RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

AGENDA

23rd Meeting, 2010 (Session 3)

Wednesday 3 November 2010

The Committee will meet at 10.00 am in Committee Room 2.

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—

   - The Plant Health (Scotland) Amendment (No.2) Order 2010 (SSI 2010/342); and
   

3. **Wildlife and Natural Environment (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Roseanna Cunningham MSP, Minister for Environment; Kathryn Fergusson, Bill Manager; Wildlife Management Team, Natural Resources Division; Hugh Dignon, Head of Wildlife Management Team; Natural Resources Division; and Andrew Crawley, Solicitor, Food and Environment Division, Scottish Government.

4. **Fisheries:** The Committee will consider a draft letter to the Cabinet Secretary.

5. **Wildlife and Natural Environment (Scotland) Bill (in private):** The Committee will consider the evidence heard earlier in the meeting.
The papers for this meeting are as follows—

**Agenda Item 2**

The Plant Health (Scotland) Amendment (No. 2) Order 2010  RAE/S3/10/23/1

The Animals and Animal Products (Import and Export) (Scotland) Amendment Regulations 2010  RAE/S3/10/23/2

**Agenda Item 3**

Wildlife and Natural Environment (Scotland) Bill cover note  RAE/S3/10/23/3

Briefing Paper (Private Paper)  RAE/S3/10/23/4

**Agenda Item 4**

Draft letter (Private Paper)  RAE/S3/10/23/5

**For Information**

Recent Developments  RAE/S3/10/23/6
Rural Affairs and Environment Committee

23 Meeting, 2010 (Session 3), Wednesday, 3 November 2010

Wildlife and Natural Environment (Scotland) Bill

1. At its meeting on 3 November 2010 the Rural Affairs and Environment Committee will take its final evidence on the Scottish Government’s Wildlife and Natural Environment (Scotland) Bill, from the Minister for Environment.

2. This cover note details the written evidence, supplementary evidence, and other background information which has been sent to the Committee during its Stage 1 scrutiny, and attaches in hard copy evidence which has not previously been circulated to members.

3. All formal written evidence, and supplementary evidence, together with other pieces of background information, are available on the Committee’s webpage—

http://www.scottish.parliament.uk/s3/committees/rae/bills/WANE/writtensubmissions.htm

4. The following recently received submissions and supplementary submissions are attached, in hard copy, with this paper, at Annex A—

- supplementary submission from the Scottish Gamekeepers Association
- supplementary submission from OneKind (formerly Advocates for Animals)
- supplementary submission from Simon Pepper
- supplementary written submission from RSPB Scotland
- supplementary written submission from Scottish Raptor Study Groups
- written submission from ScottishPower Renewables
- written submission from Dr Adam Watson.

5. The Scottish Government made a commitment to make certain historic papers available to the Committee when officials gave evidence on the 23 June 2010. Those papers are as follows—

- Macdonald, D.W., Tattersall, F.H., Johnson, P.J., Carbone, C., Reynolds, J.C., Langbein, J., Rushton, S.P. and Shirley, M.D.F. - Final report (Contrats 5 & 6) to the Committee of Inquiry into Hunting with
Dogs: http://www.huntinginquiry.gov.uk/mainsections/research/macdonaldfinal.PDF


6. In addition, the Scottish Government provided PDFs of two other documents for background information—

- Predation upon lambs by foxes in the absence of control – a report to the League Against Cruel Sports, October 1990, by Ray Hewson; and

- Scavenging and predation against sheep and lambs in west of Scotland – 1984, by Ray Hewson.

7. Hard copies of these documents are available on request from the Clerks.

8. Finally, the Finance Committee has completed its scrutiny of the Financial Memorandum and a copy of the correspondence from the Finance Committee is also attached to this paper at Annexe B.
SUPPLEMENTARY WRITTEN SUBMISSION FROM SCOTTISH GAMEKEEPERS ASSOCIATION

The Scottish Gamekeepers Association is concerned about the nature of the debate on key issues raised during evidence sessions with regard to the WANE Bill. The prescriptive nature of many proposals, ranging from licensing, the approach to non-native and invasive non-native species and the balance of discussion on wildlife crime is heavily influencing current thought. Much of this is based on a presumption of information, which in many cases is not always substantiated by evidence. Inevitably, there are differences in perspective, but we owe it to our biodiversity to get the legislation right.

Wildlife crime – poisoning

During the course of verbal evidence sessions, confirmed incidents of pesticide abuse in respect of bird of prey poisoning have been presented as ‘the tip of the iceberg’. The SGA will continue to fight hard to reduce instances through a variety of means, including peer pressure and the promotion of best practice, because any case of raptor persecution simply holds back practical reconciliation of known conflicts. Poisoning cases are made clear through the publication of SASA\(^1\) statistics, which have been acknowledged by all stakeholders as the official, independent measure of incidents. We are aware that the RSPB have cited its own publication\(^2\), which contains such additional reporting. Some of their information appears to be at odds with that from SASA. It is the case that with far more vigilance, more and more incidents are being reported than in past years. That is not to say that such incidents are always confirmed. A brief review of SASA’s 2009 data will demonstrate how reported incidents, first considered as potential poisoning abuse, can subsequently turn out to be different, for example cases 09014, 09017, 09034, 09045, 09054, 09059, 09072 and 09093\(^3\).

We respectfully suggest that the RAE Committee uses the SASA information, also contained in the 2005-2009 PAW Scotland report\(^4\), as the authoritative position on poisoning statistics. This source does not confuse ‘possible’ and ‘probable’ information, which we know can lead to significant distortion of trends.

Nevertheless, we believe the publication of persecution statistics since the early 1990s has played an important part in generating awareness of policing and penalties, particularly helping towards reduction of indiscriminate poisoning.

We do not in any way seek to downgrade the significance of any wildlife crime incident, but in all of the debate about Scottish wildlife, it is rare that we

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1. SASA Positive Results 2009 Report
2. The illegal killing of birds of prey in Scotland in 2009, RSPB 2010
3. SASA Positive results 2009 report
4. PAW Scotland Bird of Prey Poisoning Hotspot Maps 2010
consider the successes. There is no doubt that protection and greater
tolerance have brought about advances in Scotland.

We note that in 1800\(^5\), it was estimated that there were 550 pairs of Golden
Eagles across the whole of the UK, prior to the start of persecution by
farming, shooting and other land management activities. The most recent
available estimates (from surveys carried out in 2003) put the Scottish Golden
Eagle population at 440 pairs\(^6\), 80% of the entire UK population in 1800.

A 2001 estimate of Buzzards in GB suggested a range between 44,000 and
61,000 pairs\(^7\). The Scottish population of common Buzzards was estimated
around that date to be up to 20,000 pairs\(^8\). Nearly 10 years have passed
since the previous survey, and it is likely that a current estimate will show a
further increase.

There are currently 749\(^9\) pairs of Hen Harriers in the UK, of which 630 pairs
(84%) are in Scotland. As with the Eagles, it would be helpful to know how
many pairs of Hen Harriers existed prior to the start of organised grouse moor
management in Scotland. This would help us understand whether their
continued survival in Scotland has, in some part, actually depended on
moorland management. We note for instance how, following the removal of
Gamekeepers from Langholm Moor in the 1990s, Hen Harrier populations
ultimately collapsed\(^10\). It seems clear from this that game and wildlife
management can create a reservoir of biodiversity, in the absence of which
the situation for specific raptors might now be far worse.

Recent discussion in relation to WANE legislation has focused on the iconic
significance of Golden Eagles, and why they might be poisoned. In parallel, it
has been suggested that more than 50 eagles a year are disappearing and
that a similar number of territories are unoccupied, both implied to result from
persecution – the so-called ‘tip of the iceberg’. Whilst recognising that there
were two poisoning cases in 2009, one of which is unrelated to game
management, there is no other credible evidence to suggest that 50 Eagles
vanish each year. If that were the case, then given the age at which they
reach breeding maturity, the Scottish Golden Eagle population should have
been facing extinction a long time ago. Neither are we aware of any research
which maps actual unoccupied Eagle territories, but instead wonder whether
these are theoretical projections.

