OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs and Islands Committee

Wednesday 21 February 2024

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Session 6

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RURAL AFFAIRS AND ISLANDS COMMITTEE

5th Meeting 2024, Session 6

CONVENER

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

DEPUTY CONVENER

*Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

*Alasdair Allan (Na h-Eileanan an Iar) (SNP)
*Ariane Burgess (Highlands and Islands) (Green)
*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)
*Rhoda Grant (Highlands and Islands) (Lab)
*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)
*Emma Harper (South Scotland) (SNP)
*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andrew Crawley (Scottish Government)
Jim Fairlie (Minister for Agriculture and Connectivity)
Mairi Gougeon (Cabinet Secretary for Rural Affairs, Land Reform and Islands)
Jamie Halcro Johnston (Highlands and Islands) (Con)
John Kerr (Scottish Government)
Edward Mountain (Highlands and Islands) (Con)
Colin Smyth (South Scotland) (Lab)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 21 February 2024

[The Convener opened the meeting at 09:05]

Interests

The Convener (Finlay Carson): Good morning, and welcome to the fifth meeting in 2024 of the Rural Affairs and Islands Committee. I ask anyone who is using electronic devices to switch them to silent, please.

Before we move to our first substantive item of business, I formally welcome our two new committee members, Emma Harper and Elena Whitham. I also take this opportunity to thank our two former committee members, Jim Fairlie and Karen Adam.

I invite Emma and Elena to declare any relevant interests.

Emma Harper (South Scotland) (SNP): Good morning, everybody. I have no interests to declare.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): Good morning, everybody. I am not sure whether this is something to declare, but I note that I am the nature champion for the hen harrier.

The Convener: I think that that is a boast rather than a declaration of interests. [*Laughter.*]

Agriculture and Rural Communities (Scotland) Bill: Stage 1

09:05

The Convener: Our second agenda item is our final evidence session on the Agriculture and Rural Communities (Scotland) Bill. I welcome to the meeting Mairi Gougeon, the Cabinet Secretary for Rural Affairs, Land Reform and Islands. I also welcome her supporting officials from the Scottish Government: John Kerr, who is the head of the agriculture policy division; Ewen Scott, who is the Agriculture and Rural Communities (Scotland) Bill team leader; and Andrew Crawley, who is a solicitor.

I invite the cabinet secretary to make an opening statement.

The Cabinet Secretary for Rural Affairs, Land Reform and Islands (Mairi Gougeon): I am content just to move to questions, convener.

The Convener: Okay. Thank you very much.

As you know, we have taken evidence on the bill over four months and we undertook pre-legislative scrutiny prior to that. One of the topics for discussion was the selection of the four objectives. What are your reasons for selecting the four objectives that are in the bill and for not including others?

Mairi Gougeon: Thank you for inviting me to give evidence to the committee. I know that the committee has received and heard in person quite a lot of evidence in relation to the bill, because—quite rightly—it is of great interest to a lot of people, as you can see from the evidence that you have taken.

On the objectives that we have set, the overall intention is to have broad objectives and not to be too specific, because we want to ensure that we have objectives that will ultimately work in alignment and do not conflict with one another. Trying to do that when setting objectives is always a fine balance. We could put a lot of objectives in the bill, but then the focus would be on the things that have potentially been missed.

We believe that, given the broad nature of the four objectives, we will be able to capture the key aspects and main priorities of what we seek to achieve through the bill. It has been really interesting to hear the evidence that the committee has taken in relation to that and the different viewpoints that have been expressed.

The Convener: As we know, the objectives are very high level. As a result, people's understanding of what they mean differs quite

broadly. We heard from your officials at a previous evidence session that they should be interpreted according to their "ordinary meaning". There is some confusion about what that means and how that might be defined in the future. How will the objectives help stakeholders to understand what the broad aspirations and general policy direction are, and how will they be measured? Will you further define the objectives and what their expected outcomes will look like? If so, when?

Mairi Gougeon: I am keen to get the committee's response on the evidence that it has heard and any particular recommendations that there might be in relation to that. I have mentioned why the objectives and their broad definitions are set out as they are.

I seek clarity on one point, convener. You mentioned "ordinary meaning". Is that in relation to some of the terms that are used in the bill rather than in relation to the objectives themselves?

The Convener: I was referring to the terms in the objectives. Take the objective on regenerative and sustainable agriculture for example. How might that be defined?

There could be issues further down the road because of the United Kingdom Internal Market Act 2020 or something else, and there could be an argument about what the ordinary description is. That could be solved by being more specific about what the objectives mean in practice.

Mairi Gougeon: In the example that you highlighted, about sustainable and regenerative practices, the problem with being any more specific in the bill is that those could potentially change in the future, so we do not want to be too prescriptive. The words "sustainable" and "regenerative" can also mean different things in different contexts. However, I appreciate the need for further clarity and definitions about what we mean. The code of practice is hugely important in setting that out.

We highlighted a broad definition in the route map and the information that we published, particularly in relation to regenerative agriculture. We said that, ultimately, it is a collection of different practices, and we also outlined what the goals of regenerative agriculture include.

The code of practice is important, because it can be broader in setting out what the basket of measures looks like. We appreciate that everybody works on a different land type and has a different type of business, and we know that regenerative means different things in different contexts. We want to ensure that we capture that. However, critical to that is involving people in the process. No doubt, we will come on to that at some point during the session, or perhaps you want to cover the code of practice and how we intend to implement it in detail now. The code of practice is important in relation to regenerative and sustainable practices.

The Convener: We will talk about the code of practice later.

There is a general understanding that it needs to be a framework bill—an enabling bill—and that that is necessary now. However, there has been criticism that the bill is less detailed and specific than one might expect, based on other legislation. Concerns have been raised that the bill is excessively vague and permissive without currently providing adequate guidance to stakeholders or assurance of scrutiny or control over implementation in the future. Would you consider putting a little bit more meat on the bones at stage 2 about the parameters within which you intend the legislation to work?

Mairi Gougeon: I am sorry—do you mean the definitions?

The Convener: Yes.

Mairi Gougeon: Okay. A number of other areas of the bill are included with the intention of providing more certainty and clarity about the overall framework and the flexibility that it is designed to provide. That can be seen in the rural support plan that is proposed.

However, we cannot forget the information that we already have. We are aiming for the bill to deliver on what we set out in our vision for agriculture. We also have a route map—which I have already referenced—that sets out exactly what changes can be expected and when they will take place, and states when more information about each of the changes can be expected. We are trying to provide as much certainty as possible about when more information will come, as well as trying to give more of an idea about what potential measures for the future could look like.

There are broad definitions in the framework bill, and that is for a reason, which is that—exactly as I outlined in my previous response about sustainable and regenerative agriculture practices—they could change. We need a flexible framework so that we can respond quickly should a crisis emerge in relation to how we make payments and the type of things that we can fund. It will also enable us to make changes and adapt the definitions if there are improvements in science and technology. That is why having flexibility is so important.

The Convener: I am sure that we will come on to talk about flexibility when we discuss other sections of the bill.

Ariane Burgess (Highlands and Islands) (Green): On Monday, we had a fantastic session with farmers and crofters. It was insightful to talk to

folk who are doing the work on the ground. One point that came up in the conversation was that farmers make something that, at the other end of the process, gets sold on to businesses that are considering their scope through emissions.

In your thinking about the objectives, how much consideration did you give to things such as the Sustainable Markets Initiative? I am not sure whether you are aware of it, but it has an agribusiness task force of Fortune 500 companies, which, globally, has decided on five metrics—greenhouse gases, water use, the efficiency of nitrogen and a couple of others. I realised that the committee had not talked about that, but it came up on Monday.

How much have you thought about the fact that we are using public money to support farmers and crofters to become more sustainable, yet some of them sell into global markets? Did you take that into account in thinking about the need for flexibility in the bill? Is that why you think that the bill needs to be a framework bill?

09:15

Mairi Gougeon: Yes, we need the framework for the reasons that I have outlined. We need it to be adaptable in the future, not least because of how we see the transition going forward, as we have set out in the route map. There will be changes, particularly in the course of the next five years or so, and we need to be able to adapt and to have the flexibility to implement them.

I would have to take a closer look at some of the specific objectives that you have set out in relation to that initiative. I know that the committee will be well aware of something that I, too, see when I visit businesses across the country, which is that, at the moment, a lot of the activities that they undertake are dictated by the contracts that they are subject to. I recently had an amazing visit to Arla Foods and heard about its sustainability journey and how it is driving that, working with its farmers on improving sustainability.

A lot of the people whom I speak to are already far ahead of what we can talk about in the bill. There is no doubt that they would meet all the objectives that we have set out and are undertaking the type of practices that we want to see in the future. However, we know that things can change. New measures could become available that we are not aware of now, which we might want to incentivise or look to introduce. The ability to do that through secondary legislation and to enable that through the bill is really important.

Perhaps John Kerr wants to add something.

John Kerr (Scottish Government): To pick up on the specific point about the Sustainable Markets Initiative, we are aware of that. As we do the policy development work, we take account of market initiatives such as that. You mentioned five specific metrics. Other market initiatives articulate things slightly differently, so there is a danger in being too specific and aligned to one initiative, as opposed to having the flexibility, as the cabinet secretary said, to accommodate things in the round.

We want to be able to support farmers, however they choose to interact with the market, because there is a broad range of different outlets for agricultural produce. We are aware of and take account of the metrics that are being developed, but we keep in mind that, from a Government point of view, we need to keep things sufficiently broad to be able to support the broad range of markets that our farmers and crofters supply to.

Ariane Burgess: Sticking with the metrics piece, something else that came up was an anecdote from a farmer who has to do a carbon footprinting audit for one part of their business and a different one for another part. When the farmer shared that information, it spawned input from a whole lot of other people, so there is something there that we need to look at. How do we align that? Farmers are having to look one way to meet the needs of one company or industry and then another way for another. Other things came up around alignment with environmental metrics and biodiversity accounting and audits. Somebody said that they felt that, if they invited different companies to come and do their biodiversity audit, they would get different answers. How do we get to a place where there is clarity across the piece as to measurements and how we track things such as that?

Mairi Gougeon: You have touched on a really important point. We have had that discussion a number of times, particularly in relation to carbon audits, in which more than 60 different tools are available for people to use. It is not possible for us to mandate that or to say which particular tool they should use. As John Kerr has outlined, different markets expect producers to use different tools. It is about us having the flexibility so that we can recognise those different schemes in the future.

That is what we have tried to do through the preparing for sustainable farming scheme. It is about enabling businesses to get their individual baseline of information. Biodiversity is really challenging, in that regard. We have been working with NatureScot on what a biodiversity audit might look like, because that can be more challenging in certain circumstances.

The Convener: You will be aware that there are concerns about there being only four objectives in the bill. Will you consider adding to the list of objectives? We have heard concerns that there is

no reference to a range of priorities, including small-scale farming and crofting, animal welfare and health, productivity, resilience, land reform and generational renewal. Are you minded to consider increasing the number of objectives by potentially introducing new ones at stage 2?

Mairi Gougeon: That is why the evidence sessions that the committee has undertaken are so important, and it is why we go through this process. Only by doing that are we able to flesh out more points and ideas. I am not coming here with a hard-and-fast approach to what we will introduce, because I want to hear the committee's views.

I have set out why we have broad objectives. That is by no means meant to exclude all the other areas, which are hugely important. Our intention is to capture them all without necessarily listing them. A number of areas are already covered in other legislation and strategies. It is not that we consider any of those areas not to be important, but they will be captured in the broad definitions. However, I am happy to hear the committee's views on that.

The Convener: So, you would be open to amendments that would increase the number of objectives.

Mairi Gougeon: I want to hear the committee's views on that. As I said, it is about getting the right balance. I suggest that we do not want to have a huge list, because then people might think that, if something is not on the list, it is not important. That is why the objectives are framed as they are.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): How do we separate the important but distinct objectives relating to rural policy and agricultural policy? How do we ensure that they are not conflated? How are they related? How do we attach priority to them?

Mairi Gougeon: That is why it is important that we have introduced the Agriculture and Rural Communities (Scotland) Bill. I do not see the objectives being in conflict with one another. The bill recognises the importance of agriculture, the wider supply chain and food production to our rural communities as a whole.

As we have emerged from the European Union, we have continued with the common agricultural policy—direct payments and the LEADER programme are examples of that. I know that members will have plenty of examples from their constituencies of that fund being hugely important in supporting rural development. I see the objectives as being hugely important, and we will continue to drive forward with them as we further develop our plans.

In relation to the LEADER programme and rural development, community-led local development has continued to be important. We have, over the past few years since leaving the European Union, looked at what we can learn from that. We have tried to take the best of what the LEADER programme offered and to tailor our system in a way that works for our rural and island areas. We are trying to see how we can make the system work best for rural communities. The proposed powers in the framework will, ultimately, allow us to develop a scheme that works for our rural areas, and we will work with rural communities as we do that.

Alasdair Allan: That leads neatly to my next theme, which relates to what should be on the face of the bill—we have heard that phrase being thrown around in committees and elsewhere. We would have some very long legislation if everything was "on the face of" every bill.

We have had some discussion about the rural support plan. Are you content that there is enough in the bill to define its meaning and aims?

Mairi Gougeon: We wanted to bring that forward, because I understand that there can be frustrations with framework bills. This is the second framework bill that I have discussed with the committee.

I understand that the bill does not necessarily provide all the clarity and detail that people want. I have outlined already why the flexibility of a framework is so important and why we would look to provide the detail in secondary legislation—which is not least because of all the changes and potential issues that could arise, which we need flexibility to adapt to.

The rural support plan is key because it is about providing more certainty in a flexible framework. The intention is that the rural support plan will build on what we have set out in, and are looking to achieve through, our vision for agriculture, and that we will use the bill to deliver that. We have also set out the route map to the future transition and have said what it will look like.

All of that will be brought together in one place to provide more clarity, within the flexibility of the legislation.

The Convener: On that, we have heard from many stakeholders that a little bit more certainty is needed. Given that the bill is a framework bill, the rural support plan could actually be the bill, because it will set the direction of travel for five years, 10 years or whatever.

One of the overriding calls was for the rural support plan to be available sooner rather than later. The Delegated Powers and Law Reform Committee suggested that it should come before

stage 3, and the majority of stakeholders suggested that it is needed before we start to develop secondary legislation.

I cannot find the quotation right now, but we heard in an earlier meeting that nine tenths of what will be in the rural support plan has already been developed through the two policies that the cabinet secretary has touched on. If nine tenths of it has been developed, why can we not have a commitment to have that rural support plan now rather than sometime in 2025, when the committee will have limited ability to scrutinise it?

Mairi Gougeon: The first point to clarify is that we need the powers that are in the bill before we can formally bring forward the rural support plan.

However, I understand what the convener has set out in relation to the proposal by the Delegated Powers and Law Reform Committee. I would like to take more advice on that to see whether, and when, we might be able to bring forward at least a draft of the plan. I am happy to follow up on that with the committee and provide more information on when we could provide an initial draft of the rural support plan.

The Convener: When would you prefer it to come forward?

Mairi Gougeon: We have said that we need the new powers in the bill in order to introduce the plan and that we intend to introduce it in 2025.

The Convener: You do not need the powers to produce a draft rural support plan, do you?

Mairi Gougeon: As I just outlined in relation to the proposal by the Delegated Powers and Law Reform Committee, I want to consider the issue further and take advice on it. I will then follow up with the committee on when we could provide an outline of what the plan will include.

It is important to remember that co-development with farmers and crofters is critical to absolutely everything that we are doing in the bill and to all the secondary legislation that we will bring forward, including the detail of the enhanced measures and the tiers of the future framework. A just transition is critical to all of that as well.

We want to develop schemes that we know will work and that will deliver the objectives that we have set out in the bill, but we want to do so in a way that works for farmers and crofters. We want to develop that with them. The detail that comes from doing that, and from following what we have set out in the route map about when information will become available, will, ultimately, populate the rural support plan. I like to think that, by the time the plan comes forward, it will not be a surprise to anyone, because we have outlined in the route map when different parts of the information about the future framework will be published and become available.

The Convener: We have also heard about the on-going concerns of the Finance and Public Administration Committee in relation to the increase in the use of framework bills. We know about that issue, which the Conveners Group has also discussed. There is also the point about the co-design process that takes place during and beyond the passage of primary legislation. What is your response to that?

Mairi Gougeon: I am sorry, but I do not know about the particular point that was raised in relation to the co-design process. I think that Ewen Scott was at the committee; I am not sure whether he or John Kerr wants to come in on that. The co-development aspect is absolutely critical.

I know that there is general criticism of framework legislation, but I think that I have outlined why having that flexibility is so important. We have to ensure that we have the transition over the next few years, for all the reasons that I have outlined. We also need flexibility in order to adapt, in a way that we cannot at the moment, to possible future challenges. That is why it is so important. Although I appreciate the concerns that have been expressed about a framework bill, it is exactly what we need to enable us to move forward and have the transition that we have set out. John Kerr or Ewen Scott might have more to add.

09:30

The Convener: The final paragraph of the Finance and Public Administration Committee's letter says that the approach that you are taking

"presents significant challenges for effective scrutiny of cost estimates associated with legislation",

and it goes on to say that the committee's concerns in that area are set out in its December 2022 report and correspondence on the national care service. Two committees in Parliament are raising concerns about the lack of detail in the bill and co-design being done after primary legislation has been passed. Is that not something that you take seriously?

Mairi Gougeon: Of course we take it seriously. We also take seriously any recommendations that come from a parliamentary committee.

We provided a substantial response to the Delegated Powers and Law Reform Committee on the concerns that it had expressed. We have had a response to that in relation to some of the powers that we have set out, and I think that there are a few outstanding areas where the committee has recommended a different procedure for those powers, in particular.

Again, I have set out quite clearly why the framework approach is so important. I do not know what the converse of that argument would be. If we were to put all the detail of secondary legislation in the bill, that would tie us to it in a way that would be a lot harder to change.

The Convener: That is not what has been suggested. We are talking about the rural support plan, not the framework bill.

We also heard one of your bill team tell the Finance and Public Administration Committee that

“the vision for agriculture, combined with our route map, is nine tenths of our plan.”

I presume that that refers to the rural support plan. They went on to say that

“Some of the extra elements that will go into that are in development right now.”—[*Official Report, Finance and Public Administration Committee*, 6 February 2024; c 25.]

Although you will look at what the Finance and Public Administration Committee and the Delegated Powers and Law Reform Committee have suggested about bringing the plan forward, that quotation would suggest that it is almost there. The stakeholders have repeatedly said that we need to see it sooner rather than later.

Why are you waiting to get advice on the recommendations from two other committees before you do what the majority of stakeholders are asking, which is to see the rural support plan? This is not about what is in the framework bill—we all accept that flexibility is needed—but to give the Parliament some confidence that we are not just giving the Scottish Government carte blanche and a cheque book to do whatever it wishes. The support plan will set out far more detail: your officials have said that it is almost there, so why do you not make the commitment to publish it before 2025?

Mairi Gougeon: I have already set that out, convener. It was not clear to me that your previous question referred to the rural support plan, so I apologise if we were speaking at cross-purposes. John Kerr might want to come in.

John Kerr: I suspect that the comments that you are referring to were ones that I made at the Finance and Public Administration Committee. The point that I was trying to make—perhaps I have articulated it too specifically—was that the rural support plan will emerge from what we are currently doing in co-development of our policy. We have set out our vision, which clearly sets out the objectives that we want to achieve with agricultural policy in Scotland.

The bill is part of that, but it is not the only part of it, because we have to develop the detailed support mechanisms with farmers or they will not work, and that will take time. We know that we have to take the time to do that, but we also know that we need underpinning legislation and the powers to implement the support once we have done the work.

The rural support plan is based on the vision and our route map. We have some decisions to make—they are not mine to make, but are for ministers—about the other things that we want to put in the support plan. The evidence that you have taken will inform that, and we have been listening to it very carefully. I perhaps misspoke if I said that the plan was nine tenths there, because there are options about what exactly we put into the plan, and the drafting work still needs to be done. If this is an opportunity for me to correct that, I thank you for it.

The Convener: Thank you. Emma Harper and Rachael Hamilton have supplementary questions. We will then move on to questions from Rhoda Grant.

Emma Harper: I am a member of the Health, Social Care and Sport Committee. The National Care Service (Scotland) Bill, which that committee is considering, is a framework bill, as well. We had a stushie in the process because of what is not in that bill but will be developed in co-design.

The technology is developing really quickly. Scotland’s Rural College, which does research and development and works on the science, welcomes the framework bill because it will allow adaptations for whatever we do in the future, such as emissions reduction in ruminants and things like that.

I am interested in engagement in the co-design process, given that there are a lot of parallels between the National Care Service (Scotland) Bill and the bill that we are discussing, as they are both framework bills. I am interested to hear how the co-design process is being done with land users, farmers and crofters in order to give people confidence and give the process stability.

Mairi Gougeon: I am happy to outline some of that work. As you can imagine, there are a number of strands to it. We have set out the four-tier framework, and a number of pieces of work are under way. As I and John Kerr have outlined, co-development is critical to all that because we want to make sure that we bring forward policies that will ultimately work.

I will touch on a specific example. We are due to provide an update to the route map in the first quarter of this year; we will publish it next month. It will set out more detail on the conditions, in relation to whole-farm plans, that we will introduce for support from 2025.

We have also talked about conditionality in relation to the suckler beef support scheme. Those

pieces of work have involved extensive work with a number of stakeholders. As you can imagine, with the suckler beef support scheme, the various organisations and people that we have included in the consultation have been involved in the work to develop the scheme, and proposals have come from individual farmers, Quality Meat Scotland, the Scottish Beef Association and others. The whole-farm plan has been critical in all that, too.

Those are specific bodies of work, but all the work involves wider engagement and involvement in what we are doing, with wider testing to ensure that our proposals make sense and will work for farmers and crofters. Having published the most recent update to our route map after the Royal Highland Show in June last year, we issued a call for volunteers to sign up and help us with that work. From that, we have a database of between 1,200 and 1,300 people who have signed up to take part in that research.

I am looking at the other figures that we have. We have undertaken about 3,500 surveys and about 250 individual interviews with people, and there are then all the other pieces of work that we are taking forward in relation to tier 4 and the complementary support that is available there. Extensive work has been undertaken in that regard.

That is a snapshot. I do not know whether John Kerr wants to add anything, but I hope that that has provided you with a bit more clarity on the work that we are doing and on how important in the process wider involvement is.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): It is useful to have that clarity and that update on the work that you are doing with stakeholders in that co-development. Thank you for that.

However, I disagree with Emma Harper. We have heard that, although people want flexibility, they absolutely want clarity, too, and they understand the potential difficulties with the framework bill. I think that the key point is that the people from whom we have heard evidence are asking for the funding to be allocated and for a breakdown of it to be known before the bill is passed. That has been a strong theme throughout the evidence sessions.

As well as what you have just shared with us, I am keen to know what role the agriculture reform implementation oversight board has in shaping the piece that John Kerr talked about in relation to the vision and the route map—which is really just a wish list—and how that will shape clarity about the funding underpinning them.

Mairi Gougeon: ARIOB is an advisory board. Ultimately, it is down to me to take the decisions on how we move forward. The board has a wide variety of expertise, so we are able to discuss some of those matters. It is involved in giving advice and in the wider testing in some of the areas that I have talked about, including how we best take forward the whole-farm plans and conditionality. However, I should say that, in that regard, we have had separate groups to involve a wider range of stakeholders in informing our work as we move forward.

As I have said, ARIOB is an advisory board, and I very much appreciate its advice, not forgetting that where we are in relation to some of the conditions that we are introducing and some of the policy priorities that we have identified all comes back to and is based on the work of the farmer-led groups and the work that they published in 2021. We are trying to build on those measures and their reports.

Rachael Hamilton: John Kerr mentioned in a previous session—the session at which we initially took evidence—that the SRUC was doing some economic modelling that would be published. I am sure that, at the time, he said that that would be published around December. Is there any movement on that?

John Kerr: Some of the economic modelling that we are doing in support of the work has informed the papers, including the evidence pack, that accompanied the bill that we introduced to Parliament. However, we have work on-going with the SRUC and others to inform policy development and the secondary legislation and to help design our future schemes. It is an iterative process; we might choose to publish some of that work, but we might also choose to take forward other work in discussion with stakeholders without necessarily publishing it. The principal aim is to develop the policies in the right way and to inform our next steps in the agricultural reform programme.

Rachael Hamilton: On that point, I believe that the group has an important scrutiny role. We are not seeing that work, because the Government is choosing whether to publish it. That does not allow us to do our job.

The Convener: Rhoda Grant will look at that a little bit more closely.

Rhoda Grant (Highlands and Islands) (Lab): I totally get what the cabinet secretary is saying about the difference between the bill and the plan. The bill has to be wide, but it is the rural support plan that could make or break businesses and which will show the direction of travel for agriculture. That is why people want to see a draft of what the Government's thinking is. It does not need to be nailed down at this point, but it is why we are getting so many representations on it.

The bill does not really provide for much scrutiny of the plan. Where is the consultation? Where is the monitoring and evaluation? Where is the parliamentary scrutiny? If people knew that the plan was going to be scrutinised—not in the same way as the bill, but still scrutinised closely—it would give them a degree of comfort that they would be able to feed in their views. If the first iteration was not right, people could go back to the drawing board. The real fear is that, in 2025, it will be a case of take it or leave it.

Mairi Gougeon: In terms of overall support, I hark back to the route map, which is where we have set out as much information as we can about the future direction. I understand the concerns and criticisms that you have heard about the lack of detail and the need to know the future direction for business planning, which I know is vital to businesses. That is why the detail that we have set out on when that information will be available is so important, as is the list of measures that we have published.

That list was published in order to set out our thinking on what could become a condition or part of the enhanced tier in a future framework and to show examples of how that could work in different business units in different areas. There was a particular focus on that in the measures that we produced in relation to livestock, because we know that that is where the largest emissions come from.

09:45

I raise that point because I do not want us to forget about the information that already exists and what we have already set out. It is important in providing as much certainty as we can and in setting the direction of travel for the future, as well as providing information on what the transition will look like. We do not want anybody to face any cliff edges, and particularly not in 2025. We have been strong on that commitment and have tried to make that clear throughout the process. It is neither in our interests nor in the interests of farmers and crofters for that to happen. We must ensure that there is a just transition throughout, and that is what we have tried to map out.

Rhoda Grant: We genuinely hope that that is the Government's intention, but, unless the bill guarantees us that scrutiny will take place, the committee might not be able to see a draft of the plan. I suppose that I am asking for a commitment that the Government will lay a draft, that the committee will have time to scrutinise it and that Government will listen to the feedback that we gain from speaking to stakeholders about it.

Mairi Gougeon: We seriously consider all the feedback that we have heard, which is why all the evidence sessions that the committee has undertaken are important to us. I look forward to seeing the committee's recommendations in relation to part 1 and the other parts of the bill.

I will not make a commitment on the member's suggestion today, as I am here to listen and engage. It is important that we hear those points, and then we can take the matter forward once we have considered the committee's view on the issue.

I said earlier that I would follow things up with the committee. I want to take a bit more advice on what we would be able to set out in advance. I am happy to reaffirm that, and I will follow that point up with the committee.

Rhoda Grant: I want to press home this point, because all the communication that we are getting from the industry is that it does not know what is going to happen. The longer that people wait, the more fearful they become.

Mairi Gougeon: I absolutely appreciate that, but that is where what we have set out in the route map comes in. I am not focusing on the rural support plan at the moment because, as John Kerr has outlined, a lot of what is in the route map will be part of that. There is information there, and more information will be coming along the timeline that we have set out. The rural support plan will not change what we have in the route map; it is about bringing together the different pieces and showing how we will deliver on the vision and against our objectives.

Another important point that you have raised, but which I have not touched on, relates to monitoring and evaluation against the objectives that we have set out. That will be built into how we move forward, because we need to know that we are improving and to find a way of measuring and evaluating that so that we know that we are delivering on the bill's objectives. That will, of course, be embedded in the work that we are taking forward.

Beatrice Wishart (Shetland Islands) (LD): I reinforce the points that Rhoda Grant has made. What we have heard loudly and strongly is that farmers and crofters are in a holding pattern. They are holding off from making investments, including quite big investments, and that will have knock-on consequences for the supply chain and our rural communities. The sooner that farmers and crofters have the clarity and certainty that they have been crying out for, the better.

Mairi Gougeon: Again, I absolutely appreciate that point. I emphasise that we have tried to communicate as much as possible. I am sometimes concerned that people are not aware of the information that we have already published. More information is coming all the time. As I have

said, we are due next month to publish the update to our route map, which will provide more information on the conditions that we set out last year, the whole-farm plan and the suckler beef support scheme, as well as other aspects. More of that clarity and direction is coming, and it will be coming in accordance with the timeline that we have published.

The Convener: Sticking with section 3 and the matters to be considered in the plan, I know that you have said that, if you create a list, the areas that are excluded can be highlighted. However, should there be additions to the matters to be considered under section 3?

Mairi Gougeon: Again, I do not know whether the committee has any particular comments or suggestions to make on that. I believe that the matters to be considered, which we have set out in section 3, cover what we need that to do, but, again, I ask the committee whether its members have any particular suggestions to make or whether they feel that anything is missing from the list that should be considered but has not been.

The Convener: There is a long list of additional suggestions of things to which regard should be had, including the good food nation plans, crofting law reform, common grazings, the biodiversity strategy, the river basin management plans, the rural development plan, the Circular Economy (Scotland) Bill and the proposed human rights bill. We have had a huge range of suggestions from stakeholders, and I presume that you will be open to suggestions about how section 3 could be amended to ensure that it covers their concerns.

I also want to touch on the importance of monitoring and evaluation of the rural support plan. We have heard that, in 10 years' time, we could be asking ourselves whether the rural support plan delivered what it set out to do. Did it improve soil health, mitigate climate change, increase resilience and enable rural communities to thrive? Those are all suggestions that Professor Dave Reay made on what the rural support plan should do. How do we articulate that? How do we ensure that the bill provides for the monitoring and evaluation necessary to ensure that we are heading in the right direction and that we are not waiting until the end of the plan's five-year period?

Mairi Gougeon: I want to address your first point about the list of matters to be considered and highlight and emphasise the fact that all the areas that you have mentioned are hugely important. More policies and legislation are coming down the line that are closely interlinked with agriculture and the future framework that we will have. I want to reassure the committee that we are considering all the policies that you have outlined, some of which are mentioned in the policy memorandum. The fact is that we must adhere to legislation that is already in place, and our rural support plan proposals are not being developed in isolation, without any consideration being given to those areas, given that, as I have mentioned, so many of them are integral to what we are doing.

I am sorry—what was the second matter that you raised?

The Convener: It was the issue of monitoring and evaluation. I do not want us to wait until the end of the five-year period of the plan before deciding whether soil health has improved or whether the plan has had a positive impact on climate change or rural communities.

Mairi Gougeon: I come back to the point that I made to Rhoda Grant. Monitoring and evaluation will be vital, because we must ensure that we deliver against the outcomes, not least our emissions targets, but also in relation to nature restoration. We will undertake work to identify the best way of doing that.

Of course, it is a complex process, because we are dealing with things that are difficult to measure. For example, someone who undertakes measures on their farm or croft might not see the benefits—say, the biodiversity benefit—for another 10 or so years down the line. In addition, someone who has taken action to achieve a specific outcome might not get the results that they expected as a result of a weather event or some other incident. Ultimately, the issue is how we take all that into consideration. Measuring progress will be quite a complex process, but it will be fundamental to what we do as we go forward.

I do not know whether John Kerr has anything to add.

John Kerr: I do not have anything to add specifically on monitoring and evaluation, but I re-emphasise the cabinet secretary's point about the matters to be considered in relation to the rural support plan. We have set out quite a broad set of things that must be considered, especially in section 3(2)(c), where we refer to all the other statutory duties that must be taken account of. We make it very clear in the bill that, in the development of policy, we will take account of the other Government policies that are in statute at the time; indeed, we will perhaps take account of non-binding Government policies, too.

In our policy development, we are working very closely with colleagues in the environment directorate and our delivery bodies to make sure that we are able to help farmers and crofters deliver in relation to the wider interests of the Scottish public and what they would expect of people who are in receipt of support. We are absolutely committed to doing that. Making sure that we have got that right is part of our normal operation in the civil service.

The Convener: I am sorry, but, before we move on, I am going to jump back to section 3, on matters to be considered in relation to the rural support plan and the Scottish ministers needing to "have regard to" certain matters. There are questions about whether we need that section at all. What is the purpose of it? On the reference to ministers needing to

"have regard to ... any other statutory duty",

I presume that they would be required to have regard to those issues whether or not they were set out in the bill. You touched on having a list. Why is there a section 3 at all, given that the Government has to pay regard to statutory duties whether or not they are set out in the bill? Given the list of other considerations that you have said are really important, but which are not in section 3, why have we got a section 3 at all?

