

For example, 100 per cent of the swedes for the whole of the UK come from Scotland, and we have moved this year to 100 per cent of our leeks coming from Scotland when they are in season. We are always very conscious of trying to buy locally, from Scotland or the rest of the UK, but we are also mindful of what does and does not grow here. Obviously, that has some effect, but it is important that our customers are able to shop locally.

**Jim Fairlie (Perthshire South and Kinross-shire) (SNP):** Good morning. Thank you very much for turning up—it is very decent of you to have done so, given that the rest of your competitors are not here.

You both talked about your commitment to Scottish producers, which I absolutely applaud—that is great. There is potential to talk about the branding of Scottish produce, but, more important, I hear constantly about downward pressure on producers being driven by the supermarkets' power, to get them to provide their products more cheaply, with less security in their contracts and so on. We are constantly supplied with that information. Do you accept that your commitment to Scottish produce means that you also have a commitment to the Scottish people to ensure that there is a resilient food industry in Scotland?

**Sophie Throup:** Absolutely—we do. As we said, it is really important for us to be able to supply such products to our customers, and we can do that only if we have a resilient supply base from which we can buy. We pride ourselves on forming long-term relationships, and many farmers who come into our depots, abattoirs and other facilities have been supplying us for 20-plus years.

We are mindful of trying to make adjustments and provide extra support on prices, because we know that the situation has been incredibly hard. We are also farmers at home, so we know the pressure that farming has been under for the past couple of years and beyond.

On supply, we think about not only the market price but where we can go on to do more. For example, for the past year, we have been doing a shared-risk initiative on root vegetables and potatoes. At the moment, while we see whether it works, the initiative involves only a small number of farms, but we are underwriting the cost of any risk relating to potatoes and whether any costs go down. If there is a benefit, that is shared between the growers and Morrisons.

**Jim Fairlie:** I am glad that you have brought up that important point. Soft fruit growers have witnessed tunnels lying empty and plants being ripped up, shredded and mulched because the growers can no longer make money from them. My understanding is that, although the increase in

the shelf price was about 11 per cent last year and about 14 per cent the year before that, the price that is paid to the producer has remained static or has been pushed down. Will you roll out that shared-risk initiative to all the sectors that you work with?

**Sophie Throup:** We listen carefully to all our suppliers when we have discussions with them, but supermarkets' margins have also been under increasing pressure. For example, Morrisons' margins have dropped every year for the past 10 years as we have tried to keep paying a fair price to farmers and to other suppliers and growers while maintaining fair prices for customers.

The market is highly competitive. We know that, if we put our prices up out of line with those offered by other retailers, customers would vote with their feet and choose to walk elsewhere. We are conscious of trying to keep a balance between the two. It is important that we ensure that we have producers in the future, so that we can still source, where possible, British and Scottish products. It is not in our interests for that industry not to be there in the future.

**Jim Fairlie:** Okay, but do you accept that we have only one pig processing plant and only one chicken processing plant left in the country and that the pressures will continue to grow? Do you accept that, if we want to have a resilient industry in Scotland, your group of organisations has a vital responsibility to maintain a long-term supply chain?

**Sophie Throup:** We absolutely accept that there needs to be a fair price that provides a decent return for everybody, so that people can continue to invest. It is not the job of supermarkets alone to do that, but we want to support futures in the long run.

We have a pig abattoir south of the border, so we do take pigs south of the border. For chickens, the situation is interesting. We, of course, use that abattoir, but we also do other things. For example, we often get feedback from our egg processors that Scotland would also really benefit from its own end-of-lay hen abattoir. At the moment, laying hens, which are Royal Society for the Prevention of Cruelty to Animals assured, have to travel all the way down to Bradford from Scotland to be processed, which seems unsustainable. There are areas in which it is a question of working together to understand when other elements can help the supply chain.

09:15

**Jim Fairlie:** Do you want to come in, Chris?

**Chris Brown:** I will build on that quickly. Sometimes, in a meeting, I ask people what

number they think a supermarket looks at first when it is trying to work out whether it has been successful that day. Usually, they say that it is related to profit or something less polite, but I tell them that it is about availability and whether our orders were fulfilled by our suppliers. If they are not fulfilled, we end up with spaces on the shelves. It does not matter what the quality, branding or flavour is, because that is only a concept to a customer. The customer has to buy a physical product. We have to work as a supply chain to deliver that on the shelf day in, day out. If we are not doing that right, that is because there is an interruption to the supply chain, so we have lots of conversations.

Obviously, with the recent energy price spikes, we have had a lot more conversations about the fact that we needed to improve the cost price for suppliers because, otherwise, we would not get the supply that we ordered. For example, 20 per cent of the cost of a potato can be energy, because it is stored in places that need to be kept chilled. Therefore, we have to work with suppliers, but we are still an attractive proposition. Sales of local produce in Asda stores have gone up by 30 per cent and, next year, we will list 240 new Scottish lines. That is great because, as I said to the convener, that shows the positivity in the food industry, which is generating new products that customers want to buy in Scotland.

**Jim Fairlie:** I absolutely accept that you guys are the place to go and buy our food, but that needs to be on the basis that the guys who supply it get a fair kick of the ball.

**Ariane Burgess (Highlands and Islands) (Green):** As Jim Fairlie has touched on the area that I wanted to cover in this section, I will ask another question.

We have heard some stakeholders calling for fruit and veg to be subsidised by the Scottish or UK Government. Indeed, a paper from Warwick university found that doing so would cost taxpayers roughly £2.5 billion a year, compared with the £6 billion a year that is spent on treating illness related to poor diet. I am interested in hearing your views on that. Would supermarkets support the Government subsidy of fruit and veg?

**Sophie Throup:** That would be an interesting concept. Obviously, we are incredibly mindful of our customers' diets and, although we have not set any targets to, for example, alter the balance of what customers buy, we have started a lot of activity—and, indeed, want to do even more—to encourage customers to eat more fruit, vegetables and whole foods and to ensure that they know what to do with them once they have bought them. We produce fantastic whole foods. Subsidising fruit and vegetables is maybe a bit more straightforward, but it is also important that

customers understand how to prepare and eat them, and that would be a good place for Government help.

**Chris Brown:** Such a mechanism would need careful consideration. How is it going to operate? In general, supermarkets push fruit and veg; it is the first area of the store that you hit when you come in. In most stores, when you are beginning to think about what you will buy, you are presented with the fruit and veg. That said, although it is the prime selling opportunity—and although I hope that it means that people make the right dietary choices—the fact is that people are still individuals.

**Kate Forbes (Skye, Lochaber and Badenoch) (SNP):** I, too, thank the witnesses for being here.

What we are scrutinising is an agricultural policy bill. Essentially, it is a bill to replace the common agricultural policy, so it is very much focused on subsidy—or some other word for that kind of financial support.

However, I want to go back to the issue of how you agree contracts with farmers, co-operatives and wholesalers, and what the process looks like. Jim Fairlie has already touched on the point about the percentage of the profits that go back to the producer. Some research from 2022 by the food charity Sustain suggested that on five everyday items—apples, cheese, beef burgers, carrots and bread—farmers sometimes make less than 1 per cent of the profits. That will have a direct bearing on where, for example, a subsidy should be set in order to sustain those livelihoods. How, therefore, do you reach agreement on pricing, volume and timescales?

I was also heartened to hear that some of your relationships go back 25 years, which suggests to me that they are mutually beneficial. Is that the norm, or is that rare?

**Sophie Throup:** These things are done in different ways. We very much think about a market price when we set prices. Of course, prices can go up and down and ultimately, our suppliers are, in some cases, free to choose where they want to go. It depends on the supplier and what they are supplying; dairy contracts, for example, tend to involve longer supply agreements with later end points.

However, not all the suppliers with whom we have worked for a long time—say, through the abattoirs—have a contract that guarantees that they will send their beef or lamb to us. They are free to send it somewhere else, although most of them will continue to send it to us, as we have worked with them for many years.

Therefore, when we set prices, we are very conscious of market pricing, but we also think

about whether there are any extra areas that we are asking farmers to look at and for which we might be able to add an extra payment. For example, we have initiatives on additional welfare and sustainability measures in our milk supply chain, for which we pay above the market price, and that additional support enables the farmers to go and do more.

Similarly, we are quite flexible in our approach to arrangements. In the context of policy and thinking about future areas, we are doing an awful lot with farmers on net zero agriculture and sustainable ways of working. In such cases, we have spent a lot of time investing in farmers having supported carbon footprints, soil carbon testing or other things that will benefit their business but the cost of which they are not beholden to meet. We are trying to work in partnership with our farmers as we take things forward and think about pricing.

When we think about volumes, we think about what it is that we can sell in the stores. From a Morrisons perspective, our manufacturing business sells not only to Morrisons itself but to external customers, too, and that includes quite a lot of export. Therefore, we are mindful of the markets that we are selling into and those that we are gearing up for. As part of that, we will work with other organisations such as Quality Meat Scotland, which can help to open some of those doors and facilitate some of those opportunities for us.

When it comes to pricing and volume, we are very conscious of the need to hit the right balance, and it is very difficult to do that. This time last year, things were tricky for the pig sector—as it had been further back—because of an oversupply of pigs in the market. That is part of the reason why the pig price was so depressed. We therefore took the very hard decision, which involved giving all the right notice periods to our pig farmers, to reduce the number of pigs that we had coming into our business, so that we could balance the supply a little more and help stabilise the price. We are very conscious of our role in demanding the right numbers to ensure that we do not flood the market with more than is required.

**Chris Brown:** Unhelpfully, my answer is that it depends.

**Kate Forbes:** That sounds very political.

**Chris Brown:** The supply-and-demand side of things is huge. For the big products in Scotland, we will use the QMS indices for beef, lamb and pigs. Perhaps I can take a slightly broader view and look at, for example, broilers and eggs; in that area, there is not only a price, but a feed price tracker, which we have operated since April 2022 when we started to see massive volatility in

commodity markets. Some organisations, such as some of the Spanish co-ops, like to contract for half the volume and then see what the spot market does with regard to the other half. We are happy to accommodate that. In other areas where there is particularly intense price volatility, such as the catching sector, contracts are agreed on a three-monthly basis.

**Kate Forbes:** I have a tiny supplementary question. It is well known that farmers typically make a loss without Government subsidy. Can you ever envisage a situation in Scotland in which farmers are sufficiently recompensed by the market so that they do not make a loss?

**Chris Brown:** Again, I think that it depends. We talk to a lot of farmers, and some will say things in private that they will not say in public. I appreciate that there are various farm income studies that show the majority position, but the fact is that there is a range of people and a range of performance.

An awful lot of farmers produce things and then expect that produce to be sold, and I think that, going forward, people will need to think about where they will market their produce. That process was set in motion back in 1990, when the MacSharry reforms came in, as intervention came out of the CAP and things became much more market related and volatile. I think that even the Curry commission about 20 years ago said that HM Treasury should be looking at price volatility measures, a bit like the way in which the US used insurance to manage things.

The Government has levers that it can use if it wants to intervene in marketplaces. If it does not intervene, we will end up with supply and demand being set and shrinkage of production as a result. If that happens, as I think Mr Fairlie rightly pointed out, we lose critical mass, and that is when you lose processing capacity and end up in a bit of a doom loop.

**Ariane Burgess:** A new environmental assurance scheme was recently proposed under the red tractor scheme, but farmers have raised concerns about the new standard incurring higher costs and supermarkets selling their products at a premium, but farmers not receiving a premium price. It is a similar situation with organics; such products have a market premium, but the Soil Association and others have proposed that more of that premium should find its way back to farmers. I understand that some supermarkets would pay farmers a higher price but they feel that they cannot do that while their competitors keep their prices down. Would your companies welcome regulation in this area, such that farmers who produce a premium product to a higher environmental and animal welfare standard would

be guaranteed to receive a premium on the price from all the supermarket buyers?

**Sophie Throup:** I do not mind kicking off on that question, but I should make it clear that I am the British Retail Consortium member on the red tractor board.

As you probably know, the red tractor greener farms commitment was proposed as a voluntary, not compulsory, module. When it was being looked at, we, at Morrisons, said that we were thinking about how we could pay a sort of subsidy to farmers for taking the additional steps required by the environmental module. However, that sort of thing would be up to individual retailers, as the price is not set by the red tractor scheme.

That said, schemes such as the red tractor environmental module ensure consistency. An increasing amount of transparency is becoming required in the food supply chain—and probably rightly so—as retailers and processors are increasingly obliged to report their data. Understanding how we get that data from farms as a primary data source in a consistent package is really important; otherwise, we will not be comparing apples with apples. That is why such schemes are very helpful.

Obviously, another benefit of red tractor and such schemes is that they go across a volume of supply. The fact—and this is certainly the case for Morrisons—is that organics will only ever be a relatively small amount of product that is taken in by customers. Our organic sales are only about 5 per cent of everything that we sell, because our customers tend to be much more value focused. However, for those customers who choose to buy organic, we have those products available, and there are associated premiums for the farmers that produce them.

There are other schemes that we have done ourselves. For many years now, we have been paying our egg farmers to take additional steps for the environment, such as additional tree planting and the installation of bee cover or bee strips, and we ask our customers to pay a little more for those eggs. With our for farmers scheme, customers choose to pay a little bit extra for those products, and that money goes straight back to the farmers to help them invest in that activity. We are trying to make schemes and programmes available for customers to support, so we can pass that money back down to farmers.

**Chris Brown:** This area of the market is very dynamic at present. Asda is converting all of our produce, both domestic and overseas, to the LEAF—or linking environment and farming—system, which is an integrated farming module. We have not taken a perspective on the red tractor

green module yet, because integrating the LEAF system is taking up a lot of our time.

As for organics, our position is very similar to that of Sophie Throup. Organic farmers receive a premium, and that premium goes through to the retail price. At present, though, organic is in decline.

**Ariane Burgess:** It is great to hear that both of you are giving farmers that premium price, but do you think that we could go further if there were regulation across the board that meant that everybody had to do it? By that, I mean regulation in general, leaving organics aside.

One thing that you have talked about this morning is the challenge around the competitive market margins. If there were regulation in certain situations that could help all of you take that step together, do you think that that would help us move things along? We have incredible climate targets, and agriculture plays a big role in reaching them.

09:30

**Chris Brown:** The challenge, if you did that sort of thing domestically, would be in how you would regulate imports, because you might end up with a very great differential between the import price from somewhere that did not have to meet those standards versus the price from domestic producers, given what they have to do. It is a conversation that we have all the time. You would be penalising domestic producers and tying both hands behind their backs, while the consumer, who is very time and finance restrained, will make their own rational choice. You might well end up shrinking the market for domestic product.

**Sophie Throup:** Something else that we are very mindful of is that when, as you would imagine, we ask consumers lots of questions about, for example, sustainability, the environment and animal welfare, they say that they want all of those things, but most of them do not want it to cost them any more. Therefore, we are mindful of how we can do both, as much as we can, but we are also putting in place certain schemes and programmes for customers who are able to make a bit more of an investment in their food through, for example, the “For Farmers” scheme or organic schemes.

**Chris Brown:** I have one very quick comment, which is this: do not forget the caterers. You might put chicken prices up to £10, but if someone can go and buy a rotisserie chicken from their local convenience store for £5—cooked and sorted—that is where they will go.

**The Convener:** I will keep to questions in the same vein and move to Alasdair Allan.

**Alasdair Allan:** Can you say a bit more about your work with farmers and others to ensure high standards in environmental and animal welfare? You just touched on that, but will you comment specifically on how that is scrutinised, reported and assessed by you?

**Sophie Throup:** As I said, Morrisons has a British sourcing policy anyway, and our core standard for all of our UK production is that we go for a red tractor mark or QMS product. Those are our baseline standards. That also means that we are able to have a standard level of audit and reporting.

On top of that, in certain sectors we have products that are assured by RSPCA Assured—in particular, eggs and things such as outdoor-bred pork, for example. Many of our vegetable growers are already Linking Environment and Farming, or LEAF, accredited for other supermarkets—we do not have that all to ourselves, but we have the benefit from it, because they supply multiple other retailers.

