



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs and Islands Committee

Wednesday 30 April 2025

Session 6



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NATURAL ENVIRONMENT (SCOTLAND) BILL: STAGE 1 1

RURAL AFFAIRS AND ISLANDS COMMITTEE

14th Meeting 2025, Session 6

CONVENER

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

DEPUTY CONVENER

*Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

*Tim Eagle (Highlands and Islands) (Con)

*Rhoda Grant (Highlands and Islands) (Lab)

*Emma Harper (South Scotland) (SNP)

*Emma Roddick (Highlands and Islands) (SNP)

*Mark Ruskell (Mid Scotland and Fife) (Green)

Evelyn Tweed (Stirling) (SNP)

*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Peter Clark (British Association for Shooting and Conservation)

Ross Ewing (Scottish Land & Estates)

David Fleetwood (John Muir Trust)

Donald Fraser (NatureScot)

Robbie Kernahan (NatureScot)

Alan McDonnell (Trees for Life)

Grant Moir (Cairngorms National Park Authority)

Edward Mountain (Highlands and Islands) (Con)

Duncan Orr-Ewing (Scottish Environment LINK deer group)

Dick Playfair (Scottish Venison Association)

Graeme Prest (Forestry and Land Scotland)

Tom Turnbull (Association of Deer Management Groups)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 30 April 2025

[The Convener opened the meeting at 09:00]

Natural Environment (Scotland) Bill: Stage 1

The Convener (Finlay Carson): Good morning, and welcome to the 14th meeting in 2025 of the Rural Affairs and Islands Committee. Before we begin, I remind everyone to switch their electronic devices to silent.

We have received apologies from Evelyn Tweed. I welcome Mark Ruskell, who is joining us as our newest member, and take this opportunity to thank Ariane Burgess for her contribution to the committee's work since the beginning of the parliamentary session. Edward Mountain will also be joining us at some stage this morning.

The first item on our agenda is consideration of the Natural Environment (Scotland) Bill at stage 1. Today, our focus will be on part 4 of the bill, which is on deer management. First, we will hear from representatives of NatureScot. We will then host a round-table discussion with nine stakeholders who have an interest in deer management in Scotland.

Edward Mountain has joined us. Would you like to make any declarations of interest?

Edward Mountain (Highlands and Islands) (Con): Thank you, convener. I am sorry that I was slightly late for the meeting; my watch is obviously not as accurate as yours.

I declare that I have been involved in deer management for more than 25 years. I have written deer management plans for various sub-groups, in the Cairngorms and further north, some of which are still in place. I am involved in deer management at home on the farm, and I have taken a great deal of interest in it. Not all of that is in my register of interests, but I am sure that your committee members will understand that, for a landowner, deer need to be controlled and that they are controlled at home. Thank you, convener.

The Convener: Thank you, Mr Mountain. For the first evidence session, I welcome to the meeting Donald Fraser, who is the head of wildlife management, and Robbie Kernahan, who is the director of green economy, both at NatureScot. We have approximately 60 minutes for the session. Before we move on, let me make you aware that you do not need to operate your

microphones. We have a gentleman here who will do that for you.

I will kick off with the first question. Section 10 of the bill amends part 1 of the Deer (Scotland) Act 1996, which covers NatureScot's deer functions. The bill updates the aims and purposes of deer management to include the public interest. Additionally, NatureScot should now take account of the environment when carrying out its functions. Will that change what NatureScot is already doing on the ground? How will it affect NatureScot's resources and capacity?

Robbie Kernahan (NatureScot): I am happy to start, convener. Thank you. It is a pleasure to be here.

The bill is an opportunity to modernise the deer management legislation, which was first enacted in 1959 and has not changed significantly. The bill is a good opportunity to continue to bring the legislation up to the level that we would hope for when we think about nature and the climate crisis in Scotland.

The reference to our deer functions in part 1 of the 1996 act, the inclusion of the environment and updating our aims feel right to us. As for the public interest, we have always had to take that into account, but you will appreciate that, with the importance of nature and climate in policy terms and the pressures coming to bear through the land-use lens, it feels like the right time to amend the deer legislation. Deer have shaped and will continue to shape our environment for many years. It is important that we use the best possible evidence and that references to current challenges are reflected in the legislation.

The Convener: Will the new powers and having to enforce them have any effect on NatureScot's capacity?

Robbie Kernahan: I do not think that the amendments to part 1 of the 1996 act will make any significant difference to how we administer the legislation. I will take a couple of steps back. The deer management system in Scotland is predominantly based on a voluntary system. The bill provides a range of mechanisms whereby we might intervene to deliver the public interest. In defining the public interest, we need to take current policy changes and challenges into account. However, I do not think that that will make a significant or material difference to the resources that we currently put into delivering the public interest.

The Convener: The public interest is currently undefined. What do you see as being the public interest?

Donald Fraser (NatureScot): There is a whole range of public interest. The 1996 act set out

some of it in a bit of detail and referred to natural heritage, but “natural heritage” is a quite specific term. The environmental aspect and the wider biodiversity and climate focus that we find ourselves in broaden out the public interest to a range of areas. It was explained in, I think, the committee’s previous meeting that there is an understanding of the public interests that are out there and being delivered in a series of land management spheres. Deer management is part of that, and that is now better understood.

The Convener: Can you explain why a definition of public interest is not in the bill? There is some attempt to define public interest in the explanatory notes, but it is not likely to change any great detail, so why is it not in the bill?

Robbie Kernahan: Some aspects of the public interest are more clearly defined, convener. The needs of agriculture and forestry were the original basis on which the Deer (Scotland) Act 1959 was introduced, and it tried to protect those interests; that was in the public interest at the time. The 1996 act introduced the concept of natural heritage, which is quite clearly in the public interest. More recent changes are beginning to explore wider socioeconomic and environmental objectives, which are sometimes quite hard to express in primary legislation.

I can give some examples. They might include things such as water quality, carbon sequestration and some of the emerging drivers for ensuring that we deal with flood and carbon management, which probably are not easy to express in primary legislation, but it is important that they are referenced. We can then begin to work with the sectors and others to put some colour and substance behind them. Of course, the code of practice for deer management provides a mechanism to articulate that more robustly.

The Convener: We are going to see things such as the climate change and biodiversity plans, and we have the Agriculture and Rural Communities (Scotland) Act 2024. Those will have different objectives and the public interest might change. Is there a role for the Parliament in looking at the explanatory notes to ensure that the Parliament has oversight of what “public interest” might mean and its impact on land managers?

Robbie Kernahan: You have just expressed very clearly that public interests change over time. Although some references in the bill recognise that, I think that the solution is to pin public interests down more explicitly, probably in secondary legislation and areas of guidance where there is consensus that things have moved on. That is about as much as I can say in response, convener. Donald Fraser might want to add to that.

Donald Fraser: The point is to be clear about where the regulatory mechanism in the act can and will be used so that there is clarity for stakeholders involved in managing deer. That is important. Whether the mechanism is primary legislation, secondary legislation or developed through the deer code, which potentially provides a mechanism, clarity is important.

The Convener: There might need to be something in secondary legislation that clearly defines what might be in the public interest, given the changing scene and other pieces of legislation, to make sure that stakeholders know what is coming down the road and whether it is proportionate and addresses what the bill is supposed to achieve.

Robbie Kernahan: We are quite relaxed about whether that is in secondary legislation or defined in the code. However, it is important for everyone involved in deer management that we can clearly define the circumstances in which we will intervene in the public interest and that that is collectively understood, clearly defined, articulated and well evidenced.

The Convener: I suppose that what I am trying to get at is that the code of practice will play a critical role. It is almost as though there is a framework bill and the code of practice then puts the meat on the bones. Should that code of practice undergo more scrutiny from the Parliament and not just be left to NatureScot to pull together, whether through co-design or whatever? Does the code of practice need oversight from the Parliament?

Robbie Kernahan: Again, we are quite relaxed about that. The bill proposes some changes to the frequency with which we review the code and sets out the process for how that would operate in practice. The most important thing, from our perspective as a regulator, is to make sure that the sector is sighted on and involved in the development of the code and that it is clearly understood and articulated, because it provides a significant basis for our interventions.

Tim Eagle (Highlands and Islands) (Con): Good morning. This is an interesting discussion. Part of the problem with framework bills is that they are not defined. The stakeholders do not know what is going on. I have a few questions about the code of practice, because I think that it will be instrumental in helping everyone to understand what the bill will do. Section 12 of the bill will change when NatureScot can review compliance with and the effectiveness of the code of practice for deer management. How will you decide when is an appropriate time to carry out a review?

Robbie Kernahan: The easiest answer is that we will inevitably need to undertake a review very quickly to be able to reflect the range of circumstances in which NatureScot would intervene, as is set out in the bill's provisions. Traditionally, it has been quite straightforward for us to articulate the things that you must do under the code because they are a legal requirement and the things that you should do under the code because, if you do not, it exposes you to the risk of regulation and intervention. Those things are articulated on the basis of the existing provisions. There are also things that you could do because we consider them to be best practice. That is a tried and tested formula that I think the industry understands, and we are quite comfortable that it provides a range of options whereby we might ratchet up our interventions.

The second point is the most important aspect in helping to develop, articulate and put the colour and substance on the types of situations in which NatureScot may look to introduce sections 6, 7, 8 and 10—the regulatory aspects of the bill. The simplest way to do that in the code is to use examples of a range of circumstances in which, if we took the view that voluntary mechanisms were not delivering on the public interest as clearly defined in a geography—it could be, say, river basin management planning, riparian restoration or peatland restoration; it could be a range of circumstances all of which constitute aspects of the public interest—we would intervene. We want to be able to articulate and express the regulatory aspects in a range of circumstances.

Perhaps Donald Fraser would like to add to that.

Donald Fraser: The 1996 act requires us to review the code every three years, which is quite prescriptive. That is quite a short timescale for some of the changes that we are looking at. The bill as drafted will change that to provide a bit more flexibility and a time for bedding in some of the changes in the code. The code will have to go through a fundamental review that looks at the new provisions in the bill. The bill provides time for that and allows for a bit of flexibility in when we review, so that we are not constantly reviewing. There is a need for checks and balances to ensure that the code is fit for purpose in that timeframe, but the bill provides more flexibility than the current prescriptive provision.

Robbie Kernahan: If some parts of the sector are not comfortable with the clarity provided in the code, that might provide a mechanism or a trigger for us to say, "Okay, we need to be able to express that more clearly, because there is a lack of understanding." I hope that we would avoid those circumstances by ensuring that we co-produced the code from the outset each time that we reviewed it.

Tim Eagle: What is NatureScot's relationship with the code? I ask that because my understanding is that, under the 1996 act, you had to "have regard to" the code of practice. I am not quite clear now. In some parts, I think that "have regard to" has gone, but it remains in section 5 of the 1996 act. That is not particularly strong, is it? You have to have regard to, but it does not matter. In your minds, will NatureScot work to the code that is produced?

Robbie Kernahan: I will take a couple of steps back. The code is still relatively new. It was not developed in the 1996 act; it was developed later on. It is an attempt to provide clarity and guide behaviours for those deer managers who need to take account of it. Although we also need to take account of it, it was very much driven by trying to direct the behaviours of deer management practitioners about what they can, should and must do. In exercising our functions, we would obviously want to take that into account. That will still apply in principle, regardless of how it is prescribed in primary legislation, because we want to use that code to clearly set out the circumstances in which we will apply regulation.

09:15

Tim Eagle: I looked up a definition, which I have here. It says:

"Case law from 2014 notes that to have regard to a matter means simply that that matter must be specifically considered not that it must be given greater weight than other matters."

Some stakeholders are coming to me and saying, "I don't know what NatureScot is going to do with the code of practice." I think that they need the explicit knowledge that everything that you write in it will be built with them and that it will also be what you follow.

Donald Fraser: The code sets out the interventions that we can make from a regulatory perspective. We have regulatory duties in terms of discharging our functions, and having regard to the code within the legislation is one part of that. The code is a key part of being clear about how we implement and discharge our regulatory functions. It is key to ensuring that we are following the principles of better regulation in setting out when we will act, how we will act and on what basis we will act.

Tim Eagle: I have one more quick question. Would it be better to change "have regard to" in the bill to "comply with" because that might give certainty to stakeholders? Also, as the convener mentioned, would it have been better if a draft code had been published along with the bill, because the framework nature of the bill means

that we do not really know what we are talking about here?

Robbie Kernahan: Taking a couple of steps back, the code of practice of deer management is aimed at deer practitioners. Its primary purpose is to help them to understand how they can deliver sustainable deer management in Scotland. It is structured in such a way as to ensure that practitioners understand the legal requirements, the things that they could do to avoid the prospect of regulation and the things that they should do because it is best practice. That is reasonably well understood under the current provisions. There is a need to look afresh at the code, based on the new provisions, as the interventions under the proposed new section 6ZB about enhancement and restoration are new, and it will take time to work through those provisions and ensure that they are well articulated and well understood.

The Convener: We know that the code of practice has to be approved by the Parliament, but the work with stakeholders to pull the code together has not yet begun. Would it not be desirable for a draft of that code of practice to be available prior to stage 3 of these proceedings, so that we know what it is likely to look like and stakeholders know what is coming down the road?

In other situations where framework bills have required a code of practice, it has been quite some time before that code of practice has been approved, and there have also been difficulties with issues around the guidance on the Hunting with Dogs (Scotland) Act 2023, aspects of the code of practice for the Wildlife Management and Muirburn (Scotland) Act 2024 and even with the definitions in the Agriculture and Rural Communities (Scotland) Act 2024. Therefore, do you agree that it would be sensible for the work on producing the code of practice to start now and for the Parliament to be able to see what it looks like in draft form prior to the bill going through?

Robbie Kernahan: There is a slight difference between the circumstance that we are talking about today and the situation regarding the sustainable agriculture code or other codes of practice, as we already have a code of deer management that is well articulated and understood. We are happy to reflect on your suggestion, but I do not suspect that there will be any significant change to the structure of the code or how it works in practice. The issue is much more about updating and refining the code to take account of the articulation of the new provisions. We are not opposed in principle to starting that conversation, but that might well be limited by capacity.

The Convener: So, you are not considering starting to work on that so that we can give some

reassurance to stakeholders and land managers at the moment.

Robbie Kernahan: We have already started informal discussions, but not with the express intention to progress the two things in parallel. However, I am happy to reflect on that as the bill progresses through each stage.

The Convener: Was a precedent not set with the Wildlife Management and Muirburn (Scotland) Act 2024? I believe that work started on the associated code of practice prior to that piece of legislation being passed, so it is not unusual.

Donald Fraser: We can start that process. That code was not developed in advance of that bill becoming an act, but the process had started. There was engagement with stakeholders in that process, but there was no finality to the code by the time that the bill was passed.

Rhoda Grant (Highlands and Islands) (Lab): Section 13 will add nature restoration as a reason for intervention in deer management. However, control schemes under section 8 powers of the 1996 act have not been used until quite recently. How would new powers in the bill change NatureScot's approach to intervention, and should we include in the bill things that you must intervene on?

Robbie Kernahan: Again, it is useful to remind ourselves that the bill is trying to ensure that NatureScot, as the regulator, can intervene proactively to pre-empt problems arising. One of the potential limitations of the existing legislation is that it is reactive—it involves responding to concerns about damage and trying to prevent damage. It does not allow us to get on the front foot and think about deer management planning in areas that we would like to enhance and restore—indeed, historically, some of the provisions have prevented us from doing that. The bill is an attempt to ensure that we are well equipped, forward looking and able to put in place deer management provisions to enhance nature rather than only respond to concerns about damage.

From our perspective, that is a positive change. I suspect that, as that plays out in practice, a degree of complexity will be introduced. For example, we might have an area of land—a control area—in relation to which there is perhaps a mixed appetite to respond to some of the deer management provisions that are expressed, and I suspect that that might lead to more of the powers in section 8 being more readily used.

At the moment, the use of control schemes is an exception, and they have not been used in many circumstances—indeed, ministers have only recently signed off section 8 control schemes for the first time. To an extent, that is symptomatic of the fact that the use of the powers requires there

to have been quite clear deterioration from a baseline, and some of the habitats that we have been looking at have already been of quite low environmental quality. As a result, if we are serious about realising our aims for restoring and enhancing nature by 2030 and 2045, the use of section 8 powers could become more common.

Donald Fraser: Section 8 is almost the end of a process in the sense that there has to have been a failure in the process in order to get to that point. It is at one end of the regulatory piece that goes from a voluntary approach involving putting in place management plans and agreements to the point at which a control scheme is put in place. The process is meant to ensure that the enhancement and restoration piece is seen in a similar context to the damage piece that we have now. It changes the focus and effort around deer management so that we can have proactive discussions around those areas to ensure that we are getting enhancement and restoration as required.