Mairi Gougeon: It is important to have it for exactly for that reason. It is about ensuring that we are looking at those matters and that they feature as part of the rural support plan.

If we look at the matters that are set out, we see that we have our objectives, the climate change plan, agriculture, forestry and rural land use. From the evidence that you have taken and from some of the discussion that we have had today, we know that there are very specific things that people would like to be included in there. Of course, we take a lot of those matters into consideration—and we have to, where that is legally binding and where we are working across other areas of policy. However, it is important for us to at least set out the matters that we would be looking to include as part of the plan rather than not do that.

The Convener: However, I presume that you have a statutory duty relating to other legislation that you do not have to repeat in this section.

Mairi Gougeon: Andy Crawley, do you want to come in on that one?

Andrew Crawley (Scottish Government): Yes. The convener is quite right to say that statutory duties apply regardless of anything that appears in this bill. I would suggest that the way to understand the issue is, as the cabinet secretary says, in relation to how we shape the plan, how the plan has been developed and how we might want to put into the plan material relating to how those other statutory duties have been taken account of.

Although we do not have to have section 3(2)(c) and we could drop it, that might mean that the plan would not develop in a way that is helpful for people who would be looking to the plan to understand how support would develop over that five-year period. It is about clarity and transparency as much as it is about legal change and legal effect.

The Convener: Would that not be more clearly set out by having a more specific, tailored framework for what the rural support plan might look like? Rather than having to make assumptions about what is covered by the phrase

"ministers must have regard to",

what if there was a section of the bill that made it clear what was to be included within the rural support plan? Would that not achieve that in a far more transparent way?

Andrew Crawley: Different duties might be engaged in different ways at different times. Again, it is all about flexibility and being able to frame the plan accordingly, because circumstances will change—we know that—and new duties will arise as new legislation is enacted.

The Convener: Thank you. That is helpful.

Rachael Hamilton: I will go back to my original question. Notwithstanding the arguments that you make about the flexibility of a framework bill, what is holding civil servants back from issuing a draft publication of the allocation of funding within a rural support plan? Is it resource or capacity?

Mairi Gougeon: In relation to your point about the draft allocation of funding, in particular, just in recent weeks—as you will be aware—we have provided an overall outline of what that budget split might look like, to provide some of that clarity.

What holds us back from allocating budgets and from budget certainty is that we do not have budget certainty going forward. It is not possible for me to set out what the envelopes might be against that when I do not have that information.

Rachael Hamilton: Okay. I think that there are questions relating to that point later on.

You said that the 70 per cent allocation to tiers 1 and 2 was announced just a week ago. Has there been any consideration of the ring fencing of certain levels of that funding or of providing funding through multi-annual funding agreements?

10:00

Mairi Gougeon: It is not possible for me to make a commitment on multi-annual funding when I have absolutely no clarity on our allocation from the United Kingdom Government beyond next year. It would be irresponsible of me to make commitments around that when I do not know what that quantum of funding will be. We have set out what the overall broad spectrum of the envelopes might look like across the tiers, but it is not possible for us to do that in detail.

Rachael Hamilton: What analysis did you use to come to the conclusion that you wanted to allocate 70 per cent of direct payments in tier 1 and 2 if you did not have foresight or knowledge of future allocations?

Mairi Gougeon: We set that out more broadly because it covers what we currently fund by direct payments and how that is split across the future tiers of the framework. As we have set out, tiers 1 and 2—the base-level support and the enhanced tier—will be the direct element of that funding. When we introduce the enhanced tier in 2026, we will be able to drive a huge amount of the change that we want, including more measures on reducing emissions and enhancing nature.

We want to give our farmers clarity and certainty about what to expect, which is why we said that we have committed to maintaining direct payments now and into the future and to maintaining that base level of support. We want to continue to support food production, and we want to be able to use the quantum of funding that we have to do more through that enhanced tier.

Rachael Hamilton: For clarity, what is the total funding that you envisage in the 70 per cent of direct payments?

Mairi Gougeon: Sorry—what do you mean?

Rachael Hamilton: We currently have £621 million from the UK Government. What is that in tiers 1 and 2? You said that you wanted clarity on future funding. You have allocated 70 per cent in tier 1 and 2. What are you basing those figures on?

Mairi Gougeon: That is the overall quantum of funding, not the figures. As I have said, that aligns with what we have in direct payments at the moment, so the direct payments would include that. NFU Scotland advocated for 80 per cent of the overall funding, including the less favoured area support scheme, which would not be part of pillar 1 support. We are considering what that support will look like.

If you are pressing me for figures, I do not know what funding there will be from 2025.

Rachael Hamilton: What would you like the funding to be? What figure would the Scottish Government like to deliver the vision and the route map in relation to that envelope?

Mairi Gougeon: Ideally, we would like more funding than we have at the moment. NFU Scotland has called for £1 billion-worth of funding from the UK Government, and I support that call. I listened to the NFU's conference down south recently, and it is asking for £4.5 billion rather than the £2.4 billion that it has been given by the UK Government.

I think that we are entitled to more support than we currently receive. Considering the potential for what we can do for climate and nature, we should receive more funding than we currently do. That funding has remained static over the past few years, so we hope for and would welcome any increase to that.

Rachael Hamilton: On the back of that comment, would you make a plea to the Cabinet for further funding for the top-up, beyond what you already allocate?

Mairi Gougeon: Again, we are confusing two different things. The vast majority of the funding that we receive for this portfolio, and which goes into payments, is ring fenced by the UK Government, which has given us no certainty as to what any future budget allocation beyond next year will be, so we have no idea what is coming. Without that clarity, it is not possible for me to determine exactly what funding there will be or to make commitments about multi-annual funds that, as yet, I do not have.

That is why we set out, as I have already explained, how we can expect the overall envelopes in the budget to be allocated. However, the quantum of that funding will very much depend on the UK Government, because that is where the lion's share of my budget comes from. It all depends on how much I get from the UK Government.

Rachael Hamilton: If you had the same funding, would you want to ring fence that funding and commit to multi-annual funding agreements?

Mairi Gougeon: Ideally, we would want to commit to multi-annual funding agreements, but I am not in that position today because I do not have any certainty. However, going forward, we want to make sure that we are providing as much certainty and clarity to the industry as possible. Let us face it: if we were still members of the EU, we would have had a seven-year period in which we could plan for the future and what the schemes would look like. When we had that, everybody knew what they were going to get over that period and it was all set out. We are in a very different state of affairs at the moment, so it is not possible for me to say what funding is going to look like or to make those commitments, because I do not have that information and I have not been given any of that certainty.

Rachael Hamilton: The Scottish Government's supporting evidence and analysis report was critical of a number of the previous CAP schemes. For example, the greening and less favoured areas support scheme was found not to deliver as effectively as possible on the stated objectives. How will the new payment scheme address those issues?

Mairi Gougeon: Precisely because it gives us the flexibility to adapt the schemes and develop them in a way in which we think will deliver against the objectives that we have set out. There have been calls for there to be a rebasing of LFASS. We want to continue with support of that type because it is so important for our farmers and crofters in the most rural parts of Scotland. We must design the schemes with farmers and crofters and develop a support system that is going to work. One of the schemes that has ultimately delivered on its objectives—I am sure that my officials will correct me if I am wrong—is the agri-environment climate scheme. We could potentially look at what some of the measures might look like, which could form part of a potential enhanced conditionality in the tier 2 measures. It is about how we design those schemes, but, ultimately, we need to design them with the people who are most impacted by them.

Beatrice Wishart: Do you intend the rural support plan to contain any targets?

Mairi Gougeon: A number of targets are listed elsewhere, particularly in relation to emissions reduction, and we know that that is also being considered through the natural environment bill. For me, it is not necessarily about introducing new targets. What will be critical, as I have outlined in previous responses, is the monitoring and evaluation of targets. We already have statutory targets to meet, so it is about how we set out the pathway to achieving them.

Beatrice Wishart: So, there is nothing new, then.

Mairi Gougeon: It is not possible for me to set that out at the moment. I cannot say that we would be looking to introduce other particular targets as part of the rural support plan, but we have statutory targets in relation to emissions reduction and the targets that are being looked at through the natural environment bill. Of course, we will have to consider those.

Rhoda Grant: The committee had a useful session on Monday with small-scale producers. It was clear that they do not get a huge amount of Government support, especially those with properties that are under 3 hectares. They told us that they are sequestrating carbon. A lot of them are carbon negative and get nothing for that. Although they do not want carbon trading, they are very keen that the work that they are doing is supported, especially when considering things such as local food networks. How will you support the small operations that are putting an awful lot back into their communities and helping with our environmental targets?

Mairi Gougeon: Smaller-scale producers are the lifeblood of a lot of our rural and island communities, and support for them is hugely important. That is where I see benefits from this legislation and the schemes that we will be able to design going forward. Producers who have properties that are under 3 hectares have not been included in any of the existing payment schemes because the administration and costs for those smaller producers would not be worth it, which is why we have tried to develop a bespoke scheme to help small producers.

Previously, funding was allocated against the small farms grant scheme, which was very difficult to spend. Small producers, who probably have fewer resources than anybody else, were expected to jump through hoops in order to access support in a way that was inherently unfair and, ultimately, did not work and locked them out, and that is why we undertook work with the small producers pilot to see what sort of support would be the most beneficial and useful. That has been a really important piece of work, with funding being allocated for a few specific projects to trial that support. Support is being provided for a couple of abattoir projects, and there is a website and online resource for small producers. The process has been about listening to small producers and what support they would find most helpful, and about how we can develop and build on that. The pilot is really important as it will enable us to learn lessons, which we can use to inform what future schemes will look like.

Ariane Burgess: It is great to hear that there is a small producers pilot fund, which I understand to be worth about £1 million. However, there are 40,000 small producers—people who operate at the scale of a croft, on under 3 hectares, and sell at market gardens—who really need support. How do you define small producers? What size of land being farmed are you talking about? We need to be really clear about that. I have talked to people who call themselves small producers but have 70 acres.

Mairi Gougeon: Sorry. I used the figure of 3 hectares because that size was previously a determining factor for such support. It is not a case of my thinking being that someone who farms less land than that is a small producer and someone who farms more than that is a large producer. Obviously, it is not as simple as that, as you said.

This is about our enabling, through our measures, small producers and businesses to be supported, because we recognise how vital they are. I do not know whether John Kerr wants to come in with more information on that.

John Kerr: At present, those who are farming or producing food on fewer than 3 hectares are eligible for some of the forms of support that we offer. Obviously, an area-based payment will always result in a small payment for somebody

with a small area of land. The efficiency of distributing money on an area basis to very small units is an issue for everybody and one that we would want to be alert to.

However, I just want to be clear that we currently support small producers, although not many access that support. In the small producers pilot, we are specifically working through how best to get the types of support from which those producers would really benefit. I am talking about support such as networking, training and access to market. Those are not really about an area-based payment; they are about other forms of support.

I just want to make the point that the 3 hectares size is not the most important thing for that group. Getting a package of support for small producers, whether they are below or above that threshold, is important, irrespective of the area-based payment. There is a danger of that becoming the main issue when it is not. To be fair, that was not the way in which you asked the question.

Ariane Burgess: No, it was not.

John Kerr: I thought that providing some clarity around that would be helpful.

Ariane Burgess: Okay—thanks. On Monday, we spoke to a crofter. Jo Hunt is an economist turned grower and vegetable-box producer. He worked out that support could be extended to the 100 market gardens in Scotland, with no actual additional demand on the public purse, by redistributing the basic payments. Currently, 68 per cent of basic payments go to 10 per cent of farms. Will you outline your current thinking about the capping, tapering and front loading that could help to redistribute payments in the future payment framework?

John Kerr was at a previous meeting when we looked at the bill with the bill team. He brought to my understanding the Government's thinking that the money allocation is not fixed; it is a process because it is part of the just transition and will be evolving.

Mairi Gougeon: The bill will, ultimately, give us the powers to do any of those things, although we have a cap in place at the moment. The powers to enable us to manage payments are critical. I have had discussions about redistributive payments. I recognise that, quite broadly, there is support for front loading. However, I am not positioned to set out today exactly what that would look like or what form it would take, because that will be part of the consideration of what things might look like in the future framework. There will also be discussions with the people who will be impacted by that to consider how we would best progress things.

Beatrice Wishart: When do you intend to set out the approach on capping? That is important for stakeholders to hear about.

Mairi Gougeon: Absolutely. As I said, we have a cap in place at the moment. We do not have any businesses that are in support at the overall cap, which is just over £500,000. After that, there is tapering, at the level of 5 per cent, that applies to businesses that are in receipt of funding of more than £130,000 and 85 businesses are impacted by that. That is where things stand at the moment.

10:15

As we transition, we will set out more information. We would not change the cap or the taper or introduce front loading or redistribution without discussing that with the people who would be impacted. We would have those discussions before bringing forward such proposals.

Beatrice Wishart: Do you have a timescale for having those discussions?

Mairi Gougeon: It is not possible for me to set out a timescale today. I hope that, in relation to the route map, I have been able to outline where we can expect to see changes and transition, but we still need to take forward that overall conversation.

The Convener: I am really confused. We know what the status quo is. The committee will have to comment on and, ultimately, amend the bill that is in front of us. The level of the cap that you foresee being in place in the future will be critical to our larger farms and, as we have heard, to some of our smaller producers. When will you make it clear exactly what your position is on capping, top slicing or front loading? We are now at the business end of the bill process. We know where we are at the moment, but we need to know where we will be in two or three years' time. Surely you can give us some indication of whether it is your intention to extend the capping powers or to retain them at the level that they are at just now.

Mairi Gougeon: You are right that the status quo exists until such time as we make transitions through the route map, as we have set out. We do not want any cliff edges in relation to support. We are not intending to surprise anybody with anything that comes forward. What is important is that we have the powers under the framework to enable us to consider such issues.

I do not know whether John Kerr wants to say anything else on that.

John Kerr: In the route map, we have said that we will bring forward new conditions in 2025, and the cabinet secretary has said that the areas that we are considering will be announced really soon. The route map also says that, in 2026, we will

bring in our enhanced tier—tier 2. Doing that work will give us time to consider the other elements.

From my perspective, the plan would be to look at the capping and tapering process as part of the base project, which is scheduled at that time. Of course, plans might change but, as we have set out, we anticipate the status quo lasting until 2026 or thereafter, depending on how the conversations go once we get into the detail.

The Convener: Cabinet secretary, you must understand the committee's concerns. You keep telling us that it is fine for the Government to have these powers. Our concern is that we will pass a bill that will give the Government broad powers but we have no indication of your intention when it comes to capping. We will be giving the Government those powers but we do not know what the limits will be, what criteria will be used or how extensively the powers will be used.

Mairi Gougeon: I understand the committee's concern about that. That is why we are taking an overall framework approach to the powers that we are taking. Ultimately, we need to have those powers, otherwise we would automatically rule out being able to do, discuss or take forward a lot of things. That speaks to the changes that we are looking to introduce. We have talked a lot about the route map and setting out some of the information.

I hope that I have been able to emphasise and illustrate throughout the meeting the importance of co-development—working with our farmers and crofters—in developing all of this. It is not in our interests or in the interests of the wider industry for there to be any surprises or cliff edges. We are categorically committed to not providing that for our farmers and crofters. Ultimately, as I have set out, we want to design the system with them and to see what mechanism will work best.

John Kerr: I will just add two points in support of what the cabinet secretary has already said. Any sensible policy on capping and tapering would want to maintain the flexibility for future ministers to take a different decision based on the facts in front of them at the time—for example, what the overall budget is. The other point is important from the point of view of scrutiny. Such issues will be part of the secondary legislation that would have to be introduced to bring the policy into existence legally, which will be scrutinised by the Parliament when it is introduced, so there will be a further opportunity for that scrutiny.

Mairi Gougeon: Absolutely, and not least because we would have to undertake all the relevant impact assessments in relation to that as well. We would need to evaluate the system that has been in place to see whether it has worked and to make sure that we have the evidence base for any decisions on that.

The Convener: This is the last thing that I want to say on the issue. The DPLR Committee asked for additional information to be provided by the Scottish Government, but it

"remains concerned about how this power"—

the capping power—

"might be used by future administrations, whose intentions cannot be known and therefore recommends that the procedure be upgraded to the affirmative procedure."

Are you supportive of that?

Mairi Gougeon: We are considering the recommendations that have come from the DPLR Committee. I know that there were a few areas—well, another area—as well as that. Of course, we will consider that, as we will consider this committee's recommendations, too.

Emma Harper: This relates to my previous question about what should or should not be in the bill. You have already given information about the number of stakeholders who have fed into the process—you said that it was about 1,300—and about people who have volunteered to participate in looking at policy development as we go through. How do we make sure that people who will benefit from any rural funding engage with the process, feed into it and are part of it? It is not just farmers. As I heard at the meeting on Monday, where there were farmers, crofters, land users and community development people, creating thriving communities is part of the discussion.

Going back to the bill, which is what we are talking about, there are stakeholders who think that a clearer direction of travel or key parameters for future support are needed in the bill. What do you think of that? Again, I am going back to engagement with stakeholders, because in looking at the bill and the information in front of me, there could be clearer information about biodiversity, regeneration, sustainable farming and emissions reduction. I would be interested in hearing what you think about that.

Mairi Gougeon: What do I think about providing more of that information? It is always challenging because, as we have touched on today, in relation to some of that information, whatever we put in the bill will not be as flexible and adaptive. Throughout this period of transition, we are very much in a space where we need the ability to be flexible and adaptive. We started this discussion by talking about sustainable and regenerative agriculture. We need flexibility to look at that, because there is not one hard definition that we would be able to put in the bill. We need to be able to bring forward a basket of measures that can be used to support our producers, more than anything else, and to

highlight what we mean, and we think that the code of practice is the best way to do that.

Again, I understand the criticisms that there can be, but we have tried to share our thinking as much as possible. The process is slower in its nature because co-development takes time. It takes more time for us to get it right and I appreciate that that can be frustrating for people, given the point that we are at with the bill and the need to know the detail of what future schemes will look like. That is why we have tried to articulate that as clearly as possible, at least when more information and detail becomes available. We are committed to working with people, because we want to make sure that, ultimately, we get the policies right.

In some of the other areas that you have talked about, such as emissions and biodiversity, we have statutory targets, as I have touched on, and more could well be coming down the line. That, of course, shows why we need to be flexible, so that we can take those things into consideration.

Emma Harper: Part of this is about allowing for the flexibility and ability to incorporate whatever science, technology or research delivers, in order to support the whole process. It is about allowing flexibility to be built in, in relation to a further support plan down the line.

Mairi Gougeon: Absolutely. We can take some of the measures that we published last year as an example of that. When we published the measures, which was just over a year ago, I think that methane inhibitors were on that list. However, at that time, we did not have the approval for Bovaer, which has since had that approval.

That highlights how we know that such technology is coming down the track and could be used as a measure as part of an enhanced tier. It also highlights how, especially given the way that things develop in this space, we need to make sure that we can update and add measures as more become available and offer that full flexibility.

Ultimately, we want to ensure that farmers and crofters have a variety of measures that they can use to suit their circumstances. They know their land and business better than anybody else and we want to make sure that we have flexibility for them in the future framework.

Alasdair Allan: I appreciate that time is wearing on, so I will make a brief point. It is a technical point, but I hope also an important one.

There will be a lot of secondary legislation on the back of this bill, and there is a concern to ensure that the balance is right in how that is scrutinised. What are your plans for parliamentary scrutiny around secondary legislation, particularly in relation to getting the balance right with regard to negative procedure for secondary legislation?

Mairi Gougeon: Set parliamentary procedures are obviously in place in relation to affirmative and negative instruments for the committee's consideration.

As we have done in relation to some of the other developments that we have announced—for example, the whole-farm plan and the suckler beef scheme and attached conditions—we have set out in the route map when we will be making more information available and the process towards reaching that. We have set that out in the route map and in some of the information in relation to that that we have published already. This year, we have said that we will be setting out more information in relation to what will be considered in the enhanced tier of the framework; however, the secondary legislation would not be coming forward until 2025, by the time that it is enacted. I do not know whether Andrew Crawley wants to come in on that.

Andrew Crawley: I do, cabinet secretary.

I will make a point of clarification around scrutiny. A lot of the discussion is about whether instruments should be affirmative or negative. We gave that question close consideration when drafting the bill. We recognise that, because it is a framework bill, different sets of regulations will have different import, and therefore different levels of scrutiny might be appropriate and would be welcomed by the Parliament. That is why the main regulation-making power in section 13 is what we call an either way power, so that where regulations merit a higher degree of scrutiny—a debate—they would be affirmative. If they are relatively minor and technical, they would be negative.

As is always the case with scrutiny arrangements of that kind, the Parliament will, of course, have a view on whether we are bringing forward the right kind of instrument, which will inform decisions that are made later about the level of scrutiny that the Parliament expects for the types of regulations that we are making.

We want to get this right, and we have tried to frame the bill in such a way that we will be able to get it right.

Mairi Gougeon: In relation to the important point that Andy made, I highlight that we have used either way provisions for previous instruments that we have brought to the committee. I am not aware that we have had any particular issues in relation to that. We have used such powers before.

As Andy outlined, negative instruments tend to be used for the more technical parts. We feel that those provisions in previous legislation have

operated quite well—certainly, the committee has not raised concerns about that.

Rhoda Grant: I think that my supplementary question has been answered.

The Convener: Okay.

Rachael Hamilton: I want to get some clarity on what Andrew Crawley said. Part 2 of the bill includes various sections, but the section that he talked about—section 13—is about eligibility criteria, payment entitlements, amount, conditions, enforcement and administration in relation to support. Those are technical things, but the fact remains that part 2 in total is subject to the negative procedure. Cabinet secretary, are you saying that you would be open to amendments that separate the sections of part 2, which would allow some technical amendments to be subject to the negative procedure and others to be subject to the affirmative procedure, based on the committee's recommendations?

10:30

Mairi Gougeon: We will take seriously any recommendations that the committee makes in that regard, but we have also had correspondence with the Delegated Powers and Law Reform Committee about the powers that we are taking and the instruments that we are looking to use in relation to them. We have touched on a couple of areas in which that committee had recommendations, including moving from the negative to the affirmative procedure or reconsidering one of the other instruments, but the committee was broadly content with the responses that we gave in relation to the powers there. As it stands, I am content with where we are on the basis of what the Delegated Powers and Law Reform Committee has expressed to us.

The Convener: It is absolutely worth putting on the record again that, when the DPLR Committee looked at the "Power to provide support", its recommendation was:

> "In light of the absence of detail, and the fact that this power is a Henry VIII power, the Committee recommends that this power should be subject to the affirmative procedure."

It is important to put it on the record that negative procedures might not be adequate to allow this Parliament to scrutinise future legislation that is yet to be understood, or even yet to be developed.

Mairi Gougeon: However, the particular power that you have referred to involves a specific power for a very specific purpose. We responded to the Delegated Powers and Law Reform Committee on that issue. In fact, the power is similar to another power that was taken in, I think, the Environmental Protection Act 1990; Andy Crawley might have more information on that. We thought that, because the proposed power was broadly similar to the power in the 1990 act that is also subject to the negative procedure, it could be done in the same way. The proposed power in the bill is not as broad as the power in the 1990 act and is for a very particular purpose.

Andrew Crawley: I am keen to distinguish what I would characterise as the main regulation making power in section 13 from the power in section 4 to modify the schedule—we view that as having a much narrower focus. Although it might be characterised as a Henry VIII power, my personal view is that it is only a Henry VIII power in the most narrow and technical sense. Under the power in section 4, we would be modifying payment purposes in the schedule, which we need to be able to do in order for the framework to work and to be flexible. As the cabinet secretary said, the equivalent power that we looked to is subject to negative procedure, and that is why we thought that it was appropriate. But, of course, as with all else, we will consider carefully the recommendations of the DPLR Committee on that issue. However, from our perspective, they are two separate powers with different issues.

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): Some of this has been covered already, but I will pick up on comments that were made by stakeholders about the purposes in schedule 1. I am sure that the cabinet secretary is quite sympathetic to the idea of future proofing any legislation. A number of specific comments, which I will not go into in detail, were made about areas where there was an element of prescriptiveness that may or may not miss out things that might become relevant later.

For example, questions were asked about why certain sectors have been omitted and about why certain things have been included. People asked why eggs, poultry and pork have been omitted. One comment was about the need for sufficient flexibility to account for future circumstances, such as changes in climate or cropping patterns having an effect. Are you sympathetic to that? How do you balance being prescriptive—there will be pressure on you to be prescriptive—with being broad enough to allow for change?

Mairi Gougeon: We are now at the opposite end of the spectrum from where we were when we were talking about the broad objectives of the bill. I appreciate your point and the points that stakeholders have raised.

We believe that the bill is still broad enough that some of the areas that you have mentioned would not necessarily be excluded. However, as we discussed earlier, if we create a list, it can look as though something that has not been included is

seen as being less important or something that cannot be supported.

I am happy to consider the committee's recommendations, and I am open to considering other matters that the committee feels should be in the schedule that are not there at the moment.

Ariane Burgess: We have already touched on this a little bit. New EU regulations require member states to allocate at least 10 per cent of direct payments to complementing redistributive income support for sustainability. I would like to understand why you have not chosen to include a similar requirement in the bill at this point.

Mairi Gougeon: You have to bear in mind that we are not comparing like with like. Our vision for agriculture sets out the overall objective that we want to broadly align with the EU where it is practicable for us to do that. That is where we generally look at the 10 objectives that have been set for the CAP.

The EU is, of course, in a different situation, because it sets out its multi-annual frameworks at the start of a session and it then has however many years to deliver on those. We are in a different position and are coming from a different starting point.

As we have talked about today, we must ensure that we have the flexibility to do what is right for Scottish circumstances, so we need to have a conversation with our farmers and crofters to see what the best mechanism is and what it might look like. As I touched on in one of my previous responses, there tends to be broad agreement about what front loading can do and what impact it can have, so we might want to consider it further. However, I would not want us to tie ourselves to a certain position in relation to that, because we need to go through the co-development process first.

Ariane Burgess: Great—it is staying connected to the CAP. We might already have touched on that.

Do you intend to bring forward entirely new regulations to govern the new schemes, or new versions of schemes, under the proposed tier system? Will the existing CAP regulations eventually be repealed when legacy schemes are fully obsolete? Is any specific end date envisaged for the CAP legacy schemes? Will you set out the expected use of the powers in the rural support plan—our favourite topic?

Mairi Gougeon: There is a lot in that, so forgive me if I miss anything.

Ariane Burgess: You can come back to it.

Mairi Gougeon: You can correct me if I get anything wrong. Are you asking about the later parts of the bill, where we talk about the continuation of the various schemes?

Ariane Burgess: Yes.

Mairi Gougeon: We have set out in the route map what our transition will be and for how long we expect current schemes to stay in place. The powers in the bill will ultimately enable us to do that.

You touched on the sunset clause. It is felt that it is unusual for an enabling power to have a sunset clause attached to it, so that is why we want to repeal the sunset clause. It is just not all that helpful. It would be better for us to repeal it and ensure that we have the time through the transition than for us to set a firm end date for when we should have used it by. Again, it is about providing flexibility and enabling the transition that we have set out in the route map.

Ariane Burgess: Okay, but do you have any sense of the timing? You do not want a certain date, but will it be within a certain number of years or a certain—

Mairi Gougeon: The route map goes up until about 2027, when we expect some schemes to get there. Depending on where we are in the development of a certain scheme, there could come a point at which it might make sense to continue beyond a specific point that we have mentioned. Of course, I cannot predetermine any decisions that might be taken further down the line or what could come up during the process, but it is important that we have the ability to continue those schemes until such time as we have made the transition. Ultimately, that is why those powers are in the bill.

Ariane Burgess: I might not have picked you up correctly, but part of my question was about new schemes or new versions of schemes. I guess that this touches on Alasdair Allan's question, which was about the Scottish statutory instruments. Is it your intention to create entirely new regulations to govern those schemes? If so, how will the powers be set out and how are you going to use them in your work on the rural support plan?

Mairi Gougeon: Yes, the bill would allow us to create new schemes. As we set out, 2026 is when we would be looking to have in place the enhanced tier of the framework, which is going to be new and different from what we have at the moment.

In the route map, we have set out that some schemes are going to continue, but they could well change. One of those is AECS, and we have LFASS as well. Some of the other supports will continue through that period until we transition to the new parts of the framework, and we have set

out broadly when we expect the new tiers to come into effect within that.

I hope that I articulated that well. Is there anything that you want to add, Andrew?

Andrew Crawley: I will add a minor clarification. Ariane Burgess asked about legacy schemes and CAP schemes. We envisage that they will be turned off—repealed. In effect, we will be tidying up the statute so that future schemes will be drafted as Scottish legislation. Hopefully they will be a lot easier to read and understand than the CAP rules are.

Ariane Burgess: That would be very welcome. The clear message that I get is that we need to pay strong attention to the route map, because that is telling us where we are going.

Mairi Gougeon: It will give information on the transitions that can be expected as well, but the route map broadly sets out when we expect the new parts of the framework to come into effect.

The Convener: On the introduction of new legislation and secondary legislation, it is quite clear that the conveners of committees across the Parliament have concerns about framework bills and the additional workload that committees will have in dealing with the related SSIs. What work or process planning have you done on secondary legislation?

We have seen some bad examples. There is a suite of instruments regarding deer management, but we get to consider only one or two SSIs in isolation although they form a far bigger policy. Have you planned how you will introduce secondary legislation? Will it be grouped so that there are suites or packages of SSIs that deliver on certain policies, or is the committee going to see two years' worth of SSIs? That would make it very difficult for us to see the big picture. What work have you done on that?

Mairi Gougeon: I hope that you will refer to the bill as a good example in the future, but time will tell.

As I outlined in my response to the previous question, it is all about transition for us: everything is not suddenly going to change overnight, with cliff edges in relation to it. Of course, we will need to introduce SSIs, not least for some of the conditions that we will introduce next year. There will then be secondary legislation that will enable us to bring forward the enhanced tier of the framework, which is expected to be in place in 2026, and the SSIs will be introduced in 2025. It will be a phased process because of the timescales that we have set out.

The SSIs are also phased, because we need to be able to undertake the work on the relevant tiers of the framework. It is critical that we get the phasing right—not least for the committee—but I appreciate your point.

The Convener: Okay. Thanks. The next question is from Beatrice Wishart.

Beatrice Wishart: Sorry, convener—which question are we on? Have we moved on to question 15?

The Convener: Yes.

Beatrice Wishart: Right—that is fine. I thought that we had missed something earlier.

My question is about the code of practice. Stakeholders have highlighted unknowns around the code. They want to know how prescriptive it will be, what the timeline will be for bringing it in and whether compliance with the code will be enshrined in regulations under section 7. Could you say a bit more about the Government's intentions when producing the code and using its section 7 powers?

Mairi Gougeon: I hope that the code will be a helpful document for farmers and crofters. It is to be used as a support rather than as an alternative mechanism—I want to make that clear.

As we touched on at the start of today's discussion, sustainable and regenerative agriculture means different things to different people. It is about a basket of measures, and the code is really important in helping to outline some of those. We want to make sure that we get that right in how the code is used. The list of measures also refers to any consultation that needs to take place and how we raise awareness of the code.

I have talked a lot today about co-development and getting that right. The code is designed to be a tool for, and a support to, farmers and crofters as opposed to anything else.

10:45

Beatrice Wishart: One of the stakeholders said that the code is envisaged as being more of a manual that can be referred to. Is that how you envisage it?

Mairi Gougeon: We have to make people aware of it. If we want to be a world leader in sustainable and regenerative agriculture and deliver on our vision, we have to explain what that means to people and what that might look like. For me, it is about the measures that we will introduce and expect people to undertake. Everything will have to tie back to that and will involve looking at where we ultimately aim to be. It is about providing support for people—it is a manual in that sense—that we can refer them to and say, "This is what we are considering, and this is the basket of measures included in that definition." That is how the code is meant to be used.

The Convener: Given that the code of practice could potentially—you have not ruled it out—play a big part in cross-compliance, which would ultimately have an impact on basic payments, what scrutiny by Parliament should there be? Should Parliament have an overview or should there be a requirement to consult it on the code? The code could ultimately form the basis for cross-compliance.

Mairi Gougeon: Again, it is not the intention that the code is to be used in that way. As I hope I have outlined, we intend the code of practice to be helpful to our farmers and crofters rather than a tool for cross-compliance or anything else.

Rhoda Grant: The code is part of the overarching aim of the bill, but it is a tool, so it is not prescriptive—is that what you are saying? How will you achieve the overarching aim of the bill if the code is not prescriptive?

Mairi Gougeon: Again, I cannot say that—Sorry. John wants to come in.