On top of that, we are very mindful about trying to understand where we can ask farmers to do more. I was describing earlier that we have various initiatives that we are doing through our “For Farmers” range of milk and eggs, through which money will be directly returned to farmers who are looking at environmental and animal welfare step-ons in sustainability.

We have set ourselves very ambitious goals in supporting agriculture to get to net zero. For that, we have been trying to take very practical steps to bring farmers along the road on carbon footprinting and—which is more important—on what to do with the information when they have it, and how to think about an action plan and how it could benefit their businesses overall.

We are trying to do various things, from applying standards to using various programmes and ways of working with farmers to encourage them towards the next stages of sustainability, which is, ultimately, what many stakeholders in the food industry, including our customers, are looking for.

**Chris Brown:** Asda uses the red tractor logo as the benchmark standard, and we require that overseas product be benchmarked against it, with adaptations for local positions. We run farmer groups, as Sophie Throup does, in which we invest in groups of farmers looking at best practice and trialling things. None of that is about exclusivity, because the field is a very open laboratory and we want people to talk.

We have been working with Syngenta and have planted 1,000 cover crops on our potato headlands. I would make a policy direction move on that. Although those crops look fantastic—they are beautiful flowers that look terrific—they are not

there as horticulture. The fields are not flower beds, so we also pay to have an entomologist sample them to see what biodiversity is being generated. I can give you the breakdown of 150,000 insects; that is apparently what entomologists do in the winter. We are building on that by asking whether we can take the labour out of it. Are there laboratory techniques? Are there new opportunities to get that approach down to farm level?

I think that pretty well all the retailers are engaged in best-practice development and are supporting agriculture.

**Alasdair Allan:** You have mentioned some of the things that you are doing on that front. Clearly, farmers are committed to environmental and animal welfare aims—as, I am sure, you are. You mentioned some interventions, but the big influence that you have is, of course, the price that you are prepared to pay. How do you ensure that the price that you are prepared to pay is having the right influence and is not creating perverse incentives or pressures that are difficult for farmers to reconcile with the high aims?

**Chris Brown:** There is a constant dialogue. We have a potato buyer who is based in Scotland who visits the growers and hears what is being said. Having been through the energy costs spike over the past two years, we have proved to be adaptable—as did all the retailers. We were hearing from farmers who were saying, for example, “Look—if we try to deliver the contract we agreed three months ago, I’ll go bust next month.” That would not help anybody, so we had to change and be adaptable and we had to listen to the concerns of our suppliers. I would push back on that question and say that the shelves are full, I have not got many rulings against me from the groceries supply code of practice—fingers crossed, touch wood—and we are trying to do a good job.

**Sophie Throup:** Morrisons is equally mindful of making sure that we are paying a fair price to the farmers and supporting them in the more holistic aims, as well. We have also introduced things to support new entrants to farming. For example, we have 1,000 head of cattle in our elite beef scheme in Scotland, which is where we take from the dairy herd beef that we pre-pay for—we pay for the cattle at the end of rearing, put them under farms to contract rear them and then we knock off the price difference when they come into the abattoir. We are constantly trying to think of different ways to fund growth and development for farms and to be very practical in our approach.

There is a real tension in trying to understand how to maintain food prices that customers can afford. As, I am sure, you are aware, there is some real food poverty in the UK, which is incredibly sad

to see. We want to do our best to ensure that all customers can afford to access healthy and sustainable food, but we also need to make sure that things will not fall over at the other end of the supply chain. Listening very hard and being able to adapt and regularly change things such as supply payments is really important, so that both ends of the spectrum feel that they are being listened to.

**Chris Brown:** It might surprise you to hear that we turn down a lot of commercial offers on the ground that we do not believe that they are viable in the long term. Someone might come in and offer us a price that has been fed down through their supply chain but we say, “We don’t think that’s going to survive. We think you’ll go bust, then we’ve got empty shelves.” As I said to the committee earlier, that is the last thing we want.

**Jim Fairlie:** You have raised some really interesting stuff; it has been a brilliant session. Sophie Throup talked about the standards. This is a kind of follow-on from the last question, but it will also lead on to my next one. Do you remember the Scottish Quality Beef & Lamb Association? I have to declare an interest: many years ago, I was a sheep and cattle farmer. At the time, the Scottish Quality Beef & Lamb Association was given as an incentive: we were told, “Join this—we’re going to pay you extra.” However, that incentive became a stick. Given where we are now, at what point do you see the incentives that you are encouraging becoming sticks?

I want to ask about carbon credits, in particular, because that natural capital is owned by farmers—it is in their soil; it is theirs. Is that an incentive at the moment to supply you, to be part of your supply chain, that will later become a stick, in that if they do not give you the value of that carbon credit they can no longer supply you?

**Sophie Throup:** We are absolutely aware of the burgeoning emerging industry in carbon credits. The whole carbon market needs guidance and a rule book. As Chris Brown does, I go to huge numbers of farmers meetings at which carbon credits are talked about, but no farmer really understands what they can do with them because they do not know what the rules of the game are and what can or cannot be trusted.

However, from a very early stage, we have set out a sort of progression for farmers to understand how they can make themselves as sustainable as possible, and how we can help them to reach net zero. That is not done at the expense of biodiversity or anything else but is done in a holistic way, looking at things in the round.

We were very inspired by the National Farmers Union’s goal of thinking about net zero 2040 or 2035 and we wanted to encourage our producers

to do the same thing and to go after that. However, we have never said that that means that we want the credits that would therefore be sitting on someone’s farm. It is about how we can encourage and work with all the farmers in our supply chain to lower their emissions as far as they can and then increase the opportunities on the farms for carbon sequestration and carbon holding—which also have very good biodiversity impacts—so that those are as high as they can go, to enable the farmers to get to net zero.

That is not to say that farmers who are not at that point are out and are not allowed to come into the Morrisons supply chain. We know that our customers are looking for sustainable food, but a huge amount of pressure is put on us by some non-governmental organisations and groups to adopt a meat-reduction target. We do not think that that is the right thing for us. For us, the question is more about how we can make meat more sustainable and how we can make meat, as an excellent protein source for customers, accessible and sustainable and something that customers do not feel guilty into not buying—which reflects some of the narrative that comes through.

For us, it is a matter of supporting farmers to be robust and resilient in the future. They do not cover everything, but many ways of lowering emissions also involve lowering costs and being more efficient. How can we support farmers to get there, using the right skills, knowledge and tools to do the job? We are not here to do a dawn raid on carbon credits; we are thinking about how farmers can improve their own farms’ situation and, we hope, improve soil capacity for the future, too.

**Chris Brown:** We have only 20 minutes, so let me have a quick go at this.

**Jim Fairlie:** A very quick go. I apologise, convener.

**Chris Brown:** I would not touch this area with the dodgiest of bargepoles. There are a couple of reasons for that. The Department for Environment, Food and Rural Affairs has a group on food data transparency, on which the Scottish Government is an observer. One of its workstreams concerns eco-measurement. Last time I looked, there were four pages of questions. I do not understand for the life of me how we can set Government policy on something as important as food production for this nation when we do not understand the question we are posing ourselves.

I think that the whole area of carbon labelling has run way ahead of the science. I do not think that we have a true handle on carbon cycling, for example. We are going through the process, however, because it is what we have to do. I would point out that, if I put biscuit waste into an

anaerobic digestion plant, that means zero carbon, whereas if I put biscuit waste into a cow, which produces methane, all of a sudden that has all the carbon costs associated with it. Are we going to correct for that? How are we going to declare that? Will we put a carbon label on, so that the public can make a choice when they go into the shop? Let us do that—and put it on a kilo of cabbage and a kilo of beef. A kilo of cabbage is 90 per cent water, but a kilo of beef is only 30 per cent water. Are we going to correct for that? Do we want to correct for the nutrition that is in a kilo of beef, such as the amino acids and proteins, which we need, or do we just consider the bit of vitamin C in the cabbage? The questions are so big, but they have been ducked. We need to get a hold of all that.

As Sophie Throup said, it is a bit like the wild west, although I would point out that Clint Eastwood came into the wild west and shot the bad guys, but the bad guys are running the show at the moment.

**Jim Fairlie:** That is really interesting. We will have to have you guys back again.

**The Convener:** I am afraid we have to move on. We have only 15 minutes left and we still have quite a few questions to get through.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** Does the contractual process vary among agricultural sectors?

**Chris Brown:** Yes. As has been described, some of the Spanish growing co-operatives contract half of their volume and then spot-market the other half. For bananas, that is done on an annual basis, with a cost reduction for logistics costs and currency changes, so people can fit into that. The QMS market standards apply to beef, lamb and pork. There are feed-tracker contracts for broilers and egg layers. Generally, we will shift the contract or the arrangements, depending on what people want. We have been taking beef from ABP Food Group since 1965. Campbell's—I am sorry: I mean Glenrath Farms—has been supplying us with eggs for 25-plus years. I have been told off by John Campbell so many times about that.

The arrangements are part of a dialogue. The conversations are face to face—or Zoom to Zoom—but they form part of a greater conversation around supply and demand and the pressures that people are facing.

**Rachael Hamilton:** I have been looking at some of the statistics, and I was concerned to see that one in five farmers says that they have suffered a wasted crop because of cancelled orders. In such cases, 29 per cent of farmers received no explanation, and 29 per cent of them had not been paid in 30 days.

Some of the key concerns among farmers are that they want to sell what they have agreed to sell to supermarkets, they want to be paid what it was agreed they would be paid, they want to be paid on time, they want a longer-term commitment rather than a short-term one, for sustainability reasons, and they want to agree on fair specifications. However, it sounds as though Chris Brown is saying that supply and demand, affordability and other external factors are playing into the issue. Given the really challenging legislative demand on Scotland's farmers through the agriculture legislation, how can supermarkets look to a sustainable future and ensure that farmers have people to succeed them on their farms?

09:45

**Sophie Throup:** One of the points in your question was about payment terms. When we work with farmers and other small suppliers, including local food makers in Scotland, we have a policy of paying within seven days. That automatically helps the farmers' cash flow. We are very mindful about paying quickly. With contracts, as Chris Brown described, there are market elements, but we also recognise that, for producers to be able to invest, longer-term contracts are needed. For example, we have just moved to up to seven-year contracts for some of our egg suppliers in the UK, and we have extended to two-year contracts for potatoes in some cases, instead of having annual negotiations. Annual negotiations, however, leave everybody free to move, so we are not tying people in forever.

We are open to listening and therefore to not having just a one-size-fits-all approach for all farmers and suppliers. We try to be responsive in setting contracts, prices and payment terms, particularly for small family businesses, including farming businesses. Such businesses need to understand how they will get the payments. We think that having short payment terms is a sensible approach.

**Rachael Hamilton:** The dairy industry is to be protected—I use that term broadly—so that dairy farmers can stop any contract changes and have a fair say in the process. We hope that that will be quite groundbreaking for dairy farmers. Do other sectors in agriculture have the ability to cancel a contract or come to you and say that they have had issues such as frost, drought or flooding and ask you to be flexible?

**Chris Brown:** We have to be flexible. To cover dairy, I note that both supermarkets are supplied by Arla, which is a farmers' co-operative, so it will not be covered by the guidance. One thing that has never happened in the UK but has happened

overseas and was always available under the EU regulations was the ability to form a producer organisation, which takes businesses out of competition law. Some remedies were in the farmers' hands, if they could have got together to agree anything.

**Rachael Hamilton:** I cannot quite remember Sophie Throup's words, but she almost said that her company would honour a contract. We recently had flooding during storm Babet, when many farmers lost their potato crops and others lost neeps, I think. I am interested in whether farmers have to go out to the open market to honour their contracts. I am not sure whether that is necessarily relevant in Sophie Throup's case, because Morrisons controls that within its growers. However, would Asda support somebody who had to go to the open market to buy potatoes or neeps to supply you?

**Chris Brown:** I was once in a departure lounge on the continent when my brassica supplier wandered in. I said, "What the heck are you doing here?" He said, "We've just had a thunderstorm in the UK"—this was high summer—"and the hailstones have bruised my spinach crop. I need to go and find some spinach, so I am here trying to find it."

There are people who take the opportunity to see whether they can win. For example, there are French growers of parsnips, which the French do not consider to be worth feeding to cattle, who grow them in case there is a bad dose of weather in the UK and they can send parsnips in. That is the dynamic in the industry.

If people have problems, we have conversations with them. We talked about Stewarts of Tayside; we are a very big customer of theirs, and we have big conversations with them.

One thing that is happening from a policy perspective is that people are being given capital opportunities so that they can give themselves personal protection. We increasingly have leaf salads that are not grown in greenhouses but are grown under roofs. That is to protect them not from snow but from excess rainfall, which causes soil contamination of the leaves from splatter and makes them useless for being put in bagged salad. People are making rational decisions. A longer-term view about security of food is needed, which could encompass capital assistance to do that type of thing.

**Rachael Hamilton:** I have a final quick question.

**The Convener:** I am afraid that we are way behind schedule. I am sorry. We will move to a question from Karen Adam.

**Karen Adam (Banffshire and Buchan Coast) (SNP):** We have had a full and rounded discussion of a few of the points that I would have raised, but I will go back to a few of them, if you do not mind.

In my time on this committee, we have scrutinised the Good Food Nation (Scotland) Act 2022, and we are now scrutinising future agriculture policy. Throughout all of that, we have talked with committee witnesses, and we have gone out and talked to industry leaders, farmers, tenant farmers and constituents in areas of deprivation.

Obviously, there is a move to spotlight the markets when farmers and food producers, for example, tell us that they do not feel that they are getting a good price. Sometimes their eyes move to the consumer, but consumers tell us that they cannot afford the food. It always goes back to the conversation about what is happening with the supermarkets.

I want to give you the opportunity to speak to that and tell us what factors you consider in setting supermarket prices. Do you appreciate that there is that discussion about how you operate?

**Sophie Throup:** Absolutely. As we have described, we listen really carefully to customers, and we know that customers are feeling incredibly stressed and that that is regionally dependent. Our customer survey shows that customers in Scotland, for example, are 18 percentage points more sensitive and worried about money than customers in London are. We are very mindful of how customers feel, and we are absolutely mindful of how farmers feel.

As we have described, we buy directly from around 2,500 farmers across the UK—around 900 in Scotland—and it is really tough for them. The cost of production has been a very big challenge for farmers, particularly the costs of feed, fertiliser and fuels.

There has been a step back on energy prices, but we have been mindful of how we can absorb some of those costs. That is partly why Morrisons prices went up a bit sooner than prices went up at other retailers at the beginning of the cost of production crisis. We drew manufacturing costs straight into our chain. As costs have started to ease slightly, we have been able to pass some of those reductions on to consumers but, in the middle, we have our own enormous costs and challenges. We quite rightly think about our colleagues' pay but also about our energy bills. Our rates and other cost areas in our business have gone up astronomically, so there is absolutely a balancing act. We are very mindful of how we play our part responsibly in that.

As we have described, it is an extremely competitive business. Supermarkets have only

between 2 and 4 per cent margins altogether, so there is a tightrope that we have to balance on carefully to get the cost of food right while thinking about our central costs of running the business and making it as efficient as we possibly can. We also have to think about how to make sure that we still have farmers and growers in the future to buy from.

**Chris Brown:** We see that, too. We have an income tracker that looks at our customers. The thing that jumped out at me last year was that 50 per cent of them said that they were not going to go on holiday; they were just going to do day trips during the summer. We recognise those pressures.

Do not forget that there tends to be a bit of a lag because of the contracts and so on. That means that, if the cattle price drops tomorrow, you will not see the price of beef dropping the day after. There are buffers in relation to supply and things being drawn down.

**Rhoda Grant (Highlands and Islands) (Lab):** Both of you have spoken about how you source from Scotland, but what are the constraints on sourcing locally? What do you take into account when you are deciding whether to source from Scotland, from the rest of the United Kingdom or from other countries?

**Chris Brown:** We source from Scotland. One of the constraints is the availability of processing. Like Morrisons, we take pigs out of Scotland to be processed in England, and they are then brought back into Scotland. Similarly, we take a couple of thousand lambs a month out of the Borders to go to the Dunbia plant in Preston, in Lancashire.