Rhoda Grant: Are you saying that the new powers would be used earlier, or is it that your intervention would not be so dependent on gathering information about the degradation of the area, so it would involve enhancing the current base rather than bringing the land back to the state that it was once in?

Donald Fraser: A number of provisions in the bill will streamline the process of moving through the section 6, 7 and 8 provisions to ensure that there are no unnecessary barriers. There are appropriate checks and balances in the process to make sure that we, as the regulator, are responsible for what happens. There will be some streamlining but, yes, the evidence base for some of it could be clearer, particularly if it is set out clearly in the code that we talked about earlier.

Rhoda Grant: Can you give us some examples of where the bill would enable you to intervene, as opposed to the current situation? Also, can you say whether we should set out in the bill the circumstances where you must intervene?

Robbie Kernahan: Over the past 20 years, we have exercised powers under section 7 predominantly in relation to designated sites, where nature objectives are quite clearly expressed. Although deer management arrangements have not been restricted to just those areas, because, as you know, we have to look at what would constitute a sensible control area, that has been the trigger for intervention. Increasingly, when we think about public interest being expressed in carbon, water catchment or water quality terms, we might be looking at catchments that are not specifically designated for natural heritage but in relation to which there is quite clearly a need to ensure that herbivore

pressures are not preventing the establishment of woodlands or the restoration of peatlands. Looking at those catchments is relatively new for us but, based on the way that the provisions are written, it is clear that we would be expressing our desire for deer management planning to be much more effective in some of those areas.

Of course, as Donald Fraser has articulated, that could begin to change the nature of our relationships in such a way that we would make a much more formal request for deer management to be applied in a certain area, and, ideally, the owners would come together to facilitate a deer management plan that largely satisfies any concerns about whether herbivore pressures will prevent the establishment or restoration of habitats. If we need additional assurance, we might look to underpin that with a section 7 control agreement, which, again, is voluntary but provides a degree of formality in the relationship between NatureScot, as the regulator, and the owners or occupiers of that land, to ensure that we have in place a process to check annually that progress is being made. In a situation in which we are not able to secure agreement, either individually or collectively, we will find ourselves in circumstances in which a control scheme might be applicable, which would mean that there is less room for negotiation but we remain quite clear about the necessary deer management measures to either prevent damage or to restore and enhance the habitats.

Does that help to explain how things might work in practice?

Rhoda Grant: Yes, but it does not answer my final question, which was about whether we should set out in the bill examples of when you need to act. Should the bill say that, if, for example, one landowner complains that their efforts in nature restoration are being hampered by another landowner, or if you feel that a river is not being maintained properly with regard to wild salmon, you must take action?

Robbie Kernahan: On the specific provisions around when we might act, some of those circumstances are articulated more clearly than others. I think that most of the concern is about the new provisions on responding to the need to restore and enhance nature, because that can take a variety of forms, and the issue comes back to how we articulate and express that. Our expectation is that that would be much more clearly articulated in the code of practice than in the primary legislation.

Tim Eagle: I have to clip my little flock of sheep soon, and, a bit like that, it all seems just a wee bit woolly for me. It is about clarity and understanding. Earlier, you mentioned case studies and the code of practice. With regard to

what restoration means for one holding and then the holding next to it, and so on, will you give the guarantee that you will put not just case studies but clear guidance with the code of practice and work with the sector to ensure that we know what it means?

Donald Fraser: It is about clarity and making sure that the public interest in what we deliver has a high-level strategic nature to it and is signed off by a Government minister, and that there are policies at both regional and national scales to allow us to look at how they affect the locality so that there is a clear line of sight between where the public interest has derived and what we are trying to achieve.

It goes back to the question about how prescriptive we can be. The situation is slightly difficult in that, although deer management is quite often a significant factor in delivering environmental benefits, it might not be the only factor to consider; for example, there might be the issue of invasive non-native species. We must look at other aspects in the round and take a holistic approach to what we are trying to achieve in those areas and how we are doing it. Where there is a need for deer management, it should be clearly articulated and set out in the code—we have talked about the code setting that out, from a strategic level down to how it is applied in practice.

09:30

Tim Eagle: I should have said that criteria are also important in the code. Are you aware of the financial memorandum and that it lays out how many times you expect to use the new powers under nature restoration?

Donald Fraser: Yes—we contributed to the financial memorandum.

Tim Eagle: How did you come to that, out of interest? It mentions three to five deer management plans, nine voluntary control agreements and one to two control schemes. How did you come to those figures?

Donald Fraser: They are based on our application of our current regulatory powers on damage historically. That involved looking at what resources we have in line with the Scottish biodiversity strategy, which is one of the drivers of what we are trying to achieve here, and trying to make sure that we have a programme of work that fits with the resources that might be available and the scale that we are trying to influence and change for the 2030 and 2045 targets. We have looked at it on the basis of the work programme and what we could look to deliver.

Whether we get to section 8 depends on the nature of the case-by-case work that we are doing,

how much engagement we have and how proactive people are. We have set out that those are the maximum levels that we would be looking to resource.

Tim Eagle: Finally, I presume that, in order to come to those figures, you have already done some detailed background work. Is that something that you can release? Do you have a set of draft criteria that could be released, so that we can understand how you came to the figures in the financial memorandum?

Donald Fraser: We have based the figures on the information that we have looked at. It might be slightly hypothetical in relation to the areas that we will be focusing on, but, in broad terms, we looked at the costs of implementation and regulation. We can provide more information.

The Convener: In that case, is it not important to have the criteria in the bill, or far more clearly set out? If you can estimate the costs and put something together in the financial memorandum, the information must be fairly robust. If that information was available to stakeholders, it would make far clearer the limitations that they are working within.

Robbie Kernahan: In response to that point and to Tim Eagle's point, we cannot regulate the system everywhere. That is not how the system works in Scotland; it is a voluntary system of deer management. We are looking only to intervene in cases in which the voluntary system begins to break down. Donald Fraser and I have 25 years of experience of implementing deer legislation in Scotland, based on the criteria set out in the existing provisions. In having a forward look at what the Scottish biodiversity strategy expects of deer management and understanding the need for landscape-scale restoration in certain parts of the country and the Scottish Environment Protection Agency's desire for more effective river basin management planning, we expect—

The Convener: You talk about landscape scale. How will that work with the voluntary arrangement, when you might have people opting in or opting out? Will that increase the number of times that you will have to statutorily, rather than voluntarily, enforce deer numbers? Have you considered that?

Robbie Kernahan: That is how it works already. We have a number of section 7 control agreements over fairly significant areas of land—we might have 12, 13 or 14 estates all signed up to voluntary control agreements. We regulate that by negotiation, and we still prefer to work within a voluntary system. It is only when the voluntary system breaks down, which still tends to be the exception, that we might look to use section 8 to deliver some of the restoration, which is perhaps

expressed spatially, through other plans and strategies. The difficulty with being prescriptive in the bill is that the Scottish forest strategy and other such plans will have some targets that are expressed spatially, and it is difficult to translate that into primary legislation for deer.

Emma Roddick (Highlands and Islands) (SNP): I will pick up on Rhoda Grant's line of questioning, which raised some interesting points about where there should be a duty or a trigger to intervene. I am not clear about whether that should be the case, and it is an area that the committee will have to look into in detail. It would be good to hear a bit more about your position.

Robbie Kernahan: Taking a step back again, the fundamental responsibility for delivering sustainable deer management rests with owner-occupiers. Those people who have the right to take deer have some responsibility to ensure effective deer management. The code of practice continues to set that out at a variety of levels. I suppose that the question is, at which point does the bill put additional duties on NatureScot to regulate the system under certain circumstances? I am not sure what more I can offer other than to look at what has been drafted, which sets out the types of circumstances in which NatureScot may regulate rather than will or should regulate. I hate to come back to it, but we hope to express that more clearly in the code of practice. Again, maybe the committee wants to take further evidence on that.

Donald Fraser: The underlying point here is the change in approach and behaviour in delivering for biodiversity and climate principally, including through the measures around deer management and ensuring that we have enhancement and restoration. If we are prescriptive and provide that NatureScot must act in certain circumstances, it potentially opens that provision up to being undeliverable, because we have to act in too many circumstances, for which we are not resourced.

In the code, we are looking to set out that there is a prioritisation process here. We cannot do everything everywhere—the scale of deer management issues in Scotland is vast and significant. We need to take a planned and prioritised approach, and the structure around that is important, to make sure that there is clarity for stakeholders about where and when we will intervene, by providing as much information as possible about how we see that prioritised approach aligning with other significant Government or public interest policies.

Robbie Kernahan: My brain is catching up with the questions. There is a fundamental question about the voluntary system in Scotland. It is a voluntary system and we only intervene where that voluntary system is failing, but we cannot apply

regulation everywhere. We must be quite judicious about interpreting where and when we will intervene, because we are limited by the resources that we have to regulate a voluntary system.

Emma Roddick: If there would be a resourcing issue if there were a duty to intervene, does it not follow that there is a resourcing issue with when you feel that you should intervene?

Robbie Kernahan: In circumstances in which NatureScot should intervene rather than must intervene, we have a degree of discretion. If the bill suggested that we would have to intervene in certain circumstances, it would require a significant shift in how we would resource the system.

Mark Ruskell (Mid Scotland and Fife) (Green): I will pursue that line of questioning. I am interested in knowing why the section 8 power has been used so infrequently over the decades. It feels as if the power has been redundant. Is part of the reason that there is an in-built fear of judicial review within NatureScot and Scottish Natural Heritage? To go back to Emma Roddick's point about resourcing, do you fear that, if you use the option of a section 8 power, someone might challenge it and you would need deep pockets?

Robbie Kernahan: Fundamentally, no—NatureScot does not fear judicial review. The bill, as drafted, includes a process for appeal and challenge, and we are more than happy to continue to test that. Only by doing so will we understand and learn whether the prescription is right and our approach has been right. Some of the concern about section 8 is because we have always needed to be clearer about expressing damage. Sometimes, that has been difficult in the face of robust scrutiny about how damage is evidenced. I mentioned earlier that, for quite a lot of the schemes, the baseline in relation to the condition is relatively low. It is very difficult to show deterioration in condition when something was not in a great shape to start with.

Mark Ruskell: I am thinking of examples from over the years. Would you say that that was the case with the Ardvar estate a number of years ago, when there were questions about why NatureScot was not using section 8 powers to intervene? Was it because the estate was so deteriorated that damage was difficult to prove?

Robbie Kernahan: To be fair, there probably was a case for intervention in Ardvar. We were satisfied that we had failed to reach agreement. However, section 8 control schemes are signed off by ministers, and ministerial appetite is required to regulate the system.

Mark Ruskell: Would you expect more or less potential risk of judicial review as a result of the

bill, or do you think that there will be enough certainty with the bill and the code of practice so that everybody will know where they stand and it will be clear that a section 8 order is a section 8 order?

Robbie Kernahan: It is certainly our aspiration that the changes to be made through the bill will put deer regulation on a modern footing, with clearly articulated intervention powers being expressed, reinforced and understood through the code of practice, and with the mechanisms by which section 8 would work and be challenged being modern and fit for purpose.

Having just gone through the process, I would say that there are still hiccups in the existing system that we would like to change, and the bill will provide the mechanisms to do that.

Donald Fraser: Judicial review is about challenging NatureScot's processes in delivering on regulation and the legislation. As long as our processes are in place, the risk of judicial review is reduced, lessened or negated. The challenge for us will be around the test of whether we are satisfied under the legislation. It is about making sure that we are satisfied that the processes for delivering on the legislation are in place and not challengeable.

Mark Ruskell: In relation to a section 8 order that was issued this month, you said:

"NatureScot cannot be satisfied that effective deer management will be put in place to address risks of significant impact on peatlands, woodlands and other habitats".

What does the proposed new section 6ZB of the 1996 act add? It is about restoration. Does it change the nature of your consideration of the section 8 powers? It seems that you are already acting where there is deterioration as well as an urgent need for restoration. I am struggling to understand how the proposed new section 6ZB adds anything significant. Maybe you can explain.

Robbie Kernahan: I will go first and then let Donald Fraser follow up. We have a range of designated sites in east Sutherland that are negatively impacted by deer and are suffering damage. There was consensus in the local deer management group that the situation needed to be addressed in the deer management plan. One estate is not part of the plan and is not willing to sign up to a local deer management plan. We were unable to secure voluntary agreement, hence the need to ratchet up the regulatory intervention and use a control scheme to ensure that deer management provisions were in place to address concerns about damage in designated sites or to designated features.

The difference that the proposed new section 6ZB makes is in circumstances in which it is less

about dealing with damage and more about an express desire to restore and enhance, over and above concerns about damage. That is an important distinction. We have never really had the opportunity to think about where we would like to see intervention to restore and enhance nature, to deliver for nature and climate outcomes in a way that is more about positive outcomes and less about reactive concerns about damage and things going backwards. That important distinction is the value that we see in the new provisions.

Mark Ruskell: Would it not be easier to say that deterioration and restoration are part of the same picture, and that what we need is deer management and nature restoration orders? That would encapsulate everything rather than having a quite outdated system that is based on preserving remnants of biodiversity and then trying to bolt on something that is more about restoration and improvement? It feels quite confused.

09:45

Donald Fraser: There are two parts to it, which are both quite important. As is set out, the issue of deer management is pretty extensive throughout Scotland, and we are trying to get a baseline of effective and sustainable deer management across Scotland. The preventing damage aspect, and looking at the different habitats and the purposes that we want to achieve, allows us to do that fairly clearly and consistently across Scotland.

The second part is where we are looking to deliver enhancement or restoration more specifically—because we cannot do that everywhere—but we are working at both ends of the spectrum to get the best for our biodiversity and climate locally and regionally, and we are working at a national level. The public prevention of damage aspect is important in ensuring that we get consistency across Scotland.

The Convener: I have a brief technical question about section 8. The bill suggests that a control scheme should be registered in respect of titles to the land. Should there be something in the bill to allow, in the event of the title changing hands, the control scheme to change back to a control agreement? Would that not be more reasonable, given that the new owners might be willing to put in place voluntary measures to control deer? Do we need to be aware of that?

Robbie Kernahan: That is an interesting question, convener. Again, how would that work in practice? The basic premise is that we want control schemes, or deer management measures, to persist regardless of changing ownership. It is important that that remains the case.

I do not think that it would make a lot of material difference whether deer management provisions

were carried out voluntarily or as part of a control scheme. After all, a new owner who came in might be quite comfortable in applying the deer management provisions in a control scheme. There is the risk that they would not be able to deliver on those provisions, and then NatureScot would have to take on the deer management arrangements instead and subsequently charge the owner. That would be the issue. However, if a new owner was comfortable with the conditions of a scheme, it would not make a lot of practical difference.

The Convener: It might not make a practical difference, but, surely, the legal obligation under a control scheme is quite burdensome. If a voluntary agreement could be reached between NatureScot and a new owner, would that not be more proportionate?

Robbie Kernahan: I suspect that that would be absolutely negotiable. After all, we review control schemes annually, and we might reach the view that, in that location and with that owner, a control scheme would no longer be appropriate.

The Convener: Thank you. Did you want to come in, Donald?

Donald Fraser: The point is that we are satisfied with the measures that are in place. If we can be satisfied with the measures, that might negate the need for continuing the section 8 control scheme.

Emma Harper (South Scotland) (SNP): Good morning. You have already touched a little bit on the criteria for managing deer, but I note, for example, that different species of deer occupy the same habitat. NatureScot's website mentions the deer working group's recommendation that NatureScot adopt an upper benchmark of 10 red deer per square kilometre; however, that is just in the Highlands, and we know that there are deer in the Borders and in Dumfries and Galloway, and that there are peri-urban deer, too.

What I seek to understand is the need for deer management protocols or policies to be flexible, given that different habitats are being occupied and farmland is being affected. Of course, that is all about damage to property rather than peatland restoration. Is there a need for flexibility in the bill to ensure the creation of guidance that would work for the diverse habitat areas that need to be protected and restored? Is that correct?

Robbie Kernahan: I think so, yes. The bill does not mention specific density thresholds, and it is incumbent on NatureScot to take into account the size and density of deer populations in discharging our functions. As you have rightly said, the densities, the species and the impacts will be different in different parts of the country, and it is important for the committee to understand and

recognise that, because one size does not fit all here. We need the regulation and legislation to provide flexibility for intervention based on different circumstances.