John Kerr: The code of practice should set out broadly what constitutes sustainable and regenerative agriculture. Effect will be given to it by what we put in the conditions for the different tiers. For example, we intend to use the whole-farm plan as a baselining tool. When we have the enhanced tier 2, certain conditions will be attached to the support that you get for that. That is how we will reach the outcomes in our vision that you are referring to.

Rhoda Grant: Okay. That means that the code is prescriptive. Will it be laid before Parliament? Where is the oversight? Who will be involved in its development? How will it be monitored and evaluated? Where is the consultation on what it contains? It appears to me that there is no subordinate legislation governing this at all. It is important enough that it should be subject to at least the affirmative procedure.

John Kerr: I have perhaps not been sufficiently clear. The code of practice will be a tool, as discussed with Ms Wishart, for setting out broadly what sustainable and regenerative farming is, so it will not be prescriptive. The choices for farmers will be in what support they access, and that support will have conditions attached to it. In our current agri-environment schemes, if you want to draw down support for particular things, you have to undertake certain management practices to gain access to that support. That will also be the case for the different tiers of our support in the future, and that is separate from the code of practice.

Rhoda Grant: So, drawing down any support, even in tier 1 and tier 2, could be subject to compliance with the code of practice; therefore, it is prescriptive.

John Kerr: No.

Rhoda Grant: Would you allow somebody who did not comply with the code of practice to draw down funds under the scheme?

John Kerr: They would have to comply with the scheme’s rules.

Rhoda Grant: Which would be the code of practice. We are going round in circles. The code of practice is important.

John Kerr: The code of practice will set out in general terms what sustainable and regenerative agriculture could be. As the cabinet secretary said, that may be different things in different places. It cannot be prescriptive in relation to the management practice of any particular farm accessing any particular scheme. That would have to be part of the conditions of the base tier, then tier 2, tier 3 and so on. The code of practice sits beside that as a document that explains what sustainable and regenerative agriculture is in general. The scheme rules will determine specifically what each farmer will need to do.

Mairi Gougeon: It is not possible to put a simple definition of sustainable and regenerative agriculture in the bill. As I touched on at the start of the meeting, we published in the route map a definition and an example of the overall goals of regenerative agriculture. Bearing in mind that we have not designed the code of practice yet, we cannot say definitively what will be in it, because we want to consult on it and get it right on improving animal welfare, increasing the resilience of production to climate change and capturing carbon in soils and vegetation, which is more general than the prescriptive level that you are talking about.

Rhoda Grant: Cabinet secretary, you are not really giving us any reassurance on this incredibly important issue. I think that we all understand why you have not put a definition in the bill, but what you are saying would sway us towards having a definition in the bill. You are saying that the definition in the code of practice will not be scrutinised but that it should and would underpin the future development of how people access funding.

I ask again, how will the code of practice be consulted on and overseen? From what I can figure out from the bill, it will be laid before Parliament for no other reason than for information. Should the definition be scrutinised by Parliament much more thoroughly?

Mairi Gougeon: I return to the point that it is in our best interests to ensure that what we bring forward is consulted on and developed in that way. Subsection 26(6) of the bill sets out that point in relation to the consultation.

To go back to the start, the code of practice is a basket of different measures, in which sense it will not be prescriptive. Perhaps we are not articulating how it will be used in the best way, but it is about the support. It is critical that we try to outline the general understanding of what those terms mean in the code of practice.

Rachael Hamilton: Looking at it from the other point of view, stakeholders have expressed concerns about why the code of practice is there at all and what it actually means. How will the Parliament scrutinise its direct or indirect benefits and its impact on climate change targets? The Government sets the rules. If farmers are being told to comply with conditions set by the Government, and if they are unable to access funding if they do not comply, surely all the power is held by the Government, even if the direct or indirect impact of the code of practice is being scrutinised to see whether it is working.

Mairi Gougeon: We have to review the code, and the powers are there for that to happen. Practices can change and develop, especially in this area, and we have to ensure that what we have can be updated to reflect that. We need the flexibility to do that. Section 26 mentions the consultation and ensures that we can review the code and update it as necessary.

Rachael Hamilton: What if the Scottish Government uses its powers in such a way that it gets this wrong? We know that farmers are already doing stuff. What if what they are doing does not fit in with the Government's rules, with the result that they become non-compliant? I completely get where Rhoda Grant is coming from. The way in which the bill is being interpreted is that the code will be prescriptive and farmers will have to follow it, because, if they do not, they will become non-compliant. How will they know whether what they are doing is right, given that it is the Government that sets the rules? Farmers need to be confident and to have clarity.

Mairi Gougeon: Absolutely. I will bring in John Kerr in a moment. Throughout the process, we have been—or, at least, we have tried to be—clear. You talked about the good practice that is already happening, and a key component of our approach is that we want to recognise that good practice. Again, the code of practice is not intended to be a prescriptive document. The Government will not develop it in isolation and then land it on people. It is not in our best interests to do that. It is in our best interests to have conversations with farmers and crofters to determine what the code will look like and how it might develop. The powers on the review and consultation are important in that regard.

John Kerr: It is important that we are clear that the code of practice is set out in the bill as a guidance document—in other words, it is not prescriptive. If, as is likely to be the case, we have prescriptions in our schemes that sit in the different tiers, they will be taken forward through secondary legislation. That legislation will be scrutinised, so the Parliament will have the opportunity to scrutinise the rules that are in force for how people can obtain support under each of the tiers, or however we introduce the schemes. That scrutiny will be there at the point at which the prescription bites, which is not in the code but in the rules associated with drawing down the support payment. Everyone would expect there to be a compliance regime around the receipt of public funding.

The important point is that there will be scrutiny of the secondary legislation.

The Convener: The code of practice has been promoted as underpinning how the Scottish Government foresees that sustainable and regenerative agriculture will be delivered. On that basis, stakeholders have suggested that it will be ingrained. The intention is that the code of practice will be ingrained in every piece of secondary legislation. That is really important. The code will inform every piece of secondary legislation, which means that it will be prescriptive.

There are concerns about the code, which the Government has said will underpin the future delivery of sustainable and regenerative agriculture. Therefore, it will be absolutely critical. I simply put that out there. Perhaps you could give us an example of what will be in the code and how it will play out when it comes to secondary legislation.

Mairi Gougeon: I would be happy to follow up on that, because I know that there are other examples of legislation that sets out guidance or asks people to refer to guidance. I would be happy to provide the committee with more information on that.

John Kerr: It is important that we are clear that there is not a prescriptive link that flows from the code of practice into the schemes, which is the impression that is perhaps developing from this conversation. That is not right.

The Convener: That is what we are hearing from stakeholders. One of the principles of the bill—

John Kerr: In that case, this is a useful opportunity for us to correct that misinterpretation.

The Convener: Can you give us an example of how the code would be used? In itself, it has no powers. What is the benefit of having provisions for a code of practice in the bill?

John Kerr: One of the important elements of sustainable and regenerative agriculture is how

farmers and crofters maintain their soils in good condition. It is possible to set out in a code, in broad terms, how that can be achieved. It can be done through cover cropping or by having permanent pasture that is not grazed for a certain period. Such measures will protect soils. However, that would not be prescriptive. An arable farmer in East Lothian will not necessarily use rotational grazing to protect their soils—they might use cover cropping. Those are the kinds of conditions that would apply to the tier 2 support that a farmer might get for the good management of their land. The conditions will be different for different types of farming.

The Convener: Surely, when you are developing secondary legislation, you would pay close attention to what the code of practice, which the Government would pull together, says when it helps you to define and deliver secondary legislation. Therefore, the code of practice will be ingrained in secondary legislation.

11:00

Mairi Gougeon: On the enhanced tier and the proposed measures as a result of that, we have tried to give examples and to show our thinking. This is not about us mandating to individual businesses in future frameworks and support that they must do this or that; it is about giving farmers and crofters the flexibility to select the measures that are right for the land type and farm business that they operate. The list of measures that we have published is not definitive by any means. It is about offering flexibility and choice to enable people to do that, not strict prescription.

I envisage that the measures that we are proposing would be considered within the broad definitions that we will potentially set out. The work that we take forward and how we develop the code will be really important.

The Convener: Okay. Thank you.

Rhoda Grant: The policy memorandum states:

“The recommendations in the Code of Practice are expected to underpin good agricultural and environmental practice, as set out in conditions for area-based support for farmers.”

That is the crucial bit. People have to comply with the code of practice to get area-based support. It might not be said that everyone must do everything to the letter in the code of practice, but they will have to follow the code of practice as it pertains to their land to access area-based payments. That means that it is crucial that people understand what is contained in the code of practice and that they agree that it is practicable, otherwise they will not get their area-based payments. That is big.

Mairi Gougeon: We have set out the basic standards that we expect people to meet in relation to good agricultural and environmental conditions and extra conditions in relation to the whole-farm plan and starting to build the foundations and baselining for individual businesses. More information will be published in the update to the route map relating to the whole-farm plan that is coming. That will set out what we expect, so that people can access that support.

What you have said about involving people and their needing to know what is in the code of practice is exactly right. That is why we want to consult on it and ensure that what we set out in the code is right.

I go back to the points that we touched on earlier. The code is not prescriptive, because we have to enable the future tiers of our framework. We have set out as our objective that, ultimately, we want to be a world leader in sustainable and regenerative agriculture. We have also set that out in our vision. A host of flexible measures can be part of that, but the co-development in that work will be critical in ensuring that we get it right.

Rhoda Grant: I do not think that anyone disagrees with that. The issue is about who will oversee that, what scrutiny is available, and what changes can be made to ensure that there are no unintended consequences. I do not think that the very light touch in the bill is sufficient.

Mairi Gougeon: I disagree in the sense that I do not think that there is a particularly light touch in the bill. It mentions the reviews that we would have to undertake of the code and the consultation. However, if the committee has particular views on that, we will, of course, consider them in the stage 1 report. We are happy to take away from this conversation any particular views that the committee has. However, I would not want there to be a misinterpretation of the basis of the approach and what the code of practice would mean.

Emma Harper: I am a bit breathless listening to all this. Section 26 of the bill has paragraphs on the code of practice and on what is “sustainable and regenerative agriculture”, as well as on what the Scottish ministers must do to

“review and, if they consider it appropriate, revise and publish the code”.

Scottish ministers must come to Parliament before publishing the code. Also, the

“Scottish Ministers must, in preparing or reviewing the code, consult such persons as they consider likely to be interested in or affected by it.”

After hearing what Rhoda Grant said about the policy memorandum, it seems to me from reading that section that the bill does not suggest that

anything is going to be foisted on farmers; rather, this is about engaging with them. Cabinet secretary, you have talked about co-design and about all the people who have been invited to participate and to give input on their role in relation to sustainability and regenerative farming, whether they are wheat producers, big arable barley growers or whatever. I am interested in hearing how we make sure that people understand that nothing will be foisted on them, because this is partnership working, which is what co-design is all about.

Mairi Gougeon: I hope that we have been able to evidence that through the work that we have undertaken so far and, ultimately, through all the commitments that we have made throughout the whole process about how we develop policy. We want to do this with farmers and crofters because, as I have said a number of times today, they know their own business best. It is critical that any future system provides them with the flexibility to enable them to make the choices and undertake the measures that will work for their businesses. You can see some of those measures—we have published what some of that might look like. It is absolutely built in to everything that we do and everything that we have set out as part of the route map and the information that we are providing. What we are introducing ultimately has to be deliverable and it has to work for our farmers and crofters. It is in our best interests to continue that work with them to ensure that we get this right.

The points that you touched on and that I highlighted in previous responses to Rhoda Grant, including some of the points that are set out in section 26, enable us to do that. It is about having that consultation and engagement and, of course, reviewing the code, because, as we have discussed already today, things can change and improve in this space—things are developing all the time.

Rachael Hamilton: I am just wondering whether the five-year review timeframe is too long in terms of consultation. Obviously, we hope that, in the future, farmers will be paid annually by the Government. If farmers cannot access funding because of non-compliance, because they are not meeting your definition of sustainable and regenerative agriculture, it will take them a very long while to put in place what is necessary to meet that definition. We are talking about many different farming contexts here; we are not talking about one size fits all. I think that the Scottish Government could consider whether a five-year process is just too long.

Mairi Gougeon: Again, if the committee has any particular views on the review period, I am happy to look at that point and consider it, but I want to clarify that we have already set out our expectations for support going forward, including the minimum standards that we are expecting, what conditions will apply to support from 2025 and what support will be introduced in 2026. I just want to be absolutely clear on that. If there are any other views on the review period, I am happy to consider them.

Rachael Hamilton: One of the main concerns that I have, and which I hear from other stakeholders, is that the term “sustainable and regenerative” could be interpreted in different ways by different groups of people, whether they be food producers or environmental lobbyists, for example. It is difficult, because “sustainable” could also incorporate a fair work agenda or other areas that are not related to the environment or animal welfare, for example.

It would be useful to understand that. From the policy point of view, I do not know at what point in the whole process of this transformation you will allow the committee to understand what you mean by “sustainable and regenerative”. That understanding would take away the fears about non-compliance that Rhoda Grant and the convener were talking about.

Mairi Gougeon: That is what I have tried to illustrate by talking about some of the definitions that we have put out there. You are absolutely right that the term can mean different things to different people. As I set out at the very start, it is a collection of different measures. I have also made the point that you just made, that every business is different and we need flexibility to be able to adapt to that.

The code is not something that we will conjure up ourselves, suddenly introduce and expect everyone to comply with. It is about working with people to develop a code of practice that works for everyone. It is not in our best interests to exclude, for example, the 18,000-odd businesses that are currently part of our agricultural payment system. We do not want to lock people out—it is a journey, and it is about taking people with us on that journey, which is why we have made the commitments that we have made. I want to be clear that it is certainly not the intention to lock people out.

The Convener: To close off this session before moving on, I will ask whether you foresee the code of practice having animal welfare and succession planning as part it.

Mairi Gougeon: No. Again, that would completely undermine everything that I have said about co-development. I am not the expert on what should be in a sustainable and regenerative farming code of practice, so it is not for me to outline it to the committee. What I can point to is

what we have published in the route map, which I have highlighted a number of times today and I have read out some of its elements. However, again, that has to be developed.

The Convener: Given that there is a suggestion that the code may not come forward until 2026, the committee would appreciate hearing about early work that has been done and getting an idea of whether elements such as animal welfare and fair pay and work conditions might play a part. It would certainly be helpful to give us an idea of what to expect.

Mairi Gougeon: I am happy to follow up with the committee on the work that we have already published in that regard, if that would be helpful.

The Convener: That is very helpful, thank you. Last, but not least, I call Elena Whitham.

Elena Whitham: I think that I have learned my lesson about not volunteering to go last. I will be as brief as I can be.

Cabinet secretary, you mentioned a just transition for our farmers and crofters, which is really important, especially when we are looking for them to redevelop their skills and practices, as we have just been speaking about. A big part of that will be continuing professional development. The committee has heard in evidence that there needs to be a massive culture shift in how our farmers and crofters take up such opportunities. We have to be cognisant of certain groups, such as female farmers, new entrants or younger farmers.

Although stakeholders and respondents are broadly supportive of CPD, they have raised a number of questions about how it would be implemented and what the Scottish Government's intentions are for those powers. I am thinking about measures to compel versus measures to incentivise. When can we expect to see any regulations in that area?

Mairi Gougeon: Thank you for that question. CPD is an important part of the framework, because we do not have the powers to implement a CPD regime at the moment. Therefore, the ability to take those powers through the bill is really important. It was interesting to go through all the evidence that the committee has heard on the issue, because it came across that this would be interpreted as a stick to force people to undertake CPD, which is not what is intended at all. If there is CPD that could be considered essential, or that a person must undertake in order to undertake another activity, it is important that we have the powers and flexibility to enable us to require that.

There are examples of that in relation to plant protection products, where people need to undertake specific training before they can undertake that activity, which is reasonable. However, the provisions are about facilitating CPD in the first place and building a system that enables continued learning and personal development.

11:15

Another thing that came through strongly in the evidence was the importance of peer-to-peer learning and the support that is available on that. We want to facilitate and encourage that as much as possible as well as providing other opportunities for learning through that process. I hope that that is helpful, at least in clarifying how we intend to establish the powers and enable that aspect.

Another element that goes alongside that is knowledge transfer and what will be called the agricultural knowledge and innovation service, which presents different opportunities. An awful lot of work has been undertaken so far on that and on what will become the future tier 4 support.

John Kerr will know when that will be implemented. I think that the new part of the framework will come in from 2027 onwards.

John Kerr: We will try to bring forward the CPD support and the other parts of the tier 4 support as quickly as we can, because it will, we hope, be an evolution of where we currently are with our farm advisory services and the networks of farms, including the monitor farms. The women in agriculture work has been mentioned, and we continue to maintain and build on that. It is an evolving situation.

The timeline for that is slightly separate from the timeline for the other work, because we have a discrete team working on that and much of that work is delivered with different delivery partners in the advisory services on the ground. We will be developing that as soon as we can.

Elena Whitham: Thank you.

Beatrice Wishart: Can you say something about the budget for CPD? How will CPD be supported?

Mairi Gougeon: Again, it is not possible for me to put a figure on that or set out what it could look like, because I do not know what future budgets will be. Sometimes, because this area is called tier 4, it can be seen as being at the end of the scale, rather than as something that supports everything else that happens within the framework, which is the way that it should be viewed. We want to enable that going forward.

We fund a number of schemes such as the knowledge transfer and innovation fund and the farm advisory service, and we have set out the

broad envelope of what we think the direct element of the support will look like. However, it is not possible for me to set out future budgets at the moment.

Beatrice Wishart: There will be some support for it.

Mairi Gougeon: Yes—it is a critical element, and we support similar schemes now. As the schemes evolve and we transition into what will become the formal tier of the new framework, I fully intend to support that.

The Convener: We are not looking for specific figures, but we know that the budget that is set out in the financial memorandum is about £840 million. Will the cost of delivering the CPD come from that budget, or will it pull on budgets from other sectors?

Mairi Gougeon: Again, it is not possible for me to set out at this stage what that might look like. Also, we have undertaken—

The Convener: You have a financial memorandum, so you must have done work to decide what it is based on. We will have 70 per cent of the funding in basic payments, and we will have tier 2 and tier 3. It is a simple question: do you foresee that the CPD funding will come out of the £840 million that you expect to be the budget up until 2028?

Mairi Gougeon: Within the overall quantum of what we have in the portfolio funding, I would expect us to fund the CPD.

I am sorry, but can I just clarify that that was the question?

The Convener: It was. Will the CPD funding come out of the £840 million pot that is identified in the financial memorandum?

Mairi Gougeon: Yes.

The Convener: Okay. I think that that was the crux of the question from Beatrice Wishart.

Mairi Gougeon: I am sorry if I misinterpreted the question, but that is where I would expect that funding to come from.

The Convener: Cabinet secretary and officials, we appreciate your time this morning—it has been hugely helpful. Thank you for attending. I suspend the meeting for 10 minutes.

11:19

Meeting suspended.

11:27

On resuming—

Subordinate Legislation

Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2024 (SSI 2024/6)

The Convener: Our third item of business is consideration of a negative Scottish statutory instrument. Given that the committee has received further information on the instrument, I propose that we defer consideration until next week, in order to invite the minister to discuss the evidence. Are members in agreement?

Members *indicated agreement.*

Sea Fisheries (Amendment) Regulations 2024

Official Controls (Fees and Charges) (Amendment) Regulations 2024

Sea Fisheries (International Commission for the Conservation of Atlantic Tunas) (Amendment) Regulations 2024

The Convener: Our fourth item of business is consideration of three United Kingdom statutory instrument consent notifications. Do members have any comments on any of the notifications?

As members have no comments, are they content to agree with the Scottish Government's decision to consent to the provisions set out in the notifications being included in UK, rather than in Scottish, subordinate legislation?

Members *indicated agreement.*

Wildlife Management and Muirburn (Scotland) Bill: Stage 2

11:28

The Convener: Our next item of business is consideration of the Wildlife Management and Muirburn (Scotland) Bill at stage 2. I welcome Jim Fairlie, the Minister for Agriculture and Connectivity, and his supporting officials to the meeting. I also welcome Jamie Halcro Johnston, Colin Smyth and Edward Mountain.

Section 4—Regulation of certain wildlife traps

The Convener: Amendment 180, in the name of Edward Mountain, is grouped with amendments 120, 13, 121, and 14 to 16.

Edward Mountain (Highlands and Islands) (Con): Before I speak to and move my amendment, and because there are new committee members, I would like to make a declaration of interests in line with those that I have made before, so that people are aware that I am a member of a family farming partnership and the joint owner of a wild fishery. Both roles require the controlling of some species of wildlife, including stoats, weasels, mink, rats, mice, foxes and corvids, which include crows, rooks and jackdaws. I have been controlling and managing wildlife to manage environments for more than 40 years. I use licensed firearms and spring traps.

I make it clear that I do not own any hill ground, but I have been involved for more than 40 years in muirburn and burning to manage grassland and farmland and protect it from invasive species such as gorse and broom. In the past, I have supervised muirburn and have contributed to muirburn consultations and management plans. I hope that what I have said is sufficient for the committee to understand that I have a relevant interest in the matter.

11:30

Convener, I will speak only to the amendments in the group that are relevant to me. The reason why I lodged my amendments is to ensure that training courses are relevant and that there is consultation with interested parties and land managers when it comes to setting them up. In my experience in the countryside, I have found that, once courses have been set up, they tend to expand in time. For example, a deer stalking certificate 1 course that could have lasted two days now extends to four days. It concerns me that a whole industry is building up around these courses. I believe that they can be limited in time to make sure that they are short and relevant.

The other thing that I have found is that courses are becoming increasingly expensive. There may be up to eight to 10 people on a course, with each being charged £500 to £600 for it. It can work out as £3,000 a day for one instructor, which seems an extremely high figure. I seek to limit the cost of the courses to ensure that everyone has the opportunity to take them.

I do not propose to speak to the other amendments in the group yet. I will listen to the arguments that are made on them and comment at the end. Thank you for your time, convener.

I move amendment 180.

The Convener: I invite Colin Smyth to speak to amendment 120 and the other amendments in the group.

Colin Smyth (South Scotland) (Lab): My amendment 120 proposes that NatureScot should consider independent animal welfare expertise when determining the content of the trap training courses. The sentience of wild animals and birds is recognised across the scientific community, but trap design and use have not kept up with animal welfare science. With farmed and companion animals and those that are used in research, methods of killing are tightly specified and regulated, the aim being a humane death that is as near instantaneous as possible. That is in contrast to legislation on the trapping and killing of wild animals, which has fallen behind. The involvement of animal welfare expertise in trap training would be a good first step in helping to address that. The provision would not be onerous. It could be implemented simply through, for example, an independent veterinary adviser, an independent academic or the Scottish Animal Welfare Commission being asked to review the animal welfare aspects of the course content.

Amendment 121, like a number of my other amendments, draws on the international consensus principles for ethical wildlife management, which I have talked about on a number of occasions. In this case, the training and assessment that are required for a person to obtain a trap licence would include two particular principles. They would not prevent the use of traps or even restrict their use; they would simply require the use of traps to be justified on the specified ground. Trap users would have to have a legitimate reason to use the traps and consider, first, whether there was evidence of that and, secondly, whether there were non-lethal alternatives. Such evidence should be routinely required in wildlife management decisions.

Jamie Halcro Johnston (Highlands and Islands) (Con): I draw members' attention to my registered interest as a partner in a farming business and, through that, as a member of a

number of organisations including NFU Scotland and Scottish Land & Estates.

I am delighted to speak in support of my colleague Stephen Kerr, who cannot come along to the committee's meeting today. He has asked me to cover a number of areas and to move his amendments when we come to them. On his behalf, I will speak briefly to two amendments in the group.

We are against Colin Smyth's amendments 120 and 121. We do not consider that amendment 120 would add anything instructive or novel to what will be expected of such training courses. The amendment is unnecessarily prescriptive. On amendment 121, similarly, we do not see the rationale for being so prescriptive. Course content, including animal welfare considerations that practitioners should be cognisant of, ought to be a matter for NatureScot and accredited training bodies. It would be highly unusual for ministers to prescribe syllabus content in the way that is proposed.

The Convener: Before I ask the minister to come in, I will make a contribution. Will the minister confirm whether the licences suggested in Colin Smyth's amendment are compliant with the agreement on international humane trapping standards? I would like confirmation of that.

Jim Fairlie (Minister for Agriculture and Connectivity): It is quite strange to be sitting at this end of the table, having spent the past three years in the seat that Emma Harper is now sitting in. It feels a little odd for me—I do not know how odd it feels for you—but we will crack on.

I will speak to Edward Mountain's amendments 180, 13, 14 and 16. The Werritty review recommended that trap operators must be required by law to complete training on the relevant category of trap. Training requirements are common in other professions, especially those relating to animal welfare. I know that the Scottish Gamekeepers Association and similar organisations already undertake a lot of training, and I welcome that. I was pleased to hear that Alex Hogg has indicated that the SGA is happy with the training requirements outlined in the bill. I assure him and the association that we would want its expertise and knowledge to inform the development of training alongside other stakeholders.

However, Edward Mountain's amendments would create an unnecessary barrier for trap users and training operators. Amendments 13, 14 and 15 would exclude much of the existing training that trap users already undertake as part of their wider professional development and, in some cases, it would result in applicants being required to undertake licence-specific training over and above that. For example, the amendments would not allow the relevant authority, which is likely to be NatureScot, to validate courses such as the higher national certificate or higher national diploma in gamekeeping if they were to incorporate training on the use of traps in their curriculum.

In developing the framework for training courses, the Scottish Government and NatureScot will work with stakeholders to ensure that, if a fee is to be charged for training courses, the cost will be accessible and consideration will be given to providing for exemptions in certain circumstances.

Amendments 16 and 180 simply add an extra level of bureaucracy to the training course creation and approval process. The licensing authority will be responsible for ensuring that any approved training courses cover the standards that are required by the bill and other pieces of legislation. Should it feel that it is necessary to do so, the licensing authority already has the power to consult with anyone it deems appropriate as part of the training course designation process. The amendments are therefore unnecessary and they would impose additional duties on practitioners and the licensing authority at a point when the training courses are required to be updated, and lead to delays in the approval process. That would not be helpful to either the licence applicants or the licensing authority, which would have to manage the additional administrative burden created by the amendments. I cannot support amendments 180, 13, 14, 15 and 16, and I encourage members to vote against them.

On Colin Smyth's amendments 120 and 121, the bill is not intended to introduce purposes for which some wildlife traps may be used but to ensure that wildlife traps that are used are operated in line with training and best practice. The traps covered by the provisions in the bill are largely used by professionals such as keepers and land managers rather than for domestic use. I therefore expect the training to be based around the existing conditions for the use of each type of trap, as set out in the Spring Traps Approval (Scotland) Order 2011, for example. That means that the training should be easily completed for anyone who is currently undertaking legal trapping. On that basis, I do not think that amendments 120 and 121 are necessary, as those aspects of trapping and best practice will be included in the required training course. If those amendments are moved, I would encourage the committee to vote against them.

To answer the convener's specific question, the spring traps specified in the licence scheme are those specified in the Spring Traps Approval (Scotland) Order 2011, as amended. That order lists the traps that are compliant with the AIHTS

and traps that are used for the capture of live birds are not required to be compliant.

Edward Mountain: I am disappointed to hear what the minister has said, specifically in relation to amendments 180 and 16. He almost indicated that he was prepared to go on amendment 180 in the sense that it would require consultation and he said that consultation would take place. I am unsure why he does not want to support amendment 180.

I am also unsure why he would not want to support amendment 16, because that just asks for people who are using the traps to be included in the design and content of the courses.

I understand why the minister is not able to support amendment 14, but I take heart from the fact that he said that the cost of the course should be reasonable. I would be prepared not to move amendment 14, provided that the minister would be prepared to discuss with me a form of wording that would enable that to be reflected in the bill. I heard what the minister said about amendment 13 and if he is prepared to move his position on amendment 14, I would be in a position not to move amendment 13, as it also tries to limit the overall cost.

Rachael Hamilton: I will go back to amendment 16, if you do not mind. Obviously, it is a very practical amendment. The Scottish Government often co-designs schemes with practitioners. I am very happy to support the amendment, and I do not see why the Scottish Government should not consider that, on the basis of the experience and knowledge that practitioners have.

Edward Mountain: I agree with Rachael Hamilton. I think that the minister referred to Alex Hogg, who is the chairman of the SGA. He is a man with huge experience of these matters, and he has supported the courses. Including such people in the consultation on how the courses should be drawn up seems to be logical. That is why amendments 180 and 16 seem entirely relevant to me.

I would be happy to let the minister in to give me some guidance on amendments 13 and 15. If not, I will push them to a vote.

Jim Fairlie: I am happy to discuss amendment 13 further with Edward Mountain.

Edward Mountain: Amendment 14.

Jim Fairlie: I thought that you said amendment 13.

Edward Mountain: I am sorry, convener; I know that I should speak through the chair. I said that I understand that the number of days of courses, which amendment 13 deals with, is difficult for the minister and that amendment 15, which is also on the number of days of courses, is difficult. However, I would like to examine with the minister amendment 14, which is to do with reasonable cost, to ensure that the cost of training courses is not too onerous and does not preclude people from taking part in them.

Jim Fairlie: I am happy to discuss amendment 14, and I apologise—that was my mistake.

Amendment 16 requires NatureScot to consult persons who are likely to be interested in and affected by the courses. It is likely that NatureScot may consult relevant parties in creating and approving a training course. However, as the relevant licensing authority, it is chiefly responsible for ensuring that any approved training course covers the standards that are required by the bill and other pieces of legislation. Therefore, it has to be given discretion on what the training course will be, but absolutely in consultation with the practitioners, as I have already stated.

The Convener: The question is, that amendment 180 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 180 disagreed to.

Colin Smyth: It is disappointing that the minister will not support the pretty modest proposal in amendment 120, particularly given the suggestion that the training would simply be reviewed by the Scottish Animal Welfare Commission, which is an organisation that the Scottish Government itself set up for that type of purpose. The longer the bill is debated, the more the commitment that was given in evidence that a key aim of the bill is to improve “animal welfare outcomes”, even when traps are used lawfully, looks like rhetoric from Scottish Government officials rather than anything that is reflected in the bill.

However, I take on board what the minister said—that the issue that I have raised will be covered in the training. I would like to discuss that

further with the minister before we get to stage 3, to outline exactly how that will be the case. Ideally, we could see some of the training before then or, at the very least, get more information about it. Therefore, I will not move amendment 120 at this stage but, subject to that discussion, I will consider bringing it back at stage 3.

Amendments 120 and 13 not moved.

Colin Smyth: Some time ago, in response to my members' business debate on the ethical principles of wildlife management, the Government said that it would consider such an approach. Amendment 121 is a test of whether that was just the usual empty rhetoric that we have come to expect or is something that the Government is seriously considering.

Amendment 121 moved—[Colin Smyth].

The Convener: The question is, that amendment 121 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Grant, Rhoda (Highlands and Islands) (Lab)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Carson, Finlay (Galloway and West Dumfries) (Con)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0

Amendment 121 disagreed to.

Amendments 14 and 15 not moved.

Amendment 16 moved—[Edward Mountain].

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 16 disagreed to.

Amendment 57 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 57 disagreed to.

Amendment 80 moved—[Finlay Carson].

The Convener: The question is, that amendment 80 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 80 disagreed to.

Amendment 58 not moved.

The Convener: Amendment 59, in the name of the minister, is grouped with amendments 60, 69 and 70.

Jim Fairlie: Please bear with me, convener, as I sort out my papers.

Amendments 59, 60, 69 and 70 are technical amendments that have no practical impact or effect on the provisions of the bill. They simply correct the grammar of provisions that have been amended by the bill to take account of those amendments.

Amendments 59 and 60 remove erroneous conjunctions in section 4(7), and amendments 69 and 70 remove a similar error in section 7(5). I encourage all committee members to vote for the amendments.

I move amendment 59.

Amendment 59 agreed to.

Amendment 60 moved—[Jim Fairlie]—and agreed to.

Section 4, as amended, agreed to.

Section 5 agreed to.

Section 6—Killing and taking of certain birds permitted only on land with section 16AA licence

The Convener: Amendment 61, in the name of the minister, is grouped with amendments 17 and 122 to 124.

Jim Fairlie: Following stage 1, the then minister, Gillian Martin, received feedback from stakeholders asking for an exemption to allow falconers to take red grouse without requiring a licence. Amendment 61 seeks to address those concerns. Having considered the amendment, I agree with and support it.