There is a reality check here as well. Scotland is 500 per cent self-sufficient in lamb, so there is a question mark about whether the investment is in production of sheep or production of lamb. However, one of the constraints with regard to pigs is definitely processing, ever since the Broxburn processing plant closed.

**Sophie Throup:** I am mindful of the time, but I can say that we are looking at that area and that we work closely with QMS and do work on the Scottish protected geographical indications. One of the things that we cannot do is assign a Scotch beef status to cows. The meat from cows that comes into the beef supply chain is perfectly good to eat, and it is sold at a premium in France as being particularly aged, but it is not available to be named through the Scotch beef standard—only meat from males is eligible for that designation. The removal of that constraint is an example of a practical change that would enable us to have more beef to sell in Scotland.

**Rhoda Grant:** That is maybe something that the committee should look at more closely—it seems strange to me.

On the ability to process, I was told about a supermarket—not Morrisons or Asda, I hasten to add—that was sourcing local potatoes but sending them to England for washing and packaging before bringing them back to the local supermarkets. Everyone thought that the potatoes were coming just five miles down the road rather than travelling for many miles in order to be processed. Is there a way that we can overcome that sort of thing? Is that common practice?

**Chris Brown:** We pack our potatoes in Scotland.

**Sophie Throup:** We do not do that now. We pack our potatoes south of the border, including in Gadbrook, in Cheshire, and then bring them back up to Scotland, so that is a challenge for us. Having more processing and packing facilities available would be good. The reason why we decided to pack potatoes south of the border was about economies of scale. The way to make a manufacturing business pay is by ensuring that each of the sites is as efficient as possible and running almost as full as it can. We had to make the hard decision to come out of Scotland and move our potato packing to two sites in England. The economies of scale meant that we could not keep the site in Scotland open.

**The Convener:** What priority do you put on margins when you look at whether to procure products such as pork or beef products locally? You touched on the overproduction of pig meat, but I presume that that did not mean that you just stopped procuring from overseas. The same would apply to beef—I understand that Morrisons has interests in farms outwith the UK that produce beef. What priority do you put on margins when it comes to looking at limitations around sourcing more locally?

**Sophie Throup:** All of our fresh meat is 100 per cent British—we do not buy that from any farms outside the UK. Similarly, we take pork from six farms in Scotland, and that volume has remained consistent. However, we are absolutely bound by the global price when it comes to pork. The fluctuations caused by African swine fever and China's shutdown of imports had a huge effect on the pig price, as well.

**The Convener:** Does Chris Brown have any comments on that?

**Chris Brown:** Just a quick one, as the committee is looking at policy. The fact that we are still measuring beef carcasses on the EUROP grid, which was designed for beef intervention purchases, is nuts. We need a much better

decision in that regard, and that would help everyone in Scotland.

**Sophie Throup:** Yes—one that is aligned with quality.

**The Convener:** I hope that that leads us to a question from Jim Fairlie about production size and so on.

10:00

**Jim Fairlie:** Are we going on to question 7? Okay. Sorry—we are jumping about all over the place here. Our witnesses have made the discussion too interesting.

What role does a supermarket play in determining specifications for certain products, such as the size of cuts of meat and the size or shape of fruit and vegetables? As a former sheep producer, I know that you wanted lamb to be supplied at 21kg, so that you could get your chops at the size that you needed them to be to fit in a packet and be sold at a certain price point. However, nature disnae work like that, so can those specifications lead to massive food waste? If food waste were a country, it would be the third-highest emitter of greenhouse gases in the world.

**Sophie Throup:** That is a lot to address in 30 seconds. We are very mindful of what is practically going to fit in a pack and also of what consumers want to eat, what sort of fat content the product contains and, therefore, what waste we have to cut off at butchery and the additional efficiency demands that would be involved if the cattle were coming in too fat and therefore needed extra processing. With sheep, in particular, there are many different breeds to go for. However, although we have a bit of tolerance and are not entirely fixed, we are looking towards a certain pack size that we need to be able to satisfy.

With regard to fruit and vegetables, we have a policy of buying the whole crop from the field—we have a similar policy for fish. In our processing facilities, we designate some of the crop as premium, class 1 or class 2, and the rest of the crop goes into our Wonky line or, if it cannot go anywhere else, becomes animal feed. We try to do everything that we can with the whole crop from a field.

**Jim Fairlie:** So, there is no penalty to the farmer for producing odd-shaped carrots, for example.

**Sophie Throup:** Absolutely not.

**Jim Fairlie:** That used to be the case.

**Sophie Throup:** It did—I remember that it was the case about 20 years ago, when I was at Asda. However, we absolutely like taking odd-shaped vegetables, because the Wonky line is actually incredibly well liked by supermarket customers.

Sometimes they want to buy more from the Wonky line than from the core lines. Customers are quite accustomed to odd-shaped produce.

**Jim Fairlie:** I have a quick question for Chris Brown. You said that Scotland is about 500 per cent self-sufficient in lamb, yet we still import lamb from New Zealand. Is that because of packaging size? Is it because of price?

**Chris Brown:** It is because of the spike in demand for legs at Easter and Christmas.

**Jim Fairlie:** So, because you cannot get rid of the rest of the carcass, you buy New Zealand lamb legs.

**Chris Brown:** Yes. Do not forget that 25 per cent of UK lamb is currently exported. It is not just a supermarket market any more, because there are other markets. Work needs to be done to inform the farming community about where the animals are going and what those markets require.

**Jim Fairlie:** Yes, but it just seems counterintuitive that we are 500 per cent self-sufficient in lamb but supermarkets still go to New Zealand.

**Chris Brown:** That is because of the out-of-balance requirement, as well as a shift in preference. Customers like leg meat. Shifting whole shoulders is tricky. You need to have quite an interest in anatomy.

**The Convener:** We have run out of time, but there is one topic that I would like you to briefly touch on—we might write to you for further clarification on it. It concerns the Groceries Code Adjudicator, which Rachael Hamilton will ask about.

**Rachael Hamilton:** Has the introduction of the Groceries Code Adjudicator benefited anyone in the food supply chain?

**Chris Brown:** Yes.

**Rachael Hamilton:** In what way?

**Chris Brown:** There is a route for complaints to be dealt with, and the adjudicator has statutory powers. Buyers in Asda—and, I am sure, in Morrisons—all have to be trained, and the fact that there is a complaints procedure, which is there in law, with an independent adjudicator sends an incredibly strong message to farmers and to customers about the operation of the supply chain.

**Sophie Throup:** It is important from our point of view because we buy from farmers, and they are also covered by the code—it does not just cover suppliers. We find that that makes a big difference. We also have a director in Morrisons who is solely responsible for taking on those complaints independently, which means that the farmers and suppliers do not feel that they can speak only to

their buyer or trading director, because they can speak independently to somebody who is absolutely responsible for making sure that the code is adhered to and that farmers and suppliers are being listened to.

**Rachael Hamilton:** Out of interest, how many appeals have there been?

**Sophie Throup:** I do not know; I would have to come back to you on that.

**Chris Brown:** We have a compliance officer, too. I think that all retailers who are covered by the code do.

**The Convener:** Chris Brown, earlier, you said that not everyone comes under the code, but you feel that you do, because you process a lot of the product that you sell.

**Chris Brown:** We do the processing and, therefore, we buy from growers. Under the auspices of the code, the grower can make a complaint. That would not be true if they were selling to an agent who sells to a packhouse that then sells to a retailer.

**The Convener:** Do you believe that the groceries code should be expanded to include everyone in the supply chain?

**Chris Brown:** No.

**The Convener:** Why?

**Chris Brown:** That would open a door behind which is immense complexity. I think that we can manage it if it goes to the first point in the chain, but not once we go further down. For example, if a sheep farmer is putting lambs in at St Boswells and they do not know where the lambs will go but they like the price, will they make a complaint if they do not know where their lambs are going? That becomes very difficult to manage and to resource. Do not forget that there are costs and there are checks on the contract being delivered. Price is not talked about.

**Jim Fairlie:** I am going to disagree with you on that one, Chris. We should have a further conversation about the whole supply chain being included in the groceries code, because where does the primary producer go when they have the feeling that they are being completely shafted—pardon my French, but that is the word that would be used—by the supermarkets? Surely it is to the benefit of the supermarket industry to have the ability to say that, at any stage in the supply chain, producers have someone whom they can speak to who can hold it to account if it did something wrong. Surely that is a good thing.

**Chris Brown:** That could be done on the ground, but they would need to have something stronger than a feeling and, for some sectors, that would be very difficult, because they use

disassembly processes and it would be very difficult to work out what has happened in relation to attribution of value.

**Jim Fairlie:** Okay. This has been a great session. Could we get the witnesses back, please?

**The Convener:** Does Sophie Throup have anything to add to that?

**Sophie Throup:** As I have already said, Morrisons is slightly different because many of our farmers are already covered by the Groceries Code Adjudicator. I suppose that that makes us think about the issue slightly differently.

I spend a lot of time—as I am sure my colleagues do—going to farmers' meetings, because it is really important that there is transparent dialogue and that farmers know that they have somebody to talk to, even so that they understand how things work. We have quite a lot of days in which we take farmers round abattoirs and the supply chain. They say, "Crikey. I didn't know all of this went on after my products left my farm." Increasing transparency about what happens to the product, as education for farmers, is as important as discussions about price.

**The Convener:** I really appreciate your having come to represent Morrisons and Asda today, whereas others have failed to represent their organisations. After this session, I hope that you believe that we do not bite. We are here to bring clarity and transparency to the food chain, and we really appreciate your involvement in that. No doubt, we will be in touch again. We might have some written questions that we would like you to follow up on. Thank you very much once again.

10:07

*Meeting suspended.*

10:15

*On resuming—*

## **Wildlife Management and Muirburn (Scotland) Bill: Stage 1**

**The Convener:** We now move to the first of this morning's two round-table sessions on the Scottish Government's proposed stage 2 amendments to the Wildlife Management and Muirburn (Scotland) Bill. This session will focus on the proposed ban on the use of snares in Scotland.

As we have a tight hour in which to get through the questions, I will go round the table rather than allow the witnesses to introduce themselves. We have with us Jessica Findlay from NatureScot; Glynn Evans from the British Association for Shooting and Conservation; Libby Anderson from the Scottish Animal Welfare Commission; Ross Ewing from Scottish Land & Estates; Penny Middleton from the National Farmers Union Scotland; Conor Kelly from the Scottish Gamekeepers Association; Bob Elliot from OneKind; Ross MacLeod from Game and Wildlife Conservation Trust; and Chief Superintendent Mike Flynn from the Scottish Society for the Prevention of Cruelty to Animals.

As I have said, there are a lot of people in the session and we have only an hour, so I must ask everyone to keep their contributions short and indicate that they want to come in only when they have something further to add in response to the question. We will take one question from each committee member and, at the end, we will, I hope, have time for some supplementary questions from members. If you raise your hand, I will try to bring you in, in turn, to address the question that has been asked.

I will kick off with the first question. What do you believe the animal welfare impacts of snaring in Scotland are, and do you agree with the Scottish Government's proposal to implement a full ban on the use of snares? Are there any arguments for any exemptions?

It is probably simplest to start with Jessica Findlay, who is to my right.

**Jessica Findlay (NatureScot):** With regard to the information that NatureScot holds, we do not have a specific remit associated with snaring. However, we are aware that snaring has the potential to cause welfare issues for target and non-target species. We recognise that a breadth of predator control measures is undertaken and that such measures can have positive impacts, but that issue is quite complex in and of itself, as predator impacts are quite difficult to disentangle. As I have said, though, we do not hold precise information

on snaring, as we do not have a particular remit in that respect.

**The Convener:** I will bring in Libby Anderson. Libby, given that you are representing the Scottish Animal Welfare Commission, which has reported back on the issue, would you like to make some comments?

**Libby Anderson (Scottish Animal Welfare Commission):** Yes, thank you, convener.

The Scottish Animal Welfare Commission supports the proposed amendment. In our advice to ministers, we highlighted that any live-capture trap will have an impact on the welfare of the animal that is captured. Although we are aware of modifications that have been made to snare design, the basic principle of the snare continues to cause suffering to the animals that are captured in it. There is a risk of asphyxiation, strangulation and evisceration, all of which have been well documented over the many years in which I have been aware of snare use.

As I have said, I am sure that we will come on to discuss current modifications. Leaving those aside for the moment, though, I would say that the principle of capturing an animal by a wire noose round the neck and leaving it for up to 24 hours exposes it to significant welfare harms. In brief, we do not think that there should be any exemptions to the ban.

**The Convener:** Thank you. I will bring in Ross Ewing and then Glynn Evans.

**Ross Ewing (Scottish Land & Estates):** Good morning, everybody. First, I want to highlight some findings of the review of snaring that was carried out in February 2022 for the Scottish Government.

For those who are unaware of that, under the Wildlife and Natural Environment (Scotland) Act 2011, a review of snaring takes place every five years. The latest review, which was in 2022, gave us some insights into the scale of snare misuse in Scotland, and it might be quite instructive here, especially when we are talking about the potential negative implications. I would just highlight that, between 2012 and 2016, the total number of standard prosecution reports received by the Crown Office and Procurator Fiscal Service was 23, while between 2017 and 2021 the figure was 18. Therefore, there has been a reduction.

I will also highlight an important point that was touched on by the minister last week. The review was very clear about where it felt that the issue was with regard to illegal snare use and, by extension, welfare implications, stating:

"the Review Group consider that it would be very difficult to legislate for the actions of individuals where the *modus operandi* is to undertake an act of snaring with the intention of committing an associated crime."

It went on to say:

“the cases prosecuted tend to point to deliberate abuse for purposes ranging from poaching to badger persecution.”

To be clear, that is completely distinct from legal snare operators and what they do. I am sure that the practitioners in the room will have more to add about how they go about safeguarding animal welfare when utilising those devices.

**The Convener:** Thank you.

Glynn Evans, I am aware that BASC also played a role in the recent legislation in the Welsh Parliament. Will you touch on that?

**Glynn Evans (British Association for Shooting and Conservation):** As I live in Wales, I will be impacted by the decision there to ban snares. The legislation in Wales bans all snares as well as closing the licensing route. I think that it is going to be an absolute disaster. I will give an example. We do not have many grouse moors in Wales, but there is one grouse moor and it uses humane cable restraints. The moor holds 85 per cent of the black grouse population in Wales. When we consider rare species such as curlews and lapwings, I genuinely think that we will rue the day that snares were banned in Wales.

I will also touch on something that Libby Anderson mentioned about asphyxiation. Modern-design snares—humane cable restraints—have stops, and the stop is specifically selected to be at 26cm. It will not close beyond that point, so it will not asphyxiate a fox that is caught in it. That cannot happen—the stop prevents it.

**The Convener:** What is your experience of the legislation in Wales?

**Glynn Evans:** We presented evidence. There are different committees in Wales; in 2017, one of them suggested a voluntary code of practice, which the Welsh Government drew up. The suggestion from that committee was to take almost a stepwise approach. If things were not shown to have been proven—it is very hard to prove a negative—we would have taken a stepwise approach, similar to what has happened in Scotland, with training and registration. However, the Welsh Government moved forward and decided to introduce a ban.

**The Convener:** Thank you. We move on to a question from Jim Fairlie.

**Jim Fairlie:** SLE has proposed a licensing scheme to enable the continued use of certain snares—the cable restraints that Glynn Evans has just mentioned—under a specific licence for specified purposes, including preventing harm to wildlife, game birds, livestock and crops. Mike Flynn, what is your view on that?

**Chief Superintendent Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals):** You will be unsurprised to learn that the Scottish SPCA follows the Government’s stated intention of banning all types of devices and snares. You can rebrand them as you like, but, from what I see, the humane cable restraint is, to all intents and purposes, a snare, so we would agree with an entire ban.

**Jim Fairlie:** Conor Kelly, what is your response to that?

**Conor Kelly (Scottish Gamekeepers Association):** I do not know whether you have much experience of humane cable restraints and their use, but about two years ago we changed our management style to use humane cable restraints. My experience, as a practitioner, is that our non-target catch has gone down significantly.