That brings me back to Mark Ruskell's previous question about damage. When it comes to agricultural or commercial forestry issues, the biggest concern is damage, which could come from a range of species at various densities. We just need to ensure that our interventions are alive to that fact and that, if we seek to use orders under sections 6, 7, 8 or 10 of the 1996 act, any such approach is afforded the flexibility to deal with site-specific circumstances, species and impacts. I think that the bill provides that flexibility.

Emma Harper: Baseline data is going to be collected and co-ordinated. I assume, therefore, that NatureScot will need to work with, say, Forestry and Land Scotland to ensure that everybody is aware of how the data is being collected and that it is being measured or analysed, or the level of damage is being assessed, to see whether a tipping point has been reached and a section 8 order is required. Am I correct in saying that partnership working will be required to collect that data?

Donald Fraser: Yes. The data that is collected has a number of facets to it, including population densities and localities, but the main one is impacts. As we have said, most of the deer management in Scotland is done on a voluntary basis by the private sector, the third sector and the public sector. FLS is a significant player in that respect, and it takes a significant proportion of the deer cull every year. That stakeholder working happens across the piece.

The collaborative nature of gathering and then sharing evidence is important. We are doing quite a lot of work in that respect to ensure that the data can be made open and transparent and that more informed and better decisions can be taken across landholdings and within different management groups. We have structures such as deer management groups in the upland areas, but such an approach also needs to be made more apparent in other areas of Scotland.

Beatrice Wishart (Shetland Islands) (LD): Good morning. On the limitation of criminal liability, section 18 of the bill will amend section 14 of the 1996 act, which deals with the criminal liability exemptions for actions under a control agreement, control scheme or section 10 of that act. Are the distinctions between staff and non-staff criminal liability sufficiently clear under section 18 of the bill?

Robbie Kernahan: The bill continues to clarify that, in pursuit of our functions under sections 8 and 10 of the 1996 act, NatureScot staff or

contractors working on our behalf are quite clearly protected from potential criminal liability, as is expressed under proposed new subsection (3A) of section 14 of the 1996 act. I am quite comfortable that that is practical and workable. It is not a significant change from ensuring that whoever it is—NatureScot staff or the contractors that we use—operates within the law.

Beatrice Wishart: How will the changes be communicated to your third-party contractors or, indeed, community groups?

Robbie Kernahan: In circumstances in which we are exercising section 8 or section 10 powers over anybody involved in the control of deer, a lot of that—the nature of the intervention, the type of deer management provisions being executed and how they will be discharged operationally—will be spelled out in operational plans. Practically speaking, I think that a lot of that will come down to what species of deer we are shooting, when we are shooting them, what methods we are using and where it is happening. That will largely be captured in the operational plans for delivering those functions.

How they are expressed to local communities will, I suspect, depend on the nature of the intervention and its scale. For example, in pursuing control schemes, we already have a mechanism whereby we alert interested parties to the fact that such a scheme is in operation and to the specific management measures expressed in it. If people have any concerns about that, they have the means to make representations both to us and to ministers about them.

Donald Fraser: I make it clear that these powers will be used in fairly limited and controlled circumstances; they will be highly controlled. There might be circumstances in which there is no agreement on the management that is taking place, our staff who are undertaking regulatory functions might be exposed to potential criticism as a result, and it might all end up in legal issues. The approach provides an element of protection for our staff in the process, but, as I have said, it will be limited and controlled. Clearly, there are exemptions for welfare and other such aspects that it is completely important to maintain, but the approach provides a legal basis for protecting our staff in certain difficult circumstances when we might have to put boots on the ground to effect deer culls that others might not accept.

The Convener: Moving on to the next topic, do you have any comment on the need for or the workability of any of the proposed changes to your investigatory powers under sections 21, 22 and 23 of the bill?

Donald Fraser: Basically, they are about streamlining things so that we are able more

effectively to enter on to land in circumstances when we do not have an agreement in place. The deer working group looked at this issue and, indeed, recommended that an external body look at how regulation can take place more effectively. We are quite comfortable with that being in place and that the information and data that we might require to make decisions on those regulatory processes are available to us.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): I am interested in understanding what processes NatureScot uses to assess an applicant's competence and fitness to be authorised, especially for higher-risk activities such as using shotguns or night shooting. It would also be helpful for the committee to understand whether the bill will make a meaningful change to that process.

Donald Fraser: I am happy to take that question. Fitness and competence are part of the current process for issuing authorisations. That was explained in the previous evidence session, but there are two parts to it. The fitness piece is about someone's ability to hold and own a firearm. The competence piece is generally about the person's practice and ability to carry that out safely, effectively and competently, considering the various aspects of public safety and food safety. Those are the two pieces that we consider and apply now when looking to issue authorisations.

The bill will look to set a base standard for deer management across Scotland. We support demonstrating that deer management is done effectively, so that the public can have confidence in it. It is important that the public are confident that those managing and culling deer are doing so competently. There are additional aspects that are linked to the pieces on out-of-season control and night shooting, and we might look to put in additional aspects of training or other requirements to make sure that those things are done competently. The bill allows us to look at competence in respect of those activities, to ensure that it is fit for purpose in terms of modernising the different approaches that are now available in Scotland through the use of technology for some management techniques. We are making sure that we have the checks and balances to encourage public and political confidence.

Elena Whitham: If we think about Scotland as a whole, do we have the necessary skills spread across the whole country? My colleague Emma Harper touched on that. Do we have people across Scotland who possess the skills that we are looking for to carry out those activities, or does NatureScot believe that there is a need to train up

and provide assistance to people to get that level of competence?

Donald Fraser: In Scotland, we have a significant resource of people who are able to undertake effective deer management and culling. In delivering the fit and competent approach, we do not want to introduce unnecessary barriers, and we want to ensure that we are not putting barriers in place. Clearly, public safety must be at the heart of what we do, and we are not reducing standards, but we also need to ensure that there are no unnecessary barriers.

10:00

One challenge for deer management is in making sure that we have the continued resource coming through, which we will need to effect the increased culls that we are looking at. Aligned with other agricultural and land use sectors, we have quite a senior-aged population who are involved in deer management, so we need a flow of people coming into the industry to maintain the deer management resource in the longer term.

However, the competence element is not a barrier to doing that. It is inherent in most of the land management spheres now that we have competence and training to manage deer, but it is important that we maintain that resource and that an element of support is there for that to take place.

Elena Whitham: The issue that I am trying to explore relates to lowland deer management and the fact that a lot of people will be asking permission to go out on the land and, in a hobby capacity, help the landowner to manage deer. The costs associated with that person getting to that level of competence can be quite prohibitive. Perhaps we should be thinking not about larger estates in Highland settings but specifically about lowland settings.

Robbie Kernahan: It is important to remind the committee that deer management practitioners in Scotland have a wealth of skills and experience. Although that is the case, currently the law does not require anybody to have demonstrated their competence before being allowed to go out and shoot deer. The bill would introduce a basic requirement for anybody carrying a firearm to demonstrate that they are competent and able to shoot deer safely and humanely with the highest regard to deer welfare, food standards and firearms safety. That will apply to anybody who wants to shoot deer in Scotland and is a sensible step in building confidence that deer management in Scotland is progressive, operates to certain standards and is much more aligned with what happens in lots of other European countries, where there is a basic level of competence that

anybody who wants to shoot deer must reach. That is meaningful progress.

There is a concern that that could be a barrier. However, the vast majority of vocational and recreational stalkers in Scotland are operating to excellent standards, and most of them have already undertaken voluntary qualifications to demonstrate that very point. I hope that that dispels any concern that the requirement is a barrier to deer management.

Over and above that, when people want to shoot deer out of season or at night, we already assess their level of competence. We will need to reflect on how that happens and whether that provides opportunities to ensure that the highest standards are applied. Doing so allows us to potentially deregulate the system, allowing individuals who have the skills and the knowledge to exercise those functions without having to come to NatureScot for a specific authorisation when they have already satisfied the requirements and have demonstrated that they have the skills and capacities to shoot deer safely and humanely, with all active considerations to ecology and welfare.

The Convener: Will the authorisation be linked to properties or to individuals? Will there be the ability to do both?

Donald Fraser: The bill will offer the ability to do both.

Tim Eagle: Section 28 of the bill will allow people to register as being authorised to carry out activities that require authorisation from NatureScot. In what cases would one-off authorisations outside the register be granted?

Robbie Kernahan: The suggestion is that activities such as driving deer with vehicles and shooting deer in the close season will still require specific authorisation from NatureScot. Once someone is on the fit and competent person register, they will be able to shoot deer in Scotland, but if they want to shoot deer at night, we expect a slightly different degree of competence—they will have to evidence and demonstrate that they can do that competently, in line with what we already assess. That will provide flexibility to practitioners to make decisions about the point during the day when they want to shoot deer, much as they do when they are controlling foxes or other things at night. However, there remains a requirement for specific authorisations to be applied by NatureScot for certain activities, and those certain activities tend to be the exception—they are not normal and commonplace activities.

Tim Eagle: Okay. That is fine.

Elena Whitham asked a good question. We talk a lot about the upland context, but we do not talk

enough about the lowland context, which is much more problematic. If we want to achieve the reduction of deer numbers, for the purposes of nature restoration or whatever it is, we do not want to have barriers. Have you thought about having a referee scheme or a grandfather rights-type scheme for the fit and competent element that, at least in the interim, could help those in the sector to officiate one another until we can get an official standard? Do you know what that official thing will be?

Donald Fraser: No. There is a bit of work to be done on that, and we want to develop that with the industry to get the standards right. Those things are on the table. We have done that in the past. When we introduced the fit and competent person approach and the requirement for a level of confidence there, we had something almost like grandfather rights: we allowed people to go to others to demonstrate that they had that competence as well as official qualifications.

The trajectory is that we want to recognise those official standards but there will be a journey towards that, whatever those standards are. We need to make sure that there are timescales for that and that people are prepared, so that we do not have barriers—we cannot afford to have those barriers. However, we want to ensure that the level of competence is maintained and enhanced. There are different ways of doing that, and the prescription around it must take that into account.

Robbie Kernahan: To add some colour to that, I suspect—I have not quantified it, but perhaps I should go away and get the data to provide to the committee—that by far and away the majority of stalkers in Scotland will already be deer stalking certificate qualified at level 1. Under those circumstances, where there might be a proportion of people who are not qualified, it will be a small proportion.

Of course, we are happy to look at whether we can continue to facilitate effective control, reassured by the right standards, as Donald Fraser said. Traditionally, we have done that with a system of two referees who are aware and have witnessed an individual discharging and demonstrating best practice. If there is consensus among the sector that we need to actively consider that, we would be happy to look at it. However, we want to have the right standards pitched at the right level. We want to have consensus among practitioner groups so that we retain an ambition to ensure that those standards are right.

Tim Eagle: I agree with that. It is about making sure that there are no initial barriers. I am pleased that you are thinking about options. We have an incredible amount of talent out there and some experienced people.

Quite a lot of international guests come to Scotland. I do not know whether you can put it on record yet or whether you have thought about it, but I presume that we might be able to do something along the lines of allowing them to come and there being no need for them to do any further stuff, assuming they are accompanied by someone who is fit and competent by our law.

Donald Fraser: It is within the bill that that will be permitted, as long as they are accompanied by someone who is trained.

Tim Eagle: Okay.

The Convener: We talked about the refereeing and NatureScot effectively being able to authorise someone being on the register who does not have the DSC1 qualification. It would be helpful to the committee if we knew that that work was starting now, so that we know what the transition to the new authorisation will be. Would you take that on now, a bit like the code of practice, and start working on it so that the committee and the Parliament can have confidence that we will not fall off a cliff edge?

Robbie Kernahan: We are happy to take that commitment away and put some thought into both process and timing.

Picking up on the final point from Tim Eagle about guests coming from elsewhere, Scotland has an international reputation for high-quality stalking and all the benefits that that provides locally. Indeed, quite a lot of those guests will already have secured qualifications in their own countries, which probably require a higher standard than we are asking for in Scotland. However, where they did not have such a qualification, it would mostly be addressed by accompanied stalking with somebody who was competent to do that.

The Convener: How does that work in practice? Is it about making sure that your guest is within sight when they are shooting? Is that effectively what it means? If you were accompanying a visitor, would you need to be in earshot, eyeshot or whatever for that to be allowed?

Robbie Kernahan: Yes, they would be accompanied.

The Convener: Tim Eagle, I am conscious of the time and Edward Mountain is still to come in, so would you like to ask your final questions?

Tim Eagle: I have a couple of final questions. The first is around the business and regulatory impact assessment, or BRIA. I have not yet seen one or found one. Do you know whether that has been done or is being done? When we might see that?

Donald Fraser: That has been done by the Scottish Government, not by us. We have contributed to it, but I do not know the answer to that question.

Tim Eagle: My second question is about legal resource within NatureScot. I had a figure that the recent intervention at the Loch Choire Estate cost you nearly £14,000. For clarity, if you are dealing with the numbers that we spoke about earlier, are you confident that you have the legal resource within NatureScot to deliver it all?

Donald Fraser: That is one consideration that we take into account when looking at the priorities and the work programme that we have and the resource that we have. Inevitably, that example was the first, as we have said, so we will learn lessons from it. We do not expect that to be the cost of all such schemes.

Edward Mountain: Robbie Kernahan, this question is for you. Between us, we have probably taken part in or signed off the culling of several tens of thousands of red deer across Scotland. In a couple of sentences, bearing in mind the Deer (Scotland) Act 1996 and the proposed bill, can you define good deer management?

Robbie Kernahan: My immediate response is that it is planned, open and transparent. Decisions about deer management provisions are made in a planned way, cognisant of some of the constraints that are provided by the land on which deer management is taking place.

Edward Mountain: That does not define it; it says what some of the constraints are. Let me try a definition and see whether you agree with it. Wild deer are part of a mosaic of species that affect the habitat in which they all live, and their management ensures that the habitat as a whole is not degraded and that the welfare of all affected herbivores is respected. How about that? Is that a good definition?

Robbie Kernahan: You have given that more thought than I have in advance of the session. Deer management decisions have to be taken into account, with habitat and land management objectives at their heart.

Edward Mountain: You would be surprised if I did not think about deer management, which is what we are talking about. I am sure that we would all have come prepared with that.

I have a follow-on question from that. Is deer management forming a mosaic of species? For example, in the low coasts of Moray, it might be barley; in Abernethy, it might be capercaillie, if they are not declining too far; in the Cairngorms national park, it might be Scots pine, if they are not being eaten by beaver; and on the west coast, it might be sessile oaks and the rainforest. All those

areas are zoned. Should there be areas that are zoned for deer—such as Forestry and Land Scotland has—where greater numbers are allowed, with fewer allowed in areas where it is not appropriate to have them, such as new plantations? Do you agree with zoning?

Robbie Kernahan: Inevitably, zoning already takes place and is based on the management objectives of the landowners. That is absolutely right. As you well know, land management objectives are complex and varied, both within a place and between places. Deer management provisions need to be able to respond to that.

Edward Mountain: Okay. If we accept zoning, I want to know how, within the Natural Environment (Scotland) Bill, you will take zoning into account and accept some damage by deer in certain areas if there is no damage by deer in other areas. That might be within a deer management group or, as you say, on an individual estate. To me, the bill does not allow for that and it is a bit of a sledgehammer to crack a nut. Can you explain to me how NatureScot will allow for that?

Robbie Kernahan: I will have a first go and will then pass to Donald Fraser. Based on the conversation that we have had with the committee today, I hope that there is explicit recognition that we will intervene in certain circumstances in certain parts of the country, on the basis of certain triggers, which means that there is probably already a recognition that we will not intervene in certain other parts of the country. Zoning will, therefore, take place as a result.

10:15

Edward Mountain: Donald Fraser, the convener can say whether you have time because I have one follow-up question.

Donald Fraser: As Robbie Kernahan says, we have differential zoning or differential densities now, and that will continue to be the case, based on the management objectives. However, the bill sets out the need to put more prescription on some of those areas, to make sure that the objectives and outcomes are realised. There will be different densities and difference in the management in Scotland and in the deer management areas, as well as an ability to have those different objectives realised.

Edward Mountain: My final question is specifically on some activity carried out by NatureScot on the North Ross deer management group earlier this year, when it spent £32,000 on providing helicopters to private estates to kill deer in difficult areas. Do the deer live in those areas because that is where they are not hounded day in, day out and because they are difficult areas to get to? Is it good management when you are

doing that to allow only 21 per cent of the hinds that are in calf to be shot where, for the past five years, the average is about 40 per cent of hinds in calf shot in that area? You were definitely leaving calves on the hill.

You shook your head, Donald Fraser. You were not?

