



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

Wildlife and Natural Environment Bill

11 March 2010

NORTHERN IRELAND ASSEMBLY

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ENVIRONMENT**

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Members present for all or part of the proceedings:

Ms Dolores Kelly (Chairperson)
Mr Cathal Boylan (Deputy Chairperson)
Mr Roy Beggs
Mr Jonathan Bell
Mr John Dallat
Mr David Ford
Mr Danny Kinahan
Mr Ian McCrea
Mr Daithí McKay
Mr Peter Weir

Witnesses:

Mr John Hetherington)	Premier Woodlands Ltd
Mr Ken Bradley)	
Mr Mike Meharg)	Department for the Environment
Mr Chris Savage)	
Ms Rachael Singleton)	

The Chairperson (Mrs D Kelly):

I welcome Mr John Hetherington. Generally, a witness takes five or 10 minutes to present their concerns, followed by an opportunity for members' questions.

Mr Kinahan:

I declare an interest: John occasionally helps me with my deer herd.

Mr John Hetherington (Premier Woods Ltd):

I will start by saying that I hope to wear three hats: I am one of the few registered deer farmers; I am managing director of my woodland company; and I am a recent past chairman of the British Deer Society's Northern Ireland branch. I hope rapidly to convey some of my thoughts and thank the Committee for the opportunity to do so. I will work through the Bill, commenting on some of the clauses. I, and other folk, want to help in any way that we can.

I am responsible for land management — largely woodland — throughout the whole of Ireland and GB. To give some idea of the scale involved, we look after roughly 50,000 acres. Clause 1 deals with the duty to conserve biodiversity. To conserve or manage anything, I, as a land manager, must know exactly what I have to manage.

Almost all my comments will refer to various species of deer. Under any strategy, there must be clarity about the species and number of deer. No recent information has been published on the spread, species or number of deer. For the record, I am co-author of an all-Ireland survey on the spread and species of deer, which is with scientific peer reviewers in Dublin. Hopefully, it will have gone through that process within the next number of weeks. Unfortunately, however, that has its own speed.

There are probably seven species of deer in Ireland. The red deer is considered to be the native species. However, is it truly native? Sika and fallow deer are long established here. Not so long-established deer include muntjac, Chinese water deer and roe deer. Clarity is needed on which species of deer there are here; otherwise, how can they be sensibly managed?

Clause 10 deals with snares. A snare is a useful piece of equipment for land managers and has been used for a long time. With sensible regulation, I strongly support that clause 10 remain in the Bill.

Clause 12 deals with the introduction of new species. Virtually all red deer, which is the only native species, are not actually true Irish red deer; they are hybrids. Therefore, clarity is needed on what constitutes a hybrid. Considering that, for hundreds of years, parks in Ireland, England and Scotland have introduced sub-species of red deer, of which there are, perhaps, 30 throughout the world, what we have is not a genetically pure Irish red deer — if such a thing exists. Therefore, there must be clarity on the introduction of new species.

With regard to clause 13, one omission from the Bill is recognition of exemptions to the Wildlife (Northern Ireland) Order 1985 that are granted under the deer farming certificate. I have a photocopy of the deer farming certificate for Castle Upton, which was issued 11 years ago. It exempts the landowner and me, as manager of the deer, from certain provisions of the Wildlife Order. As far as I can see, the Bill is silent on what happens to folk who have exemptions. Further clarity on that issue would be helpful.

The Deer Society, which is a welfare organisation, is concerned that poachers could avail of clause 15 as long as they had switched off their vehicles' engines. Vehicles have often been in poaching or in the illegal taking of deer.

I understand why that clause is in the Bill: it will help the Forest Service, for example, which has large forests, and its wardens, who can use their vehicles if they see a deer that they want to shoot. Equally, I want the Committee to understand that there are huge concerns that it will help poachers.

Clause 16, "Licences relating to deer", must take account of what species we want to preserve and manage. I strongly suggest that red, sika and fallow deer be recognised as the three long-established species. Although other species have not been here for very long, there must be a distinction with regard to licences, because if estates with fine herds of sika, which are Japanese and not native, found that they were destroying the natural heritage, the landowner could derive substantial sporting income from overseas visitors shooting sika stags. The Department could ask the landowner to shoot them all or remove them. It must be clear what species we are talking about.

The clause makes no mention of deer fencing. As a forest manager in many Scottish forests, I

have to erect deer fences, and there is then no need to shoot deer. There is no mention of that in the Bill as one of the management tools to help to overcome the problem that large numbers of some species of deer will create.

There is a lack of clarity in clause 20 about who would become a wildlife inspector. One concern is that members of some voluntary organisations could create a heck of a nuisance. It would help if the Bill stated that the wildlife inspector would be a departmental officer. Clause 20 simply refers to “a person authorised in writing”, which could result in someone being a wildlife inspector who was not employed by the Department.

Clause 26, “Reduction in close seasons for female deer” is probably the British Deer Society’s worst nightmare, because it seriously undermines deer welfare. Someone such as myself who is experienced in managing deer often has to shoot only one deer. However, someone who had no thought for the deer could shoot the mother, which would leave dependent young pining away and eventually dying of starvation.

We strongly suggest that instead of bringing the season forward, the end of the season be extended, simply because, horrible as it is to have to shoot pregnant females, there are no welfare issues at that stage because there are no dependent young. I strongly suggest that that be tied in with some of the Scottish seasons, for example, but it should certainly not be brought forward by one full month.

Clause 32 helps to clarify the situation. Some of the preservation Acts are very old and there is a lack of clarity about who can do what. We hold a deer farming exemption certificate for Castle Upton, which has allowed us to trade in deer without a game dealer’s licence. However, that is an anomaly. When the Wildlife (Northern Ireland) Order 1985 was enacted, the Department of Agriculture and Rural Development was the authority that issued the exemption certificates; however, it has stopped issuing them. For the life of me, I have no idea why. My application for my farm at home sat on a desk for seven years. Eventually, the Department issued the certificate to me.

As long as that farmer’s certificate exists, I could legally bring in any species of deer from anywhere in the world. I have highlighted concerns about invasive non-native species for the past 15 years, but nothing has happened. The Wildlife (Northern Ireland) Order 1985 must either be

almost scrapped or totally absorbed into the Wildlife and Natural Environment Bill.

Wearing yet another hat, I am also a lay magistrate; but I struggle to follow what is in the Wildlife (Northern Ireland) Order 1985 and in the new Bill. I am familiar with the management of land and deer, and I have some idea of how legislation works, and if I struggle, 99% of folk will struggle severely. The Committee must ensure that the legislation clarifies those issues and that it is workable.

The Chairperson:

Thank you very much, Mr Hetherington. It must be a nice change for you to give evidence rather than hear it. *[Laughter.]* You propose some very specific amendments to the Bill.

Mr Boylan:

Thank you very much for your presentation. The legislation is as clear as mud. If you cannot understand it, the rest of us will have some difficulty. There are many arguments for and against the use of snares. We received a presentation from the Countryside Alliance. Most people's impression of a snare is a piece of wire and some unfortunate animal perhaps being trapped for days. Are there any new types of snare? Has technology progressed or are they just an ordinary piece of wire?

The legislation states that snares should be checked once every day. Is that acceptable or should they be checked twice a day?

Mr Hetherington:

Snares are useful because hares create serious problems for foresters. Hares' teeth grow constantly throughout their lives; they have to keep nibbling at things all the time to wear their teeth away. As a forester, I plant rows of trees, and hares nip them all off to wear down their teeth. Snares are crude, but landowners cannot afford, as they might have hundreds of years ago, gamekeepers to control species that do harm. I do not have a strong view on the matter; I simply say that snares are useful, although they ought to be checked at least once, but preferably twice or more, every 24 hours. In certain areas in Scotland, due to walkers' rights, they cannot be used at all; they cannot be used anywhere to which the public has access. For any responsible land manager, therefore, there are limitations. As I say, I have no strong view on the matter, other than to point out that they are useful devices with which to control hare populations.

