



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 27 November 2013

Session 4

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**Wednesday 27 November 2013**

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**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**  
**35<sup>th</sup> Meeting 2013, Session 4**

**CONVENER**

\*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

**DEPUTY CONVENER**

\*Graeme Dey (Angus South) (SNP)

**COMMITTEE MEMBERS**

\*Claudia Beamish (South Scotland) (Lab)

\*Nigel Don (Angus North and Mearns) (SNP)

\*Alex Fergusson (Galloway and West Dumfries) (Con)

\*Cara Hilton (Dunfermline) (Lab)

\*Jim Hume (South Scotland) (LD)

\*Richard Lyle (Central Scotland) (SNP)

\*Angus MacDonald (Falkirk East) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Hugh Dignon (Scottish Government)

Karen Hunter (Scottish Government)

Paul Wheelhouse (Minister for Environment and Climate Change)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

Committee Room 3



## Scottish Parliament

### Rural Affairs, Climate Change and Environment Committee

Wednesday 27 November 2013

[The Convener opened the meeting at 10:02]

### Subordinate Legislation

#### Animal By-Products (Enforcement) (Scotland) Regulations 2013 (SSI 2013/307)

#### Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations 2013 (SSI 2013/309)

**The Convener (Rob Gibson):** Welcome to the 35th meeting this year of the Rural Affairs, Climate Change and Environment Committee. Please remember to switch off mobile phones and so on, as leaving such devices in flight mode can affect the sound.

Agenda item 1 is consideration of two negative instruments: the Animal By-Products (Enforcement) (Scotland) Regulations 2013 (SSI 2013/307) and the Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations 2013 (SSI 2013/309).

Members should note that no motion to annul has been received in relation to the instruments, as was hinted in the first paper—we have corrected that typo. I refer members to paper RACCE/S4/13/35/1. As committee members have no comments on either instrument, are we agreed that the committee does not wish to make any recommendations in relation to the instruments?

**Members indicated agreement.**

## Wildlife Crime (Annual Report 2012)

10:03

**The Convener:** Under our second agenda item, the committee will take evidence from the Minister for Environment and Climate Change on the “Wildlife Crime in Scotland 2012 Annual Report”. I welcome the minister and his team—Hugh Dignon, wildlife management, head of branch, and Karen Hunter, wildlife management, policy officer, from the Scottish Government. I refer members to paper RACCE/S4/13/35/2, which we have prepared as background. Minister, do you wish to make an opening statement?

**The Minister for Environment and Climate Change (Paul Wheelhouse):** Yes, convener. I am pleased to be here to give you more information on Scotland’s—indeed, the United Kingdom’s—first-ever annual report into wildlife crime.

The Wildlife and Natural Environment (Scotland) Act 2011 introduced the requirement for the Scottish Government to lay an annual report before Parliament into the extent of wildlife crime. The publication of this first report serves as a reminder of the importance of doing everything that we can to challenge a crime that affects not only our environment, our wildlife and our wellbeing but our global reputation as a destination for wildlife tourism. We are leading the way on the issue of wildlife crime in Scotland.

This and future reports will develop into a data series that will highlight trends and developments and the action that is being taken. It will provide greater clarity year on year and guide action for PAW Scotland—the partnership for action against wildlife crime in Scotland.

The report includes information on court proceedings for wildlife crime offences over the past five years, police recorded crimes for the past five years, recent legislative changes and the future direction of wildlife crime policy. Data from the justice department, the Crown Office, Police Scotland and the national wildlife crime unit have been collated to paint a picture. I have been careful to emphasise that, although it would be ideal if we could track each case from discovery through detection and prosecution to court disposal, the justice system data simply do not allow that.

Each of the data sets records a different aspect of a case. Some data relate to crimes recorded, while others relate to offences prosecuted, of which there could be several in relation to any one incident. Similarly, data can refer to the accused who might have faced charges in relation to

offences in addition to wildlife crime, such as vehicle or firearm-related charges. At present, the data do not capture all wildlife crime. However, we will strive to work with colleagues to improve the intelligence networks and to encourage crime reporting so that future data provide the clearest possible picture.

The act that brought about the annual report also strengthened our wildlife laws with the introduction of the new vicarious liability provisions, which represent a ground-breaking approach to dealing with the persecution of birds of prey. Although the new provisions have not yet been tested in the courts, I am confident that, if and when the circumstances arise, law enforcement colleagues will not hesitate to pursue a vicarious liability case.

The Scottish Government has made tackling wildlife crime a priority since 2007. In 2008, we published the report "Natural Justice: A joint thematic inspection of the arrangements in Scotland for preventing, investigating and prosecuting wildlife crime", which led to the building up of the PAW Scotland organisation. We have financed wildlife crime community projects and the national wildlife crime unit, and we have developed a partnership approach that has seen a significant reduction in incidents of raptor poisoning from 30 in 2009 to three in 2012. We have supported the development and use of world-leading forensic and DNA capabilities to tackle wildlife crime both in Scotland and in relation to international issues such as rhino horn and ivory smuggling.

Robust legislation must be supported by good enforcement, and police reform has delivered a strengthened wildlife crime officer network. In every division, there are supporting senior officers, liaison officers and wildlife crime officers. In addition, there is a central co-ordinator who is a national liaison point and a key contributor to PAW Scotland. The Crown Office has a dedicated unit dealing with wildlife and environmental crime, with advice on hand from senior Crown counsel and the high-profile support of the Lord Advocate.

It goes without saying that we cannot afford to be complacent. There is still an unacceptable level of bird of prey persecution, which my announcement of further measures in July will tackle. Put simply, I will not accept a drop in the number of birds of prey that are being poisoned as evidence that we have won the war on raptor crimes. There is no acceptable level of crime that we must tolerate, as I have already made clear on several occasions. I want to see all forms of persecution eliminated from the countryside and those who carry it out brought to account through the criminal justice system. There is no excuse for illegal raptor persecution. I reiterate that, when

species conflicts exist, land managers can work with Scottish Natural Heritage to access support to manage any pressures.