The SNH commissioned report (No 193)\(^11\) indicates a shortage of sub-mature
Golden Eagles in the Eastern Highlands, pointing the finger of blame at
grouse management, yet Scotland still manages to take Eagles from this area

\(^5\) Stirling District Council conservation paper, 2001. Text provided by P. Stirling-Aird. This figure also used by
Dumfries & Galloway Council in Wildlife promotional literature
\(^7\) Quoted by BTO, Bird Trends status summary 2010
\(^8\) SNH Species briefing notes
\(^9\) RSPB website 2010
\(^10\) The Langholm Moor Demonstration Project, Joint Raptor Project
framework for Golden Eagles)
and export them to Ireland. This suggests a degree of confidence in the robustness of the population to absorb and make up for the removal, and that current estimates of the Scottish Golden Eagle population are now higher than the 442 pairs last reported in 2003. This seems totally at odds with the impression created by some stakeholders that the Scottish Eagle population is in a very fragile state. It is in everyone’s interest to understand the current position.

Because of the incidence of just one poisoning case, it is very easy to attribute all uncertainties over population numbers to persecution. We feel this is particularly damaging. Eagles, by virtue of the range they require (25km–75km, up to the distance between Edinburgh and Glasgow, or in places, that between the East and West coasts of Scotland), will always be rare. Even minor land use changes may thus have profound impact (extension of forestry, introduction of wind farms, wider countryside access, localised deer culls, reduction in managed heather habitat).

Scotland has been rendered a small place by advances in infrastructure, technology and democracy. These have enabled a variety of land uses and changes. In developing relevant wildlife legislation and conservation plans, we must look at the totality of impacts for all rare species. Otherwise, it is all too convenient to lay blame on persecution, an approach which risks ignoring other important influences.

We make these points because we note the development of WANE debate around vicarious liability and licensing systems. We have no expertise to offer in respect of the competence of the legal argument for strict liability, but we are concerned that an estate / land licensing system merely adds bureaucracy and cost without necessarily achieving biodiversity objectives. We believe that alongside existing policing and penalties, it is important to consider both incentive and preventative measures to support biodiversity, including more targeted use of local predator / raptor species control licensing. This has not been given sufficient consideration so far in WANE deliberations.

Upland land use

The oral evidence sessions have been injected with suggestions that focus on upland grouse or deer management represents monoculture. Again, this seems to have been deployed to influence opinion in a way which owes more to politics than it does to biodiversity concerns. Global heather moorland habitat is rarer than rainforest, and 75% of it is found in Britain. Much of it has been lost to forestry and grazing pressure since 1945, and it is only where managed that it is capable of providing a vibrant ecology. The evidence for this is well documented, benefiting upland waders\(^\text{12}\) and other moorland bird species, including raptors. Further reduction in heather management is likely to limit such species.

Left unmanaged, heather grows rank, woody and of little nutritious value to animals. In this condition, it also represents a substantial fire risk. Land Managers do have some options including the conversion of moorland into grazing. However, if Land Managers are committed to retaining moorland, they will seek a return on investment to offset the expense. The land manager can therefore make a decision to concentrate on a particular ‘harvest’, for instance grouse, deer, or a mix including other tourism applications, depending on economic and investment priorities.

What is absolutely clear is that far from any notion of monoculture or ‘slash and burn’, well managed heather moorland generates a substantial biodiversity dividend for Scotland at the same time as contributing to the rural economy. The abundance of flora and fauna in heather habitat is widely acknowledged by different agencies, so it seems counter-productive to demean its management when the potential upside for rare species is obvious. A considerable portion of Britain’s managed heather habitat comprises SPA, SAC or SSSI territory, which underlines the close relationship between management and biodiversity.

Hare management and moorland management

We note the related discussion on culling of mountain hares as part of land use plans, particularly in relation to grouse management. This is carried out to reduce the tick burden, affecting both birds and sheep. It is suggested that this has resulted in an overall decline in hare populations. Whilst this may result in periodic reductions in local numbers, it is clear that, as with other species, mountain hares can benefit from moorland management. The GWCT indicates that in Scotland, local moorland mountain hare populations are up to 10 times higher than anywhere else in Europe. This is due to control of predators and improvement of habitat. It contrasts with areas that are not managed, where hare presence is more patchy, probably as a result of greater predation, disease and poor food.\(^{13}\) The GWCT goes on to indicate that without the incentive to manage hare numbers, their numbers would be reduced. They also point out that it is legal and sustainable to take mountain hares in Scotland for sporting purposes and where a licence has been for disease and crop protection.

Separately, we also note the substantial increase in reported cases of the debilitating Lyme disease in Scotland. Apart from the toll of tick-borne disease on animals and birds, the impact on human health, whether resulting from wider countryside activities or from close association with the land (for instance via keepering) is of concern. **We need to bear in mind within the WANE deliberations that any land management restrictions may have consequences that we have not yet properly considered.**

*Lyme Disease, Scotland, Annual Totals, at 21.6.10*

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\(^{13}\) “Mountain hare range appears to be stable”, GWCT Release, September 2010
Concerns with regard to animal health, their populations and to human health may be mitigated in future with further research and controlled use of Acaricide treatment on the disease carriers, including deer and hares. We believe this will be worth exploring and may in time provide an answer to local cull management. In the meantime however, we believe that it is sensible to use all the tools at our disposal, including use of snares, to control local mountain hare populations. WANE legislation should facilitate this.

**Wildlife crime – poaching**

The stage 1 review of the WANE bill held in the Scottish Parliament RAE Committee session on 15th September 2010 was intended to focus on poaching. It did not, but instead concentrated on persecution. We would like to take this opportunity to indicate wildlife crime statistics produced by the National Wildlife Crime Unit (NWCU) over the course of recent months.

**Wildlife crime statistics by priority area**

<table>
<thead>
<tr>
<th>2010 Priority Area</th>
<th>Summer 2009</th>
<th>Autumn 2009</th>
<th>Winter 09/10</th>
<th>Spring 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Badger Persecution</td>
<td>10</td>
<td>6</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>Bat Persecution</td>
<td>1</td>
<td>4</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>CITES Issues</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>FWPM</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Poaching &amp; Hare Coursing</td>
<td>97</td>
<td>51</td>
<td>73</td>
<td>87</td>
</tr>
<tr>
<td>Raptor Persecution</td>
<td>17</td>
<td>5</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>127</strong></td>
<td><strong>67</strong></td>
<td><strong>86</strong></td>
<td><strong>117</strong></td>
</tr>
</tbody>
</table>

Source - Scottish Wildlife Tasking and Coordination Group (SWTCG), Tactical Assessments 2009-10, NWCU

Poaching and hare coursing have never been less than 74% of all incidents in each period. This is a persistent, serious concern. It has significant economic impact on land management, diverts keeping and stalking resource to deal with the consequences, and dominates wildlife crime policing activity. The weapons used by poachers, including inappropriate rifles and cross-bows, pose major welfare issues for animals. Poaching and coursing warrants urgent attention as part of the WANE review, not cursory treatment as occurred at the meeting. We urge the RAE Committee to give due consideration to this substantial rural problem.
Pheasant & red legged partridges as non-natives

We remain concerned that identifying Pheasants and Red Legged Partridges as “exempt from a no-release presumption” within WANE legislation again owes more to political positioning than it has to do with biodiversity concerns. Far from clarifying their status, it causes uncertainty as to whether the exemption might be subject to future ‘amendment’. There are similar species, equally well adapted to the Scottish countryside, which are not singled out in the same manner. Crucially, there is a long heritage of management for Pheasants and Red Legged Partridges which recognizes best practice and provides an incentive for a variety of positive actions, from the retention of field headlands and unharvested crops to planting of hedges and trees, which helps substantially towards maintaining our wider biodiversity mosaic. The presence of Red Legged Partridges is first noted in 1668\textsuperscript{14}, with first UK breeding recorded in 1770\textsuperscript{15}. Pheasants have a first breeding record in the UK sometime before the 10\textsuperscript{th} Century\textsuperscript{16}. By any yardstick, several centuries continuous existence in the UK represents a significant, established presence. Pheasants and Red Legged Partridges should be regarded as naturalised, alongside all the other species we take for granted, from Beech and Sitka Spruce Trees to Hares and Rabbits, all of which have been introduced in the past. \textit{In this respect, Section 2A of 14 Non Native Species etc. (‘Subsection (1) does not apply to…. (b) red legged partridge.’) within the WANE Bill is unnecessary.}

Wider agency policing

In recent oral evidence, arguments have been raised by the SSPCA for greater involvement in the policing of wildlife. It is our belief that first and foremost, this should be carried out by the Constabularies, through well trained Wildlife Crime Officers and supported through the National Wildlife Crime Unit so they are equipped to deal with the full range of wildlife crime. Such policing will have commitment to ensuring that prosecution of the Law is carried out with strict impartiality, observing all relevant protocols and based on the rules of evidence. \textit{Crime is, and should fundamentally remain a police matter. We have particular concern that facilitating other agencies to carry out this work will carry institutional bias that may not always help solve wildlife crime.} As mentioned earlier, we also believe policing and prosecution should be complemented by preventative initiatives, which have featured little in the debate so far.