Mr Ford:

Thank you for your presentation. You referred to the need to clarify the definition of “hybrid” in clause 12. Will you explain a bit more about what you mean? According to my reading of clause 12, there is no problem. Does it matter whether an animal is defined as an inappropriate species or as a hybrid of that species?

Mr Hetherington:

I want clarity about which species the Bill is intended to protect. I cannot see anywhere in the Bill that part of its rationale is to protect species of deer. Unless I am mistaken, no clause or schedule refers to red deer of questionable heritage. The Bill should identify the species that it is supposed to protect, particularly deer species. For example, red deer and sika deer are in the same cervus family, and, therefore, they hybridise genetically and their offspring are fertile. I simply want a working definition of the species that are to be protected and of the hybrid species that may not be wanted.

Mr Ford:

Fair enough, but if neither red deer nor sika deer are named as invasive species, I do not see what the issue is, because a hybrid would not matter either. However, when they give evidence later, we can ask the departmental officials about it.

Some people who wish snares to be banned completely put forward evidence that, in certain circumstances, they might be permitted, for example, at lambing time, when there are problems with foxes. You appear to suggest that snares are required permanently. Weather permitting, I hope to plant a couple of trees this weekend, and to avoid problems with rabbits or hares, I will put a tree guard around them. Given that tree guards or, for larger plantations, fencing can be used, why are snares required? Would those measures not be more effective than randomly setting a few snares?

Mr Hetherington:

Snares are an option. This winter, we had a great deal of snow — there is half a metre of snow in one of the Scottish estates — and fences are rendered useless by frozen snow. Hares and deer can hop over fences, tree shelters and tree guards. If there is any snow at all, hares stand on their hind legs to eat trees, even up to a metre from the ground. I do not have a strong view, but snares are

one tool that I would like to be retained.

Mr Ford:

Assuming that the hares choose to put their necks in the snares before nipping off the trees; snares would be fairly ineffective if the hares nipped the trees first.

Mr Hetherington:

Precisely.

Mr Dallat:

I have seen only one hare in the past five years. Where is your farm?

Mr Hetherington:

Near Enniskillen.

Mr Dallat:

Therefore you have loads of hares.

Mr Hetherington:

Yes.

Mr I McCrea:

They will need passports to get to the Republic of Ireland.

Mr Dallat

I am not familiar with the farming of deer. What do you do with the poor deer? Do you shoot them?

Mr Hetherington:

Yes.

Mr Dallat:

Therefore people get pleasure out of shooting those creatures.

Mr Hetherington:

No. There is absolutely no pleasure in shooting farm deer.

Mr Dallat:

Then why do you do it?

Mr Hetherington:

I enjoy having the deer. I personally take responsibility for their meat, and, to provide some food for my wife and children, I shoot the deer that I farm.

Mr Dallat:

They are not part of the food chain.

Mr Hetherington:

I am also a trained hunter, so I can sell them into the food chain.

Mr Dallat:

Otherwise they get shot and that is it.

Mr Hetherington:

Deer populations of all species generally reproduce at a rate of 30% a year; therefore every three years their numbers double. God forbid that a driver should knock down a deer on the road, but unfortunately it happens. Controlling deer numbers is a matter of public safety, and someone has to manage them. I began my working life in the Forest Service, helping in the wildlife branch around Newcastle, where there were many road accidents involving deer. However, because they have been sensibly managed, there are now very few road accidents with them.

Mr Dallat:

I understand why: you shoot them. That is OK.

Mr Beggs:

Clause 15 forbids shooting while in a vehicle when it is moving or when its engine is running. I see no problem with that ban; I would like to know why you are dissatisfied with it. Does that provision need to be further extended? Why do you want to ban people from shooting in that fashion?

Could the existing wildlife legislation be combined in the Bill to avoid confusion or should there be a completely new one?

Mr Hetherington:

Most poaching on areas that we manage is effected from the public road. However, we also recognise that criminals do not abide by legislation; no matter what is in the legislation, they pay it no heed.

The British Deer Society is concerned about this, for we recognise that most poaching takes place from a vehicle on the public road with rifles and lamps. An authorised person may challenge an individual in suspicious circumstances; however, as long as the engine is switched off and the keys are out of the ignition the individual is not offending. That makes it harder for the wildlife enforcer — wildlife inspectors or the police — to prove an offence.

Mr Beggs:

Should the clause be extended to prohibit the discharge of a weapon from inside a vehicle? That is one way of proving that an offence took place; discharge would leave residue in the vehicle. Would that cause problems for deer farmers?

Mr Hetherington:

No.

Mr Beggs:

It might be a simpler way forward.

Mr Hetherington:

Yes.

Mr Beggs:

Can I ask about the confusion with other preservation legislation?

Mr Hetherington:

There was expectation after the 1985 Wildlife (Northern Ireland) Order was enacted; it was the first piece of legislation to protect deer through the breeding season. Before 1985, there was no

such legislation. DARD was made the licensing authority that granted deer farmers exemption certificates.

That is not part of DARD's legislation, yet it was deemed the lawful authority to issue the exemption certificate from parts of the Wildlife (Northern Ireland) Order 1985. I believe that such certificates have not been issued for the past five or six years; therefore the small number of deer farming exemption certificates still in circulation creates an anomaly. That is one of the loopholes left wide open to anyone who might wish to abuse what I hope all responsible folk want to avoid: the illegal introduction of invasive species and keeping them in deer enclosures that are often not very secure. I have been talking to Departments about that for years. Under the deer farm exemption certificate, there is no minimum standard for enclosure or fencing; therefore, nothing can be done to stop someone delivering a lorry load of invasive deer to a field with a hedge.

I am simply saying that the Bill is silent on the issue; it ought to contain a provision to prevent that happening.

The Chairperson:

The Committee thanks Mr Hetherington for his evidence. Are members content to ask DARD for clarification on some of the points that have been raised?

Members indicated assent.

The Chairperson:

The Committee now moves to its initial clause-by-clause consideration of the Wildlife and Natural Environment Bill. We are running half an hour behind schedule. I welcome officials from the Department of the Environment (DOE) — Mr Ken Bradley, Mr Mike Meharg, Mr Chris Savage and Ms Rachael Singleton — and invite them to take us through clauses 1 to 20 of the Bill. Mr Bradley will begin with clause 1, before I ask Committee members whether they have any queries.

Mr Ken Bradley (Department of the Environment):

We intend to go through the first 20 clauses. I apply two caveats: first, we are presenting the Bill without additional wording that is based on stakeholders' comments. There may be alternative

wording that we will need to run past our Minister at some stage. Secondly, some of the proposed wording is fine from a layman's point of view and from ours, but the Office of the Legislative Counsel may take issue with it. Subject to those two caveats, Chris Savage will go thorough each clause and then we will take questions.

Mr Chris Savage (Department of the Environment):

Good morning. The intention behind clause 1 is to introduce a statutory duty on Departments and public bodies to further the conservation of biodiversity. We received a number of comments from stakeholders on the definitions and the terminology used in the duty, including comments on what "conserving" means in the clause.

We want to keep clause 1(1) as plain and simple as possible. It is important to remember that the Department is in the process of producing guidance that will support the duty. That guidance will go into much more detail about the concepts behind definitions. We want to keep the core duty as clear and plain as possible for all public bodies.

As to a definition of the term "conserving", the purpose of clause 1(3) is to remind public bodies that "conserving" also means "restoring or enhancing". We believe that most people understand that "conserving" means "maintaining and protecting". However, the Department is willing to add "maintaining or protecting" to clause 1(3), if the Committee feels it appropriate. Guidance can be used to clarify the issues.

