Official Report
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DRAFT

Rural Affairs Committee

Comataidh nan Cùisean Dùthchail

Wednesday 4 November 2026

Session 7

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Wednesday 4 November 2026

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RURAL AFFAIRS COMMITTEE
9th Meeting 2026, Session 7

CONVENER

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

DEPUTY CONVENER

*Andrew Baxter (Skye, Lochaber and Badenoch) (LD)

COMMITTEE MEMBERS

*Dawn Black (Angus North and Mearns) (SNP)
*Finlay Carson (Galloway and West Dumfries) (Con)
*Jamie Langan (South Scotland) (Reform)
*Laura Mitchell (Moray) (SNP)
*Emma Roddick (Inverness and Nairn) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Katrina Brown (James Hutton Institute)
Malcolm Combe (University of Strathclyde)
Professor Peter Higgins (NatureScot)
Donald MacKinnon (Na h-Eileanan an Iar) (Lab)

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs Committee

Wednesday 4 November 2026

[The Convener opened the meeting at 09:07]

Decisions on Taking Business in Private

The Convener (Mark Ruskell): Good morning, and welcome to the ninth meeting in session 7 of the Rural Affairs Committee. Before we begin, please ensure that all electronic devices are switched to silent.

Our first item of business is consideration of decisions on taking in private items 5 and 6 and on whether consideration of a draft report on the rural support plan should be taken in private at item 7 and at future meetings. Item 5 is consideration of the evidence that we will hear on the outdoor access inquiry, and item 6 is consideration of a draft letter on pre-budget scrutiny. For clarity, I will ask two questions. Do we agree to take items 5 and 6 in private?

Members *indicated agreement*.

The Convener: Do we agree to take item 7 in private at this meeting and at future meetings?

Members *indicated agreement*.

The Convener: Our second item of business is a decision on taking next week's agenda items in private. We seek to agree to that today in order to avoid having to go into public session for a very short time next week. Next week's items, which members are invited to agree to take in private, are our discussions on the committee's objectives and its work programme. Do we agree to take those items in private at next week's meeting?

Members *indicated agreement*.

Subordinate Legislation

Scottish Land Commission (Number of Land Commissioners) Regulations 2026 (SSI 2026/284)

09:08

The Convener: Our third item of business is consideration of a Scottish statutory instrument. It was laid under the negative procedure, which means that it will come into force unless the Parliament agrees a motion to annul it. Such a motion has been lodged by Donald MacKinnon, who joins us. Given that the motion was lodged recently, the committee will not consider it in full at today's meeting; we will bring it back for consideration at a future meeting. However, given that Donald is here, I invite him to offer some brief comments on why he has lodged the motion to annul. After that, I will move on to comments from members of the committee.

Donald MacKinnon (Na h-Eileanan an Iar) (Lab): Thank you for allowing me to attend and speak to the committee today. This week, I lodged a motion to annul the statutory instrument laid by the Scottish Government to reduce the number of land commissioners from five to four, and I appreciate the opportunity to explain why.

Only last year, the Parliament considered the structure of the Land Commission, among other matters. Following those deliberations, MSPs passed the Land Reform (Scotland) Act 2025, creating a new land and communities commissioner in addition to the existing five land commissioners and the tenant farming commissioner. As far as I am aware, the Government made no attempts at that time to reduce the number of land commissioners, so why is the Government proposing to do that now? We do not know.

In my opinion, the Cabinet Secretary for Climate Action and Rural Affairs has failed to explain why the decision has been taken not to fill the current vacancy on the board. I am particularly concerned that the only explanation being given by the cabinet secretary is a financial one. References have been made to public service reform in correspondence to the committee and in the policy note that accompanies the SSI. Is it now Scottish Government policy to not replace board members of a statutory body if a member resigns, in the name of public service reform and saving money? If that is the case, it is very significant and it highlights the need for scrutiny of the proposed change by the committee and the Parliament.

I am also concerned that the change will make it harder for the Government to fulfil its statutory duty

to take “every reasonable step” to ensure that a member of the Land Commission’s board is a Gaelic speaker and that all the skills that are listed in the Land Reform (Scotland) Act 2016 are represented on the board. I do not think that adequate consideration has been given to how the change will affect the function of the Land Commission and its ability to deliver its statutory functions. The policy note refers to the Land Commission chair and the chief executive being “informed” instead of consulted about the decision.

I urge the committee to annul the SSI when you come to consider it.

The Convener: Thank you, Donald. Are there any comments from members?

Andrew Baxter (Skye, Lochaber and Badenoch) (LD): I thank Donald MacKinnon for his straightforward explanation as to why he lodged his motion to annul. I agree with him that the Government’s introduction of this regulation proposing a reduction in the number of land commissioners is not entirely justified by either what the cabinet secretary has said or the policy note that accompanies it. There are lots of unanswered questions, including what the financial saving is, which I suspect is too minimal to justify it under public service reform.

Our papers indicate that the Land Commission has discussed the regulations at board level, but we have no indication as to what the board’s opinion really is and whether it has the capacity to absorb the reduction in commissioner numbers to enable it to undertake its work under the 2025 act. When we questioned Hamish Trench last week about the loss of a Gaelic speaker on the commission, he indicated that they were looking to fill that gap in the future recruitment of a land commissioner but that it could be some time away, leaving the Land Commission without Gaelic input, which is so important, as he indicated. Gaelic speaking and land issues are inextricably linked. Those are my views on the issue.

There is certainly an opportunity for the committee to ask the cabinet secretary, the Government as a whole and probably the Land Commission for further information when we consider Donald MacKinnon’s motion.

The Convener: As there are no further comments, are members content with the proposal that we write to the Scottish Government and the Scottish Land Commission, seeking further information? There will, of course, be an opportunity on 18 November, Donald, for you to come back. Are members content to delegate authority to me to draft a letter that reflects the concerns and comments of the committee?

Members *indicated agreement*.

The Convener: I will suspend the meeting briefly to bring in our panel of witnesses.

09:14

Meeting suspended.

09:16

On resuming—

Outdoor Access

The Convener: Agenda item 4 is the committee's first evidence-taking session for our new inquiry into outdoor access in Scotland.

The Land Reform (Scotland) Act 2003 gave people rights to access most land and inland water, as long as they did so responsibly. Those rights are known as Scotland's access rights, and guidance on enjoying them is set out in the Scottish outdoor access code. The committee agreed to undertake this inquiry, noting that it has been 22 years since the code was established and that many changes to how people access land and water have emerged since then.

The committee has put out a call for views out on this topic, and we are very grateful for the many hundreds of responses that we have received. The call will be open until 23 November, if anyone watching these proceedings would like to make a submission.

We begin our parliamentary inquiry this morning with evidence from a panel of academics. I welcome to the meeting Dr Katrina Brown, senior researcher at the James Hutton Institute; Malcolm Combe, reader in law at the University of Strathclyde; and Professor Peter Higgins, professor of environmental and sustainability education at the University of Edinburgh and a board member of NatureScot. Before we begin, I remind the witnesses that they do not need to operate their microphones, as our broadcasting team will do that for them.

I will open the questioning by asking what socioeconomic and environmental impact you think the Scottish outdoor access code has made over the past 21 years. Professor Higgins, can you start, given that NatureScot has overall responsibility for outdoor access?

Professor Peter Higgins (NatureScot): With regard to impact, I should say, for context, that I was involved with the 2003 act and in crafting the outdoor access code. At that time, access was broadly understood as a contested area when it came to how people enjoyed their time in the countryside, and the act, as you have just said, made it a legal responsibility to ensure that that could happen. Since then, the number of people accessing the countryside has vastly increased. Some might attribute that partly to Covid, but the number was already increasing.