The purpose of introducing the licensing scheme is to implement the recommendations of the Werritty review, which focused on the management of grouse moor and, in particular, raptor persecution associated with grouse shooting rather than with falconry. Without amendment 61, falconers would need to apply for a licence or would be able to hunt grouse only by using their birds of prey on land that was already covered by a licence. Given that falconers take only a small number of red grouse across Scotland each year, that seems unnecessarily burdensome. I ask the committee to mirror that view and to support amendment 61.

In the interests of ensuring that I have declared everything that I need to, I should add, at this point, that my daughter has bought me a birthday present of a day of falconry.

I move amendment 61.

Edward Mountain: The point of amendment 17 is to ensure that the bill complies with the grounds on which it was set out. The bill is intended to deal with upland moorland management and grouse shooting, so the rationale behind amendment 17 is to remove other birds that are not part of upland moorland management or grouse shooting, meaning that other game birds could not be added to the list of birds that are controlled under the bill unless they have reached a level of scarcity resulting in their being on the amber or red list.

The reason for doing that is that the industry is extremely concerned that, at a later date, additions will be made to the bill to ban the legal pastime of game shooting, which I understand some people are not in favour of. If the minister is truly clear on the reasons for the bill, he will support amendment 17 so that there would need to be a clear rationale for adding birds to the schedule, rather than that just being done on a whim.

The minister's amendment 61 relates to birds of prey, and I am extremely glad and thankful that the Government has listened to people who use birds of prey for falconry. It is a legitimate field sport, and I have huge respect for the people who pursue it. In some cases, it ensures the survival and diversity of such species by ensuring that there is a captive breeding programme, so that amendment is good news.

I hope that the minister will carefully consider my amendment 17. Its aim is not to frustrate the bill but to make sure that it does what it says on the tin, in that it applies to moorland management and grouse shooting, not other shooting that is recognised as an acceptable form of sport in Scotland.

Rachael Hamilton: As was articulated by Edward Mountain, the bill should remain focused on the remit of red grouse shooting. Part 1B currently includes only red grouse. However, the bill empowers the Scottish ministers to add further birds to the section 16AA licensing regime, if they think that it is appropriate to do so, via secondary legislation. The consultation preceding the bill did not signal an intention to regulate other species, so that broad enabling power is likely to come as a surprise to rural stakeholders without grouse interests, as that change could have a significant downstream consequence for the sector more broadly.

The bill's policy memorandum says:

> "The purpose of the ... scheme is to address the on-going issue of wildlife crime, and in particular the persecution of raptors, on managed grouse moors."

The committee agrees with that. The policy memorandum continues:

> "It will do this by enabling a licence to be modified, suspended or revoked, where there is robust evidence of raptor persecution or another relevant wildlife crime related to grouse moor management".

What else would you like me to do, convener?

The Convener: You can speak to any other amendments in the group that you wish to speak to.

Rachael Hamilton: That is it. Thank you.

The Convener: I invite Rhoda Grant to speak to amendment 124 and other amendments in the group.

Rhoda Grant: My amendment 124, along with many of the others that I have lodged, seeks to create greater scrutiny of and consultation on actions that will flow from the bill. Much of it is enabling, and it is important that secondary legislation that will flow from it will also be scrutinised.

Currently, the bill lists only red grouse as requiring a section 16AA licence, but other birds may be added to the list in the future. My amendment stipulates that the relevant committee of this Parliament must be consulted and given time to take evidence on any additions before reporting back to the Scottish Government. Thereafter, in laying its legislation, the Scottish Government must explain what consideration it has given to the committee's report. I am trying to create a super-affirmative procedure in order to provide greater scrutiny. I believe that that is essential, given the increase in the amount of enabling legislation that comes to the Parliament.

I believe that my amendment would fulfil the aims of Edward Mountain's amendment 17 regarding consultation. However, I cannot support his other amendments or Rachael Hamilton's amendments. The legislation needs to be future proof, so amendment must be allowed of the list of birds that can be taken under a section 16AA licence. However, my amendment would ensure that such a change was made after full scrutiny by the Parliament.

Kate Forbes: Stakeholders have shared some concerns about the capacity for other birds to be added without scrutiny. I have had some good conversations with the minister that have recognised those concerns and the need to have balanced legislation that is not overly prescriptive or too broad but can take changing circumstances into account. Although I cannot support Rhoda Grant's amendment, I wanted to put those stakeholders' concerns on the record. I know that the minister understands the breadth of that worry.

The Convener: As no other member wishes to speak on the group, I invite the minister to wind up.

Jim Fairlie: Amendments 17, 122 and 123 seek to severely restrict the power to add other birds to the licensing scheme that will be established by section 7. As, I am sure, Edward Mountain is well aware, the power to add a bird species to allow it to be taken only under licence is not a mechanism to protect that species but a mechanism to protect other wildlife that predates on it. The licensing scheme needs to protect raptors and other wildlife, so the regulation-making power to add other bird species to the scheme needs to remain as it is. That will ensure that if, in the future, we have robust evidence that wildlife crimes such as raptor persecution are being committed to facilitate the management of other bird species, we will be able to regulate the management of those birds. For that reason, I encourage members to vote against those amendments.

Edward Mountain: I hear what the minister has said, but I think that he is sending a very dangerous message, or an unconcerned message, to people who carry out field sports in Scotland. The industry is approved by law and regulation, and it should have confidence that it will be able to continue unless there is clear evidence that there is fear that the species that are being hunted will become extinct, which is why I specified that only species on the amber or red list may be added.

Do you agree that the Government, through you, is saying that it is not just about grouse moor management and that every field sport is in your sights?

Jim Fairlie: No. I am saying that there has to be a facility to bring forward licensing if there is clear evidence that wildlife crime is happening in a different type of shoot. I do not need to explain to Edward Mountain that that is very possible, and it does happen.

Rachael Hamilton: Can I intervene on that point?

The Convener: The minister can take an intervention if he so wishes.

Jim Fairlie: I will take it.

12:00

Rachael Hamilton: Minister, section 7 confers a significant enabling power. The bill is about creating a licensing scheme to tackle raptor persecution on grouse moors specifically. As Edward Mountain said, the enabling power means that, in the future, country sports that involve released game birds could be targeted. What would be the trigger for the enabling power being used, and what would be the threshold for monitoring raptor persecution in other country sports?

Jim Fairlie: As I have just said, there would have to be a clear indication that a crime had taken place. However, as we are not legislating in that area at this moment in time, the amendment merely gives ministers the powers, which would

have to be brought back to the Parliament. There are safeguards for the industry to make its own defence if those powers have to be brought into force.

Rachael Hamilton: I am sorry, minister, but I completely disagree with your opinion. Section 7 gives the Scottish ministers wide-ranging and powerful enabling powers to do what they like in adding to the list of specific species in such circumstances. That is why I do not support it.

Jim Fairlie: We will have to agree to disagree.

I turn to amendment 124. As Gillian Martin explained when she spoke to a number of similar amendments during day 1 of stage 2, the changes that amendment 124 would make are not necessary. It would add an additional burden to the Scottish Parliament, despite the fact that established procedures are already in place for changes through secondary legislation, and it could lead to unnecessary delays in adding or removing birds from the list, which could have consequences for the natural environment.

Any amendment to add a new type of bird species to part 1B of schedule 2 to the 1981 act will be subject to the affirmative procedure, so the Parliament will have the opportunity to consider the instrument in draft form, take evidence on it and vote on it. That is the correct procedure for any such amending instruments.

Rhoda Grant: Will the minister take an intervention?

Jim Fairlie: Let me just finish my point, please.

I ask the committee to support amendment 61, to allow falconers to take red grouse without requiring a licence, and I ask the committee to vote against amendment 124.

Rhoda Grant: I am a little concerned that only the affirmative procedure will be used, given that there will be people who will need to be consulted. What reassurance can the minister give me that an order will be widely consulted on before it is put in front of the Parliament?

Jim Fairlie: As I have just said, under the affirmative procedure, an order can be brought to the Parliament for consideration.

The power to add additional game birds to a section 16AA licence was considered by both this committee and the Delegated Powers and Law Reform Committee, which found the powers

“acceptable in principle”

and was

“content that it is subject to the affirmative procedure.”

The RAI Committee said:

“The Committee notes, and agrees with, the DPLRC’s conclusion that the ... powers ... are acceptable and that the affirmative procedure would be appropriate.”

The Scottish ministers would also be required to consult before adding any birds. This committee agreed to the principles of section 7 in previous sessions.

Kate Forbes: For absolute clarity—again, I know that the minister fully understands some of the apprehension—what I am hearing from the minister is that there would be an obligation to consult, because there would be a parliamentary procedure. It would not be a case of ministers just making a decision in a dark room without engaging with stakeholders. That is the key in offering assurance.

Jim Fairlie: I agree with that summing up.

Amendment 61 agreed to.

The Convener: Amendment 17, in the name of Edward Mountain, has already been debated with amendments 61 and 122 to 124. I call Edward Mountain to move or not move amendment 17.

Edward Mountain: I feel forced to move amendment 17, because I have received no reassurances from the Government; nor is it laid down in legislation what the procedure would be for other birds, notwithstanding some words that were given today. I therefore press amendment 17.

The Convener: I remind members to limit their comments to moving or not moving their amendment when I ask them the question, and to try to make sure that they have covered all the possibilities during their opportunity to speak to their amendment.

To double check, are you are moving or not moving amendment 17?

Edward Mountain: The point is duly taken, convener. I press amendment 17.

The Convener: Will you move it?

Edward Mountain: Yes.

Amendment 17 moved—[Edward Mountain].

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2; Against 7; Abstentions 0.

Amendment 17 disagreed to.

Amendment 122 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 122 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2; Against 7; Abstentions 0.

Amendment 122 disagreed to.

Amendment 123 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 123 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2; Against 7; Abstentions 0.

Amendment 123 disagreed to.

Amendment 124 not moved.

Section 6, as amended, agreed to.

Section 7—Licensing: land on which certain birds may be killed or taken

The Convener: Amendment 125, in the name of Stephen Kerr, is grouped with amendments 128, 62, 129, 81, 63, and 130 to 133. I remind members that amendments 81 and 63 are direct alternatives, which means that they can both be moved and decided on. The text of whichever is last to be agreed to is the text that will appear in the bill.

I call Jamie Halcro Johnston to move amendment 125 on behalf of Stephen Kerr and to speak to the amendments in the group.

Jamie Halcro Johnston (Highlands and Islands) (Con): I am delighted to speak on these amendments and to present some of Stephen Kerr's reasons and concerns regarding amendments in this group.

Amendment 125 would replace the appropriateness test with a fit-and-proper-person test in order to address widely held concerns about the lack of certainty arising from the appropriateness test by ensuring that licence applications are granted unless the applicant is an individual who is not considered fit to hold a licence as a matter of fact in law.

The appropriateness test is likely to cause legal and operational uncertainty that could be damaging to rural Scotland. The term "appropriate" is not defined in the bill and the only guidance that is given is that NatureScot

> "must have regard ... to the applicant's compliance with a code of practice"

However, that is not the only factor that NatureScot can take into account. The code of practice, which is yet to be developed, will include best-practice guidance on matters that have nothing to do with the policy objective of tackling raptor persecution. It is also concerning that NatureScot's assessment of appropriateness is not confined to an identifiable and relevant individual—the applicant or land manager.

Stephen Kerr is also concerned that the bill creates a two-tier approach to decision making, in which licence applications could be refused on lesser grounds than those on which licences can be suspended or revoked. That is illogical. The effects of a licence refusal, suspension or revocation are the same: the land cannot operate as a grouse moor, which means that the rights holder will suffer substantial losses of capital and income; quality rural jobs and the accommodation that is tied to those will become redundant and rural economies will suffer, as will the privately funded land management that is of benefit to red

and amber-listed species and mitigates the risk of wildfires.

Put simply, the approach could create a system in which rights are restricted by the back door in cases where NatureScot does not have sufficient evidence to justify a licence suspension or revocation and so simply waits until the licence expires and refuses to grant a new one on the basis of its discretionary interpretation of appropriateness.

Amendments 128 and 129 are critical safeguards in the face of an increasingly overburdened regulator. NatureScot processes some 5,000 licensing applications each year, which means that there is a tangible risk that section 16AA licences would face undue delays in processing. Given the significant economic value that is associated with grouse shooting, and the immediate and significant consequences of not having a licence on 12 August, we feel that it is vital that a safeguard be built into the licensing scheme to guard against delays being caused by an increasingly overburdened regulator.

I will briefly turn to other amendments in the group. On amendment 130, in the name of Colin Smyth, the committee heard from the minister's officials that the primary purpose of the code of practice in this bill is to enable the licensing authority to have regard to how much or otherwise an applicant has complied with it. The committee also heard that the code of practice will, like most codes of practice, have a range of recommendations. There will be things that people must absolutely comply with—that is, legal requirements—things that people really should comply with, and things that are good practice. There will also be things that people must do all the time and other things that people will not have to do. The requirement to "have regard to" the code of practice, as reflected in the bill as laid, is a common way of incorporating a code of practice into primary legislation. It would require the licence holder to be aware of the code's provisions, to keep that awareness up to date, taking into account any revisions that are made to it, and to consider how the code may be relevant to particular actions and activities on the land.

Amendment 130 would have the effect of radically changing how the licensing scheme would operate by providing that licences must slavishly comply with every detail of still-to-be-developed guidance, much of which will likely have nothing to do with raptor persecution. Otherwise, a licence may be refused, suspended or revoked. That is a wholly disproportionate approach to regulation. It would remove the licensing scheme from any rational connection with its declared purpose in relation to raptor persecution and leave the bill wide open to legal challenge.

On amendment 131, which is also in the name of Colin Smyth, it is impossible to understand the reasons behind the collection of the data to which it refers and the duty that it would place on the licence. The purpose of section 16AA licensing is to tackle the persecution of raptors; it is not concerned with the number of grouse shot or the legal management of other wild birds or animals under general licences. Reporting lawful activity has no deterrent effect at all and is therefore not connected to the aim. The proposed reporting requirements therefore have no rational connection to the policy aim and would disproportionately burden the licences for correspondingly little public gain. Information about the number of grouse shot is commercially sensitive and, if it was made publicly available, it could be detrimental to rights holders. Moreover, unaggregated species data is not useful to the public, the regulator or policy makers.

Predator control is undertaken in a number of other land management contexts, such as farming. Singling out one sector for additional recording requirements would be disproportionate and inconsistent with the principle of equality of treatment, which underpins natural justice and which the Scottish Government is bound by.

I move amendment 125.

Rachael Hamilton: Amendment 62 would ensure that any licence conditions are reasonable. In other words, it necessitates the imposition of reasonable licence conditions only.

On amendment 63, a 10-year licence would ensure the greatest clarity for land managers and would be most consistent with the type of investment and land management associated with Scotland's grouse moors. Ten years provides optimum certainty for investment, livelihoods, the wider supply chain and the economy—obviously, the rural economy is very important just now. Ten-year licences would ensure that sustainable grouse moor management could continue under licence, with greater opportunities to bolster efforts to deliver on climate and biodiversity targets due to the longer timeframe allowing for enhanced forward planning.

On amendment 132, we know that moorland that is managed for grouse shooting is often also managed for other purposes—examples include hill farming, deer, peatland restoration and renewables. In the light of the increasingly mixed-use nature of grouse moors, it follows that any licensing decision is made with reference to the taking or killing of red grouse in isolation. It would not be right that a grouse moor operator suffers a sanction on the back of the actions of a person

who rents the land, for example. This simple amendment provides for that. Its effect would be to make it clear that it is only the conduct of persons who manage the land for the purpose of the licence—that is, grouse moor management—that can trigger licensing penalties. How can it be right that the conduct of persons who manage the land for a purpose that is unrelated to the licence—for example, an agricultural tenant—can result in the licence being suspended, despite the land management in question having no tie to the licensed activity or, to put it another way, the management of the grouse moor? That is irrational given that the purpose of the licensing scheme is to tackle raptor persecution connected with grouse moor management.

12:15

Emma Harper: I am pleased to speak to amendment 81. The amendment would increase the maximum period for which a grouse licence may be granted from one year to five years. This issue has been brought up by many land managers and estate owners, including those in Dumfries and Galloway and in the Scottish Borders, and I understand that it featured heavily in much of the evidence that the committee heard and considered at stage 1.

As is the case with many other businesses, grouse moor management is a long-term undertaking, and it requires careful planning and up-front capital investment. Land managers whom my office has engaged with as recently as yesterday have expressed concerns that an annual licence will not provide the certainty that is needed to undertake long-term financial and business planning for the management of grouse moors.

NatureScot also reassured the committee during its stage 1 evidence taking that it would prefer more flexibility on the licence duration and that

“A licence duration of between three and five years sounds about right and sits more comfortably with other civil licensing schemes that we know work well.”—[*Official Report*, *Rural Affairs and Islands Committee*, 21 June 2023; c 30.]

I also know that, when giving evidence at stage 1 as the then minister for the bill, Gillian Martin indicated that she was willing to consider a change to the duration of the licence. Some have called for a shift to 10-year licences, and we have just heard that Rachael Hamilton’s amendment 63 proposes to make that change. That feels too long with regard to being able to assess any changes in circumstances, as has been indicated by RSPB Scotland.

It is right that there is a periodic review of licence holders—whatever the licence may be—and renewal allows that to happen. A maximum licence duration of five years seems to strike the right balance. Any longer than that could undermine the effectiveness of the licensing scheme. A five-year licence would give land managers and estates the certainty that they need to manage and invest in their businesses, while ensuring that the licensing authority retains enough oversight to ensure that everyone is adhering to statutory requirements and best practice.

Colin Smyth: Amendment 130, in my name, would make the code of practice, to be introduced by the bill for land management under a section 16AA licence, mandatory. The wording of my amendment, particularly the phrase

“relevant to management of the area of land in question”,

clearly addresses the question of whether a person must comply with all aspects of the code where some aspects do not apply to the land management in question, which has been previously mentioned as a reason why the code cannot be mandatory.

The wording of the code could also easily set out the circumstances for which each part of the code is relevant, so suggestions from Jamie Halcro Johnston, which were taken word for word from the British Association for Shooting and Conservation and the Scottish Land & Estates briefing note, that every aspect of the code must be “slavishly” followed in every single circumstance is simply untrue and does not reflect the wording of the amendment. Such a claim maybe reflects the weakness of the arguments against the amendment.

A requirement only to “have regard to” a code of practice is not, in my view, strong enough. When the code is relevant to the land that is being managed, the question of how we ensure that the code is followed remains. Under the current wording, a provision to “have regard to” will not ensure that the code is followed when it should be. My amendment would ensure that, importantly, the code is followed when it is

“relevant to management of the area of land in question.”

In response to Jamie Halcro Johnston’s comment on judicial review—which also comes from the briefing note—I say that every piece of legislation is open to judicial review. However, just because you do not like having something in the law, that is not grounds for a judicial review. My advice to Scottish Land & Estates and to the British Association for Shooting and Conservation, which are the only bodies making this claim about a judicial review, is that if their lawyer is seriously telling them that the amendment is grounds for a judicial review, they should maybe get themselves a new lawyer. It is simply untrue.

Amendment 131 would provide a degree of accountability that is currently lacking with regard to the numbers of birds and animals killed—both the game birds that are shot and the animals that are killed because they are seen as a threat to those birds.

The amendment would allow authorities to gauge the numbers of targeted and non-targeted animals that are being trapped and killed, which is surely important to allow a full understanding of species biodiversity, as I outlined in quite a lot of detail when I spoke to amendment 117. It is important to stress that the requirement is to report to the relevant authority for consideration. It is not to publish commercially sensitive information, for example about an individual licence holder. I repeat the question that I asked when I spoke to amendment 117. If the Scottish Government does not agree with reporting that information, what is it trying to hide?

Rhoda Grant: It has been raised with me that proposed new section 16AA(8)(b)(ii) of the Wildlife and Countryside Act 1981, which section 7 will insert, means in practice that a licence may be revoked due to wrongdoing by a person who is outwith the licence holder's control—someone who is not contracted by them or an employee. An example is a farmer who is a tenant on the land. My amendment 133 is intended to make it clear that a licence may be suspended or revoked only if the licence conditions are breached by the licence holder or by somebody who is in their employment or under their direction.

I support amendment 81. The bill will make section 16AA licence holders reapply every year, which is not sustainable. Given that a licence may be revoked, I believe that a five-year licence would provide the best balance, and I believe that there was broad consensus on that.

I have sympathy with what amendment 125 seeks to add, but I am concerned that it would remove from the bill safeguards on adherence to the code of practice.

Edward Mountain: With the committee's indulgence, I will comment briefly on Rachael Hamilton's amendment 63. The reason for asking for the time period to be extended from five years to 10 years is purely that the period will have a huge effect on whether a business is viable. I do not think that anyone really understands that buying just an Argocat, without a sprayer on the back, is probably going to cost you £35,000. Buying a Land Rover or another vehicle to get round the land that you are managing will add another £30,000. When you add on the costs of the traps and the rest of the equipment that you will need, the cost of going on the training courses and the cost of providing a house for the employee, you are probably looking at an investment—just to start up with one employee—of north of £150,000, and the yearly running costs for these places are exceptionally high.

The point of having a 10-year licence is that it would give some surety and security, most importantly to the people who are employed there. There is a real fear that jobs that are here today may be gone tomorrow, and a five-year licence could bring that about. Everyone knows—I am sure that Ms Forbes knows this—the fragility of the rural countryside and of jobs for gamekeepers on upland estates when it comes to management. Protecting their jobs and giving investors some surety is therefore important, which is why I support the period being changed to 10 years.

I am slightly concerned about Colin Smyth's amendment 131. He wants every single animal that is killed or taken on the land to which the licence relates to be recorded. We would have long lists of rats and mice and every other species that we could possibly record, and I am not sure what benefit would accrue from that at the end of the day. There might have been a way in which the amendment could be supported if it was targeted at species excluding rats and mice. It might have been important to include animals whose spread we want to keep track of that are being killed. An example is mink, which there is encouragement to remove as they are an invasive species.

I urge the committee to support Rachael Hamilton's amendment 63 and not to support Colin Smyth's amendment 131.

Jim Fairlie: Amendment 125, in the name of Stephen Kerr, requires that the licensing authority must grant a licence

"if it is satisfied that the person is a fit and proper person, having regard in particular to the applicant's compliance with the code of practice made in accordance with section 16AC".

In the absence of a definition of a "fit and proper person", it is not clear what the amendment will achieve. The policy intention that has been made clear all along is that obtaining a section 16AA licence will not be a bureaucratic process. If the applicant produces the required information about the land that is subject to the licence, and if the licensing authority has no reason to doubt their compliance with the code of practice, there is generally no reason to think that a licence will not be granted. To put it another way, NatureScot will be able to take into account compliance with the code of practice as a way of determining how "fit and proper" an applicant is.

However, NatureScot does need some discretion to deal with unusual cases. I fear that attempting to add a definition of "fit and proper person" and then assessing whether an applicant

meets that definition would add a second test for those applicants and would create the potential for unintended consequences and loopholes.

For those reasons, I ask Stephen Kerr not to press amendment 125. If he does press it, I encourage members to vote against it.

Amendment 128, in the name of Stephen Kerr, provides that a section 16AA licence would be deemed to have been granted if NatureScot had not processed the application within three months. Amendment 129 further provides that the licence would have effect from the date on which it was deemed to have been granted.

I understand that there is anxiety about the possible time taken for the processing of licence applications. A number of factors can affect the time taken to process a licence, including how long it takes the applicant to get back to NatureScot with any additional information that has been requested. However, when the applicant has supplied all the required information, NatureScot aims to process most applications within 30 days and will prioritise urgent applications, as I would urge it to do. If the bill is passed, NatureScot will produce licensing guidance in collaboration with stakeholders to clearly set out how a licence can be applied for, what information is needed to process the application and how it will be assessed and granted.

In any event, the amendments are flawed in a number of respects. First, amendment 128 does not recognise that the application process could be delayed by inadequate information being provided by the applicant or by NatureScot making enquiries or requiring further information about certain aspects. Amendment 128 could lead to an application being granted automatically, due to the passage of time, even when that application is flawed or inappropriate or when there is incomplete information. That would fundamentally undermine the policy intention of introducing the licensing scheme, which, I suspect, might be the real purpose of the amendment.

I also note that amendment 129, as drafted, would have the effect of removing the maximum duration period for all section 16AA licences.

For those reasons, I cannot support amendments 128 and 129, and I encourage members to vote against them.

Amendment 62, in the name of Rachael Hamilton, would amend section 16(5)(a)(iii) to specify that any conditions that the relevant authority places on a section 16AA licence must be reasonable. That amendment seems satisfactory and I am happy to support it.

Amendment 81, which Emma Harper spoke to on my behalf—which is where things get a bit weird—amends the maximum period for which a grouse licence can be granted from one to five years. I have heard the arguments as to why one year is not a satisfactory duration for a section 16AA licence. As lead minister for the bill, I agree that having a five-year period strikes the right balance between keeping to a minimum the process involved in licensing, which will allow businesses to plan ahead, and enabling NatureScot to retain a degree of control over activity that is the subject of the licence. I support amendment 81 and hope that members will do so, too.

Amendment 63, in the name of Rachael Hamilton, would amend the maximum period for which a licence can be granted from one year to 10 years. As I have just said, I agree that the duration of section16AA licences should be extended beyond a single year, but I think that 10 years is too long and would not provide the degree of control and oversight that the bill aims to put in place. I do not support amendment 63 and hope that Rachael Hamilton will not press it. If she does, I encourage members to vote against it.

The effect of amendment 130, in the name of Colin Smyth, would be that a section 16AA licence holder would be required to “comply with all aspects” of the code of practice that are relevant to management of the land in question. The amendment would be unlikely to work with the code of practice that is being developed. It is expected that the code, like others in this area, will contain elements that are legal requirements and absolutely must be complied with, alongside some other elements that are highly recommended for all and others that may represent very best practice but might be achievable only by estates with significant resources.

Compliance with the entirety of the code may vary according to the nature of the land that is under management, its size and the resources that are available to the business. That flexibility seems reasonable and, in some cases, will be necessary. Compliance with the code may also improve over time as estates put in place new elements of best practice such as resources and skills.

12:30

The net result from amendment 130 could therefore be a code that represented a lowest common denominator rather than the highest of standards. NatureScot will, of course, be looking to move estates along the pathway to achieving the best standards, and that can be reflected in regular dialogue about compliance. I think that that is a better approach, and for that reason I will not

support amendment 130. I encourage committee members to vote against it.

Amendment 131, in the name of Colin Smyth, would also require a section 16AA licence holder to maintain record of the numbers and species of all wild birds and animals that are killed or taken on land to which the licence relates and to report those annually to the relevant authority. I do not believe that the amendment is necessary or proportionate. It is also not clear what purpose, or whose purpose, it would serve, and for some people it might prove onerous and costly. It is simply not standard practice to mandate the inclusion of that kind of information in a licence condition.

The bill is intended to set out the framework for licences so that guidance can be set out in consultation with stakeholders. That will allow the licensing scheme to be responsive and dynamic, and it feels like a much better approach.

For all those reasons, I will not support amendment 131, and I ask members to vote against it.

Amendment 132 requires that the conduct of only the licence holder, or a person who is involved in managing the land for the purpose of killing or taking red grouse, can be a basis on which a licence may be suspended or revoked. The amendment would mean that, if someone else working on the land—for example, a shepherd—committed a relevant offence, the licence could not be suspended. The amendment would also mean that, when a person managing the land—for example, a gamekeeper on a grouse estate—committed a relevant offence, the licence holder could simply get rid of that gamekeeper and carry on using their licence, even if they had instructed that the offence be committed in the first place.

I understand the concern here, and I would certainly expect NatureScot to carefully consider that sort of evidence and take it into account when considering whether to suspend or revoke a licence. However, I am also mindful of the need to avoid loopholes in the licensing scheme. It is not hard to envisage how someone who is determined to persist with raptor persecution could take steps to cast suspicion on a person who is not employed directly on a grouse moor, either with or without their knowledge, simply in order to prevent any possible licensing sanction. For that reason, I will not support amendment 132, and I encourage members to vote against it.

Amendment 133, in the name of Rhoda Grant, provides that a grouse licence could be suspended or revoked only when a relevant offence had been committed by the licence holder or someone under the direction of the licence holder. Again, my concern is that it would create a potential loophole. We know from past experience that some grouse moor managers will persist with raptor persecution in the face of strong opposition from the public and their peers, as well as from law enforcement activity. It would not be hard for a licence holder to argue that any offence committed was not under their direction. Therefore, I cannot support amendment 133, and I encourage committee members to vote against it.

Rhoda Grant: There is quite a lot of concern that people could break the law on the land pertaining to the licence without the knowledge or agreement of the licence holder. It is about finding the right balance. Can the minister give assurances that NatureScot would have to be reasonably convinced that an offence had been carried out under the direction of the licence holder? They could obviously ignore things and turn a blind eye, which I believe would leave them guilty as well. However, can you give an assurance that, when offences are carried out explicitly against the will of the landowner, they will not have their licence revoked?

Jim Fairlie: That is why there is a provision that offences must be relevant to the grouse moor management, which allows NatureScot the flexibility not to take action. It is not required to suspend a licence, but it has the ability to do so if it is convinced that the crime has been committed in the manner that we have spoken about.

Rachael Hamilton: I have a question on that. If someone was suspected of committing an offence, would they not automatically get their licence suspended?

Jim Fairlie: NatureScot has the flexibility to decide that.

Rachael Hamilton: Yes, but how long would that take, through an investigation?

Jim Fairlie: It would be up to NatureScot and the grouse moor manager to have that conversation.

Rachael Hamilton: If we do not support Rhoda Grant's amendment, the individual will be under suspicion, will have to go through an investigation and will have their licence suspended for an indefinite period of time. Therefore, they will be under suspicion from the get-go.

Jim Fairlie: I understand the concern, but NatureScot must have the flexibility to decide whether to suspend the licence. It does not have to suspend it—that is the most important point. It is not a requirement to suspend the licence.

The Convener: I call Jamie Halcro Johnston to wind up and to press or withdraw amendment 125.

Jamie Halcro Johnston: That discussion highlighted some of the intentions behind the bill,

but it is difficult to have much confidence in how they will be practically implemented. I will press the amendment on Stephen Kerr's behalf. Perhaps there could be further engagement between the minister and Mr Kerr on those areas.

The Convener: The question is, that amendment 125 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 125 disagreed to.

Amendment 126 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 126 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 126 disagreed to.

Amendment 2 not moved.

Amendment 127 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 127 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 127 disagreed to.

Amendment 128 moved—[Jamie Halcro Johnston].

The Convener: The question is, that amendment 128 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 128 disagreed to.

Amendment 62 moved—[Rachael Hamilton]—and agreed to.

Amendment 129 moved—[Jamie Halcro Johnston].

The Convener: The question is, that amendment 129 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)

Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 129 disagreed to.

The Convener: I remind members that amendments 81 and 63 are direct alternatives. The text of whichever is the last agreed will appear in the bill.

Amendment 81 moved—[Emma Harper]—and agreed to.

Amendment 63 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 63 disagreed to.

Amendment 130 moved—[Colin Smyth].

The Convener: The question is, that amendment 130 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Grant, Rhoda (Highlands and Islands) (Lab)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Carson, Finlay (Galloway and West Dumfries) (Con)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 130 disagreed to.

Amendment 131 moved—[Colin Smyth].

The Convener: The question is, that amendment 131 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Grant, Rhoda (Highlands and Islands) (Lab)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Carson, Finlay (Galloway and West Dumfries) (Con)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 131 disagreed to.

Amendment 132 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 132 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 132 disagreed to.

Amendment 133 not moved.

Amendment 49 moved—[Jim Fairlie]—and agreed to.

Amendment 64 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 64 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 64 disagreed to.

Amendment 134 moved—[Jamie Halcro Johnston].

The Convener: The question is, that amendment 134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 134 disagreed to.

The Convener: I call amendment 65, in the name of Rachael Hamilton.

Rachael Hamilton: I will not move amendment 65, on the basis that the minister is working with me.

Amendment 65 not moved.

Amendment 66 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 66 disagreed to.

Amendment 67 moved—[Jim Fairlie]—and agreed to.

Amendment 135 not moved.

12:45

Amendment 50 moved—[Jim Fairlie]—and agreed to.

Amendment 68 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 68 disagreed to.

Amendment 82 moved—[Alasdair Allan].

The Convener: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 82 agreed to.

Amendment 136 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 136 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 136 disagreed to.

Amendment 18 moved—[Edward Mountain].

The Convener: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 18 disagreed to.

Amendment 137 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 137 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 137 disagreed to.

The Convener: Group 5 is on "Section 16AA licences—code of practice". Amendment 83, in the name of Jim Fairlie, is grouped with amendments 138, 139 and 20. I call Emma Harper to move amendment 83 and speak to all amendments in the group.