Other concerns expressed relate to resources, training and support. As I said, the Department's guidance is being produced, and we will be available to provide advice on any issue to the various public bodies. We do not expect a big-bang approach to the introduction of the legislation. It is a facilitating and enabling measure to raise the profile and visibility of biodiversity, to try to stimulate a culture of change, whereby the public sector considers biodiversity issues in its policies, plans and programmes. That is something that we hope to build up over time in order to achieve success.

Clause 2 deals with the biodiversity strategy —

Mr Ford:

Can we respond to each clause? Otherwise, we will get lost.

The Chairperson:

Yes. There is no guidance for local councils on sustainability duties. That may not be your direct responsibility, but when will that guidance be issued? I asked before whether it will be published in tandem with the Bill.

Mr K Bradley:

That is correct. As Chris said, we are producing guidance. We are also holding an event at the end of March to develop our ideas. Guidance will be available at the same time as the Bill becomes law.

Mr Ford:

We may add references to “maintaining or protecting” biodiversity to subsection (3). That would meet the concerns of some who made representations. It may not be strictly necessary, but it would be helpful.

Subsection (4) states: “The Department may issue guidance”. However, if the Department proposes to do so, there is a strong case for changing the wording to “shall issue guidance”. It may also consider adding “on a regular basis” or a similar phrase. That may be difficult to word, but this will not be a one-off exercise. Guidance will need updating every few years. We should include some form of words that reflects that.

Mr K Bradley:

I think that we would be happy to change subsection (4) to “shall issue guidance”.

Mr Ford:

Are you happy to include a reference to updating the guidance regularly, or however the Office of the Legislative Counsel phrases it?

Mr K Bradley:

The guidance is meant to be fairly broad and cite examples of practical experience used elsewhere. I do not expect that there will be much need to update it.

Mr Ford:

You are surely not suggesting that what was appropriate as guidance to the Wildlife (Northern Ireland) Order 1985 is appropriate in 2010.

Mr K Bradley:

In England and Wales, the Department for Environment, Food and Rural Affairs (DEFRA) reviews its duty every five years to see what lessons have been learnt. It also produces guidance at the time as well. It follows naturally that reviews such as that produce updated guidance. At the end of the day, we will all be learning and identifying good examples of best practice. We should embrace that, whether or not we insert a mechanism for regular review in the legislation. However, I see no strong objections to our doing that.

Mr Ford:

I am happy to leave it that. I am saying simply that not much happened from 1985 until now, and I do not want to wait another 25 years before we see even an updating of the guidance.

The Chairperson:

The definition of a “public body” was also raised with the Committee. Will the guidance include Crown bodies, cross-border bodies and Northern Ireland Water?

Mr C Savage:

As a statutory undertaking, the definition includes those bodies.

Mr Beggs:

I again declare an interest as a local councillor. Will you give a more detailed explanation now of “to further the conservation of”, rather than wait until the legislation is approved, at which point we may find that we do not like it?

Mr C Savage:

The whole point of the guidance is to try to explain that term. That is the core term in the legislation.

Mr Beggs:

Yes, but can you give us an explanation? There may be a problem or there may not.

Mr C Savage:

It means any actions that a Department or public body can take to enhance biodiversity. It will be easier for some parts of the public sector to enhance biodiversity; for example, it will be easier for bodies or Departments that are responsible for estate management and maintenance. Opportunities will arise to use native species in certain circumstances, at probably no extra cost to those bodies. That is a clear example of something that will probably be quite easy for such bodies to do. It may be more difficult for other parts of the public sector, however. Nevertheless, it will be up to them to enhance their own green housekeeping facilities; for example, by using recyclable materials. That will all lead to enhancing biodiversity.

The Chairperson:

Before the Committee begins its formal clause-by-clause consideration of the Bill, it would be helpful if, having indicated that you will be proposing amendments to clauses, you could come back to the Committee with the amended clauses.

Mr C Savage:

The easiest way to proceed may be to add a column to your table of issues for clarification.

Mr K Bradley:

We could include our proposed amendments in that column and run them past the Minister.

The Chairperson:

Will you get them back to the Committee before we complete our initial clause-by-clause consideration?

Mr C Savage:

Yes.

The Chairperson:

OK. Thank you.

Mr C Savage:

Clause 2 deals with the biodiversity strategy. The purpose of the clause is to place an obligation on the Department to designate a strategy. Concerns were raised that the designated strategy

should be the current Northern Ireland biodiversity strategy. That is the intention of the clause. Its wording merely reflects the need to be flexible for the future, but the clause will underpin the current strategy, which runs from 2000 until 2016.

Some stakeholders want the Bill to stipulate a definite reporting cycle, rather than publish a report “from time to time”, as the clause states. In practice, the Northern Ireland Biodiversity Group (NIBG) is charged with producing a report every three years, the most recent of which was produced in October 2009. The reporting cycle is happening, and there are no plans to change how it is done. That said, the Department is willing to change the method of reporting, but we must also be flexible for the future. The issue may be whether that three-year reporting cycle will continue to be appropriate in the medium to long term.

Mr K Bradley:

We are not even sure whether the Northern Ireland Biodiversity Group will continue.

Mr Ford:

I accept that to include a three-year reporting cycle in the primary legislation may be a bit tight, but surely suggesting no less than every five years would be helpful. That is unlikely to be excessively short in the lifetime of the Act.

Mr K Bradley:

That seems sensible.

Mr Beggs:

I concur. The need to report regularly is mentioned in the summary of responses. However, no mention is made of how often the strategy should be reviewed. Is this an appropriate point at which to put down a marker?

Mr K Bradley:

The strategy in its present format contains 76 recommendations. Many of them are fairly general. The strategy will run until 2016. I am not sure whether there is a need to review it at present, given that there are six years left on it.

Mr Beggs:

Planning legislation may require it. Plans, such as the Antrim area plan, can be badly askew. I do not say the strategy must be reviewed at present, but, after 2016 at the very latest, it ought to be reviewed in the light of experience that has been learnt from the legislation. Should we not add that the strategy should be reviewed regularly?

The Chairperson:

The EU pays great attention to climate change and to directives that will flow from that. The biodiversity strategy is currently out of date, so a requirement for review should be built into the legislation.

Mr C Savage:

It is a question that we will have to consider. The core provision is that, in requiring the Department to designate a strategy, there has always to be a strategy in place. I do not know that we can rely on three-yearly or five-yearly reviews to give us pointers as to how current strategy should change, but that could inform any review of the strategy. However, we need to consider whether we want to make provision for that in legislation.

Mr K Bradley:

The strategy's recommendations are fairly general and broad. Departments are now all signed up to biodiversity implementation plans, now that the biodiversity duty is being introduced. One could argue that the actions of Departments already negate the need for a review and that European commitments apply, so we do not have to replicate them in the biodiversity strategy.

The Chairperson:

If only we had your faith. *[Laughter.]*

Mr C Savage:

We accept what the Committee has said about the importance of biodiversity and making progress towards the various European and national targets that we have to halt the loss of biodiversity. The strategy has an important part to play in that. It is a point that we will consider.

The Chairperson:

We will wait to hear what you have to say.

Mr C Savage:

Clause 3 will place an obligation on the Department to publish lists of priority species and habitats of conservation importance. The lists are intended to focus attention on those priority habitats and species and to supplement what is in the biodiversity strategy. One or two stakeholders were concerned about ensuring that the lists take account of our European obligations, and I can confirm that they do. All species and habitats of importance are included in our priority lists.

Clause 4 deals with —

Mr Kinahan:

An issue that was raised with me concerned the need for more regular reviews of species, in case one species that has been protected begins to outgrow others.

Mr Mike Meharg (Department of the Environment):

The biodiversity strategy is a UK-wide strategy, and the Northern Ireland strategy is subject to it. Priority species are reviewed every three years at a UK level.

There are some species slightly more or slightly less common here than in the rest of the UK, so we “Northern Irelandise” the lists to ensure that species here are covered. We have just undertaken that process, and the NIBG has signed off on it. The latest list of priority species is due to be published in the next month or so.

