



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Environment, Climate Change and Land Reform Committee

Tuesday 10 January 2017

Session 5



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Pàrlamaid na h-Alba

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Tuesday 10 January 2017

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
WILDLIFE CRIME IN SCOTLAND (ANNUAL REPORT 2015).....	2

ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
1st Meeting 2017, Session 5

CONVENER

*Graeme Dey (Angus South) (SNP)

DEPUTY CONVENER

*Maurice Golden (West Scotland) (Con)

COMMITTEE MEMBERS

- *Claudia Beamish (South Scotland) (Lab)
- *Alexander Burnett (Aberdeenshire West) (Con)
- *Finlay Carson (Galloway and West Dumfries) (Con)
- *Kate Forbes (Skye, Lochaber and Badenoch) (SNP)
- *Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
- *Emma Harper (South Scotland) (SNP)
- *Angus MacDonald (Falkirk East) (SNP)
- *Mark Ruskell (Mid Scotland and Fife) (Green)
- *David Stewart (Highlands and Islands) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Gary Aitken (Crown Office and Procurator Fiscal Service)
- Peter Charleston (Bat Conservation Trust)
- Assistant Chief Constable Steve Johnson (Police Scotland)
- Eddie Palmer (Scottish Badgers)
- Detective Chief Superintendent Sean Scott (Police Scotland)
- Andy Smith (Scottish Gamekeepers Association)
- Ian Thomson (RSPB Scotland)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 10 January 2017

[The Convener opened the meeting at 09:40]

Decision on Taking Business in Private

The Convener (Graeme Dey): Welcome to the first meeting in 2017 of the Environment, Climate Change and Land Reform Committee. I remind everyone present to switch off mobile phones, because they might affect the broadcasting system.

Agenda item 1 is a decision on whether to take items 3 and 4 in private. Are we agreed?

Members *indicated agreement.*

Wildlife Crime in Scotland (Annual Report 2015)

09:40

The Convener: Agenda item 2 is an evidence-taking session with two panels of witnesses on the Scottish Government's "Wildlife Crime in Scotland: 2015 Annual Report". In the first instance, I welcome Gary Aitken, head of wildlife and environment crime, Crown Office and Procurator Fiscal Service; and Steve Johnson, assistant chief constable, and Sean Scott, detective chief superintendent, Police Scotland.

We move straight to questions.

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): Good morning. In previous years, there has been some criticism of the way in which the data in these reports has been presented, and it is good to see that in this year's report the data has been presented by financial year. What are the key difficulties in comparing wildlife crime statistics? How could the data be further enhanced in future years?

Assistant Chief Constable Steve Johnson (Police Scotland): Good morning. Perhaps I should begin with an overview, and an analysis of the statistics is, I suppose, a good start in that respect.

One of the problems for Police Scotland lies in the move from the legacy force arrangements to one whole police force. We still do not have a crime recording system for the whole of Police Scotland from which we can extrapolate the data, so we are, if you like, still evaluating old data sets using an incoherent and inconsistent data set that we in Police Scotland will have until we get such a system.

However, the data is strong when it comes to giving us a general indication of the direction of travel or the amount of activity that is taking place. A problem with the statistics on wildlife crime is the low number of such crimes and the fragility of those figures. When the data is spread across the whole of Scotland, we start to get into single cases. It is really important to note that, because although I as the lead for Police Scotland on this matter acknowledge that the numbers are important and that we want to see positive correlations with regard to the activity of partners and the police in protecting wildlife and wild species, I want to get into the qualitative aspects. I want to understand the metrics of the data from a member of the public calling us with concerns right through to what colleagues in the Crown Office are doing and attrition with regard to something

suspicious or a potential crime leading to a non-criminal justice outcome.

Moreover—and I would certainly welcome and offer to support the provision of data in this respect—there is nothing in the report about the health of the species that we are trying to protect. For example, we have a lot of statistics with regard to raptor persecution, and we can compare them with the situation in 2010, 2011 or 2012. That is fantastic, because it gives us an idea of activity, but what is the outcome of that? What is that work for? What is the current health of the raptor flock in Scotland? Is it better or worse now than it was in, say, 2010, and if it is worse, what are we going to do about that? How do we move into those preventative and enforcement spaces, and what are we going to do about the intelligence gaps that we have in order to make that assertion on whether what is happening is good or bad? Indeed, for all the six priority areas highlighted in the report, I would welcome some context as to where each sits with regard to overall performance or outcomes and what we are seeking to achieve.

I certainly welcome the clarity that the report provides year on year, but I think that we can do a bit more work to find out whether it shows that this activity is having a positive outcome or whether these are just statistics for the sake of having statistics.

The Convener: Given your comment about the lack of a whole-Scotland picture, how robust is the report? How much store should we set by it?

Assistant Chief Constable Johnson: You could say that the report is robust with regard to the integrity of the data that has been provided. We have pulled in all the information across different systems as best we can, but for me the ideal would be a crime recording system linked to an incident recording system to allow us to follow that first call about suspicions with regard to an area of scientific importance and the attrition that happens right the way through police and partner systems.

09:45

We do not have such an integrated system. We have a capital bid in to try to improve part of our information and communications technology infrastructure to enable that to happen, and I am sure that over time it will happen. The data is good data, based on the information that we hold at the moment. Could it be better? Yes, because technology would allow us to go down to different layers of granularity. We could record it at the point of origin with different layers of granularity; right from the call handler we could geocode the data, code the issue and follow that code all the way through an integrated system.

Kate Forbes: What changes in the recording and reporting of data would have to be made to get to the position that you would like to move towards?

Detective Chief Superintendent Sean Scott (Police Scotland): Thank you for the opportunity to be here. One of the other hats that I wear in my current portfolio is as leader of the national crime managers forum, which is recorded crime management. Work is on-going to design and create a single crime recording system, which will be a benefit to everyone.

The report shows improvement in that we have disaggregated the reporting into the crime priority areas, which was not done previously. That is an encouraging improvement, and when we get to a single crime recording system nationally we will be able to get far more detailed and informative data for the committee and the Government to assess. That work is on-going. Do not ask me for a completion date, because I cannot give you that; a number of factors will influence that, but we are taking steps.

Kate Forbes: I have one last question. There were three recommendations from the previous Rural Affairs, Climate Change and Environment Committee that were not included in this year's report. They were: presenting data on a quarterly basis, a breakdown of COPFS resources applied to wildlife crime and, lastly, the impact of land reform legislation on wildlife crime. What steps are being taken to include or work on those three recommendations for next year?

Gary Aitken (Crown Office and Procurator Fiscal Service): I think that there is a parliamentary question on COPFS resources at the moment. The resources are reasonably steady across the piece. We have four core lawyers involved in the wildlife and environmental crime unit over the period that the report covers. Beyond that I am not sure that there is much more that can usefully be said about our resourcing. As a proportion of our total workload, that is quite a positive proportion of staff devoted to the area, which is as it should be. It recognises the importance of the matter for us as an organisation and for Scotland as a whole.

I am not really in a position to comment on the other aspects.

Alexander Burnett (Aberdeenshire West) (Con): Good morning. Can you give us more clarity on the difference between an incident and a crime? The dictionary definition of the word "crime" is that an offence has been committed, but I think that you have explained, correctly, that when a member of the public calls to report concerns, that is logged as an incident; there is then an attrition rate on that all the way through something being

reported to the procurator fiscal to a conviction. Is it correct that a number of organisations seem to be reporting incidents as crimes as their starting level? Can you clarify that?

Detective Chief Superintendent Scott: You are absolutely right. There is attrition, and the public perception of what may be a wildlife crime is obviously based on people's knowledge of what they see at the time. They report the incident and then we investigate it.

For example, a wildlife incident such as a swan on the road creating a vulnerability to traffic can be recorded. That is occasionally recorded as a wildlife crime incident, but when we investigate it we find that it is not actually a wildlife crime. There are a number of instances in which the public perceive something as a crime. For example, a couple of men might be walking a dog into the woods and that might be recorded as potentially being a wildlife crime in relation to badgers; however, if when it is investigated there is no disturbance to a sett it is not a wildlife crime. Those are two instances in which a wildlife incident is recorded as such, but does not then extrapolate into a recorded wildlife crime. Such incidents will be closed off on our system for tasking and operational resource management, or STORM, incident recording system as non-crime, if you like.

Alexander Burnett: Is that a flaw in the way that the statistics are currently being presented that will be cleared up by your new definition?

Detective Chief Superintendent Scott: I do not know whether it is a flaw. We want the public to phone in whenever they think that something might be afoot. Reporting is based on their knowledge, so we welcome and encourage it greatly. We will investigate the matter and, if it transpires that it is not a crime, it is a false alarm with good intent, in effect.

Assistant Chief Constable Johnson: If we do not go back and explain what we have done and whether the incident was a crime, that is an opportunity missed. People report a matter to the police and expect some sort of activity to follow. The way in which the statistics are currently reported means that people seek some kind of criminal justice disposal at the end of the matter.

From conversations with colleagues, I know that an awful lot of activity goes on in the local policing areas, in which officers follow up such enquiries and meet people. They do an awful lot of work to engage with the person who reported an incident to ascertain whether a crime has been committed and then investigate appropriately. However, if a crime has not been committed, they can use the opportunity to move into the preventative space in which we inform people what we are doing or what

we seek to achieve in a broader preventative agenda.

Sometimes, we simply need to understand that and follow the journey. Technology will enable us to do that better and move into the qualitative space in which I can sit down with Sean Scott, ask him to take me through the incidents because we have had a series of them and ask what we are doing at the back end. Are we ensuring that we share the information with partners so that we do not attract undue criticism or are we identifying opportunities for us and partners to learn to do something differently?

The matter could be viewed negatively but, at the moment, I am trying to view it as an opportunity for us to improve on our practice.

Gary Aitken: That happens across the criminal justice system. The public report to the police all sorts of incidents that are correctly recorded as incidents and investigated. Some turn out to be crimes and some turn out not to be. We are focused on wildlife crime in this discussion, but there is quite an overlap with the way that the rest of the system works.

The Convener: Let us start to look at the statistics. I accept that there are difficulties in comparing stats across reporting years because some prosecutions occur outwith the year in which the crimes were committed. There was an 11 per cent increase in recorded wildlife crime in 2014-15 compared with 2013-14. Is that because of an improvement in reporting or has there been a genuine increase in wildlife crime in certain areas?

Assistant Chief Constable Johnson: I can cover that from a policing perspective. To be candid, we do not know the answer. The statistics that we have in the background data show that there is an increase in reporting where we have full-time wildlife crime officers. We have six full-time wildlife crime officers in the different divisions and a number of part-time wildlife crime officers. The increase is the year-on-year increase. It is still lower than the reporting in previous years.

Credit must go to my predecessor, ACC Malcolm Graham. Before I took on this portfolio, an awful lot of the work was about building the infrastructure and resources. The number of full-time resources that Police Scotland puts towards wildlife crime has increased and is now stable. More than 100 police officers have been trained on wildlife crime and we are moving towards training more special constables to have that knowledge. The greater the knowledge that we have and the greater the access that the public have to police officers with that knowledge, the more reporting there will be.

I return to the earlier point about whether more wildlife crime is taking place, whether people are

more confident in reporting it to us or whether we are more readily accessible because we have the structures and infrastructure in place. I do not have sufficiently mature data to provide an absolute view on that but we can track it. The evidence suggests that full-time wildlife crime officers have the benefit of providing people with direct access—the public can report offences to them—and the confidence that comes from that. I can learn from that and talk about the resources that we have and about how, if we cannot afford for that service to be full time, we make the knowledge of the officers who have the relevant skills available to the local community.

The Convener: Perhaps one of you could tell me why there has been a 14 percentage point drop in the number of crimes referred to the Crown Office this year—35 per cent in comparison to 49 per cent?

Detective Chief Superintendent Scott: There could be any number of reasons. As we all know, there can be significant evidence-gathering challenges with wildlife crime because of the isolated and remote parts of the country in which it is committed and the lack of closed-circuit television, witnesses, social media or open source information. There is a huge amount of difficulty in investigating wildlife crime, and that could be part of it. As you are aware and as the report says, we are making significant strides in the use of forensics and specialist support in investigating wildlife crime. Every case has its idiosyncrasies and challenges, so we will pursue every evidential opportunity that we can to try to achieve an outcome.

The Convener: Yes, but let us look at the trend. It has been acknowledged that Police Scotland has made additional resources available to tackle wildlife crime and the Crown Office has specialist lawyers dealing with it, yet we have still seen a 9 per cent drop in conviction rates in 2014-15 compared with the previous year. If all that is put together, why are we where we are for that year?

Gary Aitken: Given the number of cases that are going through, a percentage drop in the conviction rate can be quite a blunt tool for looking at these cases. It does not necessarily follow that a greatly different number of cases is being dealt with.

From my point of view, the important thing is to have enough evidence to take a case to court. We cannot guarantee a conviction once the case is in court, nor should we try to do so. The court is there to determine the truth of the situation. I would not be overly concerned about the percentage difference in conviction rates when we are dealing with numbers of this kind.

The Convener: But if we are putting in all these resources—with forensic resources now available to look at some of these crimes—surely we should be seeing an upturn in the conviction rate figure?

Detective Chief Superintendent Scott: To give you one example, through investigations and reports of potential wildlife crime, we delivered 70 raptors to Science and Advice for Scottish Agriculture during that period. It transpired that only 10 per cent of the birds had an illegal substance in them.

A huge amount of effort goes into trying to get the evidence, but sometimes it is not there because the birds may have died of natural causes or for other reasons. Significant effort is put into trying to get that evidence, but there are limited evidence-gathering opportunities.

The Convener: It would be useful to get some of that detail into the report in future to better explain some of the statistics. Let us move to the issue of deterring wildlife crime.

Emma Harper (South Scotland) (SNP): Good morning. What work is being done to deter wildlife crime? I know that in Castle Douglas, our local wildlife crime officer had 30 people in a room, teaching them about raptor persecution. Does the lack of custodial sentences or of action in 23 per cent of cases contribute to a lack of deterrence?

Detective Chief Superintendent Scott: You will see from the report that there was significant investment in a national wildlife crime prevention campaign during the reporting period. I go back to the convener's question about why there was an increase in recorded wildlife crime—public awareness during that period was definitely raised. Significant effort has been put in to deterrence and prevention activity by wildlife crime officers, who have gone into schools and community groups to give talks to raise awareness, and our wildlife crime co-ordinator—Sergeant Andy Mavin—has delivered speeches to people in academia on the issue.

We have a prevention review and we are working with the Scottish Government to see how we can take that forward. We have had special Twitter weeks on some of the priorities—bats, badgers and freshwater pearl mussels. We have made a significant effort to raise awareness in a number of areas in order to deter wildlife crime, to make the public more conscious of what may or may not be wildlife crime, and to encourage reporting.

Gary Aitken: We have also had some good results in court; we have had some custodial sentences in wildlife crime cases. The Poustie report—"Wildlife Crime Penalties Review Group Report"—looked at sentencing more generally and made some recommendations. I am pleased that

the Scottish Sentencing Council has advised that one of the first black-letter law areas that it will look at is wildlife crime sentencing guidelines. That is a positive step, as well. We will see what sort of message that provides to sheriffs and justices.