Wildlife crime is, of course, much more than raptor persecution. Crimes involving deer, badgers, hares, freshwater pearl mussels, songbirds and other species also remain far too prevalent. I reiterate a further point that I made in the press release that accompanied the report. Underlying every statistic are wildlife offences that often entail cruelty and suffering. I find it extremely depressing that, in this day and age, there is still illegal and inhumane treatment of our wildlife. It is a blight on any civilised nation by a selfish and ignorant minority.

We are coming to the end of the year of natural Scotland, so the report is timely. I will continue to work with others to deliver improved reporting in the area with the aim of reducing and eliminating wildlife crime. That will take time and effort from all those involved—I am under no illusion that change will happen overnight—but there are areas in which we are seeing encouraging progress, such as the development of the wildlife estates Scotland initiative and action by the Scottish Gamekeepers Association and Scottish Land & Estates to expel and ostracise those who are found guilty of offences. That should send a strong signal to others.

I am confident that the actions that the Scottish Government has taken to date, including the publication of the report, will help to protect and secure our wildlife's future. I look forward to answering the committee's questions on the annual report.

**The Convener:** Thank you, minister. The first question is from Graeme Dey.

**Graeme Dey (Angus South) (SNP):** A section on page 20 of the report states:

"Various initiatives to combat poaching are underway or being considered".

Looking at the bullet points that follow, can you tell us which initiatives are under way and which are still under consideration? Can you report any progress on the ones that are under way?

**Paul Wheelhouse:** If I may, convener, I will direct Graeme Dey's question to Karen Hunter.

**Karen Hunter (Scottish Government):** The Scottish Government does not sit on the poaching group as such, but the vast majority of the initiatives mentioned are under way. The aides-mémoires are in the process of being published and handed out to stakeholders. Awareness raising is being carried out with different forces.

I am sorry, but I do not have more information.

**Paul Wheelhouse:** We can come back with more information if that would be helpful.

**The Convener:** It is a long list. We understand.

**Paul Wheelhouse:** We can come back with a definitive position on each initiative if that would be helpful. I appreciate what Mr Dey is trying to find out.

**Graeme Dey:** I would particularly like to return to hare coursing later in the discussion if that is possible, convener

**The Convener:** Certainly.

**Jim Hume (South Scotland) (LD):** Good morning, minister. You said that there was a wildlife police officer in every division. How does that compare with the situation when we had a wildlife police officer in every police force board region?

I think that a previous minister stated that they would look into ensuring that, as part of police training, every officer would have some training regarding wildlife crime. Has any progress been made on that?

**Paul Wheelhouse:** My understanding is that there has been an increase in the overall number of officers who are involved with wildlife crime. We now have 14 officers at divisional level who have responsibility for wildlife crime in their area. There was a gap between the officers delivering wildlife crime activity on the ground and the senior management, through Malcolm Graham, who represents the specialist units at Police Scotland board level. Given that gap in middle management, I am really pleased that Malcolm Graham has put in place provision for a middle-ranking, senior officer in each force area who will have responsibility for co-ordinating the activities of the wildlife crime officers in their area. That is an important step forward. That was not in place when Police Scotland was formed, but Malcolm Graham has responded to the apparent need for such a linkage to be made between the senior board and himself, representing the specialist units, and the officers on the ground.

The training point has been well recognised. In the early days, there was quite a lot of activity. Police trainees who were going through the probationary period were given training on wildlife crime issues. That has waned a little—we discussed it at the latest PAW Scotland meeting—but the police are now looking at using modern technology to have interactive tools to ensure that every officer has some exposure to and understanding of what constitutes a wildlife crime and what kind of evidence is required to demonstrate that such a crime has been committed. That is an important step forward.

Hugh Dignon might be closer to the detail of what that might cover. Do you want to say anything more on that, Hugh?

**Hugh Dignon (Scottish Government):** One thing I would make clear about the 14 officers at divisional level is that those roles are liaison roles. So, in addition to those liaison officers who are in place in every division, there are also wildlife crime officers on the ground. They are the men and women who are out there dealing with wildlife crime as part of their daily portfolio of responsibilities. They have a liaison officer in their division, and they now also have the support of senior officers as well as the central co-ordination. That is where the 14 officers fit in.

I do not have anything further to add to what the minister said about the new approach to ensuring that all police officers who are coming into Police Scotland have some exposure to wildlife crime legislation and training. That is a new development and we are very pleased to see it happening.

10:15

**Paul Wheelhouse:** I would like to add one further thing. It may seem obvious, but now that there is a single police force, the 14 officers can co-ordinate their efforts in a big operation, working together with support from colleagues in what would previously have been a separate force area. If there is an incident, let us say, in the former Grampian area, officers from elsewhere can come in to help and offer support with that investigation.

**Graeme Dey:** I would like to develop the point that Jim Hume embarked upon. I am fortunate that the area that I represent is extremely well served by the police in tackling wildlife crime. By tradition, practice in Tayside has been the gold standard for dealing with the issue. However, beyond the police involvement, local community officers who cover rural areas are very much engaged, and as recently as last week a new poacher watch initiative involving gamekeepers and farmers was launched. To what extent are those best practice examples being shared across the police force in Scotland to ensure that we really are addressing the issue?

**Paul Wheelhouse:** I welcome that initiative, which is a particularly good example. We have an opportunity to share best practice through PAW Scotland. Those involved in individual work strands—looking at poaching, for example—can report back on initiatives that have been deployed in a local area in Tayside, and that might stimulate other partners to try something similar in Dumfries and Galloway, in Highland, or elsewhere. It is a good forum for sharing that information, and the idea is to disseminate it to colleagues across the country. Police and gamekeepers are represented

in PAW Scotland, so they will know if there is something good happening in the network, and they can share that experience with other partners.

I certainly recognise the value of that work and the importance of sharing it and ensuring that initiatives that work are rolled out in other places where there are similar challenges. We can look at ways of enhancing that effort, but the media strand of PAW Scotland is very good. Louise Batchelor is an experienced journalist who is passionate about the environment, and she is involved in helping us to disseminate messages to the wider community. That is working particularly well, and that model could be deployed in other parts of our engagement with stakeholders. Having media professionalism involved in working groups, whether in relation to biodiversity or to agriculture or other sectors, shows that there is a role for someone who knows how to get across the message about progress that is being made.