The Chairperson:

The Northern Ireland Local Government Association (NILGA) and other stakeholders commented that the term “reasonably practicable” is too ambiguous and needs to be clarified. The NIBG said that the requirement should be expanded to include public bodies as well as the Department.

Mr K Bradley:

I do not see a problem with including public bodies as well as the Department in clause 3(2)(c) and (3)(a). To do so would reinforce the biodiversity duty.

The Chairperson:

Therefore, the Department may accept that amendment. Will you come back to us on that?

Mr K Bradley:

Yes.

The Chairperson:

Thank you.

Mr C Savage:

The purpose of clause 4 is to give new statutory protection to the nests of certain species of bird that habitually use the same nests year after year. They need protection for their nests all year round, as opposed to the current protection, which applies only to the nesting season.

The golden eagle is one bird that we had in mind for the Bill. Stakeholders identified other species that they would like to see added to the new schedule 1A to the 1985 Order, and we are happy to include birds such as the red kite, osprey, white-tailed sea eagle and peregrine.

The case for including other species is a bit more complicated, because we are not talking about a nest similar to an eagle's, which is a single structure that is built on every year and develops into a significant structure that can be used by many generations. Stakeholders are asking for the nest sites of species such as swifts and hen harriers to be protected. That becomes more difficult because the hen harrier in Northern Ireland can nest in trees or on the ground in an area year after year without necessarily returning to exactly the same spot. Making provision for the protection of such species creates more difficulties. Bearing in mind that there are special protection areas under the EC habitats directive for those types of species, broad areas are given a general level of protection.

Therefore, although the Department is happy to add four or five species to the new schedule, it has issues with the inclusion of others.

Mr Ford:

May I have the list of species that the Department is considering adding repeated?

Mr C Savage:

Red Kite, osprey, white-tailed sea eagle and peregrine. We recognise that one or two of those species may not yet be breeding here. However, we must create the schedule now for the future, and that is why some of those species are being listed. Golden eagles may have been sighted here, but there are not yet any reports of their breeding. Nevertheless, that potential exists.

Mr Ford:

For clarification, hen harrier and swift have been ruled out, while peregrine, white-tailed sea eagle, osprey and red kite are to be included. However, merlin and chough have not been referred to, although they were raised in the evidence.

Mr C Savage:

The merlin has very similar nesting habits to the hen harrier. The chough tends to nest on rocky patches. I believe that the only breeding pair of choughs in Northern Ireland is on Rathlin Island, so there are difficulties in identifying their nesting areas.

Mr Ford:

That is all the more reason to ensure that the site is protected.

Mr Meharg:

The chough does not necessarily use the same nest year after year, in the same way in which birds of prey do. The new schedule specifically makes provisions for birds' nests rather than the area in which they nest. From that point of view, we felt it better, at this stage, to leave chough off the list. However, we will monitor the species mentioned and the success of their nests in years to come. It may be deemed appropriate to include them at the five-year review stage.

Mr Ford:

The Committee faces a slight dilemma when an organisation with the authority of the Royal Society for the Protection of Birds (RSPB) suggests species about which departmental officials say something differently. However, thanks for clarifying that.

The Chairperson:

Do you have a question, Deputy Chairperson?

Mr Boylan:

My question has been answered.

Mr McKay:

It was also suggested that barn owls should be protected.

Mr Meharg:

Barn owls would fall into the same category. They are sometimes site-faithful but can also use nest boxes — barrels, and so forth — that are set up for them. Their tendency to move to man-made structures or to structures that are put up specifically for them means that there is not necessarily the need to afford the barn owl the permanent protection that is to be granted to the golden eagle or the white-tailed sea eagle.

Mr Ford:

Is it not logical to assume that if barn owls are going to particular structures, that indicates that nests are being reused? I would assume that the logic of that is that barn owls should be included in the list of species that the Department has agreed reuse nests.

Mr Meharg:

They would not be as site-faithful as the other raptors listed. As a species, they generally adapt and move around. The golden eagle and other birds are to be given protection because the destruction of their nests may leave them unable to breed again at all, whereas barn owls have shown that they are adaptable enough to move to other places and structures. Therefore, the reason for the protection is to save the eyrie, which is the one place that the pair of birds will use. It is not the same for swift, barn owl, merlin or hen harrier as it would be for the other species to which we have given our consideration.

Mr Ford:

Even though barn owls are under quite significant pressure at present?

Mr Meharg:

They are, but that is not necessarily because of the loss of nest sites. It is more to do with habitat loss and poisons.

Mr Boylan:

For clarification, is the report that you will receive in a month about the three-year review of all the species?

Mr Meharg:

The report will be about priority species in Northern Ireland.

Mr Boylan:

Obviously, you have an idea of the species that need protection now. If the Committee were to sign off on the Bill now, would it be five years before we can add to the list of species that require protection? Is there any —

Mr K Bradley:

If we felt the need to add to the list within five years, schedules could be amended by subordinate legislation.

Mr Meharg:

There are schedules to the Wildlife (Northern Ireland) Order 1985 that give protection, but the priority species lists are not subject to review every five years. If a particular species suffered a catastrophe, we could publish that list at any stage.

The Chairperson:

You used the term “birds of prey” when talking about nest protection. Is that a comprehensive term that you use instead of listing many species?

Mr Meharg:

Some birds of prey do not have the same site fidelity.

Mr C Savage:

In legal terms, individual species would have to be defined.

Clause 5 will make it an offence to undertake any reckless action that harms wildlife. It builds on certain offences in the 1985 Order where actions are undertaken intentionally. The main concern was that innocent activity in the countryside, including in the agriculture sector, could be

covered by the new offence. The Department believes that responsible activity in the countryside will not be caught by the new offence. Any case would be based on evidence of what is occurring and whether a prosecution is in the public interest.

Mr Beggs:

Coming at this as someone who owns 25 acres of land and as a local councillor, I am thinking about responsibility for cutting back hedges, keeping open rights of way, and so on. Could local councillors, for instance, be liable if a hedge is cut in which there is a nest? The word “recklessly” is used in clause 5. I am not sure what is classed as being reckless. How could people ensure that they are not affected by the legislation?

Mr C Savage:

It is up to people to demonstrate that they have taken reasonable action to determine that there is no risk to wildlife before they carry out an activity. Obviously, we have a hedge-cutting season, so I suggest that adherence to that would be an adequate defence, should reasonable action have been taken.

Mr Beggs:

Does that need to be clarified and included formally in the guidance? You believe that to be an adequate defence, but I want to know to what exactly we are agreeing. Will council staff or landowners have to walk every bit of ground and be well briefed on every species of bird so that they can spot them? I am just trying to determine what would be deemed reckless. What training would otherwise responsible people have to undergo to avoid being caught out by the word “recklessly”?

Mr C Savage:

We have existing guidance about wildlife in law. We intend to update that guidance once the Bill is enacted, so that will present a good opportunity to give examples of the type of actions that people should take so that they avoid falling within the ambit of the offence.

There is no real scope to add anything to the Bill. A judgement would have to be made by the judiciary. However, the Department will produce guidance to support many of the changes.

Mr Beggs:

I would take more comfort from the proposals if the hedge-cutting season were to be included in clause 5.

Mr Meharg:

We have never specified a hedge-cutting season in legislation, because birds have such a wide range of nesting times. The Department of Agriculture and Rural Development's good agricultural and environmental condition (GAEC) obligations determine the hedge-cutting season. For health and safety reasons, roadside hedgerows can be cut back at any time of the year. However, we expect contractors, before cutting down trees during the nesting season, to carry out a survey for birds' nests. Contractors are aware of that obligation, and surveys are carried out regularly.

Mr Beggs:

I have never seen a contractor walking along the side of a road looking for birds' nests before cutting a hedge, and I am not aware of councils telling staff to check hedgerows or of farmers checking them.