10:00

Detective Chief Superintendent Scott: We can sometimes fixate on the structure of dedicated wildlife crime officers, but we have the whole of Police Scotland available to us. As Steve Johnson said, there have been training days to raise awareness for many more officers. Stop and search has been debated, but officers are now schooled in wildlife crime powers to stop and search people in certain instances. More of our front-line officers who deliver on the street day by day—not just the dedicated wildlife crime officers—are aware of their powers on stop and search for wildlife crimes.

The Convener: In relation to conviction rates, we have touched on the fact that it is very difficult to gather evidence on activities that occur in very remote areas. Organisations including the Scottish Gamekeepers Association and Scottish Land & Estates have openly condemned raptor persecution, for example, but do you get sufficient co-operation from those organisations and their members when it comes to investigating incidents?

Detective Chief Superintendent Scott: We have positive relationships with all our partners in the raptor group that is part of PAWS—partnership for action against wildlife crime in Scotland. I have nothing but positive things to say about our partners in that regard. I interact with them in my capacity, as do my officers, and we have no problem at all. SLE and the SGA work hard to foster and develop relationships with their members. I have no issue at all with the relationships or how we can take them forward.

The Convener: I do not mean your relationship with the organisations—I am talking about relationships on the ground when there are individual incidents. It has been suggested in evidence to the committee that there is perhaps still in some settings reluctance to speak out against things such as raptor crime because of threats to jobs or fear of being ostracised in the community. What is the police's experience in such circumstances? Do you get the co-operation that you hope to get from individuals?

Detective Chief Superintendent Scott: Maybe on one or two occasions individuals have shown reluctance—perhaps because of their personal circumstances, although the reasons have been unclear—but it happens very seldom. The use of our powers to enter land to search on it has to be

based on suspicion and intelligence: we cannot progress an investigation unless we have evidence or intelligence. Some people volunteer to help us when they do not have to, so there is a mixed bag.

The Convener: You mentioned PAWS. To finish the questions in this section of the meeting, I want to explore how well the PAWS protocols are working. Comments have been made that in some more recent incidents the PAWS protocols have perhaps not been followed as they were meant to be. Will you comment on that?

Detective Chief Superintendent Scott: In the raptor group—which, as I said, I chair—each individual organisation has its agenda and priorities, but as a whole they work well together. I cannot comment on individual motives for not adhering to a voluntary protocol. We have addressed the subject and we are speaking candidly in order to ensure that we adhere to the protocols. For example, under the media protocol, everyone has the opportunity to comment on and perhaps to amend, before it goes out, the language in anything that is to be submitted to the press or the wider public. In general, the approach is positive, but on one or two occasions that have been rehearsed in the press, it has not quite been what it should have been. We are encouraging and working with partners in order to try to ensure that that does not happen.

The Convener: As a layman, if I came across a wildlife crime incident, the first thing that I would do is contact Police Scotland, but that does not seem to happen in every instance, which strikes me as being a little odd. To what extent does that hinder you in trying to deal with incidents?

Detective Chief Superintendent Scott: I do not think that there is any doubt that one or two of our partner agencies that can report directly to the Crown Office do not record the crimes with Police Scotland, which means that the recorded data do not reflect the actual levels of wildlife crime. We encourage our partner agencies to come to Police Scotland. We would prefer by far on every occasion to be notified of wildlife crimes and to work with our partner agencies to investigate them, but the convener is absolutely right to point out that that does not happen every time. I encourage the agencies to work with us on every occasion in order to maximise the opportunities for evidence gathering. We have powers to gather evidence that they do not all have, so we encourage such joint working whole-heartedly.

Assistant Chief Constable Johnson: Such reporting is important on a case-by-case basis, but it is by aggregating the data and looking at what the statistics tell us over a year or a number of years that we are able to act strategically and to commit the right level of resources to the issues

and problems that we face. If crime is not reported to us and does not form part of our metrics or our data bank, managers who are challenged about whether to commit resource A to this issue or that issue will—quite rightly—make a decision on the basis of what the demand profile looks like. If we do not have that information in relation to wildlife crime, there is always the potential that we will put in resource to what we believe is the right place, but which turns out to be the wrong place because someone has not shared relevant information.

Therefore, I would echo Sean Scott. If there are partner agencies that have a mechanism that allows them to report directly to the Crown Office, but do not pick up the phone and report crimes to the police, I would actively encourage them to phone the police, because we want to have the right information. Having the right information enables us to follow an issue through right from the first point of contact. It might end with a criminal justice outcome, which will act as a deterrent, but we also want to change behaviours. Criminal justice outcomes will start to change behaviours by acting as deterrents, but in my experience of working in wildlife crime, getting into the preventative space and getting people to engage in looking after their environment is far more positive and far more effective in the long term than trying to scare them about criminality.

That is an area of activity that I am looking at with Police Scotland. At the moment, we do not have three-year to five-year strategies on prevention, intelligence and enforcement for each of the six priority areas. We seem to be committed to an annual reporting process. The approach is based on looking at things on an annual basis, but many of the problems that we are talking about are generational. My drive is about recognising that we can report annually, but that we also need longer-term strategic objectives that should probably be linked to the cycle of schools. If we can get into schools at primary level, we will be able to track outcomes 15 years later when the pupils are young adults who might want to engage in hare coursing, raptor persecution or other sorts of criminality. Prevention, intelligence and enforcement are areas that I will try to address for the longer term. That work will include highlighting why people should report stuff to us.

The Convener: What will having the proposed new wildlife crime unit do for your ability to improve the situation?

Detective Chief Superintendent Scott: That is part of the programme for government. We have not got to the end of the process of determining what the specifics of that investment might look like; we are still speaking to the Scottish Government about that. Any enhancement of resource will give us an opportunity to improve the

service that we provide, whether through support to divisions or support to specialist officers. The nature of the process means that we have not yet reached granular detail, but we would welcome any investment.

The Convener: Do you have an opportunity to shape what that might look like?

Detective Chief Superintendent Scott: Yes—very much so. We are in dialogue with Government officials. Assistant Chief Constable Malcolm Graham and I met the cabinet secretary about that back in September, prior to Steve Johnson taking on the portfolio, and we discussed some of the options. We have not quite reached the end game—the process is on-going.

The Convener: That is useful.

Mark Ruskell (Mid Scotland and Fife) (Green): I want to go back to the point about evidence. We have discussed members of the public phoning up to present you with hard evidence, but I would like to ask about the wider scientific evidence, particularly on raptor species. The last time Assistant Chief Constable Graham appeared before the committee, he indicated that Police Scotland would be doing a lot more work, including population modelling and looking at areas where we expect high populations of raptor species but which do not have them. ACC Graham said that that would form part of the context for you focusing your work on areas where persecution might well be happening. Steve Johnson mentioned the health of populations. What are you doing in that wider population work? It is—is it not?—clear that it is part of the evidence.

Assistant Chief Constable Johnson: Absolutely. I will be candid with you. I have, as you have probably gathered, just picked up the portfolio, but that work will certainly be my direction of travel. I have a history of leading on wildlife crime in forces in other parts of the United Kingdom, and I think that that academic element is absolutely essential. For example, I would never have thought that one of the healthiest flocks of peregrine falcons would be found in London.

The situation evolves and changes, and my officers and I need to understand it, because it informs our strategic objectives on prevention, intelligence and enforcement. One of the commitments that I can make to the committee is that during my tenure I will look at the academic research and at how wildlife crime is evolving, and ensure that we feed that into the report's narrative. That is very important. If we are having a positive impact, I want the academic evidence to back up and support such an assertion; if there is a lack of activity or if there is an academic statement that we are not quite getting things right and that what

is happening is not part of an evolutionary process but is linked to criminality, I want to understand that, to be able to commit resources to it and to engage with partners. After all, the most cost-effective approach for me, in Police Scotland, is to prevent things happening in the first place.

I see evidence from academia and the bodies that monitor the health of the species across all six priority areas in the report as being absolutely essential. The work is—to use common parlance—intelligence led. A lot of the evidence will sit within academia, so I will certainly welcome any support that I can get from academia in that respect. I cannot commit financial resources to that work, but I can certainly engage on a partnership basis in order to try to improve the position.

Mark Ruskell: You see academic evidence as a strong part of the evidence.

Assistant Chief Constable Johnson: Absolutely. People might say to me, anecdotally, that the number of golden eagles in Scotland has never been healthier and is growing every day, but is that fact or fiction? Is it right, and where is the evidence to suggest that it is right? We are certainly seeing fewer cases, and anecdotally, we hear communities talking more positively about Scotland's flora and fauna not only in economic but in moral terms. For example, people will say that it is right to protect those species. However, where is the academic evidence from university X or body Y that I can put my hand on and say that it shows that the health of the golden eagle population in Scotland has gone from the figure at one point to the figure at another point, and the correlation is negative or positive? I would certainly welcome working with any academic body or interest group that can provide a sound evidential basis.

I stress, though, that the evidence must be sound; it cannot be someone simply purporting that their research has academic rigour. For my work to be intelligence led, the research must have academic rigour and stand up to scrutiny, because I want it to drive operational activity not only from a police perspective but, more important, from a multi-agency perspective, in order to ensure that wildlife crime is not just talked about in criminal justice terms but is discussed in education environments, in terms of health and so on. After all, getting people out and enjoying Scotland's flora and fauna provides an opportunity to get more eyes and ears out there. The situation is all much more strategic than previously—we need to play our role, but we are but one small part.

Mark Ruskell: I appreciate that point, but the challenge is that the same commitment was given to Parliament last year by your predecessor. My question is this: what action has been taken on

that over the past year? Clearly such evidence has not been reported on in the report, but as you have admitted, it is clearly part of the evidence base. One year on, you have made a commitment on behalf of Police Scotland that once again you will work with the evidence. What has changed in the past year?

Detective Chief Superintendent Scott: Our partners in the raptor group have done a lot of scientific and academic research as part of, for example, the heads up for harriers project and the golden eagle relocation project, which is going to start in the Borders very soon and which I think our partners might talk about in the next evidence session. That is a hugely positive piece of work, and we are trying to raise awareness of it.

There are also the annual bird of prey crime maps, which highlight hotspots of potential raptor crime activity. They are a positive step because they allow us to analyse evidence, to take matters forward with our partners and to consider what resource we need to commit in order that we can do the right work. We are taking an incremental approach, but Mark Ruskell is right to raise the question. Has a specific piece of work led to a specific outcome? No, not so far—but we are taking an incremental approach and we are working hard to try to use academic and scientific research and, for example, our analysis of raptor incidents so that we can take things forward with our partners.

The Convener: Let us move this on. I call Claudia Beamish.

10:15

Claudia Beamish (South Scotland) (Lab): I will ask about the persecution of badgers—as everyone knows, although I will say it for the record, they are protected as a species under the law in Scotland—and dig a bit deeper into why badger crime is not reported to the Crown Office and how that situation might be improved. Written evidence from Scottish Badgers highlights what it sees as weaknesses in both services with regard to the approach to badger crime, and I wonder whether you can comment on that very briefly. For example, it has been suggested that police call centres do not necessarily recognise badger crime as such, and there can be delays in investigations, which can lead to the deterioration of evidence. Moreover, because of lengthy delays, matters might not be progressed, and there might be a lack of transparency in that respect.

I do not know whether you have had sight of this, but our papers contain a table showing that although in 2014-15 five cases of badger crime were recorded by Police Scotland and four reported to the Crown Office and Procurator Fiscal

Service, 42 cases of badger crime were identified by Scottish Badgers. That is an enormous difference. I have listened carefully to the evidence that you have already given this morning about the difficulties of finding evidence and have taken that point on board, but I would still appreciate your comments on how you can improve on that and, indeed, whether such criticisms are valid.

Detective Chief Superintendent Scott: Thank you for the opportunity to respond. I can highlight a couple of things to you, the first of which is the secure intelligence provision mechanism that has recently been set up between us and Scottish Badgers to help us get intelligence in order to investigate badger crime. That secure email link is a really positive move.

As for understanding badger crime, the call handlers in our call centres have specific training on all wildlife crime priorities. They are therefore aware of some of the key aspects of badger crime and have that information available when a member of the public reports what they believe to be suspicious activity with regard to badgers. Moreover, training material for first responders on badger crime is available online and in hard copy booklets to help them when they attend such incidents.

Earlier, I talked about our receiving reports of people walking dogs in woods where there is believed to be a badger sett; such incidents can end up not being crimes, because when we investigate we find that no sett has been disturbed. Moreover, under the criteria for proving a crime through the presentation of evidence to the Crown Office, we need evidence of live or fairly contemporaneous sett disturbance. We face a number of challenges in that respect, but we have mechanisms for informing our call handlers and first responders and for directly sharing information between Scottish Badgers and us, which will help us take things forward.

Claudia Beamish: I really must seek reassurance on this point, given that, according to the information that I have highlighted, 42 crimes were identified by Scottish Badgers. With respect, I doubt that they would happen as a result of two people walking their dog in the woods. I would like a response to that point.

Detective Chief Superintendent Scott: With regard to the crimes reported by Scottish Badgers, are you talking about those that were directly reported to the Crown Office or to Police Scotland?

Claudia Beamish: The incidents were identified as crimes.

Detective Chief Superintendent Scott: The question whether something is a crime needs to be assessed by the investigators, and then the

evidence has to be provided to the Crown Office. With regard to breaking those figures down, I can reassure you that every one of those cases will have been assessed on its own merits and reported accordingly, based on the evidence and material at our disposal.

I do not know whether Gary Aitken wishes to comment on the reporting regarding badgers.

Gary Aitken: Only the police and occasionally the Scottish Society for the Prevention of Cruelty to Animals report badger offences to the Crown. We consider every case individually and, if there is sufficient evidence, some form of prosecutorial action is very likely because it is a high priority, but we need the reports to come to us. The figure of 42 cases has been mentioned, but 42 cases were not sent to us by anybody. We can assess only what comes to us. The identification of an incident as a crime does not necessarily mean that there would be sufficient evidence to prosecute the case in court. It may be clear that a crime has occurred but the identity of the perpetrator may not be known and there may not necessarily be sufficient corroborated evidence to prove it. We work with what comes to us.

That brings us back to the difficulties that we all have in interpreting the statistics. Our systems were set up as case management systems, not statistical gathering systems, so a case that involves a badger might not necessarily be defined as a badger case—it would have to be an offence under the protection of badgers legislation for that to happen. If it is a snaring case, it will come under a different category.

I am pleased that it was said earlier that the figures in the report are becoming more usable year on year. There is still work that we can all do to improve the clarity and transparency and it may be that, in the fullness of time, technology and other matters overtake that. The Lord President is considering modernisation of the whole criminal justice system and one of his main wishes is for what is described as an evidence vault, which would be a single computer system for the whole criminal justice service. If we ever get to that point, we will finally be in a position to compare apples with apples for wildlife crime and everything else and to track exactly the same thing all the way through without the constant difficulty that while we count cases, other people count individuals and some agencies count charges.

The report is not as clear as I would like it to be. I hope that we are moving in the right direction and breaking things down. We will learn for the future and, as they build up year on year, the reports will be a more useful comparison against one another.