We rely massively on humane cable restraints, because the estate that I am on is classified as an island, with no predator control being carried out in the surrounding areas. I will give you an idea of the scale. We control about 200 foxes a year on the land; given that 61 per cent of that control is carried out through humane cable restraints, the removal of that tool would be absolutely detrimental to practice on the estate. People say, “Oh, it’s the same”—and I understand that the perception is that a cable or wire is used—but there is now a breakaway device. We have found that some deer and badgers have managed to break free, and we record that. That information goes on to a database that is shared with the GWCT, so it is recorded.

As Glynn Evans has pointed out, there is a 26cm stop, which prevents a fox from being asphyxiated—we find that foxes manage to get out of the devices. Given how important this is, we try to check them no later than one hour after daylight. I know that some people will say, “Well, it’s only every 24 hours,” but we have tended to find that best practice involves our being there as early as possible to prevent a fox from being in a device for any length of time. That is my experience.

**Ross MacLeod (Game and Wildlife Conservation Trust):** The GWCT has been doing research on predator control for the best part of 40 years now. We have been researching fox movement, and we have used humane cable restraints to catch foxes and tag them before releasing them. We have re-caught some foxes and have been able to assess their welfare, and, in our experience, they have looked absolutely fine in those circumstances.

We listened carefully to the words of the Minister for Energy and the Environment at last week’s evidence-taking session. She rightly

concentrated on welfare, but we were most concerned by the fact that the environment minister did not mention the impacts on rare, iconic and vulnerable species such as curlew, lapwing, oystercatcher, black grouse and capercaillie—the list goes on.

That is why we think a conservation approach involving licensing would be sensible, particularly now. As Conor Kelly has indicated, we can now monitor exactly what is happening through mobile app recording, and there is every reason to think that we can further improve the technology in that regard to give early warning of when foxes are in snares.

**Ross Ewing:** Following on from what Ross MacLeod said, I should say that, ahead of this evidence session, we surveyed land managers in conjunction with Scotland's regional moorland groups, and, of the 129 responses that we received, 98 per cent said that there would be a negative impact on biodiversity if the proposals went through. They are the experts—the people who work on the land and, ultimately, know best what will happen.

Indeed, we looked at the matter further to try to understand the implications on job losses. When we asked land managers whether they thought that a ban on snares and cable restraints would result in job losses, 72 per cent of those we surveyed said yes. I say that to highlight the extent and scale of what we are talking about.

We were really struck by last week's evidence, because we did not think that the minister was able to articulate the scale and extent of snare use in Scotland. I am pleased to say that snares are now largely being superseded by HCRs. Broadly, 61 per cent of foxes in Scotland are controlled using lamping or thermal means, while 39 per cent are controlled through snaring. To our knowledge, zero per cent are controlled using live-capture traps.

For all those reasons, we think that the licensing scheme that we, alongside others, have devised constitutes a compromise approach that would enable humane cable restraints to continue to be used under licence. The licensing scheme would be predicated on the land, because it is the characteristics of the land, be it topography, cover or wind blow, that necessitate snare or HCR use. That is a really important point to note.

In our draft proposal for a licensing scheme, we have said that NatureScot would have to be satisfied that no other method of fox control would be reasonably practicable on the land. Broadly, such methods should be used as a last resort, but, in some places, those methods are absolutely instrumental. We cannot get away from that point.

10:30

**The Convener:** Have you any indication of how many old-type snares are currently being used as opposed to the new humane restraint devices?

**Ross Ewing:** Alongside the Game and Wildlife Conservation Trust and the Scottish Gamekeepers Association, we have been pushing the use of humane cable restraints. It is not widespread at this point, because the current code-compliant snare in Scotland necessitates something that is completely different from an HCR, so the HCR is only being trialled by a handful of estates, including Conor Kelly's. It is important to note that, at the moment, Scotland's code of practice has a snare within it that is not—despite what you might have been told by certain people, convener—an HCR. It is distinct, and we can evidence and show you that quite clearly.

**The Convener:** I will bring in Penny Middleton next.

**Penny Middleton (National Farmers Union Scotland):** I return to the original question, which was about the animal welfare impacts of snaring and arguments for exemption. I spent the previous 10 years of my life as an SSPCA inspector and I fully understand where the committee is coming from. The types of injuries that I saw through snare use were absolutely horrific and I completely understand why snares have such bad connotations for people. However, the most recent changes, in 2011, concentrated on significantly improving the use of snares to address a lot of the previous problems, and the new humane cable restraint device will take that even further. When we parcel that up with the use of snares being under licence, we have a very different situation from the one that most people think about when they think about snaring.

From the farmer's point of view, pest control is a necessary activity on farms. We speak to farmers who regularly lose lambs to foxes, and they know that, once a fox finds those lambs, they can come night after night. In that situation, snares are sometimes the only option that is available. That can be due to the topography and the type of land, as Ross Ewing said, but it can also be due to time constraints and lack of skills. We have moved on a long way in farming and farmers have lost a lot of the skills that were involved in lamping and the shooting of foxes, so it becomes the only option for them.

**Jim Fairlie:** Penny Middleton has said that everybody accepts that we need to control foxes. I ask Bob Elliot, Mike Flynn and Libby Anderson to say whether they agree with that.

**Bob Elliot (OneKind):** That might be the case in certain circumstances, but we are talking about snares as indiscriminate—

**Jim Fairlie:** Yes, but do you accept that, in certain circumstances, there is a need to control the numbers of foxes?

**Bob Elliot:** Not using these devices—no.

**Jim Fairlie:** Okay. Mike?

**Chief Superintendent Flynn:** I totally agree with the point about farmers. It is funny—in our statistics, we have no record of a farmer being involved in illegal snaring. I agree that farmers have to be able to protect their livestock.

**Jim Fairlie:** Do you accept that, as Penny Middleton says, there is a need to control foxes in certain circumstances? Do you agree with that principle?

**Chief Superintendent Flynn:** If it is done in a humane manner, yes.

**Jim Fairlie:** Libby?

**Libby Anderson:** We have not been asked to opine on the need or otherwise to control foxes—

**Jim Fairlie:** That is why I am asking you the question.

**Libby Anderson:** Lamb mortality is a multifactorial issue, and the statistics indicate that fox predation of lambs is a very low strand of the problems that affect lambs. I know that that has been discussed in the committee before, and the commission wrote to the convener and committee members pointing out the Scottish Government research on lamb predation.

**Jim Fairlie:** You would say that there is no need.

**Libby Anderson:** I would not say that there is no need, but it is necessary to evaluate the need. The committee has heard previously about the international consensus principles for wildlife control. Any wildlife control technique should be evaluated in the light of those principles, including consideration of whether it is necessary and whether it can be affected by changes in human behaviour or practices. You may feel that we are not giving a straight answer, but that is because it is a very complicated question.

**The Convener:** I will bring in Glynn Evans next.

**Glynn Evans:** There are lots of points to be made on the subject, but I will touch on just one in order to be succinct. At times, there is a need to control foxes, and at times humane cable restraints and modern snares are used. We need to understand that old-fashioned snares—self-locking snares have been illegal for more than 40 years—and modern humane cable restraints are completely different. We have talked about the international agreements, and I note that those

modern devices meet international standards for restraining traps.

I note the point that Ross Ewing made. At certain times of the year, the cover will be too high. I control foxes and my preferred option is generally to use a rifle. However, at certain times of the year, the cover will be too high where I live, so I cannot see a fox to shoot it and I need to use a different method. In the past, that would have been humane cable restraints. It is important to understand that the time of year when it is difficult to control foxes with a rifle because the cover is too high is also the time of most conservation need, when we have ground-nesting birds. If we do not have a method of control, those birds are going to suffer.

**The Convener:** I will bring in Ross Ewing next, and then Bob Elliot.

**Ross Ewing:** The context here is really important. The first point to note is that we are in a biodiversity crisis. The reasons why that is important have been set out clearly by the GWCT, so I will not repeat them. However, another point to note is that we have already lost a third of the toolkit for fox control through the Hunting with Dogs (Scotland) Act 2023. I know that there is a licensing scheme in place for that, but the feedback that we have had from members thus far is not particularly rosy. We absolutely need to be able to manage predation—I could not make that point more strongly—and humane cable restraints offer us an opportunity to do that.

It is also important to note that, in the five-year reviews that have taken place since the Wildlife and Natural Environment (Scotland) Act 2011 came into force, recommendations have been made to improve Scotland's code-compliant snares not once but twice, but Scottish ministers have not acted on them. Recommendations have existed for some time that would bring us into line with elsewhere in the UK and bring to fruition the use of humane cable restraints, but that has not happened. We now have an opportunity to do that through a well-managed land-based licensing scheme, and I hope that the minister will listen to that and bring it to fruition as an alternative and a compromise.

**Bob Elliot:** I am looking at a paper from 2017 on Christine Grahame's debate in Parliament on stink pits. It includes loads of pictures of dead foxes—foxes that were found dead in snares. They are appalling devices. On the research angle, a lot is being said about capercaillie, curlew and so on becoming extinct. However, no conservation organisation—not the RSPB, Trees for Life or the John Muir Trust, for example—uses snares. They do not have them in their toolkits. Their work is about landscape management and looking at alternatives, and there is some really

visionary stuff going on. The Clyde Valley wader group includes farmers, the RSPB and NatureScot and, with the inventive ways of growing crops there, lapwing numbers are going up. It is brilliant. I am sure that there is some predator control, but they are not using snares to do that. It is not a great idea to snare around capercaillie or where there might be wildcats or protected animals such as pine marten. Wildcats and pine marten will not get out of a breakaway snare.

We have talked about foxes, and it is still being accepted that foxes will be snared round the neck by a device. This is a rebranding exercise. Back in the day, they were called DB snares, I think. Glynn, there is a film of you guys setting them. Even in 2015, you were setting one of these things, and things have not changed. People's cats and dogs, including companion animals, are still getting caught in them. We have had otters caught in them—the list is huge. The snares have been banned elsewhere in Europe, and Wales has done it. We should do the same.

**The Convener:** Conor Kelly wants to comment.

**Conor Kelly:** I have a question for Bob Elliot about the point in his paper. Did the snares in which you found those foxes have tag numbers? Did prosecutions result from that?

**Bob Elliot:** I have all those snares down as having been legally set. It makes no difference whether a snare is legally or illegally set—it is still a snare. That is where we are now. We have had lots of reviews and lots of changes, but it still has not worked.

**Conor Kelly:** A second point to make on that is that the device has been designed with a larger stop so that a smaller animal such as a pine marten, a capercaillie or a wildcat could remove itself from it. We are finding that smaller foxes are removing themselves from such devices, because the stop is loose enough to allow them to do that. I highlight that, in our experience, we have had no catch of pine martens or wildcats. We do not have wildcats in our area, but we have pine martens, and we have no experience of catching them in our HCRs.

**Glynn Evans:** There are two aspects to this. One is that the designs for the snare hardware—the humane cable restraint—have moved on. I am grateful to Bob Elliot for name checking me and a film that I did. The kind of snare that we are talking about is a modern humane cable restraint—a snare that was compliant with the Welsh Government's code. That is a different design from the kind that the committee has looked at previously. The hardware is one aspect.

The other aspect is about setting the devices in the right place. Mention has been made of non-target species. Our approach would be that we

would not set the devices in areas where there are non-target species. When we talk about injuries and so on, another key consideration is the need to set such devices away from places where there is a risk of entanglement, because entanglement is a big cause of injuries.

The hardware is one aspect, but there is also the best practice advice on where to set a device. Those two things come together to make the device compliant with international humane trapping standards.

**The Convener:** I will bring in Penny Middleton next.

**Penny Middleton:** I have two points to make. First, I want to go back to Libby Anderson's point about the fact that lambs die for any number of reasons. I absolutely accept that. A wide range of things will impact lamb losses, some of which we can do something about and some of which we cannot do anything about. Let us face it—what we are talking about here is something else that farmers would not be able to do anything about.

I remind the committee that we are asking for it to be possible for snares to be used under licence. There would be three levels to that licensing process. First, a person would have to prove that they were preventing serious damage and that the action was necessary. Secondly—

**The Convener:** I will stop you there, because we will move on to licensing in a moment. That is not an option that is currently in front of us.

**Penny Middleton:** We are asking about the use of licences, under which those tests would have to be met.

Secondly, we are talking about significant changes in snares. It is true that people are still using illegal snares, but we cannot make legislation based on the fact that some people are hellbent on breaking the law. The kind of snare that we are talking about will be a clearly different type of snare. It will be possible to tell the difference between a legal snare and an illegal snare. That option must not be taken away simply because some people will break the rules.

**The Convener:** Chief Superintendent Flynn is next.

**Chief Superintendent Flynn:** I emphasise that the only reason why we oppose snares 100 per cent is because of the welfare issues. Snares are totally indiscriminate. On the jobs that we go to, about half the animals that we find are non-target species, such as cats and badgers. As Glynn Evans said, reports have been made to the fiscal about legal snares that have been set illegally by people who have been on training courses. Therefore, the excuse about lack of training goes out the window.

I am glad that Penny Middleton mentioned her earlier career. The injuries that we find are horrendous. I am not talking only about a wee animal in distress; I am talking about stuff such as disembowelment. With a 26-inch stop, there is no guarantee that animals will be caught around the neck. If an animal such as a badger is caught around the midriff, that will do incredible damage. This year alone, two cats have been brought in with snare injuries.

We oppose the use of snares because they are totally indiscriminate and they are cruel. We should not forget that foxes are sentient beings, too, and they deserve protection. Some of the foxes that we have seen that have come out of snares have been in an atrocious state, and I guarantee that any gamekeeper who found them like that would be equally appalled.

**The Convener:** I will bring in Ross MacLeod, after which we will move on to the next topic.

10:45

**Ross MacLeod:** On the question of examples of good practice, Bob Elliot mentioned the Clyde valley waders project. We know the people there very well and it is a very good example. We work with some of them, including the RSPB, and we have every respect for what they do. The difficulty is that those particular cases are islands, as Conor Kelly mentioned. What we really need to do is to tackle the matter at scale across Scotland, because the situation for curlews, for instance, is critical. Curlews are likely to become extinct if we are not careful and we do not manage these situations. To transfer sensible land use practice—as in the examples—quickly and on a significant scale is, to say the least, going to take us a very long time. We need other options in the interim in order to ensure that we can balance the good work that occasionally happens in the landscape with the immediate and pressing issue that is presented by fox predation.

If we do not take the short-term opportunities that we think are represented by a conservation approach to licensing, we will miss a big opportunity to redress the balance and remove the risk that we will be unable to meet the target for the recovery of species by 2030, as the Scottish Government expects. We need to do something rapidly.

**The Convener:** Before we move on, I want to explore the licensing scheme a little more. At the moment, we do not have an amendment from the Scottish Government relating to snares because the Scottish Government suggested before the summer that it wanted to do more work to look into the various devices. The Government has still not made its position clear. However, it suggested that

Scottish Land & Estates had come up with a potential licensing scheme. The Government has looked at that proposal only in the past few days, which is quite remarkable.

I will go to NatureScot first. What are NatureScot's views on the potential licensing scheme and is it one that NatureScot could manage?

**Jessica Findlay:** As we know, the minister is currently considering the licensing scheme, so I cannot comment on that. However, NatureScot, as a licensing authority, has considerable experience of licensing schemes. We issue about 5,000 licences a year and, in doing that, we aim to uphold the highest welfare standards that we can.

If a licensing scheme were to come our way, we would need the resources to manage that, because, as it is set out at the moment, there is a code of practice that would go alongside it. Considerable thinking would need to go into that. As I mentioned earlier, we do not gather information on snaring because we are not required to do so. However, if we were a licensing authority and that became a responsibility of ours, we would look to gather as much evidence as we could and ensure that it was in the context of the agreement on international humane trapping standards.

There is a balancing act involving the need to safeguard welfare—we understand and accept that there are potential significant issues with snaring. Obviously, the minister is currently considering the licensing scheme.

**The Convener:** I will bring in Ross Ewing, given that Scottish Land & Estates proposed the licensing scheme.

**Ross Ewing:** Thank you, convener. It is worth noting that we proposed the scheme in conjunction with several land management stakeholders. I will give you a flavour of the key points of the licensing scheme that we have pulled together. Penny Middleton has alluded to the fact that there are certain licensable purposes that would need to be satisfied by any prospective applicant. Secondly, the applicant would have to be able to evidence that no other method of fox control was reasonably practical on the land.