Badgers

We referred in our written submission on the WANE Bill to the issue of unoccupied badger setts. As this has not formed any significant part of oral debate so far, we either assume that this point has been recognized, or that it has been submerged by other features. Nevertheless, we reiterate our

\textsuperscript{14} Charleton, W. 1668 Onomasticon Zoicon
\textsuperscript{15} Brown, A. 2007. British Birds 100 214:243
concern that foresters, developers and farmers are unnecessarily prevented from working near non-active badger setts, and that keepers are likewise unable to cull foxes that have occupied old setts. This has resulted in cases where perfectly law-abiding citizens cannot progress their legitimate work, or at worst, are being taken to court. In some instances, setts that have remained unoccupied over a considerable time, and holes of unknown origin are defined as Badger setts. We repeat our view that it would be sensible to take the opportunity to use the current Bill to define ‘active’ and ‘inactive’ Badger setts.

Scottish Gamekeepers Association
25 October 2010

SUPPLEMENTARY WRITTEN SUBMISSION FROM ONEKIND
(FORMERLY ADVOCATES FOR ANIMALS)

1. Wildlife crime: Enforcement and evidence gathering

The comments made to the Committee on 15 September by Mark Rafferty of the Scottish SPCA, regarding the difficulty of reporting wildlife crime and getting police to attend and prioritise reports, very much reflect our own experience. Our own field research officer has encountered difficulty in obtaining police assistance when reporting suspected wildlife crimes.

The field research officer’s role at OneKind is to gather information that will support our campaigns, not to carry out investigations which will lead to prosecutions. OneKind has no law enforcement role and does not seek any such role.

Inevitably, however, the field research officer comes across many incidents where it appears that an offence has been committed and which need to be reported to the authorities. Very often it is also necessary to obtain help for a suffering animal. In these situations, he follows an organisational protocol which requires him to inform the police first of all and then, if a live animal is suffering, the Scottish SPCA.

The problem is that the police are very under-resourced to respond to these calls and can also sometimes give the impression of being less than willing. In a number of cases, a report has been made but no action has been taken or the response has been inadequate. In one case it proved extremely difficult to get the police to investigate a number of snares that appeared to be illegally set on a shooting estate. The response of Strathclyde Police, in whose area the snares were found, was first to pass the information straight to the Scottish SPCA and secondly to inform our officer that he should attend his local police station in Edinburgh and make a statement.

Ultimately it required some persistence to get the statement taken. The incident was originally reported on 11 August and we understand that the site was only visited on 8 October. This delay may have meant that evidence
seen in August was no longer present two months later. A member of the public, faced with the initial lack of response and later communication difficulties, would probably have given up trying to report the incident and potentially illegal traps would have been left in the countryside.

This type of problem is likely to increase as police resources become more tightly stretched in the coming few years, and the investigation of wildlife crime, which is difficult and time-consuming, may become an even lower priority.

This leads us to support the case advanced by the Scottish SPCA for its Inspectors to be authorised as wildlife inspectors under ss.19ZC and 19ZD of the Wildlife and Countryside Act. The Scottish SPCA is recognised as a reporting agency to the Crown and its Inspectors were granted specific authorisation under the Animal Health and Welfare (Scotland) Act 2006 to gather evidence, to seize animals and evidence, and to obtain warrants to enter domestic premises. As far as I am aware, there has been little or no objection to the Scottish SPCA’s use of these powers in the years since these were granted.

Authorisation as wildlife inspectors would confer limited powers of entry to premises, to obtain specimens for examination or to take samples on fully-trained, qualified Scottish SPCA Inspectors.

We noted Sheriff Drummond’s comments about people going onto land to carry out investigations where they do not have the authority to do so. But there is a very significant difference between private individuals going onto land and representatives of a national charity which is a reporting agency, whose inspectors are trained in all aspects of the law and evidence gathering and – crucially – are specifically authorised under statute to carry out certain specified functions.

While landowners’ rights must of course be protected, it can only be helpful if the public use their eyes and ears when they are in the countryside and pass on any matters of concern to an agency that will make it a priority to investigate.

2. **Snaring: Inserted section 11D**

John Scott MSP asked a question last week about a point raised in a submission by an associate solicitor from Grigor and Young, Elgin. The submission had suggested that the presumption in inserted s.11D that “the identification number which appears on a tag fitted on a snare is presumed in any proceedings to be the identification number of the person who set the snare in position” ought to be removed on the grounds that it was onerous. However that may be reading too much into the provision, which says simply that the person who was allocated the identification number and was the owner of the tag is assumed to be the person who set the snare. The Crown would still have to prove that the person who set the snare was also
responsible for the offence under consideration, and the presumption would presumably be rebuttable.

3. Effects of snares on animal welfare

Aileen Campbell MSP asked Professor Thompson for information about the effects on an animal of being caught in a snare.

OneKind has recently commissioned research from the University of Cambridge\textsuperscript{17} on this issue. It cites a recent paper\textsuperscript{18} on the use of traditional and cable restraint devices to capture red foxes in central Spain. The paper summarises the findings as follows:

“For both snares in all settings, an average of 35\% of fox captures were around the body rather than the neck. Overall, injuries were similar for all snaring methods and capture-loop placement, suggesting that the addition of swivels and a break-way hook did not improve the performance of the snare. Of 64 foxes, one was dead, two had severe internal organ damage (internal bleeding), one had joint luxation at or below the carpus or tarsus, two had major subcutaneous soft tissue maceration or erosion, three had fracture of a permanent tooth exposing the pulp cavity and four had major cutaneous laceration. Overall, 9.4\% of animals had indicators of poor welfare by ISO\textsuperscript{19} criteria (severe injury). For how long these animals suffered from these injuries was not known, but could have been for up to 24 hours as the snares were checked once daily. Other measures of welfare, besides injury scores, were not collected.”

The paper also refers to a study\textsuperscript{20} which examined the use of neck snares to live-trap foxes, saying:

“Traps were set in a way that would reduce trauma to captured animals (for example, they included a swivel, and a stop that prevented the snare from closing to smaller than a circle diameter of 10-12 cm). Snares were checked once daily in the early morning. Of 21 snared foxes, two had severe injuries on external examination (the snares caused deep damage to their throats); these foxes were bigger than expected. Another fox was found dead one month after capture (overall mortality was 14\%). The authors noted the potential for foxes to wrap the snare line around trees and woody vegetation during trapping, and that this could cause bodily harm to the fox.”

Behavioural and physiological responses also need to be considered along with physical effects. For example, an animal may suffer from extreme fear,

\textsuperscript{17} Rochlitz I, Pearce G P, Broom DM \textit{The Impact of Snares on Animal Welfare} Centre for Animal Welfare and Anthrozoology, Department of Veterinary Medicine, University of Cambridge


\textsuperscript{19} International Organization for Standardization (ISO)

severe cold or hunger while it is trapped. Extreme muscular exertion or stress (for example, brought on by repeated attempts to escape) may bring on exertional myopathy. This condition can develop over a period of days after being trapped and can lead to depression, muscular stiffness, lack of coordination, paralysis, metabolic acidosis and death, up to two weeks after the event.

OneKind
14 October 2010

SUPPLEMENTARY WRITTEN SUBMISSION FROM SIMON PEPPER

Part 3 Deer

I would like to remind the Committee of an issue which seems to have evaded much scrutiny in its discussions so far, and which is absolutely crucial: whether the measures in the Bill are sufficient to promote effective collaboration amongst owners of land.

Notwithstanding a number of very useful measures proposed in the Bill to improve the quality of deer management planning where it is working, there is little or nothing to change the dynamic which currently allows large numbers of owners to simply opt out of participation in Deer Management Groups (DMGs), taking no responsibility for the impact which their action/inaction has on others’ interests. This is a serious problem, undermining the prospect of effective deer management across the whole country.