Mr Meharg:

The farming community has GAEC regulations that oblige them to do that, and if that is not done, under one of the statutory management requirements, farmers can be penalised under the single farm payment.

Mr Ford:

Technically, I should probably declare my wife's shared interest in a family-owned farm.

The Ulster Farmers' Union expressed concerns about the word "recklessly". Is the Department satisfied that "recklessly" is defined adequately in common law and, therefore, does not require specific clarification in the Bill?

Mr C Savage:

In general, the Department is satisfied that "recklessly" is understood in law. Anyone who is involved in legitimate activity in the countryside will not be caught out by a new offence.

The Chairperson:

To pick up on Mr Beggs's point, does the Department wish to elaborate further on comments submitted to the consultation on duplicating and conflicting cross-compliance requirements?

Mr C Savage:

I am not sure that there is any duplication. The various cross-compliance schemes require farmers to carry out activities in a certain way, and the Bill is compatible with those obligations and responsibilities.

The Chairperson:

Nevertheless, the guidance notes could refer people to cross-referencing requirements.

Mr C Savage:

Yes.

Mr Beggs:

Before we move on, you were asked whether common law is clear enough about the meaning of "recklessly". I would find it useful if you would make me aware of the common law interpretation of that word.

The Chairperson:

You can come back to us with the common law interpretation of the meaning of "recklessly".

Mr C Savage:

The intention of clause 6 is to extend to the Bill some existing offences in the Wildlife (Northern Ireland) Order 1985 to other acts contained in that Order. For example, for someone who permits or causes unlawful acts, the main cause for concern was whether the Bill should refer to employers requiring their employees to carry out an illegal activity. Clause 6 is designed to facilitate situations in which that happens. For example, under the 1985 Order, it is an offence for an employer to require an employee to set poisoned bait to kill a raptor, but it is not an offence for an employer to require an employee to shoot a raptor or to destroy its nest or eggs. That is the type of activity for which we are trying to close loopholes.

In particular, people with falconry interests queried the sale of birds of prey.

Our system of falconry differs from that in the rest of the United Kingdom, because our definition of wild birds in the Wildlife Order 1985 is different. Our definition includes all captive bred birds as well. Aviculture and falconry are subject to a licensing scheme in Northern Ireland, whereas the scheme in GB is slightly different.

Sale is something that we have not allowed to date as a matter of policy, although that could be reviewed, as there is provision in the Wildlife Order 1985 to allow for the sale of captive bred birds. It has not been used as a matter of policy, although if the Committee felt that the Department should consider it, we would look into it. However, it would probably require much consultation with various interests, such as the RSPB — which would be very interested — as well as falconry and aviculture interests.

Mr Kinahan:

I want to take up the Ulster Farmers' Union comment that consideration should be given to how to treat people who were given permission a long time ago to shoot on someone's land and who use it purely as a mechanism to get a shotgun licence.

Mr C Savage:

We expect landowners who give certain rights to others to take reasonable action to remind such people of their responsibilities under the Wildlife Order 1985, namely, not to undertake any illegal activity. As long as landowners who gave such rights can demonstrate that they have passed on that message, that is a —

Mr Kinahan:

I am not sure that most farmers know who was given such rights in the past.

Mr Meharg:

Shooting licences are renewed every five years.

Mr Kinahan:

I see. Thank you.

Mr C Savage:

Clause 7 qualifies defences in relation to offences under article 4. There was general support for that; I do not think that stakeholders raised concerns.

The Chairperson:

Other than the licensing procedure?

Mr C Savage:

Sorry: can I deal with that under clause 14?

The Chairperson:

Clause 8 is generally supported.

Mr C Savage:

Yes. Clause 9 creates a new offence of disturbing or harassing basking sharks. The main comments by stakeholders were that such protection should be extended to seals, which the Department would be willing to do. Other species mentioned by stakeholders, such as marine turtles and cetaceans, are protected under separate European conservation regulations. The Department plans to review those regulations soon and intends to copy the new offence into that legislation as well.

The Chairperson:

Several consultees said that there was a plethora of legislation, and that there was no one-stop-shop or easily accessible information. Will the Department take on board those views?

Mr C Savage:

There are two main pieces of legislation on natural heritage: the Wildlife Order 1985 and the Conservation (Nature Habitats, etc.) Regulations (Northern Ireland) 1995. The conservation regulations concentrate on our European commitments, and the Wildlife Order on national commitments. They are separate because the requirements of European legislation are much stricter, and in some cases it is difficult to apply them to natural species. I heard Mr Hetherington

say that there should be a new wildlife Order. The legislative draftsman considered that proposal at the beginning of this process, but he decided that the amendments were not sufficient to require a new wildlife Order.

The Chairperson:

Can I confirm that Committee members support the additional protection for seals?

Mr Ford:

I presume that that applies to both species of seal.

Mr C Savage:

Yes.

Members indicated assent.

The Chairperson:

We will move on.

Mr C Savage:

We will now move to clause 10, which relates to snares, on which there are two extreme views. The Department feels that we have to ask whether control of predators in the countryside is necessary, and we believe that it is necessary to protect livestock and agriculture. If that is accepted, the second question is what is the best method of controlling predators. We believe that the best way is to rely on the existing regime and to strengthen it as much as we can in line with the Bill and its potential to introduce further controls.

Recently, legislation was passed in Scotland requiring all snares to be fitted with fixed stops and ID tags, thereby strengthening their regulatory regime. We believe that there is a need for snares. The Department fully understands animal welfare concerns and all the alternative methods; however, we believe that snares are the most effective and cost-effective mechanism available to landowners. We have also seen research papers that were produced on behalf of the RSPB from which it was clear that the species of conservation concern, such as the curlew, suffer greatly from predation. There were calls in the research for tighter control, although there was no suggestion about how that could be done; nevertheless, it is an example of the need for predator

control in Northern Ireland. There will always be illegal practice, but if we can strengthen the regulations as much as possible to outlaw bad practice, we can mitigate the risk. That may be the preferred option.

The alternative option has been raised of allowing the use of snares only under licence. The Department is willing to consider that, subject to its going to the Minister. Our only concern is that we do not know how many licences or applications there would be, and it could end up being quite a resource-intensive exercise for the Department to monitor.

Mr Boylan:

Chris set that up really well, so we all need to watch that we do not get trapped. I would like to ask Research Services to look into other measures and how other jurisdictions deal with the issue, because there is a great deal of support for a total ban.

The Chairperson:

— except from the Committee for Agriculture and Rural Development.

Mr Boylan:

Perhaps Research Services could do some work on it for us before we make a decision.

Mr Kinahan:

We have to consider the Scottish method to see how successful it has been. Has it just been introduced?

Mr C Savage:

Yes. The Scots undertook it because they were also coming under extreme lobbying to ban the use of snares totally. There are huge land management issues in Scotland, and the Scottish Minister considered it for a long time. However, although he decided that there was a fine line, he came down on the side of maintaining their use but trying to ensure that it is regulated as tightly as possible.

Mr Kinahan:

That sounds sensible.

Mr Ford:

There is no reference to the Bern Convention and the indiscriminate means of capture. Does the Department have a formal legal opinion on that interpretation?

Mr C Savage:

No. We have never sought an opinion on it.

Mr Meharg:

Neither have we been challenged on the fact that snares have been part of the legislation since 1985. As far as I am aware, a legal opinion has never been sought on whether it is indiscriminate or not. Usually snares are set in a run and are targeted at a particular animal.

Mr Ford:

Yes, but the issue is not the alleged targeting but the practical effects.

Mr Meharg:

Part of it is the indiscriminate nature of setting the snare up and seeing what you get, whereas targeting a particular species and using field craft has been taken in the past as being non-discriminatory.

Mr Ford:

If there is no specific opinion in this jurisdiction, is there any opinion elsewhere following on from the Bern Convention?

Mr C Savage:

We are not aware of any challenges under the convention; any legal challenges would have been at member-state level. The Department is not aware of any challenges against DEFRA, or in even the Republic of Ireland, where the use of snares is still legal.