Donald Fraser: No, we were not. Those areas where they were targeting the deer—in those circumstances—are the higher areas that are less productive. There are not the calving rates that you would find in the lower areas in the North Ross deer management group. To be fair, it was mainly estate stalkers who were involved in that management, and they are absolutely bound by best practice to ensure that no welfare issues are associated with it. That is at the heart of all the operations, whether they involve a helicopter or any other form of assisted culling.

Edward Mountain: It seems a lot of money to give to private landowners to control deer when you are talking about serving section 7 and section 8 notices in other areas—£32,000 is a lot of money.

Robbie Kernahan: It is an illustration of a deer management agreement. It is voluntary. We have signed up to a voluntary agreement with a number of estates that are trying to discharge that. We know that, in deer management, it is difficult in practice to access some of those areas, so we work with the estates to facilitate access. In my view, it was a good example of collaborative action between the estates that had signed up to a voluntary control agreement.

Edward Mountain: I am not sure that I agree.

The Convener: Thank you, Mr Mountain. Thank you, Robbie Kernahan and Donald Fraser, for your responses this morning. They are much appreciated.

10:17

Meeting suspended.

10:26

On resuming—

The Convener: Welcome back. We are now joined by nine stakeholders who have an interest in deer management—I do not know whether that is a herd, a flock or a cacophony, but you are all welcome. I will invite you all to introduce yourselves in a moment.

We have allocated approximately two hours for the discussion. As you will have seen from the previous session, we have many questions to get through, so I ask everybody to be succinct in their

questions and answers. Some questions will warrant no more than a yes or no response—I know that that may be incredibly difficult—but other questions will require more discussion so that we can hear the various voices. I ask you to indicate to me or to the clerks if you wish to participate at any point. It is not expected that everybody will speak to every point, especially if you feel that the point has already been made. Likewise, if you feel that a part of the discussion does not relate to your area of expertise, you should not feel that you need to respond to every question.

I remind you that you do not need to operate your microphones—we have a gentleman who will do that for you. I invite you all to introduce yourselves, starting with Dick Playfair, on my left.

Dick Playfair (Scottish Venison Association): I am secretary of the Scottish Venison Association.

Duncan Orr-Ewing (Scottish Environment LINK deer group): I am head of species and land management at RSPB Scotland, but I am here in my capacity as convener of the Scottish Environment LINK deer group.

Grant Moir (Cairngorms National Park Authority): I am chief executive of the Cairngorms National Park Authority.

Tom Turnbull (Association of Deer Management Groups): I am chair of the Association of Deer Management Groups.

Peter Clark (British Association for Shooting and Conservation): I am the Scotland director for the British Association for Shooting and Conservation.

Graeme Prest (Forestry and Land Scotland): I am director of land management for Forestry and Land Scotland.

Alan McDonnell (Trees for Life): I am head of nature restoration at Trees for Life.

Ross Ewing (Scottish Land & Estates): I am one of the directors at Scottish Land & Estates.

David Fleetwood (John Muir Trust): I am director of policy at the John Muir Trust.

The Convener: You are all very welcome.

I kick off with a question that I asked the witnesses from NatureScot in the first session. Section 10 of the bill amends part 1 of the 1996 act to add that NatureScot should take account of “the public interest” in respect of the

“Aims and purposes of deer management”

and consider the environment when carrying out its functions. Is there consensus on the terms

“public interest” and “environment” and how they relate to deer management across the sector?

Ross Ewing: It is important to understand what “Aims and purposes” means in the context of the 1996 act. NatureScot has to have regard to those aims and purposes when exercising its statutory functions. The one that feels out of kilter with the rest is the aim

“to safeguard the public interest”,

in so far as that is not a term that is defined in the bill.

10:30

As the convener mentioned in the previous session, there is an attempt to define it in the explanatory notes to the bill. However, given the absence of a definition in the bill itself and the direct correlation between the aims and purposes that are set out in the 1996 act and NatureScot exercising its statutory powers—which, in the worst case, could include undertaking a section 8 scheme—we feel that the definition is limited.

You also mentioned the addition of the word “environment”, for which section 10 of the bill also provides. Section 1(2)(a) of the 1996 act refers to

“the size and density of the deer population and its impact on the natural heritage”,

to which the bill would add “and environment.” The rationale for that is set out in the explanatory notes—apparently, it is all about NatureScot being able to take

“account of the cumulative impact of deer across Scotland”,

when considering and formulating deer management policy.

However, we know, because NatureScot has admitted it on the record, that, ultimately, whatever the national deer population size or the size of the populations of each deer species, the impacts of deer on their environment at local and regional scales are of much greater significance. In our view, therefore,

“the cumulative impact of deer across Scotland”

as per the explanatory notes, is somewhat inconsequential. We feel, therefore, that the addition of the term “environment” is probably a bit of an overreach, and we are not convinced by the rationale that is set out in the explanatory notes.

Duncan Orr-Ewing: I think that this point will come up again later. We are satisfied that the definition of “public interest” will come out in the discussions around the deer code in due course.

We are dealing here with legislation that dates back to 1996. As NatureScot has explained, at that time, the main priorities were the protection of

forestry and agriculture; we are now dealing with a climate and nature emergency and the need to restore biodiversity at a landscape scale. Many of the drivers of nature restoration—peatland restoration and new native woodland plantations—will come out in the deer code. Along with the ADMG, however, we think that it would be helpful to have some case studies of what good looks like in practice.

The Convener: You said “in due course”. Before I became an MSP, the late Sir Alex Fergusson said that I should avoid the issue of deer in Parliament but that we surely would have it sorted out by then. However, it has been many years now. Should we not see a definition clearly set out in the code of practice now, in tandem with the bill going through Parliament, rather than wait until the bill becomes an act?

Duncan Orr-Ewing: We have been through the process—as was mentioned earlier—of developing the grouse code, and we have also been involved in the muirburn code. Those codes have been worked up with full stakeholder involvement. We are satisfied with the process, and we think that it will ensure that we arrive at a fair definition of “public interest”.

Tom Turnbull: We have been asked to manage deer in the public interest for quite a long time, but it is still difficult to define. In fact, it was so difficult that, when the deer management groups were assessed, there were 101 criteria for how we manage deer in the public interest. Nevertheless, we have demonstrated considerable progress in exactly that regard. Deer management plans are in place. We are aware of what is being planted, the peatland restoration that is being done and the work that is being undertaken. We are aware of the deer that are being shot and the deer that are in the landscape in the Highlands. I think that we are already managing deer in the public interest. A definition would be helpful, but in the Highlands we are already doing that.

We should be furthering and not preventing sustainable deer management. We should be providing a resilient deer sector with deer managers who are capable of managing the deer in the public interest, however that is defined.

Peter Clark: There is consensus around the room about the need for effective deer management, but the pathway that is taken to get to that will differ depending on who is speaking. With regard to regulation, we need further incentivisation, particularly on the public interest point. We have heard, in respect of various different aspects of farming, about public good for public money, and that absolutely needs to follow the bill. There needs to be greater incentivisation to drive the change, because the financial

package is not currently in place and we have regulation over incentivisation.

Grant Moir: The public interest can be defined in the legislation or in the code, but putting it in the code allows it to be changed as things change over time, whereas putting things in primary legislation tends to tie them down for a long time. As we have seen over the past 10 or 15 years, the definition of public interest has changed when it comes to land. Having a definition in the code would make more sense, but we also need an understanding of what that might mean as we go along. It would be good to do some early work on that with stakeholders, and that should be looked at.

The Convener: In your view, would it be better if we saw a draft code of practice prior to the conclusion of the bill process?

Grant Moir: I do not know about the exact timescales with regard to NatureScot's capacity and such like, but it would be useful to have initial discussions with stakeholders about what the public interest looks like, so that people are clear about where the bill is heading in that respect.

Graeme Prest: I will try to be succinct. I support what has been said. As those of us here all know, we manage 9 per cent of Scotland and 30 per cent of the deer cull, and I agree that our experience confirms what others have said. It is not helpful to define "public interest" too tightly, but it is nonetheless important to have "public interest" in the bill, and having "environment" in there is important, too, because it recognises the nature and climate emergency.

Ross Ewing: Those aims and purposes are important. They are in part 1 of the 1996 act, which is where everything stems from, and for that reason it is important that a definition is provided. Whether that is provided in the bill itself or in the code is somewhat inconsequential. At the moment, however, there is no obligation for the code to provide that definition, so we would like to see that in amendments at stage 2, to ensure that the definition is provided and that it can potentially be changed in due course. We would certainly support having the code of practice developed ahead of stage 3, for the reasons of clarity that were set out in the previous session.

The Convener: I call Beatrice Wishart.

Beatrice Wishart: Thank you, convener—I take you at your word, so my question will be short and succinct.

Do the witnesses agree with the proposed changes to advisory panels and the code of practice on deer management?

Ross Ewing: The function of advisory panels is set out under section 4 in part 1 of the 1996 act. Section 4(8) refers to

"encouraging and facilitating the engagement of the local community in deer management ... looking into issues relating to deer management in the locality ... and ... communicating the views of the local community to those engaged in deer management".

It is not clear to us why NatureScot wants to be a formal part of the advisory panel and how it is currently limited by being an observer of the advisory panel. That is not clear from reading either the explanatory notes or the policy memorandum to the bill. It would be helpful to get some clarity from NatureScot, if possible, as to why it feels that it is important for it to be a substantive part of the advisory panel.

It might also be worth pointing out that NatureScot is the entity that convenes the panels, so there may be a question around a conflict of interest. If it is convening the advisory panels, does it also have the right to play a substantive part in the panel? That may be more of a procedural point, but at this time we are not clear as to the reason that NatureScot is seeking to be a substantive member of advisory panels as opposed to being just an observer.

Tom Turnbull: On that point, we absolutely need clarity as to why NatureScot would like to be on that panel and why it would not want to have some form of independence from the panel in an advisory capacity.

David Fleetwood: I agree with the point about clarity. We support the changes, but NatureScot could perhaps come back on the difference between taking an active part in decision making and being an observer of proceedings. On that basis, we would support that change.

Alan McDonnell: There is a wide variety of expertise across a range of specialisms within NatureScot, and it makes sense for decision makers to have access to that. As for the code, the important thing is that everybody is interested in clarity with regard to how the legislation will work in practice. Without that, we will have uncertainty, which will lead to fears and different agendas, which will fuel division, and that is literally a practical obstruction to progress on the ground.

The Convener: Our second theme is deer management plans, control agreements and control schemes, and we will kick off with a question from Mark Ruskell.

Mark Ruskell: We are interested in those sections of the bill that relate to deer management, as the convener described. We are interested, in particular, in your comments on the incorporation of nature restoration as a ground for intervention—

we discussed that in the previous session; the proposed changes to the control measures; and NatureScot's ability to recover the expanded costs.

I see that Mr Orr-Ewing would like to go first.

Duncan Orr-Ewing: I have to express my concern arising from the NatureScot evidence that we have heard—in my view, that did not show the ambition that is needed. We are in a climate and nature emergency, but what we heard from NatureScot sounded a lot like business as usual, constrained by existing resources.

I remind everybody that we have a population of 1 million deer, which is increasing. We know that we are being asked to increase the deer cull by 50,000 animals per annum in order to get the national deer population on a downward trajectory and to reduce the damage and facilitate nature restoration. However, many of us on the ground—I speak not just for environmental non-governmental organisations, but for private landowners and public bodies that are trying to deliver nature restoration—are often frustrated in that exercise by pressure from deer often coming from outside the boundaries.

I agree with the commentary that we heard earlier from Tim Eagle, Emma Roddick and others that we need clarity around what NatureScot must do and the triggers for when it has to intervene. At the moment, that is not clear, and there should be more occasions for intervention. The independent deer working group report, for example, set a threshold of 10 deer per square kilometre; surely that must be a trigger for intervention. In addition, we need protected areas, which are a fundamental plank of nature restoration, to be in good condition. Many areas—mainly woodland and upland sites—are degraded through damage by herbivore browsing and trampling.

We need more action on the ground, but it did not sound, from what NatureScot said, that more action is coming. It sounded roughly like NatureScot is going to do what it is currently doing, and that is not enough.

Grant Moir: Key to the bill is how we intervene, and it is crucial that we get that right. I am interested in how intervention interacts with plans. The bill provides for the powers to be linked to plans that are put in place to do certain things in certain places. We are seeing plans coming through under other bits of legislation. For example, under planning legislation, all local authorities through their local development plans, including the national park authorities, have to produce nature network plans for their areas. If there is a plan that says, "These are the nature networks for these things in these areas," and something like deer management is preventing the

delivery of those nature networks, is that grounds for intervention? It might be at a voluntary level to start with and work up the hierarchy, as NatureScot described, but it is crucial that we understand where and at what scale the interventions are happening and what resources are needed to do those things. Resources are crucial: it is all very well having legislation, but is it possible to do the things that you want to do?

Key for me is the move away from just looking at damage to degraded landscapes. If we are going to reverse biodiversity loss and tackle the nature crisis and the climate crisis, it is about not just stopping damage to already degraded systems, but trying to make the enhancements to deliver restoration in those places. There is no doubt that a lot of enhancement and restoration will be done voluntarily, as it currently is, but intervention will be needed in some places and we must ensure that we have the right mechanisms for it. That is about asking what plans trigger those things, what things make intervention happen and whether we have the resources to be able to intervene.

David Fleetwood: I agree with the points that have been made. Perhaps I could add a little bit more data. As Grant Moir said, this is one of the key points of the bill.

We have talked about delivering deer management in the public interest and the definition of that. It would be fairly uncontroversial to say that the definition of public interest would incorporate responding to the climate and biodiversity crisis, flood mitigation, increasing water and air quality and so on. Eighty per cent of our peatland is degraded, our native woodland cover is stagnating at around 3 per cent, and deer counts by NatureScot show that 56 per cent of areas surveyed have densities above seven deer per square kilometre, which is the point at which we see deer damage to native woodland and to peatland. Only 4 per cent of surveyed sites have densities at two deer per square kilometre, which is the level at which some of that habitat will regenerate. For me, that is a pretty good illustration of why the shift from focusing on damage and on protecting a degraded baseline to restoring some of that habitat is critical to the bill.

Ross Ewing: I am not able to say to the members I represent in what circumstances they will be subject to regulation, because that clarity is not provided in the bill. It is all very well to discharge that to the code of practice, which we know is the intention of ministers. However, if we look at what NatureScot has to do for that code of practice, it is by no means clear and definitive enough.

10:45

As members touched on in the previous evidence session, NatureScot has to have regard to the code. This is what that means.

“To have regard to a matter means simply that the matter must be specifically considered, not that it must be given greater weight than other matters and certainly not that it is some sort of trump card. It does not impose a presumption in favour of a particular result or a duty to achieve that result. In the circumstances of the case, other matters may outweigh in the balance of decision making. On careful consideration, the matter will be given little, if any, weight.”

In this circumstance, that means that NatureScot needs to consider whatever is set out in the code of practice, but then it could act in complete contravention of it. That is the reality of what we are talking about. When I am trying to give members certainty about circumstances in which the state might intervene in deer management issues, even when the code is finalised, based on the current draft of the bill, I will be unable to do that. I cannot see how that complies with the point about the legislation being reasonable and proportionate.

Another compounding issue is that we do not yet have a business and regulatory impact assessment. We have certainly not been approached by NatureScot or officials to understand how those powers might impact on our members under the new ground for intervention. I do not think that my colleagues at the ADMG have had a similar representation, either. I am, therefore, not clear whether any assessment has been undertaken as to the actual real-life impact of that.

All that we have is the financial memorandum, which sets out some arbitrary numbers—it mentions three to five deer management plans going forward, nine control agreements a year and a maximum of one to two control schemes going forward under the new ground. How those numbers were determined without having the criteria and circumstances decided is beyond us. I have to put on the record our serious concern about how the new ground for intervention will interact with NatureScot’s statutory functions.

David Fleetwood: I agree with Ross Ewing that there is an opportunity to clarify process and timelines. We might come back to discuss creating clearer triggers for NatureScot to take action under section 7 and section 8. That could be done in a variety of ways, such as looking at deer densities over a certain level, deer densities around designated sites, sensitive habitats being negatively impacted and so on. We could have a substantive discussion on what those triggers might be, but I agree that there is an opportunity for clarity that could usefully be taken.

Tom Turnbull: The figure of 1 million deer in Scotland was mentioned earlier. It is banded around quite regularly, but there is no evidence of how many deer there are in Scotland. We do not know. We do not know how many are culled currently, either. We know roughly what is happening in the Highlands, but outwith that we know almost nothing.