The contributions to the economy are very significant, amounting to £1.4 billion and 130,000 jobs, and the benefits to health and wellbeing have been very substantial. There has also been a sense of the nation regaining an understanding of its sense of place with regard to the countryside. After all, we are a country with an amazing landscape. Broader than that, the code has enhanced Scotland's international reputation, across the United Kingdom and overseas, as a place that welcomes visitors.

I could say more, but that would be my first take.

Dr Katrina Brown (James Hutton Institute): One of the biggest impacts is that, with the cultural and practical shift towards having those shared rights and responsibilities, some things have become normal that were not normal before all of this happened. Having that clarity of entitlement as well as the supporting protocols on both the management side and the taking access side has shifted everyone's energy and capacity from tensions about whether people should be in a place to considerations as to how we can coexist in it. What are the mechanisms for doing that? How do we learn to rub along together so that we can gain different benefits? Many such aspects have become almost ingrained to the point that they are invisible, and that is a massive achievement.

The Convener: You mentioned the change. What were things like before the access code came in?

Dr Brown: I can speak to the cultural shift, in particular. There were many dynamics of an us-and-them nature, with people not always knowing whether they should be in a place or being worried about confrontation. Not only did that sort of thing, and the associated stress, affect emerging benefits and the health and wellbeing of both sides, including management, but there was no basis upon which to build relationships, mutual understanding and all the things that go into creating those norms, which allow different parties to understand what they want out of this and allow them to meet all the objectives.

Malcolm Combe (University of Strathclyde): My own story is perhaps slightly different, because I have, to an extent, always known access rights. I actually did my undergraduate dissertation on the 2003 act, though it was on the community right-to-buy provisions rather than access rights, and, when I was a practising lawyer, those access rights existed.

Perhaps I can offer a personal story. I grew up in Renfrewshire and, around the time that I was doing my dissertation, I was cycling on the cycle path between Kilbarchan and Lochwinnoch. When I got to a little folly that was off the cycle path near Howwood, I pulled up my bike and was about to go over a fence and walk up to it, when an older gentleman who was passing said, "Are you allowed to do that?" I said, "Well, yes, I am,

because I know about the land reform act." It was still early days, and I was perhaps a bit of a bellwether in that I knew the rules quite well at the time. I think that there is still an element of people getting to know the rules and adjusting to that situation.

I also remember my late colleague up at Aberdeen, Professor David Carey Miller, talking about the time, before access rights, when he sought access to Loch Muick. He happened to go off the public right of way and a land manager said, "You can't be here." At that point, the land manager was correct, and David had to go back to the public right of way. Now, there would be more of a discussion about what is allowed and what can happen. I suppose that that would be my main observation with regard to that side of things.

Obviously, the access code now has a certain primacy. People know about it and refer to it, and it is good to have it as a central reference point. It is generally quite user friendly. Certain points could be honed, and we might well come to that, but, just as a means of rebalancing or resetting things and giving people an idea of what they can and cannot do, it has been a positive move.

The Convener: How have the access authorities adopted their new role and discharged those duties in the past 21 years? Katrina, do you want to start with that?

Dr Brown: There have been marked phases of evolution in that. In the early days, there was lots of learning. At that time, there was also lots of investment and wider infrastructural resource in relation to getting things up and running and communicating the messages of the code. For example, there were more access officers in those access authorities than there are now.

Over the piece, we can point to examples of where some authorities and local access forums and so on have worked well and have done lots of adaptive management, as well as to other examples of where it has been difficult to get off the ground or a little bit patchy.

Overall, in that time, a huge body of learning has happened about what works well. However, there is also an ongoing challenge. Access authorities and access forums and so on support the social, cultural and relationship building infrastructure that makes things such as the code work in practice. However, they also need to be supported, and, in some cases, we can see a little bit of tailing off. There has been a bit of pressure on those access authorities and local access forums, where they exist, in relation to their being able to deliver that.

Malcolm Combe: I should immediately start with the disclaimer that I have huge respect for a lot of the work that goes on with access authorities. They have the Scottish Outdoor Access Network, which I have spoken at in the past, and a lot of great work is going on. However, I tend to hear only about the flashpoints, such as when a court decision comes along, when a local reckons that something is not happening or when there is a resourcing issue.

Obviously there is the overarching duty, under section 13, to champion access rights—that is how I tend to explain that—and there may have been moments when that has fallen off the radar slightly. There was a judicial review of a local authority that was to do with its not taking full account of the 2003 act rights when it came to making a planning decision. I could tell stories about where things maybe have not gone quite as right as they could have. However, because of the particular role that they have under section 14, as enforcers, it is often the access authorities that will bring a matter to court, because members of the public might not have the resources to do that. Such matters are currently dealt with in the sheriff court, but they will soon be dealt with to the Scottish Land Court. That brings to bear all the access to justice and litigation considerations for local authorities, which, with regard to their use of public money, have strategic decisions to make about what enforcement notices they will serve and whether, if there is an appeal, they will stand up to that.

The experience is broadly positive with some highlights, shall we say, and I am happy to speak to them as required.

Professor Higgins: My colleagues have spoken very eloquently already, but I can perhaps give a broader perspective.

The national access forum is, of course, the responsibility of NatureScot, which has statutory duties in a range of different areas. However, as I understand it, it does not have any particular enforcement-related duties with regard to local authority access fora. That leaves the national access forum operating in an advisory capacity, and it promotes access very effectively.

If we think about the range of local authorities in Scotland, we see that each of them has very different access-related issues to deal with. It is difficult to give an overview, because there is no systematic analysis of how they are performing in different ways. Some of the local authority access fora are very effective at promoting access and dealing with issues as they arise, whereas others, as the committee has just heard, are less so.

I have a concern about the way that things will work out with regard to the national performance framework and, soon, the merging of local authorities. We are at a point where this may all change. The good practice might continue to exist and the less good practice might be improved, but

the outlook is uncertain. Looking to the future, which is what this committee is at least partially interested in, it is important to give that some thought.

09:30

At the moment, a landowner or someone who feels that they are being denied recreational access will raise an issue, and, that leaves open the question of whose interests we are dealing with. It would be better if we were thinking more nationally and strategically about ensuring access as a public right for all, including those who do not really have voices—by which I mean people who are not able to argue their case in the way that people like us are able to.

It will be important to ensure that local authority access fora are thinking about people who do not have access to the normal ways of engaging in these discussions and debates. For example, who will respond to this committee's call for views? It will be groups of people who are arguing against other groups of people, rather than the vast numbers of people who are enjoying access. For me, that is a key element of what the national access forum and local access fora might do in the future.

Dawn Black (Angus North and Mearns) (SNP): I want to ask a fairly general question, in order to tease things out and develop some of the themes that we have already covered.

The key words in the access code concern the right of responsible access. However, although the public might know of that right, do they truly understand what that means? I would say that the majority of people exercise responsible access, but the reality on the ground for the access authorities, not only in remote rural areas but in all rural areas and in green spaces near villages and towns, is that people do not necessarily understand the responsibilities that they have as individuals. There are a lot of issues that are common across those areas, especially since the Covid pandemic, but before that, too. From my background as a councillor in Aberdeenshire Council, I know of issues such as people lighting fires in inappropriate places—near woodlands, on grass and so on—toileting in open spaces and near watercourses, and abandoning camping gear after a night away and leaving it for someone else to clear up.