That brings me on to the additional safeguards that we have proposed in the licensing scheme. Jess Findlay mentioned our proposal for the humane cable restraints code. We are talking about a statutory code of practice that land managers will have to have regard to when they are using any sort of HCR. We know which areas the minister has concerns about, so we have said, for example, that the humane cable restraints code should allude to how often humane cable restraints are to be checked, how they are to be

set to reduce the likelihood of non-target catch, and how to keep records. If that is not enough, we are also proposing robust modification, suspension and revocation provisions. We have proposed giving Scottish ministers the power to modify a licence at any time, to suspend or revoke a humane cable restraint licence if they are satisfied that a relevant person has committed an offence and, indeed, to suspend a licence when they are not satisfied, provided that proceedings against an individual or a licence holder are in order.

What we have proposed constitutes a reasonable compromise. It would allow crucial conservation work and the protection of livestock work to carry on in Scotland under a strict licensing regime, which we have every confidence that NatureScot would be able to administer and handle.

**The Convener:** I will bring Penny Middleton back in, having rudely interrupted her earlier.

**Penny Middleton:** As Ross Ewing says, on the use of snares under licence, farmers do not have snares out every day and every year. Rather than being put out constantly, they are targeted at certain times of the year and at certain animals. We think that a licensing scheme could work. As part of that scheme, it would be necessary to pass three bars. First, there must be a reason for snaring, such as lamb loss that the farmer knew was down to a fox. It could not be just that there was some infection among the lambs; the farmer would have to demonstrate that they were losing lambs to foxes. Secondly, the farmer would have to demonstrate that no alternative explanation was possible. I believe that, in certain situations, no other solutions are available. Thirdly, it would need to be shown that snaring would not have any impact on the conservation status of the species that was being targeted.

There are definite protections in place there, which would mean that, under licence, the balance could be struck and snares would be used because they needed to be used.

**The Convener:** Last week, when the minister was before the committee, I asked whether NatureScot would have an opinion on whether banning snares would have a positive or negative impact on the preservation of ground-nesting birds. The minister suggested that we should ask NatureScot. Do you have an opinion on whether banning snares would be positive or negative for ground-nesting birds?

**Jessica Findlay:** We know that predator impacts can have a significant impact on the declining productivity of certain threatened ground-nesting birds, and we know that predation impacts are only one type of impact, of which there are a

complex number—including habitat impacts, climate and the predation itself. It is difficult to disentangle the different impacts of different predators, as was borne out in a large report called “Understanding Predation”, which was produced about six years ago. There is a lot of complexity there.

As I mentioned earlier, we do not have a requirement to understand snaring as one method among the suite of predator control methods. It is difficult to disentangle all of those different issues. However, we recognise the significant welfare implications of snaring. It is difficult to answer the question, because there are many different factors involved, but we do support coherent predator management, and we recognise that predation is one of the factors that can have an impact on ground-nesting birds and biodiversity.

**The Convener:** Taken in isolation, would removing snaring as one of the potential tools in a gamekeeper’s or land manager’s toolbox have a negative impact? That is one of the things that the Government considers when it makes a balanced decision. Would removing snaring have a negative impact on ground-nesting birds?

**Jessica Findlay:** There is a risk that it could have, but that has not been quantified in any way. There are alternative methods. It is a matter of balancing the welfare implications with the available tools and deciding whether alternative methods could be stepped up and used in place of snaring. I cannot comment in detail, because we do not hold information on it.

**Glynn Evans:** I think that it would have a negative effect; the GWCT did some research on it recently. I assume that foxes are snared on a number of grass moors. The GWCT’s research said that, where there was predator control on grass moors, there were four times as many curlews as there were in similar areas of unmanaged land. The research also said that 1.05 curlew chicks per pair fledged on moors that had predator control, which is double what is needed to sustain the population. I assume that snares form a big part of that in the spring of the year.

**The Convener:** I am aware that another three people wish to come in on that point, but this is an appropriate time to move on to a question from Rachael Hamilton. We can then hear people’s views later.

**Rachael Hamilton:** You touched on the subject of my question, convener, so bringing in the other witnesses just now would be beneficial. I can then pick up on anything that does not come up.

**The Convener:** Okay. I will bring in Conor Kelly, Ross MacLeod and then Bob Elliot.

**Conor Kelly:** To go back to Jessica Findlay's point on the negative effects of fox predation on ground-nesting birds, the GWCT would absolutely have the data to show that foxes have an impact on ground-nesting birds and their productivity.

In our area of the lowlands, we find that, with the predator control that we carry out, we have successful broods of lapwing, curlew and even golden plover on the upper hills, whereas in the areas around us, because we are an island, the birds turn up and try to breed but they get predated. That is my experience of the impact that foxes can have on ground-nesting birds.

**Ross MacLeod:** The GWCT has undertaken substantive research in that field. The first piece of research, which is often referred to, was the understanding predation experiment at Otterburn that took place between 2000 and 2008. The result of that was a dramatic improvement in the productivity of curlews, in particular, but also in that of black game or black grouse. In the Otterburn example, snaring formed roughly 25 per cent of the catching of foxes.

The work was repeated, and the results appeared in a journal in 2022. That work was undertaken by my colleague Dave Baines, who looked at 18 bird sites where we checked predator control against non-predator control and then swapped them around. In one particular case in those paired examples, 80 per cent of the foxes were caught using humane cable restraints. Again, he pointed out in the research that he led that curlews risked achieving productivity of about 0.95, when we see problems occurring below 0.5.

We proved the case again, therefore, and that is why we believe that the use of predation control, particularly snares, has a role to play in improving the lot of upland birds. We should bear in mind that these birds are described as upland birds, whereas they used to be on farmland. We will need to ensure that these islands—these refugia—are resources to spread the birds back in farmland, where the landscape needs to adjust. It will take time to do that.

**Bob Elliot:** I have another quick point on the research. When I was reading up on foxes, I noticed something on the GWCT website about the rearing and release of pheasants and the studies that have been done on that. It said:

“The widespread rearing and releasing of gamebirds has probably improved fox food supply in autumn and winter.”

A lot of the snaring work is going on because people want to protect their game birds for shooting—that is essentially what is happening.

Nobody, apart from the GWCT, is really doing much regarding snares and snares research. I think that I heard Ross MacLeod dismissing some

of the large landscape-scale projects that are going on now. Projects such as Cairngorms Connect and Trees for Life are connecting up habitats and thinking about why we have lots of crows and foxes in the environment. Here, we are concentrating on the snare, which is a cruel and indiscriminate object. We have to come back to that. We are now talking—at last—about the welfare issues with these things and not about just changes to design but whether we should be catching animals in wire nooses. That is what we should be talking about.

**The Convener:** I will give Ross MacLeod the right to reply to that, and then I will move on to Ross Ewing.

**Ross MacLeod:** With respect to game birds, we do not see many pheasants and partridges knocking around at 1,000 feet or 1,500 feet on some of the grouse moors that we are operating. The point here is that we are talking about a conservation licence for rare endangered species that are typically in upland areas.

I am not at all dismissive of the projects that are taking place in landscapes. We are involved in some of them ourselves, and we think that they are very important. The issue is that shifting the overall behaviour and culture around changing landscape use to suit the birds that are at risk will take a long time, and we need something that helps the cause of those birds in the interim.

11:00

**Ross Ewing:** The fox range in Scotland is dramatically increasing. The 2018 review of the fox population in Scotland was quite clear on that, and one of the main reasons for it has been the extent and scale of afforestation.

It is unsurprising, I suppose, that in the southern uplands—I know that representatives of the southern uplands moorland group are here in the room today—snaring is a particularly important method of predation control. From a survey that I did just this week, we can see that, in 2021-22, 55 per cent of foxes in the southern uplands region were snared, 38 per cent were shot and 7 per cent were controlled with dogs. We can see the importance of snaring in that respect, so to dismiss it as an issue that is simply about producing vast numbers of game birds is fictitious and misleading.

The motivations of gamekeepers are not singular, for that reason. There are multiple reasons why gamekeepers carry out predation control; it is not just about game birds—I want to make that absolutely clear. Anybody who suggests that that is the case has clearly not engaged with, or spoken to, any of the people who are sitting at the back of the room today.

**Conor Kelly:** I come back to the welfare point. I hear the concerns of Mike Flynn and his colleagues about the old conventional snare. I ask the committee to look at GWCT's evidence on the welfare benefits—well, they are not benefits, but the humane cable restraints certainly do not have the same side effects, or negatives, as the old conventional snare. From experience, we are certainly seeing a reduced risk to the fox as a species from our HCR use.

It should also be pointed out that best practice set out stipulations that should be used to limit the non-target catch, specifying the height and size of the loop and—as Glynn Evans pointed out earlier—the entanglement area. Those are all things that good practitioners should be looking at to limit the risk of any injury or damage, because nobody in this room wants that to happen. I do not want somebody stumbling across an animal in distress or whatever with my tag number on it. In my experience, we come along and often find the animal sleeping—there is a quick dispatch and then we move on. That is what we want it to be.

**The Convener:** I have a supplementary question from Kate Forbes.

**Kate Forbes:** I am slightly concerned that we may be losing sight of the fact that the issue before us is snaring rather than the validity or otherwise of certain sectors. If all sectors, whether that is conservation, agriculture or anything else, are agreed on the need for predator control, would a licensing scheme actually enable better enforcement? As Penny Middleton outlined, such a scheme would require people to jump through certain hoops rather than push the illegal activity further underground.

**Ross Ewing:** That is absolutely spot on—I agree with that completely. The revocation, suspension and modification provisions that we have included in the draft licensing scheme are robust.

The other point to add is that, in the light of the fact that no impact assessment was actually done on the implications of that particular proposal, the onus is on the Scottish Government to put in some sort of interim measures that will enable the use of HCRs to continue.

When we looked at the consultation that came out, we found it regrettable to see a statement that the use of live-capture traps, for example, is more humane and more efficient. That is just not the case.

It is important that we recognise that HCRs are vital as a conservation tool. As Kate Forbes just outlined, that will allow land managers to make sensible applications for specified purposes where no other method of fox control is available. We are talking about those limited circumstances, in areas

such as the place where Conor Kelly works, where such methods are absolutely fundamental.

**The Convener:** Rachael, do you have anything to sweep up on that?

**Rachael Hamilton:** I am glad that there has been an explanation to differentiate between humane cable restraints and traditional snares, as they were starting to be conflated. We need to be looking at an exemption for, and possibly—as Ross Ewing has just said—an impact assessment of, the use of humane cable restraints.

However, my question is to the GWCT and Conor Kelly and is about what the minister said in her opening statement last week. She said that shooting and trapping are available to land managers. I wonder how effective shooting and trapping are and whether you—particularly the GWCT—have any information on the effectiveness of the live capture of predators?

**Ross MacLeod:** We have been collecting data on the mix of options through an app that has been rolled out to 26 upland estates. Off the top of my head, I think that it found that about 39 to 40 per cent of foxes are managed by snaring—HCRs—and 60 to 61 per cent are managed by shooting. That mix included 1,000 man days of operating cage traps as an alternative; no foxes were taken in that way. Therefore, we will concentrate on whether shooting makes up the shortfall if HCRs are removed. Forty per cent is a lot to make up, particularly when shooting is not always possible. It has been outlined that, where there is deep cover, it is not possible to shoot, because you cannot see. It is also unsafe in those circumstances, particularly if other people are moving around the landscape. Therefore, there are issues with shooting. We also cannot always use thermals, particularly when it is damp or wet. It is therefore impossible to imagine that shooting can make up the shortfall.

**Conor Kelly:** I will touch on Ross MacLeod's point and say that we find shooting very effective, but there is a shortfall. We probably shoot 30 per cent of foxes, so the numbers are reversed for us, in that 61 per cent of our foxes are snared or caught in humane cable restraints. We have quite steep topography, we are heavily forested on all sides and we are surrounded by commercial forestry. It is therefore not physically possible to shoot that number of foxes or control their number. We put in our best efforts—we do try—but the use of humane cable restraints is vital, especially when hunting with dogs has been removed as an option.

I know of one case that has gone to NatureScot so far, in Perthshire, and that has been rejected. That has not exactly filled me full of reassurance, if I am honest.

The toolkit is becoming less and less, and I understand that technology is getting better and that thermal equipment is getting better, but I still cannot see the tops of hills using thermal technology, for example, and we have to take other things into consideration, such as fog. We cannot carry out our vermin control to the extent that we need to, so we are in dire straits if HCRs are not left as an option under licence.

**Alasdair Allan:** I have a question on the way in which the operation of snaring offences under the bill might work. I wonder whether anyone has a view on how vicarious liability, which the committee has touched on before, might apply, and what the consequences of it might be.

**Ross MacLeod:** It was broadly covered last week. We are not aware of any vicarious liability offences in relation to existing snaring offences; I do not see the need for that.

The other thing that I will highlight is that the 2022 review was quite clear that the majority of illegal snare operation tends to involve those who are committed to undertaking an illegal operation; it is not done by people who are sanctioned to do so in a certain way. We will never be able to stop those who act on the wrong side of the law; that will continue irrespective of whether snares and cable restraints are banned. Therefore, if we consider what the aim of this legislation is, ultimately, a ban on snares is not going to stop illicit operators, such as poachers and people who persecute badgers, so I do not see the case for vicarious liability.

**Bob Elliot:** My only experience of that was when I was working for the RSPB when vicarious liability came in—I think that I might have been at your predecessor committee at one point. It can be a powerful tool to drive change.

I will come back to the main point about the welfare aspects of snares. Whether they are set illegally or legally, there is still the same impact on the fox that is being snared. That is why we are here today, because we have moved on. The debate has moved on from the basics of predator control. The snare is a device that should not be used for any reason at all.

**Jim Fairlie:** I have a question on vicarious liability. If a person's entire livelihood is put at risk as a result of doing something illegal—setting an illegal snare—surely vicarious liability is an important tool to ensure that only legally set snares are used by estates and farmers who are trying to do the right thing.

**Ross Ewing:** What we would argue for would be a sensible compromise, and our licensing scheme speaks to that. Because it is a land-based licensing scheme, if a relevant individual—that is, someone acting on behalf of a landowner—was to

deliberately set a humane cable restraint in an illegal fashion, NatureScot, as the regulator, would have the power to suspend, revoke or modify that licence, and it would cover the entire landholding. The implication would be felt not just by the individual but by the estate at large.

I think that that gives the regulator sufficient discretion to say, "Actually, we do not have trust and confidence that proper practices are being followed in this particular place and, therefore, the entire landholding should be subject to a suspension or revocation." I think that that constitutes a fair compromise. I do not think that vicarious liability will be required. Our licensing scheme would achieve the aim.

**Chief Superintendent Flynn:** We have been involved in many snaring cases and vicarious liability has never come up. There has never been any evidence that snaring was carried out on behalf of, at the instruction of, or with the knowledge of, the landowner or the factor or agent.

**The Convener:** Just on that point, I posed a question on convictions and whatever to the minister a number of times. At the moment, as we have heard from Conor Kelly, there are quite strict guidelines about the way in which snares are set. How many convictions or cases have you investigated where snares have been set legally and resulted in a bad outcome?

**Chief Superintendent Flynn:** You have to remember that a lot of what could be classed as violent crime never gets to the fiscal and never reaches court. We have found lots of instances of an animal having suffered, as I explained earlier, because of bad practice such as putting snares on fence lines, which is against the law.

You have to remember that we have been discussing this for at least 15 years and the situation has always been getting better. We have put a stop at 23cm, we have stopped drag snares and we have stopped putting snares on fence lines. However, that is still going on.

**The Convener:** Is it going on with licensed operators or with people who are illegally setting snares?

**Chief Superintendent Flynn:** Like I said earlier, there are two cases currently with the procurator fiscal that involve people who have been on training courses, so it is not as if they did not know the exact law. That does happen.

**The Convener:** I suppose that my point is that this legislation will make it doubly illegal, because currently the cases that you see involve snares that are being set illegally, so banning them probably will not make any difference. It is currently illegal. When animals are caught

indiscriminately or snares are not being set properly, that is illegal.