Emma Harper: I am pleased to move amendment 83, which was lodged by Jim Fairlie, who was a member of the committee a couple of weeks ago. The bill provides that Scottish ministers must prepare a code of practice relating to managing land to which a section 16AA grouse licence relates. The code of practice was a recommendation of the Werritty review and it is intended that it will cover issues that were identified by that review, such as the use of medicated grit. The proposed new section 16AC(2) of the 1981 act sets out examples of the type of guidance that may be included in the code of practice. At stage 1, a number of parties were concerned that there were no specific references that allowed medicated grit to be provided, raising concern that the silence might suggest that its use was no longer legitimate.

Amendment 83 adds medicated grit to a non-exhaustive list of topics for which guidance may be provided, and I hope that it will provide clarity and certainty on the matter. It has been specifically included in an amendment to make it transparent that the code would cover the use of medicated grit. If a licence specifies that the medicated grit sections of the code must be complied with, failure to do so would be an offence under the bill, which would mean that the licence could be revoked or suspended on those grounds. That is an important safeguard to ensure that the use of medicated grit is appropriate and that it meets good practice standards as set out in the code.

I move amendment 83 and encourage committee members to vote for it.

Colin Smyth: Amendments 138 and 139, in my name, relate to the code of practice for a section 16AA licence. The relevant paragraph that outlines what the code may provide guidance on, paragraph (a) of proposed new section 16AC(2) of the 1981 act, covers

"how land should be managed to reduce disturbance of and harm to any wild animal, wild bird and wild plant".

That sounds positive, but paragraphs (b) and (c) of the new subsection contradict paragraph (a), as they refer only to how wild birds and predators should be killed, rather than "managed". The current wording in the bill assumes that killing wild birds and predators should continue to be the default means of control, which is ethically and ecologically questionable. Clearly, my amendments would not prevent killing, but they would require reasonable consideration of "whether, when and how" birds or predators should be killed, rather than implying that they will be as a first resort.

Robbie Kernahan said in oral evidence that the code of practice should "drive up standards", and Hugh Dignon said that one of the Scottish Government's intentions was

"to improve animal welfare outcomes even when ... traps are used lawfully"

and

"ensuring that the highest standards apply and that people are operating to those high standards".—[*Official Report*, *Rural Affairs and Islands Committee*, 31 May 2023; c 62.]

Those warm words are meaningless unless they are reflected in the bill. If the code of practice is to "drive up standards" as intended, I ask members and the minister to support my amendments.

Edward Mountain: I am pleased to speak to my amendment 20, which seeks to ensure that Scottish Natural Heritage, or NatureScot—whichever name it is trading under on the given date—should

"consult such persons as it considers likely to be interested in or affected by the code of practice, including land managers."

I think that that is fair, reasonable and inclusive—which the Scottish Government claims to be, so I would be very surprised if the minister were against the amendment.

I am somewhat surprised by amendment 83. I must put it to the person who has moved it, Emma Harper, that she does not know that the use of all medication on land is covered by vets' prescriptions.

Emma Harper: Would the member take an intervention?

Edward Mountain: I will make a little bit more ground first.

Something called Panacur was originally put on medicated grit; now, flubendazole is used, and it requires a veterinary prescription. People cannot just buy it and put it out.

I am happy to take an intervention from Ms Harper now.

Emma Harper: I am absolutely aware, from my research since coming back to the committee, that we used to use fenbendazole but we now use flubendazole. There are issues and concerns around when and how flubendazole is used, and there are issues around potential resistance. I have learned that the grit is used in a way that supports the welfare of the red grouse to deal with the parasitic strongyle threadworm. I am interested in that, as my background is as a nurse, working in healthcare. I am therefore used to dealing with issues around managing medication. I do not think it is right that Edward Mountain suggests that, because I do not work in a rural area, I might not have knowledge about medicated grit, for instance. We all know how to research.

I am interested in considering how we manage best practice, support the best welfare and monitor how medicated grit is used. I think that it is worth pursuing amendment 83. I spoke to the minister to gather some background information, and I was reassured that the amendment that was lodged by Jim Fairlie is a reasonable one.

Edward Mountain: I certainly take that intervention in the spirit in which it was meant. I did not question Ms Harper's knowledge of what medicines do; I was politely suggesting, knowing full well that it was not she who lodged amendment 83, that a farmer or land user who may use medication on animals cannot just go and buy it from some supermarket or off the dark web. People cannot buy a tonne of medicated grit off the dark web. They buy it with a vet's prescription, following the correct procedures, and they cannot then just scatter it wherever they need to, as the veterinary person who has issued the scrip for that grit must assure themselves that it is being used in accordance with that scrip.

If there is any doubt about medicated grit good practice, that can be found under the Game and Wildlife Conservation Trust's "Best practice use of medicated grit", which includes a 28-day withdrawal period.

Emma Harper: Will the member take an intervention?

Edward Mountain: I am sorry, Ms Harper, but I took quite a long intervention from you earlier.

I have explained that medicated grit cannot be used or acquired without significant controls. I accept that it might be said that it could be used,

but I do not think that things should go any further than that.

I believe that Mr Smyth's amendments 138 and 139 are too restrictive and prescriptive. How should the taking or killing of wild birds be carried out

"prioritising methods with the least negative animal welfare impact"?

Does that mean shooting them? Does it mean trapping animals? Obviously, that would not be birds, because they cannot be trapped except in live traps, so they cannot be killed. We have established ways of trapping animals and killing birds, which in most cases involves a shotgun or a rifle. I do not know how to make things more highly controlled than that. People could be put through shooting tests to see whether they can point a rifle in the right direction. However, every time a person fires a rifle or a shotgun, they aim to kill the thing that they are firing at; they do not aim to make it suffer. Therefore, I am not sure how amendment 138 would help.

Amendment 139 begs the question how much we want to micromanage the control of predators. Do we want to suggest how and when to do that? Do we want to suggest that people can only put a trap in a ditch in a box, as covered by the spring trap legislation, and that that can be done only at a certain time of year on a particular moor or bit of ground that is subject to a management plan? I simply do not see how that would work.

Colin Smyth: Is Edward Mountain saying that the only way in which we can manage wildlife and our land is through killing animals? Is that his argument?

Edward Mountain: I am sorry—I did not hear that.

Colin Smyth: Is Edward Mountain arguing that the only way to manage land and to protect a particular species against predators is by killing? The point of my amendments is that other forms of control should be considered before killing is used as a last resort, but Edward Mountain seems to be arguing that the only thing that we can do is kill.

Edward Mountain: In most cases, the reason why a predator is being controlled is to allow other species to flourish. I am not sure whether Mr Smyth is suggesting through his amendment that people should trap an animal and release it somewhere else. I fear that taking an animal from one location to another would require a licence. Is Mr Smyth suggesting licensing the moving of predator species from one place to another? I am not sure whether that is what the minister would like to see or whether that is entirely reasonable.

On that note, I am happy to conclude my remarks, convener.

The Convener: There was a suggestion that we should try to finish the first session at 1 o'clock, but I am minded to carry on until 1.45 at the latest. We will continue to consider the amendments.

Edward Mountain: I understand the time pressures, but I have a committee meeting that I need to prepare for, as I got the committee meeting papers at 5 minutes to 8 last night, I think. Extending this session will jeopardise my position as convener of another committee and my ability to speak to my amendments, so I respectfully ask that you reconsider that or shorten the session by a bit.

The Convener: We intend to finish at 1.45, which should be before your committee reconvenes. That will also give people time to prepare for questions this afternoon. I will press on. We may finish before 1.45. We indicated that we expected to finish the session by 1 o'clock but, given the progress that we have made, we need to try to push on a little bit. However, I take on board your comments.

Colin Smyth: Based on your timing, are you suggesting that we will get to the group on "Muirburn licences—purposes" during those 45 minutes?

13:00

The Convener: No. It is not my intention to go into the part of the bill on muirburn if we are quick enough to get that far.

Jamie Halcro Johnston: I have a follow-up point to Edward Mountain's comments that relates to amendments 138 and 139.

Methods for taking or killing wild birds are legal and already adhere to high standards of animal welfare. Amendments 130 to 139 risk sowing confusion and ambiguity for no discernible public benefit. Given the significant and immediate consequences of failing to comply with a statutory code of practice, the contents of the code must provide absolute legal certainty and leave no room for confusion. Trapping infrastructure employed on grouse moors is already compliant with the international agreement on humane trapping standards.

Jim Fairlie: It has been clear all along that medicated grit was always going to be part of a code of practice, as that was one of the matters considered by the Werritty review. It recommended that the Scottish Government should publish a code of practice, which is now in train. It was always the Scottish Government's intention that guidance on the use of medicated grit would be included in the code of practice for grouse moor management as it was developed.

Rachael Hamilton: I understand the intention, which is based on the Werritty review's recommendations. However, how does medicated grit relate to a code of practice that is related to the disturbance of wild animals, wild birds and wild plants?

Jim Fairlie: Medicated grit was part of what the Werritty review considered. Some people would like us to remove medicated grit entirely—there is a very big campaign to do that—but we believe that, on balance, to ensure that grouse moors can function as grouse moors, having medicated grit in the code of practice is helpful to all parties.

Rachael Hamilton: How does that help with the disturbance of wild animals, wild birds and wild plants?

Jim Fairlie: Could you clarify your point, please?

Rachael Hamilton: The code of practice is all about ensuring that specific species are protected and not disturbed. What is the benefit of adding medicated grit to it?

Jim Fairlie: The code of practice is about ensuring good-quality grouse moor management and medicated grit will be part of that code of practice.

It is helpful to have that intention made clear in the bill, so I am happy to support amendment 83 and encourage committee members to vote for it.

I thank Colin Smyth for amendments 138 and 139. I understand the intentions behind them. However, I will not support them.

As the previous minister set out in her letter to the committee on 18 January, NatureScot is taking an iterative, collaborative approach to developing the code of practice for grouse moor management. A code working group that comprises a range of stakeholders has already been established to develop the structure and content of that code. The code will include guidance on wildlife management that will set out statutory requirements with which people who are undertaking wildlife management must comply, as well as providing advice about best practice.

It is important that the finer details of what is included in the code are informed by the wide range of experience and voices that the grouse moor management code group offers so that we can get a workable but robust code. We need to give the code working group space to determine what will be promoted as best practice and we should not be too prescriptive about what we set out in the bill. Therefore, I will not support amendments 138 and 139, and I encourage members to vote against them.

Amendment 20 from Edward Mountain is unnecessary, as the bill as drafted requires the Scottish ministers to consult on the code of practice for grouse moor management. Should the Scottish ministers exercise their powers to delegate the preparation of the grouse moor management code of practice to NatureScot, NatureScot would then be required to adhere to any consultation requirements set out in section 7 of the bill. I hope that that reassures Edward Mountain and that he will not move his amendment. If he does, I encourage members to vote against it.

Emma Harper: I am pleased that the minister gave me the time to deal with amendment 83, as it was originally his amendment, and I encourage members to vote for it.

Amendment 83 agreed to.

Amendments 138 and 139 not moved.

Amendment 19 moved—[Edward Mountain].

The Convener: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 19 disagreed to.

Amendment 84 moved—[Finlay Carson].

The Convener: The question is, that amendment 84 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)

Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 84 disagreed to.

Amendment 20 moved—[Edward Mountain].

The Convener: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 20 disagreed to.

The Convener: Amendment 85, in the name of Jim Fairlie, is grouped with amendments 85B, 85C, 86 and 87. I call Emma Harper to move amendment 85 and to speak to all amendments in the group.

Emma Harper: I will be moving and speaking to amendments 85, 86 and 87, in the name of Jim Fairlie, who is now the minister.

As the committee's stage 1 report indicated, the monitoring and reporting requirements must be balanced against any resources that the Scottish Government and its agencies, and wider interest groups, require to carry out that work. In the previous minister's response to the stage 1 report, that minister stated that the Scottish Government was committed to an open and transparent approach to legislation. Where additional reporting serves a useful purpose, the Scottish Government has said that it is happy to support it, which I welcome.

Amendments 85, 86 and 87 will require monitoring of section 16AA licences and their effect. Part of the reason for the bill is to address raptor persecution on land managed for grouse shooting, and the Scottish Government wants to do so through the section 16AA licensing provisions. The Werritty review identified three raptor species populations as being significantly impacted by criminal activities on some grouse moors: the golden eagle—indeed, there have been criminal investigations into the persecution of those birds in my South Scotland region—the hen harrier and the peregrine falcon.

To assess the bill's effectiveness in reducing raptor persecution on those raptor species, regular monitoring and surveillance of their populations will be essential, and I acknowledge the Scottish Government's commitment to doing so. When Gillian Martin was the minister, she stated that some monitoring of raptor populations was already undertaken by the Scottish Raptor Study Group, and my office has been in contact with the group ahead of this consideration.

Based on the evidence that the committee has taken, I strongly believe that the requirement to undertake raptor population assessments is important, and I would welcome the minister's comments on these important amendments on monitoring.

I move amendment 85.

Rachael Hamilton: In monitoring the effectiveness of section 16AA licences, it is important that any summary in relation to relevant offences is not speculative, so that a conclusion is not formed on the basis of incomplete information. In that regard, the reference to "suspected offences" is not an appropriate metric. Offences are either proven by way of conviction or not proven, and amendment 85B would ensure that only proven offences were reflected in any summary or report.

Amendment 85C is a minor amendment to provide consistency in respect of the language and phrasing used elsewhere in the bill.

I move amendment 85B.

Jim Fairlie: Now, this really is an unusual situation, as I must now address amendments as the lead minister for the bill and, first of all, thank Emma Harper for speaking on my behalf to the amendments that I lodged previously.

In my new position as Minister for Agriculture and Connectivity, I have received a great deal of advice on the amendments to the bill, and, as a member of this committee, I heard all the evidence from stakeholders at stage 1. I have tried to use the new advice to better understand the bill and all the concerns and issues that surround it.

I originally lodged amendments 85, 86 and 87 for the reasons that Emma Harper has set out. I think that those reasons still hold. However—and this is an example of how my understanding has developed—I can now see ways of improving the amendments to ensure that we get the most out of any reporting requirements that we include in the bill.

Monitoring and reporting requirements must be weighed up to balance the value that they provide against the resources that they take to fulfil. That said, the Scottish Government is committed to an open and transparent approach to legislation, and, where additional reporting serves a useful purpose, it should be supported.

The bill has been introduced in part to address raptor persecution on land managed for grouse shooting, and the section in the bill on licensing provisions is the approach that we have taken to do that. The three raptor species populations identified in the Werritty review—the golden eagle, the hen harrier and the peregrine falcon—are significantly impacted, as Emma Harper has said. To assess the effectiveness of the bill in reducing raptor persecution on those species, regular monitoring and surveillance of their populations will be essential. Some monitoring of that kind is already undertaken by the Scottish Raptor Study Group, albeit at longer intervals than is provided for in the amendments.

Including a requirement to undertake an assessment of raptor populations is a reasonable suggestion. However, what I would like to do, and what I think would be helpful, is to discuss the requirements further with NatureScot and relevant stakeholders to understand their ability to undertake the additional monitoring and reporting. I would also like to ensure that the amendments are framed in a way that is consistent with the language used in the rest of the bill. I therefore request that Emma Harper not press amendment 85 or move amendments 86 and 87 and that she allow me to have those discussions and to bring back better versions of the amendments at stage 3.

Emma Harper: Given that, based on what Mr Fairlie has said, the Government would like time to ensure that the amendments are workable and doable within the current resources, I am happy not to press or move them. I am keen for the minister to work with NatureScot and others, to have the appropriate discussions and then potentially to bring back redrafted versions at stage 3.

The Convener: I call Rachael Hamilton to wind up and press or withdraw amendment 85B.

Rachael Hamilton: I will press amendment 85B.

The Convener: The question is, that amendment 85B be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 85B disagreed to.

Amendment 85C moved—[Rachael Hamilton].

The Convener: The question is, that amendment 85C be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 85C disagreed to.

Amendment 85, by agreement, withdrawn.

Amendment 69 moved—[Jim Fairlie]—and agreed to.

Amendment 86 not moved.

Amendment 173 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 173 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)

Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 173 disagreed to.

Amendment 70 moved—[Jim Fairlie]—and agreed to.

13:15

Amendment 140 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 140 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 140 disagreed to.

Amendment 87 not moved.

Section 7, as amended, agreed to.

Section 8—Animal welfare inspectors' powers

The Convener: Amendment 71, in the name of the minister, is grouped with amendments 21, 141 and 142.

Jim Fairlie: Gillian Martin's amendment 71 modifies the Animal Health and Welfare (Scotland) Act 2006 to confer additional powers on inspectors appointed by the Scottish ministers to investigate certain wildlife offences.

I am aware that the issue of giving additional powers to the Scottish Society for the Prevention of Cruelty to Animals inspectors has been debated in the Parliament on a number of occasions. That is why the Scottish Government decided to set up an independent task force to look further at the matter and, after listening carefully to stakeholders, developed the proposals. The proposals were consulted on last year, and 71 per cent of the respondents agreed with the proposal to extend the powers of the Scottish SPCA to investigate wildlife crime, but two thirds also agreed with proposals to place limitations and conditions on the extended powers of the Scottish SPCA inspectors.

Notwithstanding that level of support, I know that some people have raised concerns about giving further powers to individuals and organisations that are not part of the police service. On the other side of the argument, some would have liked the Government to go significantly further on new powers for the Scottish SPCA. Having listened carefully to the evidence that has been presented to the committee, I believe that the provisions set out in amendment 71, which provide for a small extension of powers to deal with a gap in the arrangements for securing evidence of potential criminality, strike the right balance.

I will give an example of the powers in use. As the law currently stands, a Scottish SPCA inspector responding to the case of a live animal caught in an illegally set trap is not able to seize any other illegal traps in the immediate vicinity that do not contain live animals. They would also not have the power to search the area for evidence of other illegally set traps. If the amendment was agreed to, it would mean that, in those circumstances, an inspector would have the power to seize the illegally set traps and search for evidence of other illegally set traps in the vicinity. They would then turn over their evidence to Police Scotland, which would retain primacy over the investigation of wildlife crime cases including offences under the Wildlife and Countryside Act 1981 and this bill.

The additional powers for inspectors will come with a number of safeguards and limitations. They can be exercised only when an inspector is already responding to a case under their existing powers. As is currently the case, each inspector will be appointed separately and individually by the Scottish Government. All inspectors will be required to undertake training prior to being given authorisation to exercise the new powers. Authorisation can be withdrawn at any time at the discretion of the Scottish Government. Protocols will be established between the SSPCA and Police Scotland to ensure effective partnership working and to set out clearly the role of the SSPCA within the limit of those powers. The SSPCA will not be given powers to stop and search people, and it will also not have the powers to arrest people who are suspected of committing a wildlife crime.

The protocols for partnership working that the SSPCA will follow when using the new powers will clearly set out how the new functions should work. That will include what reporting mechanisms will

be in place, how the SSPCA, the National Wildlife Crime Unit, Police Scotland and the Crown Office will work together effectively, and what the individual roles and responsibilities of each party are.

Rachael Hamilton: As the minister well knows, there was much discussion in committee sessions regarding when the protocols will be established. Is there any indication of when that will be? It is important for us to understand what the protocols are, because of the long-standing concerns around giving the SSPCA powers and the view of some people that investigation powers should lie with Police Scotland.

Jim Fairlie: You have jumped in just a second too quickly. I was about to say that those provisions will not be commenced until the protocols have been agreed by all relevant parties, including Scottish ministers.

On the extent of investigatory powers, under the Animal Health and Welfare Act (Scotland) 2006, the SSPCA can utilise its powers only in relation to the investigation of cases that involve live animals. That will remain the case with the new powers. If a situation were to arise in which, for example, it responded to a call relating to a live animal caught in a trap and then, on arrival, found that the animal had subsequently died, I would expect the SSPCA to alert Police Scotland, which would then determine the appropriate course of action. I would also expect such situations to be clearly covered by the protocols that will set out how the SSPCA will operate using those new powers.

Amendment 21, in the name of Edward Mountain, would remove section 8 of the bill. Section 8 is currently an enabling power that provides that the Scottish ministers may, by regulation, modify the 2006 act to add powers such as those that I have just described. The intention was always to seek to remove that provision by amendment at stage 2 and replace it with a provision that sets out in the bill the detail and limits of the new powers, which is what amendment 71 now does.

If amendment 71 gets the support of the committee and is agreed to, Edward Mountain's amendment 21 would immediately remove the new provisions. However, in the event that amendment 71 is not agreed to, it would be sensible to retain section 8 as it would enable the Scottish ministers to lay regulations to extend the powers of SSPCA inspectors at a later stage, should that be desirable. Those regulations will be subject to the affirmative procedure, so if they are ever to be used, Parliament would have a say. I will therefore not support Edward Mountain's amendment 21, and I urge committee members to vote against it.

Rhoda Grant's amendments, which would require the Scottish ministers to undertake a review of the effect of those new provisions, are a helpful addition. I hope that the requirement to undertake such a review would help to allay some of the concerns that were raised at stage 1 about how the new powers will be used. I therefore support those amendments in principle; however, I do not think that the review period of one year, as set out in the amendments, is an appropriate timescale.

Amendment 141 would require the review to examine whether the "exercise of" those new powers "has resulted in convictions". Given the time that it can take for an investigation to proceed through the criminal justice system, a longer review period of three to five years would probably be more appropriate.

More generally, there are also some minor issues with the amendments, and I would like to work with the member to address them. I therefore ask Rhoda Grant not to move either amendment at this stage, and I will consider them further with a view to bringing a revised version at stage 3.

I move amendment 71, and I encourage committee members to support it.

Edward Mountain: The beauty of submitting an amendment early is that it comes up early and you do not have sight of the minister's amendment, which was lodged just prior to the window for lodging amendments closing. We kind of agreed among ourselves at the outset that we wanted to remove section 8, but that is as far as it went. I lodged my amendment to remove section 8 because I have very deep-felt concerns that section 8, as amended, would give powers to people who have never had such powers before.

I am a great believer in having respect for our police force and that it should be the police, not other people, who implement the law. I have always believed that. Therefore, I am concerned that the powers that will be given to the inspectors are greater than the powers that a policeman has. There is no need for a search warrant, there is no need for corroboration and no specified training is required. Therefore, identifying whether the person who turns up is trained and authorised is almost impossible. There is little or no training on pesticides, which means that collecting evidence on pesticides will be difficult. At the moment, as I am sure the minister knows, that issue is got around when an inspection is carried out by the police with a member of the agriculture department attending to identify and inform on pesticides.

I have real concerns about section 8, because I do not think that it clarifies all the issues that need to be clarified. It would remove powers and

undermine the authority of the police, which I am against, and it would give powers to third parties who I do not believe are qualified or have the legal training to exercise such powers.

Rhoda Grant: I am glad that the minister has heard the concerns about this part of the bill. I understand the frustration that is felt by SSPCA officers who are called out because of animal welfare concerns and who are unable to do anything, despite seeing illegal activities. However, there are also concerns about empowering a third sector organisation to provide law enforcement.

I lodged my amendments 141 and 142 to ensure that the issue will be looked at and that there will be no unintended consequences, but I take on board what the minister has said about considering the matter before stage 3. I will be pleased to do that, so I do not intend to move amendments 141 and 142. I look forward to those discussions.

Ariane Burgess: I am delighted to put on record my support for amendment 71, which will extend the SSPCA's powers to investigate wildlife crime. Scottish Greens have called for that for a long time, which is why we included in the Bute house agreement reference to the holding of a timely review of the SSPCA's powers.

On several occasions during stage 1, we heard evidence of situations in which animal welfare officers are limited in what they can do to collect evidence of wildlife crime. The extension of the SSPCA's powers will improve our ability to bring more perpetrators of wildlife crime to justice and to protect the reputations of those businesses that abide by the law.

Jim Fairlie: I welcome the debate on this group. The proposed step is a big one for us to take, and it is right that we should consider it carefully. I think that we have struck the right balance, and that the necessary checks and safeguards are in place to ensure that the protocol between the SSPCA and Police Scotland is right. Therefore, I think that we are in the right place on this issue.

The Convener: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 71 agreed to.

Amendment 21 moved—[Edward Mountain].

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 21 disagreed to.

After section 8

Amendments 141 and 142 not moved.

Before section 9

Amendment 75 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 75 disagreed to.

The Convener: At this point, I suspend our consideration of amendments until 6 pm this evening.

13:28

Meeting suspended.

18:06

On resuming—

Section 9—Requirement for muirburn licence

The Convener: Good evening, and welcome back to the fifth meeting in 2024 of the Rural Affairs and Islands Committee. I remind everyone please to switch any electronic devices to silent.

We reconvene our consideration of stage 2 amendments. Amendment 181, in the name of Edward Mountain, is grouped with amendment 182.

Edward Mountain: Can I check that you are happy that the declaration of interest that I made this morning is extant?

The Convener: It absolutely is.

Edward Mountain: Today is a first for me, for three reasons. First, I have attended three committee meetings today, which is unusual. Secondly, I have heard the minister speak against his own amendment; I never heard of that before. Thirdly, I will speak at length about a subject in the hope of enabling one of the committee members to attend the meeting to vote against my amendments. Those three things are new to me.

My reason for lodging amendment 181 is to ensure that muirburn licences are for muirburn on moorland. It is unclear to me from the legislation that a muirburn licence does not extend beyond moorland.

My definition of "moorland" is heather, which is in the dictionary definition for "muirburn", and I want to make sure that it does not extend to gorse, broom and grassland. That is why I have lodged amendment 182, which attempts to define what moorland is not: it is not improved grassland or land suitable for arable cropping beyond permanent grassland. All of those are burnt regularly by people, as I am sure that Alasdair Allan will know, to improve and protect grassland and to stop the invasion of species such as broom and gorse. However, they are burnt not only for those reasons but to remove and control pests such as leatherjackets—cranefly larvae—which can destroy grassland very easily. To my mind, the best option for controlling those, in most cases in which they have damaged and killed off grassland, is to burn that grassland rather than spray it. It is an organic way of controlling such species.

Those are the reasons for my two amendments—to define what muirburn is and where it is—and I am interested in hearing the minister's comments and in seeing whether he has a more eloquent way of describing it.

I move amendment 181.

Jim Fairlie: Amendments 181 and 182 would insert a definition of moorland into the bill and would have the effect that a muirburn licence would not be needed to make muirburn on improved grassland or land suitable for arable cropping.

The Rural Stewardship Scheme (Scotland) Regulations 2001 provide definitions of "arable land" and "improved grassland" that clearly exclude heath or moorland. Heathland, or heather moorland, is defined instead as "rough grazings". The amendments would not apply for the purposes of the provisions of the bill, but that provides background to what Edward Mountain is trying to do.

Gillian Martin has lodged amendments 76 and 77 to amend the definition of making muirburn in the bill to mirror the definition used in the Hill Farming Act 1946, which is the

"setting fire to or burning any heath or muir".

That means that, should amendments 76 and 77 be agreed to, Edward Mountain's amendments 181 and 182 would have no practical effect, as heath or muir would not include improved grassland or land suitable for arable cropping. Amendments 181 and 182 would, however, create a layer of complexity and possible confusion for muirburn applicants, because they would be dealing with two different definitions of what muirburn is and where it can be carried out.

In addition, the definition of moorland that amendment 182 offers is so wide that it could encompass anything that is not improved grassland or land suitable for arable cropping—for example, it could include forestry, roads and private gardens. It is clear that such a wide definition would not be practical.

For those reasons, I cannot support amendments 181 and 182, and I encourage committee members to vote against them.

The Convener: I call Edward Mountain to wind up and to press or withdraw amendment 181.

Edward Mountain: I listened carefully to what the minister said. It is clear that he understands that, when I lodged those amendments, they defined what is not moorland—that is, improved grassland. I am not sure how the minister could think that improved grassland would include

people's gardens, or that land suitable for cropping would impinge on people's gardens. The amendments try to define it in more detail than Gillian Martin's amendments did when she lodged them.

I am happy that my amendments are correct, and I am not convinced by the minister's argument. I urge committee members to vote in favour of my amendments to ensure that there is no dubiety, which I believe there is at the moment. I will press amendment 181.

The Convener: The question is, that amendment 181 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 181 disagreed to.

The Convener: Amendment 22, in the name of Edward Mountain, is grouped with amendments 24, 27, 29, 30, 35, 38, 42, 44, 46 and 47.

Edward Mountain: Some people will think that my amendments in this group are wrecking amendments, but they are absolutely not, because I am seeking to get the minister to explain why the code is needed. I have been involved in muirburn since I was 18 years old and, without embarrassing myself, that was 44 years ago and I have done a considerable amount of it.

Muirburn may have changed during those 44 years, but the reasons for doing it have not. You need to manage vegetation, because if you do not it becomes rank and of low value to flora and fauna and certainly shades out the pioneer growth that comes underneath. For me, muirburn is about creating a mosaic, and there is a careful way of doing that to ensure that we have mixed habitats across moorlands where we have pioneer communities. Those communities may be as low as individual grassworts or plagioclimax, which is short heather and bluebell heather, or they may be climax vegetation, which is the longer rank heather. All those things have a part to play.

Pioneer communities are particularly important for hares and similar species. Plagioclimax communities are important for ground-nesting birds in allowing them to move around with small chicks and get insects, and climax vegetation is important in allowing nesting sites for more apex predators such as hen harriers. Therefore, each of those communities provides a niche of habitats for different species. Diversity is the key to this.

18:15

Controls have been placed on deer because they are blamed for damaging the hills, and I would sometimes agree that they do. However, that is because they are delving into the pioneer and plagioclimax communities, which provide the best grazing for them. They do not touch the old rank climax vegetation; in fact, very few species do. They are there, and I am trying to ensure that we have diversity.

Muirburn is about burning vegetation. Some people are under the misapprehension that it is about burning peat, but it is certainly not about that. It needs to be understood that it is about removing the vegetation to allow new vegetation to come through.

It is not random. It has never been randomly carried out on the hills but is very carefully managed. I say to members of the committee that it ain't easy. Anyone who has done it will know that there are huge effects that can make muirburn difficult; whether it is rain, wind or snow, it all plays a part.

It is important to understand that carrying out muirburn requires a skilled practitioner who understands what can be safely achieved within a period. Burning a slope can be easily controlled if the wind is in the right direction; if it is in the wrong direction, however, you will have problems.

The plan, at all stages, is to burn rotationally. I will spend a wee moment on that, because it is really important. People who have been up and looked at heather habitats know that heather regenerates at different speeds. I could certainly take you to bits of hill where heather will regenerate such that you would have no idea that burning has taken place five to six years after it has been done. I could also take you to other bits of hill where it would still be noticeable 12 to 15 years afterwards.

The fallacy of the bill is the fact that we are talking about burning on peat depth. If you go up into the high montane, where you should not be burning, there is very shallow peat depth where there is a schist underneath it, which means that to burn it would be dangerous. It is bad for that montane. In some ways, burning where there is a more equal peat depth is far more sustainable. I

do not like the fact that the bill talks about narrowing it down to peat depth.

I have no idea how you can look at an entire burn area—where you are going up and doing 100 or 200 square metres—and work out the peat depth across that whole 100 or 200 square metres to work out whether you can burn it. I think that that is dangerous.

With these amendments, I want to understand where the minister is coming from and where he believes that the current muirburn code is wrong—because, if implemented, the current muirburn code is correct. Of course, I would say that, because I worked on the muirburn code when it was first brought out. However, I am confident that if you read through all the muirburn code guidance, which is a very straightforward document, you would feel confident that, if muirburn was carried out in line with that guidance, there would be nothing wrong with it.

My plea is for the minister to explain to me why licensing is required when we have a decent code. We do not need to introduce licences, but rather to enforce the code that we have, and to rely on and use the skills and experience of those people who are on the hills and who understand the hills that they—and perhaps their fathers and grandfathers before them—have worked on perhaps all their lives. We need to understand that they have a real argument to bring to the table about why the management of muirburn is best done under the code and not under a licence system.

I am interested to hear what the minister says to the arguments that I have raised and why he thinks that a licence is more appropriate than a properly enforced code.

I move amendment 22.

Jim Fairlie: I will make a couple of points. We will be debating the muirburn code. As Mr Mountain says, not everyone carries out muirburn properly, in the way that the code dictates.

I am disappointed that Mr Mountain has lodged amendments that would remove the whole of part 2 of the bill. If passed, the amendments would mean that the existing legislation would remain in place, which would feel like a missed opportunity to improve the regime for a rural activity that is important, but can have an adverse impact on peatland, habitats and wildlife if it is not undertaken appropriately and safely.

Although some might disagree, there is broad agreement from stakeholders and the public that muirburn should be subject to greater oversight and that the legislation currently governing it—some of which dates back to 1946—should be updated. The public consultation showed that the majority of respondents supported the proposals, with 68 per cent agreeing that a licence should be required to undertake muirburn, regardless of the time of year when it is done.

