Official Report
Aithisg Oifigeil

DRAFT

Rural Affairs Committee

Comataidh nan Cùisean Dùthchail

Wednesday 18 November 2026

Session 7

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RURAL AFFAIRS COMMITTEE
11th 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:

Kenny Auld (Loch Lomond and the Trossachs National Park Authority)
Richard Barron (National Access Forum)
Stuart Chalmers (Forestry and Land Scotland)
Faye Cooke (Scottish Government)
Mark Johnston (Crown Estate Scotland)
Patrick Kirkham (Scottish Government)
Peter Rawcliffe (NatureScot)
Colin Simpson (Cairngorms National Park Authority)
Philip Waite (Highland Council)

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs Committee

Wednesday 18 November 2026

[The Convener opened the meeting at 09:00]

Decisions on Taking Business in Private

The Convener (Mark Ruskell): Good morning, and welcome to the 11th meeting in session 7 of the Rural Affairs Committee. Please ensure that all electronic devices are switched to silent. We have received no apologies. Andrew Baxter and Emma Roddick are joining us online.

Our first item of business is a decision on whether to take items 6 and 8 in private. Item 6 is a review of the evidence that we will hear on outdoor access, and item 8 is consideration of our people's panel approach. Do we agree to take those items in private?

Members *indicated agreement*.

The Convener: Does the committee agree to consider its work programme in private at our next meeting?

Members *indicated agreement*.

Subordinate Legislation

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

09:01

The Convener: Our second item is consideration of a Scottish statutory instrument. We are joined by Gillian Martin, Cabinet Secretary for Climate Action and Rural Affairs, and her Scottish Government officials Emma Ash, senior policy adviser on land reform; Faye Cooke, solicitor; and Patrick Kirkham, head of land reform.

The SSI is laid under the negative procedure, which means that it will come into force unless the Parliament agrees to a motion to annul it. Such a motion has been lodged by Donald MacKinnon. He joins us, along with Ariane Burgess, for this session. I note that the Delegated Powers and Law Reform Committee made no comment on the instrument.

I believe that the cabinet secretary would like to make a brief opening statement before we go to questions from members.

The Cabinet Secretary for Climate Action and Rural Affairs (Gillian Martin): I appreciate the opportunity to make an opening statement. I hope that the information that has been provided will assist members to support the SSI.

I want to be clear from the outset that progress on land reform is a priority for the Government. I fully expect the Scottish Land Commission to continue playing its key role in supporting Scotland's land reform journey.

The effect of the SSI is that the Scottish Land Commission's size will not change, but its make-up will change. The addition of the new land and communities commissioner will be balanced by removing a land commissioner post and not backfilling the land commissioner vacancy that arose as a result of the unexpected resignation of Dr Calum MacLeod earlier this year.

Dr MacLeod's resignation coincided with the initiation of the recruitment process to appoint the new land and communities commissioner, which prompted us to consider the balance and composition of the board in the light of the commission's evolving responsibilities and wider public service reform objectives. In doing so, I considered the commission's overall capacity, expertise and experience in providing strategic leadership, oversight and challenge, as well as the support and day-to-day delivery work that are provided by the commission's staff. I want to be

clear that there will be no reduction in staffing associated with this specific proposal.

I believe that the commission can continue to discharge its statutory functions effectively. It will have six commissioners: four land commissioners, the tenant farming commissioner and the new land and communities commissioner. I appreciate that the direct financial savings associated with the proposal are modest; nonetheless, they will allow the commission to spend that money on its day-to-day work instead of on the costs of an additional commissioner.

Public service reform is about ensuring that service delivery is proportionate, streamlined and designed to meet Scotland's needs in the most efficient way while ensuring that structures and processes that support delivery remain sustainable, responsive and fit for purpose. This decision is consistent with the framework that was established in Parliament in the Land Reform (Scotland) Act 2016, which expressly provides for ministers to alter the number of land commissioners by regulations. That power recognises that the commission's composition may require adjustment over time. Indeed, depending on the work programme of the Land Commission, an additional commissioner may be needed in the future, and the framework allows for ministers to revisit the issue. We are making an adjustment, and a decision might be made in the future to appoint an additional commissioner.

I will talk briefly about the committee's and Donald MacKinnon's interest in Gaelic representation. There is no doubt that the departure of a Gaelic-speaking commissioner is a loss. However, I want to be clear that there is no guarantee that a Gaelic speaker would be successful in a future recruitment exercise. Indeed, the number of successful applicants with Gaelic has, sadly, been low through three different appointment rounds for land commissioners, despite a command of the language being included as a desirable criterion in recent appointment rounds.

I know that the commission remains strongly committed to supporting and promoting Gaelic. It continues to engage constructively on those issues, and the recently published consultation on its Gaelic language plan demonstrates that ongoing commitment. We have circulated the land and communities commissioner advert among Gaelic stakeholders, and the board has advised that it has circulated the advert among its Gaelic-speaking networks as it recruits its next commissioner. We continue to strongly encourage applications from Gaelic speakers in future recruitment rounds. The need for the expertise that Dr MacLeod brought to the board, including in relation to human rights and Gaelic, will be considered in future recruitment exercises.