There are also issues associated with the increase in the number of motorhomes and camper vans. I stress that I am not talking about all camper van and motorhome owners—actually, I think that the problem involves the proliferation of people hiring those vehicles who do not necessarily know the code, so they do things such as dumping disposable waste and grey water in inappropriate places. Those are the issues on the ground that local authorities, as access authorities, are trying to cope with, and they relate to capacity, because local authorities generally do not have enough rangers who can go out and monitor what is going on and enforce the code, as they are all busy doing education in schools and so on. Police Scotland does not have the ability to send officers out to do that either, unless there is an absolute emergency.

I want to tease out your views on the role of the access authorities as educators that can ensure that the things that I have outlined do not happen. How do we make sure that people understand what the code means, so that the authorities do not have to deal with those issues week in and week out?

Malcolm Combe: You raise some really good points. I could talk about the terminology around the right of responsible access. Some people prefer the phrase "right to roam", and there is sometimes quite a healthy dialogue around that. I quite like talking about responsible access and responsible management—there are responsibilities on that side, too—as a teaching aid, because that shows that there are qualifications around access and that it is not a binary situation. However, the legislation itself just uses the phrase "access rights", so it is even less stipulatory.

You have mentioned issues around inappropriate campfires, leaving waste and so on, and such activity would clearly not constitute responsible access. At the moment, the access code caters for that, so the issue is to ensure that it is promulgated properly, so that we get the message out there. I remember seeing an advert for the Scottish outdoor access code on the back of a Lothian bus about 20 years ago, so I know that there have been advertisements and things pushing the message out there. Again, as an educator, I am all for that.

There is also a need to be clear about what is and is not part of the access code. You mentioned motorhomes. A motorhome itself would not be covered by the code, as it is a motorised vehicle, but what people might do when they are away from the motorhome or, indeed, disposing of stuff from the motorhome could be problematic.

There is a need to get the message out there, so that people understand the exact scope of the code and the qualified nature of the rights and the responsibilities that come with access. However, there is an issue about how to do that. Even I sometimes struggle when I am talking about the different access rights that can apply in Scotland, such as those concerning old public rights of way

and common-law as well as statutory rights of access. It is not always easy to communicate all of that quickly, but I am all for whatever can happen to help that.

Professor Higgins: Thank you for outlining the background to your question.

The existing situation under the law, particularly with regard to the code, covers everything that you have talked about. Essentially, however, it does not mention some of the areas that you have raised, which are actually issues that concern the police, if they involve any kind of criminal damage, or the local authority, if they involve broader areas such as local byelaws. Therefore, the question for me is to do with how we develop a culture in which the rights and responsibilities around access are understood by people on both sides of the discussion: those who are benefiting from and enjoying access to the countryside—I do not like to use the word "taking", as it implies that someone has to give it or even be forced to do so—as well as those who manage the countryside.

I will give you a few pointers about how to do that. Previously, at the Net Zero, Energy and Transport Committee, I argued that the issues around access to the countryside should be a part of Scottish children's education from the early years onwards. I say that as someone who has spent much of their professional life in education.

Another issue is to ensure that there is a broader understanding of the roles of rangers. Malcolm Combe mentioned that they have a range of responsibilities, and you noted that many local authorities cannot afford to pay for enough rangers to do the jobs that need done in the countryside. Trying to get people who are on both sides of the discussion to work together requires a lot of time. I got my figures wrong earlier. I talked about 130,000 jobs, but that figure relates to tourism in general, and I meant to say 39,000. However, the figure of £1.4 billion was correct, so surely we can try to get this right in terms of making sure there is provision to look after this key issue that we are talking about today in the context of what it brings into the Scottish economy and what it does for Scotland.

Another issue relates to outdoor education. A few months ago, I was sitting in this committee room, talking about the legislation that became the Schools (Residential Outdoor Education) (Scotland) Act 2026, which, assuming that everything in it comes to pass next year sometime, will give all young people in Scotland the opportunity to go on a residential experience. It should be a core expectation of those providers that they deliver access education within the work that they do.

One final thing is that landowners can be forgiven for not knowing that they do not have some kind of universal right to keep people out of a large area of land. Ownership of that land is often marketed as some kind of privilege. The agencies that sell estates in Scotland—I am talking about estates, now, rather than land around, say, Edinburgh or Glasgow to which there is local access—often market their products as being exclusive, and there should be an expectation that they include in their particulars a statement of what access actually means and what the law actually says, which would change the perceptions of some landowners. I could share a number of anecdotes relating to discussions that I have had with landowners and people who own fishing rights on rivers, who say that they did not know about access when they bought a beat. I tell them that I could have told them. People have a right to know.

Those are things that we could do that would be advisory and supportive in a range of ways. I hope that that helps.

Dr Brown: I will make two points. The first is on access authorities being supported in their role not just through being given the resources to do what they are there to do, but through wider joined-up thinking with other functions of local authorities and more broadly. Outdoor access is a fundamental part of health and health equity in Scotland, and some of the growth in outdoor participation has come from more diverse audiences. Research has shown that the more that people feel included and have a sense of belonging and a sense of genuine citizenship, the more responsible they can be. The opportunity to bring in those skills and that knowledge comes when facilitating wellbeing and broader interventions; it is not just at the access authority points of contact, such as rangers.

The second point is that it is clear that where people get their expectations about what the outdoors can do for them and about the experience that they might have there has changed. In some ways, it has become channelled through commodified sources and social media, and through tourism opportunities. One of the challenges is to bring knowledge of what is responsible into those same conduits through which people are getting ideas, inspiration and opportunities, and access authorities and others could be working more in tandem with those channels. We probably did not consider that much when the bill that became the 2003 act and the code were first developed. The code sets out what is expected of people exercising access rights and of managers. There is less about what happens with promotion and responsibilities, including the responsibility for ensuring that messaging is code compliant.

Andrew Baxter: I want to challenge the notion that all that we need to do to address the problems that Dawn Black so ably laid out, which all of us around this table who have received complaints from constituents on the issue have been asked to address, is teach children in our schools about responsible access. I am not dismissing that, and I consider it to be important, but doing that is pointless unless it is backed up by the adults in their lives outside school.

I fear that, over the past 20 years, we have baked in an attitude. Malcolm Combe said that people know about the access code, but I am not sure that they do. If I were to talk to someone I saw jumping over a fence, as you were, Malcolm, all those years ago, and ask them what underpins their right to do that, some might point to the Scottish outdoor access code or to the Land Reform (Scotland) Act 2003, but I am pretty sure that most would say, "I have a right to roam." It seems as though we have created a culture, perhaps inadvertently, in which people's attitude is that their right to roam trumps everything, including the code. I am sure that many of my colleagues can point to that attitude—they might even have challenged people themselves.

To change the behaviour of adults who are causing those problems now, should we prioritise targeted engagement or resource a much more visible presence across our country? Does that need to be backed up by meaningful enforcement, and not necessarily through Police Scotland?

09:45

Professor Higgins: I would not say that education in schools is the only solution, and I did not say that. There are a range of ways in which we must deal with the issue, and it requires broader engagement.

I take some issue with your concern about the phrase "right to roam". The original idea was that there were customary traditions of access to the countryside that ranged across Scotland, including transhumance and so on. We have that cultural understanding, although it has been lost, particularly in the cities.

We need to address the issues in multiple ways, and they need to be resourced, as has been said already. We do that through broader engagement with adults. You are right that damage is done by a range of grown-up adults, but bear in mind that the 2003 act is 23 years old and some of those people have no idea that it is there or about the outdoor access code. It is profoundly important to have ways of trying to get it into the cultural norm, because we would then have a basis for discussion and for moving things forward.