The Scottish Government committed to implementing the recommendations of the Werritty review, including those relating to muirburn, and that is what part 2 of the bill does. The Werritty review recognised the benefits that muirburn can bring, but it also highlighted the strong evidence that muirburn can have negative impacts, including on biodiversity and soil. The review concluded that muirburn should be subject to greater regulation and oversight and that that should apply to all muirburn, not only to that undertaken on grouse moors.

It is recommended that muirburn should be unlawful unless carried out under licence, and part 2 of the bill seeks to implement that. I therefore cannot, nor would wish to, support any of the amendments in this group. I ask Mr Mountain not to press them. If he does, I encourage committee members—most of whom were elected on a manifesto commitment to implement the recommendations of the Werritty review—to vote against those amendments.

The Convener: I call Edward Mountain to wind up and to press or withdraw amendment 22.

Edward Mountain: I am disappointed that we did not get into the actual facts about muirburn and that the minister did not engage with any of the specific issues that I discussed. I am also disappointed that he does not acknowledge the importance and skills of those who carry out muirburn, or the reasons for it.

To my mind, introducing another level of licensing will lead to a situation in which we will probably end up with so much analysis that there will be paralysis. The environment will suffer, along with all the species that rely on it and the people who live around the edges of that environment.

I am disappointed. However, I would be prepared, if the minister was willing, to engage with him on these specific amendments to see whether there is a way to recognise the reasons for muirburn and the skills of those who do it and to look at whether the limits can be reviewed at stage 3. I am prepared not to move the amendments, on the understanding that I believe that the minister will engage with me.

Jim Fairlie: We will debate the whys and wherefores of muirburn later, so I ask Edward Mountain not to press his amendments.

Edward Mountain: On the ground that there will be further engagement, I am happy not to press the amendment. I am also happy not to move any of the other amendments. I know that

you cannot deal with them en bloc, convener, but I am giving you notice of that now, to save the committee's time and on the understanding that I can further debate the matter with the minister later.

Amendment 22, by agreement, withdrawn.

Section 9 agreed to.

Section 10—Application for muirburn licence

The Convener: Amendment 143, in the name of Colin Smyth, is grouped with amendments 88, 144, 23, 89, 90, 145, 146, 94 and 149.

Colin Smyth: Amendment 143 draws attention to another elephant in the room. As I explained when I spoke to amendment 113 on 7 February, the explanatory notes to the bill say that the Government wants to

"ensure that the management of grouse moors and related activities are undertaken in an environmentally sustainable and welfare conscious manner."

Amendment 143 complements the environmental goals of the bill and speaks to the reasons why a muirburn licence should be given by NatureScot.

Although it may be accepted that muirburn can be a tool for land managers, it is environmentally and ethically indefensible for muirburn licences to be given for the sole purpose of maintaining and increasing moorland game only so that it can be shot. Some will oppose amendment 143 because they support maximising the amount of killing, but that is not the public's view. Three quarters of Scots are opposed to muirburn for that purpose—solely so that grouse numbers can be maintained or increased for the grouse then to be killed for sport.

Amendment 143 will reduce unnecessary muirburn, but it will leave in flexibility for it to continue to be used when necessary. Put simply, if land managers want to obtain a licence to muirburn for genuine conservation reasons, the amendment in no way blocks that from happening.

I move amendment 143.

Kate Forbes: Amendments 88 and 89 are, in my view, fairly minor, technical amendments and they are certainly not controversial. They ensure that there is consistency across licensable purposes for peatland and non-peatland. Amendment 88 ensures that muirburn, which of course does not distinguish between habitats, can be licensed on peatland and non-peatland where we want to prevent damage to habitats caused by wildfire.

Amendment 89 does the same thing, correcting inconsistencies across licensable purposes for peatland and non-peatland, but amendment 89 concerns a licensable purpose where an individual wants to conserve, restore, enhance or manage the natural environment. In short, my two amendments allow for the management of habitats and the protection of the natural environment across peatland and non-peatland as a licensable requirement when it comes to muirburn.

I have spoken to the minister about the amendments, and I understand and respect the point that the Government may wish to bring them back at stage 3. I hope that the minister can give some assurance on that, so as to give effect to the intention behind my two amendments at stage 3, which will mean that I will not move my amendments.

Rhoda Grant: Amendment 146 is in a similar vein to Kate Forbes's amendment 88; mine also covers muirburn on both peatland and non-peatland. The wildfire in Cannich last year highlights the need to manage fuel load on peat as well as in other areas. It seems wrong to me that we spend money on restoring peatland only for those efforts to be ruined by an intensely burning wildfire. It is sometimes the case, therefore, that muirburn is the most effective way to manage the fuel load, and it should be used as such. Perhaps there should be a duty on land managers to manage fuel load in order to mitigate the harm caused by wildfire. The problem is that the science in this area is not yet conclusive, which makes it challenging to legislate. We need to ensure that what we put down in legislation can be adapted to fit future scientific knowledge. That said, it seems clear that leaving a large fuel load on land is dangerous. Leaving it on degraded peat is disastrous, and we have heard and seen evidence to show that muirburn has caused little harm on well-maintained peatland. My amendments acknowledge the role to be played by muirburn in peat restoration and protection.

Amendment 149 ensures that any regulations that modify the list of purposes for muirburn are subject to full consultation and scrutiny by the committee. I hope that that would give members some confidence in ensuring that any changes are fully scrutinised and will be in line with the science at the time.

Edward Mountain: Amendment 23 is simple in that it recognises that muirburn is carried out not only for moorland game but for wildlife. Most people will accept that muirburn has beneficial effects for ground-nesting birds such as grouse, snipe and other nesting species that require short heather for moving their chicks around. It also has benefits for other species, such as hares, blackcock, peregrine and hen harriers. In fact, everything benefits from muirburn, in my opinion, which is why I want to add the fact that it is for

"managing the habitats of moorland game or wildlife".

That is, there are two reasons why muirburn should be allowed.

Turning to the other amendments in the group, I believe that Colin Smyth's amendment 143 is, in effect, trying to destroy grouse shooting. I respect Mr Smyth's position on field sports, which is that he does not want to see them, but his amendment tries to stop grouse shooting, or that would be its effect.

18:30

I find Kate Forbes's amendments 88 and 89 interesting and I could sign up to them. I recognise that she has taken into account the horrific wildfires that we had in the Highlands recently. There is no doubt in my mind that they were due to a lack of management of fuel loads, and there are organisations that need to understand that. If Kate Forbes does not move her amendments, I will look to see how the proposals can be progressed at stage 3, but I hope that the Government will work with her on them.

I believe that amendments 144 and 145 are surplus to requirements given Kate Forbes's amendments 88 and 89. I do not think that they are required.

I find amendment 90 interesting. I agree with it, but it presents me with a problem in the sense—

Alasdair Allan: Is it the fact that we agree that presents a problem?

Edward Mountain: No. Technically, managing reseeding on grasslands could fall within the bill's definition of muirburn. I believe that grassland management is truly important and it is really important for crofters to have that ability, but technically it could fall within the bill's definition of muirburn, so there could be a problem with Dr Allan's amendment. Although I support it and would like it to be agreed to, I hope that the minister, if my concerns are right, will work with him to ensure that crofters are given the ability to carry out management of grassland, which is so important to their practices.

I find Rhoda Grant's amendment 149 interesting. I listened to her arguments and I am swayed by the amendment, so I will be interested to see how the committee votes on it.

The Convener: I invite Alasdair Allan to speak to amendment 90 and other amendments in the group.

Alasdair Allan: My amendment 90 seeks specifically to allow crofters to apply for a muirburn licence for the purpose of reseeding to provide or improve grazing on peatland. The bill allows licences for muirburn on peatland only for the purposes of restoring the natural environment, preventing wildfire and research. During stage 1, crofting stakeholders raised concerns about the lack of provision in the bill for muirburn on crofting peatland for the purposes of reseeding, which they highlighted is a traditional and effective practice that, when carried out properly, avoids damage to the peat. Controlled muirburn over small areas of land, such as on crofts or common grazings, is a long-established practice in crofting areas across the Highlands and Islands. Although there are alternative reseeding methods that could be attempted on that terrain, their potential efficacy is viewed as highly questionable.

Edward Mountain: I believe that the member's amendment is important for those reasons, but does he accept that carrying out muirburn on grassland could also have the benefit of removing problems that cattle and crofters face with ticks? That could help to limit the spread of Lyme disease, which is a serious problem across the Highlands.

Alasdair Allan: It is not within the scope of my amendment, but I certainly acknowledge the need to control the spread of Lyme disease, which has been an issue in parts of my constituency. We should of course be open to looking at all measures around that.

My amendment, however, focuses on ensuring that crofters continue, where appropriate, to carry out muirburn on their crofts or common grazings for the purposes of reseeding or to provide or improve grazing, as they have done for generations. I hope that, whatever the Government's reaction to my amendment is, the minister will be willing to work with me on the issue in the future.

Rachael Hamilton: I was minded to vote against your amendment, but you have persuaded me that it is a sensible one. I initially interpreted it as narrowing the scope of the area where peatland could be burned, but that is not the case. You are saying that it would widen that scope.

Alasdair Allan: Unless I have drafted it badly, yes. My intention is to provide another reason that crofters could use to employ muirburn.

Jamie Halcro Johnston: I am delighted to have the opportunity to speak to amendment 143, in the name of Colin Smyth, and to raise the concerns of my colleague Stephen Kerr, who unfortunately cannot be here today.

Amendment 143 represents a deliberate and targeted attempt to compromise rural businesses that rely on grouse shooting as part of their income stream. Given the body of evidence that demonstrates the benefits of muirburn that is carried out by grouse moor managers for diverse forms of moorland wildlife, it seems counterintuitive to remove the primary motivation

for undertaking such activity in the first place. Moreover, moorland game includes species such as black grouse, which is a red-list species of conservation concern whose populations are now largely confined to moorland that is managed for grouse shooting, partly because of the muirburn that is undertaken to benefit moorland game on such landholdings.

The Convener: No other member wishes to comment. I therefore invite the minister to wind up.

Jim Fairlie: I simply cannot support amendment 143. As Colin Smyth well knows, if muirburn were not allowed on moors or heath where game is present, it would be impossible to support moorland game or the industry that is enabled by it. That might be Colin Smyth's intention, but it is definitely not the Scottish Government's. The bill's purpose is to allow for the undertaking of muirburn, in properly controlled circumstances, for a range of reasons, including the creation and maintenance of habitats for red grouse or other moorland game, and also, as we have heard, the protection of other ground nesters. I therefore encourage members to vote against amendment 143.

Kate Forbes: Does the minister recognise, too, that, as the Scottish Fire and Rescue Service indicated, one of the most essential aims of carrying out muirburn is that it acts as a firebreak for wildfire? Not only is it in the interests of a particular industry, albeit one on which people might have different views; without it, we might have seen homes being burned to the ground last summer.

Jim Fairlie: I agree. I also highlight the absolutely invaluable work of gamekeepers and associated industries to ensure that such wildfires are brought under control.

I understand why Kate Forbes has lodged amendment 88. Like her, I want to ensure that the bill's provisions on the purposes for which muirburn will be allowed in the future are as clear as possible. I agree that, when undertaken appropriately, with caution and planning, muirburn can be a tool to prevent and reduce the risk of wildfire. However, I do not consider amendment 88 to be necessary, because making muirburn for the purpose of

"preventing, or reducing the risk of, wildfires causing damage to habitats"

is covered by the existing purposes in the bill of

"managing the habitats of ... wildlife"

and

"managing the natural environment".

I therefore ask Kate Forbes not to move amendment 88, which would allow me to consider the matter further ahead of stage 3 and to determine whether we can make the bill's purposes clearer.

Similarly, amendments 144 to 146, in the name of Rhoda Grant, are unnecessary. The bill already includes, in section 10(2)(a) and (b), making muirburn for the purposes of

"preventing, or reducing the risk of, wildfires",

which would include managing fuel loads to serve those purposes. Such detail could—and, indeed, should—be set out in the muirburn code. However, there is a risk that the changes to the wording that is proposed by amendments 144 to 146 might restrict the wildfire management purposes solely to managing fuel loads. If there were to be another use of muirburn to prevent or reduce the risk of wildfire it would no longer meet that licensable purpose. It is not immediately clear what amendments 144 to 146 offer over what is already in the bill. I therefore ask Rhoda Grant not to move them.

Amendment 23, in the name of Edward Mountain, which would allow muirburn to be undertaken on peatland to manage habitats for game birds or other wildlife, does not take into account the value of Scotland's peatland. As they are currently stated in the bill, the purposes for undertaking muirburn on peatland are limited in recognition of the risk of serious and significant carbon emissions when burning either damages the peat or interferes with the natural carbon sequestration process that occurs on functioning peatlands.

Edward Mountain: I might have misunderstood. All that my amendment 23 would introduce is that muirburn should be undertaken for

"managing the habitats of moorland game or wildlife".

I am simply saying that all wildlife is important, not just moorland game. I find it odd that you are in a position where you cannot accept that.

Jim Fairlie: As I have said, the purposes that are listed in the bill for undertaking muirburn on peatland are limited, in recognition of the risk of serious and significant carbon emissions when burning either damages the peat or interferes with the natural carbon sequestration process that occurs on functioning peatlands. For that reason, the bill attempts to reach a balanced position between limiting the damage to peatlands that arises from muirburn and limiting the damage that arises from wildfire. That means that the process of undertaking any muirburn on peatland needs to be done more thoughtfully and only in limited circumstances. I therefore encourage Edward Mountain not to move amendment 23. If it is

moved, I encourage committee members to vote against it.

Amendment 89, in the name of Kate Forbes, would add the terms “conserving”, “enhancing” and “managing” the natural environment to the purposes for muirburn on peatland. The current provision allows just for “restoring” the natural environment. As I explained to Edward Mountain, the provisions for muirburn on peatland are about reaching a balanced position. The increased purposes for undertaking muirburn that are proposed by amendment 89 are broader in terms than just “restoring” and would therefore open up the scope for when muirburn could take place on peatland.

For example, “managing” the environment is so wide that it would allow muirburn on peatland for any purpose whatsoever, without any restriction. I think that we can agree that that would not be appropriate, would put peatlands at unnecessary risk and would not align with our commitments to address climate change.

However, I appreciate where Kate Forbes is coming from, so, as with amendment 88, if Kate Forbes is happy not to move amendment 89, I will undertake to consider the matter further ahead of stage 3, to address some of the issues that she has outlined today.

Kate Forbes: I take in very good faith what the minister says. So, if he can assure me that there will be an amendment of some kind at stage 3 that gives effect to my amendments 88 and 89, I will not move them.

Jim Fairlie: I give the absolute commitment that we can meet to talk about the issue and see what we can bring back at stage 3.

I appreciate the intention of amendments 90 and 94, and I am sympathetic to ensuring that the bill works for not only grouse moor managers but crofters and farmers, while protecting our valuable peatlands. Crofting delivers real benefits: it sustains agricultural activity, supports the rural economy, enhances wildlife and the natural environment, and supports people to stay, live and work in our rural and island communities. The Scottish Government supports crofting and is committed to enabling more people to live in or near a croft and to work their land. It is not the intention of the bill to interfere with that. Potentially, the effect of amendments 90 and 94 is already covered by the purposes for muirburn on peatland that are in the bill. I therefore ask Alasdair Allan not to move his amendments.

Alasdair Allan: I likewise wonder if you will go a little further and offer to work with me ahead of stage 3.

Jim Fairlie: I give that commitment—we can work with you ahead of stage 3.

Amendment 149 is unnecessary. As I have previously mentioned, established procedures are in place for laying affirmative Scottish statutory instruments, which include the laying of those instruments in draft. In addition, we have included consultation requirements. The special provision that is envisaged in amendment 149 would diminish the efficiency with which business-as-usual legislation might be taken forward. It could also substantially delay the making of regulations that were needed to introduce urgent further protections for peatland muirburn or similar. On that basis, I encourage the committee to vote against amendment 149.

Rhoda Grant: As my colleagues have done, I could ask that the minister might be willing to meet me before stage 3 to discuss the issue further, and I sincerely hope that he will do so, but perhaps he will also put on the record some assurance that any changes will be widely consulted on with all stakeholders, who will have an input to any changes that might take place.

Jim Fairlie: I give you the commitment that we can meet before stage 3 to talk about the issue, but I ask you not to move amendment 149 at this stage.

The Convener: I call Colin Smyth to wind up and to press or withdraw amendment 143.

Colin Smyth: The equivalent of more than 200,000 football pitches is subject to muirburn purely to maintain and increase grouse. About 40 per cent of that takes place on deep peat, which is defined as having a depth greater than 50cm. Ending unnecessary muirburn to maintain and increase grouse will not prevent anyone from shooting grouse but will mean that our vital peatlands are afforded far greater protection, while muirburn can still continue for the other legitimate reasons that are set out in the bill.

Kate Forbes: Does the member accept that, as we have seen over the summer, the most destructive thing for peatland is wildfires that are out of control and that, where muirburn can be restricted and managed, it often ensures that peatland is saved on a much broader basis than if fires were to get out of control because of increased fuel load?

18:45

Colin Smyth: I take on board the point that Kate Forbes makes. As she was a member of the committee at the time, she will be aware that the Government gave assurances in evidence that, even without a licence, muirburn can still be an emergency tool to respond to wildfires. If a land

manager wants to obtain a licence for muirburn for genuine conservation reasons, amendment 143 would not affect that in any way.

The amendment backs what I believe we all agree the bill should set out to achieve, which is to ensure that the management of grouse moors and related activities are undertaken in an environmentally sustainable and welfare-conscious way.

Rachael Hamilton: I am trying to understand why the member has lodged amendment 143, so I would like to know whether he has ever been to see any black grouse conservation projects on moorland. Obviously, the practice of muirburn is actually conserving wildlife and red-listed species.

Colin Smyth: If a land manager wishes a licence for conservation reasons, amendment 143 would not impact on that whatsoever. That important point needs to be made.

I am not surprised that the Conservatives do not agree with the amendment, because they want to maximise the level of kill. I appreciate that, but I have to say that I am disappointed that the Greens and SNP seem to share that position. Despite the fact that I know that the minister has no—

Rachael Hamilton: On a point of order, convener. Colin Smyth needs to clarify his statement about my party wanting to maximise kill. It does not mean anything. I do not understand what it means. It is actually disrespectful. I can tell him categorically that I support rural economies and country sports pursuits. It is important that he acknowledges that and does not explain it as maximising kill. I have no idea what that means, and it is disrespectful.

The Convener: Thank you, Ms Hamilton. That is not a point of order, but I take this opportunity to remind members that standing orders require members to treat one another with respect. We should bear that in mind in our contributions.

Colin Smyth: I am happy to address that point. In previous amendments, for example, I proposed that we should not be trapping to minimise one species in order to maximise another species purely for the purpose of killing that other species. That circle of destruction has been debated time and again, and that is the point that is being made here.

I am not surprised that the Conservatives do not agree with amendment 143, but I am disappointed that the Greens seem to share that position. I am aware that the minister has no intention whatever of meeting me to discuss bringing back the amendment at stage 3, but I will not press it. The Government's position on supporting muirburn purely to maintain and increase grouse to be shot for sport is very much now on record.

Amendment 143, by agreement, withdrawn.

The Convener: Amendment 88, in the name of Kate Forbes, has already been debated with amendment 143. I call Kate Forbes to say whether she wishes to move or not move.

Kate Forbes: Not moved.

Rachael Hamilton: Can I move that amendment, please, convener?

The Convener: Certainly.

Amendment 88 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 88 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

Abstentions

Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 88 disagreed to.

Amendment 144 not moved.

Amendment 23 moved—[Edward Mountain].

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 23 disagreed to.

The Convener: I call amendment 89, in the name of Kate Forbes.

Kate Forbes: I will not move amendment 89.

Amendment 89 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 89 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

Abstentions

Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 89 disagreed to.

The Convener: I call amendment 90, in the name of Alasdair Allan.

Alasdair Allan: On the basis of the offer that the minister has made to work with me ahead of stage 3, I will not move amendment 90.

Amendment 90 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 90 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

Abstentions

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 90 disagreed to.

Amendments 145 and 146 not moved.

The Convener: Amendment 183, in the name of Rachael Hamilton, is grouped with amendments 25, 26, 184, 101, 102, 167, 39, 40 and 168. I point out that, if amendment 184 is agreed to, I will not be able to call amendments 101, 102 or 167 and that, if amendment 102 is agreed to, I will not be able to call amendment 167, because of pre-emption.

Rachael Hamilton: I am pleased to have the opportunity to speak to the amendments in this very important group.

It is worth stating at the outset that uncertainty over amendments in this group has prompted a significant amount of concern and anguish among stakeholders and muirburn practitioners. Therefore, I am keen to ensure that the various concerns that have been raised with me are properly articulated and considered, so I ask members to bear with me while I make some quite technical and scientific observations in relation to the amendments that have been lodged.

I want to start by addressing amendments 101 and 102, in the name of Kate Forbes, which would have the effect of starting and ending the muirburn season two weeks earlier than the status quo. I understand that those amendments have been driven by the perceived impact of muirburn on ground-nesting birds.

I have no issue with opening the muirburn season on 15 September rather than 1 October. It seems logical to provide practitioners with additional capacity to make muirburn in September, notwithstanding the fact that the quality of the burning will not be as good as it is towards the end of the season. If we are to meaningfully reduce fuel load and enhance habitats for biodiversity, having the capacity to burn for an additional two weeks in September could be advantageous. Therefore, I have no difficulty in supporting amendment 101.

However, I have a slight issue with the scientific evidence that supports the amendment that would have the effect of closing the season on 31 March instead of 15 April. I have taken the time to consider in detail the available scientific evidence on the impact of muirburn on ground-nesting birds, and I have to say that I am completely unconvinced by the arguments in favour of amendment 102.

In 2021, the British Trust for Ornithology published an incredibly detailed research report that considered in detail the nesting dates of moorland birds with reference to muirburn. It noted that the

"Overlap for most species between burning season and laying dates remains small"

and that the overall impact of muirburn can be characterised as "low", even among early breeders. Indeed, it went on to note that those birds that breed early favour habitat that would never be targeted for burning. Golden eagles and peregrine falcons prefer crags, which cannot be burned, and lapwing and golden plover prefer short vegetation, which you would be extremely hard pressed to burn.

The only species that Kate Forbes can credibly say would be impacted by muirburn is the stonechat. That is a small bird that can be described as a habitat generalist, in light of the fact that it nests successfully in lowland, as well as upland, areas. For that reason, the authors of the research that I have referred to noted that

"no more than 0.3-0.5% of nests are likely destroyed by burning",

which is not statistically significant in the grand scheme of things. Therefore, I think that we can say that the current muirburn season is not posing a threat to ground-nesting birds. Indeed, on the contrary, we know that many species benefit significantly from habitats created by muirburn, as has already been articulated by members this evening.

The other concern that has been put to me is that moorland birds are nesting earlier, which I undertook to explore. Helpfully, that same BTO research report 741 provides useful commentary on that issue, too. It suggests that, on the whole, breeding dates are

"typically advancing by 1-2 days per decade".

Given the in-depth analysis courtesy of that report, I am not sure that we can credibly say that, just three years later, moorland birds are now breeding significantly earlier. I accept that the muirburn season might be something that we need to look at in the future, but I do not believe that we have reached the point where action is required now.

We must also consider the disbenefits of curtailing the season on 31 March. Providers of muirburn training have said that curtailing the season will have enduring impacts on the provision of muirburn training. That is an interesting point and something that only those who practise muirburn could probably comment on. Muirburn training is set to become a statutory requirement under the bill, so it is an important point.

We know that muirburn training requires an assessment of practical skills, which involves an assessed muirburn. Muirburn trainers have said that some 90 per cent of those assessments take place between 15 March and 15 April, because that is the time when the conditions are most favourable for burning. They have also told me that it is often not feasible to burn at any other time of year due to the ground, the vegetation and the atmospheric conditions.

Therefore, the question is whether amendment 102 would have the effect of imposing a bottleneck on the provision of muirburn training. I am not sure whether that is something that the minister has considered. About 100 people have been trained and assessed voluntarily, but hundreds more will shortly require the qualification in order to burn. Closing the season on 31 March would put the entire training aspiration from the Scottish Government at risk.

To that end, I ask all members to vote against amendment 102 on the basis that it lacks evidential grounding. It is likely to be accompanied by unintended consequences that could potentially be damaging. It is also worth noting that, during the stage 1 debate, the minister intervened on Ariane Burgess when she suggested that the muirburn season should be curtailed early, citing the very research from the BTO that I have spoken about at length. I hope that the minister will be sympathetic to my arguments, considering his comments in the chamber.

It goes without saying that the arguments that I have outlined in relation to amendment 102 also apply to Ariane Burgess's amendment 167, which would see the muirburn season ending even earlier than 15 March. I find that impractical, and it is quite astonishing that Ariane Burgess would seek to curtail the activity without a shred of supporting scientific evidence—although we may hear that shortly—especially given the extent to which her region has been hit by catastrophic wildfires in recent years.

Muirburn has an integral role in reducing wildfire risk and neutralising wildfire when it does occur, as we have already heard this evening. I believe that amendment 167 would significantly detract from that, which would not be in the interests of the people who were affected by the wildfires in that region.

Thank you for bearing with me, convener. I will now speak to amendments 183 and 184, which are in my name, as well as to amendments 25, 26, 39 and 40, which are in the name of my colleague Edward Mountain. The amendments are designed to give practitioners a mechanism to burn beyond 31 March if the minister is determined to continue on the damaging course of closing the season early.

19:00

My amendments would provide the ability to burn in the extended muirburn season, which is

the period between 1 and 30 April, for limited purposes only, to include provision for training. That would effectively deal with the issues surrounding training that I referred to earlier. Edward Mountain's amendments would also provide the ability to burn beyond the close season under licence for a narrow range of purposes.

There are very good reasons why practitioners should be able to continue burning into April. I have highlighted the immediate unintended consequences of not being able to burn in April, but I should also say that there would be a reduction in the amount of muirburn made annually if the decision were followed through. I contend that it is not in the public interest to reduce muirburn in that way, given the demonstrable benefits that it provides for biodiversity, livestock, game birds, wildfire mitigation and habitat conservation. There is emerging evidence from a long-term study in northern England that muirburn is having huge benefits for a range of key peatland characteristics including water retention, methane reduction and nutrient provision. It is for those reasons that I very much hope that, if the minister decides to support amendment 102 in the name of Kate Forbes, he will support Edward Mountain's and my efforts to provide practitioners with the means to burn in April.

I support amendment 168 in the name of my colleague Rhoda Grant, which would provide sufficient and effective scrutiny of any future changes to the muirburn season that might be made by regulation.

I move amendment 183.

The Convener: I call Edward Mountain to speak to amendment 25 and other amendments in the group.

Edward Mountain: We, in this room, all recognize that every part of Scotland is different. I am sure that the convener and Colin Smyth would argue that the Borders is the place to be, and Kate Forbes and I might argue that the Highlands are the place to be.

Kate Forbes: We would be right.

Edward Mountain: Across Scotland, it is very different. There is somewhere in the middle of Scotland that the minister might think is the best place to be. The Western Isles, of course, are a good place to be, as well.

My point is that those places are all completely different. They have completely different seasons. There might be snow up in the Cairngorms right the way through to April, yet there might not be snow in the Borders in March. The point of my amendments is to ensure that we recognise the geographical differences that each part of Scotland faces.

It is absolutely wrong to say that all ground-nesting birds nest at the same time, for example. I heard the argument during an evidence session that nesting periods have come forward. Well, they might have come forward in the more temperate bits of Scotland, but, in the Highlands and the more rugged bits, nesting seasons have not really come forward. Keepers know that and muirburn practitioners know it. They understand that and they understand the reason for ensuring that their muirburn is carried out at an appropriate time.

In my mind, trying to reduce the muirburn season by saying that all of Scotland is the same is a fallacy. That is such a mistake, and it does not recognise the different challenges that are experienced in different parts of Scotland. That is why I lodged amendments 25, 26, 39 and 40. I wanted to try to get to the situation in which we have a different season based on geographical location. One could argue that there should be a different season, as was done under the Hill Farming Act 1946, whereby you could carry on burning at higher altitudes until a later date because you probably would not be able to get there to do it at an earlier date. That is why there is sense in my amendments.

However, it is just not true to say that Scotland is all the same, that the Western Isles are the same as the Highlands or that the Borders are the same as Perthshire, and so we need one arbitrary date. For those reasons alone, I have lodged my amendments. I ask the minister and other members of the committee to consider carefully why the amendments are there and why we need to do this.

I also believe that, when we are talking about the muirburn season, we must be cognisant that the people who are carrying out the burning are doing it for good reasons and are not out there to burn birds that are sitting on nests. If there is any risk of that, they do not do it. I am asking that we have trust in them and let the geographical area, not a centralised policy based on a centralised Government agency, dictate the burning season.

Kate Forbes: Rachael Hamilton has already addressed my amendments 101 and 102. The purpose of the amendments needs to be seen in terms of what both achieve, because they are essential to each other. I recognise the push from some quarters, particularly the RSPB, NatureScot and others, to close the muirburn season on 31 March instead of 15 April for reasons relating to the number of moorland birds that might be disturbed, but it is my strong view that that cannot result in an overall reduction in the muirburn season. That is why I have also lodged my amendments to ensure that the start of the

muirburn season is 15 September instead of 1 October, which I understand will make a meaningful difference, as per discussions with stakeholders.

There is not much to add beyond that. I encourage members to see those two amendments working in partnership, and I hope that members can support them.

Ariane Burgess: My amendment 167 seeks to set the close of the muirburn season as 15 March. As we have heard, various dates have been suggested this evening, which demonstrates the degree of change that we are seeing in the seasons and the effects on wildlife. My amendment would set an earlier end to muirburn season as proposed in the bill to avoid the season overlapping with the breeding seasons of several bird species that routinely nest on moorland.

Edward Mountain: Will the member give way?

Ariane Burgess: I will just continue my point for now, because I am collecting my thoughts here. It is interesting to note that the BTO data has already been used, because I am going to reference it. It is an interesting piece that highlights that we can use data in different ways. My approach here is a precautionary one.

Edward Mountain: I thank the member for giving way. From the data that she has gathered, what moorland ground-nesting bird is nesting on 15 March?

Ariane Burgess: I have a long list of birds here.

Edward Mountain: I am asking about 15 March in the Highlands.

Ariane Burgess: The report that I have from NatureScot is about the whole of Scotland, which is what we are looking at here. The BTO study "Nesting dates of Moorland Birds in the English, Welsh and Scottish Uplands", which has been referenced, found that, in 10 per cent of golden plover nests, 15 per cent of lapwing nests and 31 per cent of peregrine nests, eggs had already been laid by 31 March, and by 15 April those figures had increased to 45 per cent, 52 per cent and 82 per cent respectively. Additionally, the study found that 11 per cent of hen harriers, 27 per cent of snipe and 41 per cent of stonechats had laid by the latter date.

My concern is that we are seeing climate change and the nature emergency lead to breeding seasons coming earlier. With this amendment, I am seeking to future proof the provisions.

Rachael Hamilton: Will the member disaggregate the data that she has just quoted to refer to Scottish areas rather than to the whole of the UK, so that we can understand the quote in relation to the lapwing and golden plover?

Ariane Burgess: The data that I have refers to moorland birds in the English, Welsh and Scottish uplands.

Rachael Hamilton: I am just trying to compare like with like.

Ariane Burgess: That is right, is it not? I have information from NatureScot about breeding seasons and dates here. It is interesting that we can all use and cite the same data but come at it in a different way. As I said, my amendment seeks to take a precautionary approach and future proof the legislation. I understand that other amendments would shorten the season by only two weeks. I will listen carefully to the minister's views.

Rhoda Grant: Amendment 168 would ensure that any changes to the muirburn season were properly scrutinised. I assume that the powers to change the muirburn season will be used in response to the impacts of climate change on nesting birds. It is right that such changes should be made, but it is also right that proposed changes should be laid before Parliament and consulted on widely.

Many members have tried to adjust the muirburn season in the bill. I have sympathy for Kate Forbes's amendment 102, as we have heard that birds are already nesting by the end of March. Other members have sought to add flexibility to the season. I have some sympathy with that, given the impact of climate change, but I am concerned that, without robust scrutiny, such flexibilities could be abused. I believe that it would be better to deal with changes to the season under the code rather than in the bill. Therefore, my amendment 168 seeks to ensure that changes to the muirburn season will be properly scrutinised.

Colin Smyth: Having lodged the same amendment as Kate Forbes, I express my support for the end date of the muirburn season being moved in the way that amendment 102 proposes. Ideally, the end date would be the one that is suggested in amendment 167, but, failing that, amendment 102 is a reasonable compromise. However, I do not support the start date of the season being moved as is set out in amendment 101, as I do not think that there are any justifiable reasons for that.