Assistant Chief Constable Johnson: Through our positive relationship with Gary Aitken's unit,

we discuss what evidence we have in individual cases and whether it is sufficient to report. As Gary Aitken said, that does not necessarily mean that it will ultimately go to trial and secure a conviction. If there is not enough evidence to report a case, we cannot report it. The committee should be assured that each case is assessed on its own merit.

A training programme with Scottish Badgers is coming up soon for us and our Crown Office colleagues to enhance understanding of the issues across our agencies.

Claudia Beamish: It was mentioned that something might be recorded not as a wildlife crime but as another kind, such as the use of a gun without a licence. That came up at the Rural Affairs, Climate Change and Environment Committee not only last year but the year before—the convener will correct me if I am wrong. It has been suggested that there will be improvements in the recording of such crimes and it is encouraging to hear the witnesses say that that will happen, because it cannot be that difficult to include in the data the fact that the person was prosecuted for something but the crime also involved something else. Is it, indeed, also a wildlife crime? Will the witnesses explain a little more about that?

The Convener: Before the witnesses respond, I will pick up on something. The Scottish Badgers submission states:

“badgers are also regularly subjected to deliberate persecution such as poisoning, gassing, snaring, drowning with slurry, suffocation when setts are blocked, and crushing when setts are destroyed.”

If Scottish Badgers is not exaggerating the scale of that, the Crown must have evidence of some of those cases.

Gary Aitken: But I have to have the cases. We have had four reported to us. The volume about which Scottish Badgers is talking does not reach our desks. We will consider very carefully anything that comes to us. Badgers are a key priority and are certainly subject to grossly inhumane treatment by some individuals because of their idiotic idea of sport and for other reasons. We would like to be able to take that seriously but we need the building blocks to do it.

It sounds as though it should be simple to extrapolate the information, but we receive tens of thousands of cases a year and our computer system was designed and built to manage the throughput of those cases, not to identify them in particularly great detail. We are getting better as time goes on, but to extract the sort of information that could be useful would probably require a completely new system, which has significant capital costs for a statistical purpose that is useful, but not our core business. Our system is perfectly

fit for purpose for prosecuting crimes; it is just not always quite as helpful as we would like it to be in some of the other areas that are interesting to us.

I am not in a position to comment on the timescale for modernising the entire system. Work is being done, led by the Scottish Courts and Tribunals Service. That is positive and we will see where that takes us. It could have huge benefits across the criminal justice service.

Assistant Chief Constable Johnson: There is some work to do. The reality is that, if Scottish Badgers believes that, in 2014-15, 42 offences were committed and we have crimed only four, there is a lot of work to do. As Sean Scott already said, we have a developing relationship with Scottish Badgers and it is involved in training. However, there is clearly a piece of work to do on deconfliction and understanding the terminology. Is that 42 incidents? Were those 42 incidents reported to Police Scotland? Could I track each from the incident through to us not criming it because we did not believe that it was a crime? Are we defining a crime in exactly the same way that the Crown Office and investigators on the ground define it?

My commitment is to work with Scottish Badgers and any other agency that believes that we need to deconflict the data to ensure that, when we appear in front of the committee, Scottish Badgers makes a submission that we as a partnership can at least recognise, and that we have a compelling narrative on why there would be a difference, because there might well be a difference between an agency that records to a nationally agreed standard and an organisation that has a single interest in a particular species. There will always be some difference, but it should certainly not be in the magnitude of four recorded crimes to 42, as purported in the submission.

There is a commitment to start to deconflict that data and work with Scottish Badgers to understand whether we have a recording mechanism that will enable us regularly to deconflict the data to enable it to say that it reported an incident to us and we have done nothing or that it reported an incident to us and was satisfied with the outcome. At the moment, I have nothing to suggest that that takes place, but I know from speaking to Andy Mavin that we have a commitment to working with Scottish Badgers to ensure that we deconflict the information for the future.

Claudia Beamish: Although that is reassuring, Assistant Chief Constable Johnson, it is still concerning that there is a lack of clarity on definitions, at which you hinted. Do the organisations, the public and the police understand the definitions that they each use? PAW Scotland will help with that. I do not want to

spend too long on badgers—Scottish Badgers will come before us in the second panel of witnesses—but there are also some discrepancies between Scottish Government figures that were given to me in answer to a parliamentary question and what is said in the report. Rather than ask about that now, it would be helpful to allow Scottish Badgers to present its evidence and, if you are able to stay and listen, or read the *Official Report* afterwards, perhaps you could comment on that to the committee in writing. Those matters are really important for transparency and to reassure everybody in Scotland.

The Convener: That is a good point. We have you in front of us annually to consider the content of the report but there is nothing to prevent you from writing to the committee in between time with updates on how you are progressing your relationships with organisations such as Scottish Badgers. I encourage you to do that because it is a really important issue.

10:30

Finlay Carson (Galloway and West Dumfries) (Con): Most of the points that I was going to raise have been covered. We seem to be getting tied up in issues around the lack of information technology. Five badger crimes were recorded by the police and 42 by Scottish Badgers. I do not think that we need a computer system to dig into that. Assistant Chief Constable Johnson suggested that he was looking into other reasons why there is a discrepancy. I do not think that we should be getting tied up in failures or in the lack of IT systems, given the numbers that we are discussing when it comes to badgers.

Detective Chief Superintendent Scott: I can give the committee some additional reassurance. Through the wildlife crime liaison officer structure and through our single points of contact for criminal investigations, I line-manage all the detective superintendents in the 13 policing divisions. They are acutely aware of the requirement for rigorous investigation into all wildlife crime. They often make specific interventions in investigations, with the appointment of detective officers as opposed to wildlife crime officers or police constables.

I have confidence that we apply as much rigour as possible to every single crime, based on the circumstances that are presented to us and our understanding of what is being presented. We then have engagement with the Crown.

There are some technicalities around badgers and live setts where they are active, and the experts will probably tell you about those later on. We would more than welcome additional

knowledge or ways to progress or even improve our service to tackle this particular criminality.

The Convener: Let us now move from badgers to bats.

Maurice Golden (West Scotland) (Con): Bat persecution is considered to be a wildlife crime priority. Three offences were recorded in 2013-14 and none in 2014-15. Proceedings in relation to those offences are categorised as, or appear as, “other wildlife offences”.

Could you update the committee on what work is being done to improve reporting as well as conviction rates in this area? What, if any, do you perceive to be the key barriers?

Detective Chief Superintendent Scott: Bat disturbance is indeed seldom reported, unfortunately—or fortunately. It is unclear how wide the scale of the problem is.

When it comes to the reports that we get on bats, we occasionally have instances where people are upset about nearby tree cutting and they will say that there is a bat there. When we go along, however, we might find that there is not a bat colony there. That does happen. The tree cutting that is carried out by local authorities is often subject to an ecological survey. As I said, however, bat disturbance is seldom reported, and we do have difficulties with that. We would welcome further reporting on the matter.

We have bat training coming up early in the year, which aims to enhance our relationship with experts on bats and our understanding. Our own people, as well as representatives from the Crown Office, are coming along to that training.

It is an unclear environment. Private developers and local authorities are aware of their legal requirements regarding bat colonies. We are partly dealing with crime prevention during this reporting period, so as to enhance awareness. We will keep pursuing that. You are right, in any case, that we do not get many reports about bats, and we would welcome more.

Maurice Golden: Obviously, three offences were reported. Do you know where they are in the system? If you do not know the answer to that question now, I would be happy to get it in writing later.

Gary Aitken: I do not know that off the top of my head. I could provide that to the committee in writing in due course if that would help.

The Convener: What penalties are imposed for such crimes?

Gary Aitken: The same general penalties that people would get for any sort of wildlife crime. Bat crime is rarely prosecuted. I suspect that it would very much depend on the nature of the

disturbance. If there was an indication that it was for commercial gain in the course of some form of development, for instance, I would hope and anticipate that a court would take a fairly dim view of that. However, that is not something that I can comment on categorically.

As has already been mentioned, such incidents are very rarely reported. That comes back to other issues that we have discussed, about encouraging members of the public to report what they perceive as wildlife crime, whether it turns out to be a crime or not. The more information that is provided to Police Scotland, the better the picture that we can get and the more chance we have of picking up offences that have occurred. That comes back to areas that are well outwith my sphere of competence. It is a matter of education and early engagement.

I have been on a bat walk in my locality, and it is amazing to see them flying about at night and to understand that those species are living almost literally next door. It is a matter of getting that message out. Schools, youth clubs and so on are the places for engaging on that. We need to encourage reporting; then we can start to consider the mechanisms.

Detective Chief Superintendent Scott: I forgot to mention that we had our Twitter week for bat awareness back in October. We are trying to use social media tools to spread awareness as well. We are trying our best.

Maurice Golden: I will let you in, Assistant Chief Constable, but how key is public awareness of the subject? I will ask the subsequent panel that, too, but I would like to hear your reflections. My take on it is that people perhaps do not recognise the need to report incidents involving bats. Would awareness raising help with the reporting aspect?

Assistant Chief Constable Johnson: Getting out as much public information as we can could help massively. We have already answered the question about the preventative aspect and getting knowledge out about the types and scale of offences.

It is probably not for Police Scotland to comment on this, but we can perhaps point the committee in the direction of local authorities and planning authorities, which need to keep records. Where a site is being developed or infrastructure development, new build or land management proposals are being considered and there are colonies present, the authorities will cease or pause the work and record that. That is interesting contextual information.

In the past, when such crimes were reported to the police in relation to someone developing a new site, it may have been said that there were bats

there, but nine times out of 10 we would get called only at the end, once the persecution had taken place and the colony had ceased to exist. Local authorities and planning authorities are now very good at getting people in to do early surveys regarding the impact on wildlife, and once they spot that there are colonies on the site, they put in place the appropriate measures to manage that.

That brings me back to the point about the contextual information that exists. Police Scotland will not hold that data, but I imagine that the local authorities will, and it can provide a really interesting backdrop. I imagine that the numbers will increase as people look to develop in spaces that are inhabited by colonies. I would certainly find it beneficial to know that we are getting the message out and that people understand the issues around bat colonies—particularly developers and those who seek to develop.

I said that local authorities have good systems and mechanisms in place, but I think that evidence should come from them as to whether they have those mechanisms in place and whether they take their duties and responsibilities for the protection of wildlife seriously.

Detective Chief Superintendent Scott: As the issue is one of the six priority areas, I am sure that its development will be included in the Government's prevention review, which is part of the programme for government. It is part of our continuing dialogue.

Finlay Carson: I declare an interest as the Leisler's bat species champion for the Parliament. It tends not to roost in houses, which is a relief.

You talked about local authorities, but do they police any aspects of the situation? For instance, when they examine barn conversions, do they check whether there have been bat populations? Do they engage with the police when they think that there has been contravention of planning laws?

Detective Chief Superintendent Scott: I will be honest. I am not specifically aware of a local authority telling us about a bat colony disturbance. Local authorities know that that is their obligation. However, I can find out for you.

Finlay Carson: It would appear to be more realistic for local authorities to come forward, rather than members of the public, given that it is barn conversions and so on that are most likely to disturb the populations.

The Convener: We will move on.

Alexander Burnett: As species champion for the freshwater pearl mussel, I am glad to note that it is a priority area. It is the smallest of the species that are covered, but it is under a disproportionate threat. Its rarity and scarcity is part of its problem. I

know from some of the statistics and details that have been reported that there are a lot of issues around that. For example, because of its rarity, you have to redact information about its locations; otherwise, more crime might be encouraged in those areas.

It is a niche subject, but will you say a little about where we are going with detecting crime and with prosecutions in this case? It is easier to see the motivations for wildlife crime in other cases. Will you say a little about the motivation when it comes to the pearl mussel? I have not learned of any secondary market in the pearls. Where is the crime coming from?

Assistant Chief Constable Johnson: I will start and then I will hand over to Sean Scott. It might be of benefit to the committee to hear about my experience. I came from a place in England that has probably the only other colony of freshwater pearl mussels, and I worked with industry there. As I understand it as a lay person, the main threats to freshwater pearls are around the depth and quality of the water. From my experience of working with companies that extract water from rivers and places where the species exists, I can say that it is a persistent challenge to ensure that the water depth is absolutely right to enable the species to survive.

It is really important to protect the sites, and the mechanisms for reporting activity should be clearer. There should be mechanisms for reporting to committees such as this one in confidence so that it is not just a question of our putting the species on a list and hiding behind a veil of secrecy, saying, "We can't share this with you." I will certainly push for such an approach. My experience has been that we have given people assurances, but we have done so confidentially and not necessarily in a public manner.

Detective Chief Superintendent Scott: Disturbance can be discovered months after it happened. We have a joint investigation continuing with the Scottish Environment Protection Agency in Tayside, and we continue to work with it wherever we can. Again, we used Twitter during our awareness week back in November. It is about trying to identify through the retail trade where the pearls might be going. That work is continuing, but there are challenges around it. Crime hotspot maps have been published, as you are probably aware, and we will continue to work as much and as closely as we can with our partners.

Alexander Burnett: Have you had any success with tracking the market and finding out where the pearls are going?

Detective Chief Superintendent Scott: Not at present, but work is continuing. I can certainly find out and report back to you.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Good morning, panel. I appreciate that there are issues with comparing prosecution rates, as a prosecution might occur in a different year from that in which the crime took place, and there are also issues to do with recording and reporting between Police Scotland and the procurator fiscal, as you have said. When partners go to different agencies, that may affect the level of recording and the information that is in front of us.

First, is it possible to estimate the number of wildlife crimes that are not recorded by Police Scotland? Secondly, why has there been a 12 per cent increase in relevant crime reported to the procurator fiscal but a 29 per cent drop in terms of those prosecuted?

Detective Chief Superintendent Scott: Just to clarify, will you repeat the last part?

Jenny Gilruth: My first question was this: can you estimate the number of wildlife crimes that are not recorded by Police Scotland?

Detective Chief Superintendent Scott: We cannot, to be frank. As with any crime area, there is an unknown quantity of crime out there—the dark figure, as we sometimes call it. People say that reported crime is the tip of the iceberg, which might well be the case. We can investigate only what we know about. I am afraid that I cannot give you an estimated figure for the crimes that we do not know about. That might not be the answer that you were looking for.

Jenny Gilruth: What things might help to get a higher rate of reporting? I think that you have been asked about that already. Could more public outreach be done? Steve Johnson talked about education, which is really important. What do you see as key in increasing the reporting of wildlife crime more generally?

Assistant Chief Constable Johnson: To be candid, I cannot estimate and give a figure for unreported wildlife crime, but I can make the sweeping statement that people are probably more likely to report crimes against themselves or their colleagues, such as thefts, than wildlife crime. Sometimes, that is to do with a lack of knowledge that what someone is seeing is a crime, and that is where education comes in. Sometimes, it is due to ambivalence about whether a species is persecuted, which is an attitude in society, however abhorrent we might find it. Sometimes, it is due to the fact that the person would commit such crimes themselves and would not report them. There is a broad ambit.

I could not pin my colours to the mast and give a specific number, but I would be a fool if I sat here and said that all wildlife crime is reported to Police Scotland. That is certainly not the case, as with many other types of crime.