Mr Ford:

What useful purpose does the Department see in snaring?

Mr C Savage:

There are land management and agricultural purposes, and in the conservation of species of high

conversation concern, when predator control is highly necessary.

Mr Ford:

Would that include the management of new woodland?

Mr K Bradley:

We telephoned several bodies to see how widespread the use of snares is. The Forest Service said that it used them, albeit not extensively, and was asked by neighbouring farmers to use them to safeguard saplings.

Mr Dallat:

It is assumed that snares are always put down by Farmer Brown, who owns and controls the land. Some of those who use snares get involved in badger and cock baiting, and all the other dreadful things that happen in the countryside, usually at night.

Mr C Savage:

One provision in the Bill addresses that point, making it illegal for anyone to possess a snare or to set a snare on anyone else's land without their permission. The Bill is trying to tighten up in that area.

Mr K Bradley:

Two types of snare, the locking snare and spring trap, are banned outright. There are strict enforcement measures in place, therefore, for those two types of snare.

Mr Dallat:

That does not encourage me to support snaring, but it is useful to know that those who cause suffering on farms will be branded illegal, although I am not sure that they will be terribly concerned.

Mr Beggs:

I came to this issue with a view to banning snares completely; however, we heard evidence from the Royal Society for the Protection of Birds that snares were a useful conservation tool. The red grouse, I believe, has prospered in the Antrim hills as a result of predator control.

Some form of licensing is important to ensure appropriate control of snare use. Do you accept that if someone gives a commitment to check their snares regularly, there needs to be a mechanism to establish who is doing the snaring so that they can be checked and monitored? Does there not also need to be a system of identifying approved snares to ensure that someone is not using snares illegally and to regulate the movement of the snare so that there is not a black market or subculture of snare use? Have you information on the Scottish scheme to identify individual snares? Are they individually tagged?

Mr C Savage:

Yes. New legislation requires snares to have an ID tag to allow follow-up in monitoring their use; however, some people will use snares illegally even if regulations and bans are introduced. Responsible users in the countryside have to use their eyes and ears to identify illegal users and report their concerns to the relevant authorities. Illegal use will always happen, but we are trying to mitigate bad practice that is due to a lack of training or awareness.

We have also given a commitment to produce a code of practice on the use of snares, which will be similar to codes of practice that were introduced in the rest of the UK. That is the most appropriate way of addressing the issue, but we recognise that there could be good arguments for licensing. Ultimately, we will need to get the Minister's view.

Mr K Bradley:

One could take the view that only responsible people would apply for licences anyway. Therefore, the introduction of a licensing regime would enable a clear distinction to be made between someone who has a licence and who operates snares correctly and those who do not have a licence and may not operate them correctly. We will seek the Minister's view on your concerns.

Mr Beggs:

Clause 10 refers to:

“Any person who, without reasonable excuse—

... has in his possession any snare without the authorisation of the owner or occupier of the land”.

Could that provision not be easily widened to deal with those in possession of a snare without a licence to operate it? Surely that would make it easier to catch the underhand people who abuse wildlife and use snares without following regulations, undergoing training or being subject to

regular checks.

Mr K Bradley:

You are correct. It would be much clearer for enforcement purposes, because people will either have a licence or they will not. Therefore, a decision could be made irrespective of people's attempts to prove what they use the snares for.

Mr Beggs:

Have you carried out surveys to find out how many people would be interested? I assume that snares are needed only by gamekeepers and people who use them for very specific purposes. I am not aware of anyone in the local farming community who does any snaring. Does snaring not concern only people who work with specific forms of agriculture such as protecting trees and red grouse?

Mr K Bradley:

When the Minister — who, like you, is a farmer — asked us to find out the extent to which snares are used, he, too, thought that they were hardly used at all. It was not until we phoned various people that we realised that that was not the case.

Geographical location may be a factor in snare use; it may be more prevalent in upland areas, for example. The use of snares may also be more common at this time of year, which is the lambing season. They seem to be used fairly extensively in Fermanagh. I do not know if it is because of tradition, but there seems to be a large disparity between the use of snares in Fermanagh, for example, and north Antrim and south Down, where it is very limited. The spread of snare use is very hotchpotch.

The Ulster Farmers' Union knows that snares are there for a purpose, and it will challenge any moves to ban them outright. The view of the Ulster Farmers' Union is that although snares are not used extensively, they are needed.

Mr C Savage:

If the Committee is of the view that we should adopt the middle ground and introduce a licensing regime, we will reflect that to the Minister.

The Chairperson:

Licensing is the minimum requirement that the Committee would like to see introduced. We will request research to be carried out on the subject. I note that the UK and the Republic of Ireland are two of only five countries in the EU that permit the use of snares. I also note DARD's suggestion that DOE should assume overall responsibility for traps and snares; that is a nice move, I suppose.

Mr C Savage:

We had discussions with the Department of Agriculture on that point recently. We are content to accept responsibility for traps and snares, but, again, we need to seek the Minister's view. It would require the transfer of a clause from the Welfare of Animals Act (Northern Ireland) 1972 to the Wildlife and Natural Environment Bill. The provision authorises the use of certain spring traps, which are listed in subordinate legislation. The last piece of subordinate legislation was made in 1996, and before that in 1961. It does not seem to be overly burdensome from our perspective.

The Chairperson:

There are also points about the use of more humane snares that we should look at.

Mr McKay:

As it stands, clause 10 is too open-ended or even lax. I would prefer that snares be banned outright, but licensing has to be the bare minimum of regulation. I welcome the new position, but I will still be pushing for a ban on snares. As the Chairperson said, most member states do not use snares at all; Germany, Austria, Holland, among others, see no need for them. What do those countries use to deter predators? Have you looked at those options?

Mr C Savage:

We are not aware of what methods such countries use; we have done no research on that. We are aware of what happens in the rest of the UK and in the Republic of Ireland.

Mr McKay:

That is something that we should research.

Mr Weir:

I think that that is a valuable issue in terms of looking at it. The concern might be, as you might find, actually, is maybe in some European countries it may be actually less humane than what is there in terms of I suspect that in a number of the countries how they would control particular species actually lead bullets type of thing rather than snares on it. However, it is useful to get a degree of comparison and see what is happening elsewhere in relation to that whenever we are finally focusing what our position should be.

The Chairperson:

The Northern Ireland Biodiversity Group suggested the following amendment to clause 10 (3)(aa): delete the words “as to be calculated” and replace with “or so managed”.

Mr C Savage:

“Or so managed” is a useful phrase that we will consider for inclusion in the Bill.

The Chairperson:

Clause 11 is supported generally.

Mr Ford has to leave shortly —

Mr Ford:

I do not have to leave as urgently as I thought; I can stay for a while yet.

The Chairperson:

Let us move to clause 12.

Mr C Savage:

We can deal with clauses 12 and 13 together as both relate to regulation of non-native species. Their intention is to strengthen our control over the regulation of such species by issuing codes of practice and having the power to ban the sale of certain species. There were some concerns that the framework in the Wildlife (Northern Ireland) Order 1985 is not adequate for the job. There were also requests that obligations should be placed on landowners to control invasive species. Some called for codes of practice.

A great deal of work has been undertaken over the past three years under an all-Ireland contract between the Department of the Environment and its counterparts in the South, as many of the issues relating to non-native species arise through lack of education and awareness. Only in recent years has the importance of that area come to the fore. The work under that contract has included education and awareness, creation of a web site, the development of codes of practice for various sectors, the development of risk-assessment processes so that we can identify high-risk and vulnerable species. We believe that the changes in the Wildlife (Northern Ireland) Order 1985, as they stand, will complement that work. However, the Department recognises that there are issues with article 15 and schedule 9 of the Wildlife (Northern Ireland) Order 1985. Unfortunately, we could not find time at this stage of the process to adopt a radical approach to those provisions in the Order.