Ultimately, having considered those factors, I am satisfied that the commission will remain well placed to fulfil its statutory functions and continue its important work in support of Scotland's land reform agenda. I am happy to take any questions that committee members have.

The Convener: Thanks very much. I now invite members to ask questions—I point out that we will debate the motion under the next agenda item, so we are just asking questions at this point. I will bring in committee members first and then go to Donald MacKinnon and Ariane Burgess.

Emma Roddick (Inverness and Nairn) (SNP): Good morning, cabinet secretary. I understand taking the opportunity to reassess capacity and need when someone resigns, but we very recently had such an opportunity during discussion of the new land and communities commissioner, and the idea of reducing the number of commissioners did not come up in committee.

I am worried about the possibility that someone who currently sits on a similar public body and who is thinking of resigning might wonder whether their resignation might end up in their post being abolished. Can you give us any reassurance on that point and outline any further justification for the way in which this has been done?

Gillian Martin: Ms Roddick's question makes it sound as if there is a sort of blanket strategy of taking such an approach whenever there is a resignation. However, this decision was taken on its own merits. Obviously, we consider the composition of boards at various points. I am not quite sure when we would next have an opportunity to consider the composition of the Land Commission board—I think it might be 2029; my colleagues might be able to confirm that.

Two things happened. First, the land and communities commissioner post was going to be advertised, and then an additional vacancy arose as the result of Dr MacLeod resigning. Those two things happening at the same time gave me a chance to look at the board's composition in the light of the future work programme and the capacity in the organisation, and I decided that not backfilling the vacancy and just recruiting the land and communities commissioner would allow us time.

The Convener: Does that answer your question, Emma?

Gillian Martin: I want to make it clear—

The Convener: I am sorry, cabinet secretary—does that answer Emma Roddick's question?

Emma Roddick: I want to say yes, but I would like to hear a bit more.

The Convener: Okay. Cabinet secretary?

Gillian Martin: I do want to answer the substantive question. The analysis was done, and I must make it clear that no one on any other board should be worried about this being a strategy that is going to be applied elsewhere. This decision was based on its own merits. I was given the landscape of the board, the decisions to be taken and the recruitment processes for the new land and communities commissioner. My decision, which was based on the current board's capacity, was not to backfill but to concentrate instead on getting a commissioner in.

I would also point out that, in future years, another decision could be made—this is not a set-in-stone situation. For the moment, our analysis has led us to believe that it would be best to stick with six commissioners, as I have outlined, rather than have seven and have to go out and recruit two of them.

Andrew Baxter (Skye, Lochaber and Badenoch) (LD): Good morning, cabinet secretary. In your opening remarks, you outlined the perceived difficulties with recruiting Gaelic-speaking members to public bodies. Do you consider that you are meeting the intention of the legislation—particularly section 11(2) of the Land Reform (Scotland) Act 2016—in knowingly leaving the commission without a Gaelic-speaking member and failing to address the opportunity of allowing at this stage the appointment of a new member who could be Gaelic speaking?

Gillian Martin: With regard to the appointment of the land and communities commissioner, having a Gaelic speaker would be a desirable—what is the word?

Faye Cooke (Scottish Government): Criterion.

Gillian Martin: Criterion—thank you. The word went out of my head. Being a Gaelic speaker would be a desirable criterion. The organisation could also contract in Gaelic-speaking assistants to help with its Gaelic language work and ensure that it had that capacity.

There is no guarantee that a successful applicant for any of the board posts will be a Gaelic speaker—there are many criteria associated with the various posts—but I find it disappointing that, as I have said, the last three rounds of recruiting commissioners have not resulted in our getting a successful applicant with Gaelic language skills.

I have already outlined how the commission has tried to recruit for the new post that it is trying to fill and what it is doing to reach out to Gaelic-speaking communities and those with Gaelic language skills, and it has given me information about how it is trying to encourage more Gaelic speakers to put themselves forward for the new role. However, there is no guarantee that a Gaelic speaker will either apply or be successful.

Andrew Baxter: I appreciate all of that, but by saying that speaking Gaelic is only a desirable criterion in the current process instead of, say, making it an essential criterion in the appointment of this additional commissioner, who could have been recruited, are you not giving the impression, or sending a message, to our Gaelic-speaking communities that you do not think that having a Gaelic-speaking member of the commission is all that important?

Gillian Martin: It comes down to the framework, Mr Baxter. It does not dictate that you have to have a Gaelic speaker, or that that is essential.

I will bring in Patrick Kirkham, who leads on land reform, to make an additional comment.