It would be very unfortunate if this rare opportunity for improved legislation were to be missed. All the interests involved clearly support the principle that measures are needed which create the conditions for DMGs to operate effectively, with the willing participation of relevant owners. Key to this voluntary dynamic is the availability of a credible statutory backstop power, for use only when the voluntary approach fails. The lack of such a power has been a serious constraint on effective deer management for the last 60 years, as routinely observed in countless reports.

The current approach is not sustainable, involving as it does reliance on costly and time-consuming interventions by the agencies (SNH/DCS, FCS, Scottish Government) to secure co-operation in the case (only) of designated sites which cover a small proportion of the country. The cost is prohibitive; the outcomes are not secure; it rewards those who fail; and its application is geographically limited - there is no prospect of adequate resources to use this approach on the wide range of issues which are arising in response to public interest issues.

The Committee must question the Minister closely on this matter. As it stands, the Bill does not create the conditions which would incentivise reluctant owners to participate. The Deer Commission proposed a duty on all owners of land to manage deer sustainably; failure in the fulfilment of this duty
Agenda item 3  
RAE/S3/10/23/3

(explained in a code of practice) would have been the trigger for interventions and ultimately backstop powers which – if they were credible - would be most unlikely to be needed in practice. If the Minister wishes to reject this proposal, it is important to know how she expects the prospects of voluntary collaboration to be improved.

We know from experience that preserving the freedom to opt out will simply perpetuate the highly unsatisfactory situation where a variety of interests – both public and private – suffer adverse impacts as a result of the failure of some owners to exercise their own rights responsibly. This should be a key issue in consideration of the Bill’s provisions.

Simon Pepper  
21 October 2010

SUPPLEMENTARY WRITTEN EVIDENCE FROM RSPB SCOTLAND

Here are some follow-up points on issues raised during the RAE Committee evidence session of 15 September. If there are any further queries please do not hesitate to get in touch.

The Review of National Goose Policy

Since 2000, efforts to address conflicts between geese and agriculture in Scotland have been overseen by a group of stakeholders, the National Goose Management Review Group, chaired by the Chief Agricultural Officer, with SNH secretariat, and informed by a Goose Science Advisory Group. Seven Local Goose Management schemes currently operate in areas with prominent goose issues (Islay, Coll and Tiree, Uist, Solway, South Walls, Strathbeg, Kintyre). These use a combination of coordinated scaring of geese from fields, and the establishment of designated goose feeding areas, funded by SNH.

Arrangements are currently subject to a five-yearly review. The 2010 Review of Goose Management Policy in Scotland is being prepared by a consortium of consultants under contract to the Scottish Government. LINK’s understanding is that the report will be passed to the Scottish Government by the end of October 2010. It will make recommendations for future policy in relation to goose management in Scotland.
The number of greylag geese wintering in Orkney: RSPB data. There is no local goose management scheme for greylag geese in Orkney. Most of the winter population of these geese originates in Iceland, and numbers have increased dramatically (see figure). This is remarkable considering that the overall Icelandic population has been stable (or perhaps even declining) in recent years.

The increase in winter numbers of Icelandic breeding greylags in Orkney is being fuelled by birds abandoning their former wintering areas further south in Scotland and terminating their migratory journey in Orkney instead. This is likely to be caused by climate change resulting in higher winter temperatures that facilitate wintering at more northerly latitudes. The highly nutritious grass pastures in Orkney provide foraging for the geese. The steady warming of the climate means that that this grass now grows throughout the winter with barely any period of dormancy, as used to occur in the past. With such high quality food now available all winter, it would appear that the Greylags have shortened their migration by some 200-300 miles.

There is also a smaller (but growing) population of greylag geese that breeds and resides all year in Orkney. This population can be considered as functionally separate from the wintering Icelandic greylags – though it too has interactions with agriculture. Neither of the Orkney greylag populations is the subject of local goose management schemes – however, breeding greylags are the subject of local schemes in Uist, and in Tiree and Coll.
Geese, the Wane Bill and the reporting of bag data in Scotland.
It is our view that decisions such as establishing new local goose management schemes are a matter of policy and rest with the Scottish Government, informed by the current review.

The principal area where the WaNE Bill could positively influence goose management arrangements – and simultaneously arrangements for wildlife management more generally in Scotland - lies in improving the **collection and reporting of bag data** to underpin the science required for an adaptive management approach to wildlife populations. It is widely recognised that Scotland, in relation to other comparable European countries, lacks robust mechanisms to assess, record and report the number of quarry animals and birds that are hunted.

For example: greylag geese are a quarry species and as such are shot for sport, either by individual wildfowlers, by groups of shooters organised by agents, or under the auspices of sporting estates. They are also shot under licence during the close season to prevent serious damage to agriculture. Licensees are required to report how many birds have been shot under licence, but there is no requirement or mechanism to record or report the other sources of shooting mortality – that from sport shooting. In contrast, countries such as Iceland and Denmark – both countries with strong shooting industries - put a responsibility on sport shooters to report the numbers of each quarry species that they have shot each year.

Scottish breeding greylags do in some areas impact agricultural incomes, work plans and indeed important agricultural biodiversity. There are currently strong calls to manage these populations in such a way that numbers are regulated to reduce impacts on agriculture and keep these impacts at manageable and sustainable levels, but also to ensure that populations are not threatened with extinction and that actions are in line with national and European conservation legislation. There is a growing body of science showing that such an approach is technically feasible. However, this approach **can only work if it is informed by accurate mortality data.** Under current bag data arrangements, this is not possible. In order to move towards modern and effective goose management in Scotland, the collection and reporting of bag data must be improved. **We urge the inclusion in the Bill of a clause giving Scottish ministers powers to require the accurate reporting of hunting bag information.** We further urge that there is a time-limited requirement to act on implementing improved arrangements in this regard, to minimise unnecessary delays.

**Pheasants and Red-legged Partridges**
These two species are not native to Scotland. In some locations we believe they are established in the wild as breeding birds, but their presence in Scotland is solely, unambiguously and directly the result of human agency. The majority of birds present in the wild will have been released for sporting purposes, and the high numbers and widespread distribution of the species are entirely due to continued releases. The practice of releasing non-native gamebirds is currently largely exempt from regulation. Pheasant and red-
Legged partridge are not listed on schedule 9 of the Wildlife and Countryside Act of 1981 as amended by the Nature Conservation (Scotland) Act 2004, but the rationale for this is economic rather than ecological.

At least 4 million pheasants and 1 million red-legged partridges were held for sporting releases in Scotland in 2009, according to the Defra Great Britain Poultry Register. We believe that this figure may not record some of the smaller local operations, and so is a minimum figure, and that the trend is increasing across years. Impacts of gamebird releases and gamebird shooting practices are multiple, but few have been formally investigated. The availability of hard data and scientific publications is very limited, for example in relation to the area of pheasant release pens and the numbers shot (see section on bag data above). However, it is evident that the density of releases is a key factor in relation to environmental impacts\textsuperscript{21}. In areas where good habitat management is combined with moderate release densities, general wildlife impacts can be positive. In contrast, the available data show that at high densities of gamebird release, negative environmental impacts occur, and may in some cases be severe. For this reason, GWCT provides guidance recommending that release pen densities are kept below 700-1000 birds per hectare, or just over 14m\textsuperscript{2} per bird\textsuperscript{22}.

Anecdotal reports – which are all that is available in terms of direct measurement of release densities – suggest that pen densities often exceed this figure in parts of Scotland (for instance in the Borders). For this reason, more hard data is needed, as has been gathered in other parts of the UK.\textsuperscript{23} There is good evidence, on the other hand, that damage can transpire when densities are too high. In recent years red-legged partridges and pheasants have been released more frequently on the edge of upland moorland. Craig Leek SSSI is home to an extremely rich bryophyte community with eight Nationally Rare species, and one Red Data Book species. Recently, a game estate adjacent to Craig Leek began releasing red-legged partridges. These birds roosted on the crags at Craig Leek, causing soil eutrophication with detrimental effects to the fragile bryophyte community there\textsuperscript{24}. Some of these rare bryophyte species are only represented by one known colony in the area, and just two or three populations in the entire UK. Therefore, soil enrichment by partridges severely threatens their existence in the UK (Rothero 2006), and demonstrates that releasing gamebirds in close proximity to sensitive areas with fragile species of high conservation importance can be extremely detrimental. It is also evident that other types of damage can be caused by high density of releases non-native game birds, with impacts potentially beyond designated areas, including:

\textsuperscript{23} PACEC, 2006. Economic and environmental impact of sporting shooting in the UK. PACEC, Cambridge, UK.
\textsuperscript{24} Rothero, G. 2006. Baseline surveys of Tortula leucostoma and Athalamia hyalina on Craig Leek SSSI. Scottish Natural Heritage Commissioned Report No. 176.
- **Browsing of ground vegetation** - threatening high conservation priority plants, damaging designated sites, reducing plant species richness, altering hedge structure, excluding native perennials.\(^{25,26}\)

- **Predation of overwintering invertebrates**\(^5\)

- **Passing parasites to native wild birds**\(^{27,28,29,30}\)

  LINK urges that the Bill should include a capacity for ministers to regulate the release of non-native gamebirds in specific situations and locations where environmental damage occurs. We emphasise that this is not a call to ban sport hunting, nor a denial of positive aspects of the industry – it is, rather, a wish to minimise or avoid future negative environmental impacts of high density releases, in a proportionate manner.