We have to make sure that we get into that space to inform those people who want to protect the flora and fauna and use the legislation appropriately to create an environment where they can live and prosper. We absolutely have to do that, so we need to engage in that space, and part of that is about making people who see crimes step forward and report them. That probably goes hand in hand with what I have said before about academia, in that there is a presumption that the crime is taking place and things have not moved on. We need to understand that.

10:45

The Convener: In relation to fish poaching, 50 per cent of the crimes that are reported to the Crown Office are being prosecuted. Is that because the evidential base that you are getting is more robust than it is in some other areas of wildlife crime?

Gary Aitken: Fish poaching cases are often more straightforward. They are likely to fall into a more traditional evidential set. If we are lucky, two people will have seen the crime being committed or seen enough evidence to prove that it has been committed. We are much less likely to have that simple, straightforward evidential set for raptor persecution. Sometimes we get it for badger sett disturbance, but with fish poaching it is much more likely that we will catch somebody red handed.

The Convener: Okay. Let us move on to raptor persecution. Mark Ruskell will lead on that.

Mark Ruskell: You have said quite a lot this morning about public confidence and public awareness. The report is useful in identifying where persecution has happened, where it is perhaps likely to happen in the future and the overall trend. Given that context, why are there five incidents of raptor persecution on which information has been withheld, which therefore do not form part of the official statistics?

Detective Chief Superintendent Scott: What information has been withheld?

Mark Ruskell: I refer to the report and those individual raptor persecution incidents.

Detective Chief Superintendent Scott: Are you asking about the reason for withholding of information from Police Scotland or from the Government?

Mark Ruskell: I am asking why it is not detailed in the report.

Detective Chief Superintendent Scott: I will be honest with you. I do not know, but I can find out for you.

Mark Ruskell: Okay. Let me give you an example. Four particular incidents are detailed in the RSPB's report "The illegal killing of birds of prey in Scotland 1994–2014: A review", which identifies four incidents that took place on an estate near Heriot. There is quite a lot of evidence in the report, yet that information is not in the 2014 report. The crimes took place in 2014 and they are recorded in the RSPB data, but they are not recorded in the wildlife crime report, so they do not form part of your data. I do not know why there is a mismatch between that set of information, which is in the public domain, and what is recorded in your official wildlife crime report for that year.

Detective Chief Superintendent Scott: Sorry—maybe I misunderstood you. There are five incidents recorded by the RSPB that do not appear in our recorded statistics—is that what you are referring to?

Mark Ruskell: No, I am saying that the RSPB reported four incidents that do not form part of your wildlife crime report. I am trying to understand why you are withholding the data about the location of those crimes.

Detective Chief Superintendent Scott: The only comment that I can offer is that something may be deemed to be a crime by a partner agency but not according to the classic recording requirements. I need to find out for you—I do not know the answer on those particular incidents.

Mark Ruskell: I want to press you on this, because the four incidents involved baited traps. There is even a picture here in the report of a baited trap with a pigeon, and there are spring traps. That is illegal, is it not?

Detective Chief Superintendent Scott: I cannot see the picture from this distance but, if it is an illegal trap, it is an illegal trap.

Mark Ruskell: It is illegal. I am trying to get to why the location of that clear illegality and the fact that it took place is not reported in the wildlife crime report. If you are trying to build public confidence that you are tackling wildlife crime, to give the general public a true picture of it and to alert people to the fact that it has taken place near Heriot, and you want to have the public on your side, you need to disclose all the data, unless there is some other reason for withholding it, such as that there is an on-going investigation. I am trying to understand that.

Gary Aitken: Have those cases definitely been reported to the police?

Mark Ruskell: In one case—I think that it was the Raeshaw estate—Scottish Natural Heritage

withdrew the general licence; it put a restriction order on the estate. I am amazed that the police did not know that.

Detective Chief Superintendent Scott: The withdrawal of a general licence can be based on intelligence only, so it is not necessarily the case that a recorded crime has been reported. Restrictions on licences and that piece of work can sometimes be based only on intelligence over a period of time, which is enough for SNH to suspend a general licence; it does not necessarily mean that there is a recorded crime. We need a bit of clarity around that. That could explain that part of your query.

Mark Ruskell: Convener, it would be useful if we could get some more background on that. The report from the RSPB is in the public domain. I picked up a copy from a stall at a fair. I could be an interested member of the public. I could be going for a walk near Heriot, and I could say, "Gosh—there's some wildlife crime taking place here." I have that information from the RSPB report, which is in the public domain, yet it is not reported in your annual report.

Gary Aitken: If we are told about it—

The Convener: We have to be careful about whether it is crime or alleged crime—I suggest that just in case. Steve Johnson wants to come in.

Assistant Chief Constable Johnson: We would certainly take up an offer to meet you outwith this committee meeting so as to be able to fully understand the question that is being asked of us, and we will then provide a written response to Mr Ruskell and the committee.

The Convener: Maurice Golden wants to come in.

Maurice Golden: On a general point of clarification, but following on from Mark Ruskell's point, I think that it would be helpful for the committee to get something on the record. I presume that, if an incident is reported to you, you investigate it, you decide whether there has been a crime and, if appropriate, you refer it. At that point, you will decide whether there is enough evidence to prosecute, as with any other crime. Another agency may produce a report, which may or may not be in the public domain, but unless that has been reported to you and gone through an official channel in some way, you will not be in a position to deal with it through your rigorous processes.

Detective Chief Superintendent Scott: That is spot on. The ethical recording of reported incidents has closure codes, and an incident is either a no-crime or a crime. Every single case is assessed and will be closed off. That leads to an investigation, a crime report and the rigour that

follows. If we are told about something, it will be recorded as a crime if it meets a crime criterion. If a member of the public thinks that something is a crime and we investigate and it looks as though it is, it will be recorded as a crime. It can then be no-crimed, once investigation takes place, if the evidence is such that it does not meet the criteria. However, ethically, it will be recorded as a crime until it is no-crimed. Her Majesty's Inspectorate of Constabulary in Scotland's recent biannual audit of our crime recording assessed us as good and said that the ethical recording of crime is improving all the time.

Mark Ruskell: What percentage of raptor persecution crimes are referred to the procurator fiscal, and what is the conviction rate on the back of that?

Detective Chief Superintendent Scott: Are you asking how many cases are referred to the fiscal?

Mark Ruskell: What percentage of raptor persecution crimes are referred to the procurator fiscal, and what is the conviction rate?

Detective Chief Superintendent Scott: I am not going into the specific tables in the report. If a raptor crime is recorded as a crime and it is investigated, it will be reported and it will be in there. If it is not a crime or there is not enough evidence to report it, it will not be reported. I am not quite getting where you are coming from, in that sense.

Mark Ruskell: What is the percentage of crimes that are then referred to the procurator fiscal?

Assistant Chief Constable Johnson: I have nothing to add.

Detective Chief Superintendent Scott: I can provide that to you.

Mark Ruskell: That would be good. Why has there been a 19 per cent increase in raptor persecution offences this year?

Assistant Chief Constable Johnson: I return to a point that I made earlier about where we have seen increases and where we have full-time wildlife crime officers, particularly in the north of the country—there are six officers there. It comes down to understanding the data and being able to follow the story. Where we have those full-time officers and people have access to them, the proximity means that they can report things, and it looks as if there is a positive correlation with convictions, or certainly with the progression of matters. I think that one of the reports refers to that, and it is key.

I have certainly looked at that and picked up on it. Statistically, it looks as if there is a positive correlation, although we need to work with

partners to see whether this is the case, between the places where we have full-time wildlife crime officers and positive outcomes, and there is certainly a correlation with an increase in reporting. If people have somebody who they know and can report stuff to, they can build up a relationship, and it is evident that more will happen through that route. That is the nature of these things.

Mark Ruskell: Do you think that the level of raptor persecution is going up or down?

Assistant Chief Constable Johnson: I cannot answer that. The statistics say that it is going up, but the question is whether there are more incidents or whether more are being reported. The statistics say that more are being reported, but you could make that parallel assumption.

The Convener: Could there also be a change in behaviour around raptor persecution? In the past, perhaps naively, people would poison raptors and leave the evidence to be found. Is it now the case that birds are disappearing and not being found? To an extent, part of that might be explained by satellite tag failures. Are we seeing a change in the nature of raptor persecution, whereby the evidence is being disposed of?

Detective Chief Superintendent Scott: It is difficult to say. There could be any number of reasons for the disappearance of birds. As Mr Johnson said earlier, it would be good to see the qualitative outcome of our partners' work on the state of the health of certain birds. We know that conservation in certain areas has meant improvements in, for example, golden eagle pairs nesting.

The convener mentioned the satellite tagging element, and the recent review of satellite tagging that the cabinet secretary has ordered will be a useful piece of work that will inform us about certain aspects of raptor persecution.

The Convener: When a part of the country is devoid of raptors, it makes one wonder why that is the case. It must make Police Scotland wonder why that is the case.

Assistant Chief Constable Johnson: It would do if it was reported to us that there had been nesting pairs in a certain location and they were no longer there. That is the point of having the wildlife crime liaison officers—they can start to get us to the bottom of such situations.

The point that you are making is that somebody is removing the evidence before we get there. That is a negative outlook, but some positive relationships have been developed over the years through people looking at alternative ways of managing things. The committee has a report from the SGA. That is an evolving process that involves

informing and the association taking positive action against its members when it sees practices that are from history and not for the future.

I do not want to just focus on the negative. If the evidence has been taken away before I have become aware of it, I could not possibly—

The Convener: I am not casting aspersions or saying that that is going on. I am asking whether, in Police Scotland's view, we might be seeing a change in behaviour, whereby evidence is being disposed of, that could be masking the scale of the problem.

Assistant Chief Constable Johnson: You could make an assertion both ways. There will always be some who will seek to get round the law and mask such activity, and there will also be some positive correlations in relation to people doing the right thing to protect colonies and birds. I do not understand the ecological effects, but it might well be that birds move away from some areas to other areas. I do not understand the science well enough, but if somebody showed us the science that there should be nesting pairs in a certain place and there were not, we would have to try to get to the bottom of that.

One of the challenges for us is that, when we become aware of the absence of a species, the amount of time, effort and resource that Police Scotland can commit full time to finding out whether a crime has been committed is limited in comparison with what it can commit to the investigation of other crime that takes place in the community. We are busy over here and we would not be able to commit a resource to that in most cases. It is a choice.

When crimes or incidents are reported to us, we could get better right from the point of call handling. When we take a call, we record it and we are subject to scrutiny of our incident recording and our management of incidents. When we think that a crime has been committed, we investigate it. As the Crown Office has said, many such incidents are unwitnessed, the forensic evidence is unsubstantiated and the case is very weak from the off. We can commit resources earlier in the process to try to secure the best evidence and present the best case that we can.

The story that I have just told you is a story of attrition, from the point of origin to the end point. It is about understanding the issues and doing something about the skills and knowledge and the whole prevention, intelligence and enforcement arena.

11:00

Gary Aitken: To pick up on that point, if there was good evidence that someone had taken steps

to conceal the wildlife crime that they had committed—that is quite a big if, because getting that evidence would be tricky—we would view that sort of thing very seriously. It is, in effect, akin to the disposal of a body following a murder; it could be viewed as a common-law offence such as attempting to pervert the course of justice or to defeat the ends of justice, which would have significant consequences. We are always keen, in appropriate circumstances, to take proceedings in such cases, because that acts as a warning to anyone else who might think about doing the same thing and lets them know that there are consequences.

It would be pure speculation for me to say whether or not those who are engaged in wildlife crime are learning to cover their tracks better; I have absolutely no idea. What I can say is that, unfortunately, criminals learn, and our forensic techniques become public knowledge in this area just as they do in every other area. Mobile phones are very useful tools for the police, but criminals are learning to be more covert about how they use them. I am sure that some criminals are sufficiently forensically aware when they commit wildlife crime to take steps to deal with the issues.

If we had evidence to back that up in a particular case, I would be very interested in it. That is not something that we see coming through, but on a speculative basis, as you said, it may be happening—I simply do not know.

The Convener: Logic suggests that it may be happening. The more success you have and the more people see individuals being jailed for raptor persecution, the more one might expect that to drive a change in behaviour—not only positively, but negatively, with criminals disguising their activities.

Assistant Chief Constable Johnson: Absolutely—that is the challenge, is it not? Criminals who conduct criminal activity will always try to stay one step ahead of the police service. The challenge for us is to try to get ahead of them and break the cycle and, when we can, we will commit resource to doing that. We can give you the assurance that, if we had evidence or intelligence to suggest that someone was engaging in such activity, we would follow that up with a significant investigation.

The Convener: Thank you. Claudia Beamish wants to come in on a slightly different area.

Claudia Beamish: I want to turn our focus to the international trade in endangered species of wild flora and fauna, on which I understand that there is an international convention. I note for the public record that there was only one incident recorded in 2014-15, but that it included 10 offences in Fife relating to endangered species. It

would be helpful to know from you, either now or in writing, how that case is progressing.

On page 30 of the annual report, the Government states:

“Police Scotland expect the numbers of recorded offences to increase in future years, due to increased public awareness and reporting of illegal wildlife trading, particularly online.”

What measures are you putting in place to reflect that concern?

Detective Chief Superintendent Scott: With regard to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, there is absolutely no doubt that—as in many other areas of criminality—there is an upsurge in online criminal activity. That will increase further, and it is certainly part of our work as an organisation, as we look at our three-year, five-year and 10-year strategies, to look at our operating model and at how we deal with online criminality.

We have a number of on-going cases that relate to the reporting of illegal activity under CITES. We have had recent cases in Fife involving tiger claws and auction houses that were selling illegal material. There is a lot of positive work going on in that regard. For example, our organisation and the Crown Office have training coming up this year with our UK Border Force colleagues on issues to do with the trade in endangered species.

I do not know whether Gary Aitken wants to comment on the case that is currently sitting with the Crown Office.

Gary Aitken: I will provide a separate update as part of the written update on the bat cases, if that is acceptable.

Claudia Beamish: Thank you very much.

David Stewart (Highlands and Islands) (Lab): Good morning, panel. I would like to get your assessments of the idea of increasing the SSPCA's powers to investigate wildlife crime.

Detective Chief Superintendent Scott: The subject was discussed at the committee meeting that we attended last year, and we made a written submission to the Government's review containing our thoughts on the idea of giving additional powers to the SSPCA. That is part of the written record, and we are still awaiting the Government's decision on that idea.

There are a number of organisational, logistical and legal challenges to investing additional powers in the SSPCA, which are on the public record in our submission to the review. We want to work closely with all our partner agencies, and we encourage the SSPCA to inform us of any incident that it deals with. We work with the SSPCA on

occasions, but there is the potential to develop that relationship further. Its current remit is animal welfare and neglect, whereas we investigate crime. We want to investigate with the SSPCA wherever possible.

Going back to a previous topic, there are occasions when we are not told about incidents that the SSPCA investigates, which it reports directly to the Crown Office. It might be helpful if we were involved in some of them, but that would be on a case-by-case basis. We would encourage that interaction as widely as possible.