Patrick Kirkham (Scottish Government): I want to give a small clarification with regard to the legal duties on ministers under the 2016 act. The section in question says that

"In appointing the Land Commissioners, … ministers must take every reasonable step"

for there to be a Gaelic speaker. That duty applies to actions that are taken during the making of appointments, so when an appointment round for the land commissioner is live, all such steps must be taken, including the publication of materials in Gaelic and their circulation among Gaelic communities. It is not a general duty on ministers at all times; there have been times in the past when there was no fluent Gaelic speaker on the commission, and that did not mean that there was a duty to appoint additional commissioners.

09:15

With regard to making that criterion essential, I will just note that the criteria are already quite specific and there is not always as large a pool of candidates as you might imagine there is for filling a vacancy. Making that criterion essential would quite limit the available pool, particularly given the other essential criteria and the role specification. I think that that is why, in the legislation, being a Gaelic speaker is set as desirable and not as essential—it is just to make sure that a suitable candidate can still be found.

The Convener: Andrew, it is back to you, briefly.

Andrew Baxter: Thank you, Mr Kirkham, for your lesson about the difference between reasonable steps and requirements in the legislation, which I already fully understood.

Cabinet secretary, Michael Russell has acknowledged that the commission can no longer offer engagement through a commissioner speaking Gaelic, and he mentions recording a message in Gaelic as a learner. I commend him for learning the language, but do you, as cabinet secretary, accept that that is not an adequate substitute for having a fluent Gaelic-speaking commissioner who is able to engage directly with those communities?

Gillian Martin: As I said, it is extremely desirable that the commission has a Gaelic speaker, and I know that Mr Russell has learned Gaelic only in his adult life. However, as Patrick Kirkham outlined, and as you said that you fully understand, that is not an essential criterion.

I really regret that Dr MacLeod has stepped down. Obviously, he had his reasons for doing that, but he is a Gaelic speaker and he brought a great deal to the commission. However, there is no guarantee that a successful recruitment for his former post would mean that a Gaelic speaker filled it. The post of land and communities commissioner is out for recruitment at the moment, and I really hope that Gaelic speakers will apply for it.

Finlay Carson (Galloway and West Dumfries) (Con): I will broaden this out. My position is that, given that we are in the middle of a discussion on public service reform, any discussion around the future of the Scottish Land Commission should form part of that, rather than it being for us to take a piecemeal approach by reviewing one commission.

Whether or not you recognise this as a problem, cabinet secretary, I do not believe that the concentration of land ownership has been addressed. Has the commission delivered what it was set up to deliver? The key question is whether its functions are best delivered through a stand-alone organisation or should be absorbed into existing Government structures and agencies as part of public sector reform. The functions that are currently undertaken by the commission need to be considered within the wider piece of public service reform. They should not be seen as just part of a piecemeal decision that we are taking today.

Gillian Martin: I have a different view from that of Mr Carson, and he knows that. The Conservatives' position is that the Land Commission should not be a stand-alone body, but I take a different view. It is a relatively small organisation, but I think that it does great work. All cabinet secretaries have been asked to look at the bodies under their portfolios. As cabinet secretary, I have no plans currently for the Land Commission to be absorbed into any other body. Its functions are well served by its being a stand-alone body, and I have no desire to absorb it into any other body.

Mr Carson did not say which body the Land Commission should be absorbed into. In the past few months, I have set out plans to bring together three bodies under my portfolio into an environment agency—although it is important to say that public service reform is about more than the number of bodies that we have. I have set out my criteria for the bodies that I am bringing into one environment agency, and I have decided that the Scottish Land Commission will remain as it is.

Public service reform is in all of our minds at the moment, but I have made the decision on the basis of the capacity of the current board and its work programme. There is a small saving in money for the commission, and it will be able to deploy that in other functions. It is not that much money—it is probably only about £15,000 a year. However, the regulations allow me to look from time to time at the make-up of the body, and that is what I have done on this occasion.

Jamie Langan (South Scotland) (Reform): I want to build on your answer to Mr Carson. You have alluded a couple of times to the relatively modest financial saving, so it seems that this is a service delivery question. Finlay Carson and I are not particularly in favour of the Scottish Land Commission, but, regardless of that, is it the case that the work of the commission is best served by reducing the number of commissioners, so this is not a financial decision?

Gillian Martin: As I said, we undertook an analysis of the board's capacity. You will have seen that the chair of the commission, Michael Russell, wrote to you with his views. Initially, he expressed disappointment, but he said that he understood and reaffirmed that the board has capacity to deliver its work programme. We must recognise that the change does not affect the number of staff—the people who do the day-to-day work of the commission—or capacity

I have made this decision at this point on the basis of the work programme and the capacity that already exists in the board, as well as the recruitment process for the new commissioner. The board will have a cohort of six commissioners, and I feel satisfied that, for a body of its size and given the work programme that it has in front of it, it will be able to deliver.

Laura Mitchell: Good morning, cabinet secretary. You mentioned a few times in your statement and in response to questions that the tenant farming commissioner and the new land and communities commissioner bring the total number of members of the board up to six.

Gillian Martin: Yes.

Laura Mitchell: How does that compare with other similar public bodies?