When it comes to the triggers for intervention, I believe that to demonstrate restoration or enhancement, you will still have to demonstrate damage. We are, in effect, talking about the same thing, in my opinion. We need clarity, as has already been called for. We need case studies, as was mentioned in previous evidence sessions. We need reassurance for a sector that is feeling pretty demotivated in the Highlands. A lot of skilled practitioners work hard in difficult conditions to deliver culls, and we need to reassure them that their futures are safe. We also need to make sure that the deer managers of the future are in place and that they are enthused.

We have already heard about the voluntary principle of deer management in Scotland. If used incorrectly, the intervention triggers could have a negative effect on voluntary collaborative deer management. Why would you put a target on your back by collaborating with NatureScot and providing it with figures if you would then be regulated on what are currently unclear grounds? It is a big risk, particularly for my organisation.

Going forward, there needs to be real support. Every other rural sector has incentives. Where are the incentives for deer management? Where is the support for deer management? All of that is required if the triggers will be used in that transition.

Peter Clark: Before the bill, we saw the draconian measures that were proposed in the consultation on the so-called deer management nature restoration orders. A lot of those powers have just been rebadged and included in the bill.

Of particular concern to BASC members is the vague definition of nature restoration. Herbivore damage varies widely in different areas of Scotland, and pinning it purely on deer will cause significant issues and also pose a significant challenge for landowners and deer managers.

The complete lack of baseline criteria is also a serious issue. It leaves a lot of the decision making on the implementation of proposed new section 6ZB of the 1996 act entirely down to NatureScot’s discretion, and that is very worrying indeed for our members.

Graeme Prest: I have five different points to make. I have been gathering them up as we have been going through.

The Convener: I am sure that they will be five succinct points.

Graeme Prest: I will be succinct. The first point is that, for a number of people around the table, a step change is required. We can argue about the exact numbers but, broadly speaking, the deer population has doubled in Scotland in the past 30 years. As we all know, Scotland is one of the most nature-depleted countries in the world, which gives a good idea of the baseline. The baseline is important. The point was made earlier that nature restoration is the core of the legislation. We need to go beyond assessing damage to what is there now, which is often degraded, to restoring it. Unless we do that, we will not achieve our targets in biodiversity and climate, which are critical.

Forestry and Land Scotland manages 9 per cent of Scotland and we do about a third of the cull, but—hands up—we do not have it right everywhere. We do not have deer densities down to the levels that are required to achieve all the objectives. That is partly because we need to do more and partly because there is incursion from neighbours. That shows the scale of the task. It is important to bear in mind that and the need for a real step change.

I agree with the point about having clarity around triggers for intervention, but that has to shift from the current triggers under the current legislation, otherwise we will not see that step change.

I will mention two other points. First, for your information, we have used authorisations for a good number of years now—that was mentioned in your question, Mark. They have been critical to achieving the level of cull that we do in terms of shooting at night and out of season. We do that in a safe and careful way, and the authorisations are critical to achieving that step up from our own direct experience.

My final point is that we need an emergency measure. If you get an incursion—say, after snow in winter—your new woodlands or restoration can be set back overnight. Having a measure in the legislation that allows for action promptly and quickly in an emergency situation is important.

The Convener: As the chair, I have a difficulty here. Everybody is indicating that they want to come in. I have some first-time speakers, but I know from Tom Turnbull's expression that he wants to challenge something that Graeme Prest said. Do you want to come in? Then I will move to Alan McDonnell.

Tom Turnbull: Another point was made about the doubling deer population. I am not sure that we know that. We know roughly what is happening in the Highlands because there are helicopter counts on the open hill and we can tell what is

happening. Outwith that, do we know? We do not know what the cull is.

Duncan Orr-Ewing: The 1 million deer population is on the official record. It has been publicly stated by the Scottish Government and NatureScot. That is there to be seen.

Ross Ewing: Sorry, but NatureScot has said that that figure is misleading and unhelpful, and you have used it in this evidence session, Mr Orr-Ewing, and the previous one. We should heed NatureScot's advice on this. I will leave the matter at that.

Alan McDonnell: I echo Graeme Prest's point about the step change and how the triggers should match that. We can agree with the need for clarity, but our ambition needs to be to set strategic objectives. We are talking about the Scottish biodiversity strategy objectives for 2030 and 2045.

I particularly want to mention that we have the means of providing that clarity. With the data sets that we already hold, we can prioritise the greatest opportunities for nature restoration at scale. NatureScot has been assessing and comparing the current condition of habitats with restored condition for about 30 years now. We have the techniques to assess the impact of herbivores and the contribution of herbivores—good and bad—within that. We can set those objectives. The clarity that can come through the deer code and how that works can be co-developed within the sector, which is important.

That, in turn, can—as a number of people have said already, and as Tom Turnbull stated clearly—inform the resources that we need to implement that on the ground. Work has already started. We have collected some data. A colleague of mine asked what the average cost of that reduction in deer population is and the benefits that can come from it, such as the sheer scale of woodland that can be regenerated. There is interest under the banner of the Common Ground Forum in discussing that right across the sector—Tom Turnbull and I were talking about that this morning. The bill needs to go forward, and there are the means to take it forward.

The Convener: I am aware that we are now getting second-time speakers on this first question. I have supplementary questions from a number of members as well, so I will bring in Emma Roddick with her supplementary question and I will go through the list again. Feel free to add to your comments if they were not covered previously.

Emma Roddick: This is a side step, but I want to ask David Fleetwood about the John Muir Trust's submissions on funding for fencing and the value for money of that approach compared to tree

planting for woodland creation. Could you speak to that?

David Fleetwood: Thank you for the question. That picks up the point that Alan McDonnell made and some of the discussion that we have had about incentivising the step change that we have all talked about.

The numbers that we have put forward—I will not go into the fine detail for reasons of time—suggest that the Scottish Government could incentivise and provide the finance for a significant proportion of an additional cull while, at the same time, delivering the natural regeneration of native woodland. Using some of the funding that is put forward to support woodland planting and diverting that into deer management gives an opportunity to potentially solve two problems with one investment. Graeme Prest might wish to come back on that. We have looked at the opportunity to use something like the forestry grant scheme slightly more broadly. I will leave it for others to come in.

Graeme Prest: Scottish Forestry is not here, but I know its position on that. Brendan Callaghan was at a previous committee meeting where this subject was covered. Some £8 million or £9 million a year is spent on fencing through forestry grant schemes and Scottish Forestry is definitely interested in at least some of that being moved towards more effective deer management. To pick up my earlier point, you need only one break in a fence and, if you have a high deer population next door, you can lose all your good work. Fencing has its place, but there is a significant downside in cost, longevity and securing new woodland creation in the longer term. Also, if you have the deer numbers down, of course, you get good seed trees and good natural regeneration, and that is cheaper than cultivating and planting trees.

Alan McDonnell: My colleague helped to put some of that data together, so I am happy to write to the committee with some more detail on that, because it might be of interest. I also note that the total budget for such work probably falls within current grant schemes that are already dedicated to nature outcomes, and we think that that work would be more effective. Using that funding in the way that we see it going would directly help to secure deer management livelihoods for the long term. That is the key to going forward.

David Fleetwood: Alan McDonnell will probably also follow up some points. I will illustrate some of the figures. Deer fencing has an average cost of £150 million a year. A national cull programme has a potential cost of £35 million a year. Restricting that to the additional deer numbers above the existing cull rate would cost £1.5 million a year. A fairly significant magnitude of difference in cost

and potential public savings could be levied from that approach.

Tom Turnbull: We would support a scheme that promotes and supports a cull. A long timescale will be required for recovery in a lot of areas. It takes a long time for land to recover in a lot of places. I would not preclude deer fencing from the conversation. It is a useful tool, but it has to be kept upright to be used. Stock fencing will also be required in many circumstances.

Peter Clark: I will be quick. If we are talking about the total cost of deer management and the pressure on the taxpayer, BASC has long advocated for community-integrated deer management using local recreational stalkers on publicly owned land. That brings down the contract bill. That is one other option that we could pursue and it is a missed opportunity in the bill.

Grant Moir: There are three trials across Scotland looking at different ways of incentivising deer management: there is one in the Cairngorms, one on the side of Loch Ness and one down in the central belt. We have just had the first year and we are about to go into the second year. It is quite early, but some interesting stuff is already coming out of those trials on how we can help to incentivise the right things.

11:00

I want to pick up on fencing. There is an interesting discussion about one-off costs versus recurring costs and the outcomes and benefits that you get from different things in different ways. That means that you might be able to maintain employment in certain places with on-going recurring costs, but it might cost you more in the long run to do those things. We are trying to find the balance between those things.

We want to see as much done as possible without deer fences and with natural regeneration. However, there will also be places where fencing and planting make sense. We have to be a bit careful that we do not say that it has to be one thing or the other. We are trying to find the right balance and the right places associated with that.

I want to pick up on another point. I think that Peter Clark talked about not just pushing on deer. It is crucial that we think about this as integrated land management. We are talking about deer today, which is great, but in certain places there will be a mixture of other herbivores on those landscapes as well. We have to take account of that and think about those things because, in some places, there is not much point in substantially reducing deer numbers in order to reduce damage or overgrazing if, at the same time, you do not look at any of the other

herbivores, including sheep and other things. It is crucial that we think about those things together.

Ultimately, the tricky things are usually boundary issues between estates that are looking to reduce numbers versus estates that are looking to maintain numbers at a certain level. The question is who to put the onus on to do the thing associated with deer. At the moment, the onus is on the person who wants to reduce deer numbers to keep deer out. The person who wants high deer numbers has no onus to do anything other than maintain those numbers. There is a little bit of thinking to be done there about where you do the NatureScot interventions. The boundary issue is expanding all the time because land management is changing all the time in Scotland.

Duncan Orr-Ewing: To build on Alan McDonnell's point about nature restoration, I agree with everything that he said about how to measure what good looks like. We have plenty of exemplars of what nature restoration best practice looks like, which include what NatureScot has delivered at Creag Meagaidh and Beinn Eighe, and our site at Abernethy. There is a range of exemplars that we can draw on, in the uplands and the lowland deer range.

I agree with the point about incentives. We need to incentivise deer management—that is a key discussion.

I want to touch briefly on the voluntary approach that NatureScot mentioned. In my view, the voluntary approach has been given a fair wind, but it has not worked enough. Some of the examples of nature restoration best practice have not been delivered through the deer management group structure. They have been delivered by like-minded bodies that have come together—the Cairngorms Connect project is a good example of that.

We need clarity on when NatureScot must intervene in the public interest. As Graeme Prest said, when it comes to nature restoration, a lot of good work can be undone overnight unless there are rapid intervention powers. I am talking about incursions of deer, which come in and damage peatlands and native woodland plantations. In such circumstances, NatureScot needs to have the ability to take action quickly. If a community, an ENGO or a private landowner asks for help, NatureScot must respond swiftly or give a good reason as to why it cannot help.

The Convener: Ross Ewing wants to comment on that point, after which we will move on to the next question.

Ross Ewing: I want to respond to the point that was made about the voluntary principle. In the vast majority of cases, the voluntary principle works, and that is reflected in what we are dealing

with here. It is important to highlight that the deer working group report did not recommend the proposed insertion in the 1996 act of proposed new section 6ZB, on the new ground for intervention. The deer working group was asked to make recommendations for changes that would ensure effective deer management in Scotland and safeguard the public interest. No such recommendation was made about a new ground for intervention.

The argument that has been put to us by ministers is that we did not have a nature and climate crisis at that point, but there were already two biodiversity strategies in place, so it is not correct to say that the deer working group would not have considered biodiversity loss and the biodiversity crisis in the context of coming to its recommendations. The committee should note that the proposed new ground for intervention does not follow from the recommendations in the deer working group report, which made 99 recommendations and gave ministers 350 pages to consider. That reflects the fact that, in the vast majority of cases, the voluntary principle works.

The Convener: David Fleetwood has a final comment on the topic.

David Fleetwood: The premise of Mr Ewing's point is that the current system works, and I contend that that is potentially not the case. We have seen a number of section 7 control agreements not achieving their objectives. There are examples of land that we manage in Assynt that has been impacted by neighbours refusing to engage with NatureScot to develop a control agreement. Of the 11 such agreements that have been implemented across the country, one has achieved its aims. Only one section 8 order has been implemented in all that time, and that has happened only in the past year.

It is clear, therefore, that the current system is not functional in some way, and it is right that we should look at addressing that in the bill.

The Convener: I will give Ross Ewing the right to reply. It must be short.

Ross Ewing: We are not saying that the powers do not need to be changed—they absolutely need to be tweaked to make them more effective and usable. We are saying that the proposed new ground for intervention is not evidenced in the piece of work that, ultimately, pre-empted all the changes in the bill. It is the pariah in all of this, in that it was not recommended by the deer working group's report.

Tom Turnbull: I need to respond on deer management groups, as that is my remit. The deer management group area in the Highlands is the only area in the whole of the UK where we know what the deer numbers are, we know that they are

static or declining, and we know what the future cull projections are. We agree those with NatureScot. We do not have those figures for anywhere else in the UK. We have them for 3 million hectares of the Highlands, and we should be proud of that.

The Convener: Three members have supplementary questions on this topic. We will start with Tim Eagle.

Tim Eagle: This is quite a niche question. In our session with the previous panel, we asked about a situation in which a control scheme is in place and the land is being sold, and what the impact of that could be. I imagine that that will not come up much, but does anybody have any comments on whether that is the right approach?

Ross Ewing: In such a situation—it was reassuring to hear NatureScot’s commentary on this—the right approach is that, if the new owner of the landholding was willing to manage the deer and get on top of the situation after a section 8 order had been in force, we would expect NatureScot to de-escalate the situation and get a voluntary control agreement in place. That would be a reasonable and proportionate thing to do.

However, it is important that we acknowledge that applying section 8 to the title of the land will have other unintended consequences in relation to land value and land marketability. Those points have not been addressed. I would expect the business and regulatory impact assessment to look at that, but we have not yet seen that. If it does not, there will be some questions about whether the general principles as a whole can be supported.

Duncan Orr-Ewing: When it comes to nature restoration, as Tom Turnbull alluded to earlier, in some places—in the west of Scotland, in particular—the climate and the conditions are such that it can be a long-term process, so I think that the requirement to reduce deer numbers and to maintain them at appropriate levels over a long period of time needs to transfer across to successors in title.

Tim Eagle: The issue here is about overreaching. It is not about the impacts of section 8 not being adhered to. If a new owner were to come in and say, “I agree with all of that,” in order for the land sale to proceed, because the land price could be affected, should the bill provide that NatureScot could de-escalate the requirement to an agreement, rather than the land having to be sold with a control scheme in place? Does that make sense?

Duncan Orr-Ewing: Yes, it does, but, in my view, the purchaser of the land must give a cast-iron commitment that they will continue with whatever has been requested by NatureScot.

Emma Harper: I do not know whether my question will take us backwards, but I am thinking about what was said about the fact that we do not have numbers that accurately reflect the deer population. Duncan Orr-Ewing said that it was 10 deer per square kilometre, but that is the figure for red deer. Tom Turnbull mentioned the fact that we do not have accurate numbers, although we do, to an extent, in the Highlands. We measure what action is needed when there is deer damage and restoration is required. On top of that, there are all the different deer species. Does it matter whether we have accurate data if we measure the extent of the issue by looking at interventions that are based on damage or restoration requirements?

Tom Turnbull: We have been trying to move away from the frustrating conversation about deer densities and numbers for quite a long time, because it is unhelpful. Deer density is a snapshot of a day when a count has taken place. Those deer might be in a completely different place the next day, so it is not necessarily the most helpful information.

Since the assessment process started in 2014, we have been encouraging members to undertake habitat impact assessments to measure exactly what is happening on the ground. The assessment process measures damage. I do not know how we will measure restoration and enhancement or encourage our members to do that, but I presume that that will be looked at in the code.

Ross Ewing: You have raised a good point, Ms Harper. To an extent, the power in question will be underpinned by the availability of good data. We have relatively good data from deer management groups, which are not only culling deer but delivering good things such as peatland restoration and habitat restoration.

The question that follows is how we can apply a provision such as the one in proposed new section 6ZB to the lowlands in Scotland. I do not think that it is possible to do that, because there is a lack of suitable data. There is a vast number of different landholdings, quite a lot of which will rely on recreational stalkers rather than professional deer stalkers.

We have created a regulatory scheme that, basically, is applicable only to the upland context, where we are probably having the best go at managing deer sustainably. Such collaboration does not exist in parts of lowland Scotland. To an extent, that whole situation is underpinned by data. The lack of data in the lowlands will make the powers that we are talking about difficult. That is why, conventionally, NatureScot has not used its statutory powers in a lowland context. The bill offers nothing to the lowlands. We would all like some incentivisation to be provided for managing deer in lowland Scotland.