**Cara Hilton (Dunfermline) (Lab):** I was pleased to hear that the role of the wildlife crime officers will continue with the single police force, but I have some concerns. Do you think that there is a link between wildlife crime and organised criminal activity? I know that that is a big issue in Fife, where we saw 300 incidents of wildlife crime last year, which represents an increase of about 800 per cent. That is a big concern, and I know that the wildlife crime officer in Fife is concerned about the links with organised criminal activity. I am also concerned that wildlife crime is becoming an increasingly urban problem. What measures are in place to recognise that fact when we are tackling wildlife crime?

**Paul Wheelhouse:** I begin by welcoming Cara Hilton to the committee. This is the first time that I have engaged with you in this forum, Cara, and you have raised an important issue. We find that there are particular types of wildlife crime, whether it is hare coursing, badger baiting or other perverse sports, in which people make serious money out of the gambling that surrounds those activities. The police are certainly aware of that, and we take it particularly seriously. There are other areas of wildlife crime that could have links to organised crime, through the international trade in illegal products such as ivory from elephants and rhino horn, as well as egg theft and stealing live raptors for trade, which are covered by the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

There is quite a lot of concern about the links to organised crime. Like other parts of my portfolio that butt up against the issue, such as the waste sector, we take it seriously. The Lord Advocate is keen to clamp down on wildlife crime and is supportive of our efforts on it. The Crown Office

and Procurator Fiscal Service now has a team that specialises in wildlife crime, because it is a technical area of the law and we need to build up expertise and experience to be able successfully to prosecute it. We come up against organised criminals who are well resourced and quite able to fund their defence, so we need to have well-trained and aware legal professionals who can tackle it.

We are taking the matter very seriously. I will examine the issues in Fife. If a particular case is of concern, I would be happy to correspond with or meet Cara Hilton to talk about what we can do in Fife. I take wildlife crime seriously. Through the Lord Advocate, the Government is keen to clamp down on any links between environmental crime and the organised criminal community.

**Nigel Don (Angus North and Mearns) (SNP):** The Health and Safety at Work etc Act 1974 was a step change in the way in which industry organised itself because, suddenly, the guys in the boardroom thought that they might be responsible and realised that they should do something. Is there any evidence that the prospect of vicarious liability has changed the way in which estate managers—and, indeed, other business managers—conduct their business?

**Paul Wheelhouse:** Anecdotally, that appears to be the case. Individual estates have made comments to us to the effect that they are concerned about being able to demonstrate that they have taken every step to ensure that their staff are trained in their legal responsibilities. Estates are taking seriously the reputational driver—the threat of being hauled in front of the sheriff court—and the policy team at SLE tells us that vicarious liability is having an effect in helping to enforce the message that wildlife crime is unacceptable.

There has been genuine progress. I do not know whether Hugh Dignon wants to add anything about definitive statistics to prove that progress, but my understanding is that vicarious liability is having some effect. Although we have not had a prosecution under vicarious liability, as I said in my opening statement, I have every confidence that if the evidence exists, the police and the Crown Office and Procurator Fiscal Service will use the power. Until it is tested in the courts, we will not be able to be definitive about how successful a prosecution would be, but there is a recognition that if a suitable case comes up, we will need to pursue it.

**Hugh Dignon:** I do not think that any data are available on changes in people's behaviour. However, we co-operated closely with Scottish Land & Estates in producing guidance for its members to help them to understand what due diligence and taking all reasonable steps to



prevent wildlife crime taking place on their ground would entail. That was fairly clear evidence of SLE's intention to ensure good co-operation.

**Nigel Don:** Much wildlife crime has nothing to do with those who are employed on estates but comes to an estate through other people coming in. Does the minister believe that, or will he reflect on whether, the law is sufficiently well written to enable us to catch and prosecute people? That might be a slightly unfair question because he is not a lawyer, but that is what we do here.

Sometimes the law of evidence needs to be changed. I do not want to get into corroboration and all the other high-level stuff but, sometimes, we will just not be able to use the normal rules and ways of doing things for a particular case or issue. Has anyone reflected on whether the normal rules of evidence might be almost inapplicable—it might simply not be possible to use them—for some issues? Hare coursing might be one such issue. Perhaps we need to rewrite the law so that we can cover a particular issue.

**Paul Wheelhouse:** I am well aware that this is a technical issue, hence the importance of having the Crown Office and Procurator Fiscal Service, which is best placed to determine the kind of charge that can be brought and whether a case for vicarious liability, for example, could be taken forward. I do not want to second guess what the COPFS does, but when it considers a prosecution, it looks at the most likely means by which it can secure the desired outcome and redress a criminal activity of one kind or another.

On looking at the law, there will be a time when we have to ask whether the provisions in the WANE act are effective. I do not think that we are there yet. The real test will come when we bring a vicarious liability case to court and see what the learned gentlemen and ladies make of it.

I take Nigel Don's point on board, however. When it comes to pursuing a wildlife crime, it is worth bearing in mind the fact that the case requires the same burden of proof of the crime. A wildlife crime is a crime. To many people, it might not be as serious as a murder, but the case will require the same evidential trail and the absolute proof that someone has committed a crime. That is just as important in wildlife crime as it is in any other kind of crime.

It is difficult, because we are talking about offences that are often committed in remote locations with no eyewitness, so we have to work extremely hard on developing the evidential tools that will allow us to pursue such an offence if it comes to light.

A lot of work is being done. The Lord Advocate has had a lot of discussions with his team and Police Scotland about how to develop those

evidential tools and best demonstrate when a crime has taken place. I acknowledge that it is very tricky and we must be responsible and make sure that, if there is a prosecution, the individual that we charge has committed the crime. That is very difficult. The area is clearly a sensitive one and I will welcome any thoughts from the committee on the process for such reviewing of the legislation. I will wait to see what the committee makes of that, but I recognise the challenge and will stay alert to any developments. If the legislation is defective in any way, I have the appetite to address that.