David Stewart: Thank you, Mr Scott. For those who do not have the benefit of remembering the evidence that you gave last year, is it fair to summarise your two main criticisms as being that you saw the SSPCA, as an animal welfare charity, having a conflict of interest and that you felt that it would not be able to meet the detailed regulatory requirements that the police have to meet? Is that a fair summary of the two main points that you raised the last time?

Detective Chief Superintendent Scott: Pretty much. It is about investigatory accountability. All our activity is scrutinised by Parliament and by HMICS, and we have a legal obligation for that. We also have access to specialist services that the SSPCA does not have, and that is a statutory responsibility. In addition to having the resources and the oversight, our primary role is to investigate crime. We highlighted a number of issues and we await the Government's response.

David Stewart: I would like to hear from Mr Johnson on that issue, as well. Since you gave that evidence, have you had discussions with the Government or the SSPCA about some of your criticisms?

Detective Chief Superintendent Scott: No, we have not had recent discussions with the Government about our submission. The cabinet secretary still has to make a decision or announce the result of the Government's review.

David Stewart: Mr Johnson, you talked earlier—rightly—about it being crucial that investigation is intelligence led. I do not think that anyone is suggesting any change to Police Scotland having the primary role in the investigation of wildlife crime. We are talking about the argument that your team would be enhanced by a partner agency that has a lot of expertise gaining more investigatory powers. From the outside—this is perhaps a simplistic perspective—it is difficult to see the problem with that. Given the generally low detection and prosecution rates for wildlife crime, what is the problem with enhancing your team?

Assistant Chief Constable Johnson: The two objections in our submission probably remain.

However, we said that we would seek changes in the legislation to enable the SSPCA, alongside its charitable function, where it found evidence of wildlife crime being committed, to seize and retain that evidence before informing the police, who have a statutory obligation to investigate. That would not conflict with the SSPCA's charitable status, and working alongside a partner agency in that way would play to the strengths of both organisations in the eyes of the public that we serve. That would be a reasonable compromise. Changing the legislation would meet the needs of the public and would lead to our being better informed about wildlife crime and where it takes place, and better able to investigate it and prosecute appropriately.

My detectives go through rigorous training, selection and accreditation to enable them to do the job, and I think that there would be a conflict of interests given the SSPCA's charitable status. However, the suggested amendment to give the SSPCA the power to seize and retain evidence before informing the police would play to the strengths of both partners.

David Stewart: That seems to be a sensible compromise. I will summarise the situation like this: you have no objection to enhancing your team, but there need to be some regulatory and legal changes on charitable status and other issues in order for that to work for you.

Assistant Chief Constable Johnson: Absolutely. We sit here as representatives of accountable bodies, and you will hear from other agencies. For the fight against wildlife crime, we have a significant team. I like to think of my lot as the strikers, but we still need the defenders, the goalkeeper and others. Part of my strategic role is to ensure that we have co-ordination and that we can play to one another's strengths. Some people have statutory or regulatory powers and some just represent a general interest and a desire to make a positive impact, but I will work with anybody who wants to work towards those goals.

David Stewart: That might increase your strike rate, too, if I can keep the football analogy going.

Assistant Chief Constable Johnson: Hopefully.

David Stewart: Mr Aitken, could you give me your views on the point that I made earlier?

Gary Aitken: Superficially, the issue sounds quite simple—it sounds as if it is just a case of giving extra powers. That is fine, as long as the legislation is framed in an appropriate way and it is free from challenge further down the line. There may well be a need for increased accountability or a regulatory framework to ensure that those powers can be properly exercised in accordance with the Human Rights Act 1998 and so on, so

that the end product that we get is something that we can use.

I am happy to get good cases with enough evidence from any authorised reporting agency. The SSPCA has great expertise on a lot of matters, and it reports many cases to us wearing its main, welfare hat, but we do not want it to be put in a position of having enhanced powers that are not fully and properly set out or that cause it or us difficulties further down the line.

David Stewart: From my perspective, the panel have given us positive feedback. I am sure that the Government will hear this evidence. We need clean, tidy, well-drafted legislation that is compliant with human rights. I would welcome that.

Can I move on?

The Convener: Before we do so, there is a point on which Claudia Beamish seeks clarification.

Claudia Beamish: This is a point for Gary Aitken. Could you clarify this for us? I understand the importance of legislation being clean and effective, as my colleague David Stewart has said, but how would human rights be relevant in this case—or not in this case, but—

Gary Aitken: In general?

Claudia Beamish: Yes.

Gary Aitken: The Human Rights Act 1998 and the European convention on human rights run through everything that the criminal justice system does. Any powers of the state—in this context, we are talking about the SSPCA, which has a slightly odd constitutional position; in the proposed circumstances, it would become ever more part of the state mechanism—must be proportionate, must be exercised proportionately and must be capable of complying with the Human Rights Act 1998.

Although we are focusing on wildlife, the accused will be subject to the 1998 act, because even companies, although they are not human, have rights under ECHR. We want to be sure that anything that we get works, and the parliamentary draftsmen are very good at dealing with that, but that is my main concern—there is no point in getting something if it does not do what we wanted it to do in the first place.

The Convener: It is useful to get that on the record. Dave Stewart wants to move things on.

David Stewart: I will move on to penalties for wildlife crime, which were mentioned in earlier evidence. A number of panel members have mentioned the report on penalties by Professor Mark Poustie of the University of Strathclyde. The Government is considering it, and the previous minister, Dr Aileen McLeod, accepted the

recommendations. We are awaiting further draft legislation from the Government—I appreciate that this is an issue for the Scottish Government. Just for the record, the recommendation was for a maximum fine of £40,000 or 12 months' imprisonment under summary conviction, and up to five years' imprisonment on indictment. That would not necessarily require fresh stand-alone legislation—it could be done on the back of existing proposed legislation that is going through Parliament.

Has there been recent discussion with the Crown Office or Police Scotland on penalties? Gary Aitken, I think, mentioned sentencing guidelines, so perhaps he could say a bit more about that. I presume—at a naive level—that increasing penalties deters people from carrying out crimes.

11:15

Gary Aitken: That is a whole psychological and social discussion that I am not in a position to get into.

David Stewart: Maybe you should write to us on that.

Gary Aitken: The COPFS will work with whatever penalties are available to us. However, in other similar regulatory fields, the penalties on summary complaint are higher. For instance, in health and safety matters, which are another part of my remit, the maximum penalty on summary complaint is £20,000, which is considerably higher than the standard. I have not been involved in any discussions with the Government about implementation of the review. In many respects, we are neutral as far as that is concerned—we will work with what we are given. However, the recommendation would certainly provide more flexibility in how cases could be dealt with. For instance, a case that would attract a penalty of less than £40,000 could be on summary complaint, which is generally more efficient and effective and speedier than an indictment process—although not always.

The second issue that David Stewart has asked about is the Scottish Sentencing Council, which is entirely a stand-alone agency, separate from the Crown Office. I welcome the fact that one of its first priorities is to consider wildlife crime. I speculate, in my head, that that says something about the importance to society and the criminal justice system of wildlife crime.

Assistant Chief Constable Johnson: I have not been involved in any conversations on implementation of the recommendations. I echo the point that sentencing tends to reflect society's levels of acceptance of types of criminality. An increase in penalties could probably only be a

benefit because it would have the effect of deterring others from committing such crimes. Unfortunately, that would be retrospective—somebody would have to commit the offence and then be sentenced for it. I would want to use that as part of a suite of measures. It is not for me to determine such things—it is for me to uphold the law—but I cannot see that implementing the recommendations would cause any harm. It could only benefit the message that we are sending to the whole of society about the importance of the matter.

Detective Chief Superintendent Scott: Other than our involvement in Professor Poustie's original review, we have not had any recent dialogue on sentencing. Deputy Chief Constable Designate Livingstone has been appointed to the Scottish Sentencing Council, and we will do everything we can to help it in whatever work it wants to do on wildlife crime.

The Convener: Sentencing will be another tool in your armoury.

Assistant Chief Constable Johnson: Absolutely. I hope that if somebody who is engaged in a criminal activity sees a headline saying that someone else has been sentenced to five years, it would stop them in their tracks and make them think. From that perspective, the sentencing would be another tool. When we go into schools, I want to take the carrot approach while also alluding to the fact that there are stiff penalties. It is for us to deliver the message, but it is for society to say that such activity is wrong. If the level of sentence is low, people will think, "I'll risk that."

Angus MacDonald (Falkirk East) (SNP): I turn to vicarious liability and the Land Reform (Scotland) Act 2016, which went through Parliament last year. There have been recent cases under the vicarious liability provisions, with the first case concluding in December 2014. The 2016 act provides for the creation of a public register of persons who have a controlling interest in land. What is your experience of using the vicarious liability provisions? Will the public register of controlling interests allow for more convictions? Will the possibility of a prosecution against the person with a controlling interest and the subsequent sentence act as a deterrent?

Detective Chief Superintendent Scott: In investigations we will take every opportunity to utilise the vicarious liability legislation. To be honest, opportunities to use vicarious liability and to seize assets are still few and far between, but we will do it. As we explained to the committee's predecessor last year, identifying the landowner can be problematic, especially when they live abroad, perhaps in some tax haven, and there is a chain of responsibility that ends up with a local

manager looking after the estate. Gary Aitken will probably have a firm view on prosecuting such individuals, so I will pass over to him for that.

Gary Aitken: It is sometimes difficult to identify ownership of land, but as far as wildlife crime is concerned, we also need to consider who has the beneficial right with regard to sporting rights or game control. That, too, can be tricky to establish.

The criminal killing of wildlife species on land has been described to me as a murder investigation with a serious fraud investigation tacked on to the end of it. That might sound a bit glib, but it is actually not so far away from the reality. As we have already discussed, one can face significant hurdles in proving the crime. There is an area of expertise in which detective officers are generally very good: it takes a lot of time and effort to unpick all the paperwork to get you to where you want to be. Where you are taken is not always helpful if it turns out that the owner is an offshore corporation. Any clarity or anything else that makes it simpler for us to drive our way through that paperwork will always be welcome.

Angus MacDonald: Tracing owners is clearly a problem. I think that we are all aware of a specific case in that respect; it was not possible to bring a vicarious liability case following the conviction of gamekeeper George Mutch because the employer could not be identified. What efforts were made in that case to identify Mr Mutch's employer?

Detective Chief Superintendent Scott: To be frank, huge efforts were made. This all goes back to the layering of ownership and our trying to establish through international inquiries who, exactly, the owner was. We had a number of experts assisting in the investigation, but I am afraid that we could not quite get there. That case was a challenge: on-going investigations are also providing challenges. Therefore, clarity on land ownership and who can be pursued will obviously be welcome.

The Convener: This is a hugely important issue, and Parliament will be looking at the nature of transparency in the next few months—certainly, in the course of this year. It might be helpful if you, as people on the front line, can put on the record the degree of transparency that you require in order to deal with such cases.

Detective Chief Superintendent Scott: We need to know who the owner is and who is responsible for running the estate in question. If this is to tie in with the legislation with regard to the Crown Office's ability to prosecute, we need clarity in respect of identifying the specific individual who is liable for activity on an estate.

The Convener: So, what we need is not just the name of a company, but of who benefits from that ownership.

Assistant Chief Constable Johnson: Absolutely. Under the accountability mechanism in Police Scotland, my detective chief superintendent reports to me, as assistant chief constable, I report to the deputy chief constable and the chief constable is the accountable and responsible body. Why does such a mechanism not exist in other areas? With land ownership and land management, wilful ignorance of criminality is no defence. People know that an awful lot of activity is taking place on their estates—if they do not, they should—so they need to take more than a passive role in managing the asset, especially if criminality can take place.

Anything that can be brought in that can provide us with clarity about who the accountable and responsible person is will be welcome. That would give us at the very least, as far as prevention is concerned, someone to engage with to ensure that things are done right in the first place—which is what every good citizen, whether they be a citizen of Scotland or the world, would want. When people fall foul of or are wilfully ignorant of the law, we need to make sure that we can pursue them and present the evidence to the Crown.

Angus MacDonald: How will general licensing, which we have discussed, help to concentrate minds? What about, for example, the withdrawal of a general licence from anyone with a controlling interest who has been convicted of vicarious liability?

Detective Chief Superintendent Scott: I am sorry, but I did not pick up on the actual core of your question.

Angus MacDonald: I asked about the withdrawal of a general licence from a person who has been convicted of vicarious liability. Clearly that would help to concentrate minds.

Detective Chief Superintendent Scott: As has been said, we would welcome that happening on every occasion.

The Convener: Let us move on to the final theme of our questioning.

Jenny Gilruth: In 2014-15, only two offences of fox hunting with dogs were recorded. I understand that neither case was referred to the procurator fiscal, and that only one case involving fox hunting—in 2010-11—has ever led to a prosecution. Why might that be the case?

Detective Chief Superintendent Scott: Again, it is about the quality and quantity of evidence that supports there having been an occurrence of criminal activity that we can present to the Crown Office in order for it to prosecute. I know that in previous cases much was made of video footage in which a particular frame suggested that there had been criminal activity. In the case of flushing

to guns, the fact that an image or footage does not show guns does not mean that guns are not there. There have been a number of cases in which we have scoured hours of footage for information or evidence to support there having been an occurrence of illegal fox hunting, but it has been very difficult to do that. A huge amount of effort goes into gaining evidence in such investigations.

We welcome Lord Bonomy's recent review of the Protection of Wild Mammals (Scotland) Act 2002. He made a number of recommendations, including an interesting one on vicarious liability, through which the landowner would be responsible for any illegal activity on the land. Obviously we would need to establish whether it was illegal. Lord Bonomy's recommendations are, I think, going to improve our ability to gather evidence—we were a big part of the consultation process. It is about simplifying definitions for people who undertake legal activities and allowing us to identify illegal activity. The Government is assessing the review just now, but we welcome the recommendations and are keen to work closely with the Government to take them forward.

Jenny Gilruth: One of Lord Bonomy's recommendations was for the appointment of an independent monitor to oversee what happens in fox hunting and to observe it "on a random basis". How would that work in practice?

Detective Chief Superintendent Scott: I do not see why that recommendation should not work. I have been very encouraged by the attitude of the leaders of Scotland's mounted foxhound packs. We had a meeting with all the leaders last year, which was organised through Jamie Stewart of the Scottish Countryside Alliance. They were happy to engage and to produce a voluntary protocol—a code of practice—on their activity in order that they could be more transparent, engage with the police before the hunt, tell us who the guns are and inform us when the hunt would start and finish so that we could be an effective part of building public confidence that the activities are legal. We welcome that.

As for having an independent monitor, I do not know whether that would be a paid or unpaid role, but I do not see why it should not work.

Mark Ruskell: DCS Scott was recently quoted in a Countryside Alliance press release. I am not sure whether you are aware of it. You apparently said that there

"is no evidence to suggest that the mounted foxhound packs that exist are acting outwith the legislation that is in place at the moment".

That quotation is from January last year. Is that still your view?

Detective Chief Superintendent Scott: Yes. At the moment I have nothing concrete in relation to

packs' activities to suggest that they are operating outwith the law. I am more than willing—as are my colleagues—to work more with the packs to enhance the voluntary protocol, and to have them engage with us prior to events and afterwards to ensure that their activity is legal. We will obviously respond to intelligence or information that suggests that it is not legal, but in the absence of such intelligence we will work with them to make sure that activity is above board.