Emma Harper: We are not talking about south of the central belt, because, the last time we took evidence, we heard that lowland deer management included Perth, and Perth is not south of the central belt.

Ross Ewing: Yes, that is right. It is a good point. As a broad rule, we are talking about the Highland boundary fault and below. You might describe half of Scotland as a lowland deer management environment, but that is not addressed by the bill in any way, shape or form.

Alan McDonnell: Deer densities and populations give you an indicative prediction of what the issues might be, but we need to be guided by impacts. The ability to collect data on those exists. The woodland herbivore impact assessment is a particularly strong methodology for woodlands. You can use that as a baseline now in any part of the country to assess the impact of browsing on that habitat—to what extent is it preventing or allowing that habitat to diversify, regenerate and adapt to change over time?

We have the ability to collect that data and we use it to guide our woodland restoration work. In fact, it is used by NatureScot in a lot of its site condition monitoring work. It allows us to get an idea of the current pressure quite quickly, and to track it over time. NatureScot has developed a light version of that, which we have trained stalkers to use. There are quite good guides on what good looks like and what progress towards restoration is. I contend that we have a good handle on what restoration can be.

Peter Clark: I will respond to Ms Harper's specific question about different species in different localities. The damage that is caused is hugely varied. Something as broad-brush as this bill, which is trying to cater for all different settings, is potentially dangerous. Right across Scotland is not one location; different things are going on in different localities.

Going back to Ross Ewing's point about lowland deer, in particular, there are huge issues with deer densities in peri-urban settings and the damage caused there. What recreational stalkers contribute in that sense and how their impact is measured is not taken into consideration in the bill. It is a complex issue, particularly in the lowland setting.

11:15

David Fleetwood: I have a couple of points that it would be useful to make on the numbers question. There is consensus around the table that more information is definitely helpful, as is the opportunity to gather it.

For me, there are two parts to this. There is the strategic element, and we have had a bit of discussion already about whether we are at 1 million or less than 1 million. Back in 1959, the Red Deer Commission proposed that between 100,000 and 150,000 was already too high. We could get caught up on whether we are at 1 million, but it is clear that we are at a large number compared with where we have been historically, given that reference and plenty of others.

At a strategic level, that needs to guide our thinking about the national picture. The bill stems in part from the shift from damage to restoration, and so on. When you are starting to drill down into a local and regional management context and thinking about your landholding and adjacent landholdings, switching the focus to outcomes is potentially much more productive. That is about using herbivore impact assessments on the ground to see what the population is doing and how that impacts the land management objectives of the properties that it sits on.

We could spend quite a lot of time getting hung up on a cul-de-sac of a debate about whether, nationally, we should be at seven per square kilometre or two. Outcomes and the impact on the ground need to guide the decision making, in the context that there has clearly been a significant increase in population over a sustained period of time. Again, it is immaterial whether the population is 1 million, 1.2 million or 980,000. It is having an impact, which I have demonstrated already: 80 per cent of our peatland is degraded and there is only 4 per cent native woodland cover.

It is important to distinguish those two pieces of the argument.

Duncan Orr-Ewing: We do not work in isolation. Many countries similar to us have good systems of data management for wild animal populations such as deer. Our systems are not at that level yet. As Alan McDonnell said, systems such as herbivore impact assessments can measure impacts. I understand that NatureScot is also looking at the integrated administration and control system to get more information on deer culling efforts on farmland and in lowland situations, where we accept that the data is deficient and needs to be improved.

NatureScot is also developing a new deer app, which hopefully will improve the data flow. However, we need more people. A critical part of the bill, and of informing sustainable deer management, is that we need to improve the openness and transparency of data management systems and the amount of data that we have in those systems. We are not in that place at the moment and it is up to NatureScot to do that. The traceability system through the deer app could be looked at in order to improve the data flow and get

more information into the system, but we may need a more mandatory approach to this.

Graeme Prest: Drawing a number of those points together, we are talking about different scales. We are talking about a broad, Scotland-wide sense of direction, but, as others around the room have said, there are also differences depending on the situation and objectives around the country.

It goes back to where we started, which is that quality deer management plans are critical. We have used deer management plans in FLS for many years now. We have good data, we set clear culls and we assess impacts and outcomes, and we do that transparently. We have examples of how this works, but getting it deployed on a much more widespread basis would make a significant difference. Having the legislation to support it is a real cornerstone in making progress.

Tom Turnbull: It is easy for a debate such as this to get a little polarised. Everyone wants to see improved habitats; it is not that we do not want to do that. All members of ADMG want to improve the land that they manage or work on. A lot of people do the right thing already, and it needs to be recognised a little more where there is good practice. What the deer sector needs is reassurance on how these things will be taken forward so that it feels like part of the conversation.

Mark Ruskell: I am interested in Grant Moir's point about public institutions effectively doing a lot of the planning in this area. If a national park has a herbivore management strategy—Cairngorms has one, but I do not know whether Loch Lomond and the Trossachs has one yet, and maybe there will be one for Galloway in the future as well—that is a plan that is in place. Under the bill, FLS will have to facilitate the delivery of that as part of the park plan, so public institutions will be working to deliver that. Does that help to guide and steer the public interest? Could that be used, through the code of practice, as a way for NatureScot to consider how private actors in that space link in with the objectives?

I am thinking about the status. You have a park plan and a herbivore strategy. Should those have weight? How should that be taken into account when NatureScot makes decisions to require those with private interests to take action that aligns with the public interest in a plan that has gone through a democratic process, been approved by a park board and everything else?

Ross Ewing: Thank you for the question. By virtue of what is in the bill, national park plans and other plans that are placed on a statutory footing will be considered in the context of proposed new section 6ZB. Our concern is that the bill is very

broad. It would be good for the committee to clarify which strategies, plans and targets are relevant to proposed new section 6ZB, because we do not have clarity on that at this point. It would be helpful for everyone to understand which plans, strategies and targets are relevant.

A concern from our perspective is about an arbitrary figure of deer density being required in certain strategies and plans, and how that would interact with the power in the bill. We would look for a little bit of reassurance that, in utilising that power, NatureScot would be reasonable and proportionate.

However, to answer your question directly, on the basis of what is in the bill, there are grounds to take into account those strategies, plans and targets in exercising that power.

Grant Moir: For national parks, it is relatively straightforward: we have a statutory management plan approved by ministers that sets out the public interest in quite a lot of detail. That involves looking at woodland, peatland, deer and all those different things. We also have to produce our nature networks work by statute. It is pretty clear that NatureScot, in looking at its powers, would have to have regard to that in delivering a plan. If the bill goes through, it will have to help to implement that as well, if the changes are made in the first part of the bill that we are looking at. That is crucial.

The bit that is interesting to me—and this is the rub—is that the public interest that is articulated through a fully consulted-on plan might still not be entirely in line with the private interest on that area of land, and there will still be tension in certain places. You will not get away from that. It will work voluntarily in certain places because it is what people want to do. In other places, people will say, for example, "I own this land to do X," which is different from what the public interest would want to happen on that land. That is where the tension will come. That is where you will end up having discussions, which might end in voluntary agreements or might go up the scale. That is the tricky bit.

The point is that you might have a plan that is public and consulted on, but what happens in other bits of Scotland that may not have those same structures in place? What plan would you use for north-west Scotland, to take that as an example? There is quite a lot in there, but I think that the public-private part is still the trickiest part, which is where you get to the powers and what you are using interventions for.

The Convener: It could potentially become a very legal process of which plan trumps which. Which plan comes out on top? Is it the national park plan, in which case the bill might mean that

you have to abide by it? What happens if you are a landowner who wants to manage their land through carbon credits or net biodiversity gain or as part of a community scheme to improve water quality or flood prevention? What plan trumps them all? Is it the national park plan? Is it NatureScot, having been lobbied to bring in some control scheme? How does the order of priority work?

Grant Moir: The national park partnership plan flows from public policy—the Scottish biodiversity strategy, the forestry strategy and whatever other strategies there might be in Scotland. We take account of those when thinking about what they mean on a regional basis. It is also about working from the bottom up, so we go out and get as much information from people as possible. I cannot think how an estate that wanted to do biodiversity net gain, natural capital or any of those things would not fall in line with what is in the national park partnership plan currently.

The plan is a statutory management plan, so I think that it would be given a pretty heavy weight in what we are looking to do on the deer side of things. It is certainly something that we would expect NatureScot to help us implement, as per what the legislation currently says about “have regard to” or what it will say about a help-to-implement power. I think that that is pretty clear. That is how it would flow between the national, the regional and what comes up from the bottom.

Duncan Orr-Ewing: I know in my own mind the plans and projects that are being talked about, but it would be useful to have some clarification. As ENGOs, most of us go out and consult on the management plans for our own sites—nature reserves or whatever—and that informs those management plans.

Quite often, we would like to be included in these projects. We have a growing number of sites in the uplands and in the lowlands where we are doing sustainable deer management. We would like to think that we can call on resources and support from NatureScot where we have issues with achieving our land management objectives in those areas.

Focusing on particular plan areas is one thing, but we know that deer do not respect geographical boundaries and, even at the national park scale, deer incursions come in from neighbouring ground. Recommendation 97 of the deer working group report was that there should be a cull approval scheme, which is not in the bill. We need to reduce deer numbers across the whole landscape, so I would also like some clarification on how the proposed cull approval scheme will work. From what I have heard so far, NatureScot is intending to use it only in very limited circumstances, whereas we think that it needs to

be applied much more widely. NatureScot needs to sign off cull levels to make sure that we drive down deer populations across the landscape to meet the needs of the various affected public interests.

Tom Turnbull: Deer management groups already set their cull targets five years in advance, in agreement with NatureScot. If those targets are not hit, NatureScot will tell us that we need to shoot a few more and our plans will change accordingly. Cull targets that are set with NatureScot are already in place across the Highlands.

We need a little bit of clarity on the plans—I think that we have all asked for that. The Scottish biodiversity strategy, for example, has a target of two deer per square kilometre in priority woodland. We are still unsure what “priority woodland” is at this point, but we have always worked with NatureScot, which is putting forward priority areas based around plans. Clarity is developing around that, but it would be good to be part of the discussion going forward.

The Convener: I have a final question on this section. Does anybody have any comments on NatureScot’s ability to cover expanded costs?

Ross Ewing: If you are referring to the recovery of expenses in the context of section 8, it is worth pointing out that there have been some changes to the process, but it is largely unchanged from the 1996 act. You can object to ministers in the first instance and, thereafter, you can appeal to the Scottish Land Court, which has the power to rule on the recovery of expenses. We would like to see some clarification, however. It can vary expenses, but we are looking to establish whether it can also quash expenses. That it can vary is clear, but the point around quashing is not.

Clearly, for a landowner who is subject to a section 8 control order but who is unable to undertake the deer management actions themselves for whatever reason, there could be significant cost implications if NatureScot were to fulfil that function, although those costs would be offset slightly by the sale of venison. I am sure that we will get on to that issue in due course. There is a procedure; we are just looking for some clarity around whether costs can be quashed as well as varied.

David Fleetwood: I do not have much to add to what Ross Ewing has said on the specifics of cost recovery. I point to the opportunity that we discussed earlier of the potential for the Scottish Government to provide the overall cost incentive, at least for the initial cull over the next four to five years. There could be a saving compared to direct spend on culling through the relocation of the forestry grant scheme money. I would look back to

that proposal, as there are other options on the table beyond cost recovery that could fill that gap.

11:30

Ross Ewing: I neglected to point out that one change is that the timescale for making objections has been shortened from 28 days to 14 days. There is no rationale for that set out in the explanatory notes or the policy memorandum. It would be useful to understand from NatureScot why that change has been made, although, of course, it might be more appropriate for Scottish ministers to answer that question.

The Convener: Thank you for that. Are there any further comments before we move on from deer management plans, control agreements and control schemes?

Alan McDonnell: I will belatedly give some gas to the Common Ground Forum and the way that it has pulled together the discussion on this. You have heard us all trying to drag the funding elephant into the room, and there is a lot of consensus on how the funding could be shaped in practice. Tom Turnbull and I are on the steering group for that, and David Fleetwood has just joined it. Recently, we have been talking about how we are trying to work ourselves out of business within the next five years, but we need bridging funding. If Government is looking for a high-impact, relatively low-cost investment in transforming the deer sector, I think that we would all heartily recommend that.

Ross Ewing: One additional and very specific point in respect of sections 6A, 7 and 8 of the 1996 act is that the bill removes the requirement in each of those sections for NatureScot to have regard to the code of practice. That is encapsulated under section 5A, where there is a broader requirement for NatureScot to have regard to the code of practice. However, given the contentions that surround intervention, it might be useful for a requirement to comply with the code of practice in respect of control schemes, voluntary control agreements and deer management plans to be included in those sections. It is really important to put on the record the need to restate that point as well as highlight the importance of the code of practice and of NatureScot not only having regard to it but complying with it.

The Convener: We will now move on to investigatory powers.

Rhoda Grant: What are your views on the strengthened enforcement powers granted to NatureScot under the bill, including the ability to enter land if it has requested information that has not been provided within 10 working days, and the proposed reduction in the standard notice period for entry from 14 to five working days?

Peter Clark: The reduced timeframe in sections 21 and 22 will place a significant administrative burden on landowners, particularly those who own multiple properties, and, obviously, the broad powers could, at best, be classed as intrusive. The changes in those sections are very concerning indeed for our members, particularly the shortening of the timeframe for notice.

Ross Ewing: It is not clear in the explanatory notes or the policy memorandum why that notice period has changed. I do not know whether the committee would be open to this, but it would be really helpful if NatureScot could provide us with the rationale for that.

Duncan Orr-Ewing: We agree with NatureScot's proposed new investigatory powers and with the timelines. In some cases, swift action is needed to get deer populations under control. If they are damaging the enhancement that you are seeking to achieve, swift action is the order of the day.

Graeme Prest: I support that. We do that already, and it has been pretty straightforward. I go back to my earlier point about sometimes having to take quick action. If you get an incursion, which is a serious issue, speed of response is very important, so I can see the absolute logic of the reduced timescale.

Tom Turnbull: This is an emergency power, and it has been used quite a lot recently, and quite successfully, in various places. It would be good to get clarity on why the timeframe has been shortened, just to reassure our members. It is important to say that regulatory action has been used quite a lot across the Highlands. Our members have not really objected to that at all. It is not that people are against regulation; it is just about gaining clarity on when and how it will be used on the ground on which they stand.

Tim Eagle: We had a wee discussion about authorisations in the earlier evidence session. Comments on sections 24 to 28 on authorisations, the impact of the provisions on deer management, the register of competence, one-off authorisations and emergency uses of authorisation would be very welcome.

Ross Ewing: The bill creates a number of offences around it being a criminal offence to take deer during the close season and a criminal offence to take or kill deer at night. We are broadly supportive of that and, obviously, the provision remains that you get an individual authorisation, or potentially a general authorisation in relation to the register of competence, to undertake those activities. We have a question as to how that quite blanket stipulation impacts on situations where it might be necessary to kill a deer on welfare grounds. For example, if it was the close season

for a red hind and it was hit in a deer/vehicle collision and then there was a requirement to despatch the deer, technically, it might be an offence to kill that deer. I am looking for clarity from ministers and NatureScot as to how those things interact.

Broadly, we support the register of competence. I think that it constitutes deregulation in the context of wildlife management, which is rare, especially in this parliamentary session, when we have had a lot of regulatory measures come forward. Ultimately, our hope is that it will make things more flexible and that it will reduce the requirement for landowners and land managers to apply for individual authorisations. If they are on the specific part of the register that allows them to undertake specified activities such as night shooting and out-of-season culling, the idea is that they could operate under a general authorisation instead of an individual authorisation, and we support that. It is flexible, and that will help. The register of competence point was mentioned in the earlier evidence session and we have a couple of concerns about accessing the basic register. As a reminder, it is divided into parts. One is for the specified activities, which are night shooting, out of season culling and so on, and one is for being fit and competent to shoot deer.

I think that the fitness point will be measured through having a firearm certificate, which is no problem and very logical. The question is how competence will be measured, and it was encouraging to hear the discussion among Robbie Kernahan, Donald Fraser and yourselves on that point. We would be looking for DSC1 being the standard but also for some flexibility in situations where you might have a professional deer manager who has been at it for 40 years and who has not done his deer stalking certificate level 1 but could easily provide you with a referee or a reference that supports his ability to kill deer professionally.

The final issue with the register of competence—again, this was mentioned earlier—is the point about ensuring that those who come to Scotland to shoot deer as sporting guests are exempt from the register of competence, provided that they are accompanied by someone who is on the register. We will be looking for that to proceed on the basis that a guest should be within earshot or eyeshot of that person. Broadly, we are relatively supportive of the provisions, barring the few questions that I raised.