**The Convener:** Before we move on to a separate point, Graeme Dey has a supplementary question.

**Graeme Dey:** From my own constituency, I know how significant the issue is and about the practical difficulties around obtaining successful prosecutions. I hear stories about gamekeepers, farmers and the police encountering these individuals and getting a bold response such as, "You will never be able to prosecute us, so go away." It has been suggested to me that there might be another way. Is it possible to look at restricting the ability of these people to allow their dogs to run free in areas in which hare coursing is happening? If dogs had to be kept on the lead, it would prevent the problem. I do not know if that could be achieved but some of the people at the sharp end have put the idea to me.

**Paul Wheelhouse:** As Mr Don correctly identified, I am not a lawyer so I would have to look at what is legally possible. In another part of my portfolio, I am responsible for national parks and they are having to put byelaws in place in east Loch Lomond to control certain unacceptable behaviour that has threatened conservation areas. I do not know whether it is possible for local authorities or other partners to apply byelaws in certain circumstances, but I can certainly come back to the committee with what we can do, unless Mr Dignon or Ms Hunter wants to comment now. I assume that we will have to come back to the committee to talk about the tools that we might be able to suggest would work in that situation.

There is legislation that permits access but it has to be used responsibly. There is probably a wider message there about communication to the public who, although they might not intend to commit a wildlife crime, go about their business in the countryside, unaware that they might be posing a conservation risk to a species such as capercaillie, which is an obvious example of a species that can be significantly disturbed by the presence of dogs that are off the lead.

The Government, the Parliament and civic society probably have a job to do to get across the message that the outdoor access code is every bit

as important as people having rights under the Land Reform (Scotland) Act 2003. We have to get both sides of the message across to people—they have a right to roam, but they also have a responsibility to do it in a responsible and mature way and to keep their dog on a lead in the appropriate areas.

10:30

**The Convener:** In any cases of prosecution, has there been an indication of whether the estates concerned are members of Scottish Land & Estates? The anecdotal evidence is that they are often not members.

**Paul Wheelhouse:** Certainly there is a suggestion that a number of offences are being committed by non-SLE members. I have highlighted the importance of an element of peer pressure being applied by SLE and other organisations, so I welcome the fact that the Scottish Gamekeepers Association and SLE have ejected people who have been found guilty of an offence. I am sure that pressure has been put on those organisations to eject such people before they are found guilty, but I understand the reason for waiting until they have been proven to be guilty before ejecting them. That is a welcome step, because it sends a message to other members of SLE and the SGA that such things are no longer tolerated by them. It is positive that they take the issue seriously enough to throw people out of their organisations, which is quite a big step for them. I recognise and welcome that.

**The Convener:** Alex Fergusson has a question on that point.

**Alex Fergusson (Galloway and West Dumfries) (Con):** It is an extension of that point, convener.

In his opening remarks, the minister rightly said that he does not view the reduction in the rate of raptor persecution in particular as a sign that the battle is over and the war is won, and I entirely agree with that. Nonetheless, I am sure that the minister welcomes the statistic, and I think that he would give credit to the Scottish Gamekeepers Association and SLE for the part that they have played. Without their buy-in, what we want will not happen, and it is clear that we have that buy-in, which is to be hugely welcomed.

At the end of the written submission from SLE, it points to what it considers to be a gap in the report, which is interesting because, as I say, buy-in from SLE is hugely important to the outcome of the legislation—I do not think that anyone would disagree with that. SLE believes that there is another group of wildlife crimes that are not yet recorded or included in the report, which is the increasing incidence of interference with and

damage to traps, snares and other items that are legitimately used daily by people going about their jobs. Do you have any thoughts on how that aspect might be addressed?

**Paul Wheelhouse:** That concern has been raised with me directly when I have met members of the Game and Wildlife Conservation Trust, the SGA and SLE. I can understand the rationale for those who tamper with traps and snares. In some cases, people might think that they are doing the right thing by preventing an animal from being caught in a trap, but it could potentially be damaging and could end up with the wrong kind of animal being caught. By tampering with a trap or snare, a person might move it or end up trapping a species that was not intended to be caught. If a wildlife crime is about to be committed, tampering with a trap could damage the evidential trail and muddy the water so that it is impossible to secure prosecution. I understand the motivation for people to do that—although I do not necessarily agree with it—but it could be counterproductive.

The point that SLE and the SGA have made is that given the provisions for legal snaring, their members are doing something that is within the law. If someone tampers with a trap, their members could end up being prosecuted because it looks as though they have placed a snare or trap inappropriately when it was not them who moved it. That makes things difficult and perhaps puts people in an unfair situation. I encourage those who are considering doing such things not to do so and to leave the prosecution of wildlife crime to the police and the professionals, who can gather the evidence in a robust way and secure prosecution if necessary.

If people are in doubt, they should leave the trap in place. If they have a concern, they can report it using the new wildlife crime app that PAW Scotland has developed. The trap or snare might be there perfectly legitimately. If people are in any doubt, they should leave it in situ. They can send in information about it via the app and let a policeman or other professional come and assess whether that is an appropriate place for it to be.

**Alex Fergusson:** So you would recognise that that is a legitimate concern.

**Paul Wheelhouse:** It is something that PAW Scotland will be addressing. We raised it at the most recent meeting and it will be on the agenda at a subsequent meeting. We recognise that it is legitimate to discuss how big a problem it is. Unfortunately, we do not have any data to tell us how extensive the problem is on a national basis, so we are reliant on SLE and SGA members to tell us what is happening. They have encouraged people to inform the police if there has been any tampering with traps. They suggested that they would ensure that such cases were reported to the

police so that they would be aware that there was an issue at the site in question and could take that into account if a wildlife crime was subsequently committed there. We will discuss the issue again in PAW Scotland.