Mark Ruskell: Is that not at odds with your submissions to the Bonomy review?

Detective Chief Superintendent Scott: I am sorry. In what sense?

Mark Ruskell: Is that not at odds with Police Scotland's submissions to the Bonomy review?

Detective Chief Superintendent Scott: No—it is not, if you are talking about specific intelligence given to me, but of course there could be a perception that potentially illegal activity is part of those hunts. We do not monitor or observe hunts, so there could be illegal activity. We made the submission on the basis that it would be far easier if there was more clarity in definitions and of roles and responsibilities—that would allow us to investigate and present cases, which is challenging at the moment.

Emma Harper: I have a follow-up question on mounted hunts. You said that you talk to pack leaders, who tell you how many guns there are, who has them and all that. There are about nine hunts in Scotland. Do they all practice in the good way that you describe, in that they tell you when the hunt is and who the guns are? Does that happen a week ahead of the hunt or on the day or morning of the hunt?

Detective Chief Superintendent Scott: At the moment, there is a bit of a mixed economy. Some hunts are doing that. I have not gone into the specific activities of each hunt, but I know that there is willingness and I know that some of them are engaging. I cannot say with absolute assurance whether all of them are now engaging specifically based on the protocol, but my impression is that they are.

Hunts are also welcoming local officers to observe and to understand a bit about the dynamics of the hunt. Again, Jamie Stewart of the Scottish Countryside Alliance is facilitating our engagement with the hunts to observe activities—to see how they start and finish and how they are conducted—so that local officers are more aware of the dynamics. Then, if information comes in from the public that suggests that something illegal is happening, the local officers will be aware of where the hunt is taking place and can reassure the public in that way. There is a lot of positive work on-going in relation to prevention and to

understanding the dynamics of what is, in effect, pest control.

The Convener: Thank you for your time this morning, gentlemen. Your evidence has been extremely useful. You have undertaken to write to the committee with further information. I also remind you—as I did earlier—that the committee's interest in wildlife crime extends way beyond simply looking at the annual report. We would welcome updates on work that you have undertaken—with Scottish Badgers for example—and on anything else that you think is relevant.

11:31

Meeting suspended.

11:37

On resuming—

The Convener: Welcome back. We continue our discussions of the Scottish Government's "Wildlife Crime in Scotland: 2015 Annual Report". We are now joined by another panel of stakeholders: Eddie Palmer, chair of Scottish Badgers; Andy Smith, a Scottish Gamekeepers Association committee member; Ian Thomson, head of investigations at RSPB Scotland; and Peter Charleston, conservation wildlife crime officer for the Bat Conservation Trust. Good morning, gentlemen—we will move swiftly on to questions.

Kate Forbes: The committee's predecessor—the RACCE committee—criticised the way in which information was presented in the wildlife crime report because it made it difficult to see trends and scrutinise the information. I would like to know your thoughts on the improvements in this year's report, such as presenting the data by financial year, and what improvements you suggest could be made in future years.

Ian Thomson (RSPB Scotland): Many thanks for the opportunity to speak to the committee. From the RSPB's perspective, we have seen year-on-year improvements in the Scottish Government's annual report. It contains more information and there is definitely more clarity.

Our concerns that a handful of incidents were not presented in the report, for whatever reason, were raised earlier. The only other comment that I will make is that it might be clearer to list the specific numbers of victims of crime for each incident. For example, if it was a poisoning case in which there were two or three victims, that number should be specified.

Other than that, I think that the report continues to go from strength to strength. It is important to highlight the scientific basis for some of the

concerns and to highlight the fact that we are dealing with only a proportion of what is going on—it is only the tip of the iceberg, as was referred to in the previous evidence session—but the report is certainly good.

The Convener: On what basis do you say that this is just the tip of the iceberg?

Ian Thomson: It is clear that we are detecting only a proportion of wildlife crime offences. There have been a number of cases such as the one that I highlighted in our submission in which an individual was observed shooting two buzzards and, when the police did a follow-up search, a further 11 buzzards were found hidden down adjacent rabbit holes. There are numerous other cases in which evidence has been found concealed or partially concealed.

The report deals with cases in which the number of shot birds that have been found is quite surprising. I say that because, if I was to shoot a protected bird of prey, the last thing that I would do is leave it lying around for somebody to pick up. We imagine in most cases that, if a bird that was shot dropped in front of the perpetrator, they would do everything that they could to conceal that evidence. The fact that X number of shot birds has been found makes us wonder whether they are wounded birds that have managed to move away a bit and then succumbed to their wounds. That is surely just a proportion of what has been killed.

The Convener: That is what I am trying to get to for clarity. There is a difference between a proportion and the tip of the iceberg. The phrase “tip of the iceberg” suggests that there is a colossal problem that we are not identifying. Is that what you are saying?

Ian Thomson: Absolutely. Back in about 2008, an award-winning paper was published on work that was done on the north of Scotland red kite population. It showed that 41 red kites had been found illegally poisoned in the north of Scotland, but the use of population modelling—rigorous and regularly used scientific modelling—showed that that represented about a quarter of the likely actual number of poisoned birds. That is the sort of number that we are dealing with.

The Convener: It was important to get clarity on that. I ask other witnesses to respond to the original question that Kate Forbes posed.

Eddie Palmer (Scottish Badgers): I agree with much of what Ian Thomson said and I have no other comments on the report as it is. Moving towards what the police talked about earlier—making clear the journey from the public reporting something to it becoming an incident that is investigated and maybe considered to be a crime—would be a tremendous improvement. That

covers something that I was going to say about badgers.

As for the tip of the iceberg, one of the difficulties may be that, although it is illegal full stop to do anything to badgers that involves killing or injuring them or taking them away and to damage their setts, we find relatively few dead badgers—people who did certain things to them might dispose of them. However, we find an awful lot of dug setts, and there is a whole thing about historical actions.

We are saying that we might report as crimes incidents where the activity has been very recent—I am talking about within days. However, the work of our project in South Lanarkshire at the moment, which involves going out with the public to survey and find new setts and monitor old setts, has found that about 50 per cent of setts have historically been disturbed, which nobody knew about before. There has been, or there is, a lot of crime about.

Peter Charleston (Bat Conservation Trust): To come back to the report’s format, in previous years the Bat Conservation Trust contributed statistics to the reports, which were published in relation to incidents rather than crimes. This year has seen the move to reporting crimes, and bat persecution is reported as having no crimes in Scotland for the period in question.

At the BCT, we are aware that Police Scotland undertook a number of investigations, none of which resulted in crimes being recorded, and we have no difficulty with that. As far as we are concerned, the problem about reporting on crimes rather than incidents is that with bat persecution, there are many opportunities to prevent crime—probably more than in most areas of wildlife crime.

We had a number of incidents where people contacted the BCT or Police Scotland directly to raise concerns about developments that were impacting on bat roosts. Those approaches resulted in visits from local wildlife crime officers, who informed developers or owners about the law and made them aware that an eye was being kept on what was going on. Compliance with the law was sought and achieved. No crimes were committed, so it was right that Police Scotland made no reports, but excellent preventative work was undertaken in a number of incidents and the extent of that work is not featured in the annual wildlife crime reports.

11:45

The Convener: That is inevitable, because the reports are on wildlife crime annually, but it is a good point to make.

Andy Smith (Scottish Gamekeepers Association): From our point of view, the report generally shows a downward trend. We always admit that a lot of work is in progress and that a lot of work has to be done.

Having listened to the earlier evidence session, I was disappointed to discover that there are incidents of wildlife crime—in particular raptor persecution—that have not been reported to the police and which should have been in the evidence. I do not know whether that is necessarily a failure of the police, but it is important that everybody has that evidence. If the evidence is there, I suggest that it should be up to individuals to let the police know about it, so that it can be reported. Every single thing should be reported to the police so that they know where we are.

I do not know whether we totally go along with the tip of the iceberg argument. On the ground, I definitely see a massive change in what is happening and in attitudes from the situation 20 or 30 years ago in the industry. That is important from our point of view.

The Convener: I made a point earlier about changing attitudes. I welcome the fact that you as an organisation have been critical of raptor persecution, but can you put your hand on your heart and say that all your members are co-operating with investigations on the ground?

In its written evidence, the RSPB makes the point that people in rural settings perhaps still feel intimidated about breaking ranks and spilling the beans about things that they are aware of. Has the cultural change happened among your members?

Andy Smith: I cannot speak for individual members. I read the RSPB submission, which refers to a “culture of silence”. It is every individual’s right to remain silent if they want to and breaking into that is difficult. If a person is accused of something, they have the absolute right to remain silent, as every citizen does. I do not see a culture of silence. I think that attitudes are changing, although slowly.

The Convener: I do not want to get completely bogged down in raptor persecution, because there are other subjects to cover. There may well be—or may not be—an improvement nationally in the raptor persecution situation, but a recent report showed a complete absence of a particular species from a sizeable area of our country, which leaves people wondering why.

Andy Smith: The answer probably goes back to what the assistant chief constable said about how evidence from academia can be quite important. I am very much a bird geek—I like my birds—but I am not a scientist by any stretch of the imagination. There are places in this country that

should have birds of prey—raptors—but do not have them. That includes some RSPB reserves that have the perfect conditions. For example, I do not think that there are very many in Abernethy—

Ian Thomson: Abernethy does have breeding raptors.

Andy Smith: We can all differ about this. There are all sorts of reasons why they might not be there. It is easy to point the finger unless there is evidence from academia that suggests other reasons—such as disturbance or whatever it may be—why birds of prey are or are not going back to a particular area.

The Convener: Recorded wildlife crime has increased by 11 per cent during the period in question. That leaves us considering whether there is enough of a deterrent against wildlife crime.

This is a general question for the panel. Given that no action is taken in 23 per cent of cases—we discussed earlier this morning the scale of the penalties that are available—do we have enough in place to deter the individuals who would carry out all such actions?

Ian Thomson: This does not relate specifically to raptors, but I suspect that, when an individual undertakes a wildlife crime, he makes a judgment call about the benefits of committing the crime, the chances of being caught and, if he is caught, what support he will get or what penalty he might face.

Until Professor Poustie’s review, we had significant concerns about the penalties that were being given by the courts in relation to, for example, possession of pesticides that had been banned for 10 or 15 years. More often than not, the financial penalty was fairly minimal. When there were multiple offences, a community disposal could be awarded, but our perception was that there was little deterrence, particularly for raptor persecution. In contrast, egg collectors were regularly given custodial penalties. It is arguable that the impact of stealing a clutch of golden eagle eggs is significantly less than that of killing an adult golden eagle, so there were a lot of inconsistencies across the board. The Poustie review really addressed that issue and recognised the concerns. The RSPB looks forward to the review’s recommendations being implemented.

The Convener: What about the wider issue of deterrence across the wildlife crime spectrum?

Andy Smith: We are probably getting that right, and there is no doubt that it sends a message out. Another thing to consider is that, if a wildlife crime involved shooting or whatever, an individual might lose their job or their family house. They would lose their firearms and their shotgun certificate, which is—rightly—extremely difficult to get hold of

in the first place in Scotland. Although there might not be specific penalties for individuals, there would be knock-on effects of an individual's actions.

Peter Charleston: Anecdotally, we hear of developers who have bat roosts to deal with making inquiries to find out what the average fines are for bat crimes and suggesting that such fines would be paid for out of their petty cash. We have struggled with that for many years and, when we have had cases of developers being fined £30 for destroying a bat roost, the committee can understand why we struggled.

However, there was an interesting case last year in Derbyshire in which a developer was hit with a proceeds of crime confiscation order, so he lost all the profit that he made from cutting corners. That is a very dissuasive measure that we would look at for future cases across the UK. That case was widely reported in the industry and I think that it will do much to improve the situation.

The Convener: That is interesting.

Eddie Palmer: Half of badger crime is committed by people for development and for agricultural and forestry purposes. They damage badger setts and do so without a licence to work near setts. A few years ago, a house builder built a house closer than the permitted distance to a badger sett. It was fined for that—my memory is that the fine was £2,000 or £3,000—but the house was to sell for £350,000, so that gives an answer about that.

Another aspect is badger digging and baiting, which is done almost entirely by dog-fighting gangs. Intelligence about that is strong. We learn about some of that from the SSPCA, which picks up information from local people, and that goes into what we feed into intelligence, which goes straight to Police Scotland.

The public think that, if they give a name and an address, someone will go and knock on the door of the guy and take the dogs off him, which is not the case at all. People do not have their front doors knocked down in this country unless there is enough evidence for a warrant. That is what the law is about.

Some individuals who have been found guilty of badger digging or baiting have received fines and community service. I am not underrating that or saying that the court got it wrong, but some people can be back out doing the same thing with their dogs almost the next day.

The Convener: Just to wrap up this section, we talked in the previous evidence session about the PAW protocols and allegations that they are not always being followed by all the partners, which is leading to some concerns within the partnership

and perhaps undermining the ability of the police to catch the perpetrators. Are you aware of any instances where PAW protocols have been broken and is that a concern for you?

Andy Smith: Something happened last year that highlights the whole issue and, in our view, it needs to be looked at. Last year, just about a week before the grouse shooting season was due to start, there was a sensational headline that eight golden eagles had gone missing over the previous five years. If you are anti-grouse shooting, that is the perfect time to release that news.

Nobody knew about the eight eagles that had gone missing over the previous five years. Last night, I went on to the Government website and the PAW website and I looked back at all the executive meeting minutes and there was no mention of it at all. I think that I looked back as far as 2012 and then I had to go to bed. There was no mention at all of those eagles going missing. If eight eagles had gone missing over a five-year period, somebody should have known about that two years ago.

If we are all working as equal partners in this organisation, what was happening should have been highlighted at the outset. After year 1, there would be a bit of a question mark. When it got to year 2, with two eagles missing, we would have said, "Let us do something about it, because we are not very happy about it," and that might have prevented the disappearance of the other eagles.

There is conflict within the group and that conflict has to get ironed out in some way. We have to move on—25 or 30 years ago, things were completely different from where we are just now. Things are progressing—they are progressing slowly, but I think that we all need to move on. In that particular case, I would suggest that PAW certainly was not working.

Ian Thomson: Can I respond to that? Andy Smith said that nobody knew. That is incorrect, because the police were aware that all those satellite-tagged birds had disappeared as and when they disappeared.

As to when the press release went out, the feeling was that, in order to have a significant impact, given that the birds all disappeared in areas where grouse shooting management is the significant land use, it was entirely appropriate to put out that information at the start of the grouse shooting season.

There have been a number of investigations where satellite-tagged eagles have been found; for example, a poisoned bird was found in the Angus glens back in 2009, I think. That has not stopped further birds from disappearing. That was all over the media at the time—it was the subject of a

significant police operation. Two further satellite-tagged eagles are known to have been illegally killed as a result of activities in the Angus glens subsequent to that. I think that Andy Smith is pulling the wool over people's eyes; there are usually attempts to shoot the messenger rather than to deal with the actual problem.

The Convener: Just to be clear—you said “known to have been”, but that is different from “proven to have been”. We are dealing with a wildlife crime report that is based on convictions or on the belief that there has been a crime. I do not want to get into the politics of this issue, because we all know how fraught they are. I want to look at the PAW protocols in particular. There is a dispute over whether they worked effectively in that instance. In general, is there a problem? Are the protocols not working sufficiently well, or do they represent progress in this area?