The Convener: Before I bring in Peter Clark, when it comes to visitors, does “accompanied” need to be defined in the bill?

Ross Ewing: That is not in the bill at the moment, to my knowledge. I can correct the record if I have missed that. I think that it is

important that we are clear about what “accompanied” means. Our view is that earshot is generally what is used, which gives you a slight capacity to operate a little bit away from the trained person if circumstances require. The other point to note is that when people get into stalking in the first instance, there is a requirement to do some autonomous stalking on your own. As long as you are within earshot of someone who is on the register, I would have thought that that was perfectly reasonable and proportionate. Getting some clarity on what “accompanied” means in practice would be really helpful.

Peter Clark: BASC has serious concerns about defining “competence” in the bill. Self-regulation has served us well over many decades and has ensured high standards on a voluntary basis. BASC offers training courses, such as DSC1 and DSC2, but taking them is voluntary. Making them mandatory poses significant challenges for the sector, not least because it is a barrier to entry. The average age of a deer stalker is 58, so barriers are concerning for the future of deer management.

We have seen no empirical evidence to the effect that mandatory training or a mandatory level of competence should be introduced, so we have asked the Government to provide that for us. We have not seen that to date. At the moment, those requirements will create significant barriers to future deer management and how we go about that in the context of the bill. Certainly, if we are looking at people who currently manage deer, there are no concessions—for example, grandfather rights—or, indeed, any financial incentives to undertake further training if it were made mandatory, so there are serious concerns from our perspective.

Tom Turnbull: As an organisation, we broadly support many of the proposals. I suggest that, wherever changes are put in place, best practice guidance should be changed appropriately as well. For example, night shootings have changed—thermals and so on are used—so the best practice guide should be appropriate for the standards required to shoot deer. Authorisations should also have a reference to landholdings. Going back to the value of data, all authorisations should record where things are shot, otherwise we will have even less data than we currently have.

Alan McDonnell: I support Ross Ewing’s point about deregulation and Tom Turnbull’s point about the need to secure data on what gets shot and where and when it is shot, each time.

David Fleetwood: I support the previous points. I will add a couple of things on the point about a close season hind injured in a road traffic collision. I think that section 25 of the 1996 act would

probably cover you, but, as you say, it is worth getting some clarity on that.

It is worth touching on a couple of welfare issues in section 27 of the bill. The first is ending the use of shotguns to kill deer unless under authorisation. I also particularly pick out ending the use of lead ammunition, which might foreshadow some of our conversation on venison and the venison market.

The Convener: I will bring in Edward Mountain for a comment.

Graeme Prest: Will you take my point on this issue quickly? Is that okay, convener?

The Convener: I think that Edward's question is about this particular point as well, is it not?

Edward Mountain: Sorry—it is a point of clarification. The committee may be minded to consider that, if the qualifications are required to be able to shoot deer, Police Scotland may interpret that as the qualifications also being required for ownership of a rifle capable of shooting deer—so rifle ownership may become limited, too. I think that that is a step too far—you do not need a qualification to shoot foxes, for example. The committee ought to ask the police their view of the interpretation of that provision. Sorry—that is just a point of clarification. Thank you. I will shut up now.

Graeme Prest: We can share some of our experience, particularly on authorisations and competence. I will start with competence. We require all our staff, and a separate number of contractors, to have DSC1 and DSC2. In the last year, several of our contractors have taken on trainees, which is really encouraging. There was a point about ageing demographics, but we are getting people coming through, which is encouraging. We also have a number of apprentices as direct staff, so that is happening. There is interest in making deer stalking a career, which I think is good for people to hear.

The public confidence aspect mentioned by NatureScot is really important. Safety and welfare and having some clarity around how “competence” is defined are really important in maintaining public confidence.

I will move on to authorisations. We have extensively used night shooting and out-of-season authorisations for a number of years, following best practice. That has been key to delivering the culls that we have been achieving. Without those authorisations, we would be well short of what we have been doing, so our experience is that they are really important to achieving the ambitions that we are all trying to achieve.

Duncan Orr-Ewing: I will take a slightly different slant. We support the overall principle of

having accredited hunters. I know that we are coming to venison later, but Norway has a very good system whereby accredited hunters can supply venison into local markets—not nationally to supermarkets, but to friends and families, local restaurants and so on. I would like to see some consideration given to being able to do that if you are an accredited hunter and you have been through food hygiene and all the parts of the accredited hunter package. I think that it is in everybody's interests, if we are increasing the deer cull as is proposed, that we have good places for that venison to go to, so we need to encourage locals—

11:45

The Convener: We will move on to cover that more fully.

Duncan Orr-Ewing: It is linked to this area, convener. Looking at the hunter/trader system that they have in Norway would be a good idea.

The Convener: Our next theme is preventing or stopping damage by deer, which Beatrice Wishart will ask about.

Beatrice Wishart: Section 20 of the bill introduces a new defence for actions to prevent or stop a deer from causing harm to a person. In your experience, is that an issue that needs to be resolved in legislation?

Tom Turnbull: I have never come across it.

The Convener: That was short and sweet. What about you, Peter?

Peter Clark: Likewise.

The Convener: Alan?

Alan McDonnell: No.

The Convener: That was a rounded “no”. We are all in agreement, which is very unusual, especially when we have so many stakeholders with us.

Our witnesses have no other comments in response to Beatrice Wishart's question, so that was nice and easy. We might get the same response to the next questions, which come from Elena Whitham.

Elena Whitham: The answer to these questions might be short and sweet as well. Section 32 of the bill introduces an offence of failing to report the taking or killing of a stray farmed deer. Are stray farmed deer a problem in Scotland? Do you agree with the provisions that are set out in section 32?

Tom Turnbull: I do not think that stray farmed deer are that common, but most farmed deer—Dick Playfair will probably be able to put us right

on this—have an ear tag anyway, so they are quite identifiable.

Ross Ewing: I was going to make that exact point. There are around 80 deer farms in Scotland, most of which use ear tags for identification. The animals are not wild. Broadly, we support the provision, which is similar to FLS's policy on stray sheep.

Graeme Prest: Yes, it is.

Ross Ewing: It is pretty much a like-for-like lift, and we support it.

The Convener: As expected, the answers to those questions were short and succinct.

Our final theme is the licensing of dealing in venison, which I am sure that Dick Playfair will be happy that we have reached, because he has been very patient.

Emma Roddick: The bill will reduce a lot of the bureaucracy around venison. Do you agree that the venison dealer licence should be repealed?

Dick Playfair: Our position, as we said in our response to the consultation—others at this meeting will have supported that, too—is that we do not think that the venison dealer licence should be removed at this point until there is something to replace it. The Scottish Venison Association had an interesting discussion about the issue with Food Standards Scotland back in February 2024. Interestingly, I do not think that it responded to the managing deer for climate and nature consultation. Its view was that, until we have sufficient safeguards in place for the sector, we should not think about removing the ones that we have.

At the committee's round-table session, it was suggested—this is backed up by the financial numbers that have been supplied—that there are only about 26 new applications for venison dealer licences a year. If one considers that the only route to market for venison—unless it is being sold through an approved game-handling establishment—is that someone in the supply chain should hold a venison dealer licence, that shows that the system is not working, but it does not show that there should not be a system. From a food safety and food legality perspective, we think that there needs to be something in the bill that will ensure that that is the case. In the venison trade, public confidence is all important. We cannot just say, "Because this isn't working, we need to get rid of it." The system is not working because it has not operated as it should.

Supplementary to that is the fact that we are relying on 30 separate local authorities to run the system. The question is, would the system run more effectively if one authority took on that responsibility? There is disparity in relation to cost,

when someone should apply and who should apply. Should the retailer apply, or should it be the producer who does that?

The system is a muddle, but that is not to say that we cannot implement a better one. Crucial to that is the fact that, if we can collect data from such a system, we can use that data. At the moment, data is precious and scarce, and we are not using what we collect as we should when it comes to venison.

Emma Roddick: You have posed quite a few questions. Do you have answers in relation to what the system should look like, or is there another system that we could borrow from for venison?

Dick Playfair: The two areas are really one. The system could be standardised and every local authority could take on a standard system across which the costs were equivalent, such that, depending on where someone was, they would not be paying £300 in one local authority area and £120 somewhere else. The alternative is to develop a system that is not clunky but that is modern and data driven.

The system as it stands needs to be worked on. There should be something there that allows a carcass to be recorded and traced from the point at which it is shot right through to the pack being on the shelf for sale. I reiterate the point that, if we were to take away an element that allows people to do that now, we would be taking away confidence in the system.

Emma Roddick: You mentioned public confidence twice. Do you think that that is still quite a big issue when it comes to the public purchasing venison, or game in general, for consumption?

Dick Playfair: It is a question of confidence, but it is also a question of education. On the confidence side, we cannot disregard the fact that we had a food scare in the venison sector in 2015. We need to learn lessons from that, and we have done. Across a number of areas, people have woken up to how important venison is to the whole deer management sector. In the discussion about deer management, people need to remember that they are in the food business. Ultimately, that is an important aspect of what we are here to supply.

We need confidence and we need education, but we do not need anything that undermines that confidence.

Emma Roddick: Do you think that there is enough time for a whole new system to be designed as part of the bill process, or should we have a pause and look at that another time?

Dick Playfair: I think that the bill can include a provision that, rather than saying, "We abolish the

venison dealer licence,” says, “We reserve the right to abolish that licence when there is a replacement system that can be put in place.” I add that the crux of today’s discussion on what can drive everything in the right direction is incentivising the deer sector, and—more specifically—incentivising the venison sector.

The three pilot schemes that are in place at the moment are, in effect, geared to a headage system whereby people are paid for shooting more deer. We think that it would be much more productive if the system was changed so that it was geared to the venison that goes into the food chain rather than the carcasses that hit the ground.

The Convener: Does it appear that the Government’s position is that it simply wants to control as many deer as quickly as possible and that, if there is any pinch point—for example, regarding the ability for venison to reach the food chain—the relevant regulation should be removed to make that easier, without considering the consequences for public confidence?

Dick Playfair: I do not think that removing that regulation will make it easier. Currently, there must be a lot of abuse of the regulation anyway, and it is simply not being enforced as it should be. I do not think the price element—the cost of a licence—is a factor. Whether it is £80 or £150, that is not really an impediment for somebody who wants to put venison into the food chain.

With respect to the Government, there is a lot of activity and discussion around the fact that we have this fantastic resource that we need to open up, and a lot of good work is going on with regard to local processing and consideration of concepts such as community involvement, which Peter Clark mentioned.

Certainly on the low ground, where there are no deer management groups, community chillers or larders could be a solution, and they could become the focal point for that activity. Rather than starting from the multiple land ownership end and trying to get everyone to agree on what they are or are not planning to do, we could say, “Here’s your route to market—let’s start at that point and work back from there.”

Ross Ewing: I support pretty much everything that Dick Playfair said. The VDL is not perfect. In a lowland context, a lot of people—partly as a result of the unavailability of larder and chiller infrastructure—process a lot of venison that they shoot themselves. In some cases, they are limited by the amount that they can get in their freezer; that is the factor that prohibits them from doing more deer management. The VDL has value. It is not perfect, as Dick Playfair said, but before any changes are made to the scheme, there needs to

be provision in place to replace the data that it gathers.

There is interesting work going on just now. NatureScot has done a power of work, in conjunction with FLS, on developing a national deer app, which is getting close to the final stage and is looking really good. That raises the question whether that app has a role to play in the context of the bill and whether the bill could be an opportunity to get the app out there and start using it. There would be a manifest change: if everyone started using that app, data collection would be vastly improved. If we can get the data all the way from the person who culls the deer on the ground to where venison is put on the shelf, that could be genuinely transformational.

With regard to this section of the bill, therefore, my suggestion to ministers is not to go too fast. The sensible thing would probably be for ministers to give themselves enabling powers to make changes by regulation in the future. For the time being, however, until we have an alternative in place, it would probably be short-sighted to get rid of the VDL.

Tom Turnbull: I support everything that Dick Playfair said. It was not that long ago—I think that it was in 2015—when Food Standards Scotland stood up at our annual general meeting after an E coli outbreak in venison and said, “If it happens again, we’re shutting the industry down tomorrow.” That would be a disaster for most deer managers—for many of them, it is their only income. We therefore need to promote quality assurance as we move forward. There are schemes in place, but we need to normalise venison and make sure that it is going into our schools and hospitals, so public procurement is vital. We need to encourage people to eat venison once a week. I think that the whole sector can get on board with that.

Grant Moir: I will not comment directly on the venison dealers licence, but I note that, at the deer board’s meeting on Monday, we discussed the deer app and traceability. It looks like the app is really good, so we can think about how we might use that. There would be a resource implication for NatureScot and others in rolling it out—that would be quite a big job, so there are considerations in that regard. Nonetheless, the app is a good thing for the future.

In addition, there is an increasing amount of support on the larder side. The Cairngorms National Park Authority has recently funded two larders, and there are applications for four more. That is about looking at the community side of things, and it links back to the idea of increasing culls in certain places.

I am not as convinced by the idea of payments being linked to venison going into the food chain rather than some of the stuff that we are doing through the pilots. I realise that there are pros and cons in each system, however, and that it is simply a case of seeing what the best system would be for each place. Overall, we need the right capacity in the right places, and traceability is key to that. So, if the app is able to do some of that, let us see what we can do with it.

Peter Clark: One of the main outcomes of the bill should be more venison on the plate, which echoes a lot of what Dick Playfair said. There is both a community aspect and an education aspect to that. I spoke earlier about community-integrated deer management and helping communities to access venison through recreational stalking on publicly owned land, and the need for larder infrastructure to follow that in order to ensure that communities can tap into that resource.

I will finish on a positive note. BASC goes into schools and runs educational days, such as hill-to-grill days, and I can certainly say that the new generation coming through has a real appetite for venison. Through those days, and through the curriculum, we can see that that appetite is being developed, so I hope that the industry has a positive future and that that will be a positive outcome of the bill.

12:00

Duncan Orr-Ewing: I will not disagree with what Dick Playfair said, because he knows more about the subject than I do. However, before I came to the meeting I had a conversation with representatives of Cairngorms Connect, which is a small venison producer, to sound them out on their views on the bill. They said that they are currently working to three systems: the venison dealers licence, which is issued by Highland Council; Scottish Quality Wild Venison, which is Dick Playfair's scheme; and Food Standards Scotland. That needs to be rationalised. From what they said, it seems that the venison dealers licence is currently applied quite randomly, depending on which local authority people are in, so application is patchy.

I agree with the idea of having the venison dealers licence in place until it is replaced by something else, but it needs to be reviewed, and we need to move to a system that is easier for small providers. At present, the system is quite burdensome, with three groups effectively involved.

The Convener: Several members have supplementaries. I call Rhoda Grant first, as she was the first to indicate, and then I will bring in Mark Ruskell and Emma Harper.

Rhoda Grant: Is there a way of fitting venison into the current meat hygiene system and using abattoirs and the like? In rural areas, we need micro abattoirs in particular. Is there a way of putting venison in with other local produce in a way that would make abattoirs more sustainable and enable more of them to be created? Is that a possible solution?

Dick Playfair: That has been looked at, and it is not really a solution per se in that we are better off with micro processing specifically for deer, in respect of efficiency and lairage. Mobile chillers have been proposed as another solution. However, with the pilot schemes that are running currently and another 16 or so projects in the pipeline that have been, or will be, Government funded, we will develop quite a lot of data and evidence on what works.

At the high-volume end of the spectrum, there are approved game-handling establishments, with Food Standards Scotland as the regulatory authority, and the supply goes straight into them. The nut that we need to crack is developing a system that will work for them. With that product, the carcasses are far smaller—we are talking about roe deer, which often weigh 12kg as opposed to 35kg or 40kg, so the return for the producer is much less. If we can develop a system that will work for those producers, that will take us towards achieving quite a lot of the solution that we need.

Mark Ruskell: I am struggling to understand how the venison dealers licence addresses the risk that FSS has articulated around E coli. If the meat already has to meet Food Standards Scotland requirements, and if FSS issued a warning in 2015 that all venison has to go through those who have a venison dealers licence, I am not sure where the risk is. It feels as if what we are discussing is more about traceability and communicating with the market, and how to deliver that through apps and security and quality assurance programmes, than anything else. I do not know—maybe I am just not fully getting it.

Tom Turnbull: No—I think that that is right. Rather than simply throw away the venison dealers licence, I would learn from the mistakes, create something that works and move on. That would be better than ditching the licence and then having nothing happen.

Dick Playfair: For clarification, with the derogation that we have in Scotland for small quantities to be sold locally, it is possible for small producers to put a product directly into the market without it going through an approved game-handling establishment.