**The Convener:** Angus MacDonald has a supplementary, as do I.

**Angus MacDonald (Falkirk East) (SNP):** Thanks, convener.

I want to follow up on Alex Fergusson's point. Although animal rights activists are well meaning, they can sometimes do more damage than good, especially when what they do involves tampering with traps. There could be cases of malicious claims about owners of estates. Has there been any evidence of estates being set up, for want of a better term? If there has, how can that be addressed?

**Paul Wheelhouse:** I am not aware of any evidence of an estate being set up in that way, but I fully recognise the possibility that it could happen. It is extremely important that activists and others who might be considering tampering with material do not do so, because we need to have clarity on who was responsible for laying a trap or laying poison illegally—I stress that there are legal ways in which people can use traps and snares—or for committing some other offence. I invite Hugh Dignon to say whether he is aware of any evidence that that has been recorded as an offence.

**Hugh Dignon:** No. I am not aware of any evidence of such cases. Claims have been made that evidence has been planted or that something untoward has happened, but I am not aware of any prosecutions that have gone ahead on the basis of such claims or of anyone who has been able to point to cases that have proceeded along those lines.

Further to what the minister said about the business of interference with traps that have been set legally, I understand that the British Association for Shooting and Conservation is carrying out some research into the incidence of that and has asked us whether we will consider supporting that research. We are considering that at the moment, and I think that it is very likely that we will be able to offer some support to help to establish the extent to which such activity is going on in the countryside.

**The Convener:** So, at the moment, the assertion in the SLE submission that

"There is an assumption among some animal rights enthusiasts that any such device is inhumane or illegal and they can break or move it with impunity"

cannot be proved. Therefore, the report to which Hugh Dignon refers will be quite important in establishing the facts.

**Paul Wheelhouse:** Yes—such allegations are all conjecture at this point. I can understand why SLE might think that that is happening. Gamekeepers might report to it cases in which a trap has been moved or tampered with and say that, because they did not do it, they feel that someone else must have done it. It is equally true that we have no proof as to who was responsible in such cases, so to point the finger of blame at animal rights activists is unfair. Until we have evidence one way or the other on what is happening, the allegations that are being made are conjecture and supposition. We need to get more evidence so that we can determine how big a problem it is and whether it is legitimate to say that it is muddying the waters when it comes to the prosecution of wildlife crime, or whether it is concentrated on one or two sites. We genuinely do not know.

I recognise the potential for that to be a problem, but we do not yet know whether it is an actual problem.

**The Convener:** It would be interesting to know. However, anybody who is listening out there who is on any side of the argument had better take note.

**Richard Lyle (Central Scotland) (SNP):** Good morning, minister. I want to go back to the point about court proceedings and prosecutions for wildlife crime. The written submission from Scottish Land & Estates says:

"This is not a few people 'taking one for the pot' - it involves some very unpleasant criminals and the police deserve a high level of support to deal with them."

The submission also states that for

"poaching deer and fish and illegal hare coursing"

there were only

"39 court proceedings in 2012 ... of which 22 achieved guilty verdicts."

You are not a lawyer, but do you have any concerns about the number of prosecutions that are taking place? Are you having discussions with the Crown Office to find out how many wildlife crimes are reported, what number are regarded as suitable to go to a prosecution and what sentences were imposed following the 22 guilty verdicts? Was it a £20 fine or a £1,000 fine? Was it 30 days' imprisonment? Have we any idea?

**Paul Wheelhouse:** You have made a number of points. First, we want to strengthen our ability to prosecute where our gut instincts are that a crime has taken place. We want to have the appropriate evidence and the ability to prosecute a crime

where it is suspected. A lot of emphasis will therefore have to be placed on trying to improve the evidential trail so that we can take a case to court and the Crown Office can feel sufficiently confident that it can secure a conviction.

Police Scotland and PAW Scotland are doing work on wildlife crime that provides a good forum for discussing how we can improve the evidential trail. The guidance from the Lord Advocate to the Crown Office and Procurator Fiscal Service, and through it to the police community, is to use all available investigatory tools. That has sent a clear message and has demonstrated the Lord Advocate's commitment to tackling wildlife crime. There has therefore been a strengthening of the strategic message that we want to bear down on that crime.

Prosecuting wildlife crime should be seen in the context of an increasing understanding that not only is it intrinsically good to tackle such crime but the natural environment and its ecosystems are important to our economy in terms of tourism, our food and drink and our international reputation. There is now recognition at the highest level in the legal community that, although wildlife crime is not a matter of life or death for mankind, it is clearly very serious, as Cara Hilton identified. There are obviously unsavoury characters involved in wildlife crime and we must bear down on it for that reason as well.

The issue is being taken very seriously—I have no doubt about that. The Lord Advocate and the Crown Office and Procurator Fiscal Service have made a commitment to put a specialist team in place, so I would hope to see more progress over time. It is also worth pointing out that, as I said in my opening statement, some wildlife crime is ultimately prosecuted through another route, such as a firearm offence or another category of offence, rather than through the pure wildlife crime element. An individual might undoubtedly be involved in wildlife crime, but the conviction might be for a related offence and would therefore not appear in the wildlife crime statistics.

We are therefore not saying that the statistics necessarily capture all wildlife crime, because there is hidden wildlife crime, in a sense, when somebody is prosecuted for something else. However, we hope to refine the data and get a better understanding of the wildlife crime that is associated with a prosecution of an offender for something else, so that we can get a better picture of how extensive wildlife crime is.

A good example of the data recording issue, as Karen Hunter my official explained to me earlier, was the situation in Fife. There might have been a problem with the quality of the data there, and so there has been an apparent jump in the figures. We will come back with some specifics on that.

However, the understanding of what is being committed on the ground will improve as we get a better handle on the statistics.

I would hope to get to a situation where there are no prosecutions for wildlife crime at all. If we eliminated wildlife crime, we would obviously not have to take people to court. However, to respond to Richard Lyle's point, we want to improve the ability to secure conviction where we suspect that a crime has taken place.

10:45

**Richard Lyle:** Perhaps you can write back to the committee on this matter, but do you have any idea of the level of fines that are being imposed or the number of days for which individuals are being jailed for these crimes and whether those levels are where they should be?