Gillian Martin: There are other bodies that have a larger staff cohort and have a board of a similar size. Scottish Canals has 309 staff but also has a board of six. The Scottish Law Commission has a board of five, the Office of the Scottish Charity Regulator has a board of seven and the Scottish Human Rights Commission has a board of five. It is a fairly standard size of board for that size of organisation. As I said, Scottish Canals has a much larger staff count but has a board of six.

Six is a reasonable number, but I guess that the important consideration is the capacity of the board to deliver the work programme. That is why the regulations and the framework allow us to make such decisions. We could have made the decision at the end of the tenure of the current commissioners, in 2029, but there was a moment when the commission could have recruited two commissioners, and I took the view that it should concentrate its efforts on the land and communities commissioner. Officials spoke to the Land Commission, and we felt satisfied that that would allow the commission to take forward its work programme.

It is regrettable that a Gaelic speaker has stepped down, as I said. However, I hope that, with the recruitment of a new commissioner, there might be a successful applicant who is fluent in Gaelic.

Donald MacKinnon (Na h-Eileanan an Iar) (Lab): Thank you for your opening remarks and for answering the questions so far.

There seems to be a bit of inconsistency in the argument that is being made. On the one hand, we have heard quite a lot this morning about public service reform, which is reflected in some of the correspondence—particularly in the initial note accompanying the SSI. On the other hand, given your response to Emma Roddick's question, it seems that the decision is being taken in isolation—"on its own merits", as you said. There is a feeling that the decision to make such a significant change to a public body should be taken from a position of having an overall strategy that looks at the wider context. I think that we would expect the make-up of public bodies to be determined in that way.

Which one is it? Is this change part of a wider strategy and part of the public service reform agenda, or is it happening in isolation?

Gillian Martin: I think that it is both. My answer to Emma Roddick was very specific to the question that she asked about whether it is a strategy that, when a board member on any board steps down, the role is automatically not backfilled. She was asking about that, and I said that it is not a strategy.

I took the public service reform agenda and the particular circumstances of the resignation of the board member, which, in effect, leaves an additional vacancy, in the round. I do not make decisions on the basis of one particular criterion; I look at everything. I have public service reform in my mind in a lot of the decisions that I make across my whole portfolio, so the decision is part of a strategy.

You mentioned my answer to Emma Roddick, who asked me a very specific question: is it the Scottish Government's strategy that, when somebody is thinking of resigning from a board, the Government will, in effect, automatically get rid of that post? The answer to that is no. Is public service reform a strategy that we all have at the forefront of our mind as we make decisions? Yes, but—as I said to Jamie Langan in my previous answer—the saving in this case is modest. The number 1 reason, therefore, was not about saving money; the money that that decision releases still sits with the Scottish Land Commission, and it is able to use that money for its day-to-day functions.

Donald MacKinnon: I have a follow-up question on the number of land commissioners. The Parliament, in passing the Land Reform (Scotland) Act 2025, took the view that there should be an additional commissioner—the land and communities commissioner, which you mentioned—in addition to the five land commissioners that existed at that point, plus the tenant farming commissioner.

Do you have any reflections on that decision that Parliament took? It was not that Parliament thought that a commissioner on the current board should also have a responsibility as the land and communities commissioner. The 2025 act provided for an addition on top of the five land commissioners and the tenant farming commissioner—a new land and communities commissioner. You seem to be suggesting that, by having no change, with the total number of board members remaining at six, that is what Parliament wanted in 2025. I do not think that that is what was voted for back then—it was an additional land and communities commissioner on top of the five land commissioners and the tenant farming commissioner.

Gillian Martin: The land and communities commissioner is being added to the board because of the work programme resulting from the land reform legislation that was taken through in the previous session of Parliament. As cabinet secretary, I am sitting with the situation as it is presented to me. At that point in time, we did not know that there was going to be a resignation—

that happened in June, and the cabinet secretary at the time accepted that resignation. When I came into post, I was presented with a situation in which there would be two vacancies, and I considered that. I have explained my thinking around that: I will make decisions on the basis of the situation that is before me.

If I thought that removing one of the board members would mean that the Scottish Land Commission could not carry out its functions, I would not have made that decision. That is the crux of the matter.

The Convener: Are you saying that the work programme and the remit of the Land Commission are getting bigger over time, or are they getting smaller?

09:30

Gillian Martin: I think that they are changing. There are certain activities that the Land Commission will undertake as a result of the legislation—for example, it will provide advice on the secondary legislation associated with the 2025 act—but I feel confident that it has the capacity to do that.

The Convener: Is its work programme getting bigger over time?

Gillian Martin: If it is, we have a framework for adapting the board to respond—[*Interruption*.]

The Convener: I am sorry, cabinet secretary. Could you say that again?

Gillian Martin: If the Land Commission believes that its board needs to have additional capacity as a result of its work programme changing or increasing, it can make such representation to the cabinet secretary.

Ariane Burgess (Highlands and Islands) (Green): It has been interesting to hear the responses that you have given to colleagues so far.