The European Union has indicated that a directive is possible on controlling invasive, non-native species to protect biodiversity, and that would introduce significant new obligations. With a view to that, we are doing the best that we can to address the issue.

The Chairperson:

Some consultees asked for clause 13 to place a duty of care on anyone possessing, selling or advertising for sale non-native species.

Mr C Savage:

If a duty of care is to be placed on anyone selling any non-native species, one thinks of a garden centre, for example, where a huge amount of plants and shrubs are probably non-native. However, only a fraction of those may harm the environment of an area if they were released and became widespread. The intention of the clause is to ban the sale of highest-risk species. That would not be achieved by placing a more general code of practice in such instances.

With regard to placing obligations on landowners to control non-native species, some stakeholders may have in mind the Noxious Weeds Act 1912, which requires landowners to remove certain highly poisonous weeds. That is quite an old piece of legislation. Some non-native species such as the sycamore are so widely spread that an obligation on landowners to remove them would be a significant burden.

Mr Ford:

Is the hybrid of an invasive species easily defined in law?

Mr K Bradley:

It is probably easier to define legally than scientifically.

Mr Meharg:

A hybrid is easily defined in law. Schedule 10 of the 1985 Wildlife Order lists the three species of deer — the fallow, red and sika — and states:

“In this Schedule any reference to a species of deer includes a hybrid of that species.”

Therefore, it is already in legislation.

Mr C Savage:

Clause 14 deals with licensing provisions, and aims at amending those provisions in cases of further qualifications and when a licence can be issued. This is where I would deal with stakeholders' comments about general licences. Some stakeholders asked whether we check licences issued by the Department. Requirements for new licences will be introduced when the Bill is enacted. The Department last carried out a general review of its licensing regime in 2000, so we would be planning to undertake a similar review. There was concern about the conservation status of pest species of birds that the general licence allowed landowners to shoot. The Department will be reviewing that, but that can be done outside the legislation.

Mr Ford:

Are you satisfied that none of the RSPB's points needs to be in the Bill?

Mr C Savage:

The RSPB's concerns can be addressed by the Department's licensing processes outside the Bill. For instance, it asked for a requirement to report on the derogations of the EU wild birds directive. That already exists. There is an annual requirement on member states, including the UK, to report on those derogations, and that happens as a matter of course. However, some of the other concerns can be addressed as part of the licensing process.

Concerns were raised about the proposal to issue licences for the disturbance of certain things for development; typically, that will relate to the movement of badger setts to allow for

development. The Department has been issuing licences for that for some years, but we are seeking to provide a better legal footing for that process.

Mr Ford:

Last week, in its presentation to the Committee, the Talnorty Avian Care Trust (TACT) made a further point, but I take it that you have nothing to add to your comments based on what TACT told us.

Mr Meharg:

No, we are still working with TACT, and we are concerned about what happens to animals when they cannot be returned to the wild. The Wildlife and Natural Environment Bill is all about ensuring that those animals' quality of life is secure.

Mr Ford:

Can I be cheeky enough to ask whether you have a timescale for concluding those discussions?

Mr Meharg:

We have just received information back from the EC zoos directive inspection, and we will follow up on that.

Mr Kinahan:

We did not raise this point last week, but if someone comes across a damaged bird and takes it to TACT because there is nowhere else to take it, and TACT then looks after it, by law, it should not do that. Therefore, what happens?

Mr Meharg:

Under the legislation, there is an exemption that will allow people to look after an injured animal if the intention is to return it to the wild. A difficulty arises if the animal is deemed to be unfit to go back into the wild, because it then becomes part of a collection. That is where the applicable legislation changes from the Wildlife (Northern Ireland) Order 1985 to the Zoo Licensing Regulations (Northern Ireland) 2003.

Mr C Savage:

Clause 15 deals with discharging firearms, and so, from vehicles. To develop the Committee's conversation with Mr Hetherington in the previous evidence session, under the 1985 Order, it is

illegal to shoot deer from a vehicle. The intention of clause 15 is to allow deer to be shot from a vehicle in certain circumstances; namely if the vehicle is stationary. The clause's primary purpose is to assist land managers to control deer populations. Mr Hetherington made a good point when he raised concerns that that might lead to illegal poaching. However, such activity is already unlawful, and it will continue to be so. The intention of clause 15, therefore, is to allow for better management of the deer population.

Mr Kinahan:

Should clause 15 be amended to make it illegal to shoot from public roads?

Mr C Savage:

The provision will be available only to landowners and authorised persons, so, presumably, members of the public would not be entitled to shoot from public roads.

Mr Beggs:

The point was made that the provision would be very difficult to enforce, because, for example, it would be difficult to prove whether a vehicle's engine had been switched on. Would it not be better to ban all shooting from vehicles?

Mr C Savage:

Under the 1985 Order, shooting from vehicles is banned. We are attempting to relax that requirement in order to allow landowners and responsible owners to use the cover of a stationary vehicle that is switched off. I take your point about enforcement, but whether people undertake illegal activity is a separate matter, and it is going to happen in any case, especially if they are on land that they should not be on, or even if they do it from a public road.

Mr Beggs:

Relaxing existing legislation would make it more difficult to gather evidence about whether someone had shot from a vehicle, because that person would be able to say that the engine was switched off and that, therefore, it was OK to shoot. If shooting from vehicles were simply to be banned, it would be possible to gather evidence that shots had been fired from inside a vehicle. My understanding from evidence to the Committee is that clause 15 would make it easier for poachers, because it would give them an excuse. I got the impression that responsible landowners do not shoot from their vehicles.

The Chairperson:

The bottom line is whether clause 15 is needed at all.

Mr C Savage:

Around a month ago, we held a deer stakeholders' meeting at which concerns were raised from the welfare side by the British Deer Society (BDS), about which you heard this morning. However, there was consensus around the table from the 15 representatives of the various interests in favour of the clause. The Department of Agriculture and Rural Development is in favour of the clause because it will assist its operation. However, other stakeholders also felt that it was a useful mechanism, given the big estates that we have. The feeling was that the provision will not necessarily lead to an increase in illegal activity.

Mr Ford:

When Mr Hetherington outlined his views, it certainly seemed to me that a relaxation of the law was not necessarily going to be of any particular benefit. As Roy has just highlighted, anything that has the potential to provide a loophole for poachers is not something that the Committee should be supporting. All that we have on the clause is that NILGA support it and that the BDS, which appears to be the principal stakeholder, has a specific opposition to it. There seems to be no particular reason why the clause as it stands should be supported.

The Chairperson:

We should perhaps reflect on that.

Mr Weir:

I take the point that the principal dichotomy is whether the person who is shooting the deer is authorised or unauthorised. That is really the nub of the issue. At present, is it the case that somebody who is authorised to control deer will stop the vehicle, get out on foot, take the shot and then get back in the vehicle? The issue seems to be getting a bit muddled, and I question how necessary the clause is. Is there something else behind it from a practical point of view?

Mr C Savage:

The only practical advantage it would have is for those responsible for managing deer populations across wide areas of land on which there is vehicular access. It would allow them —

Mr Weir:

What do landowners do at present? Do they stop the vehicle and get out to take the shot?

Mr C Savage:

That is the legal requirement.

Mr Weir:

According to clause 15, one would have to ensure that the vehicle was not moving and that the engine was switched off. There are experts in the field who will know a great deal more about it than I do. However, I am not sure whether clause 15 takes things massively forward.

Mr Kinahan:

Getting out of the vehicle is likely to spook the deer, and, therefore, we end up back at stalking. Equally, I imagine that the same thing happens when the engine is turned off, because there is a change in the noise, and, as a result, the deer knows that something is happening. We have to find a balance.

Mr C Savage:

There is a view that using the cover of the vehicle does assist in the shooting of deer. Although deer can become used to vehicles going across land, they are more wary when it come to individual human beings “at loose”, so to speak.