FSS is the responsible authority for the AGHEs—the likes of Highland Game and Ardgay

Game, as the major processors; there are some smaller ones emerging, too. Nonetheless, it is possible for a local producer to be able to supply his local market through his own processing or chill. However, under current legislation and under the current wild game guide from Food Standards Scotland, the only exception to holding a venison dealers licence is if someone is either gifting their product to family or friends or supplying an AGHE. In all other circumstances, they have to involve the local authority. It has to be sensible that there must be some type of overseeing of the process in order for that food to be safe and traceable and to be in a system in which it can be accounted for in the event of a food scare.

Duncan Orr-Ewing: I wonder whether that goes back to the point that I mentioned earlier about the Norwegian system, which is very robust, with accredited hunters training hunters. There is trust in that system—people know that they have to conform, otherwise it affects everybody in the industry. Perhaps we could look at that and see whether there are lessons to be learned from it that could be applied in Scotland.

The Convener: Are there any other comments?

Emma Harper: I have a quick thought about the potential for Quality Meat Scotland to be part of the engagement and support of venison as red meat, given that it already provides confidence in beef, lamb and selected pork. Does more work need to be done with Quality Meat Scotland to convey confidence and integrity in the venison food supply chain?

Dick Playfair: Many years ago—probably 15—we had discussions with QMS on the red meat sector and whether QMS might be able to take venison under its wing. The conclusion of those conversations was that the only thing that QMS could do with the levy that it collected from the venison sector was pay for the collection of that levy and that it would not be able to give venison the same promotional clout as is given to beef, lamb, pork and so on.

QMS has subscribers who pay the levy and—if I can say it in this room—the last thing they would want to see is the introduction of another red meat that would diminish the sales volume of their lamb or beef. We have to admit that there is competition in the sector. We see venison very much as being the smallest component—it is the little brother, who is having to punch very hard.

There may still be conversations to be had, but the volume and the funding that might accrue to the venison sector through QMS would be very small. Bringing venison into the QMS stable would also—I think that I am correct in saying this—demand legislation for changes to how QMS operates.

Duncan Orr-Ewing: The public procurement side, which was touched on earlier, could also be very helpful here by enabling the supply of venison to hospitals, schools and prisons. It would be very helpful to consider that as part of this process, as well as looking at the QMS-type approach. Marketing and promotion are pretty critical in all of this.

The Convener: Sadly, it was this committee that dealt with the good food nation plan.

Duncan Orr-Ewing: If there is regular supply for public procurement, that would also provide some underpinning for the sector.

The Convener: It may form part of the good food nation plans but, unfortunately, given the capacity of the Parliament to deal with secondary legislation, we are not able to deal with it, which is unfortunate.

Alan McDonnell: I note the progress made by Scottish Quality Wild Venison to provide confidence to the market and the full traceability that Dick Playfair was talking about earlier. There has been real progress on that recently and it has been very welcome.

Dick Playfair: Public sector procurement is one of the major strategic aims in the venison strategy and we are working hard to make progress on that. A public sector procurement group has been set up by the Scottish Government, which involves a number of separate strands of those operating in the sector. We met for the second time yesterday. It is tremendously encouraging to hear what is happening in the public sector and their buy-in to venison.

The hill-to-grill projects have been mentioned already. They have a crucial educational aspect, not just because they can result in venison going into school canteens and dining rooms but also because they are taking children out on the hill and allowing them to see the whole process from start to finish.

In addition to that, people will probably have heard of Wild Jura Venison and its success in securing a contract with Argyll and Bute Council to supply venison to schools. It has just won a national public procurement award. That is evidence for the sector that you do not have to be big to make this happen and that it is possible for local producers and a small processor to be supplying the public sector.

Highland Game is well down that route now with education, and it is supplying certain NHS hospital trusts in England. That work is moving forward. In conversations that we are having with the wholesale sector, we are getting encouraging feedback that venison has a lot of the right

attributes that make it very attractive for public sector procurement.

David Fleetwood: I was going to highlight one of the same case studies that Dick Playfair has just mentioned—it was the one in Argyll and Bute, so I will not repeat that.

It is perhaps worth looping back to the broader case for the Scottish Government providing some financial incentive. If the Government incentivises the cull, that adds to the case for public procurement utilising some of the output of that cull. It is worth bearing in mind the nose-to-tail element of the process.

Elena Whitham: I am interested in understanding the group that has been set up to look at public procurement for venison. How is that operating in relation to how local authorities write their tendering contracts? Having previously been a councillor in East Ayrshire, where there is a huge amount of public procurement for school meals coming from local producers, I know that transforming the way in which those tenders were written and the way in which the person reading the tenders interpreted the information that they were given was key. Will that approach play a role? It is not just about driving costs down when you are tendering for those things; it is about looking at the wider picture.

Dick Playfair: Yes, I think that it will. We have not made local authorities aware that venison is a healthy food choice that is available to them. Conversations with the likes of Scotland Excel, for example, which are now taking place, will start opening those doors. That approach will certainly help with the wholesale sector, where you have the likes of Brakes and Bidfood, which are already supplying the public sector.

One of the issues we are up against is that a lot of the menu choices are decided a very long time in advance and are obviously determined by price, too. Those supplying venison cannot afford to discount it to such an extent that the supply is more important than the actual return.

However, we should not overlook the fact that we have a really good story to tell. We have potentially the best story to tell of all red meats around sustainability, everything that we are talking about regarding the environment, biodiversity gain and the product itself. It is an exceptionally healthy red meat. If we cannot make this work now and if we cannot make this work in the next five years, we are doing something very wrong.

12:15

Edward Mountain: Section 20 of the Natural Environment (Scotland) Bill seems to be fairly

uncontroversial and everyone agrees with it. Section 20 of the Land Reform (Scotland) Bill, which is being considered by the Net Zero, Energy and Transport Committee, which I convene, talks about game damage and provides a right for a tenant who has no right to kill game to seek compensation from the landlord for such damage. That includes damage to crops, trees, fixed equipment, livestock and habitats. For the avoidance of doubt, game includes grouse—so, capercaillie, if they ever come back—black game, pheasants and partridges, and deer.

If a landlord was pursued by a tenant for game damage on the tenant's land, would the landlord's defence not be that they cannot control red deer across the whole range but that, if the deer management group controlled the deer, there would not be a problem? Therefore, does the group feel that, if they are part of a deer management group, that might leave them exposed to claims from tenants who would be trying to seek damage from the landlord, who would then chase a deer management group? It is just an idea that is worth considering.

Ross Ewing: Mr Mountain raises a really good point. The reality is that deer are transient. They have a very broad range in some cases, and pinning particular liabilities on a landlord where a tenant has suffered damage may be an issue. It may not be within the gift of said landlord to adequately control those deer if they have been on that ground for a relatively short time—the problem could be a consequence of a neighbour's actions or a lack thereof. That introduces a real problem, which probably needs to be considered in detail, given that deer are transient and can cross a very broad range. So far, that issue has not been considered in the context of the bill.

Tom Turnbull: The issue certainly needs to be considered. We all manage deer on a landscape scale in the Highlands for exactly that reason—deer move around. The ability for people to have a sensible discussion around such deer management issues needs to be facilitated.

Peter Clark: I know that the Land Reform (Scotland) Bill is going through the Net Zero, Energy and Transport Committee, and BASC has been looking at both bills. It is unclear at the moment how the two bills will interact if they are passed in their current forms. We should be seeking clarity on that in particular, but I know that that is outwith the remit of this committee.

Edward Mountain: I have one further question, convener. I know that everyone is different. I am quite happy to provide a refuge for wildlife that are being persecuted around me, but not everyone is in that situation. One thing that is clear is that, if the Land Reform (Scotland) Bill is passed, ministers will have powers in respect of the lotting

of estates that are over 1,000 hectares that are put on the market. That lotting can divide estates into small packages, which are then sold on. In contrast, the Natural Environment (Scotland) Bill is trying to achieve things with deer management over a bigger area because deer wander. If some of these estates, especially those across some of the more remote areas or in areas managed by Forestry and Land Scotland, are segmented up and sold off, which might be a good idea, will that affect what the Rural Affairs and Islands Committee is trying to achieve with the Natural Environment (Scotland) Bill?

Tom Turnbull: If landholding sizes are reduced through the Land Reform (Scotland) Bill, that could become a significant challenge for the deer management groups that we represent. It is clear that it is more complicated in those deer management groups where there are more landholdings. Collaboration is not a straightforward thing at the best of times, and with more people involved it becomes difficult. Given the transient nature of deer—the fact that they move around over large areas—management becomes more difficult when the number of landholdings increases. It is no surprise to me that, in the lowlands, where there are smaller and more fractured landholdings, collaboration is more difficult. We do not want to create that challenge going forward.

David Fleetwood: I will make a similar point. In the 24,458 hectares that we manage across Scotland, that collaboration and partnership approach comes first. Some are very small partners and some are big partners. We are looking to stitch together that coalition of interest at the scale that is needed in order to act. The powers in the Natural Environment (Scotland) Bill should be a backstop when that collaboration has not achieved the aims that it needs to achieve or when there is not that consensus between the landowners who are operating at that scale.

Mark Ruskell: My question is in a similar vein, because I am also on the NZET Committee with Edward Mountain. I am interested in the witnesses' thoughts on the provisions on land management plans that are in the Land Reform (Scotland) Bill and whether they will help or hinder. Clearly, some community engagement is required. Do you expect those plans to cover deer management? If so, how does that change the dynamic of getting a local consensus with surrounding communities and landowners on the appropriate objectives for deer management? Do you see deer management as something that landowners just might not consider as part of their land management plans?

Tom Turnbull: Deer management plans covering 3 million hectares of the Highlands are

already in place. Some of them need updating, but they all refer to woodland creation, peatland restoration, deer numbers, agriculture and whatever else is happening on the land. People have a five-year plan and working action plans. Those plans need to be updated, and I think that the Land Reform (Scotland) Bill process has probably slowed that somewhat, because people are thinking, "Well, what's coming next? What do we need to put in our next deer management plan?" I think that the proposal for land management plans will just duplicate much of what is already in place and in the public domain.

Ross Ewing: The other inherent challenge of a land management plan is that it will apply only to landholdings above a certain size, which I know is a topic of live discussion at the moment. The implication is that you could have properties in a deer management group that are below that threshold and that deer management will not be included as part of the land management plan.

I agree with Tom Turnbull that there is a risk of duplication, given that a specific section—section 6A—of the 1996 act deals with deer management plans, which are defined legally as distinct from land management plans. I anticipate that that will continue to be the case, but it is important for MSPs and ministers to recognise that deer management plans go alongside the production of a land management plan. How those plans interact with land management plans is a question that probably needs to be looked at.

Grant Moir: My point on this is that we produce a lot of silo plans for deer, forestry, peatland and so on—name your plan. This would take some time, but I would hope that if we think carefully about the introduction of land management plans, we could reduce the number of plans that we have to produce but do so in an integrated way, so that people could see how they all interrelate. There is something in there about thinking about the land management plan through the Land Reform (Scotland) Bill, but also thinking over time—and it will take time, because there is no way that we can do this all at once—about how we can reduce the number of plans that are required and make it easier for people to understand what estates do. People have to go to a hell of a lot of different sources to find all the information about one place. We need to think about that.

On the lotting point, I do not think that there is an answer, because it would depend on who bought the land and on whether they wanted to get involved. You could go from one person who was being obstructive to five people who were not obstructive, or vice versa. I think that it would depend on who eventually got the land—if lotting ever happened.

The Convener: A reduction in plans is a novel plan, is it not? Will it ever catch on?

Duncan Orr-Ewing: I agree with Grant Moir on that.

Clearly, not all landholdings—even on the islands—are in deer management groups, including quite big areas of the Loch Lomond and the Trossachs national park. From our perspective, and in the interests of trying to get more deer management happening across the landscape, it is important that, whatever comes out of this, sustainable deer management is at least a theme of the proposed land management plans.

Graeme Prest: We have been through some of this. We used to have lots and lots of different plans, but we have reduced them. Being a forestry body, we used to have what we called forest design plans, but for a number of years we have been calling them land management plans, recognising that we manage multiple objectives and that it is not just about the forest. Deer management is an important component of that. A helpful lesson that we have learned is that that links more clearly why we are doing deer management, how we will do it, and what the outcomes and objectives are, rather than deer management being seen as something on its own. We have tested that approach and I very much support moving further in that direction.

Edward Mountain: I have done three deer management plans, albeit 20 years ago, and they involved a huge amount of work, given the number of people involved. The costs varied: without going into specifics, I think that the cheapest one was £25,000 and the most expensive was £50,000. Therefore, people should be careful what they wish for when it comes to deer management plans, because they are massive and complex, with a multitude of owners as well as different times of year for deer management. It is very complicated.

The Convener: I am glad that you put on record your declaration of interests at the start of the meeting, Mr Mountain.

Edward Mountain: It was 20 years ago!

The Convener: I have a couple of quick questions. We talked about incentivisation. Should sporting rates play a role? Sporting rates are a very traditional tax. Could incentivisation occur by reducing sporting rates if certain objectives were met? Should we consider that as part of our work?

Ross Ewing: We are formulating our position on that now. The bill feels like a potential opportunity to look at that. The situation with sporting rates varies hugely. A lot of businesses are exempt from them for various reasons. We

would need to do a survey of our membership and come back to you with a more explicit answer on the implications. However, we are certainly taking an interest in and looking at that.

Tom Turnbull: To back that up, I think that what you suggest, convener, would be worth considering for sure. I am not sure that sporting rates work in an entirely appropriate way. It would be worth revising them and even removing them. They are just another burden on deer managers that is not really required and that does not generate income anyway.

The Convener: I would like a bit of clarification around the venison dealers licence and the removal of that requirement. Is there a consensus that we should be looking at replacing the licence or at least having something that will address some of your concerns, with a date for the removal of venison dealers licences at some point in the future? Should that form part of the bill?

Dick Playfair: I am not sure that it necessarily needs to form part of the bill. However, as the bill stands, the abolition of the venison dealers licence, with nothing to replace it, is certainly a risk to the venison sector.

Ross Ewing: It would probably be better if the bill said something to the effect that Scottish ministers may abolish the licence by regulation sometime in the future. That would at least give time to get something appropriate in place.

The Convener: We are almost bang on time. We have two minutes for any final comments.

Alan McDonnell: I want to come back on incentives. In looking at options, it is worth considering how best to directly support deer management jobs for the long term. That is part of the calculation that will be relevant if you are thinking through sporting rates.

Duncan Orr-Ewing: At the risk of opening up a whole new debate, we have not touched on female deer seasons. NatureScot came up with some quite sensible proposals around female deer seasons, which I think need some greater scrutiny by this committee. If we are going to manage deer populations and reduce them over time, the hind and female deer population is pretty important. On NatureScot's proposals, the LINK deer group supports an evidence-based approach to female deer seasons, whether on animal welfare or other grounds.

Ross Ewing: The provision remains that you can get an individual authorisation to undertake out-of-season culling. There is an opportunity in the new register for specified activities to make that more flexible. Culling deer out of season is a contentious issue, and those who are at the coalface have strong and valid views. Ministers

have made clear their intention, which is that they are not planning to do anything with it. That does not mean that amendments will not come forward to that effect, but we need to put front and centre in this discussion the people who are ultimately being asked to do some fairly unpleasant things.

Grant Moir: I support Alan McDonnell's point about the jobs and employment side of things. We need to have a good think about that. It is likely that, if we see decreasing deer numbers in Scotland in significant areas, we will see decreasing amounts of funding coming in from the sector, although you will have the same amount of work, if not more. With some of our species—sika, for example—it certainly takes a lot of work to be able to get any of them.

12:30

The question is, who pays for that? Is the cost borne by the private sector or by the public sector? Where is the balance between the two? What is the best way to pay for that? Is it through deer or through employment? There is a bigger question about where you put your money in the long term that needs thinking through. That is not necessarily something for legislation; it is about how you implement the legislation around it.

The Convener: The last word goes to Peter Clark.

Peter Clark: I have two quick points on lowland deer management and incentives. The Department for Environment, Food and Rural Affairs in England offers, through the equivalent of the agri-environment scheme in England, a scheme that farmers can apply to for chillers and ladders. That could be an option for the Scottish agri-environment climate scheme.

Evidence was put to the minister on female deer seasons because our members had serious concerns about the extension of the season.

The Convener: Thank you. We are a minute over time, which could be viewed as a success, given the number of witnesses today. I thank the witnesses very much for their valued contributions.

That concludes our proceedings in public.

12:31

Meeting continued in private until 12:46.

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