On enforcement-related issues, the local authorities already have those opportunities. Generally, they do not have the resources to ensure that people behave properly in appropriate places. Your colleague mentioned fires, and there are issues to do with toileting and so on. All of those issues tend to be more in the urban fringe than anywhere else. Again, there is a resourcing issue and a question of where to focus.

I do not know whether any members have recently been to the lake district, Snowdonia or the peak district, but you will find precisely the same issues in those places. Those are absolutely nothing to do with the presence of an access code and a land reform act, because those do not exist south of the border and the issues are there anyway. It is about public understanding, public behaviours and, in my view, the fact that we have not built in what it means to be a responsible citizen in this country in the ways that we should.

Dr Brown: There is no doubt that enforcement mechanisms need to be adequately resourced and targeted or that they cannot be the only thing. We know from research that, if people do not understand or take on board why they are being asked to behave in a certain way, they might find ways to do things at different times or just go a little bit beyond where a ranger might be. In part, that is an argument for having a wider ranger presence, but we also need to look at good examples. In places where there have been issues, land managers and communities of place and of interest have worked together to understand why the irresponsibility is happening and to find win-win situations.

One example is the capercaillie project in the Cairngorms, where mountain bikers and land managers came together. Historically, they had definitely been on two different sides and were not people who would talk to and understand one another. However, they came together, busting a lot of assumptions that they had about one another. The land managers, recognising that they could not police every person and place, said, "Let's do it a different way. Let's work with this group, and then they will have legitimacy in their community of practice and place."

In that case, the messaging was supported by infrastructure that helped to find solutions, but it was also supported by messaging from people in the community who put messages out through social media and other channels. In that example, being responsible was something that people were told to do by others, but it became a bit more cool to care. People thought, "We're mountain bikers and we can be rad, but we can also look after this place, the wildlife and forestry management interests—we can have it all." The enforcement

mechanisms are there, but that approach achieved something broader and more lasting.

Malcolm Combe: Like Peter Higgins, I did not say that it is just about schools and education. I have written about problems such as dirty camping, or however we describe it, and I know that there are clearly issues. We know that, sometimes, when people present something as coming under a right to roam and pretend that it is unqualified, that framing can be problematic. However, conversely, as Peter Higgins has alluded to, the term "access taker" is problematic from a different perspective. The English language maybe just does not quite capture it. Indeed, the legislation talks about "exercising" rather than "taking". So, yes, there clearly are issues.

Without meaning to be glib, I suggest that you can educate people about the criminal law and have campaigns about, for example, drink and drug driving, but crime still happens. We want to find different ways to get messaging across. I work in higher education and I have friends who work in primary and secondary education. Any other way to get the messaging out there, including to adult learners, is fantastic. However, that will just be part of the answer.

I have sympathy with the idea that there could have been a bit of an overcorrection in the immediate aftermath of the legislation, with people maybe going a little too far. The same possibly happened during the pandemic, when the pressure cooker had built up and there were problems. We can acknowledge that.

Peter alluded to what is happening in other jurisdictions, such as down in England. Conversely to that, in Scandinavia, where there is more of an outdoor culture and there is a hutting tradition, although some might say that people are picking too many lingonberries up there or whatever, and there might be other particular problems—I am not sure—I am not aware of the same drama on outdoor access. That is perhaps because people have more of a tradition—there is the friluftsliv in Norway and the allemansrätt in Sweden—which is more culturally embedded. Maybe we are still in a time of transition, even though it is 20 years since the legislation was introduced and people think of it as having been in place for a while. Maybe we are still adapting and it will take a bit more time. I am not sure how long it will take.

The Convener: I want to ask about guidance for local authorities. I see dirty camping and abuse of rights, but I also see concern among people who are being denied access, who look to their local authorities to enforce their rights. We have had issues around Glen Lyon, which have been in the press. Are access authorities clear on how to perform their functions? Is there a need to update the guidance to local authorities?

Dr Brown: There are undoubtedly things that we have learned that it would be helpful to have in guidance, and we have talked about some of those. Perhaps we will talk more about some things that are different now, with technological change, social media change and so on. There might be things to update on that, but many of the issues that have happened have been to do with the resource sometimes being inadequate to practically fulfil the functions. People know what to do, or what can be done and what process to follow, but they still need the resource to do it.

Malcolm Combe: The guidance is a little dated. I have been very subtly trying to google the date on which it came out, because I cannot remember it off the top of my head, which is a little embarrassing, but a refresh might be useful.

On the point about specific roles, I think that organisations know what they need to do, but there might be issues at certain times in getting the matter to the relevant person's desk and ensuring that people across an organisation as big as a local authority or a national park authority know that access rights are relevant to a range of decisions that they could be making. They should ensure that that role is not overlooked among their other important statutory functions. In that sense, there could be a bit of a culture shift, but I would not overstate that, because I think that organisations are generally doing okay.

Professor Higgins: I see no real issue with NatureScot, through the national access forum, undertaking a soft rethink of the guidance. That would be done in an advisory fashion. In particular, it is necessary to reinforce the expectations of local access fora and others in this broad discussion.

We should consider the matter in the context of potential local authority mergers, because it will just get lost if we are not careful. In that sense, we should reinforce the point that there is guidance and that people need to take heed of it. Nothing in the law, the code or the guidance is new and is not already taken care of in those ways, but it is important that we reinforce the idea that that should be the expectation.

You could find plenty of examples of local authorities taking down signs that say "No access here" and people then putting the signs back up. Quite a lot of resources are required not just to take down the signs but to deal with the necessary discussions. It is difficult for local authorities to find the resources for that, but it is important. A national overview would be helpful in that regard.

Finlay Carson (Galloway and West Dumfries) (Con): We have somewhat moved on from the

point that I was going to make, but I am not sure that the outdoor access code played a role in the development of culture. Twenty-one years ago, a different cohort of people accessed our countryside. As Professor Higgins touched on, it is about responsible citizenship and whether we need a code. Being a responsible citizen as you go into the countryside is no different from being a responsible citizen when you walk down Sauchiehall Street, for example, in relation to the dumping of toilet waste or whatever.

Is it not the case that Governments do not like legislation that reviews or revisits things? However, there has been considerable change after 21 years. It is not that the code is not right any more, but some bits need to be clarified. Foil barbecues were probably not sold for £2 in every shop 21 years ago, we now have drones and more motorised vehicles and camper vans, and Covid resulted in a huge increase in the number of dogs that people have. Is it more about ensuring that there are regular reviews to address some of our modern issues? That would also have a role in raising awareness.

To what extent has the code worked? It could be argued that it worked and continues to work, but any code needs to be refreshed regularly.

The Convener: We will come back to the issue of how access has changed, because another member would like to ask questions about that, but the witnesses can respond to Finlay Carson's other comments.

Malcolm Combe: We should remind ourselves that, as is set out in sections 2 and 3 of the 2003 act, the code has a statutory role in setting out what a sheriff must have regard to if there is a dispute about responsible access or responsible management. Fundamentally, the code must be a usable reference point if and when a flashpoint emerges, but it also has an important educational function in getting the message out.

I have a lot of sympathy for the idea that, 20-odd years on, there are things that just need to be caught up with. Indeed, I am on the record as having highlighted certain issues, including technology such as e-bikes and drones, the foil barbecues that you mentioned and what we might call more professional dog walkers. I am aware of these things, and people contact me about them, because of the work that I have done in this area.