**Examples of shoot licensing in other European countries**

1. **Germany**; there is a system of shoot licensing which is administered by German Laender (so this could mean different systems in each state). Licence applies to an area of land. Where agricultural land is included there is a requirement to kill a certain number of deer/wild boar a year so as to prevent agricultural damage. The licence can be removed in cases of wildlife crime conviction but enforcement is poor.

2. **Netherlands**; a licensing system also exists. This is also attached to a certain area of land. There has to be a minimum hectarage of land under control to attach a shooting licence. Interestingly, shooters can include non hunted land in their hectarage provided that landowner agrees. This means for example that where there is a nature reserve adjacent to hunted land, the nature reserve can include their hectares but remain a refuge if they see the benefit of fox control (for example) on neighbouring ground. The licence can be revoked in cases of confirmed wildlife crime incidents, and this is administered by Dutch authorities.

3. **Spain**; again a federal approach with individual Spanish states administering their own systems. In Mallorca, the licensing system is administered by the local state and is attached to an area of land. The hunting licence can be revoked for up to 5 years if evidence of illegal poisoning is found (red kite workers report that this has improved the situation for threatened local red kite

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organization). In Andalucía, a farmer/hunter killed one of the reintroduced bearded vultures and was convicted of setting out poison baits. This resulted in his hunting licence being revoked.

RSPB Scotland
28 October 2010

SUPPLEMENTARY WRITTEN SUBMISSION BY SCOTTISH RAPTOR STUDY GROUPS

This supplementary submission is lodged on behalf of the Scottish Raptor Study Groups (hereinafter “SRSGs”) for Stage 1 of the Wildlife and Natural Environment (Scotland) Bill. The submission arises partly from evidence given at the meeting of the Rural Affairs and Environment Committee on 6th October 2010, at which SRSGs gave evidence.

It has been said that the costs and burdens of a licensing system (relating to game bird management and shooting) would be disproportionate. SRSGs feel that these costs and burdens would be in no way disproportionate (and would not unduly inconvenience law-abiding estates) given the blatant disregard of the species protection laws that prevails in some quarters and its consequent adverse effect on populations of some scarce, specially protected raptor species. SRSGs contend that a system of licensing, relating to both landholdings and persons, coupled with a vicarious liability provision as suggested in SRSGs’ original written submission, are necessary elements to counter this problem. Incidentally and while quite rightly much attention has been paid to the iniquity of criminal poisoning, it should be noted that other forms of raptor persecution (such as shooting, trapping and nest destruction) are having a serious impact on, for example, hen harriers and peregrines in certain parts of Scotland.

It has been said that the answers to the raptor persecution problem are (one) better enforcement of the existing law and (two) reliance on a voluntary, self-policing system and code of good practice approach. The problem with the first of these propositions is that, although the existing law in itself is good, its enforcement leaves much to be desired; those determined to break the law are well aware of this. Useful practical steps would be to make wildlife crime technically recordable and to give additional powers of entry onto land (not buildings) for purposes of evidence gathering. The second proposition falls down as, while the more responsible owners and managers of land would do their best to make voluntary systems and codes of good practice work, there are those who would deliberately sidestep them – perhaps at the same time for form’s sake paying lip service to such voluntary systems and codes of practice.

SRSGs argued in their original written submission for alteration of the definition of livestock in Section 27(1) of the Wildlife and Countryside Act 1981, so that the definition should extend only to any animal (kept for the provision or improvement of fishing or shooting) that is wholly confined, i.e. in
the case of a game bird before being put out to a release pen. The present Section 27(1) definition has the appearance of an aberration that found its way into the 1981 Act. As much still remains to be discovered about the impact of non-native game birds on native wildlife it seems mistaken to countenance - as is the case through the present livestock definition - any control of native raptors (relatively scarce) in the supposed interests of keeping up the numbers of (already abundant) non-native game birds. SRSGs wish to make these points as, although the phrase “classing pheasant and red-legged partridge as livestock” was mentioned at the Committee’s 6th October 2010 meeting, the matter was not followed through with subsequent discussion.

An amendment to Section 16 of the 1981 Act was suggested (in the course of other evidence given to the Committee) so as to take into account economic and recreational issues in terms of Article 2 of the European Birds Directive when possible species control licensing is being considered. SRSGs consider that this is a misplaced suggestion. Any “taking account of economic and recreational requirements” – in the wording of Article 2 – that is used as an argument towards, for instance, licensed control of raptors at non-native game bird release pens is overshadowed by the greater economic and recreational requirements of those who want to see and to safeguard the living bird, in this case the native raptor. This is particularly so in the light of the minimal damage to non-native game birds due to raptors by comparison with various other much greater causes of mortality.

Patrick Stirling-Aird
Secretary, Scottish Raptor Study Groups
27th October 2010

WRITTEN SUBMISSION FROM SCOTTISHPOWER RENEWABLES

Introduction

As currently drafted the Wildlife and Natural Environment (Scotland) Bill has the scope to rectify a legislative anomaly in relation to species licensing. Failure to do so might otherwise present a significant risk to offshore wind projects, including ScottishPower Renewables’ proposed Argyll Array project, and make it more difficult for the Scottish Government to meet its renewable energy and climate change emissions targets. ScottishPower Renewables urges the Scottish Parliament to ensure that the Wildlife and Countryside Act 1981 is modified to enable licenses to be granted for development activities for Schedule 5 species.

Background

There are many circumstances in which activities, including developments at sea, will involve a temporary disturbance of wildlife in the vicinity. A strictly controlled licensing system allows development to proceed where this is in the over-riding public interest, and where the impact on species is proportionate
to the activity. In this way, biodiversity is protected at the same time as appropriate development is allowed. Such a system exists, under the Conservation (Natural Habitat, etc) Regulations 1994, to issue licenses for European Protected Species (EPS), such as dolphins, porpoises and whales. However, a parallel system does not currently exist for other species, including basking sharks, which are listed on schedule 5 of the Wildlife and Countryside Act 1981. This anomalous situation means that for these species, there is no listed purpose under which development, forestry or agricultural activities can currently be licensed, although for species granted the protection of EPS status, they can.

**ScottishPower Renewables’ recommendation**

Consistency is required across the legislation, in order that a coherent system of wildlife licensing can be created and to ensure important developments are not prevented by a legislative anomaly. This consistency can be achieved by modifying the 1981 Act to enable development activities to be eligible for licences to be granted. **ScottishPower Renewables believes that the Wildlife and Natural Environment (Scotland) Bill provides this consistency, as outlined on page 58 of the Scottish Government’s consultation document.**

ScottishPower Renewables
25 October 2010

**WRITTEN SUBMISSION FROM DR ADAM WATSON**

Wildlife and Natural Environment (Scotland) Bill, consultation

I request members of the Rural Affairs & Environment Committee to take the decisive action that is long overdue to end the widespread and increasing illegal persecution of protected Scottish raptors. Leading MSPs and Scottish Ministers in the previous Labour/Lib Dem coalition and the present SNP administration have condemned this unlawful activity, calling it a national disgrace. However, it continues unabated, involving poisoning as well as shooting and other illegal activities. Indeed, it has increased, as is evident from the marked declines in numbers and distribution of several species that are designated as in the highest national and international ranks for protection.

In 1943 I began in upper Deeside to study golden eagles, which have now been monitored there for much longer than anywhere else in the world. I have also studied peregrines and other Scottish raptor species, and snowy owls in arctic Canada. This research resulted in many papers in scientific journals.