Before I got into this role, I did a lot of work on governance. My understanding is that the remit of the five commissioners is much broader than that of the roles of the tenant farming commissioner and the new land and communities commissioner, which are much more specific. You have referred several times to the work programme. As someone who was involved in the passing of the 2025 act, my sense is that the work programme will grow. For example, the introduction of natural capital market scrutiny will mean that the commissioners' work will expand. Therefore, I believe that we need the existing five commissioners as well as the two specialist commissioners.

How will the four commissioners deliver the new duties under the 2025 act, such as those relating to natural capital market scrutiny and the land management plan work? You have said that the proposed saving is a modest one. I think that undoing the board of a crucial organisation is a slippery slope. I will say more about this later, but the Scottish Land Commission has transformed how people experience land in Scotland, regardless of whether they own it. The commission performs an essential role, and I believe that it needs to have a full complement of commissioners.

I agree with Donald MacKinnon. When we passed the 2025 act, we thought that we would have the five commissioners and the tenant farming commissioner plus the new land and communities commissioner. Will you explain how a reduction in the number of commissioners will help the commission to deliver on the 2025 act, along with the previous work that it still has to do?

Gillian Martin: I agree with your statement that the Scottish Land Commission has transformed how people think about land. Its work, including in providing advice to the people of Scotland, is essential, as its role as an adviser to me, as cabinet secretary.

Although the commissioners provide strategic oversight, they undertake the role for only two days a month. The day-to-day delivery of the commission's work is supported by its staff, in which there will be no reduction. We gave consideration to the support that is provided by the commission's staff, including the resource associated with delivering the new functions, and to the fact that the recruitment process for the land and communities commissioner is under way.

In its letter to the committee, the commission confirms that it continues to have

"an effective mix of skills"

and that it can draw on external expertise as needed. The commission did not say to me that it would not be able to function because of the decision that I have made. In its letter, it set out its thoughts on the reduction in the number of commissioners. It said that it understood the reduction and that it would be able to discharge its responsibilities with the cohort that it has.

The Convener: Thank you, cabinet secretary.

Our third item of business is a debate on a motion to annul the Scottish Land Commission (Number of Land Commissioners) Regulations 2026. I remind Scottish Government officials that they are not able to speak during this debate, and I invite Donald MacKinnon to speak briefly to and move the motion.

Donald MacKinnon: Thank you, convener. I appreciate this opportunity to return to the committee and speak to my motion. I do not want to repeat the points that I made the last time I was here, though I stand by all of them. Instead, I will pick up on some of what we have heard this morning from the cabinet secretary and on the correspondence that the committee has received.

With regard to what we have heard this morning, I still think that there are questions to answer as to why this reduction is necessary. I do not feel that we have heard any suitable justification on financial, organisational or structural grounds, particularly around the impact on the function of the commission.

We have heard quite a lot about public service reform, and I just want to reflect briefly on how that has played out in the correspondence that has been received. For a start, I was struck by the omission of any reference to public service reform in the cabinet secretary's latest written response to the *committee. Even though it appears to have been a key part of the rationale behind the decision, as has been outlined in the policy note and again this morning, it did not seem to form a substantive part of the argument made in the response. Indeed, in correspondence that has been received from Michael Russell, the chair of the Land Commission, he states, while expressing his disappointment, that

"we understand the imperative regarding public service reform".

I have to say that I am left puzzled by what this decision is about and where it sits in the wider context. Is this a one-off decision, or is it a new approach? Either way, my view remains that the structure and future function of public bodies such as the Scottish Land Commission should be considered in a strategic way, not, as appears to be the case here, as part of some ad hoc process.

In correspondence to the committee, Community Land Scotland said:

"Community Land Scotland are unconvinced about the public finance saving from reducing the number of Commissioners. For an extremely modest financial saving the governance and capacity of the Commission will be impacted, at a time when it is taking on greater responsibilities. This would appear to be very short-sighted."

A similar concern has been raised by NFU Scotland, which has said:

"Reducing the number of Land Commissioners risks limiting the breadth of experience, expertise and representation within the Scottish Land Commission."

I remain concerned that reducing the number of land commissioners will make it harder for the Scottish Government to comply with the 2016 act and its obligations to make every reasonable effort to recruit a Gaelic speaker and to ensure that the other skills listed in the act are represented on the board. I therefore urge committee members to vote for the motion in my name.

I move,

That the Rural Affairs Committee recommends that the Scottish Land Commission (Number of Land Commissioners) Regulations 2026 (SSI 2026/284) be annulled.

The Convener: Thank you. I invite contributions from other members before I bring in the cabinet secretary.

Ariane Burgess: Convener, cabinet secretary and colleagues, Scotland has a proud history of land reform. Since the creation of this Parliament, we have moved in leaps and bounds—or maybe a little bit slower than that—with every act that we have passed that has put us on the path to transforming who owns land, who manages it and who benefits from it. What we are tackling is a legacy. The Highland clearances began what we are still living with—that is, one of the most concentrated patterns of land ownership in Europe.