10:00

The difficulty is that, when you carry out a purely updating exercise, people with good intentions, or otherwise, will always try to hijack it and do something else. You get that when you consolidate any law; it is just one of those things, and it is just a matter of managing it appropriately. I would say that this consultation has been framed in an appropriate way by saying, "Look, we know that access rights are here, so let's look at what we can improve." In that sense, it is a useful exercise.

As for how regular any review might be, there are other areas where you get five-yearly reviews, but, for me, that might be too regular. However, I am certainly not agin the idea of reviewing a document like the access code while being sympathetic to its definite statutory function as a document that a court would have to have regard to.

Finlay Carson: I am conscious that other members will want to ask about how the code can keep pace with things, but my question is this: did it set out to create a culture? After all, if that is what you are doing, you do not have to be specific about whether it is responsible to, say, take a motorbike into a peat bog or have a barbecue. It is about the whole culture instead of its being directed at one specific thing. Has the code been successful in creating that culture?

The Convener: Do you want to respond, Peter?

Professor Higgins: Mr Carson has framed this beautifully, if I may say so, We already had that cultural understanding, to some degree, but it was among those people who were recreating in the outdoors anyway, rather than the people of inner city Glasgow or wherever. Those people had no idea. When I was giving evidence during the development of the land reform legislation, the convener of the committee that I was giving that evidence to—the Justice 2 Committee—said, "Can you explain to me what this will mean for the citizens I work with in the centre of Glasgow?", and I said, "It will give them a sense of their cultural heritage, an understanding of their place within Scotland and, no doubt, many other benefits, too." Therefore, I think that you are absolutely right to frame it in this way. Given that, we have to be careful about what we might lose if we are too draconian about the ways in which we might reframe things.

That brings me back to the point that the code—and the original act establishing it—specifies what you can do; it does not specify a whole range of things that you cannot do. The more you specify the things that you cannot do—fly drones, for example, or leave your toilet waste behind—the more you diminish that sense of responsibility when it comes to exercising your rights.

The countryside, as Malcolm Combe has just implied, is not the only place where such issues exist. I think that a review process is perfectly fine, but I would be very careful not to say, "You must not fly drones or leave your toilet waste behind." Mechanised bikes would be a really good example of something that is environmentally damaging

and that, in fact, contravenes a whole range of different elements of the work that NatureScot and many landowners are doing to restore the natural heritage out there. The more inclusions about which you have to say, “These are the things you can’t do,” the more complex it becomes.

It also reduces cultural understanding. Malcolm Combe referred to friluftsliv and allemansrätten in the Nordic countries, and, having spent a lot of time working with colleagues there, I know that they have become cultural norms. They mean that when children walk out the door, they know what to do in the same way as children in this city, when they walk out the door, know what to do when crossing the road. I realise that not everybody understands what the revised highway code says, but that is the kind of citizenry that you want, if I may say so.

Dr Brown: The code is a framework for norms in which we can develop, maintain and adapt the culture that we have been talking about. To understand that, we need not only to review the code but to look at what the code does and at all the various points at which it has agency and influence over what happens. That is partially through the formal legal process; it is also through discussions in an access forum and informal discussion between land managers, people exercising access rights and access authorities. It might even be through developing signage. If it is setting norms, a person exercising their rights might pull up a friend, colleague or family member and say, “We have something to lose here—we have an entitlement—but to keep it, and for it to be valid, we need to do the right thing.” That is when the norm and the culture kick in. The more that happens, the less we need more coercive forms of enforcement, because we are doing it through social regulation, too. We have a piecemeal understanding of the ways in which the code has that practical leverage, but we do not have any systematic understanding of it, and it would be useful to have that.

Emma Roddick (Inverness and Nairn) (SNP): Some land managers in Inverness-shire have raised the fact that there is a trend of people believing that the route that they are following, often through an app or a website recommendation, is safe for them to use, so they do not see signs that tell them otherwise. How should land managers respond to that trend? Is there any more that we need to do from a policy or legislative perspective?

Professor Higgins: I am laughing because I am thinking of an instance some years back, when a student from our master’s programme was over on the west coast and walking off a path. She was approached by three gentlemen—note the “she” and the three gentlemen—who asked where she was going. She said, “I’m going up there.” They said, “But the route goes that way,” to which she replied, “I know that, but I’m going up there.” They said, “You can’t do that, because the Munros book says that this is the way up.” She could not understand what they were talking about and they could not understand her, because they were following the route.

It is really important that we go back to the notion that you can walk anywhere you like as long as you do not do any damage and so on, and that no hindrance to that is allowable, apart from in certain circumstances. If people do not have the information, they will be unable to respond accordingly. For example, there are plenty of routes on the Walkhighlands website where people will say, “This is the way I’ve gone,” and therefore people follow that route. There is no mention of core paths on the Ordnance Survey maps, but there should be. I was in the library yesterday, and there is a big book all about the core paths of East Lothian but you cannot find them on an OS map. That is the kind of information that needs to be out there. A land manager in that situation can have only an advisory role—they can talk to people only as a fellow citizen—but they can say, “I know this place. This is where I work. If I were you, I would go this way and not that way.” However, they cannot say, “This is the route,” or, “This isn’t the route.”

As Katrina Brown said, if a healthy discussion takes place, it helps both parties to understand where the other person is coming from and why they are saying what they are saying. If someone says, “I don’t want you to go that way because a stalk is going on,” that is perfectly reasonable, and the person can take the advice or not, but there is a real difference between advising and saying, “You can’t do that” as an element of what is in the existing legislation. I hope that that helps.

Malcolm Combe: Peter Higgins gave some good examples. Without meaning to derail us a bit into popular culture, a few years ago I wrote a blog post about the Pokémon Go trend that led to electronic projections of Pokémon across landscapes. That had implications, because suddenly people went in hordes to an area where that might not have been appropriate. People who are putting out electronic information that we cannot see in the real world have a certain responsibility not to mislead people or do things that are inappropriate. However, how does a land manager deal with it on the ground? Obviously, a land manager will want to avoid occupiers’ liability issues and suchlike and will put up appropriate signage, but that is the bare minimum. They will also need to allow for proper interaction and explaining to people who are following a route that that route might not be sacrosanct.

There might be other things that could be done from both perspectives. For example, someone could say, “You must stick to the route, because the guidance is sensible,” as in the case of the three gentlemen who spoke to the person who was enjoying a trip. Conversely, if someone is entitled to move off a track and there is no particular exclusion under section 6 and there is no land management need, at that moment, for someone not to be there, that should be respected. It is a classic give-and-take, live-and-let-live situation, subject to the modern twist of the role of technology in facilitating that, which I would say is almost a separate issue to manage.

Dr Brown: A challenge that land managers face is the fact that people are finding out about routes in an increasingly decontextualised way. In the past, people were more likely to find out about routes by word of mouth or in such a way that they would be made aware of contingencies. People with local or immediate knowledge of a route might have said, “Actually, the ground is very wet just now—that’s not a good idea.” That happens less if people get information through certain channels.

The other thing that is happening as a result of the use of mapping apps and so on is that people are able to curate their route and their expectations of it much more tightly. An app might give them an expectation that a particular route will take them an hour, so that is what they will allow, because they have to get back for something else. I think that land managers need to take on board and become familiar with such expectations and plans, understand where they come from and, as far as possible, take part in the conversation through those channels.

For example, with apps such as Strava, there are local moderators and there are examples of local exercisers of access rights and managers having had what is shown on the map changed temporarily or on an ongoing basis because of particular issues. There are ways to exert an influence, but it is a question of being aware that all of that is going on.