As we have heard, the current end date of 15 April for the burning season, as is proposed in the bill, overlaps with the breeding season of several bird species that often nest on moorland. A point was raised about the need for evidence on the issue. In its 2014 document "Bird Breeding Season Dates in Scotland", NatureScot listed 18 species in Scotland whose breeding season

overlaps the end date, and climate change is driving that number ever higher. We also heard about the evidence in the BTO's report, "Nesting dates of Moorland Birds in the English, Welsh and Scottish Uplands".

There is a strong case for having a mechanism for proper scrutiny by Parliament, outwith primary legislation, to amend the date as climate change continues to have an impact. However, the bill asks us to set a date, and I believe that the proposed date is too late. In Wales, the end date has been brought forward, from 15 April to 31 March, on the basis of current evidence of breeding seasons and climate change. At the very least, we should replicate that in Scotland.

Jim Fairlie: It is important to remember the purpose of having a muirburn season, which is to ensure that muirburn is carried out only when the risk of damage to economic, social and environmental interests is at a minimum. There are different permitted reasons for carrying out muirburn, depending on whether it is on peatland and whether it is carried out during the prescribed season.

Rachael Hamilton's amendments 183 and 184 would extend the period for which a muirburn licence can be granted until 30 April. They would also allow licences to be granted for additional purposes between 1 and 30 April. As we have heard from Kate Forbes, we have very good reason to bring forward the start of the close season to protect ground-nesting birds. Therefore, to accept an amendment that would push that season back to the end of April, albeit in limited circumstances, would not be appropriate or good practice. I do not believe that we have been provided with any evidence to support the changes to the dates or the purposes for which muirburn can be undertaken that are proposed by Rachael Hamilton in her amendments.

However, I understand that the science around muirburn is constantly evolving, and that the impacts of climate change mean that we may need to adapt our approach in the future. That is why section 16(3) of the bill gives the Scottish ministers a power to amend the muirburn season if they think it

"necessary or expedient to do so"

for the purpose of

"conserving, restoring, enhancing or managing the natural environment",

preventing the risk of wildfires or in relation to climate change.

Because the power is subject to the affirmative procedure, Parliament will have an enhanced scrutiny role, and there is a requirement to consult those who are likely to be interested in or affected by the making of muirburn, which will ensure that the power is used proportionately. For those reasons, I will not support amendments 183 and 184, and I encourage committee members to vote against them.

19:15

I turn to Edward Mountain's amendments. Amendment 39 would also allow the muirburn season to

"be extended to 30 April",

in this case

"with the permission of the landowner."

That would seem to delegate the authority to the landowner rather than to ministers or to NatureScot, which I find rather strange. For the same reasons that I gave in relation to Rachael Hamilton's amendments on extending the muirburn season, I cannot support amendment 39, and I encourage the committee to vote against it—[*Interruption*.] I ask members to allow me to finish these points.

Amendments 25 and 26 seek to change the muirburn licence provisions so that a licence can be granted for muirburn outside

"the muirburn season only for the purposes of ... conserving, restoring, enhancing or managing the natural environment ... research, or ... public safety."

However, I think that those amendments have been lodged as the result of a misunderstanding of the bill. Section 11(2) sets out the only purposes for which muirburn can be licensed during the open season, so an out-of-season licence would be available for any purposes that are not explicitly mentioned in section 11(2).

The bill already allows a licence for out-of-season muirburn to be granted on non-peatland for the purposes of

"conserving, restoring, enhancing or managing the natural environment ... preventing, or reducing the risk of, wildfires causing harm to people or damage to property"

or "research".

Mr Mountain's amendments therefore duplicate provisions for research and conserving, restoring, managing or enhancing the natural environment on non-peatland for out-of-season muirburn. Examples of that might be to create a suitable seedbed at the appropriate time of year for the natural regeneration of nearby native woodland or to research the effects of muirburn on dry heath in early September.

With regard to public safety, that was previously included in the Hill Farming Act 1946 as a reason for which an out-of-season muirburn licence could be granted. However, in creating the new muirburn

provisions for the bill, we took the view that "public safety" is a very wide term that could be interpreted in many different ways, so the narrower provision for

"preventing, or reducing ... wildfires causing harm to people or damage to property"

was introduced.

Edward Mountain: Minister, I am sure that you will accept that things happen at a different pace across Scotland. As a farmer, you will know, for example, that grass will grow quicker in Perthshire than it will in the Highlands. That affects all wildlife, as far as seasons go, because things may take longer when it is colder and darker for longer. That is why I am asking for allowance to be made for geographical variance across Scotland. To treat Scotland as being all the same seems to me to be somewhat strange if we are trying to control management and put it on a level at which we get the best possible outcome for each environment.

I am not seeking a meeting—I seem to be the only member who has not had, or has not been offered, a meeting with you, minister. Will you accept, nevertheless, that there is variance across Scotland and that it would be worth considering geographical variance to take into account latitude and conditions?

Jim Fairlie: I accept that there is variance, but I also accept that NatureScot has the ability to extend the muirburn season if that is required.

I see that Rachael Hamilton wants to intervene—I will take her intervention as well.

Rachael Hamilton: Thank you, minister. My point is specifically about the Government's training aspiration. As I said, more people will be coming forward—

Jim Fairlie: We will come on to training, so, in the interests of time, do you mind if we come back to that later?

Rachael Hamilton: Sure—thank you.

Jim Fairlie: Please bear with me while I find where I am in my notes.

The provision that I mentioned is narrower because those are the only ways in which we can foresee muirburn being required. Given the way in which amendments 25 and 26 are worded, they would also allow a muirburn licence to be granted for the purpose of "managing the natural environment" on peatland outwith the muirburn season. That has the potential to undermine the intention behind the majority of the muirburn provisions in the bill.

For those reasons, I hope that Edward Mountain is assured that the points that he sought to make with his amendments are already covered and that he will see that his amendments 25 and 26 are unnecessary. I hope, therefore, that he does not move them.

Amendment 40 would change the regulation-making power in section 16 so that, if the Scottish ministers wanted to amend the muirburn season dates through secondary legislation

"for the purpose of ... preventing, or reducing the risk of, wildfires causing harm to people or damage to property",

they would need to do so while

"taking into account conditions in particular geographic areas."

I hope that what I say on that will also provide Edward Mountain with some assurance. That amendment is unnecessary, because the bill already sets out that the power to change the muirburn season dates can be used to make different provisions for different purposes, different land and different years. Therefore, the bill already provides the ability for regulations to make different provisions depending on the type of land, which could include land that is or is not at a high risk of wildfire, so I am not convinced that the amendment is necessary. However, I undertake to give it further consideration ahead of stage 3, particularly to ensure that the purpose of the regulation is sufficiently clear. I therefore ask Edward Mountain not to move amendment 40.

Kate Forbes's amendments 101 and 102 seek to mitigate biodiversity loss. I recognise the importance of biodiversity and the urgent need for action at all levels—here, elsewhere in the UK and internationally—to tackle the twin crises of biodiversity loss and climate change and to ensure a nature-positive net zero world. By moving the end of the muirburn season back two weeks, we will give red-listed ground-nesting birds the chance that they need to breed and produce successful clutches. I have also heard from rural stakeholders and recognise the need for muirburn to be undertaken in the right way.

For the reasons that Ms Forbes has set out, the balance is the key, and I believe that amendments 101 and 102 strike the right balance between responding to the changes to the nesting season arising from climate change and ensuring that essential muirburn activity can continue. For those reasons, I will support Kate Forbes's amendments 101 and 102, and I encourage members to vote for them.

Ariane Burgess's amendment 167 would go further than amendment 102 by moving the end of the season to 15 March. As the committee heard during stage 1, there are a range of opinions on when the muirburn season should close. The effect of closing the season on 15 March would be to significantly reduce the muirburn season, which would result in less time for muirburn to be carried

out for the broader range of purposes, including managing for grouse or livestock grazing.

For that reason and for the reasons that Kate Forbes has given, I believe that amendment 167 would not be proportionate or achieve the right balance. However, I assure Ariane Burgess that the bill includes a power to change the muirburn season dates, which would allow us to respond to any new evidence that comes to light in future around shifting patterns of nesting or the impacts of climate change. I hope that that reassures Ariane Burgess and that she does not move her amendment. If she does, I encourage the committee to vote against it.

On Rhoda Grant's amendment 168, as the previous minister and I have explained on a number of occasions in relation to other similar amendments, the proposed changes are not necessary. The amendment would impose an unnecessary additional burden on the Scottish Parliament when established procedures are already in place for making changes through secondary legislation. The amendment could lead to unnecessary delays in amending the muirburn season dates, which could have consequences for the natural environment.

Rhoda Grant: I understand what the minister says about burdens on the Parliament. However, the trouble is that we have so much enabling legislation, in which powers are set out to introduce measures through secondary legislation, but without a promise of scrutiny on the use of those powers. Given that I have lodged a number of amendments in the same vein, is the minister willing to meet me to discuss an amendment at stage 3 that would make sure that there is adequate consultation, that stakeholders are consulted and that there is scrutiny of any changes through secondary legislation? That would give people confidence that they will not be railroaded into anything that does not work properly for the industry.

Jim Fairlie: Let me finish the bit that I was going to say, and then I will come back to that point.

A change in the dates of the muirburn season would be subject to the use of the affirmative procedure, as well as a consultation requirement. Parliament would have an opportunity to consider the instrument in draft, to take evidence on the instrument and to vote on it. That is the correct procedure for any such amendment. That clearly established requirement is set out in the affirmative procedure.

The issue also begs a question about practitioners. They will be involved in setting up the code, and I imagine that they will be far better placed than parliamentarians are to make such decisions.

I urge the committee to vote against amendment 168.

The Convener: Thank you—

Rachael Hamilton: Sorry, convener—

The Convener: I am coming to you, Ms Hamilton.

Rachael Hamilton: Right—okay.

The Convener: I call Rachael Hamilton—[*Laughter*.] Steady on. I call Rachael Hamilton to wind up and to say whether she wishes to press or withdraw amendment 183.

Rachael Hamilton: Thank you, convener.

I will press amendment 183. In closing, I want to add that I am shocked by the minister. I do not know whether he has been grasped by the civil servants since he has become a minister, but he has done a complete U-turn. He now supports amendment 102 but, when we debated the bill in the chamber at stage 1, he clearly suggested to Ariane Burgess that the muirburn season should be curtailed earlier. I would like the minister to explain why he has done that huge U-turn.

I do not know whether I went into a parallel universe, but I thought that the minister was going to address the point on which I tried to make an intervention. He said that he was going to address the training issue and the Government's aspiration, given that hundreds of people will be coming forward to get a licence. Closing the season on 31 March will put that training aspiration at a complete loss.

The Convener: Minister, would you like to respond to that?

Jim Fairlie: No.

The Convener: The question is, that amendment 183 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 183 disagreed to.

The Convener: Before we move on to another large group of amendments, I am minded to suspend the meeting for 10 minutes for a comfort break.

19:26

Meeting suspended.

19:36

On resuming—

The Convener: Amendment 91, in the name of Kate Forbes, is grouped with amendments 92, 150, 95 to 97, 151, 98, 152, 153, 28, 154, 160, 99 and 104. I point out that, if amendment 150 is agreed to, I cannot call amendments 95 to 97, because of pre-emption.

Kate Forbes: I will speak to amendments 91, 92, 96, 98, 99 and 104. I will first put on record my admiration for individuals such as those in Bright Spark Burning Techniques, who, with the support of the Scottish Fire and Rescue Service, have taught and trained countless muirburn practitioners. I also pay tribute to those practitioners, who are well trained, experienced and conscientious in the carrying out of muirburn. Over the summer, when I visited a site near Cannich and met gamekeepers, I was struck by the fact that they had actively saved businesses and buildings as a result of their many years of experience in fighting fire with fire and because of their training in muirburn.

My amendments in this group introduce a requirement for anybody who applies for a muirburn licence to have completed an approved training course. Muirburn was discussed extensively in the stage 1 evidence sessions, and two points emerged in particular when it came to conducting muirburn safely. The first was the widespread agreement that training is a must. That has been confirmed by input from various stakeholders indicating that, given the associated risks and the potential for extensive damage if muirburn is not executed properly, it is important that those who engage in muirburn activities have appropriate training. That requirement for training was supported by Deputy Assistant Chief Officer Bruce Farquharson of the Scottish Fire and Rescue Service.

The second point goes right back to where I started: that many muirburn practitioners have already undergone some form of training. They recognise the importance of training, and they are very conscientious practitioners. Training is already happening on a less formalised basis, and voluntary training has been developed by Bright Spark Burning Techniques, NatureScot and the Scottish Fire and Rescue Service. For that reason, I hope that my amendments make sense and strengthen the bill. I hope that the requirement will not add a significant additional burden on practitioners who are already doing the training, and who have experience and expertise in carrying out muirburn.

I move amendment 91.

The Convener: I call Jamie Halcro Johnston to speak on behalf of Stephen Kerr on amendment 150 and the other amendments in the group.

Jamie Halcro Johnston: I will speak to Stephen Kerr's amendments 150, 152 and 153, which are critical safeguards in the face of an increasingly overburdened regulator. As I highlighted earlier, NatureScot already processes some 5,000 licensing applications annually, meaning that there is a tangible risk that muirburn licences will face undue delays in processing, potentially to the detriment of landscape resilience to wildfire risk or of habitat favourability for game and wildlife. We feel that it is vital that a provision be built into the licensing scheme that will safeguard against delays caused by an increasingly overburdened regulator.

Amendment 154, in the name of Ariane Burgess, stands to have a hugely detrimental impact on the ability of land managers to make muirburn. Successive scientific studies are clear about the role of muirburn in providing favourable habitat for the assemblage of moorland game and wildlife. In addition, it has been well documented that muirburn has an important role in conserving, restoring, enhancing and managing the natural environment, as well as in managing habitat for livestock. Such an amendment would have catastrophic implications for a range of muirburn users.

Alasdair Allan: Amendment 97 would change the test that an application must pass for a licence to be granted for the undertaking of muirburn on peatland. The bill currently sets out that a licence may be granted for muirburn on peatland if it

"is necessary for the specified purpose"

and

"no other method of vegetation control"

is available. During consideration of evidence at stage 1, a number of interested parties raised the concern that there might be circumstances in which other methods of vegetation control may be available, but they may not be practicable or effective in all circumstances. They expressed real worry that the wording in the bill would significantly restrict the ability to make muirburn to such an

extent that it would be impossible to carry out muirburn on peatland.

I do not think that it was the intention that the bill place such a high bar on licence applications. It would be preferable if NatureScot considered such matters on a case-by-case basis, including whether any other methods of vegetation control would be suitable, and, as a result, whether a licence should be issued. It is likely that there will always be other methods of vegetation control available, such as cutting, but they might not be practical or desirable; for example, due to the topography of the land.

My amendment would ensure that NatureScot could consider, on a case-by-case basis, any practical issues arising from alternative methods of vegetation control, and it would give NatureScot the flexibility to issue a licence for muirburn if no other method of vegetation control was practical. It is my hope that local people, such as those in my constituency, would be listened to as part of that process, to allow their knowledge and experience to inform decision making. In the same way, there is expertise in NatureScot that should also be listened to in order to inform local practice. That dialogue and working together will increase and improve everyone’s knowledge about muirburn and local peatlands.

For all those reasons, I encourage members to vote for amendment 97, not least because it responds to one of the recommendations in our stage 1 report.

Rhoda Grant: My amendment 151 refers to issues that are to be taken into account when granting a muirburn licence on peat. The bill states that muirburn can be allowed only if there is no other option for the management of a fuel load. In evidence, we heard that although cutting kills plants, it does not deal with the fuel load and, indeed, decaying vegetation can often be more flammable. Therefore, my amendment would allow muirburn on peatland for managing fuel load.

Amendment 151 aims to ensure that the prevention of wildfires is taken into consideration in considering a muirburn licence application. Alasdair Allan’s amendment 97, which he has just spoken to, seeks to do a similar thing. I believe that both amendments would work well together, and I urge members to support them.

19:45

Edward Mountain: I will speak to my amendment 28 first. I believe that a licence should be issued for a period of 10 years. The minister will argue that that is too long, which is why I have included in amendment 28 the ability for the Government to remove the licence or issue it for

“a period less than 10 years if the Scottish Ministers consider it necessary for environmental reasons”.

So, the baseline would be 10 years, but there would be the option for the Government to issue a licence for a period shorter than that. That is pragmatic, in the same way as we have driving licences for a period of time unless there is a reason why someone should not have a licence for that period.

I am taken by Kate Forbes’s amendments on approved training courses. Training courses on muirburn for everyone would be particularly helpful. It would be extremely helpful if firefighters went on those training courses to understand how to do muirburn, because one thing that is important about controlling wildfires is the ability to backburn and stop a fire from getting out of control.

I have to say that, when I was a muirburn practitioner, there was not always evidence that firefighters understood the principle of backburn, although perhaps there is now. I remember local fire officers on occasion giving control of the fire staff to keepers to allow them to direct how the backburn should be carried out, because they understood it and firefighters did not. I encourage that training, and I am sure that the minister would like firefighters to be trained to the best ability. If an approved training course is being run, why not get them on it as well?

I am not taken by Rhoda Grant’s amendment 151. We have to remember that muirburn is an option. There are other ways of reducing the fuel load, including flailing, although that does not necessarily always reduce the fuel load. It can often not be possible to get tractors on to moorland or into difficult areas. It is important that fuel loads can be managed by burning, but there are also other reasons for burning—it is not only about managing fuel loads, as Rhoda Grant’s amendment suggests.

Rhoda Grant: I am unsure whether you have understood the intent of my amendment, which is to allow muirburn as opposed to other methods of heather control.

Edward Mountain: Sorry, but, among my many faults, I am slightly deaf. Could you speak up?

Rhoda Grant: You seem to be indicating that my amendment encourages cutting heather and other fuel load rather than burning it, but it does not—it is the very opposite, actually.

Edward Mountain: I am just saying that my understanding of the amendment is that it would restrict what muirburn can be used for to reducing fuel loads. I am not sure that I have misunderstood that—although I may have done—but that is the point that I have come up with.

A licence for 10 years is entirely appropriate, unless the Government decides that, for environmental reasons, it should be less. I would be surprised if the minister did not want to accept that proposal or at least meet me to discuss it further.

Ariane Burgess: My amendment 154 would impose a new condition where a licence is granted in relation to peatland, requiring the person who is undertaking muirburn to do so in a way that minimises the damage to the peatland. As we know, healthy peatland is a vital resource in our efforts to reduce our climate emissions, as it locks up carbon.

The evidence base on muirburn and wildfires is contested, as we have already heard this evening. I remain concerned that escaped fires from muirburn could contribute to wildfires in Scotland's uplands, creating risk to wildlife and habitats and risk of serious carbon emissions from damaged peat.

My amendment is a probing one. It seeks to require people with a licence to make muirburn on peatland to do so in a way that limits damage to the peatland. For example, studies in protected areas of Ontario in Canada have shown that burning peatland in linear strips can be effective at creating natural firebreaks in the landscape. Such an approach limits the damage to thin strips, whereas burning large patches of peatland is more common in Scotland.

My amendment does not prescribe that particular approach, as other similar methods are, no doubt, available. Rather, the intention is that the muirburn code would focus on muirburn methods that can be shown to minimise the damage to our important peatlands.

Rachael Hamilton: The muirburn licence will relate to the land, meaning that it is important to specify what the land is being used for in the context of any potential licensing decision. My amendment 160 would provide—I can never say this word—specificity in that regard by stating unequivocally that the licence relates to the land for the purpose of making muirburn. [*Interruption*.] You cannot say it either, convener. [*Laughter*.]

Jim Fairlie: Amendments 91, 92, 96, 98, 99 and 104, in the name of Kate Forbes, seek to include provisions in the bill that would ensure that the person who will undertake the muirburn has completed an approved training course. There is near universal agreement from stakeholders that, due to the risks and the potential for widespread damage when muirburn is not done correctly, anyone undertaking muirburn should be trained.

When the bill was introduced, the intention was for training to be a requirement of the muirburn code. However, having heard from a number of key stakeholders on the issue of training, including the Scottish Fire and Rescue Service, it is clear to me that the importance of training demands that it be included in the bill. I therefore support those amendments.

Amendment 95, which is also in the name of Kate Forbes, would change the provisions regarding muirburn licences so that the Scottish ministers "must" grant a licence if

"they are satisfied that the person is a fit and proper person, having regard in particular to the applicant's compliance with the Muirburn Code".

I understand the intent behind the amendment, and I am particularly sympathetic to the point about changing "may" to "must", should all other conditions that were previously listed at section 11(1)(a) and (b) be satisfied.

However, removing those conditions from the bill would remove a series of tests that need to be considered before a licence is granted. Replacing those conditions with a fit-and-proper-person test feels too limiting. Indeed, it could be argued that section 11(1)(a) already provides for some of that, in that an applicant's compliance with the muirburn code is a key measure to be considered.

Section 11(1)(b) also matters. It gives NatureScot more discretion on when a muirburn licence might be granted, including the necessity of muirburn and whether there are practical alternatives. That discretion is required because there may be other reasons why it would not be appropriate for NatureScot to grant a licence that are not related to the applicant's fitness or otherwise. For example, there may be circumstances in which it would not be appropriate to grant a licence due to environmental reasons or other factors.

Therefore, although I understand what Kate Forbes is trying to do, I cannot support her amendment as drafted. If she is happy not to move the amendment, I will undertake to look at the issue again, focusing on the "may" and "must" part of the provisions. However, if she moves the amendment, I encourage committee members to vote against it.

Kate Forbes: I am happy not to move amendment 95 when the time comes, in the light of what the minister has outlined.

Jim Fairlie: Amendments 150, 152 and 153, in the name of Stephen Kerr, would add a requirement that muirburn licence applications are determined within three months, and that, if a final decision is not made prior to the end of three months, the application will be deemed to have been granted.

The amendments would effectively undermine the process that we are seeking to put in place to better govern muirburn practice. They also fail to take into account the many reasons why a licence application might not be processed in three months. Indeed, the amendments do not account for applicants taking a long time to return information to NatureScot and may create a situation in which an application is granted automatically through the passage of time even when the application is flawed or inappropriate, or if there is incomplete information in relation to it.

The amendments also reduce the opportunity for NatureScot to work with applicants to gather the required information and could lead to it rejecting applications for missing information rather than having an iterative and more constructive process.

For the reasons that I have mentioned, I will not support those amendments, and I ask the committee to vote against them.

Alasdair Allan's amendment 97 seeks to allow muirburn to be undertaken on peatland if no other method of vegetation control is "practicable" rather than "available". Demonstrating other potentially less damaging land management techniques is a key part of ensuring that our valuable peatlands are protected. However, I have heard concerns from stakeholders that, even though other methods may be available, they may not be suitable. Requiring methods to be practicable feels like a more appropriate test. I am clear that it will still be a high bar to meet and that it will require all parties to respect the intent of the legislation.

A more expensive approach or a scheme that would take longer to complete could still be practicable. However, there may be times when, due to Scotland's topography, the cost of an alternative would be prohibitive, particularly for the small land managers and owners who live and work in constituencies such as Alasdair Allan's. I hope that NatureScot and applicants will work together to arrive at mutually discussed and agreed decisions. I therefore support Alasdair Allan's amendment 97, and I encourage the committee to vote for it when the time comes.

Rhoda Grant's amendment 151 seeks to amend the muirburn licence test for peatland so that there would have to be no other method of vegetation control available,

"taking into account the need to manage fuel loads to prevent, or to reduce the risk of, wildfires".

I understand what Rhoda Grant is trying to do with the amendment, and the mitigation and prevention of wildfires is a key part of the provisions in the bill. However, given that amendment 97, if it is agreed to, will change the licensing test for determining when muirburn may be conducted on peatlands so that that may be done when no other method of vegetation control is practicable, Rhoda Grant's amendment would have no material effect on the licensing test.

As amendment 151 is no longer necessary, I hope that Rhoda Grant will not move it. That will allow further consideration to be given to how the guidance that relates to wildfire prevention can be clarified ahead of stage 3. Because the provision is not needed, I do not see the point of voting it into the bill. For that reason, I cannot support amendment 151, and I encourage the committee to vote against it.

Edward Mountain's amendment 28 would insert a condition that would require muirburn licences to last for 10 years and would allow them to last for a shorter time only if that was deemed appropriate "for environmental reasons". In the past year, we have had a very early warm period, water scarcity, a wet summer, flooding, short sharp cold spells and wind-related gales and storms, often with non-prevailing winds dominating. The year in front of us may prove to be completely different in terms of weather events. The point is that our climate is changing continually and we need to be able to respond to that. Our changing climate and weather have also resulted in more wildfires, including on peatland.

Amendment 28 would therefore defeat one of the bill's core purposes, which is to allow us to regulate and control in a much more orderly fashion the making of muirburn. Further to that, it may be quite onerous for some applicants to determine what their muirburn plan will be for a 10-year period. The bill's provisions will allow NatureScot the flexibility to issue licences for periods that are thought appropriate in individual circumstances. For all those reasons, I cannot support amendment 28, and I encourage the committee to vote against it.

Ariane Burgess's amendment 154 seeks to ensure that muirburn that is conducted for certain purposes on peatland will seek to minimise damage to the underlying peat. I appreciate the intention behind the amendment, but the best places for that requirement are the muirburn code and the approved training courses that are part of the bill. Those two mechanisms will ensure that practitioners have appropriate levels of knowledge and experience when making muirburn. I therefore cannot support amendment 154, and I encourage the committee to vote against it.

Ariane Burgess: I listened carefully to your comments on my amendment 154. I am satisfied by your assurance that the methods to minimise damage will be explored through the muirburn code and training requirements, so I will not move my amendment.

Jim Fairlie: Thank you.

Rachael Hamilton: On the question of the practitioners who will be required to complete the training courses, will it be exclusively those who put a match to vegetation and those who extinguish it?

Jim Fairlie: I have a request from Bright Spark for a face-to-face meeting, which I have agreed to, and we will look at what the requirements for the training will be. Does that satisfy you?

Rachael Hamilton: Yes. Thank you.

Jim Fairlie: Rachael Hamilton's amendment 160 seeks to change the definition of "relevant person" for the purpose of the muirburn licence scheme. I understand that the amendment seeks to ensure that only offences committed by people who are involved in the management of the land for the purposes of making muirburn can result in a licence being modified, suspended or revoked. However, NatureScot already has the discretion not to suspend a licence—we have argued that point already. Therefore, a licence holder may not be sanctioned as a result of a person who is involved in managing the land to which the muirburn licence relates committing a relevant offence.

20:00

Unfortunately, amendment 160 would lead to loopholes that could easily be used to circumvent the provisions and intentions of the bill. For example, when someone involved in managing the land but not for muirburn purposes committed an offence by making muirburn that was not in accordance with the licence, the amendment would mean that that illegal muirburn would not lead to the licence being suspended or revoked unless the person who was managing the land for the purpose of muirburn caused or permitted it.

I have some difficulty with the potential outcome for workers on the land. Should an employee be the one who commits an offence, they should not be the only one who bears the consequences—the landowner or the manager should, too. Otherwise, employees could be in a much more precarious position than they are in now.

The amendment would not result in good employment practice, with a lack of training, guidance or supervision, for example, being—or, in some cases, becoming—the norm. It is right and proper for employees to expect such support, and it is right and proper that licence holders should also bear the responsibility for offences that are committed by people they employ or otherwise allow to participate in land management.

I cannot support the amendment, and I encourage committee members to vote against it.

The Convener: I call Kate Forbes to wind up and to say whether she wishes to press or withdraw amendment 91.

Kate Forbes: In the interests of time, I will go straight to pressing the amendment.

Amendment 91 agreed to.

Amendment 147 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 147 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 147 disagreed to.

Amendment 92 moved—[Kate Forbes]—and agreed to.

Amendment 3 not moved.

Amendment 148 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 148 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 148 disagreed to.

Amendment 93 moved—[Finlay Carson].

The Convener: The question is, that amendment 93 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 93 disagreed to.

The Convener: I call amendment 94, in the name of Alasdair Allan.

Alasdair Allan: I should have explained that amendment 94 merely gives the legal definition of a crofter for the purposes of amendment 90. That amendment not having been passed, amendment 94 does not make much sense on its own, so I will not move it.

Amendment 94 not moved.

Amendment 24 not moved.

Section 10, as amended, agreed to.

After section 10

Amendment 149 not moved.

Section 11—Grant of muirburn licence

The Convener: Amendment 150, in the name of Stephen Kerr, has already been debated with amendment 91. I remind members that, if amendment 150 is agreed to, I cannot call amendments 95 to 97, due to pre-emption.

Amendment 150 moved—[Jamie Halcro Johnston].

The Convener: The question is, that amendment 150 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 150 disagreed to.

Amendment 95 not moved.

Amendment 96 moved—[Kate Forbes]—and agreed to.

Amendment 97 moved—[Alasdair Allan]—and agreed to.

Amendment 151 not moved.

Amendment 98 moved—[Kate Forbes]—and agreed to.

Amendment 25 moved—[Edward Mountain].

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 25 disagreed to.

Amendment 152 moved—[Jamie Halcro Johnston].

The Convener: The question is, that amendment 152 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)

Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 152 disagreed to.

Amendments 26 and 27 not moved.

Section 11, as amended, agreed to.

Section 12—Muirburn licences: content and conditions

Amendment 153 moved—[Jamie Halcro Johnston].

The Convener: The question is, that amendment 153 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 153 disagreed to.

Amendment 28 moved—[Edward Mountain].

The Convener: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 28 disagreed to.

Amendments 154 and 29 not moved.

Section 12 agreed to.

Section 13—Modification, suspension and revocation of muirburn licence

The Convener: Amendment 51, in the name of the minister, has already been debated with amendment 179. I remind members that, if amendment 51 is agreed to, I cannot call amendment 72 due to pre-emption.

Amendment 51 moved—[Jim Fairlie]—and agreed to.

Amendment 73 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 73 disagreed to.

Amendment 155 moved—[Jamie Halcro Johnston].

The Convener: The question is, that amendment 155 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)

Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 155 disagreed to.

Amendments 156 and 157 not moved.

Amendment 74 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 74 disagreed to.

The Convener: Amendment 158, in the name of Rachael Hamilton, has already been debated with amendment 179. I remind members that, if amendment 158 is agreed to, I cannot call amendment 159, due to pre-emption.

Amendment 158 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 158 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 158 disagreed to.

Amendment 159 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 159 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 159 disagreed to.

Amendment 52 moved—[Jim Fairlie]—and agreed to.

Amendments 160 and 30 not moved.

Section 13, as amended, agreed to.

After section 13

20:15

Amendment 99 moved—[Kate Forbes]—and agreed to.

Amendment 161 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 161 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 161 disagreed to.

Amendment 162 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 162 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 162 disagreed to.

The Convener: Amendment 31, in the name of Edward Mountain, is grouped with amendments 36, 37 and 43.

Edward Mountain: With amendment 31, I suggest that a new section be introduced to the bill. There is a reason behind that, and bizarrely enough it was driven by the Crofting Law Group, which we discussed in the previous session of Parliament. The Government promised to introduce a bill to reform crofting law, but it has failed to do that. With my amendments in the group, I am trying to update the Government's approach, as it seems to be intent on working in the old way.

I encourage the Government to create a register of muirburn licences that is available for people to look at online. Making it available for public inspection would make it more open. I also suggest to the Government that it should drop the rather old-fashioned and outdated approach of demanding that adverts about muirburn be placed in newspapers. We all know, and the Scottish Crofting Federation has argued eloquently, that placing adverts in newspapers is extremely expensive and they are not read by many people. A lot of people miss the advertisements in local papers because they do not look at that section. There is a need for the Government to be conscious of the requirement for such adverts and their cost, which is why I lodged amendment 37.

To me, it seems logical to have open access to a clear online register that will not lead to people incurring massive costs. I am not sure what there is not to like about the proposal. I look forward to hearing from the minister why he thinks that it is a bad idea.

I move amendment 31.

The Convener: As no other member wishes to comment, I invite the minister to respond.

Jim Fairlie: Amendments 31, 36 and 43 set out a new section that would require NatureScot to keep a public register of muirburn licences that are granted under part 2 of the bill. Notices of muirburn activity would be placed in that register.

I am sympathetic to the intentions behind the amendments, and I agree that transparency is important not only in respect of the way in which the licences will operate, but for all the licences that are operated by NatureScot. That is why, under the Bute house agreement, we have made a commitment to

"review the wider species licensing system ... and the introduction of a public register of licenses to improve transparency, bearing in mind data protection and safety of licence holders."