**Paul Wheelhouse:** We undertake an on-going review of wildlife crime penalties and whether they are severe enough. Formal appointments have not yet been made, but we are proposing a review, which I believe will be led by Professor Mark Poustie, of whether the penalties and sanctions available to the courts are significant and robust enough to deter wildlife crime. It is worth pointing out that in the case of certain criminal offences that have been successfully prosecuted—for example, the serious incident involving freshwater pearl mussels—the individual in question was ultimately not convicted of a wildlife crime, because we were able to secure a bigger fine or penalty for the offence through a different route. We have to look in the round at how we achieve the outcome that we want, which is to deter people from carrying out these crimes and ensure that such an offence receives an appropriate level of punishment.

**Richard Lyle:** I would certainly welcome a review and, indeed, an uprating of these fines to ensure that these criminals know that, if found guilty, they are going to be hit very hard.

**Paul Wheelhouse:** Absolutely. I am happy to take up Mr Lyle's request and write back to the committee with more detail about the review and what we propose to do in that regard.

**The Convener:** I now call the very patient Claudia Beamish.

**Claudia Beamish (South Scotland) (Lab):** Did you say "patient" or "impatient", convener?

Building on previous questions, I want to ask two specific questions, the first of which is about partnership working in remote areas of Scotland. I know that the police, RSPB Scotland and other bodies are doing good work on evidence gathering and vigilance and that, as you have highlighted, the general public are carrying out similar good

work on reporting. Can you say more about the interrelation between the different groups and how that is reported in the PAW groups?

Secondly, the League Against Cruel Sports, which, as you will know, had a reception in the Parliament last night, has drawn to my attention the use of social media—more, I should add, in urban areas—by people whom Scottish Land & Estates has called very unpleasant criminals to advertise illegal activities such as badger baiting and dog fighting. Although dogs might not be described as wildlife, I believe that such an activity falls within the category of wildlife crime. I realise that it might be an operational issue, but can you say anything more about that and any monitoring in that respect?

**Paul Wheelhouse:** I would not want to alert those who might be doing something to the means by which they might be caught, but suffice it to say that, through the Lord Advocate and Police Scotland colleagues, we are encouraging the deployment of all investigative tools. I imagine that the police will be well able to respond to changes in behaviours and the ways in which people communicate and will take appropriate action to use any intelligence that they can gather through more modern means of communication and social media to investigate criminal offences.

As for the collaboration that is going on, Claudia Beamish is absolutely right to say that these particular activities are also present in more urban parts of Scotland. However, although I take the earlier point about wildlife crimes in urban areas, many crimes such as raptor persecution and those involving freshwater pearl mussels predominantly occur in very remote parts of Scotland, where there are not many eyes or ears around to witness a crime being committed.

We have important resources in the UK-wide national wildlife crime unit, which plays a co-ordinating role in ensuring that partners work together to gather and share intelligence. I will not use names in pack-drill, but someone from the north-west of England was recently suspected of coming up to Scotland for illegal egg collection. We were made aware of the gentleman's vehicle and licence plate, and he was tracked all the way up to the Western Isles. No crime was committed, but our having access to that intelligence and information about his whereabouts and where he was going meant that he could be tracked all the way to where he ended up and back again. The national wildlife crime unit is important in enabling us to share such intelligence.

The PAW Scotland group has a number of important sub-groups. Their work is set out in the annual report, so I will not go into it in detail, but there is co-ordination around legislation, regulation and guidance. There is training in wildlife crime

awareness and sessions are organised so that people understand CITES and get training from specialists who come up from London to advise the police and other stakeholders in Scotland about trends and important developments in the CITES requirements for policing. We also have a team in the science community that is looking at the forensics. Important work is going on to build evidence trails, co-ordinate activities and share information. That is one of the big strengths of the PAW Scotland network, which other Administrations have looked at as a way of bringing together all the different agencies to create a co-ordinated approach to tackling wildlife crime.

**Alex Fergusson:** I seek some clarification, convener. I do not want to be seen to be questioning the minister on a technicality, but in answer to an earlier question he said that there is a right to roam. I am sorry if this sounds pernicky, but it is a right of responsible access. I raise the matter because, at the time of the passing of the Land Reform (Scotland) Act 2003, it was stressed that there is a difference between the two. The right of responsible access confers considerable responsibility on both the access giver and the access taker. Forgive me, minister, for seeking to correct you, but it is important to clarify that issue.

**Paul Wheelhouse:** I used language loosely. I was trying to point out that people have a right to access areas of the countryside. However, they must do that responsibly and be mindful of the requirements of the outdoor access code. It is not good enough for people to say that because they have a right to be there they can do what the heck they like—that is just not right. There must be a balance and people must understand their responsibilities when they are in the countryside. Yes, they have a right to access the countryside, but they must do so responsibly.

**Graeme Dey:** In July, you produced some new measures for tackling wildlife crime. I realise that it is far too early to talk about the results of that, but it has been suggested that the 2013 annual report will review the development and impact of those measures. When can we expect the 2013 report to be published? Can you tell us anything about the direction of travel in those measures?

**Paul Wheelhouse:** There are three elements to the measures that were announced in July. First, it is important to stress that restriction of the use of general licences is not a punishment. However, general licences are a privilege and demonstrate our trust in people to act responsibly. When we have reason to suspect that there may be a need to restrict the use of a general licence, that important step will, we hope, help to bear down on suspected illegal activity in an area. SNH is

working with the police to agree the type of evidence that could justify such a restriction. The level of such evidence is not as strict as would be required for a criminal prosecution and, although we would want to have as much evidence as possible before taking such a step, which could have a big impact on a landowner or estate, there are precedents for requiring a similar burden of proof, for example in relation to cross-compliance for single farm payments. We need to wait for SNH and the police to have that discussion and come forward with the type of evidence they think would be sufficiently robust to justify such a measure, but it is a step that we should contemplate.