Emma Roddick: The number of formats in which information is provided makes that hard. People have really struggled to have changes made to, for example, Pokémon Go when a PokéStop has been set in the middle of a capercaillie lek, or when there is shooting going on around a trail that has been used on an annual basis that would put people at risk. People might have such confidence in the information that their phone is giving them that they might not be aware of what is going on around them. Should providers of routes have more responsibility? Should there be more mechanisms to enable us to say that a particular route is dangerous or that following it would put at risk the biodiversity efforts that we are putting a lot of time, money and effort into?

Professor Higgins: I absolutely agree, but, in essence, we are dealing with the social media aspect of the issue. Katrina Brown’s point is brilliant. The decontextualising of the information used by people who are enjoying their access and the people who are managing the land is a significant issue in that there is no moderation, as you said. That is exactly what we see with social media in a range of other areas.

I would love there to be some way of getting people to tell the truth in any kind of social media setting, but what are the chances of that? There will be pigs flying over us before we manage to do that with social media. It is very difficult. The problems that arise are real.

From my perspective, as someone who has been involved in education in the outdoors for many years, I know that it is a subtle thing that involves being with the students on a daily basis, talking about what they can and cannot do. The peer referencing that Katrina hinted at, whereby people would go with people who know about these things, is really important, but, when people have an app and they just follow a line, I do not know how we can control that. I would love there to be an expectation of some form of moderation, which could be approved by, for example, the national access forum. That would be one way in which we could approach the issue. However, you would then need to resource the national access forum, which goes back to my initial point. There is a huge reason why we should resource this whole area adequately and in a national way.

10:15

Jamie Langan (South Scotland) (Reform): My first question builds on a lot of what has been said by Emma and Finlay. Have land managers been given the support needed to keep up with the change that we have seen in relation to outdoor access in the past two decades since the code came in?

Malcolm Combe: Bluntly, I do not know.

Obviously, there was a big change from the more Victorian ideas of land use and ownership and the exclusionary right that comes from Scots property law, which people were probably used to. Clearly, if you chip away at and erode that, there will be a shift, and I think that we all need to be sympathetic to the transition away from that traditional approach. It is like turning around an oil tanker—you cannot do it instantly.

However, I simply do not know whether I am in a position to answer on support in relation to that,

so I might button it and let other people speak to that.

Dr Brown: We can point to cases where we can evidence that support has been given and where that has happened effectively. I can think of examples to do with particular access forums, for example. When the legislation came into force and the Cairngorms local outdoor access forum came into being, I did research that involved sitting in on that forum for years and years. That was when Dick Balharry was chairing it, and I was able to witness the process of everybody around the table, including land managers, skilling up, understanding what was possible, finding solutions and realising that their assumptions about what might have been the problem or the solution were not, in fact, the case. Although not all land managers in an area will be on the access forum, such a forum can function as a massive support to land managers. In that particular case, there was legitimate representation, and that learning rippled out from the access forum to other land managers.

The other examples that I can think of are much more on a project-by-project basis. However, again, there was extra work to facilitate the identification of problems and the making of solutions that were relevant.

I do not know whether we have information on a more comprehensive picture.

Professor Higgins: It is a really important question. As others have said, that support has been kind of patchy.

I will pick up on what I might think of as support. There is stuff that is written and then there is stuff that is part of educational or community-based learning. That comes partly from the people on the ground, who are the gamekeepers. Often, their predecessors were also gamekeepers, and they have a strong cultural understanding of the land and their purposes in being there. The code was perceived as a significant shift—although I could also argue that it was not really, as we discussed earlier—if I can put it in that way.

Among the things that have been done is that people who are training to be gamekeepers are getting more of that context in their training, in the colleges that do it. Scottish Land & Estates has actually been quite proactive in relation to some aspects of access support. However, it has a difficulty in that the perception among some landowners is that it should be combative and against the access legislation. I have worked with a number of landowners who find it difficult, because they feel that if they are permitting or supporting access, they are out of step some of their colleagues.

It is about understanding that those who own the land and who are on the land are, in fact, there for very similar purposes to those of us who, like me, are out there for recreational and educational purposes: they love the land and they love that lifestyle. It is really important to develop that understanding and then to find a way forward.

However, it is difficult to get actual resource to support that. In relation to the law, and to the access code, as it was framed, there is an assumption that you just get on and do it. Again, that is where the local access fora could help, if we had more resource for them.

Laura Mitchell (Moray) (SNP): We have heard a lot about social media and some of the challenges that it poses. However, has social media had any positive impacts—for example, by encouraging people from different backgrounds or more diverse groups of people to go out and enjoy access to the land?

Dr Brown: There has undoubtedly been a benefit in that it has put the outdoors on the radar of a huge diversity of people in a way that it was not before. However, the question is then about how that is responsible at the same time. If there are audiences that have not historically had friends, family or school to help them with that, there is more onus on those same channels from where they got the original knowledge to say, "Okay—you want to do this. Here's how to do it in a way that's going to work well for everybody." There is lots of piecemeal knowledge on the ground about that, but it has not been drawn together systematically. There is a lot more that can be done with that.

I will return to a point that I made earlier. If newer audiences feel a sense of belonging and think, "Traditionally, people like me wouldn't have been there, but actually I would like to go," the more that they can be on the inside of discussions and represented on access forums and so on, the more that responsibility is likely to follow the participation.

Malcolm Combe: As conscious as I am that I am probably more detached from social media than I used to be and that my students' engagement with it is very different to my experience of it, I have seen an uptick in different communities getting involved in outdoor activities, whether through traditional means or social media. I know that there are organisations such as Boots and Beards in Glasgow and that ScotWays and the Ramblers have had annual events that have featured people from black and minority ethnic communities, which has been positive. As to whether that can be linked to social media, I would be struggling to make that connection.

Katrina Brown mentioned Strava and the sort of gamification of outdoor exercise. If we count Strava, or even WhatsApp groups, as social media, a facilitation of leisure activities has undoubtedly evolved in the past 10 to 15 years. However, again, it would be for someone other than me to tell you more about that.

Professor Higgins: I am even farther from that than Malcolm. [*Laughter.*] I will not tell the committee about my profound misunderstanding of, and lack of engagement with, social media.

I will, however, go back to a philosophical point, which is that the more people who know that they can access the countryside, the better, however that comes about. The question is then about how we moderate the reality of that and about people's expectations.

Managing expectations is really important in that process. I believe that anyone who posts anything on social media has to be responsible about the way in which they operate, present their views and provide information. It is about the responsible promotion of access. I would take that as a starting point.

The other thing that I and my colleagues have alluded to is the incredible health benefits, and the benefits to the national health service, of people enjoying recreation in the outdoors. The more people who go out there, the better it is for the nation's health and for savings to the NHS, and there is a whole range of other areas where you might say that there are significant economic benefits.

It is also important to bear in mind that people access the countryside all year round, including in the middle of winter and in dismal weather—I do not like to make value judgments about whether the weather is always brilliant, no matter what it does—and that brings benefits to communities outside those parts of the year when there might be other tourism or forms of income. Nationally, the benefits are enormous, The question is how we ensure some form of responsibility when encouraging access, which brings me back to the point about whether there is some endorsement that could be given through, say, the national access forum or any of the big providers out there. That would be helpful.

Laura Mitchell: We know that there are different levels of access, depending on people's socioeconomic backgrounds. How do we encourage or support more people from poorer backgrounds to access the outdoors, given not just the health benefits that you have talked about but the wider benefits, too? After all, it is really important that we try to ensure that everyone has access. What more can we do in that respect?

The Convener: Do you want to come back on that, Peter?