For me, land reform is about four things: who owns the land, who manages it, who benefits from its rising value and who gets to make the decisions. Often, when we refer to land reform, it is as something quite opaque, but for many people it sits alongside self-determination. It is about agency and communities having a real say over the decisions that shape their lives. It is incredibly disempowering to live in a township or a village where you do not own the land and the landowner makes whatever decisions they want, and I know that that is happening in communities across the Highlands and Islands.

Look at what happens when communities own their land. On Eigg, they run their own energy system, they have a forest nursery and they are building their own housing. They are charting their own course. On the Galson estate, on Lewis, which Donald MacKinnon will know well, they have three community-owned turbines generating £4.35 million and employing a great number of people in the area. It is absolutely transformative.

We talk endlessly about investment and jobs but rarely about land. Across Scotland, there are concerns about renewable energy, yet nobody points to private landowners collecting high rents for simply hosting wind farms. At Galson, that money stays in the community. If we are serious about community wealth building, we need far more of that right now. Communities own only about 3 per cent of Scotland's land, although the Government set a target of a million acres in community ownership by 2020. It missed that

target and replaced it with a count of assets, not acres.

I have noticed, over the time that I have been in Parliament, that when a target becomes hard to meet, it is redefined. Now, instead of strengthening the Scottish Land Commission, we are being asked to cut it. With one hand, the Government is bringing in the land and communities commissioner, and, with the other hand, it is removing a commissioner with a far broader remit, just as the commission needs more capacity.

The commission is the engine of land reform. Its research on concentrated ownership shaped the 2025 act and its protocols are changing how landowners engage with communities. It is about to take on more work around large landholdings and the land management plans, as well as on the scrutiny of natural capital markets. This is the moment at which it needs more, not less, capacity.

In my five years in this role, I have seen the commission transform how people relate to land—even land that they do not own. The commission helped me to understand—not as an MSP, but as a person—that I should have a say in what happens to the land near me when it affects my life, and that is true of everyone in Scotland. It is the spirit of the land rights and responsibilities statement, and the commission is the body that makes that real.

Cutting a land commissioner right now weakens all of that, so I urge colleagues on the committee to support Donald MacKinnon's motion to annul the instrument.

Andrew Baxter: I apologise for my unintentional audible interjection during the cabinet secretary's comments. I think, however, that if I had been in the committee room, I might still have interrupted her with the same interjection, because it was clear that she was unable to directly answer the question that you posed to her about the capacity of the Land Commission and whether it was facing considerable additional work. Ariane Burgess has just ably outlined the importance of that work, and the fact that it is expanding in quantity and detail sums up the problem with the reduction in the capacity of the Land Commission.

I note that the cabinet secretary was unable to answer that question directly. It looked as though she was trying to prevent herself from giving a direct yes—that the amount of work is increasing—because that would undermine her argument for reducing the capacity of the commission at this stage.

Donald MacKinnon outlined that it was Parliament's intention to increase the capacity of the commission by appointing additional commissioners, increasing the number from five to seven. The cabinet secretary seems willing to ignore that intention on rather flimsy grounds, which is completely unjustified in respect of the very limited financial savings that she has indicated are possible as a result of the reduction.

I remain unsatisfied with her answers to my questions about the loss of Gaelic-speaking representation on the commission. Gaelic-speaking representation is important for many of the communities that I represent, particularly with regard to land. Land, language, culture and communities are all intertwined in the Highlands and Islands. The cabinet secretary used—or seemed to fall back on—the excuse that it is very difficult to recruit Gaelic-speaking commissioners, but I do not think that that is a justification for reducing the numbers, and I will be supporting Donald MacKinnon's recommendation for annulment.

Finlay Carson: I have real concerns, particularly on the back of Ariane Burgess's contribution. I believe that land reform ultimately involves political choices, which should be made by ministers. I have concerns about mission creep with the Land Commission, which has, in my view, increasingly sought to influence the choices that should be on the table, rather than simply providing evidence on which those choices should be based.

09:45

I have a lot of sympathy with Donald MacKinnon's argument that the decision is rather piecemeal and that it should form part of a bigger piece of work looking at public sector reform. I believe that the function of the Scottish Land Commission should be, and could well be, better delivered through being absorbed into existing structures such as NatureScot, Forestry and Land Scotland, and local authorities. That is not just about cost savings; it is about streamlining the public sector to avoid duplication, ensuring that policy, advice, research and stakeholder engagement are delivered as effectively as possible. This is not the time or the place to make that change, but, given that we do not believe that the Scottish Land Commission is the best way to deliver value for money or the best service, I am not minded to support Donald MacKinnon's motion to annul.

Dawn Black (Angus North and Mearns) (SNP): There has been a lot of discussion around capacity this morning, and a lot of what Donald MacKinnon put forward relates to whether the commission will have the capacity to deliver what is needed. However, the cabinet secretary has been clear that the main capacity for the work that needs to be done is within the staffing of the

commission, as opposed to the board. The staffing is not being reduced, so the work capacity within the commission is still there. The existing commissioners have indicated that a total of six commissioners, including the new commissioner for land and communities, is workable, so I will be supporting the SSI.