**Chief Superintendent Flynn:** There are two different things. First, there is the actual legality but, secondly, to come back to what Bob Elliot said, the method is inhumane and cruel. Snaring is not designed to kill the animal, but inevitably, in many cases, it does. It is not a very quick, pleasant death.

**The Convener:** But that is currently illegal.

**Chief Superintendent Flynn:** Yes, and it would be illegal in the future if the bill was brought in.

**Ross Ewing:** The policy intention is to stop undue suffering to animals that are caught in snares or cable restraints. The central point is that, as the review group of 2022 said,

“it would be very difficult to legislate for the actions of individuals where the modus operandi is to undertake an act of snaring with the intention of committing an associated”

offence. In other words, those people who are absolutely committed to committing offences will continue to do so.

Convener, you asked for facts and figures on that, and I am happy to provide them. Again, in the 2022 review of snaring for the Scottish Government, there were 18 cases of standard prosecution reports received by the procurator fiscal. Four of those resulted in the cases being prosecuted. That is the ratio, and the review also sets out the figures for 2012 to 2016. The Scottish Government has that information available because it commissioned it, and that is all set out in the latest review of snaring.

11:15

**The Convener:** Finally, I will bring in Rachael Hamilton.

**Rachael Hamilton:** Mike Flynn, are you saying that you believe that illegal snaring will continue among those who are bad practitioners or poachers even if the legislation is in place?

**Chief Superintendent Flynn:** You will always get illegality. I am not saying that there is a need for the use of snares. It comes back to the suffering that is caused by snares. It is unnecessary. I will put this on the record: I do not believe for one second that any bona fide gamekeeper has ever put a snare out with the intention of causing an animal to suffer. I am not saying that that is their intention, but, in reality, that is what happens.

**Rachael Hamilton:** Can you put some figures behind that?

**Chief Superintendent Flynn:** We have figures of the cases that we have investigated and reported to the procurator fiscal, and I can get them to the committee this afternoon. That would not be a problem.

**The Convener:** That would be useful.

**Ross MacLeod:** I want to make one point. We have talked about the use of app technology to understand what is happening as far as fox catch is concerned, and that has improved dramatically our understanding of what is going on.

Looking back at the two iterations of the five-year review since the introduction of the Wildlife and Natural Environment (Scotland) Act 2011, we can see that there has been a collective failure to bring the information together. If we are in a position where a licensing system is introduced, it is incumbent on us to produce evidence about what is happening, not just in relation to fox predation and the catch rate but in terms of conservation benefit. Equally, it is incumbent on authorities such as the SSPCA to provide clear information about where incidents are happening, whether they are illegal or legal and whether they involve tags. That might give us a clear idea about whether incidents are happening in the rural environment or in suburbia. That would help immensely.

**Libby Anderson:** I want to put it on the record that the commission would not support any exception under licensing.

On HCRs, although the technology of the snare is different, the peripheral effects—the fundamental effects of being restrained in a wire noose over a period of hours—are not affected by that. If there was to be a licensing scheme, we would not support the proposal that is being tabled at present. It is far more permissive than the current legislation or other licensing schemes.

I will give a quick example of that. Basing a licensing scheme on a code rather than regulations, which would be the normal approach, is more permissive. There is an assumption in the proposal that ministers must grant licences subject to certain exceptions, and that is the opposite of the normal procedure. I will not go into more detail at present, but we would not be able to support that.

**Penny Middleton:** I would like clarity on whether I heard Mike Flynn correctly when he was talking about cases in which inspectors have seen suffering in snares. In those cases, the snares were illegally set. They were set in a manner that does not follow the best practice on how they should be used. If we are coming down to the pure welfare argument, if the new style of humane cable restraints are used in the manner for which

they are designed to be used, they will significantly reduce suffering.

**Chief Superintendent Flynn:** To clarify, those snares were set illegally.

**Glynn Evans:** If you have a code of practice that enshrines that you have to use the right device in the right way, that should alleviate the concerns that Mike Flynn has just raised.

**Ross Ewing:** Libby Anderson has mischaracterised our licensing scheme, because it is a rebuttable presumption in favour of granting licences. There is a distinction, and the reason for that is that NatureScot would have to be satisfied that no other method of fox control was reasonably practical prior to granting a licence. That is the safeguard that is in there.

The second point that I would make is about the strength of the code of practice. NatureScot would be able to suspend, revoke or modify someone's licence on the basis of their not having regard to the code of practice. That is a strong and robust licensing scheme.

**The Convener:** We have run out of time. Thank you all for the evidence that you have provided this morning, which has been hugely useful.

11:20

*Meeting suspended.*

11:30

*On resuming—*

**The Convener:** Welcome back, everyone. Our second round table this morning will focus on the proposed extension of the Scottish SPCA's powers. We have approximately one hour for questions and discussion.

As with the previous round table, I will start by going round the table. We have Iain Batho from the Crown Office and Procurator Fiscal Service; Chief Inspector Kevin Kelly from the National Wildlife Crime Unit; Ian Thomson from RSPB Scotland; Ross Ewing from Scottish Land & Estates; Detective Sergeant David Lynn from Police Scotland; Susan Davies, who is the review lead on the independent task force on SSPCA powers; and, once again, Chief Superintendent Mike Flynn from the Scottish SPCA.

We will start with questions from Ariane Burgess.

**Ariane Burgess:** There are a number of members of the task force on the panel, so I would be interested in hearing how the task force came to recommend increased partnership working and why the group was not able to agree on a recommendation to expand the SSPCA's powers.

What were the key concerns and how are they addressed under the proposed compromise position?

I ask Susan Davies to start.

**Susan Davies (Independent Taskforce on SSPCA Powers):** The remit that I was given was to try to reach an agreement with Police Scotland and the Crown Office on the way forward. It was not possible, through that route, to get agreement to scenarios 1 and 2, which are set out in the task force's report.

There was a lot of support for improved working together and a lot of good examples of where people across the partnership work effectively together. However, some valid concerns were raised about the scope of the powers. That was why, in the final report and my cover letter to the Scottish Government and the minister, we set out scenario 2, which potentially gave a way forward, but it was not possible in the timescale of the review to get agreement from Police Scotland or the Crown Office to that option. That is because the detail of some of the safeguards that would be required still needs to be worked through.

**Ariane Burgess:** Does anybody else want to come in with thoughts on that?

**The Convener:** Mike Flynn, do you have any comments on the protocol?

**Chief Superintendent Flynn:** We have said all along that we will go along with whatever protocol is put in place. I thank Susan Davies for all the work that she did during the task force review.

**The Convener:** Last week, I asked the minister whether the legislation that would set out how the SSPCA would work and how its powers would be extended would be enacted prior to a protocol being agreed. She said that that could be provided for as an amendment. I ask Susan Davies what her thoughts are on the enactment of part of the bill if there is no agreement between the SSPCA and Police Scotland.

**Susan Davies:** Provision of that safeguard would be a pragmatic step to take, but it needs a timeline. The issue has been around since 2010, if not since before then. Option 2 would take us to a resolution on the issue. It is important to have a strong commitment to working on the detail of protocols and to putting them in place fairly quickly after the legislation is enacted. The approach will take some time to bed in and there will be issues, but, if there is a real commitment to partnership working, the organisations will work through that in a sensible manner.

**The Convener:** I put the same question to Mike Flynn.

**Chief Superintendent Flynn:** As I said, we are ready to go with the protocol as soon as it is put forward by Police Scotland and agreed by the Crown Office.

**The Convener:** What involvement would you have in agreeing that protocol?

**Chief Superintendent Flynn:** We have not seen what has been suggested yet, but I see absolutely no reason why we could not agree with what is potentially coming down the line.

**The Convener:** Iain Batho, can I get your perspective on how the protocol would be set up and whether that should be the trigger for enforcing the additional powers?

**Iain Batho (Crown Office and Procurator Fiscal Service):** Our position is that we could neither endorse nor oppose the proposals at that stage, in the absence of detailed legislative proposals and drafts of any proposed safeguards, such as a memorandum of understanding between Police Scotland and the SSPCA. Our position is that we are ultimately governed by the law and the rules of evidence, so the devil will be in the detail, from our point of view. We would be in favour of the safeguards being drafted in advance of the legislation being put in place.

**The Convener:** Does Police Scotland have any comments?

**Chief Inspector Kevin Kelly (National Wildlife Crime Unit):** I do not speak on behalf of Police Scotland, as I am not a Police Scotland officer, but I will speak on behalf of the implementation of policing of United Kingdom wildlife crime. Risk sits with any new legislation or practices. An agreed protocol is the first step in mitigating risks that could be seen. Is the protocol to be used reactively? Is it to be used proactively? Where does it align with disclosure requirements on policing?

I think that the bill is a positive step forward, as demand on policing rises and services are deviated elsewhere. From an England and Wales perspective, I have advised on a similar project where we have had legislative change and are looking more to partners. However, it is about management of the changes and mitigation of risk, and how people are trained.

**Detective Sergeant David Lynn (Police Scotland):** Police Scotland is of the view that there needs to be a very clear protocol with well-defined roles and responsibilities, in order for things to work successfully if the new powers are enacted. Of course, we could sit down with the SSPCA and the Crown Office and get our heads together to create a protocol that suits everyone's needs and ensures that there are no unintended

consequences of additional powers being afforded to the SSPCA.

**The Convener:** The Scottish Government's consultation resulted in the Scottish Government describing the scope of the new powers as "a compromise". In what areas does Chief Superintendent Flynn think the Scottish Government thinks the powers are a compromise, and where would you like to see them go further?

**Chief Superintendent Flynn:** I am not sure what the Government means by "a compromise" from its side. The original intention, which was first suggested by Mr Peter Peacock MSP back in 2010, was to grant us powers under section 19 of the Wildlife and Countryside Act 1981, which covers a multitude of things, but that has been narrowed down to extending the powers that we currently have under the Animal Health and Welfare (Scotland) Act 2006. That will extend what we can do if an animal is alive when we go to an incident, as our inspectors do when the public call us.

Obviously, Police Scotland still has primacy in all things in such cases, and it is ultimately, regardless of the protocol, the procurator fiscal's decision whether a case goes to court. The fiscal is the expert in ensuring that all evidence is gathered lawfully and that there is substantial evidence to take a case forward. Otherwise, the fiscal will just not do that.

**The Convener:** In practice, if you were called—under your existing powers from the 2006 act—to an animal that was caught alive in a live trap that died after you arrived, would the new powers allow you to carry out an investigation into a suspected wildlife crime?

**Chief Superintendent Flynn:** Yes—for that individual animal. It is funny that you ask that, because, not long ago, an animal that was alive in a snare died while our inspector was standing over it, because it struggled to get away. That was the ultimate cause of death.

If we see other traps at a scene, we have to leave the scene and call in Police Scotland, but the police are not always available immediately. I have to put my hand on my heart: we could not do our job from day to day—I am talking about the whole remit; everything that we do—without Police Scotland. The service that we get is very good but, like all services, it is getting tighter. It has far more demands on its time than we will ever have.

**Alasdair Allan:** I appreciate that you have touched on this, Mike, and that others have touched on it as well. I also appreciate that there is no law or legal framework for you to operate within yet. However, so that people who are looking in can understand what option 2 is and what compromise is, can somebody from the police, the

SSPCA or anyone else say whether they have a shared understanding of who does what under that option?

**Chief Superintendent Flynn:** Our inspectors are currently authorised under the 2006 act, which applies where an animal is alive and “under the control of man”. That does not prevent us from investigating offences under the Wildlife and Countryside Act 1981. As I said previously, ultimately, with anything that we do—99 times out of 100, we work in conjunction with Police Scotland anyway—the report goes to the procurator fiscal, who makes the ultimate decision. That process will not change. Regardless of protocol and whether the report eventually goes to the procurator fiscal from Police Scotland or from the SSPCA, the procurator fiscal has the ultimate decision.

There have been instances of badger baiting—I have mentioned this before—when the police have suggested, because of the time and expertise that the SSPCA has, that we finalise the reports to the procurator fiscal. I have never heard any concern or complaints about that.

**Susan Davies:** I will add only that we are talking about giving the SSPCA the powers that it currently does not have to collect and preserve evidence if an animal is dead when the SSPCA inspectors arrive on site. That seems to be a sensible extension of the current powers. That will be backed up with training on how to gather and preserve evidence. That is the extra step that the SSPCA will get.

**Detective Sergeant Lynn:** We cannot lose sight of the huge importance and significance of the early stages of an investigation; we need to bear that in mind. An incident that appears to be relatively simple and in which items are seized could develop into a big police investigation and inquiry that involves numerous people and areas. Ultimately, the bottom line is that a case could fall or be taken no further because of a misstep at the very early stages of an investigation—for example, when evidence is seized and a locus is identified. I totally appreciate Mike Flynn’s point: Police Scotland might not always be able to respond immediately then and there, but we need to bear in mind the importance of the early stages of an investigation. We cannot talk about that as if it is not hugely important.

**Chief Superintendent Flynn:** I concur with what David Lynn says but, to be fair, I note that the evidence that is required to meet a criminal standard is the same under domestic animal law and wildlife law: we have to have a locus and evidence of an accused. In the previous evidence session, I said that there are a lot of incidents of genuine wildlife crime in which animals have suffered illegally, but no accused can be found or

it cannot be proved that there is an accused person, so the case never gets to the fiscal, because there is no evidence that an individual is responsible. The risk in gathering evidence at any stage is the same, regardless of what type of animal is involved.

**The Convener:** David, do you want to come back in?

**Detective Sergeant Lynn:** It comes down to the frequency with which we use the powers. Police officers are, I suggest, experts in identifying evidential opportunities. There might be other considerations, such as forensic considerations, that might not be immediately obvious to someone who does not have that investigative mind to the same extent. If the powers are afforded to the SSPCA, training and ensuring that a reasonable standard is met will be absolutely key.

**Rachael Hamilton:** I would like clarity on what will happen if the protocols cannot be agreed between Police Scotland and the SSPCA. In that circumstance, will the powers be extended to the SSPCA? I ask Iain Batho to answer, if he is the right person.

**The Convener:** I think that he has more or less touched on that.

**Rachael Hamilton:** I know, but I want to be clear on it.

**Iain Batho:** First and foremost, the protocols will primarily be between the police and the SSPCA and will determine how they work. Ultimately, our standards of evidence remain the same, regardless of who reports the evidence to us. Therefore, in general, as long as the standards of evidence are met, we do not really mind who gathers that evidence. However, our point of view is that there is an increased risk when offences are investigated by specialist reporting agencies rather than the police. It needs to be acknowledged that there is a difference between the police and specialist reporting agencies in respect of the level of training in, and experience of, criminal investigation, and that there can be risk in terms of how evidence is gathered, the admissibility of evidence and, ultimately, whether there is sufficient evidence for us to prosecute.

11:45

There needs to be an acknowledgment of those risks, but our position is that, if certain safeguards are in place—our main safeguards—we would support a protocol between the SSPCA and the police. The main safeguard that we would primarily be in favour of is enhanced training for SSPCA inspectors—in particular, with a view to the standards that will be required in order for people to get approval from Scottish ministers to

become inspectors. More generally, another safeguard would be some kind of increased accountability for the SSPCA in the form of additional formal procedures to enable independent scrutiny of the SSPCA. That would serve the purpose of enhancing public confidence and faith in the investigation of wildlife offences.

**The Convener:** Jim Fairlie has a brief supplementary on that.

**Jim Fairlie:** This question is probably more important to David Lynn and Kevin Kelly, but it is actually directed at Mike Flynn. If that sounds complicated, I hope that it will make sense. You were talking about the level of training and the inquisitive and inquiring mind that one needs to do such investigations. You clearly know what that looks and feels like, Mike, but—with all due respect—Iain was talking about a different level of inspection and gathering of evidence at the very early stages. What level of training would you get? Would it be provided through Police Scotland and, which is as important, how would you pay for it? I understand that all the funding that you get comes through charitable donations. Is that correct? If that is the case, how would you pay for that level of training?