An example was in 1989 when I was author of a scientific paper that reviewed data on golden eagles from 1944 to 1981. It showed the adverse effects of eagle persecution on grouse moors, in contrast to deer forests where the birds were generally protected or ignored by resident deerstalkers. Also it showed how a decline of such persecution during the Second World War, when many grouse-moor keepers were in the armed services, led to a notable
increase of resident eagle pairs on grouse moors. There followed a collapse over several years after the keepers returned.

I was a founder member of the North East Raptor Study Group, the first of its kind in Britain. Many voluntary and professional observers now study Scottish raptors. As a result, sound information on their abundance and distribution has never been better. The data unquestionably show large recent declines in the abundance and distribution of golden eagles, peregrine falcons, hen harriers, and goshawks in northeast Scotland, primarily on grouse moors. The decline of hen harriers is catastrophic. Many buzzards are shot on grouse moors and lowland shooting estates, and sea eagles and red kites have been found poisoned on such estates.

Court penalties to gamekeepers guilty of such activities have been minimal and insufficient. Although gamekeepers are the ones who appear in court, landowners remain scot free out of court. For decades, procurators fiscal, sheriffs and others involved in cases brought by the police or other bodies such as the Forestry Commission have tended to regard Scottish estate owners and their staffs with an unduly favourable eye. My wife Jenny, when a Councillor, JP and magistrate in Kincardine & Deeside District Council, was once visited by a police sergeant who was one of the first policemen specialising in wildlife crime in Scotland. He had some evidence of poison being kept at a gamekeeper's abode in Deeside and requested her to sign a search warrant, which she did. Poison was found, and a report made to the procurator fiscal, who later decided that it should not go to court. In a more recent case at Strathdon, Stephen Brown, a Forestry Commission officer, observed unauthorised tree felling on a grouse moor, and even found the felling contractors in the midst of the felling. A report went to the procurator fiscal, who decided against it going to court. In many cases where illegal raptor persecution has been proved in court even in recent years, penalties have been derisory, involving only a minute fraction of the fines or custodial sentences that the law allows. Everyone should be equally accountable in respecting the law.

Three simple solutions would greatly reduce illegal persecution and might well end it.

1. Grants and subsidies of taxpayers' money to estates where persecution of raptors has been proved in court should be denied. This should not be a small fraction such as 5%. For proper cross-compliance, if estates are proved to be involved in such illegal activities against the public interest, they should forfeit all grants and subsidies of taxpayer's money for agriculture and forestry, and also inheritance tax remissions allowed for access, conservation and other aspects. EU regulations allow for 100% of EU subsidies to be denied.

2. Shooting estates should be licensed. If an estate were proved in court to be involved in illegal persecution, the licence would be removed for a year or more, depending on the seriousness of the offence, and shooting would become illegal until the estate reapplied and received a
new licence. There are sound reasons for a licence besides the issue of raptor persecution. Many estates for decades have constructed new unauthorised vehicle tracks on Scottish hills and moors, even in cases such as Aberdeenshire where the local authority decided years ago that such new tracks as well as major upgrading should require planning permission. Estates on Deeside and Donside have ignored this requirement for years. In most of these cases, scant attention or no attention was paid to care in construction and reinstatement, and consequently many tracks are major eyesores, and some cause damaging silt pollution of watercourses with dire impact on the breeding of trout and salmon. Furthermore, many estates that emphasise red deer rather than grouse have persistently failed to reduce deer density as repeatedly requested by the Deer Commission and NCC (later SNH) so as to reduce damage to designated habitats and wildlife. Licensing would solve all these problems.

3. The relatively poorly paid keepers are always the ones found guilty. Owners should be legally liable for the actions of their staff, just as hotel owners and bar owners are, in other words, vicarious liability and responsibility. Hence, if there is a police case involving poisoning or other unlawful persecution of protected raptors, the employer of the gamekeepers should have to appear in court as well as the charged gamekeeper(s), and should be liable to public naming and reporting, and to any penalties decided by the court.

Dr Adam Watson, Clachnaben, Crathes, Banchory, Kincardineshire AB31 5JE.

Relevant expertise. I am Adam Watson (80), BSc 1st Class Honours, PhD, DSc for publications on northern birds and mammals, DUniv (Honorary). I am a Fellow of the Society of Biology, Arctic Institute of North America, Royal Society of Edinburgh, Royal Meteorological Society, and Centre for Ecology and Hydrology, and also a Chartered Biologist and elected Emeritus Member of the Ecological Society of America. My main professional research with the University of Aberdeen, Nature Conservancy, and Institute of Terrestrial Ecology was on the population biology, behaviour, habitats and management of red grouse, including the influence of raptors and moorland management. Officer in Charge of the Nature Conservancy's Mountain and Moorland Research Station in 1968-72, in 1971 I was promoted to Senior Principal Scientific Officer for Special Merit in Research. In 1986 the Royal Society of Edinburgh awarded their Neill Prize for "your outstanding contribution to Natural History and in particular to your study of Red Grouse". I have published 22 books, 218 peer-reviewed scientific papers, and 178 technical reports. I am a retired research scientist still doing research on grouse and management, since 1990 out of my own pocket.

In autumn 2008, HarperCollins published a 529-page book entitled GROUSE by me and second author Robert Moss. The Management chapter included a section on Raptors, copied below. I sent the associated detailed endnotes to
the Committee’s Convener, but they would broach your 4-page limit if included here.

Raptors
From the 1800s to the 2000s, persecution has extirpated some raptor species from much moorland. The 1939-45 war brought a respite as eagles and harriers colonised some grouse-moors, but after 1946 they were soon eliminated. There has since been poisoning, shooting, trapping, burning nests, robbing or breaking eggs, and disturbing birds so that eggs do not hatch (Fig. 200 Poisoned eagle SR 215). Some of the best-known estates in the land have been involved.

Much persecution has been due to peer-pressure from keepers, and from owners and managers (‘factors’ in Scotland) who are ultimately responsible. It is often a matter of faith that raptors are ‘vermin’, not to be tolerated. We have known a few keepers who regarded muirburn and other issues as more important and who protected raptors. They came under pressure from the orthodox majority, however, and eventually changed their ways.

Persecution eased in 1960–80 as international research emphasised habitat rather than raptors as crucial for animal abundance. Harriers and eagles bred on some moors where none nested in the 1950s. Enlightenment began to fade after 1985, however, following persistent one-sided publicity by the Game Conservancy (GC), whose Director Richard Van Oss wrote, ‘Government may have to consider whether to allow restricted control of some protected species’. And Lord Mansfield, ‘if we cannot control the numbers of ... hawks we are simply providing a feast for them. Society has got to make up its mind on a means of control of predators’.

Peregrine expert Derek Ratcliffe wrote, ‘any attempt to put the clock back on this issue would be greeted with uproar’. The Heather Trust warned against alienating other countryside and conservation bodies whose membership was ‘many times that of the field sports organisations’. Nonetheless the Scottish Landowners’ Federation publicly sought licensed culling of harriers. After investigating the law, however, their legal adviser Duncan Thomson concluded, ‘I therefore do not believe that there is any prospect of licensed killing of raptors in the foreseeable future’.

Lobbying by the GC led to the Langholm project, where a landowner in south Scotland protected hen harriers and peregrines for a study of predation. It became a watershed (Chapter 13). Harriers increased, and took so many grouse chicks and adults that the estate cancelled all shooting. Generalising from this to British moors would be invalid, because of the Langholm moor being widely regarded as atypical, but many who disliked harriers did just this.
Later, dead rats and poultry chicks were left for the Langholm harriers to feed to their young. Harriers with this supplement gave their young only 4.5 grouse chicks per harrier nest, while harriers without it gave 33.3 per nest. Even so, the number of grouse chicks lost was ten times bigger than that expected from harrier predation. Hence chick mortality was overwhelmingly due to other causes.

John Phillips tried a novel kind of supplementary feeding at Misty Law. He erected dovecots, introduced feral doves in spring, supplied food, water and nest material, and opened pop-holes so that doves could come and go. Over two years, peregrines killed many doves and anecdotal observations suggested that they took fewer grouse.

Meanwhile, persecution rose on Scottish grouse-moors from six known poisoning incidents per year in 1981-92 to ten per year in 1993-2000. In 2004-5 Scotland-wide there were 33 confirmed incidents of raptor poisoning and 36 of other persecution of birds of prey, including shooting, illegal trapping and nest destruction. Figure 201 gives an example of recent persecution in the Cairngorms region (Fig. 201 ex Fig. 15.1). Incidents of poisoning and other illegal killing of raptors in the Cairngorms region (Keith Morton, RSPB). The new Cairngorms National Park appears to be no deterrent, for two hen golden eagles were found poisoned within it in summer 2006. The number of police wildlife-officers has risen greatly, and army forces helped with surveillance of Scottish harriers in 2004. These are costs to taxpayers.