Mr Beggs:

I understand that the vehicle is useful for providing cover when shooting deer. However, I do not understand whether including the clause is advantageous to legitimate deer farmers or advantageous to poachers?

Mr C Savage:

The Department accepts that point and will consider it.

Mr Dallat:

I cannot believe that I am getting involved in this discussion. However, are the firearms involved — about which I know nothing — shotguns, sporting rifles or Kalashnikovs? Is there any protection for people who may get the bullet rather than the poor deer? Given what happened to a

child in a playground some years ago, is that something that is reflected in the clause?

The Chairperson:

I will bring in Mr Kinahan because he has a particular insight into this. *[Laughter.]*

Mr Weir:

I hope that this is not a plea of mitigation.

Mr Kinahan:

I am friendly with John Hetherington, and he has a licence to shoot deer with a low-velocity rifle. I farm deer, and, from time to time, they have to be culled. I started with three deer and, because they breed well, I have ended up with 47. Given the size of my land, I cannot afford to have more than 50 deer. Therefore, for various reasons, they have to be shot. However, the rifle used is a low-velocity rifle, and that means that the bullet does not travel far. Therefore, it is ideal for shooting deer. A high-velocity rifle is something completely different, and Mr Hetherington would not get a licence for it. The licence that he mentioned was for a low-velocity rifle.

Mr K Bradley:

Schedule 11 to the 1985 Order defines the ammunition and the kind of firearms that one can and cannot use.

Mr Boylan:

It is unfortunate that you cannot keep any more than 50 deer, Danny.

Mr Weir:

If you are deer number 51, you are in trouble. *[Laughter.]*

Mr C Savage:

Clause 16 provides for a new power for the Department to issue licences for the taking of deer during the closed season for specific purposes, such as to protect public safety, the natural environment or property. Concerns were raised around the assurance that every application will be considered fully on its merits, and the Department decided that there were no alternative solutions to the lethal method. There is no other satisfactory solution, so the Department would have to satisfy itself about that before issuing any licence.

Some of the points made in the earlier evidence session suggested that there was a lack of clarity about which deer the licences referred to. The licences refer to those types of deer listed in schedule 10 to the Wildlife Order, which is concerned with protecting three species of deer in particular. Those are the red deer, sika deer and fallow deer. They are protected by the closed season. Although we do not have conservation concerns about those species, we believe that they are an important part of the natural environment in Northern Ireland. We accept that there will always be an issue about whether they are or ever were non-listed species. For example, one of them has been in Northern Ireland since the 1400s, and another species was introduced in the 1800s. They have clearly become naturalised, but it is quite clear to us which deer we are talking about protecting.

Other species of deer were mentioned earlier, particularly the muntjac deer. There have been isolated reports that somebody may have brought one or two of them into Northern Ireland. It is a species that we do not want here, because it would cause some devastation to biodiversity. We are intent on including it in schedule 9 to the Wildlife Order as an invasive species. Anyone who releases or allows such a species to escape is creating an offence.

The Chairperson:

What about the roe deer and Chinese water deer?

Mr C Savage:

Chinese water deer are not included in the Bill, but we are happy to add that species and the roe deer to schedule 9 to the Wildlife Order. Roe deer are strange in that, going back centuries, they were probably the only native species of deer here. However, it has since disappeared. It causes significant damage to forestry. Some interests would like to see those species added to schedule 9 to the Wildlife Order, and we are happy to entertain that notion.

The Chairperson:

Does the Committee need to get back to DARD on its comments on secondary legislation?

Mr C Savage:

DARD is responsible for a piece of legislation called the Destructive Imported Animals Act (Northern Ireland) 1933, which lists certain animals that people are not allowed to import. The

problem with muntjac deer is that there is nothing in law at the moment to prevent people bringing them in and keeping them. If people allow them to escape or release them, they are committing an offence. That may be hard to prove, but we have been in discussion with DARD to see whether the muntjac deer and possibly the Chinese water deer could be added to the 1933 Act, and it has indicated that it is be prepared to consider that.

Mr K Bradley:

It would put off the snares. **UNABLE TO HEAR THIS CLEARLY — PLEASE CONFIRM**

Mr Bell:

I do not want to get caught up in that.

Mr C Savage:

Clause 17 is concerned with making it an offence for anyone to be in possession of an article for the purpose of committing an offence. There was general support for the clause, but some stakeholders want it to be expanded so that someone attempting to commit an offence is, in effect, committing an offence. That is currently covered in Northern Ireland law under the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, so we do not need to amend the clause to include that concern.

The Chairperson:

The Ulster Farmers' Union raised concerns around the breeds of dogs relevant to clause 17.

Mr C Savage:

In our consultation, we gave an example of the type of situation to which that offence might apply. The example given was badger baiting, which may involve a gang of people with dogs. We could not put examples in the Bill.

The Chairperson:

A bit of common sense is needed.

Mr C Savage:

I will deal with clause 18 and 19 together, because they concern police enforcement powers. The police have significant powers under the Wildlife Order, and clauses 18 and 19 enhance those

powers. The Ulster Farmers' Union was concerned about biosecurity issues when the police and others go on to land with equipment to take samples. Some controls are built into the Bill, but I am sure that various pieces of legislation allow police powers of entry on to land to do certain things.

The Chairperson:

The Committee asked the PSNI to comment on the matter. It is drafting a response, which will come to the Committee in the next week or two. We may return to clauses 18 and 19 when that response is received.

Mr Beggs:

Does the issue of biosecurity need to be built into the Bill? I have an uncle in Scotland who is a large pig farmer, and he does not let anyone at all through his farm gate. People who want to enter must take a shower and be sterilised. Only then can they enter his breeding unit. How will the Bill deal with such biosecurity access?

Mr C Savage:

The police may have standard operating procedures for dealing with such issues. I am sure that the police already go on to various pieces of agricultural land. The Department has not checked that with them, but I am sure that the police would recognise such concerns as legitimate. Perhaps the Department can deal with those concerns with the police and outside the legislation.

Mr Beggs:

Everyone was acutely aware of biosecurity during the foot-and-mouth disease outbreak. That has passed, however, and people are now generally more relaxed. Due regard to biosecurity must be built into appropriate guidance.

Mr Meharg:

The Northern Ireland Environment Agency (NIEA), for example, has biosecurity policies in place for when survey work is being carried out or follow-up farmland visits are being conducted. Sprays, and the circumstances under which they should be used, are identified. Agency staff members are told to use sprays at all times.

Mr Weir:

The key issue is the level of biosecurity guidance. There will be circumstances in which the police need to enter under warrant, and they currently do so. If there was thought to have been a murder, the police would not shower and sterilise themselves before investigating. That would be somewhat excessive. Guidelines are necessary. By the same token, I appreciate that, for a routine matter, people cannot just blunder in, perhaps creating more of a problem than that which they were seeking to solve.

Mr C Savage:

Clause 20 will expand on wildlife inspectors' existing powers. It was asked earlier who exactly these wildlife inspectors are. The legislation defines them as people authorised by the Department. The Department has no plans to employ wildlife inspectors who are not from the Department. That should allay those concerns. There was an issue about whether wildlife inspectors should have powers of entry at all. Wildlife inspectors have limited powers under the Wildlife Order, and those powers relate only to certain offences around keeping captive-bred birds for the purposes of registration and licensing. They clearly need to have a power of entry to allow them to ensure that the conditions of the licence are being met.

In the past, powers of entry were a condition of the licence. When we were human rights-proofed, however, we felt that we could not human rights-proof the legislation. That explicit power of entry was needed to allow that sort of activity to continue, and that is the main purpose of the clause.

Mr Kinahan:

Should wildlife inspectors have a minimum level of training so that we know that they have the necessary knowledge?

Mr Meharg:

At present, regional staff members who work with the NIEA are trained before becoming wildlife inspectors.

The Chairperson:

Consideration of clause 20 concludes the evidence session. Thank you for your co-operation.