Professor Higgins: I think that I have already answered the question, but it could be done through education, and I agree that using social media would be another way of reinforcing the argument.

Encouraging access is really important, but it needs to happen alongside that notion of what rights and responsibilities mean on both sides of the discussion. It needs to become a cultural norm. Malcolm Combe made the point really well earlier when he talked about the Scandinavian countries, and I have reinforced that. There is a long historical tradition there, and we have lost that here.

You could go right back to the Jacobite rebellion and look at the ways in which land became owned and held back then, the ways in which large blocks of land are held now, the ways in which people have become unconnected to the land and so on. Much of my work has been about connection to place, connection to the land and connection to nature and realising the significance and the benefits of time spent in nature. Indeed, we now have local providers of health services saying, "I'm going to prescribe some green exercise for you, because it will help you feel better—and you will be better." Those sorts of things are already being facilitated by NatureScot, but much more attention needs to be paid to them because of the scale of the benefits, which I have mentioned several times now.

After all, we need only think of the life expectancy in some places—I see Laura Mitchell nodding at that—to consider that this is the very least that we can do. That brings me back to the question that the convener of the Justice 2 Committee asked me during the passage of the land reform legislation. She also asked me, in passing, "Can you explain to me why someone would prevent my constituents from accessing nature?" My answer was no.

Andrew Baxter: You have rightly celebrated the benefits to our nation that the increase in the number of people enjoying access rights has brought, but we have also touched on some of the pressures that it has brought to local communities. One of the pressures that lots of rural communities are focusing on at the moment is the risk of wildfire, given the events of the past two years. The outdoor access code is very clear about responsibilities with regard to fires and barbecues, and I think that the education campaigns around the country have been particularly strong in that respect, too, but I would appreciate hearing your opinions on whether we should have a more consistent national framework for temporary

restrictions on fires and barbecues during times of extreme wildfire risk, which would sit alongside the provisions of the outdoor access code and the education awareness programmes.

Professor Higgins: I appreciate that you are asking me that question directly, but my colleagues might have a view on it, too.

In a sense, that sort of framework already exists, because it comes under the "responsible" part of "responsible access". That said, it strikes me that, if you provide places for people to have barbecues and make it easy for them to have them there, that will, as long as you provide enough space, help to take people away from other places. It is the honeypot principle.

There are also local byelaws and provisions that provide for exactly what you have been asking about and ensure that people are not able to have fires at such times. Those are of overriding importance in certain areas, particularly in those conditions. However, do people understand what those conditions are? You and I know what we mean by "You shouldn't have a fire here," but to what degree do people become educated about that? That goes back to the ranger service and the issues that we have mentioned in that regard. I think that that would be a way forward.

10:30

The other aspect to keep in mind is muirburn. People will see muirburn taking place, sometimes in very dry conditions. That is controlled—hopefully, although not always. You can imagine people thinking, "They're doing muirburn. Why can I not have a barbecue?" There is a very good reason for allowing muirburn and a very good reason for restricting barbecues, but people do not necessarily know that. You can perhaps understand why someone might think that they can have a fire wherever they like.

I do not like the term "wildfire", because "wild" means that it just happens. Of course, most of the fires over the past few years have been due to climate change. They have been all over the country, and there have been many causes of them. So, we really do not know the causes of many of the fires.

Dr Brown: I can speak with a research hat on, and I also live close to where this year's Cairngorms wildfire was. It was clear from that case that a twin approach involving effective and timely enforcement mechanisms would make a big difference. Undoubtedly, there were times when people were seen starting a fire, even while the big fire was raging in the background, but there was not sufficient resource available to follow that up timeously through the normal police channels.

The other issue that came through was the legitimacy of the messaging and the need to embed that as much as possible in the communities of place and the communities of interest that are operating in that area. In terms of thinking about fire risk, anecdotally—we would need to look into this more—people seemed to be more amenable to a message from, say, a local business saying, "Because of the wildfire, we had to close for months, and look at the jobs that were affected." For other people, the focus might be on the impact on wildlife.

The focus should be on tangible outcomes and on delivering messages by relatable people—that is, by people who have legitimacy in the eyes of the audience—rather than by an authority telling them what to do. A clear expectation has to be part of it, but it should not be the sole focus. Some people were finding the messages from officialdom neither relatable nor legitimate.

Malcolm Combe: My colleagues have made some excellent comments for you to consider. What you could do from a top-down authority perspective is pass byelaws relating to certain activities on the ground. I am not sure that I would encourage that for everything, but the option is there.

I will draw on something that Peter Higgins said. I recall being in Australia many years ago and seeing designated barbecue sites. That approach facilitated those activities. A few years ago, I remember explaining to an Australian colleague, Tina Hunter, the access dispute at Drumlean estate. She said, "That happened in a national park?" Australians have a different national park experience; it is a very different set-up. However, they were able to do things that channelled potentially problematic activities to certain areas. I do not know whether that could be done here. It will not work everywhere.

The Convener: We are running slightly over time. Finlay, you had a very narrow question, did you not?

Finlay Carson: Yes. My question goes back to the point about culture. We have been talking about byelaws and legislation. We are legislators, and we sometimes try to prevent legislation from coming in, but a lot of the time it is just there.

There is a question about when the right and wrong time is to have a barbecue. In Galloway, we just do not have barbecues at certain times of the year. Supposing there were a byelaw that said that we were not allowed to have a fire between, say, 1 September and 10 November, it might still not be sensible to have a barbecue on another date if it was dry or there were different conditions.

We also talked about being prescriptive and not having lists in legislation about what people can and cannot do, because, as soon as we do that, we end up excluding something or taking away people's responsibility to make a judgment. We keep talking about how people should take nothing from nature but photographs, leave nothing but footprints, kill nothing but time, and that sort of thing. Should we not be developing that kind of culture rather than saying we need to ban this or not allow that?

I am thinking about when there were rangers—before the Government took away the ring-fenced funding for them, which led to the number of rangers falling off a cliff because local authorities decided to spend their money on something else. It was not the case that the rangers had lots of powers to enforce legislation; that cannot possibly be done, because, even in the best world, there would not be enough rangers.

Should we not focus on the culture rather than on byelaws that specify when people can and cannot do things? We could develop a culture in which people take responsibility and think about whether it is sensible to start a fire or to go off-road with their mountain bike. That is what we should concentrate on in any refresh of the legislation.

Malcolm Combe: I have a lot of sympathy with that view, despite being a lawyer and liking rules. It is also worth flagging that there are bits of the Land Reform (Scotland) Act 2003 where context is king—I am thinking about the privacy zone around a house, which relates to "reasonable measures of privacy". We do not have a bright-line rule as in England and Wales—particularly in England, where the limit is set at 20m from a dwelling. The rule in Scotland allows you to ask, "Am I too close, or do I think I am?" If you think that you are too close, then you probably are.

We can accept that context exists in different bits of the legislation, but I agree that there is an argument for expanding the level of context. There will be other areas in which we need bright-line rules, but, to the extent that we can avoid it, it would be culturally helpful not to have them.

Dr Brown: We also need to consider the leverage that we have with the mechanisms that are already in place, including byelaws. We were talking about wildfires; a byelaw on wildfires has just come into force this year, but there is a question of how knowledge of that rule is passed on into the culture.

That brings me back to the point about whether proportionate rights and responsibilities are placed on those who are at the key points of promoting and passing on not only the messages about outdoor opportunities but the material props for those opportunities, such as bikes or logs at the local garage. Have we considered the different ways in which the rules can be translated into cultural norms—that is, being context specific and doing things in the right place at the right time—through those different leverage points? That is where culture is built.