The law now includes custodial sentences, but nobody on the staff of a shooting estate has been jailed for persecuting raptors. Some past cases with apparently firm evidence did not reach court because procurators-fiscal refused them, thus fuelling the public perception that some in the justice establishment put owners’ interests above national interests. Sheriffs have often imposed small fines or let offenders off with warnings, though an Inverness sheriff in 2005 did impose a fine of £1,500 on a grouse-keeper, who appealed against the conviction. Gamekeepers have formed associations that defend their activities and lobby politicians. In 2004 a lawyer for the Scottish Gamekeepers Association persuaded sheriffs to reject filmed evidence, because the landowner had not permitted the Royal Society for the Protection of Birds (RSPB) to be on the estate, and other cases have fallen because of delays occasioned by defence lawyers.

Raptors have aesthetic and economic value to society. Wildlife tourism is increasing rapidly, already supporting far more jobs in some parts of the Highlands than grouse-shooting, and many visitors pay to see raptors, such as sea eagles on Mull. Those who go to the Scottish hills for recreation say that they would be willing to pay extra tax for desired changes, such as £72 each person per year for better protection of rare birds.

The buzzard shows what could be enjoyed by the public if persecution ended. Though formerly killed widely, it has returned in strength, especially on lowland, and many people appreciate it. Sparrowhawks and peregrines have also increased on lowland, and give pleasure to many. More enjoyment would
come if eagles returned to eastern moors and woods. These examples illustrate the real, though hidden, costs to the public of raptor-killing.

Most conflicts can be resolved if both sides meet and compromise,xxi and there have been meetings on raptor-grouse conflicts.xxii When one side practises illegal acts, however, it is difficult to see whether the public would approve any compromise. Other suggestions to end persecution include legislation with mandatory jail-sentences, removal of gun-licences, game-shooting permitted by a licence that could be removed,xxiii and cross-compliance, e.g. denying state grants and exemptions of inheritance tax to owners of estates where the law on raptors has been broken. To conclude, grouse-shooting could continue without illegal persecution of raptors, but its future seems insecure if persecution continues unabated.xxiv

Dr Adam Watson
27 October 2010
Annexe B

Correspondence from Andrew Welsh MSP, Convener of the Finance Committee, to Maureen Watt MSP, Convener of the Rural Affairs and Environment Committee, dated 27 October 2010.

Finance Committee – consideration of the Financial Memorandum of the Wildlife and Natural Environment (Scotland) Bill

As you are aware, the Finance Committee examines the financial implications of all legislation, through the scrutiny of Financial Memoranda. The Committee agreed to adopt level one scrutiny in relation to the Wildlife and Natural Environment (Scotland) Bill. Applying this level of scrutiny means that the Committee does not take oral evidence or produce a report, but it does seek written evidence from affected organisations.

All submissions received are attached to this letter. I would particularly draw your attention to the comments made by Scottish Natural Heritage. If you have any questions about the Committee’s scrutiny of the FM, please contact the clerks to the Committee.

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The formal consultation ran from June to September 2009, which SNH responded to. In addition to this, we attended a stakeholder meeting that was organised by the Bill team before the consultation period started, and have held regular meetings with the Bill team as the Bill has been developed.

In our consultation response, we noted that the transfer of all species licensing work to SNH would require additional resources. We have also discussed the resource implications with the Bill team.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

We did not give any figures for the likely financial implications of the Bill in our consultation response. However we discussed some of the likely costs with Scottish Government policy leads for different parts of the Bill after the consultation ended. The figures provided in the Financial Memorandum for the costs to SNH for operating the out of season muirburn licensing system reflect our initial estimates of the costs for setting up and operating this scheme.
It should be borne in mind that there are some elements of the introduced Bill that have changed since the consultation exercise and therefore some financial assumptions need to be adjusted to reflect this.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill covers a wide range of topics. Those that will have a financial implication on SNH are highlighted below, listed in the same order as in the Financial Memorandum:

**Invasive non-native species**
The Bill does not give SNH any new duties with respect to invasive non-native species (INNS), but will provide new powers to assist in future eradication schemes. These powers will be discretionary, and the figures quoted in the Financial Memorandum (para 217) are fair.

The Bill does not make provision for any coordinating body overseeing work relating to the control or eradication of INNS, nor does it identify the need for an initial point of contact for anyone concerned by new infestations or wanting general advice. These issues have been raised in the Rural Affairs and Environment Committee discussions and SNH had indicated that it would be well placed to take on this more central role. There would be an additional staff cost to provide this function which we estimate to be in the order of £40,000.

The Code of Practice that is being developed by the Scottish Government gives guidance on managing INNS, and directs people to the SNH website for information on native ranges of species. We note that there is nothing in the Financial Memorandum about promoting the new Code of Practice but discussions within the Scottish Government's Invasive Non-Native Working Group have recognised the importance of effective promotion of the Code. Our experience from the promotion of the Scottish Outdoor Access Code is that targeted awareness raising is essential to ensure effective adoption of the Code. Our Communication team have estimated that it would cost around £100,000 to do this well.

**Species licensing**
One of the proposals in the Bill is for all species licensing that is currently carried out by the Scottish Government to be passed to SNH. SNH already carries out some species licensing, so this proposal would mean that this is all carried out by one organisation.
The Financial Memorandum notes that there are 4 staff employed by the Scottish Government to carry out licensing work, with a combined annual cost of £109,769, and that a similar cost would be incurred by SNH. Our calculation of the overall cost of employing staff at equivalent grades to those mentioned in the Financial Memorandum to carry out this additional work is £134,050. These figures relate only to the licensing work that is currently carried out centrally by the Scottish Government, and do not include any costings for species licensing that is carried out by the Scottish Government Rural Payments and Inspections Directorate (SGRPID). We understand that this licensing remit will be retained by SGRPID.

The Financial Memorandum does not include any assessment of any associated costs relating to the transfer of the additional licensing remit to SNH. This includes costs for the development of guidance for use by licence applicants and SNH staff, staff training and the possible development of online licensing systems. These lines of work will be required before any possible transfer of licensing remit happens to ensure a smooth changeover. In addition there is a requirement for ongoing monitoring and evaluation of licence returns to determine the possible impacts of certain activities on the Favourable Conservation Status of some species and to avoid any possible infraction proceedings from the European Union.

**Deer**

There are three main areas of work for SNH that are derived from the Bill: the development of a Code of Practice for Sustainable Deer Management; the development and operation of a new general authorisation system for owners and occupiers to shoot deer during close seasons for certain purposes; and a review of competence amongst those who shoot deer if the Scottish Ministers do not exercise the power to introduce a statutory register of competence by April 2014.

SNH has started work on producing the Code of Practice, and we intend to stage a consultation exercise for this in Spring 2011. We estimate that this will result in a one-off cost of around £20,000. We are preparing for any possible review of competence in 2014 by determining the current level of competence, against which any future level can be measured. This initial research will cost about £10,000. We estimate that the cost of carrying out a review in 2014 will be around £15-20,000, depending on its terms of reference.

**Badgers**

The Bill proposes to pass the badger licensing work that is currently carried out by the Scottish Government to SNH. We already carry out some badger licensing work, and provide advice to the Scottish Government for the licences that are issued from Victoria Quay. We therefore consider that this will have a neutral effect on our workload.
**Muirburn**
SNH will be the licensing authority for the new out of season muirburn licences. The Financial Memorandum quotes estimates of the costs of setting up and operating the new scheme that we passed to the Scottish Government. The running costs are based on an assumption that we will receive 10 applications each year. Submissions made to the RAE Committee at stage 1 have suggested that the demand for out of season muirburn licences may be higher, and we now consider that it would be prudent to expect up to 20 applications per year, thereby doubling the annual costs stated in the Financial Memorandum to £17,214.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The Bill introduces many new areas of work for SNH, as highlighted above, which are not covered in our Grant in Aid settlement. Like other public bodies, SNH is facing unprecedented pressures on its budget and it is unlikely that we could meet the financial costs associated with the Bill without additional funds. We believe there is limited scope to charge for additional licensing services and that this may be counterproductive to encouraging their uptake. This would also be a major change in policy that would have to be considered by our Board. If additional funds are not provided to support our implementation of the Bill’s provisions then it is likely that this will not be fully effective, or delivery of some of our other functions, in particular some of those associated with the delivery of National Performance Framework targets and outcomes, will be hampered.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum concentrates mainly on the costs of carrying out the new provisions. It does not consider fully the likely start-up costs that will be incurred in preparation for the new processes, such as the costs of preparing guidance, staff training and wider awareness raising, that we have highlighted.