Ian Thomson: They represent progress. The PAW Scotland raptor group is undertaking a review of the satellite tagging protocol, which I think was written in 2013, to make it more fit for purpose, so I think that that is certainly working. The chair of the PAW Scotland media group is probably the best person to advise on whether the media protocol is working.

The Convener: Let us move on to consider badgers.

12:00

Claudia Beamish: Good morning to the panel. I want to ask Eddie Palmer some questions, but if others have comments, they would be most welcome to contribute.

I think that you heard the evidence from the first panel. It would be helpful if you said how the concerns that are highlighted in your written evidence could be addressed and if you told us a bit more about concerns relating to crimes by those who quite wrongly regard badgers as a pest and those who might be tempted into using them for baiting.

Eddie Palmer: To pre-empt a question that you may have, I say that since the end of last year, because of my concern about our figures, which for the nine months from last March to December were running at about the same level as before—I have the details with me—I have been in contact with Sergeant Andy Mavin, who is our contact in Police Scotland, and we have talked about the presentation of figures. It has been suggested recently that we should start to share on-going issues and figures on a monthly basis so that we pin down exactly and immediately that there is a case that a crime has been committed, that it has started off in the process with the police, and that

someone on the other end knows that it is somewhere through the process.

Almost all the disparity in the figures applies to damaged badger setts. Those are the main things that we see and find out. Our core figure for incidents is 40-odd a year. Those are situations in which there was a known badger sett that was not disturbed at some point, but it was disturbed soon after—sometimes grossly. One of our members will have seen it, and most of them will have been seen by a police officer, as well. We then consider whether there has been an offence to be prosecuted.

Although police officers in divisions throughout Scotland do extremely conscientious work—I mainly deal with the east of Scotland, as that is where I live—things disappear. Someone will have decided at some point that the crime is historical and there is not enough evidence, but they have not come back to me. I am not blaming individuals but, when I inquire and push, I will usually get a phone call rather than something in writing some months afterwards to say that the matter has been dropped or is not proceeding, or that there is not enough evidence. That does not mean that there is anything sinister about that, but the system is not good enough.

The things that we heard about from the first panel are extremely good news. There is a willingness to look at the matter.

As the ACC said, there is a procession. A member of the public or one of our members—obviously, they have the same status—will make a complaint, but tracking what happens is currently extremely difficult. It can be very difficult to get hold of a police officer whom one has been with on an investigation. That is not because people are being difficult or obstructive; it is because they are extremely busy and are out all the time. If there is one wildlife crime officer in an area, or even two or three, they will be busy, and somebody else cannot answer for them. People cannot take messages for them. There are large communication difficulties. That is what mostly happens.

The badgers legislation was improved so that it did not just protect badgers. In the 1970s and 1980s, when people wanted to do harm, they would just destroy the sett because they thought that there would then be no more badgers. The protection of badger setts was therefore brought in. Things are quite clear if a badger sett has been disturbed. Some of what happens is minor compared with what baiters do. They can dig a crowning down hole. I have seen holes that were 12 feet deep which were dug in a night to put dogs down to get badgers out. That is a gross crime; it is not anything else. The issue is how and when that is investigated and with how much energy.

I am not being critical at all of police officers individually. In the past year, when I have dealt with more cases individually, police officers have spent an enormous amount of time and taken an enormous amount of trouble on them, as I have done as the volunteer who turns out to try to help them. I think that you will see that improving in the future.

There is a gap between what we perceive as crimes and, to use RSPB nomenclature, what could be possible or probable crimes, and we need to be clear and definite about what the crimes are. It will be extremely difficult to find the perpetrators of some crimes; they will have gone and that is it. Of course the police will not be able to prosecute someone if there is no one to prosecute, but that does not mean that the crime was not committed in the first place.

Claudia Beamish: You brought up the figures, which I raised in the first evidence session. Could you clarify for the record your concerns about what the Scottish Government reported on Wednesday 18 March 2015 in answer to a question that I asked and what is in the wildlife crime report?

Eddie Palmer: I cannot answer that. I do not know. I know what we discover and what we put forward. We hear about some things more than we used to. Before Police Scotland was formed, they almost used to just disappear. Getting hold of information is a bit easier now, but I do not think that it is of the standard that we could have. I know about the figures that you are referring to, but I cannot explain that; I just do not know.

Claudia Beamish: I am concerned that the Scottish Government reported to me in a written answer that, in 2013-14, no crimes were proceeded against and there were no guilty verdicts, but your figures are different from that. Certainly seven crimes were recorded by the police. As it is now on the record, it is important that the committee asks Police Scotland and the Government to respond to that point.

Eddie Palmer: Yes. With reference to what I said a few moments ago, we also do not know whether the police have had a conversation with the fiscal. I totally accept that there could be a good reason for the police saying that they are not going to proceed with a case. They have to have enough evidence to make it worth while, and it must be in the public interest. The police need to be able to get a conviction. As Peter Charleston said, we can accept that and totally agree. However, we are somewhere down towards the bottom of the pyramid that goes from crimes that the public think have happened to those for which somebody appears in court and is punished. There is that gradation in every sort of crime. Some are easier to investigate than others and we come back to the point that delay in investigation

means that evidence deteriorates in the countryside. That is a really difficult issue. The police try to get out as soon as they can, but if I report something to a policeman on one day, it can be two or three days, if we are lucky, before we go out to do things such as taking photographs. If they are called out on another job and we have to make other arrangements for the next week, the evidence will deteriorate and that makes it difficult to get a conviction.

The Convener: Let us move on to look at bats.

Maurice Golden: My questions are primarily for Peter Charleston, but if the rest of the witnesses have any pertinent points, they should, by all means, drop in.

It was pleasing to hear some of your opening remarks about some of the preventative work that is being done. However, the committee also heard earlier that only three offences were recorded in 2013-14 and none was recorded in 2014-15. From your perspective, do those figures accurately portray bat persecution levels?

Peter Charleston: They are in line with the national average across police forces. Annually, we make between 120 and 150 referrals to the police in the UK. Making nine referrals to Police Scotland last year shows that that force is dealing with more bat crimes than most. Research carried out over the past couple of years suggests that one in six or seven referrals to the police results in a confirmed crime, so the Police Scotland crime recording is pretty much in line with what we would statistically expect.

Maurice Golden: Do you think that more could be done to raise public awareness of what is perceived to be an incident or a crime in relation to bats?

Peter Charleston: Raising public awareness is certainly an issue, but so is raising awareness in industry, because the vast majority of bat crime relates to development. We think that working with industry is the key. We do lots of work to raise awareness but, as much as we try, we also have to be able to relate to cases and say, "If you choose not to comply with the law, these are the sorts of sanctions that you will face." Some recent cases are sending the message out loud and clear that there is a need to comply with the law.

Maurice Golden: I think that I have picked up the gist of what you said, but to get it on the record I ask whether, using your UK-wide knowledge about this, you are content with the way in which Police Scotland and the COPFS are operating, given that bat persecution is a wildlife crime priority?

Peter Charleston: Yes, we are. There is not one case from last year that I referred to Police

Scotland that I anticipated would go forward for prosecution.

The Convener: Thank you. Let us move on.

Kate Forbes: I would like to ask a series of questions on poaching and coursing. Are you content with the way in which poaching is currently recorded by Police Scotland and reported to the COPFS, and do you think that the figures in the report reflect poaching levels in Scotland?

Andy Smith: Yes is probably the answer to that. I have had my own issues with poachers. I am a full-time keeper on an estate in Edinburgh at South Queensferry and we have big problems with poachers, and that also brings in the badger side; a lot of the poachers are involved in all sorts of things to do with dogs. We actively want our members to report any incidents to police—vehicle numbers and all the rest of it. That adds up to the picture that will eventually be recorded, hopefully in the report as well.

Undoubtedly, deer coursing and hare coursing with dogs are a major problem, especially near the major towns in the central belt—fish poaching as well, which is the biggest crime that we now have; it is a massive thing just now. Our members who are ghillies on the rivers report to the police and work very closely with them as well. From our point of view, the recording is reasonably robust.

The Convener: Does the involvement of your members in this issue place them in danger at times? In relation to hare coursing, for example, I am aware of farmers who have had their property vandalised.

Andy Smith: I will give you a personal example of something that happened to me that actually resulted in me being charged by the police—it was not a very nice situation. My background is that I was a police officer for 30 years, I have been involved in gamekeeping all my life through my family and I am now a full-time keeper. Three years ago, the police were looking for an individual who was not a nice person at all. I had asked the local farmers to tell me if they saw his car about. I received a phone call from one of the farmers to say that the car was there, so I went along with another retired officer, who is 82. We found the poachers just coming out of the field. Our protocol is not to approach such individuals—we stay well away, phone the police and let the police deal with them. I phoned 999 but, unfortunately, the timing was bad; the men came out of the field as I was on the phone.

Luckily, because of my police training, I asked the operator to keep the phone line open and record the conversation between me and the poacher. I can assure you that if I had not had 30 years of police training and experience behind me, I would have undoubtedly reacted differently to

that individual. The result was that he put in a counterclaim and I was charged with breach of the peace. That charge went through the Crown Office, which basically put a pen right through it when it read the transcript of the conversation.

12:15

I was lucky because I know the system, but many guys do not—they are out there on their own and there is conflict. That is why we say that you should not approach such people but should watch them from afar and then phone the police and let them do their job.

The Convener: It is important to put that on record, because there are some fairly unsavoury individuals involved in some cases.

Andy Smith: They are not nice people. The individual I encountered was not nice at all.

The Convener: Thank you for that. Let us return to raptor persecution.

Mark Ruskell: Both the RSPB and the SGA said earlier on that it is useful to have greater transparency for cases. Could you expand on that and the issue of withheld data?

Andy Smith: We are trying to move forward. If you go back 25 or 30 years, the situation was not nice—at its worst, there were 32 poisonings. There is now a downward trend, which is great. However, there are some things that are perceived to be withheld and that is not good. We should be working together and trying to move on.

We are trying to educate our members as best we can. We do not police our organisation. If anything happens, we react to that, with the result that five of our members have been expelled from the organisation. As I said, those people were likely to lose their firearms and shotgun licences, their jobs and their houses as a result, so it has a big knock-on effect. We really want to get the message across and we need all the available tools to do that.

I mentioned the eight eagles that were held back from us. That information should have been shared in everybody's interests, so that we could use it positively.

Ian Thomson: Two or three years ago, before a case was publicised and the police investigations were finished, we shared information about it with the Scottish Gamekeepers Association, which carried out its own investigation—I use that term loosely.

A satellite-tagged golden eagle had been found under a tree with two smashed legs. The tag data showed that the bird had been held in one place for 15 hours, high up on a grouse moor, 15 miles away. The data showed that, after dark, the bird

mysteriously moved 15 miles and was found under a tree on Deeside, about 30m away from a road. The post-mortem report on the bird said that its injuries were consistent with it having been caught in an illegal trap.

We asked the SGA to assist us in finding out what on earth had happened, but it produced a fairy tale of a series of unfortunate events that apparently happened to the bird. The SGA's suggestion was so far away from what was supportable by the evidence as to be laughable. We have tried to work with the SGA before cases go into the public domain on several occasions and it has not been productive—that is the bottom line.

On withholding information and the accusation that we are not following protocols, there is a suggestion that if a satellite-tagged golden eagle goes missing suspiciously, we should go and tap on the door of the big hoose and say, "Do you mind if we go and look for this golden eagle that we suspect was illegally killed?" thereby giving the perpetrators every opportunity to clear up before we find it. The reality is that we will not do that.

Mark Ruskell: I was thinking about data being withheld from the Government's report. Earlier, I referred to the picture of the set trap in the RSPB report, but that information is not in the Government's report. Why is that the case and would you both welcome the inclusion of such incidents in the report? I cannot see how else we can get an accurate picture of wildlife crime in Scotland.

Ian Thomson: I do not understand why that incident is not in the report, because that picture was taken on an operation that was being led by the police. Three police officers were present, as well as Scottish SPCA officials and RSPB staff. We uncovered an appalling number of scenes in the middle of an estate that were confirmed to be illegal—to be crimes. I cannot answer for why they are not in the report. They should be.

Mark Ruskell: Will you speculate on whether there is a valid reason why that would be the case? Is there an on-going investigation? There was not much of an answer from Detective Chief Superintendent Scott.

Andy Smith: It sounds a bit bizarre that that incident is not in the report. If the RSPB says that it was there with the police, I would suggest that it should be in the report.

Mark Ruskell: I suspect that I know what the answer will be, but is the 19 per cent increase in offences largely down to an increase in reporting or persecution?

Ian Thomson: It is very dangerous to become fixated on body count. The finding of persecution

offences—particularly of raptors—is largely dependent on luck; the search effort is very ad hoc. Comparing statistics from one year to another is, in many ways, invalid. We never know from one year to the next whether we are finding 5, 50 or 95 per cent of offences. All that we can say is that there continue to be offences.

The assistant chief constable mentioned using the open source information. The scientific studies that have been carried out and the population censuses are much more valid in allowing us to identify where raptor persecution continues to be an issue. For example, information was published at the start of this year about areas where hen harriers ought to be doing very well, but have declined steadily for 30 years. On peregrine falcons in north-east Scotland, we are now in a situation where the part of the Cairngorms park that is in Aberdeenshire has a quarter of the number of breeding peregrines that it had in 1991. It is such information that shows where persecution is occurring, as opposed to whether someone luckily walked the right side of a wood or a clump of rocks and stumbled across a body.

Mark Ruskell: Mr Smith, what is your view on that?

Andy Smith: First, we should remember that the Cairngorms national park has the highest density of eagles in the world. [*Interruption.*] Am I not right in thinking that?

Ian Thomson: No, you are not.

Andy Smith: It is certainly where the highest density of eagles is in the UK.

Ian Thomson: Harris has the highest density of golden eagles.

Andy Smith: It is in Scotland, so that is good. I have lost track of the question.

Mark Ruskell: I was asking about the 19 per cent increase in offences. Do you put that down to an increase in reporting or persecution?

Andy Smith: It is probably down to increased reporting and people being more aware of what is happening in the countryside due to media releases. As I said, we all do our best to try to reduce the number of offences.

Mark Ruskell: Are you happy with how bird and raptor persecutions are detailed, recorded or broken down in the report? Could that be improved in some way?

Ian Thomson: There is confusion about bird crime, which I presume refers to all birds, and raptor crime. If we are focusing on the national wildlife crime priorities, the report's focus should be on raptors. Birds more widely could mean that someone shot a blackbird with an airgun. Unpleasant though that is, that is not a national

wildlife crime priority. The report would be clearer if it focused on raptors rather than all birds.

Andy Smith: I agree with that, although you probably need to refer to both. If you want to have raptors as a key issue, it must be reported that way. I agree that bird offences can cover all sorts of things.

Claudia Beamish: I will return briefly to the subject of poaching, as I have a supplementary question for Andy Smith about the Scottish Gamekeepers Association's written evidence. The submission says:

"Fish poaching remains the only type of recorded wildlife crime where there is a measurable increase, both in 2015 (up 12 per cent) and across the five year data (up 19 per cent)."