Professor Higgins: All of this requires effort. The damage from the Cairngorms fire—as was the case with the other fires—was extensive, significant and long lasting. It will take years for the micro-organisms in the soil, and particularly the peat, to recover. You can understand why that damage looms large when thinking about fires and the idea that we should legislate. However, it is brilliant to be sitting next to a lawyer who said—as Finlay Carson also said—"Let's try not to legislate." It is really important to build those things into cultural norms.

For example, the people who manage areas such as Beecraigs country park or Creag Meagaidh are, among other things, providing facilities and an implicit understanding of how people should appropriately enjoy their access and have their barbecues, if they wish to do so. An element of resolving the issue needs to come from building the broader culture that we have been talking about throughout this meeting.

Indeed, the question of what a curtilage might be—where you can and cannot go—is perfectly well understood in Scandinavia. I have only just met Malcolm Combe, and he will get a bit worried if I move my chair very close to him—like this—whereas he will not be worried if I move my chair further away. You would not expect someone to come and camp in your garden, but if your garden happens to be 10,000 hectares, that is a very different understanding of what your home is. The ways that we can embed those understandings and perceptions of our rights and responsibilities are profoundly important.

You framed your question around something that I had said already, which is that, if we keep putting in exclusions everywhere, we will lose the sense of responsibility that we absolutely need. If we retain that, there is all to play for.

The Convener: Professor Higgins, I am thinking back to the last time that you were in this room, when you and Nick Halfhide appeared before the Net Zero, Energy and Transport Committee and I asked a question about the priority that NatureScot places on public access and its role as an organisation that oversees the role of other access authorities. Mr Halfhide's response was a little alarming in that it suggested that that was not a top priority for NatureScot. Can you reflect on that? In particular, who oversees whether the access code is working effectively? Does NatureScot oversee

whether local authorities are discharging their duties appropriately?

Professor Higgins: That is a fundamental question. The statutory responsibilities of NatureScot and its predecessor organisation, Scottish Natural Heritage, clearly include public access and state that it must be a priority. In preparation for this evidence session, I looked at the corporate plan for NatureScot for the next five years, to 2030, which I was involved in drafting. Its second theme out of five is:

> "Increased support for nature-positive action through strengthened public connection, understanding and access to nature."

I was one of the people who argued that it should be the number 2 theme because the primacy of nature needed to be number 1, but it was originally number 1 on the list. Where it is on the list does not really matter, though; the point is that it is a significant issue. The question then becomes the degree to which NatureScot has the resource to do all that it should do in that regard, which goes back to the way that it works with local authorities.

The core of my response is that there is a real need for this to be done as well as we can do it. I re-emphasise my concerns about local authority re-aggregation. Where we are sitting was once in Lothian Regional Council, and many of the discussions in NatureScot board meetings are around what will happen with the proposed mergers. I am concerned that, without a requirement for the matter to be considered and the provision of appropriate support, the issue of public access will become a small issue compared with the broader establishment of the new body, whatever it looks like. This is a crucial time to re-emphasise that significant aspect of NatureScot's work.

I hope that that answer is adequate.

The Convener: You see the role of NatureScot as scrutinising the way that access authorities are discharging their responsibilities—is that correct?

Professor Higgins: Yes. The difficulty is that the national access forum does not have the legal powers to say, "You must do this," whereas the local authority access fora have a legal responsibility to do certain things.

As I understand it—Malcolm Combe will put me right if I am wrong—that notion of the national access forum being advisory only and providing guidance and support for broader campaigns and so on is brilliant in a way but it limits its powers. If you walked down the street and asked people, "What is a local access forum and what is a national access forum?", first of all, they would probably not have a clue. Secondly, if they did have a clue, they would imagine that the national one oversaw the work of the local forum and would ensure that it did what it was supposed to do. However, as I understand it, that is not the way that the legislation was formed and framed, and, therefore, is not what happens in practice.

My esteemed and knowledgeable colleague will be able to add to that.

Dr Brown: It would probably be helpful for the national access forum and the local access forums to more strategically take on the approach that we often see in partnership working and collaborative projects, which, although they have been piecemeal, show a lot of processes that work. However, that has not been part of a methodical approach to access.

10:45

The Convener: Is the legal framework around local access forums adequate, Malcolm?

Malcolm Combe: That is a good question. Although Peter Higgins was very humble, he has the correct understanding of the status of the national access forum, the creation of which was almost an example of bottom-up land reform. That the forum is ancillary to and separate from the legislation can be a good thing, but it also means that it does not have the role of policing anything.

On the framework around local access forums—or fora, if you are a Latinist—I do not necessarily know the answer. A few years ago, I suggested that the forums might be given a beefed-up role whereby they could do a bit of mediation or dispute resolution if their attempt to use good offices did not quite work. Back in 2014, the land reform review group said that that approach might work, but the Scottish Government did not proceed with it at the time.

The current impending transfer of jurisdiction from the sheriff court to the Scottish Land Court means that it might not be the best time to do something else around bigger-ticket dispute resolutions until we see how the Scottish Land Court approaches those disputes in terms of the Crofting and Scottish Land Court Act 2026. However, I would not be averse to looking at the question again once we see how the Scottish Land Court accepts its new role when it comes along.

Andrew Baxter: I want to follow up on the reality of local access forums on the ground. I get the impression that, although they might be there on paper in many areas, they do not realistically function and, if they do, they meet only to discuss and determine land access disputes. What is your view on that? Are those forums sporadic across the country?

Malcolm Combe: I do not have a contrary view.

Professor Higgins: It is funny. I welcome this committee—I wanted to say that at some point—and I am pleased with how it has been framed; it is very open in its approach of the issues that are associated with the big issue. However, I would love to have seen some form of national research project on what the reality is with regard to local access fora. Mr Baxter said, "I get the impression", Malcolm said, essentially, "I don't disagree with that," and I could say both of those things, too, but we do not have the evidence.

You will find plenty of examples on the Ramblers Scotland website—or wherever you might go to find information—of ways in which local access fora are not operating adequately. I do not want to place any blame on local authorities for that—we all see the stress that they are under—but, if we think that the issue is important, we need to be sure that we have appropriate information, that that information comes from relevant sources and that we do something with it. That is why I made the point about who will respond to the committee's call for evidence and so on in the first place and the need for us to find a way of ensuring that we hear the unheard voices, which is a core element of all that.

Although I am a researcher, I am speaking not as one but as someone who wants the committee to be informed in its judgments, which comes about through the pre-emptive stage of gathering the information—indeed, including on your field visits, which are not the ones that I would choose, since they are both in areas where, clearly, a lot of conflict about recreational access already exists. If you give me half a chance, I will suggest other ones, in places where the situation is very different—you mentioned Glen Lyon, convener. It is about how you balance those things.

I do not want to be too critical of the local access forums, but I think that there is something in your point, Mr Baxter.

The Convener: You get the final word, Katrina.

Dr Brown: People's impressions of whether there is a forum and how effectively it is working seem to be variable. The cases that I have looked at in depth in which forums have worked well took place at a time when the access authorities in question had lots of staff—a lot more than they do now. I remember that the work on the access forum—on issues that a land manager or other people had brought—was quite a big part of the job that three members of staff did and that it was quite integrated in the rest of their job. They were sometimes already at capacity but were making it work well; however, they now have fewer staff than they used to have. I do not have research on how things are working now, so I do not know, but you can imagine that that capacity would have declined.

The Convener: Okay. I thank all our witnesses for attending this morning. That concludes our meeting in public, and we move into private session.

10:50

Meeting continued in private until 11:40.

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