There also does not seem to have been any consideration of phasing in of some of the provisions according to seasons. For example, the timetable for the passage of the Bill may mean that the new Act cannot be implemented before the start of the muirburn, new hare, or hind/doe close seasons. We would suggest that it would be better not to introduce the new muirburn and hare licensing provisions, or the changes to the owner/occupier exemptions for killing deer out of season while the relevant close seasons are under way in 2011. Instead these should be introduced in time for the 2012 close seasons.
Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The strengthening of the legislative means for dealing with damage to the environment caused by deer or invasive non-native species is likely to increase public expectation that problems will be tackled effectively. For example this means that public bodies that own large areas of land will have to show leadership to deal with invasive non-native species on their land. We have carried out an initial assessment of the work required on the land that we own or manage. This has shown that in some places these species can be controlled as part of our normal land management operations, but in some places significant expenditure will be needed. We may also face increased pressure to use our new discretionary powers in relation to deer or invasive non-native species on other land, and if necessary pick up the costs where these cannot be recovered.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Although we propose to develop new guidance for the public and SNH staff before our new functions are passed to us, we will always keep this under review. We may also be required to review the Code for Sustainable Deer Management in the future, and to carry out further awareness raising campaigns in relation to aspects of the Bill’s provisions.

We are also mindful that some amendments could be made to the Bill at stages 2 or 3 that will pass more functions to SNH. In particular the possibility of requiring certain types of game shoots to operate under licence has been discussed at RAE Committee meetings. If this is introduced, with SNH as the licensing authority, we believe that this could amount to around 1fte of additional staff resource.

SUBMISSION FROM ABERDEENSIRE COUNCIL

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

   *Aberdeenshire Council took part in the consultation exercise for the Bill, but no comments were made on the financial assumptions in it.*

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

   *N/A*

3. Did you have sufficient time to contribute to the consultation exercise?
Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

In most circumstances the financial implications are accurately reflected. However, in reference to species licensing and licensing functions in relation to badgers, if option 3 were favoured, the figures cited may be considered low for Aberdeenshire Council, since we are likely to be involved in more cases than the average assumed within the financial memorandum: approximately 3 and 1 respectively. Thus our costs are likely to be in excess of the £1442 as suggested per local authority.

The costs are also based on staff who are experienced in fully determining and issuing licenses on a regular basis. It is a fair assumption that the time taken for staff that may individually only determine and issue 1 or 2 applications/licenses per year will be greater and therefore the cost of processing each license will increase.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

There is no scope within any current budget of the department who would likely be tasked with determining and issuing species licensing to meet these financial obligations. In light of probable future budget cuts the ability to meet these costs in the future seems even less likely. The departments/agencies that are currently dealing with licensing would see a budget saving, if the responsibility for licensing were shifted to another agency, and these savings could be reallocated to local authorities to meet the costs associated with this new function.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Unsure, the estimates and timescales given are only for a period covering 3 years. In considering species licensing and licensing functions in relation to badgers, as more land is developed and more development in the countryside takes place, it is likely that there will be an increased demand for licenses. There has also been a steady increase in the number of licenses issued in Scotland. Licenses pertaining to badgers issued for development purposes in the period 2005-2010 averaged 33 licenses/year, whereas in the previous period 2000-2005, only 15 licenses/year were issued. I would therefore suggest that although the figures cited for the short period up to 2014
may be accurate the likelihood is that the associated costs will continue to rise in future years.

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The costs suggested in the financial memorandum would presumably not be affected by a wider policy initiative. However, depending on the impacts of the bill on wider policy, other related financial implications may become apparent.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

This could be a distinct possibility, but a full study of the impacts of any subordinate legislation would be needed to allow other costs to be identified.

SUBMISSION FROM THE SCOTTISH GAMEKEEPERS ASSOCIATION

The Scottish Gamekeepers Association thanks the Finance Committee for being offered the opportunity to comment on the Financial Memorandum and is pleased to respond as set out below. In essence, we believe that the Financial Memorandum provides a practical snapshot of known costs with regard to the draft legislation. We note however that there are costs associated with deer stalking competence, which remains to be adequately quantified. We also note discussion during Stage 1 evidence sessions around proposals for licensing which have not formed part of the draft Bill to date. We do not believe it is appropriate to consider these within the WANE Bill, and certainly not without a full review of the individual costs, the administrative expense and the overall biodiversity objectives.

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, we did take part in the consultation exercise for the Bill. We made no specific comment on the financial assumptions made, except to observe that we did not want legislation to impose unnecessary bureaucracy. The WANE Bill started out with the intention of consolidating and simplifying a range of archaic legislation.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

N/A
3. Did you have sufficient time to contribute to the consultation exercise?

   Yes, there was adequate time to contribute to the consultation exercise

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

   Snaring
   The Financial Memorandum makes particular reference to the costs of snare training. The costs of training will ultimately fall on individuals wishing to be accredited. We believe that the figures identified in the Financial Memorandum in respect of snare training numbers and costs are a reasonable estimate of the likely take-up.

   We note the assumptions made with regard to the costs to different constabularies. We think some saving can be made on these costs if there is consolidation in the number of constabularies, or if one constabulary (or perhaps a central police agency like the NWCU) holds responsibility for administration. This would also have the benefit of increasing administrative expertise.

   Deer
   The Financial Memorandum mentions the possibility that following review in 2014, Ministers may decide to implement deer stalking competence requirements. The Financial Memorandum suggests that this might cost between £80 and £280 per individual. Otherwise, the financial implications are not assessed. As with snare training, the costs of competence training will ultimately fall on individuals, rather than on an organisation, unless for instance a land management group or owner decides to bear part or all of the cost of training. By virtue of the increased costs, the implications for take-up are likely to be considerably different than those for snare training. Stakeholders would also have to consider the implications, not just for deer management operators, but also the impact on the stalking tourism market, of any competence requirements. We therefore believe that it should be a requirement to undertake a full review of the financial implications as part of any Ministerial review undertaken in or after 2014.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

   It is possible that the SGA might choose to subsidise some training costs to encourage prompt accreditation, otherwise the burden will fall on individuals. There is some cost to us in ensuring that we have suitably trained tutors, but we are confident that we can meet these particular costs.
6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Subject, always, to unforeseen issues, the Financial Memorandum appears to make suitable allowance for margins of uncertainty in the estimates and time-scales for costs. We do however point out above that costs for Deer Management / Stalking competence training remain to be accurately quantified.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

We made the point in response to Q.1 that much of the Bill started out as a consolidation exercise. As consultation, oral and written evidence has progressed through Stage 1 evidence sessions, we note the introduction of discussion on Vicarious Liability and the possibility of land-owner / estate licensing. Neither of these aspects formed part of consultation, have not featured in the Stage 1 draft of the Bill and have not therefore formed any part of the Financial Memorandum. As they have not featured before now in draft legislation, we doubt the competence of subsequent introduction to the Bill, and certainly not without full review of the financial implications, which are considerable. Such implications not only impact in monetary terms, but may also have a profound effect on biodiversity resulting from the potential reduction in incentives for public and private land management.

Similarly, we are not clear that any increased administrative costs associated with licensing could be met by any overall gain in biodiversity benefits. The full impact of such proposals would need to be very carefully assessed in separate review.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

We have identified that there are further potential costs associated with the Deer Management review in 2014, which have yet to be fully quantified.

We also refer to potential licensing in response to Q.7. This could result in considerable costs falling on individual land managers, when the overall benefits to biodiversity are far from clear. These costs are very difficult to quantify without full and separate review.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RECENT DEVELOPMENTS WITHIN THE COMMITTEE’S REMIT

Note by the Clerk: Each time an agenda and papers for a meeting are circulated to members, a short paper like this one will also be included as a means of alerting members to relevant documents of general interest which they can follow up through the links included.

Pack report

The Final Report of Brian Pack’s Inquiry into Future Support for Agriculture in Scotland will be published on Wednesday, 3 November. A NFUS news release providing further information can be found here:

Union Meeting Provides First Public Platform for Pack | NFUS