The Convener: It is quite clear that the remit of the Land Commission is expanding. We have seen that through the recent land reform legislation, and I find it difficult to believe that its work programme as a result of that is not also expanding.

Ariane Burgess raised the important point that the Land Commission is the engine of land reform. Clearly, if there are concerns about the work of the Land Commission, as Finlay Carson articulated, a natural position would be to restrict the number of land commissioners and to reduce the commission's capacity. I do not agree with that, however—I believe that its work is important. We could equally be sitting here with a request from the Land Commission to expand the number of commissioners to do the work, rather than to reduce that number.

In answering questions, the cabinet secretary and her officials have shown that they have stuck to the letter of the legislation—I have no concerns about that—but I do not think they have stuck to the spirit of the legislation. It is important that we retain the number of commissioners. There is also an important link between land and language and culture. We need to double down on that and support it more deeply, and I do not think that this decision will help in that regard. I will be backing the motion to annul.

As there are no other comments, I ask the cabinet secretary to wind up the debate. It is over to you, cabinet secretary.

Gillian Martin: I have heard everyone's arguments, and I want to make one thing clear: we believe that the Scottish Land Commission is doing vital work. I say that particularly in response to what Ariane Burgess said in outlining the reason and the rationale for the existence of the commission, which has served us well and will continue to do so. There was nothing in what Ariane Burgess said about the importance of land reform with which I disagreed—absolutely nothing. She is right to say that it has transformed the picture—people are far more aware of their rights, and communities are far more able to access the land that they live on. She also highlighted some community projects, and we could all cite many more such projects that have been tremendously successful. Nothing about this decision takes anything away from that.

I considered the commission's overall capacity, expertise and experience in providing strategic leadership, and, in its response to my decision, the commission confirmed that it had the overall capacity and expertise to perform its functions. Dawn Black was right to say that the staff cohort remains—there is no reduction in capacity in the Scottish Land Commission.

I will leave it there. Obviously, I respect the views of everyone around the table. I understand the concerns about losing a Gaelic speaker and the desire to have a Gaelic speaker on the board. I hope that we can have more Gaelic-speaking capacity in the organisation through the latest recruitment round. However, I made the decision on the basis of the board's capacity to deliver its objectives.

The Convener: Donald, do you want to briefly wind up the debate and reflect on the comments?

Donald MacKinnon: I have nothing to add, really. I thank all members of the committee for engaging in the discussion. I remain of the view that we do not have the justification in front of us as to why the decision has been made. One thing in particular that came out in the debate and the questioning is the point that the convener revealed about the increase in the commission's workload. That contrasts with the move to reduce the number of commissioners—to me, those things seem to be in conflict.

The Convener: Do you intend to press or withdraw your motion?

Donald MacKinnon: I intend to press my motion.

The Convener: The question is, that motion S7M-01834, in the name of Donald MacKinnon, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division. To be clear, a vote for the motion is a vote to recommend that the regulations be annulled.

For

Baxter, Andrew (Skye, Lochaber and Badenoch) (LD)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Motion disagreed to.

The Convener: The committee is required to report to Parliament on the instrument. Are

members content to delegate authority to me to approve a draft report on the instrument?

Members *indicated agreement*.

The Convener: I thank the cabinet secretary and officials for attending.

I would be grateful if those who are leaving could do so quietly. We will then move swiftly on to the next item.

09:53

Meeting suspended.

09:58

On resuming—

Scotland Act 1998 (Specification of Functions and Transfer of Property etc) (Amendment) Order 2026 (SI 2026/1095)

The Convener: The fourth item on the agenda is consideration of SI 2026/1095. It has been laid under the negative procedure, which means that it will come into force unless the Parliament agrees to a motion to annul it, and no such motion has been lodged at this point. I note that the Delegated Powers and Law Reform Committee has made several comments on the instrument, which are summarised in the public paper. As members do not have any comments, I invite the committee to agree not to make any recommendations in relation to the instrument.

Members *indicated agreement*.

Outdoor Access in Scotland

09:59

The Convener: Agenda item 5 is evidence from witnesses as part of the committee's inquiry into outdoor access in Scotland—thank you for being patient. I welcome to the meeting Richard Barron, convener of the national access forum; Stuart Chalmers, head of visitor services at Forestry and Land Scotland, who is joining us online; Mark Johnston, head ranger of Crown Estate Scotland; and Peter Rawcliffe, head of people and places at NatureScot. I remind everyone that, as ever, you do not need to operate your microphones, as the broadcasting team will do that for you.

We have an hour for this evidence session, so we will move straight to questions. It would be fantastic if we could make questions and answers as tight as possible. I will ask the first question. There have been changes to Scotland's outdoor access system throughout the past 20 years. What have the three main impacts of that been, and how can those be measured? I would like to hear answers from every witness for this first question. Peter Rawcliffe, do you want to start?