I cannot say too much about the detail of the use by the police of a full range of investigative techniques, for reasons that I gave earlier on. However, I can confirm that, at the first meeting of the new police wildlife crime liaison officers group, the Lord Advocate and the assistant chief constable, Malcolm Graham, gave their clear backing and encouragement to police officers on the ground to consider all the techniques at their disposal. I am happy to answer any questions about that.

We will write to the committee with more detail on the review of penalties. We now have a chair in mind: Professor Mark Poustie of the University of Strathclyde, who is an expert on environmental law—he has had some involvement in, for example, the Regulatory Reform (Scotland) Bill and he has extensive knowledge of the application of the law in relation to environmental crimes. Other members of the team that will review the procedures will come from the law enforcement, land management and environmental communities. We expect the work to start in the new year and conclude next summer.

I am hesitant to pin down a timescale for the 2013 report, as it is still slightly experimental. We had difficulties with the publication of the 2012 report, in terms of getting to a point at which we were sufficiently happy about the robustness of the data and the extent to which it was comparable. Work is on-going on that, and we can come back to the committee when we have a clearer idea of when it will be published. I am conscious of the high level of public interest in the report and, clearly, we want each report to improve on the last and to be a more useful tool than the last. The first one was a great start and set a kind of precedent in the UK context—certainly in a Scottish context. We want to ensure that the next one is an improvement. To that end, we must work with our partners to ensure that we have a sufficiently good quality of data, and we must address some of the points that I discussed with Mr Lyle about the visibility of wildlife crime alongside other offences, as it can sometimes be

seen as a secondary offence or as being slightly less likely to result in a prosecution, which means that it ends up not being the primary objective of the court case.

**Claudia Beamish:** Page 6 of the report deals with the data in the court proceedings. With regard to hunting with dogs, the relevant legislation is the Protection of Wild Mammals (Scotland) Act 2002. It has been drawn to my attention that, in 2011-12, five people were proceeded against but none was prosecuted. To what degree is the legislation in this area sufficiently robust? Is it going to be reviewed? It has been pointed out to me that there is an exception allowing foxes to be flushed out to guns and that, if the foxes are accidentally killed by the dogs before reaching the guns, it is not an offence. Does that have any bearing on the lack of prosecutions?

**Paul Wheelhouse:** I have to be honest and say that I do not know.

**Claudia Beamish:** I did not know anything about it either, until the reception last night.

**Paul Wheelhouse:** Unless either you or Karen Hunter can enlighten me today, I will have to consider the issue and come back to the committee with a response about what the difficulty has been with securing a prosecution and a guilty verdict.

I put on record that I am strongly opposed to fox hunting. I would want to look seriously at any suggestion that there is an attempt to deliver fox hunting by the back door.

I will consider the issue further and see whether there is anything fundamental that we need to address in terms of law. However, I genuinely do not know the reasons for that drop-off in successful guilty verdicts. Karen Hunter informs me that flushing is allowed, but we will consider the issue to see whether there is any problem with how the law is defined, in case it is not sufficiently tight. I give the member a commitment that that will be done

**Claudia Beamish:** I appreciate that and associate myself with your view on hunting with dogs.

11:00

**Jim Hume:** As you know, minister, cage traps are used for controlling vermin such as mink, which is a non-native species, and carrion crows, which can do a lot of environmental damage. Cage traps are even used in the Parliament to catch some of the feral pigeons that are around. However, there is quite a lot of anecdotal evidence of cage traps being destroyed, which of course results in quite a lot of environmental damage. Is there any evidence of people being prosecuted for

destroying legal cage traps? Would that be seen as a wildlife crime?

**Paul Wheelhouse:** As I said earlier in relation to Mr MacDonald's point, that will be picked up by the BASC study that we are being asked to support.

I recognise that there is a potential issue there. Of course, when a cage trap is not being used, it should be deactivated if it is left in situ, so that it cannot be used. However, somebody could reactivate it without the knowledge of landowners. The issue might not be just the destruction of the trap; it might be that the trap is being set without the knowledge of the gamekeeper or a landowner.

We do not have statistical evidence of the issue; we have only anecdotal evidence and suggestions from people that that might happen. Hopefully, the work that BASC will do, with Government support, will help to define how big the problem is, if, indeed, it is a problem at all.

**The Convener:** Thank you. It is useful for us to be able to highlight the wildlife crime report, and I think that it will become an annual event—we hope that further highlighting is not required before then. It will be useful to see some of your written responses, so that we can be well informed. It is important that people realise that this matter is a high priority for the Parliament.

**Paul Wheelhouse:** I associate myself with your comments, convener. I thank the committee for its interest in wildlife crime, which I am sure will be appreciated by people across Scotland.

11:02

*Meeting suspended.*

11:05

*On resuming—*

## Petition

### Control of Wild Geese (PE1490)

**The Convener:** Agenda item 3 is consideration of PE1490, by Patrick Krause, on behalf of the Scottish Crofting Federation, on control of wild goose numbers. The petition calls on the Scottish Parliament to urge the Scottish Government, as a matter of priority, to address the problems created by increasing populations of wild geese in the crofting areas, to reassess its decision to stop funding existing goose management programmes and to assign additional resources to crop protection and adaptive management programmes, to ensure that this threat to the future of crofting is averted. I refer members to the paper and invite comments on the petition.

**Angus MacDonald:** As members know, I serve on the Public Petitions Committee. When the petition came before the committee, it was clear that there was a major problem for farmers and crofters in the Western Isles and the northern isles and, to a lesser extent, in Kintyre and Solway. The committee therefore decided to refer the petition to the Rural Affairs, Climate Change and Environment Committee immediately rather than go through the normal process of approaching ministers through the Public Petitions Committee.

The committee heard extensive evidence that the problem is getting worse, particularly with regard to greylag geese, which are spilling over from the Uists into Lewis and Harris, and also into Coll and Tiree. We recognised that crofters' existence is difficult enough without that added burden.

I can give the committee an example. My family farms just outside Stornoway. Twenty years ago, you would have been lucky to see four or five geese in the field; now there are hundreds. It is clearly becoming a major concern. A mixture of Government-backed schemes operate in the islands at varying costs. If the committee is minded to write to the minister, it would be good to get more information from the Government on what more can be done to address the problem, because it will clearly not go away until further action is taken.