**Chief Superintendent Flynn:** Yes, the SSPCA is entirely a charity; we get no central Government or local government money. To my understanding, there has been no indication about a cost other than time. If there is a cost to pay to go on a training course, and we are to be trained not just by Police Scotland, that is something that we will have to look at. Until now, any training that we have required in gathering evidence would have come from Police Scotland or from the Crown Office, if that was appropriate.

I go back to my point—I will mention badger baiting again—that there is the same complexity. From my point of view, the big thing is that we give the police early notification of anything that we are doing. In that way, if it impinges on something else that the police are doing, they can inform us and it will come back.

That comes into play at the moment when we have enough evidence to report a mark to the fiscal and we have to raise a Scottish criminal records number to go with the case to the fiscal. As soon as we apply for that number, the police are alerted that we have an interest in the person. At that point, if it is a firearms issue or the police have a serious concern about anything, we will be contacted by the serious and organised crime squad—it happens not regularly, but occasionally—asking what our interest is in the person. We then pass on our information.

I am assuming—and I hope, because I was the individual who suggested it—that the proposed

protocol will lead to the police being aware earlier of what we are doing and that, if there is concern that there could be a crossover into any other form of criminality, the police can address that aspect.

I hope that that makes sense to everybody. It makes sense to me.

**Susan Davies:** Another thing that came to light during the review process was around the standards for evidence. What came from the Crown Office representative through that process was that, when issues have been raised about the standard of evidence gathering, whether by Police Scotland or the SSPCA, that has been taken on board and they have worked together to improve that. Again, in that partnership way, continuous improvement can be made. I do not imagine that that would be any different under scenario 2. If there was an issue about the standard of evidence, it would be addressed by the SSPCA in the same way as it has been addressed in the past or in the same way as issues are raised about Police Scotland evidence.

**Detective Sergeant Lynn:** I want make a point with regard to Mike Flynn's comment. He is absolutely right: through a protocol, we would ideally be looking for notification before, during, or immediately after the execution of the new powers, so that we could make an assessment, in relation to any work that we have on-going, about whether we want to drop everything and get involved or have a follow-up discussion at a meeting in the aftermath to decide what direction we will take with the case. Are we going to take on the case or is it something that the SSPCA could report to the fiscal? Communication would be key. Whether notification is given before, during or immediately after, we would be looking for it to be given in writing in quite a tight timescale.

**Ross Ewing:** I add our thanks to Professor Davies for conducting the review in a really rigorous way.

Regarding our expectations for training, if the policy comes to fruition, we hope—as is set out in paragraph 26 of Professor Davies's review—that anybody who is involved in investigating wildlife crime will complete the wildlife crime officer two-day induction course, along with the investigator training course, which is a one-week training course that is repeated twice a year. There is also more advanced training for those who exercise additional powers, although I do not know whether that is relevant.

The salient point is that there are those two training courses, which ultimately underpin investigation of wildlife crime in Scotland. Our expectation is that, prior to being granted the additional powers, SSPCA inspectors would have to complete those requisite courses.

**Conor Kelly:** DS Lynn has summarised the deconfliction issue, with two organisations using similar powers. On the point about the notifications before, during or after, I would say that the “during or after” part represents a really good governance process. If someone has powers and takes every reasonable step to notify Police Scotland, that shows good governance.

On the “before” aspect, however, I would invite stakeholders to note that we previously had issues in England and Wales with pre-notifications and technically becoming agents of the police. Now is the right time to discuss that. If someone gets powers that are to be used reactively—with a pre-notification—we have to have an open discussion around where that sits, because it has to be deconflicted.

**Chief Superintendent Flynn:** I will respond to that—Professor Davies can back me up on this—because it was I who suggested that we should call 101 before we even enter somewhere. Half the problem has been that, when we do call for police assistance, there has been nobody available immediately. As I said, it was my suggestion that we should phone 101 to say what we are doing and to report that we are going in somewhere. That message will go to the relevant bit of the mainframe police, and if police officers want to turn up at exactly the same time as us, that is brilliant. If they do not, at least the police know about the matter and have a contact number and can deal with the matter afterwards.

**Iain Batho:** That approach works if there is anticipation of coming across certain evidence that falls under a wildlife offence. An issue arises when the SSPCA attends not anticipating finding such evidence. What happens when, in exercising their powers under the 2006 act in relation to an animal health and welfare issue, someone stumbles across wildlife crime evidence? Our concern is that, in that moment, everything is in place for evidence to be gathered lawfully and properly. We would be interested in how things would work in instances in which evidence is stumbled across.

**Chief Inspector Kelly:** From a practical working point of view, someone who is out doing their job could come across something for which they need the additional powers. With good governance, that would mean making the 101 call, and they would either get Police Scotland or they would not. If they did not get any interest, they could fall back on their new additional powers. That would provide the governance process.

**Chief Superintendent Flynn:** At least that would give them assurance—

**Chief Inspector Kelly:** Absolutely.

**Chief Superintendent Flynn:** It would give some clarity—to refer to a point that was made

earlier—around the idea that we are just going out and trying to find stuff. We will have already informed the police about the land that we are going on to, and the reason why. About 99 times out of 100, that is because of a complaint that we have received from a member of the public. That is the information that we tend to work on.

**The Convener:** I am going to jump between questions, so members should not panic if I appear to be missing out some questions. I just think that it is probably appropriate to go now to the question that Rhoda Grant was going to ask on resources and training, as it ties in with the conversation that we have just been having.

**Rhoda Grant:** We have talked about training, but I wonder, Mike, whether you will need more trained officers to carry out the role. Do you see the role expanding with the new powers? What are the resourcing impacts of the proposed provisions? I know that you are closing offices in Caithness, in my region, but I do not suppose that we are the only ones having SSPCA offices closed. Do you have the resources to take on the work?

**Chief Superintendent Flynn:** This is all based on the fact that we are already dealing with incidents. First, though, I should say that it is not our offices that are closing but our kennels in Balmore and Ayr. It is part of our community engagement model; we are talking about a totally separate arm of the Scottish SPCA, with a 10-year vision for us to improve our service to pet owners and the public.

On the inspectorate side, we are already dealing with the concerns of members of the public. This whole discussion came about because, although we can deal with the animal concerned, we are not allowed to do anything surrounding the immediate area where the animal has been found.

There is no plan to increase our resource; we are not going to put in an extra 20 inspectors, for example, and not all inspectors will end up doing the proper training. There is no additional resource, but there should also be no additional cost to us. In fact, the suggested approach might, in a way, save us money, because we will already be at the scene. At the moment, we have to involve the police, wait until they are available and then go back to the scene. Often we could have taken most of the steps on our first visit, but it is all part of the protocol. In short, the Scottish SPCA will not be putting in any additional resource, and we will not be employing more inspectors to deal with this slight extension to the 2006 act.

**The Convener:** David Lynn has indicated that he wants to come in, then I will bring in Iain Batho.

**Detective Sergeant Lynn:** Police Scotland runs two wildlife crime training courses: a two-day

introductory course and a more advanced five-day investigators course. The decision whether SSPCA officers could sit in on those courses would need to be made at executive level; it is not something that I can commit to today. However, it would not be suitable for SSPCA staff to be present for, say, the inputs on covert policing methods and so on that are currently part of the our five-day course. It is therefore not a given that we could incorporate the SSPCA into our current training model, so we might need to devise a new system. Again, that would need executive support, so it might not be quite as straightforward as it might seem at the moment.

**Iain Batho:** On resourcing, it is important to note that the role of a reporting agency extends well beyond the initial seizure of evidence. The agency that ultimately reports the case to us is responsible for that case moving forward through providing the evidence and the report to us. Our preference would be for any offences involving a wildlife charge to be reported by Police Scotland. If the bill were to allow the SSPCA to report wildlife offences to us, we would want assurances that it was effectively resourced to do the follow-up work after that point.

Our requirements would be for an agency to report cases to us timeously, submit all evidence to us effectively and properly and potentially make further inquiries throughout the life of the case as we require them. We would need assurances from the SSPCA that it was effectively resourced to do such on-going work if it were to report those additional offences to us.

**Chief Superintendent Flynn:** Can I respond to Mr Batho's point?

**The Convener:** Yes.

**Chief Superintendent Flynn:** Just look at the badger cases that we have put in: they have involved post mortems, veterinary statements and third-party statements. We are already doing all those things. If we were not, your department would be the first to tell us.

**Ross Ewing:** Professor Davies's review refers to the number of wildlife crime incidents that are generally reported each day, citing Police Scotland data. Police Scotland reviews around 5,000 incidents daily, of which, on average, five are suspected to be wildlife crime incidents. That is just to give the committee a flavour of the demand that could be expected. We, too, would like reassurances that the SSPCA's resources could handle that.

**Susan Davies:** Thank you, Ross, for elevating me to professor. "Ms" will do, for the record. *[Laughter.]*

Ross Ewing has highlighted an important piece of work on public education. It is a function of the partnership for action against wildlife crime to explain what a wildlife crime actually is, so that the right cases can be reported, through the 101 phone line or other reporting measures, and then followed up. That helps to limit the scope of enquiries and, in turn, the amount of resource that is drawn into matters that are not wildlife crimes.

**The Convener:** We move to a question from Karen Adam.

**Karen Adam:** My question has been extensively answered through many of the supplementaries, but I want to drill into detail that we have not heard and ask what is meant by an "official investigation". That has been a bit of a bone of contention and has raised concerns among stakeholders. At what point would an official investigation be launched? Concerns have arisen from the fact that a licence could be suspended at that point. What do we mean by "official investigation"?

**Detective Sergeant Lynn:** Part of the protocol should state that only Police Scotland can notify NatureScot of information that could lead to its suspending a licence, whether that be a general licence or a licence under the grouse moor management legislation that is going through Parliament just now. It is key that only Police Scotland can trigger that process with NatureScot. Police Scotland does not think that such a responsibility should fall to the SSPCA. That would be very important, from our perspective.

12:00

**Chief Superintendent Flynn:** I would expect that what would be involved in that process would be that the information would be passed to the police to be assessed, and the police would advise NatureScot if it were relevant.

**Detective Sergeant Lynn:** As for when an official investigation starts, it depends entirely on what you consider such an investigation to be. As I said in a previous session, as soon as someone makes contact with the police, an incident is raised. Some might consider that to be the commencement of an investigation, because there will have to be some sort of follow-up, while others might consider that an investigation starts when a statement from a complainer or a witness is taken. It is really quite subjective. There is no definitive answer as to when an official investigation starts.

**The Convener:** That is where the problem lies. The legislation talks about "an official investigation" and, last week, the minister suggested that that would be launched on production of a crime number. There are still some grey areas in that respect.

**Ross Ewing:** Having the establishment of an official investigation as the basis for suspension of a licence is, in our view, completely inadequate—and potentially not legally sound, either. Last week, reference was made to the allocation of a crime reference number as the basis for suspending a licence. I will just quote from the Scottish Government's recording and counting rules, which were published in October 2023 and give a bit of insight into when a crime reference number is allocated. Page 8 of those rules says:

"In the main, incidents reported to the police as crimes will result in a corresponding crime report(s) being created."

The inference that we have taken from that is that, genuinely, an allegation sometimes results in a crime number being allocated. That is really no different from where we started with regard to the establishment of an official investigation and, in our view, it does not provide sufficient legal safeguards to prospective licence holders that they could not be the subject of a vexatious allegation or something to that effect. Therefore, we would strongly and robustly go against the proposal floated by the minister last week—we do not think that it is adequate in any way, shape or form.

**Chief Inspector Kelly:** A number of issues are at play here. People have the right to report a crime, and people quite often report things when they are in conflict. As far as an investigation goes, I have always been really clear that it starts at the point when you suspect something. That is a really good point of measurement; when you suspect that a crime has happened, your investigation starts. There are lots of administrative activities that can take place before you reach that point of suspicion—and, indeed, they might well be the foundation for getting to that point. That is probably something for discussion as we look, potentially, at memorandums of understanding around all of this, but it should be really clear that investigations start at the point of suspicion of a crime. If you are just investigating somebody when you do not suspect them, that is not right.

**The Convener:** This is something that has caused the committee quite a few concerns. Last week, the minister said:

"We are looking at a few options, but I am currently minded to make that when something has a crime number."—[*Official Report, Rural Affairs and Islands Committee*, 1 November 2023; c 26.]

Can I have the views of Kevin Kelly and David Lynn on that?

**Chief Inspector Kelly:** If you ring the control room and report something, it will naturally get an incident number—that is, you get issued with an incident number. Let me give you a hypothetical

scenario: you wake up after a night out without your mobile phone, so you ring up and say, "Somebody's stolen my mobile phone," so that you can claim on your insurance. There are no metrics in there such as, "Did you lose it when you were drunk?", because that would be given a general incident number, or "Has somebody stolen it?", because that would be given a crime number. Having a number does not always accurately reflect the report that sits behind it; that would be a process issue, and it would be something that, at the moment in policing, would probably not be remedied. However, the fact is that, at the point that you suspect a crime, it goes from being a general incident to a crime report.

**Detective Sergeant Lynn:** It is hard to say what the best benchmark would be for an official investigation. I know that the minister said that it could be when a crime reference number was raised, which is certainly an option; however, there are issues with that. We could raise a crime report, but after some investigation it might be established that there was no crime. A crime report can be labelled "No crime"—that is the terminology that we use in the police—and at that point it is basically written off. There are complications in that respect, too.

It does not seem that there is an ideal time for declaring an official investigation. No matter what time is chosen, there will always be an element of dubiety around it.

**The Convener:** I will take responses from Mike Flynn, Ross Ewing and then Susan Davies.

**Chief Superintendent Flynn:** For us, as Kevin Kelly has said, an investigation begins when we have a suspicion. We turn up to a lot of jobs only to decide that there is nothing there and that no crime is involved. We do not issue crime numbers; the nearest we would get to that would be applying for a Scottish criminal record number because we had sufficient evidence to report to the procurator fiscal. That would be the closest that we would get—we do not have that crime classification.

**The Convener:** I will ask this once again, just for clarity. When someone phones up and says that they have a suspicion that something has happened, does that trigger a crime number? If so, would that be sufficient for NatureScot to suspend or revoke a licence? That is the context in which we are having this discussion.

I am sorry to say that I have forgotten the order of speakers. Is it Kevin Kelly and then Ross Ewing? I see that it is Ross first.

**Ross Ewing:** More information is provided in the document that I have just quoted, which sets out when a crime number would be allocated. If someone is able to provide an approximate date—or date range—for the alleged offence and an

approximate locus, or if a modus operandi can be established, that will generally result in a crime number being afforded.

Our point is that, with regard to the licensing schemes for grouse shooting, muirburn and certain wildlife traps, the Wildlife Management and Muirburn (Scotland) Bill provides that a licence can be “suspended or revoked” so long as the regulator is satisfied to the civil burden of proof—in other words, on the balance of probabilities—that a relevant offence has been committed.

Is that not sufficient to achieve the policy aim? We are talking about a reduction in the burden of proof required in order to suspend someone’s licence—we have moved away from the criminal burden of proof and are now talking about the civil burden of proof. NatureScot would have the capacity, as long as its staff were satisfied to the civil burden, to suspend or revoke someone’s licence, because a relevant individual would have committed a relevant crime. I really hope that that would be sufficient to address the policy aim. I do not foresee any circumstance in which a suspension would be warranted if the regulator were not satisfied that a relevant offence had been committed.

I just wanted to make that clear. I should also say that the document that I referred to might be quite instructive in the committee’s deliberations.

**Susan Davies:** We did not look at that issue in detail as part of the review process; instead, we looked at the direction of travel. Different options will have to be explored as the protocols are put in place.

**The Convener:** My opinion at the moment is that the committee does not have nearly enough information to decide whether we are supportive of the measure. From what we hear, there seems to be a lot of detail that should be part of the bill.

One question that jumps out for me is this: if an SSPCA officer were questioning a potential suspect, would that person have to be cautioned? If they were cautioned, would that become an official investigation that might lead to NatureScot suspending a licence? That is a concern.

**Iain Batho:** There are different legal definitions of suspicion. There is the level of suspicion that leads to a police officer or someone from the SSPCA attending an address, but there is also a legal definition that relates to suspicion crystallising to the point where someone requires to be cautioned and advised of their rights. Any wording would have to be very detailed and highly prescriptive, because general terms such as “suspicion” have different meanings for different organisations. We should be cautious about that.