Therefore, I think that it would be better to allow for the review that has just been announced to be undertaken and for options to be presented for creating a register that would potentially cover a range of licences. That would seem to be a more appropriate way to proceed, rather than providing in the amendments for a register only in respect of muirburn licences that are granted under the bill. Such an approach would also allow me to fully consider any general data protection regulation implications before creating any register.

I hope that, for that reason, Edward Mountain will not press or move the amendments. If he does so, I encourage the committee to vote against them.

Edward Mountain: The minister is nothing if not predictable. I predicted that he was not going to like my proposed new section and amendments to that part of the bill, because they are about openness and transparency and they would bring the Government into the 21st century. Of course, that is what is being suggested under the Bute house agreement—in fact, I have written that part of the bill for the minister, so a review would not be needed. It does not need anything more than what I have suggested, and it would save on the cost of advertising—

Jim Fairlie: I offer Edward Mountain my apologies, convener, as I did not speak to amendment 37.

Edward Mountain: I think that you have missed your opportunity, minister. Unless you are going to tell me that you will accept that amendment, I am probably not going to let you in—[*Interruption*.] Okay—that is even more predictable. That is hugely disappointing, convener—

The Convener: Sorry, Mr Mountain, can I just—

Edward Mountain: The Bute house agreement calls for more honesty, openness and transparency—

The Convener: I am sorry, Mr Mountain—obviously, you did not hear me. If you are so minded, you could give way to the minister and give him the opportunity to speak to amendment 37. That is a suggestion for you.

Edward Mountain: In the spirit of co-operation, and because he will not come for a meeting with me, I am happy to give way, convener.

The Convener: I call the minister.

Jim Fairlie: My apologies, convener—that was entirely my mistake.

Amendment 37 would require the Scottish ministers, when specifying any additional method through which notice of making muirburn may be given, to have

"regard to the need for the cost of giving notice to be reasonable".

The requirement to give notice of muirburn activity is not new, and the bill as it is currently drafted broadly replicates the existing requirements for giving notice, as set out in the Hill Farming Act 1946 and covered by the muirburn code.

I am unaware of any concerns or issues relating to the cost of giving notice of muirburn activity under the existing legislation. Notwithstanding that, we would always seek to ensure that any costs that individuals incurred to fulfil the requirements to give notice of muirburn were reasonable and proportionate.

I have no issue with amendment 37 being agreed to, although we would want to have a closer look at its framing ahead of stage 3 and potentially tidy it up in order to avoid unintended consequences and ensure that it is aligned with the approach that is taken in the rest of the bill.

Edward Mountain: Convener, I am very glad that I gave way to the minister to allow him to agree, albeit partially, with something that I have said.

Jim Fairlie: Predictable, yes.

Edward Mountain: Joking aside, however, there is a very serious point. The Scottish Crofting Federation has made it clear that there are exceptional costs for placing adverts in local papers, which makes it prohibitive. Online works for most people, and online is where people go. That is a very simple system for giving notice.

I refute the GDPR issue, because notice can be given simply with the location of the site and a note of whom to contact. Let us be honest: I have yet to know of anyone who, in planning to carry out muirburn, does not speak to their neighbours. They probably co-ordinate it with them to ensure that they work together.

Although I am partially enthused by the minister's response, my overall response is that I am disappointed, and I will press my amendment 31.

The Convener: Thank you, Mr Mountain—I appreciate your giving way to the minister, as that was certainly helpful.

The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 31 disagreed to.

Section 14—Muirburn Code

The Convener: Amendment 32, in the name of Edward Mountain, is grouped with amendments 163 to 166, 33 and 34. I ask Edward Mountain to move amendment 32 and to speak to all amendments in the group.

Edward Mountain: Amendment 32 is a very simple amendment, which I am sure the minister will whole-heartedly embrace, because there is no point reinventing the wheel if the wheel is already there. My suggestion, under the amendment, is that

"the Muirburn Code produced for the Scottish Government by Scotland's Moorland Forum and published on 22nd September 2017",

which was adopted by the Scottish Government, be the first code. It seems to be an extremely good and workable document, and it has been endorsed by NatureScot, whose staff would no doubt be the people who would draw up the new code.

Rhoda Grant's amendments in the group set out to prepare a muirburn code. Her amendment 163 would be irrelevant after my amendment had been accepted, and the rest of the amendments would be overtaken by the extremely sensible suggestion of using the code that already exists. That is all.

I move amendment 32.

Rhoda Grant: My amendments in this group refer to the muirburn code, which is fundamental to the practices of licence holders. The Scottish Government has not given Parliament any indication of what the code will look like, so the amendments aim to ensure that, before it is enforced, the code is consulted on, scrutinised and evaluated by Parliament. I believe that that covers the amendments that have been lodged by Edward Mountain.

Jim Fairlie: I do not support amendment 32. The 2017 muirburn code set out the current statutory requirements for undertaking muirburn and provides guidance on good practice. It stands to reason that, if the bill is passed and changes to the regulations for undertaking muirburn are brought in, the 2017 code will need to be updated to reflect the latest regulatory position.

As the bill requires that anyone undertaking muirburn in Scotland must

"have regard to the Muirburn Code",

it is essential that the code reflect statutory requirements.

The process of updating the code is already under way, and I am pleased that NatureScot is taking an iterative and collaborative approach to developing the new muirburn code of practice. That process is being managed through a code working group, with additional input from members of the Moorland Forum, who provide feedback on the practical and technical aspects of the code. That will ensure that the code is applicable and relevant to all users and audiences, and that it fits the requirements of the legislation. Other stakeholders with an interest in muirburn will be kept up to date with progress via a correspondence group.

Amendment 32 would put all that work and activity back and would mean that we would have a code that was not compliant with the law. For those reasons, I cannot support amendment 32.

I turn to amendments 33 and 34. As far as I am aware, no stakeholders have called for such amendments. As well as setting out the statutory requirements, the muirburn code will set out best practice and guidance, and it will provide a mechanism by which practitioners can be kept informed about any changes or developments. As we all know, the science behind muirburn is constantly evolving, so I think that it is sensible to require that the code be refreshed regularly.

If Edward Mountain's amendments were passed, they would mean that we could go as long as 10 years before a new code would be produced. Given all the reasons that I gave for why it would be inappropriate to grant a licence for 10 years, that would also be too long an interval for a code, especially given that climate change mitigation and adaptation and wildfires are at the forefront of our considerations.

For those reasons, I cannot support amendments 33 and 34, and I ask committee members to vote against them.

I cannot support Rhoda Grant's amendments. Taken together, they would provide that, before laying the revised muirburn code before the Scottish Parliament,

"the Scottish Ministers must publish a draft of the Muirburn Code ... consult such persons as they consider likely to be interested"

and

"lay before the Scottish Parliament a statement"

on

"the consultation process"

and on how the

"views expressed during that process have been taken account of".

I believe that, if the amendments were passed, the changes would create an unnecessary additional burden and would considerably slow down the process of updating the muirburn code. The bill currently sets out that—[*Interruption*.] Let me finish this piece. If you need to come back in after that, you can do so.

The bill currently sets out that stakeholders will be consulted on the muirburn code as it is being developed. Therefore, and as is currently occurring, NatureScot will be working with all stakeholders to ensure that production or revision of the muirburn code is a collaborative process. It seems unnecessary to consult stakeholders on something that they have helped to develop.

Finally, the muirburn code is meant to be a practical working document that provides up-to-date guidance for licence holders. It is not clear to me what laying it before Parliament would achieve. The code will be published on the NatureScot website and we will, of course, ensure that Parliament is kept updated on the process of development and on when it is published.

20:30

The amendments in the group would create an unnecessary statutory requirement for what is meant to be active, up-to-date guidance. Although I understand the intention for the first updated version of the code following the bill, I do not think that it makes practical sense to put through such a statutory process every future iteration in response to circumstances, which in some cases will have to be done nimbly and flexibly.

For all those reasons, I encourage the committee to vote against the amendments.

I point out that the muirburn code working group consists of BASC, the Cairngorms National Park Authority, the Game and Wildlife Conservation Trust, the International Union for Conservation of Nature UK peatland programme, the James Hutton Institute, NFU Scotland, RSPB Scotland, the Scottish Crofting Federation, the Scottish Fire and Rescue Service, the Scottish Gamekeepers Association, Scottish Land & Estates and the Scottish Wildlife Trust. I have asked to sit in on some of the meetings as the meetings get further down the road, to hear exactly what is being discussed so that the code covers all aspects of what needs to be done.

Rhoda Grant: I get it that stakeholders are involved, but it does not say anywhere that the stakeholders have to agree to the code. That is why I am looking for better scrutiny. As with my other amendments, I would be happy if the minister would discuss that ahead of stage 3 to find out whether we can put something in place that will ensure that Parliament has some level of scrutiny so that, if there are concerns about the code, they could at least be heard.

Jim Fairlie: I am going to push back on that on the basis that the people I mentioned will all be sitting at a round table in the room. We know how constructive round-table sessions can be. I have said that I will sit in on meetings to hear how the process is developing. I do not think that there is any need to bring the code back to Parliament, so I will resist that.

Edward Mountain: It is always a pleasure to listen to the minister telling me why I am wrong. It is probably disappointing for him to hear that I am going to agree with him on pressing amendment 32—it might be the end of his ministerial career.

I believe that work is going on. However, I am minded to suggest that further work is required to ensure that the code is accepted by all people who use the practice of muirburn. I will work with Rhoda Grant to see whether there is a way in which we can ensure that everyone accepts the code and there is a majority decision, rather than just an unclear arbitrary decision.

On amendments 33 and 34, I still believe that revising the code every 10 years rather than every five years is appropriate, otherwise we would just finish off one code and start the next one.

I am sorry if I have destroyed your career, minister, but I will not press amendment 32.

Amendment 32, by agreement, withdrawn.

Amendment 163 moved—[Rhoda Grant].

The Convener: The question is, that amendment 163 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 163 disagreed to.

Amendment 164 not moved.

Amendment 100 moved—[Finlay Carson].

The Convener: The question is, that amendment 100 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 100 disagreed to.

Amendments 165 and 166 not moved.

Amendment 33 moved—[Edward Mountain].

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 33 disagreed to.

Amendment 34 moved—[Edward Mountain].

The Convener: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 34 disagreed to.

Amendment 35 not moved.

Section 14 agreed to.

Section 15—Notice of muirburn activity

Amendment 36 moved—[Edward Mountain].

The Convener: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 36 disagreed to.

Amendment 37 moved—[Edward Mountain]—and agreed to.

Amendment 38 not moved.

Section 15, as amended, agreed to.

Section 16—Muirburn season

The Convener: I call amendment 184, in the name of Rachael Hamilton. I remind members that, if amendment 184 is agreed to, I will not be able to call amendment 101, amendment 102 or amendment 167, because of pre-emption.

Amendment 184 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 184 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 184 disagreed to.

Amendment 101 moved—[Kate Forbes].

The Convener: The question is, that amendment 101 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Carson, Finlay (Galloway and West Dumfries) (Con)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

Against

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

Abstentions

Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 7, Against 1, Abstentions 1.

Amendment 101 agreed to.

The Convener: I call amendment 102, in the name of Kate Forbes. I remind members that, if amendment 102 is agreed to, I will not be able to call amendment 167, because of pre-emption.

Amendment 102 moved—[Kate Forbes].

The Convener: The question is, that amendment 102 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 102 agreed to.

Amendment 39 not moved.

Amendment 40 moved—[Edward Mountain].

The Convener: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 40 disagreed to.

Amendment 41 moved—[Edward Mountain].

The Convener: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 41 disagreed to.

Amendment 103 moved—[Finlay Carson].

The Convener: The question is, that amendment 103 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 103 disagreed to.

Amendment 42 not moved.

Section 16, as amended, agreed to.

After section 16

Amendment 168 moved—[Rhoda Grant].

The Convener: The question is, that amendment 168 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 168 disagreed to.

Before section 17

The Convener: Amendment 174, in the name of Rachael Hamilton, is grouped with amendment 175.

Rachael Hamilton: Amendment 174 would simply amend the Fire (Scotland) Act 2005 to ensure that personnel are trained in relation to muirburn. It adds a statutory requirement for firefighters to be provided with training that specifically includes sessions on issues arising from making muirburn. It is crucial that our fire services are aware of, understand and are provided with the requisite training in relation to making muirburn, not only for the safety of the public, but for their own safety.

Amendment 175 would require ministers to publish a report every two years on the role of muirburn in relation to wildfires in Scotland. The report would have to consider the impact and damage caused by wildfire on wildlife habitats, the conservation of the natural environment, property and other matters. It is interesting to note that, in relation to the Cannich wildfire and other wildfires, it was difficult for the people who manage the land to understand the significant impact on and damage to those specific parts of nature.

The Scottish Fire and Rescue Service has made it clear that muirburn is not the primary driver or cause of wildfire events in Scotland; on the contrary, the fuel load management that is achieved in making muirburn is often credited with limiting or reducing the effect of wildfire incidents where they occur. Compelling ministers to produce a wildfire report every two years to consider the impacts of muirburn activity on wildfire intensity would be a practical and advisable thing to do as wildfire events become more frequent and prominent with the advent of climate change.

I move amendment 174.

20:45

Edward Mountain: Rachael Hamilton's amendment 174 chimes with something that I said earlier. I remind members that it is often people who practise muirburn who have the best equipment to fight wildfires. Argocats get people and firefighting equipment up on the hill. Sadly but unsurprisingly, the Scottish Fire and Rescue Service does not have access to all that equipment, because it might cost between £45,000 and £50,000 to equip an Argocat. It therefore seems entirely appropriate for firefighters, who often work beside gamekeepers and moorland managers, to go on the same muirburn course, so that they can work together. If that does nothing else, it will foster good relations and create greater understanding. For that reason alone, I support Rachael Hamilton's amendment 174.

Jim Fairlie: Amendment 174, which would amend the Fire (Scotland) Act 2005, is unnecessary. The current provisions in the 2005 act state that the Scottish Fire and Rescue Service must

"secure the provision of training for personnel".

That phrase is purposefully broad and non-descriptive, and it therefore already covers issues relating to muirburn. It is already a priority for the Scottish Fire and Rescue Service to ensure that its operational firefighters are properly trained and equipped to undertake the professional duties that it expects of them. That includes tackling wildfires.

Edward Mountain: I am not disputing what you are saying, but how many firefighters have done a muirburn course in the past three years?

Jim Fairlie: I do not have that number to hand, but what I am going to say, if you allow me to finish, might put your mind at ease.

The Scottish Fire and Rescue Service regularly reviews training capacity against demand to ensure sufficient training capacity and investment in people and resources so that staff are competent in the roles that they are expected to undertake. In my view, it would be too prescriptive to amend the 2005 act to specifically mention muirburn, given that no other individual fire types are specified in it. For those reasons, I cannot support amendment 174, and I ask members to vote against it.

In our 2023 programme for government, we committed to working with the Scottish Fire and Rescue Service to ensure that continuing priority is given to the implementation of its wildfire strategy. It has produced the strategy in partnership with various agencies and groups in the rural and land management sectors. As part of the strategy, the SFRS is adopting a burn suppression technique that is similar to those that are used in the new Mediterranean-style specialist wildfire units. The SFRS remains fully ready and able to respond to any wildfire that occurs across Scotland, and substantial investment has recently been made in rural areas to provide additional specialist wildfire equipment and personal

protective equipment. The service's planned spend over the three-year roll-out of its wildfire strategy is about £1.6 million. Although the SFRS is fully supportive of training for those undertaking muirburn, it does not support muirburn training being explicitly added to the 2005 act.

Amendment 175 would require that a report on the role of muirburn in relation to wildfires in Scotland be laid before the Parliament every two years. In my view, not only is that unnecessary but it would create an additional and onerous administrative and reporting burden on various organisations, including the SFRS and NatureScot. The SFRS already records and reports on fires through its incident reporting system inputs. It has also produced, in partnership with the Scottish Wildfire Forum, a wildfire strategy, which includes a commitment to review the distribution of wildfire danger assessments and to measure how effective they are in preventing wildfires.

On muirburn and its relationship to wildfire, NatureScot produced, in 2022, a comprehensive report in which it reviewed, assessed and critiqued the evidence base on the impacts of muirburn on wildfire prevention, carbon storage and biodiversity. The report covered decades of peer-reviewed academic literature on wildfire and muirburn, and it concluded that the evidence base on the impacts of muirburn on wildfire habitats and species is limited and sometimes contested. The report also highlighted that a number of knowledge gaps need to be filled in order to determine the pros and cons of muirburn in relation to the suite of upland ecosystem services that moorlands provide. Ultimately, the findings recommend that targeted scientific assessment is required to better understand the role of muirburn in relation to wildfire and biodiversity. Detailed scientific research cannot simply be generated and reported on every two years.

I believe that it is more appropriate and proportionate to monitor wildfires through the existing reporting systems, in conjunction with the wildfire strategy. That, in turn, will enable NatureScot to take into account the most up-to-date evidence on wildfire when updating the muirburn code and assessing licence applications. For those reasons, I cannot support amendment 175, and I ask members to vote against it.

Rachael Hamilton: I intend to press amendment 174. I have not been convinced by the minister's arguments that the Fire (Scotland) Act 2005 should not be amended to recognise training for muirburn. It is a really important aspect, considering the danger that firefighters and the wider public in rural areas can be put in, particularly considering examples such as Cannich. Although it has been noted that the Scottish Fire and Rescue Service carries out training and is quick to tackle wildfires, there were distinct gaps in provision when the Cannich wildfire was being tackled last year.

Turning to the points that Edward Mountain made, it is really important that the Fire and Rescue Service is able to use the equipment that gamekeepers and others use to mitigate the wildfire risk. It may be that the fire service does not have that in its suite of training. I therefore still think that the amendment is important, and I am not convinced by the argument that has been made against it.

The additional scrutiny that I am asking for by way of a biennial report is important. We know that biodiversity loss has not been reported, and the minister has acknowledged that there have been knowledge gaps that need to be filled. I hope to lodge an equivalent amendment to amendment 175 at stage 3, in order to get more detail on the scientific research that NatureScot does, and the timeframe in which it is able to provide it. That is a really important piece of work, which must be completed and reported to the Parliament. I will not be moving amendment 175, because I understand that the two-year reporting period could prove challenging, but I will come back at stage 3 with a different amendment that could perhaps reflect the scientific research that the minister referenced.

The Convener: The question is, that amendment 174 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 174 disagreed to.

Amendment 175 not moved.

Section 17—Delegation

Amendment 43 moved—[Edward Mountain].

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 43 disagreed to.

Amendment 104 moved—[Kate Forbes]—and agreed to.

Amendment 44 not moved.

Section 17, as amended, agreed to.

Section 18—Interpretation of Part

The Convener: Amendment 76, in the name of the minister, is grouped with amendments 169, 45, 171, 170, 77 and 172. If amendment 169 is agreed to, I cannot call amendments 45, 171 or 170, due to pre-emption. I remind members that amendments 45 and 171 are direct alternatives. That is, they can both be moved and decided on, and the text of whichever of the amendments is the latter to be agreed to is what will appear in the bill.

Jim Fairlie: Amendments 76 and 77 will change the definition of muirburn in the bill. During the stage 1 evidence sessions, we heard from stakeholders who were concerned that the definition of muirburn might be broad enough to cover situations that would not normally be considered to be muirburn. The current wording in the bill refers to the

“burning of heather or other vegetation”,

which might capture piled-up dead vegetation and so include things such as bonfires and campfires. We also heard concern that the definition would include the activity of flame weeding, which is a method that is used to control weeds in garden settings or agricultural fields, or gorse in fields, golf courses and urban areas.

It was not the intention to include activities of that type under the bill. The muirburn provisions are intended to cover only the burning of vegetation on a heath or a muir. The amendments would align the definition of making muirburn in the bill to what is currently used in the Hill Farming Act 1946, which is well understood by practitioners, so that it means

“the setting of fire to, or the burning of, any heath or muir.”

That would provide welcome clarity, so I encourage the committee to vote for amendments 76 and 77.

I do not propose to speak on any other amendments in the group at this point, but I will listen to the proposers and to what all contributors have to say before responding.

I move amendment 76.

Ariane Burgess: The definition of peat was discussed during stage 1, and that is reflected in a variety of amendments, but why is there a focus on peat depth at all? The International Union for Conservation of Nature’s peatland programme is clear that all peat—from the shallowest peaty soils to deep layers—is vital and an integral part of the overall health of peatlands. In fact, the shallowest of peat soils, those less than 30cm in depth, are arguably the most in need of protection, being more susceptible to damage and drying out.

Early in my discussions about the bill with stakeholders, I was surprised to learn that the current definition, which is based on depth, stems from post-war land management strategies when Britain was looking to maximise its natural resources and agricultural productivity. It is based not on ecological understanding or rooted in climate adaptation practices, but rather in an arbitrary assessment that is based on what was required over half a century ago.

Amendment 169 seeks to remove that arbitrary definition entirely, removing the link between the depth of peat and its status under the licensing regime that is set out in the bill. All peat soils would therefore be subject to the muirburn licensing regime. In a time of climate emergency, we should be looking to maximise the protection of peat and not be undercutting the work that other parts of the Scottish Government are doing to fund the restoration of peatlands.

I am well aware that there will not be consensus on my amendment. I await the minister’s response, but I believe that it is important to highlight how peatland is defined.

Edward Mountain: Before the meeting, we laughed about the fact that Ariane Burgess and I agree on some things. I agree that peat depth is not the relevant factor, because we are not burning peat, but I believe that carrying out muirburn on shallow peats is bad, because it encourages drying out. Usually, shallow peats are in areas of greater altitude. That is a huge generalisation but, in such areas, there is schist underneath the peat that is not fertile at all, and it is very difficult for the plants to regrow on it.

I lodged amendment 45—which would increase the depth that is used in the definition from 40cm to 60cm—as a probing amendment. It was interesting that, when I lodged the amendment, I was absolutely slated by people who thought that it was amusing to say that I had no experience of what I was talking about. I am probably one of the few members in the Parliament who has been a practitioner and has carried out muirburn. Not understanding the parliamentary process for probing amendments is deeply unhelpful, and it should not be encouraged.

The point of my amendment is to try to work out what the minister thinks is being burned, because it is not the peat that is being burned but the vegetation that is on top of the peat. We have all seen the demonstrations of quick fires and slow fires across peatland. A quick fire can burn over the surface of the soil; it might not even melt a bar of chocolate if it was sufficiently quick. In fact, I have seen fires on heaths burn quickly enough to pass through without damaging fence posts or remove the galvanised coating on the wire around the heathland.

Amendment 45 is a probing amendment. I want to know why the minister feels that the depth of the peat is the prerequisite for defining peatland and muirburn.

21:00

I am slightly taken with the minister's amendment 77, but I am concerned that the word "heath" could encompass a lot of crofting ground where there might be grassland improvement, because, by definition, heath means acidic soils with low fertility. That might include some areas on common grazings, where muirburn might be considered, and that would automatically be encompassed by the legislation.

I am interested to hear the minister's response to my probing amendment 45 and an acceptance of the fact that it is not the depth of peat that is relevant but the actions that are being carried out on the surface.

I absolutely agree that things have changed. When I was younger—which might seem like many years ago—we were paid to put in grips across moorland to drain the peatland to make it easier to graze. We are now being paid to put it back to the way it was. We have come full circle, but we still need to carry out muirburn to control the vegetation.

Colin Smyth: One of the bill's key aims is to protect our peatlands by limiting burning on them, so the definition of peatland is clearly important. The definition in the bill states that "peatland" means

"land where the soil has a layer of peat with a thickness of more than 40 centimetres",

and that "peat" means

"soil which has an organic content ... of more than 60%."

The consequence of that definition is that extensive areas of shallow peat of a depth of less than 40cm will be treated as not being peatland, even though they are functionally part of a peatland and are often the most vulnerable areas.

The best option would be not to define peatlands on the basis of a specific depth, so I have some sympathy with amendment 169 and—dare I say it?—I agree with some of the observations from Edward Mountain, albeit not with his amendment 45.

Burning for the purpose of nature restoration, wildfire prevention and research would still be allowed under amendment 169, but the need for people to measure depth would be removed. That would be in line with the Scottish Government's response to the grouse moor review group report of 26 November 2020. The response stated:

"There will ... be a statutory ban on burning on peatland, except under licence for strictly limited purposes".

It is not clear to me why, in the bill, the Government has reneged on that approach and has proposed an artificial measure of 40cm of peat for the definition of peatland.

If we are to have a depth measure, there is, arguably, a case for a depth of 50cm, as set out in the muirburn code, not least given the available mapping. There are also arguments for the widespread calls for the measure to be reduced to 30cm, which would provide more protection and is in line with international recognition. There is almost universal opposition to—and there does not appear to be any scientific basis for—the arbitrary definition of 40cm, which is very much an international outlier and seems to be little more than a case of splitting the difference between 50cm and 30cm.

If the Government is determined to stick to its view that there needs to be a depth definition, my amendment 171 supports 30cm. A 30cm peat depth is the definition that is used in the peatland code and the UK peatland strategy, and Natural England will apply that to common standards monitoring.

It is also notable that Scottish Forestry has recognised the importance of limiting damaging practices on peat and is no longer accepting forestry grant scheme applications that include ploughing on soils where peat depth exceeds 10cm. Reducing the depth to 30cm, as proposed in my amendment 171, would have the effect of increasing the area of land that is treated as peatland under the bill and would therefore include

some of the shallower peatland areas, which are important large carbon stores.

Although it would be better to treat areas of any depth as peatland, changing the definition to 30cm would be an improvement on the 40cm that is included in the bill, because the figure is at least widely recognised. Setting the level in the bill at 40cm is a backward step with no scientific basis, but reducing the depth to 30cm would improve the protection of peatlands at a time when we need to do everything that we can to protect and restore those important areas.

Rachael Hamilton: National survey data of peat at the 50cm depth threshold is currently available. It therefore follows that that definition should be retained to provide land managers with a degree of certainty about what constitutes peatland or non-peatland areas. Before passing regulations about heather and grass burning in England, the then secretary of state George Eustice ensured that peat survey data was available at the requisite threshold.

The provision of de minimis will help to safeguard against issues arising from variable peat depth in small areas by mandating that, to constitute peatland, peat must be of a 50cm depth in a single area of half a hectare or more.

I believe that amendment 169, in the name of Ariane Burgess, is completely unworkable and would unreasonably curtail muirburn activity by stealth. It would also have a Scotland-wide impact, which would rapidly increase fuel load and create a significant risk of wildfire.

On Colin Smyth's amendment 171, I do not believe that peat depth or a below-ground metric should be used to regulate muirburn, which is an above-ground activity.

I favour the retention of a 50cm peat depth as the defining characteristic of peatland, because national survey data exists at that depth, providing greater certainty to end users. There is no scientific basis for moving to a 30cm depth.

Rhoda Grant: Amendment 172 is similar to previous amendments that I have lodged to try to bring a degree of scrutiny of subordinate legislation to the bill.

It is clear that knowledge of how muirburn affects peat and what different depths of peat mean for different management techniques will depend on the science, which is not clear at the moment. As is demonstrated by the array of amendments in front of us today, the minister cannot pretend that there will be consensus on that, even if the science becomes clearer. Therefore, the impact of any change in the depth of peat that is used in the definition must be properly scrutinised.

I fear that the minister is more interested in avoiding scrutiny than in saving parliamentary time. It is Parliament's role to scrutinise the Government, on behalf of our constituents, so I hope that the minister will at least accept amendment 172.

Jim Fairlie: Amendments 169, 45, 171 and 170 all offer alternative definitions of peatland for the purpose of muirburn licensing. I want to be clear that the approach that is taken in the bill, which is in line with wider muirburn provisions, follows the precautionary principle, and that the depth of 40cm arose from that principle.

I thank Ariane Burgess, Edward Mountain, Colin Smyth and Rachael Hamilton for lodging their amendments, which has allowed us to debate the issue during the passage of the bill. It is an important debate that reminds us that it was always going to be difficult to balance the need to protect peatland with the practical necessities of managing land productively.

Today's debate, in which some members wanted peatland to be defined as deeper and others wanted it to be shallower, leads me to believe that the bill's definition of 40cm is probably right and that it adequately accounts for what we know to be the potential risks that are associated with muirburn on peatland.

The public consultation on the definition of peatland was similarly divided: 38 per cent of respondents said that it should be 40cm, while those who disagreed with the 40cm depth were divided between wanting it to be 50cm and arguing that it should be 30cm or less. I am also mindful that the 40cm depth is the definition that is being moved to in England. We have carefully considered the approach being taken there and the evidence and science that was considered by the UK Government.

In recognition of the lack of a strong scientific consensus relating to muirburn on peatland, the bill contains a regulation-making power allowing Scottish ministers to amend the definition of peatland. That means that ministers will be able to take a proactive approach and can respond to new evidence or data in future to ensure that the definition keeps pace with scientific research.

To reassure the committee, I note that the bill provides that the Scottish ministers must consult NatureScot and

"such other persons as they consider likely to be interested in or affected by the making of muirburn",

before making any regulations to amend the definition of peat or peatland.

Rachael Hamilton: A lot of us have been out to see muirburn. If the minister has seen muirburn, did he witness that peat was burned after the

muirburn or whether sphagnum moss remained wet where it was a depth of 50cm, which is the current level used in the survey data?

Jim Fairlie: I accept that establishing what constitutes muirburn is difficult. I was out on a hill last week—in fact, it was at the beginning of this week. This has been such a difficult week. I was out there on Monday and I witnessed muirburn in perfect burning conditions—they managed to burn right over the top of a chocolate bar. I have seen all the provisions that are made, but I also know that, when muirburn goes wrong, peat gets burned. We are trying to find a balance in this part of the bill.

Colin Smyth: I think that the minister has confirmed the concern that the 40cm definition seems to be a bit arbitrary. It almost seems to be a case of splitting the difference between people's views.

However, the minister has indicated that the Scottish ministers can amend the definition by regulations and that they would have to consult NatureScot and others in doing so. Does he accept that the definition of peatland needs to be kept under review, given that there is a mechanism to change it, not least because of his earlier words about the growing impact of climate change?

Will he at least agree to meet those of us who have a different view on the issue to discuss what mechanisms are in place in Government to keep the definition under review? That would at least provide some assurance to the many stakeholders that the scientific evidence will be looked at regularly. It would be helpful to discuss that with the minister ahead of stage 3.

Jim Fairlie: We are keeping the definition under review anyway, but I fully understand that it is a difficult issue in terms of getting everybody on board. Through the bill, we are trying to find the balance. I will meet you before stage 3 and we can discuss the issue. However, right now, my preferred option is 40cm.

Any regulations that are developed to amend the definitions would be subject to consultation and enhanced parliamentary scrutiny, as they will be subject to the affirmative procedure.

Taking all of that into account, I would hope that amendments 169, 45, 171 and 170 are not moved. If they are moved, I encourage members to vote against them.

Amendment 172 would add to the process that is required of Scottish ministers if they change the definition of either peat or peatland in future through secondary legislation. As I and ministers before me have explained on a number of other similar amendments, those changes are not necessary. The amendment would place another additional burden on the Scottish Parliament when established procedures are already in place for changes through secondary legislation. It could lead to unnecessary delays in amending the depth of peat, which could have consequences for the natural environment.

Any change to the definition of peat or peatland for the purpose of the bill would be subject to the affirmative procedure as well as to the consultation requirement. Parliament will have an opportunity to consider the instrument in draft, take evidence on it and vote on it. That is the correct procedure for any such amending instrument. Therefore, I encourage the committee to vote against amendment 172 on that basis.

Amendment 76 agreed to.

Amendment 182 moved—[Edward Mountain].

The Convener: The question is, that amendment 182 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 182 disagreed to.

The Convener: Amendment 169, in the name of Ariane Burgess, has already been debated with amendment 76. I remind members that, if amendment 169 is agreed to, I cannot call amendments 45, 171 or 170, due to pre-emption.

Amendment 169 not moved.

The Convener: Amendment 45, in the name of Edward Mountain, has already been debated with amendment 76. I remind members that amendments 45 and 171 are direct alternatives, so, if agreed to, the text of whichever is last agreed to will appear in the bill. I call Edward Mountain to move or not move amendment 45.

Edward Mountain: As we are sticking to a depth of 40cm in the definition, I will not move the amendment.

Amendment 45 not moved.

Amendment 171 not moved.

Amendment 170 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 170 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 170 disagreed to.

Amendment 77 moved—[Jim Fairlie]—and agreed to.

Amendment 105 moved—[Finlay Carson].

The Convener: The question is, that amendment 105 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 105 disagreed to.

Amendment 46 not moved.

Section 18, as amended, agreed to.

After section 18

Amendment 172 moved—[Rhoda Grant].

The Convener: The question is, that amendment 172 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 172 disagreed to.

Section 19—Repeals and consequential amendments

Amendment 47 not moved.

Section 19 agreed to.

Sections 20 to 28 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill.

Meeting closed at 21:17.

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