**The Convener:** Indeed. The moneys have run up into huge sums but the problem is still with us. I hope that the committee can find some consensus about what we should do. We could write to the minister with suggestions.

There has been an attempt in Orkney to manage the geese and market some of the product. We need to consider whether that is part of the solution and what there is a market for, apart from duvets. The comedian Colin Campbell once talked about seeing all these flying duvets. That is precisely what we must try to cope with in places that are being overrun.

I do not know whether members saw the programme “Hebrides—Islands on the Edge”, which showed the problem in Islay, where there are masses of deer—sorry, geese—in the area. Angus MacDonald has made some points. What about some responses from the rest of the committee?

**Graeme Dey:** I read somewhere that greylag geese are not particularly tasty, but I wonder whether there is a use for them as a source of protein. For example, could they be used to feed salmon? Is that sort of thing being considered by the Government?

**The Convener:** Or could they be used for pet food or indeed for human food at a time when we are desperate for sources of food? We need to get some answers to those questions. Presumably, the Orkney situation means that there is some kind of market but we do not know how much of a market there is yet.

**Richard Lyle:** I certainly agree with the comments that have been made.

I note that the SPICe briefing on the petition states:

“Scottish Natural Heritage is working on the development of a scheme to permit the limited sale of wild goose carcasses”.

Why “the limited sale”? If the problem is as bad as Angus MacDonald says it is, and given the points that have been made, we should ask the minister to investigate whether the carcasses can be used as a protein source—as Graeme Dey mentioned in relation to salmon and as the convener mentioned in relation to possible pet food products. Also, sale of the carcasses would be another way of encouraging another business up there in order to provide employment and income.

**The Convener:** Could there be an export market, in fact? You wonder whether the issue of getting rid of the deer—I keep saying deer, not geese. I have deer on the brain.

**Graeme Dey:** That was last week.

**The Convener:** We are on the horns of a dilemma. We have to try to think about the costs that were incurred with eradication and, at the same time, about whether there is a possible income. Is there an export market, I wonder?

**Nigel Don:** I think that the idea of writing to the minister is the obvious one—and it is the right idea. I wonder whether there is anybody else we should write to at this stage—the obvious answer in this context might be the councils concerned. They will no doubt have a view on it and might, on the timetable that we are working to, be able to express that view to us. That would simply mean that we got an input from them sooner rather than later—otherwise we might just have to write to the councils afterwards.

**Richard Lyle:** The mention of deer may have been a Freudian slip, convener. I pointed out a couple of weeks ago that there could be an increased market for venison in various areas. I checked with my local butcher, who does not sell venison. The point that I was making then—I will be brief—was that developing that product and other products throughout Scotland could lead to an increased market and an increase in jobs.

Richard Lochhead is the champion of Scottish food and I would encourage ministers to explore what other foods we can market throughout Scotland and export in order to provide jobs and income.

**Claudia Beamish:** I will highlight the national goose management review from 2010. The following statement from that review has been drawn to our attention:

“the risk remains that, without intervention to control increasing damage, social costs could rise very substantially without any compensating public benefits”.

It is a very important issue.

Once, we had a goose for Christmas—it was in France but that is part of the European Union. I am afraid that I do not know what type of goose it was, but it was delicious so there is a possibility there. That is just anecdotal.

I also highlight that although a lot of the populations are increasing—with considerable damage to local economies—some are declining. The Greenland white-fronted goose has been highlighted as one of the declining populations. We also need to put that into the equation in our considerations.

**The Convener:** Indeed. The pink-foot geese that nest in my area—in Caithness in particular—are very protected; they gather in very protected areas. However, the point is that the vast majority of geese are greylag geese, which is what the major problem is about—we do differentiate in that regard.

**Jim Hume:** Claudia Beamish is quite right. There are geese and there are geese, obviously, and we would not want to cull geese that need to be supported.



Another market for geese, where they are a problem, is of course the wildfowling market. The economy could be helped by allowing some of that sport to take place—in a controlled manner, of course.

11:15

**The Convener:** Yes, indeed. We can make that one of our suggestions. We have quite a range of suggestions that we can put in the letter. Perhaps Angus MacDonald wants to sum up from the Public Petitions Committee side?

**Angus MacDonald:** I have some more suggestions about bodies that we could contact to see what they have to say—the Crofting Commission, the Scottish Crofting Federation, which submitted the petition in the first place, and possibly the Wildfowl and Wetlands Trust.

**Graeme Dey:** We will look at forward business on 11 December. I suggest that we could request responses, if at all possible, ahead of that meeting to inform our deliberations about future business. I recognise that the schedule is tight but it would allow us to take a look at the issue and consider whether there is more that we might want to do on the subject.

**The Convener:** No doubt there will be a meeting of the cross-party group on crofting coming round soon, apart from anything else. There is a meeting of the cross-party group on rural policy this week, I think, so there might well be places where we can speak to stakeholders about the issue.

A copy of the letter to the minister could probably go to other organisations as well if the letter covers the points that Graeme Dey raised. I think that we have sufficient bits and pieces of the members' suggestions for us to try to be proactive on the issue. We can contact local authorities and also the crofting federation and so on.

**Nigel Don:** I am conscious that there will be people watching the meeting even now and I do not think that we have mentioned the RSPB. I am sure that it would want to submit something else. It seems to me that if other folk want to send us a letter we are probably not going to do anything other than read it and welcome whatever information they can give us.

**The Convener:** I would be very surprised if they did not.

**Nigel Don:** Indeed.

**The Convener:** Thank you for that. That is sufficient for us to deal with that issue.

At our next meeting, the committee will hold an evidence session with Scottish Government officials on the Agricultural Holdings (Scotland) Act

2003 Remedial Order 2014. The committee will also consider two Scottish statutory instruments.

I move the meeting into private session and ask for the public gallery to be cleared.

11:17

*Meeting continued in private until 11:32.*



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