**The Convener:** That brings us back to a previous point: surely SSPCA staff would need training to know when it would be appropriate to caution someone. We have heard from Mike Flynn that the police cannot always respond to wildlife crimes in a timely manner. How would that work in practice?

**Chief Superintendent Flynn:** It is like the badger baiting case that we spoke about. If concerns are raised, you have a suspicion, you verify that what has been claimed is true and you can identify that to the accused, that is when you have to caution someone. As soon as we think all of that, the person has to be cautioned and given their rights. We already do that.

**Iain Batho:** The legal definition of when suspicion crystallises is a common pitfall for any reporting agency. Plenty of cases are reported to us in which we consider that an accused person should have been cautioned before the point at which they made an admission, but such a risk can be mitigated with sufficient training to ensure that things are done properly.

**The Convener:** I would like to bring in Ian Thomson from RSPB Scotland. We often hear about raptors being found on the roadside and so on. What is your involvement in that, and how could increased SSPCA powers lead to more prosecutions?

**Ian Thomson (RSPB Scotland):** I have worked on the front line of wildlife in Scotland for 17 years. As an RSPB employee, I do not have any powers; I am just a member of the public—members of the public have been mentioned a few times in this session. I am a member of the public who occasionally receives reports from other members of the public and who occasionally comes across—or my team comes across—potential evidence of wildlife crime. My team and I regularly report such incidents to Police Scotland, under the current arrangements, if an animal is dead. If we received a report that an animal was suffering, our first port of call would be to the SSPCA, because our primary objective would be to have that animal treated or euthanised.

One of the key things that we have found over many years is the importance of partnership working. In our view, the SSPCA brings considerable added value to wildlife crime investigations, often because it has resources that Police Scotland does not necessarily have.

At the moment, in the whole of Scotland, there are probably about a dozen police officers who are experienced in investigating wildlife crime cases and who regularly do wildlife crime investigations and take them to the level of reporting them to the procurator fiscal. The increased powers that are set out in the bill will increase the possibility that

wildlife criminals will be detected and potentially prosecuted, and that will have a significant deterrent value above and beyond everything else that has been said today.

**Ross Ewing:** I will add an alternative view. We have real concerns about the SSPCA's ability to operate under a clear presumption of innocence, and that was alluded to in Susan Davies's report. As part of our research before today's session, I consulted 129 land managers to find out whether they had trust and confidence in the SSPCA being able to investigate wildlife crime in an impartial and unbiased way, and 97 per cent said no and only 1 per cent said yes. I want to highlight that concern about the presumption of innocence, which needs to be established in the protocols. It is really important that we have that, so I wanted to put that on the record.

**Ian Thomson:** Some of the conversations here are taking place as though the SSPCA, as an organisation, is coming to this completely new and has never dealt with evidence or reported cases to the procurator fiscal. I do not have a copy in front of me, but the Scottish Government's annual wildlife crime report details the number of cases that the SSPCA has been involved in, and there are people around the table who are more qualified than I am to say how many cases are reported to the Crown Office every year. The SSPCA is not new at doing this. It deals with investigations into criminals, including some who commit wildlife offences. That is an important point to make.

**Detective Sergeant Lynn:** Please feel free to correct me if anyone has a different take on this. From the minister's evidence and from reading over the proposal, it looks as though the SSPCA is meant to supplement and assist Police Scotland. The overall aim is to provide evidence to Police Scotland for us to then take a case further. That is slightly different from what Ian Thomson was talking about. The SSPCA will not be dealing with something from start to finish. It is the intention that it will do the initial work and then pass evidence on to us. We rely on the integrity of that work for our further investigations. As I said earlier, that is where it becomes a bit more complicated, because any potential missteps at that point could have an impact on the wider police investigation.

Some recent investigations have started out as relatively minor incidents but have then picked up speed, grown hugely and turned into massive cases in which there have been numerous accused persons. I suppose that that is where it becomes slightly different.

The SSPCA will not be dealing with something from start to finish, so any misstep would have to

be dealt with and could have wider implications for our investigations and inquiries that would follow.

**Susan Davies:** The only other point that I will add is that the decision to prosecute sits not with the SSPCA or Police Scotland but with the Crown Office. It has ultimate control, on the basis of the standard and quality of the evidence that is presented.

12:15

**Iain Batho:** One thing to highlight is that, ultimately, if we are talking about the SSPCA's impartiality and the presumption of innocence, that comes down to an assessment of its credibility and reliability. That assessment is ordinarily carried out at the end of a trial by the decision maker, whether that is a sheriff or a jury. Our test involves assessing whether there is sufficient evidence, and then we apply the public interest test. It was suggested in Susan Davies's report that the impartiality test for the SSPCA might happen as part of our public interest assessment.

Every case comes down to its own facts and circumstances, but I suggest that it is unlikely that we would not take forward proceedings on a case because it had been investigated by the SSPCA and there were wider concerns about its impartiality. Generally, the case would get through our public interest test, and the matter would then, ultimately, be for the decision maker at a trial. There is a reasonable anticipation that the defence in a case would robustly question SSPCA officers on that point, which could affect the outcome of the case.

**The Convener:** This is probably an appropriate point at which to bring in Rachael Hamilton, who has further questions on the protocol that needs to exist between the SSPCA and Police Scotland.

**Rachael Hamilton:** First, I just want to say that we will not see that protocol as part of the bill process—I think that everybody understands that—and I have concerns about the extension of the SSPCA's powers if the provisions in the bill are passed. Will the SSPCA be able to use those extended powers without a protocol? We want to understand what will be in the protocol and what will be the agreed standards. That has been touched on slightly. Who is the best person to speak to that?

**The Convener:** Susan Davies might be the most appropriate person to kick off on that.

**Susan Davies:** In the report, we set out that issues relating to training, the standard of evidence that has to be gathered and the trigger points for notifying the police, as well as all the other things that have been touched on this morning, would need to be picked up in the

protocol. The investigation power that would be extended to the SSPCA, if it was granted, would be given to an individual inspector and there would be a review process, so if someone was found not to be complying with the protocol, they could lose that power. It is not an organisational consent as such; it is more for individuals. That needs to be clearly set out as another safeguard in the process.

**Rachael Hamilton:** If the protocol covered training, including some of the training that would need to be done by the SSPCA to take an investigation further, what would be the unintended consequences if the SSPCA was given powers to investigate without the police? Currently, crucial aspects of an investigation are out of the SSPCA's reach, and Police Scotland is slightly concerned about the change. If a protocol was set, would that be covered by the review of the individual, if they were overreaching or were not carrying out their functions to the standard that was expected? What would be the unintended consequences of that going undetected?

**Susan Davies:** I am not sure that it would go undetected. Ultimately, SSPCA inspectors will have to follow a set of protocols, gather and preserve evidence in a certain way and, through the agreement with the police, have a discussion about how that evidence needs to be presented and handed over. As has been alluded to, there will have to be timescales around that.

There is already exceptionally good partnership working between Police Scotland, the SSPCA and others within the wider partnership for wildlife crime. These arrangements will be an extension of protocols that are already in place in relation to the powers that Mike Flynn and his team already have under the Animal Health and Welfare (Scotland) Act 2006.

I do not think that there should be a huge number of unintended consequences. There is the safeguard of giving an individual the right to follow up on the evidence and the ability to withdraw it if issues are raised by Police Scotland. That is considered under the protocol. Given that those safeguards will be in place, there should not be too many unintended consequences.

**Rachael Hamilton:** Police Scotland highlighted some concerns in previous evidence. Do you have any concerns about how robust the protocol will be and how standards and training will be covered by your partnership agreement?

**Detective Sergeant Lynn:** Ultimately, we will not be able to agree to a protocol unless we feel that it is suitable and that it meets its purpose. As for whether we would be concerned about the protocol, we could not really agree to a protocol unless everyone was happy with its content.

As I have said, the key aspect involves basic communication, so notification will be key for Police Scotland. I know that that might not always be possible, because the SSPCA will already be present on the land under its existing powers, but we will want to know before, during or immediately after the powers are exercised, so that we can make decisions based on where inquiries and the investigation will go, what needs to be done and what has been done. That will be key.

That will probably be the key part of the protocol as far as I am concerned. I know that all the other things are also crucial, but if we are sighted on what the SSPCA is doing, we can then make decisions. In theory, with its increased powers, the SSPCA could be on the land under its existing powers and officers could see wildlife crime—as specified in the list, under the proposals—seize evidence, deal with the matter entirely and report it to the fiscal without any police involvement whatever. That would obviously be minus an official police suspect interview. In theory, however, the SSPCA could do that.

As I said, communication is key, and notification is really important, because there could be unintended consequences. I do not think that the purpose of the proposal is to afford the SSPCA the power to run a full investigation from start to finish, but that power will potentially be given if the agreement between us is not very clear.

**Jim Fairlie:** I will put this question to Susan Davies, Mike Flynn and David Lynn—and it is a very straightforward one. Susan, you just said that there is a very good working relationship between Police Scotland and the SSPCA at the moment. What is the need for the extra powers?

**Susan Davies:** The need for the extra powers is simply that, if the SSPCA arrives on the land and the animal concerned is dead, it has no powers to act and to gather that evidence. If Police Scotland cannot get there quickly, that evidence could be lost. The bill gives the SSPCA the power to act on the evidence if the animal is dead.

**Jim Fairlie:** Mike, do you agree that that is the purpose of the power?

**Chief Superintendent Flynn:** Yes. That is the essence of it. At present, we can go to the location and contact Police Scotland but if, for whatever reason, nobody is available, we have to walk away and the evidence can get damaged by the weather or can disappear or whatever. The proposed power represents a failsafe to cover that gap. There is no issue between the Scottish SPCA and the police, with whom we work on a daily basis on a range of things.

**Detective Sergeant Lynn:** The relationship between the police and the SSPCA is generally good. We have issues that any two agencies

working together will have. At times, communication might not be great and things can fall by the wayside. Generally speaking, however, the relationship is good.

**Jim Fairlie:** Would you say that any increase in powers would have to be very limited?

**Detective Sergeant Lynn:** I believe so, yes. Police Scotland is generally opposed to the increase in powers, but, if it is going to happen at all, it should apply just to those initial stages. That would satisfy the concerns that have been highlighted about seizing evidence then and there and not having to wait for the police. As I said earlier, the proposed increase in powers could lead to the unintended consequence of affording the SSPCA far more power than might have been intended.

**The Convener:** So, we have nothing in front of us at all; we have only a direction of travel.

Susan, should there be far more detail in the bill on the additional powers, the requirements and the safeguards that we might need to put in place? Should there be independent scrutiny of the SSPCA, given the hugely increased potential impact of even an initiation of an investigation if it results in the loss of a licence or whatever? Should there be a lot more in the bill rather than just guidance or a protocol that is not even in secondary legislation? Should that detail be in the bill itself?

**Susan Davies:** I do not think that that is required to be in the bill. Having the code of practice and the working protocols is sufficient to provide the safeguards that are required. It comes back to the question that you posed to the minister the other day on whether the additional powers should be enacted before the protocols are in place. There is already a good understanding and a good relationship between the partners. I do not see that it should take a huge amount of time and effort to agree the protocols and put them in place.

**Ross Ewing:** I will pick up on a point that we were a little bit concerned about when reading through Susan Davies's review. Paragraph 30 makes reference to the fact that Police Scotland and the National Wildlife Crime Unit

"express concerns that extending powers to the SSPCA could result in wider crime investigations being disrupted".

We are all committed to tackling wildlife crime and getting it to the absolute lowest levels possible. When we were reading that paragraph and the evidence that the police submitted to the committee, we thought that it was pretty excoriating. Our worry is that we could compromise some wildlife crime investigations if, as we have set out, the protocol is not watertight

and ironed out. We would emphasise the importance of getting that protocol right.

**Detective Sergeant Lynn:** Early and effective communication could negate that risk. If we are notified of the exercising of those additional powers at a very early stage, that could negate any damage to any wider police investigation.

**Chief Inspector Kelly:** The report, which I have looked at, predates my time at the NWCUC. I do not necessarily share the views of the NWCUC at that time and would like to move forward and look at working in partnership. I go back to my opening comment about governance and managing the risk around it. I see the issue as being policing's appetite for risk. We need to get this right through what is in the MOU and what the pathway to delivery looks like. Will that be triable to work? Without that, there is too much risk to policing.

**The Convener:** There is one piece of information that I want to get on the record. The response that I got from Mike Flynn was not quite clear, so I will read out my question to make sure that I am being clear. If the SSPCA responded to a call about a live animal caught in a trap, under its powers under the 2006 act, but the animal died before the inspector arrived at the scene, would the current proposals enable an approved inspector then to enter land to gather evidence of a suspected wildlife crime?

**Chief Superintendent Flynn:** Are you asking me whether that might potentially happen?

**The Convener:** Would the new powers, as you understand them, allow you to enter the land to gather evidence?

**Chief Superintendent Flynn:** I am not trying to be obtuse, but we would not know. As I explained in the example that I gave in the previous evidence session, the animal died while we were standing there.

**The Convener:** Yes, that is the point. Given the direction of travel that the legislation is taking, if you were to get a call about a live animal but, when you arrived, it was dead, would the power allow you to undertake collection of evidence?

**Chief Superintendent Flynn:** I would say yes, in that instance. If somebody phoned us up saying that there was a dead raptor up a hill that had been there for six months—

**The Convener:** No, I am talking about when an animal is alive.

**Chief Superintendent Flynn:** —we would tell them to phone Police Scotland.

**The Convener:** Okay. Susan Davies, is that your understanding?

**Susan Davies:** My understanding is that, if the SSPCA gets a call about a live animal and it arrives and that animal is dead, it is very limited in what it can do. The power would give it more scope to investigate.

**The Convener:** That is helpful.

**Rachael Hamilton:** I have a question for David Lynn. We are in new territory with the new protocol. If somebody had their licence suspended on the basis of an investigation that had been carried out through the agreed protocol, which we have not seen, would that individual have the ability to appeal against the process that had been carried out if they believed that the protocol had not been followed?

**Detective Sergeant Lynn:** It is hard to say without a protocol being in place at the moment and without knowing what the legal obligations are. If it is not going to be in the bill, I imagine that it would be quite difficult to raise any issues with it. If the detail in the protocol is not contained in the bill, I do not know how you could take issue with what would be a standard operating procedure between two agencies. The honest answer is that I do not know.

**The Convener:** We will have very brief last comments from Susan Davies, Ross Ewing and Ian Thomson.

**Susan Davies:** In relation to that last point, you are talking about a licence that NatureScot would be issuing. In that situation, it would have to go back to NatureScot for review. I cannot speak for NatureScot, but I have worked for it in the past and there is a process that it would go through to look at any evidence that was presented for revoking a licence, or if something happened that suggested that that had been the wrong course of action. However, that would be a NatureScot issue and it would be for NatureScot to have internal procedures in place to cover that.

**Ross Ewing:** I will make a small correction, because the right to appeal in the context of the grouse shoot licence is actually to the sheriff court. It would be the sheriff court that would make the determination on any appeal that was made, and it would be looking at everything on fact and law. That would be the mechanism through which it would happen.

We would reiterate that the right to appeal is comprehensively undermined if the regulator does not need to be satisfied that a relevant offence has been committed. You would have no evidence that you could throw back if you wanted to go down the route of an appeal, if that is the low baseline—that decisions could be made without proof—that is essentially being set for the mechanism for licence suspension.

**The Convener:** I will bring in Ian Thomson.

**Ian Thomson:** Susan Davies made the point that I was going to make.

**Rachael Hamilton:** Could we write to the minister on that specific point? There is still some dubiety in my mind about how that would work.

**The Convener:** There are still some questions around what constitutes an official investigation in the bill at the moment and what involvement NatureScot would have in deciding whether a crime had been committed. We can certainly write for a little bit more clarification.

That was a productive and interesting session, which will help us in our deliberations further down the line. Thank you all for your time today. That concludes our business for today, and I formally close the meeting.

*Meeting closed at 12:26.*

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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