You highlight the concerns about public perception and whether the focus might be on other priority species. Salmon is a protected species, as is sea trout. Could you make any further comment on that, on where you see the emphasis and on whether you would like to see any changes?

Andy Smith: I know that the ghillies—and the bailiffs as well—are doing a fantastic job down on the rivers throughout Scotland. I would say that we should just keep going and try to catch offenders—that is the bottom line, I would suggest. There is not much more that I can add to that one.

The Convener: I would like to wrap up this section on raptor persecution. Andy Smith, you referenced earlier the fact that yours was not an organisation that could police its membership, as such. You simply do the things that you do. You have been quite unequivocal, as an organisation, about your view of raptor persecution, and I accept that. However, on the ground, there might well be individual gamekeepers who are subject to localised pressures to act in a way that, I speculate, might be abhorrent to the SGA and to all of us. Do you accept that that might be happening and that it might be the cause of those raptor persecution hotspots that we still have?

Andy Smith: Individuals are responsible for their own actions, no matter what those are. I would not like to speculate that that is why we have perceived hotspots or whatever we have. I think that each individual is responsible for themselves. As I said earlier, it goes with the job that you do. If you are a keeper, out up on a hill somewhere, before you pull that trigger you have a lot going through your head. It is very similar to a drunk driver getting into a car: you have the keys in your hand and you have had a drink—what do you do? Drink driving continues, although let us hope that it is reducing all the time, as is raptor crime.

The Convener: The likelihood of being caught for drunk driving is statistically higher. I think that

19,000 vehicles were stopped over the festive season. A person is much less likely to be caught for wildlife crime, of all types, that occurs in remote areas. Perhaps that is at the root of this.

Andy Smith: It is up to each individual, at the end of the day. We certainly do not condone it and we certainly do not want it in our organisation. We try our best to tell people not to do it, but individuals will be individuals.

The Convener: Of course, there are a number of gamekeepers who have nothing to do with the SGA, for example.

Andy Smith: Of a membership of about 5,000 we have somewhere in the region of 1,200 who are actually gamekeepers. Not every teacher is a member of the National Union of Teachers, for example. I cannot speak for every gamekeeper.

The Convener: Okay. Let us move on. David Stewart has a question

David Stewart: What assessment have you made of the case for increasing the powers of the SSPCA to investigate wildlife crime? I address that to Mr Thomson.

Ian Thomson: There was an interesting example recently, when a couple of walkers stumbled across a common gull that was flapping about in a trap on a moor. The walkers contacted us and, because the bird was severely injured, we contacted the SSPCA to send an inspector up there because of the animal welfare concerns. We also reported the incident to the police, but they were not able to get back to us very quickly. The SSPCA attended within an hour, the gull was euthanised and the illegal trap was seized.

There then followed a joint investigation, with the police, the SSPCA and the RSPB involved. It was a week before a follow-up search was able to take place, because the SSPCA officer's powers did not give him the right to search more widely to see whether other similar traps were set in that location. When we returned a week later, with the police, it was very clear that a further four sets of traps had been deployed in a line across that moor, baited with dead rabbits to attract birds of prey or whatever. However, all that was left were the holes where the traps had been staked into the ground, and you could see the indentation in the moss and so on.

I would argue very strongly that that case was a very good example of why the SSPCA's powers should, at least, allow it to enter land if there is suspicion that wildlife crime offences under the Wildlife and Countryside Act 1981 are taking place. I know that it is not looking for powers of entry to search buildings or vehicles under the 1981 act; it just wants the ability to enter land. I certainly strongly support that.

David Stewart: That is a very powerful point. Mr Smith, do you have something to add?

12:30

Andy Smith: The SSPCA is a charitable organisation—a point that was made earlier in the meeting by the police. My experience of this is recent, and I was very surprised by what I found out. I was asked to go down to Oatridge college in Broxburn, where we took part in a careers convention. We were there on behalf of the Scottish Gamekeepers Association. We met two chief inspectors from the SSPCA who were there. While we were talking to them I found out that the chief superintendent was down in London in the House of Commons to listen to the driven grouse debate. I have an issue here. We all probably watched that debate on the telly, but that particular gentleman went down to London to listen to it. It is a charitable organisation that we see as perhaps having an agenda, and shooting is on its agenda. The chief superintendent was certainly at that event, going from the information that was given to me by the two chief inspectors who attended the convention. I find that quite strange.

Eddie Palmer: I refer to your earlier point about the question of the added workforce. This is one of our difficulties. There were some badger cases with the SSPCA, which can pursue them—we do not. Sometimes it tells us about them, but sometimes it does not. Its figures are on the top of ours, I think. I have seen its speed of response. It can have a couple of people up in the north of Scotland within hours if there is a live case happening. Our view—leaving out some of the other issues that have been mentioned—is that it would be an added workforce.

Peter Charleston: In our response to the consultation we raised some concerns about the SSPCA having additional powers. We asked for some clarity as to whether the powers would come under the Wildlife and Countryside Act 1981 or whether they would be more general powers for addressing wildlife crime, such as powers under the Protection of Badgers Act 1992 or under the habitats regulations.

The reason for our concern is that we want clarity as to who is to investigate wildlife crime in Scotland. Is it the police? Are they the ultimate authority? We need to be able to go to somebody and say, “This is your responsibility, and we want you to enforce the law.”

We fear that, by giving the SSPCA powers, we may get into a tussle between Police Scotland and the SSPCA, with one saying, “We don’t do that,” and suggesting that we report matters to the other. Provided that there is clarity as to who has

ultimate responsibility, we would welcome the additional powers being given.

David Stewart: I am sure that you will have picked up the questions that I asked the previous panel. From my perspective, no one is arguing about taking away the primacy of Police Scotland; it is about enhancing the team. We have also heard that it is important to get the legal drafting correct. That is a matter for the Government. There are clearly human rights issues, too.

I will move on to penalties for wildlife crime. You will all be familiar with the Poustie report, which made recommendations for increasing penalties, as I outlined earlier. I ask each of the panel members for their assessment of those recommendations for increased penalties.

Peter Charleston: An increase in penalties is to be welcomed. If a commercial developer has a bat roost on their development, it will cost them at least £5,000 to deal with that roost lawfully. If penalties of less than £5,000 are imposed, there is a danger that the message will go out that crime can pay. Having the ability to impose increased penalties will help there.

As I mentioned earlier, however, the ability to seek proceeds of crime confiscation orders is probably more important for us. Those orders are of course not penalties, but nevertheless they will be seen as such by many people.

Eddie Palmer: I agree with Pete Charleston. Increased penalties would be welcome. The public vent their frustration on us when there are badger crimes. Either nobody is found for a crime, or somebody appears in court and gets what appears to be a very light sentence. I think that the average fine in a sheriff court is £250. Some people have been fined £700 or £1,000, and that is not bad going, but I think that the penalties need to be ramped up.

Andy Smith: I agree. Anything that acts as a deterrent will be good. As I said earlier, there is also the add-on of the loss of jobs, earnings and all the rest of it.

Ian Thomson: I agree. We were able to make both a written and a verbal submission to the wildlife crime penalties review group, which we were very pleased to take part in. As I said, we agreed whole-heartedly with the recommendations that were made.

The one thing that I would add is that there are certain aggravating features with some wildlife crimes when people do it as part of their role and there is an element of premeditation, which should obviously be included as an aggravating feature.

Andy Smith: Can I ask what you mean by “their role”?

Ian Thomson: People are doing it as part of their employment—as part of their job.

Andy Smith: In what respect?

Ian Thomson: Killing birds of prey.

Andy Smith: That is not part of my job.

Ian Thomson: No, no—it is not part of your job.

Andy Smith: It is not part of my job or that of any keeper. I am sorry that I am showing passion, but that is going too far.

David Stewart: Perhaps I can finish my questions there, convener.

The other point that is worth stressing, which came from the Crown Office, is that speed of delivery—in the sense of getting the conviction—is important. That is worth looking at because, under summary procedure, which tends to be much quicker, the maximum penalty would be £40,000 and a year's imprisonment, but under solemn procedure we are talking about an increase to a term of imprisonment of up to five years. It is obviously about getting these things balanced out, and it is useful to get your feedback. We clearly need to wait for the Government. If we have an opportunity, convener, to have the cabinet secretary before us, I am sure that we can ask specifically about the timescale within which the Government intends to bring legislation before us.

The Convener: We will move on. Angus MacDonald has a question.

Angus MacDonald: You will have heard my question to the previous panel about vicarious liability and Sean Scott's response, in which he indicated that he would be keen to see more convictions through vicarious liability provisions. Will the advent of the public register of controlling interests allow for more convictions under the vicarious liability provisions? Do you regard the possibility of prosecution and the sentences being handed out as successful deterrents?

Ian Thomson: In short, yes. Whether the reduction in poisoning that there has clearly been in Scotland over the past five years is a coincidence is up for debate, as there has obviously also been an increase in the use of things such as satellite transmitters. However, I think that vicarious liability has had a marked deterrent effect. Having a land register, which will help police to identify who is responsible for managing shooting on an area of ground, is very important.

Andy Smith: I agree. As has been said before, at the end of the day everything helps.

Eddie Palmer: Yes. I agree, too. When we are asked to go and look at a badger's sett, we sometimes have no idea who owns the land and

finding out who does is very difficult. Therefore, a landowner—absentee or not—can wash their hands of it and say, "People came on my land. It is nothing to do with me at all."

Peter Charleston: We have never had cause to investigate the issue. Most prosecutions for bat crime involve corporate responsibilities and liability and legislation in that regard.

The Convener: Okay. Thank you. Finlay Carson has a question.

Finlay Carson: We have already covered a lot of this during the questioning. We have been very aware of issues over the last five years with satellite-tracking signals disappearing. A lot of those incidents have not been treated as criminal incidents by the police. What steps have the RSPB and other organisations that own the satellite tags taken to liaise with the owners and managers of land? You have already said that you will not be banging on the door at the big house. What do you do when satellite signals disappear? In compliance with the protocol, how do you make an effort to understand better what has happened?

Ian Thomson: Two or three things can happen with a satellite-tagged bird. It can carry on flying around quite happily, in which case we will be able to follow its track when its signal is transmitted.

If the signal stops moving, we will look at the satellite-tag data to try to establish whether the bird has stopped moving and is still transmitting, in which case there might be a concern that the bird is dead. If a bird is lying dead, the transmitter will still function and we will continue to get data, which will allow us to recover the body. In those circumstances, we will contact the local divisional police and discuss what the data is showing. We ask the police whether they wish to come with us to look for and collect the body or whether they are happy for us to do it. In such cases, it is often impossible to tell whether the bird died naturally or has been the victim of an illegal crime. However, we go on the basis that there is the potential for there to have been a wildlife crime, because these birds often go down in areas that have a history of confirmed raptor persecution, for example previous poisonings, trappings and shootings, although that does not necessarily mean that that individual bird is a victim.

There are other cases, though, where a tag that is functioning very well suddenly stops transmitting. The tags are incredibly reliable: something like 6 per cent of them fail; in other words, 94 per cent of them continue to work. If a tag suddenly stops transmitting, it means that something fairly catastrophic has happened to the tag, and then we liaise with the police in exactly the same way. We say, "This bird was in this last known position when it stopped transmitting.

We're concerned that this is suspicious. Do you want to have a look around the area with us or are you happy for us to do it?" The police will say, "There's no evidence of a crime. We're happy for you to go."

Basically, that is how we act when a tagged bird disappears or stops moving.

Finlay Carson: The cabinet secretary is undertaking a review of satellite-tracking data and the report is expected in 2017. Did you make a submission to the review? What are your initial thoughts on what it might tell us?

Ian Thomson: The RSPB monitors a number of satellite-tagged species, notably golden eagles, red kites, white-tailed eagles and hen harriers. The people undertaking the review have asked us to contribute all our data, so we are in the process of pulling that together. I would not like to pre-empt the findings of the review before it is published, but I think that it will be very interesting reading.

The Convener: It is challenging to cut through the claims and counterclaims about raptor persecution. I would like some clarity from those of you who understand birds far better than I do. When you are trying to apply satellite tags, to what extent can nest disturbance be detrimental? I ask the question because a few weeks ago I saw a series of pictures on the internet that purport to show the process of tagging eaglets. People were sitting around having their lunch in the vicinity of the nest and a dog was present. The process appeared to have taken a sustained period. At one point, the chick was being petted and people were taking photographs. Just for clarity, would that have any detrimental impact? Would the nest be abandoned by the adult eagles?

Ian Thomson: A study was carried out—forgive me if I cannot be specific but I think that it was in the early 1990s—in which adult golden eagles were trapped on their nests to be fitted with satellite tags, and that was found to have a negative impact on whether the birds would return to those nest sites to breed in subsequent years. Because of that, the whole system of tagging was changed. Obviously, satellite tags are a fairly new piece of technology and there is a learning process in that regard. Another study showed that tags had been fitted incorrectly to a couple of red kites in England and the birds had suffered lesions.

A person has to have a licence to do satellite tagging. They have to undergo a rigorous training regime and submit a licence return. In addition, it is very clear what happens to a tagged bird after it has been fitted with a tag. I am sure that all of that information—certainly the success of the tagged bird—will feed into the tagging review, because a

tagged bird is a bird that can contribute to the review.

I saw those photographs, and a number of false allegations were made about them—that is the bottom line. The people involved were carrying out operations that were entirely permissible within standard practice and had been permitted by the British Trust for Ornithology. As far as I am concerned, some of the spurious allegations about the photographs were made in a bid to undermine the satellite-tagging review before it is published, by suggesting that birds come to harm from satellite tags. I suggest that we wait to see what the review contains; then we will see what harm is coming to tagged birds.

12:45

The Convener: Absolutely. As a layman, looking at those pictures, I wonder why people would be sitting having their lunch around an eagle's nest. I am interested in whether that is standard practice or behaviour when people are engaging in a process that, as you say, requires training and licensing.

Ian Thomson: As you know, eagles' nests on cliffs are, by and large, up trees. If there happen to be four or five people attending on the day, not all four or five of them will go up the tree or the cliff; they will wait for the person who is either retrieving the chick to do the tagging or taking the chick back up to the nest. If they happen to sit and have their lunch there, so be it. They are not there for three or four hours, as was alleged by some people.

The Convener: In general terms, the process of satellite tagging young birds is not detrimental to their survival.

Ian Thomson: No, not at all.

Andy Smith: I do not know how long it takes to tag an eagle because I have never done it. Like everyone else, I saw the pictures. As a layman, my view is that it is not right to have a dog anywhere near a nest. I am glad to hear that a false picture was being given.

The Convener: Thank you for that information, because it is useful to get some clarity on the issue. The matters that we have discussed today are hugely important. The committee will continue to take an interest in them, within and outwith the process of considering our annual report. Thank you for your time today, gentlemen. It has been most useful.

At its next meeting, on 17 January, the committee will take evidence from various academics and experts on deer management in Scotland and will consider subordinate legislation. As agreed earlier, we now move into private session.

12:47

Meeting continued in private until 13:30.

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The deadline for corrections to this edition is:

Thursday 9 February 2017

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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