Peter Rawcliffe (NatureScot): Yes, I can go first. We can see that there has been an impact on participation levels and the number of visits to the outdoors over that period. Our data shows that the percentage of people in the Scottish population who visit the outdoors on a regular basis—that is, weekly—has grown from about 40 per cent in the 2015 to 2020 period to now sit at 60 per cent. A lot of factors have contributed to that growth—not just the legislation, but the emphasis on it, the promotion of the outdoor access code and the work that has been done by access authorities on core paths planning and the provision of more paths. Those factors have all definitely created an environment in which people take more visits to the outdoors. In recent years, there has also been a decline in the number of people who never visit the outdoors. There are some positive things in that data.

Health messages have also been an important part of that growth. Recreational walking has been a major component of the slight growth in our levels of physical activity as a nation. The work to implement legislation by bodies such as Walking Scotland—formerly Paths for All—has been contributing to that, too.

Richard Barron (National Access Forum): I echo what Pete said. It has been good to see that more people are now out there, using the countryside. Some of the problems that we experienced prior to the Land Reform (Scotland) Act 2003 coming into force have been resolved,

while some of them are the same and are still there.

People have more awareness about using the outdoors. In particular, Covid got people into their local community areas—we had tried for years to get people to use their local environment to walk and cycle more, and Covid made that happen. There have also been advantages from the Land Reform (Scotland) Act 2003 coming into operation and statutory access rights appearing, and people now have more confidence in what they can do and where they can go.

Mark Johnston (Crown Estate Scotland): I come at this issue from the point of view of a land manager. We have been trying to attract people to benefit from tourism and outdoor recreation for more than 30 years. The outdoor access code provided a clear message so that we could engage with people in the same way as neighbouring landowners. The legislation also gave us forums—the local access forums—in which to engage with other bodies, and we have been working with the Cairngorms national park on core paths. The legislation brought together thinking on how we encourage access.

The Convener: What was the impact of that?

Mark Johnston: Speaking from the perspective of the Glenlivet estate, we were encouraged to improve paths and improve the experience for people who come to the estate. We did not notice a big jump in numbers, probably because we were already trying to get people to come out. Certainly—to again echo what has been said—people now have the confidence to come on to the estate and exercise their rights, and that is also something that we have been proactively encouraging through providing signage information and having people on the ground to welcome visitors.

Stuart Chalmers (Forestry and Land Scotland): We manage 8 per cent of Scotland's forests and land. The word "confidence" is really key—there is now far greater confidence. There is also now a greater diversity of people using the land than there was before. For example, the percentage of people from ethnic minorities who use the land has significantly grown and is now closer to the percentage in the census data. However, there are still issues in relation to people with disabilities and long-term health problems, who are still not accessing the countryside in the numbers that we would like. The legislation has given more confidence, but there is a need for investment to drive inclusion.

The legislation has also meant that people are going further and deeper into the forests than had been the case. That is partly through activity changes such as gravel cycling and long-distance running, but the access legislation has supported it as well.

There have been challenges, which we might dig into. Car-based camping is one. People have been given the confidence to do it, but it is not strictly covered by the access legislation.

Finlay Carson: My first question is for Peter Rawcliffe. In your written evidence, you suggested that, initially, between 2005 and 2010, the bulk of the resourcing of your work was based on raising awareness of the code, which was done through television adverts and so on; then from 2010 until 2020—a decade—that focus shifted into encouraging people into our natural environment, to promote the benefits of access to the countryside; then, from Covid onwards, there was again more focus on the code. Did that focus arise as a result of too much focus having been put on getting people into the countryside rather than giving equal importance to their viewing that access—that right to roam—in the light of their responsibilities? Did we get the balance wrong for that decade—which has resulted, I believe, in more than 2,000 responses to our consultation, which generally suggest that there are issues of irresponsible access?

Peter Rawcliffe: In retrospect, we could say that we got the balance wrong, but those issues were not very live during the 2010s. The review that was commissioned did not come up with any issues in 2014. It said that the access legislation was working well. At that point, those issues were not paramount. Clearly, local issues were happening during that time, but nationally significant issues were not.

As we know, Covid changed everything. The lockdowns, in particular, and then the restrictions on people's access meant that people spent lots of time exploring their local places, as Richard Barron said. The gradual releases then meant that people could visit further afield, which put a lot of pressure on the countryside. People who might have gone on holiday abroad or gone somewhere else to stay were all using the countryside. Many were new to that countryside and did not know about the code or how to behave responsibly. That is when the emphasis changed to being on the code.

In addition, visitor management became much more important at that time. People were travelling around Scotland in cars and camper vans, for example, which put pressure on places that had not previously experienced it.

I do not think that the balance was wrong, but, post-Covid, we have tried to address the challenges of the legislation and the visitor management issues across many parts of Scotland.

Finlay Carson: Mark Johnston, ultimately, your sector had to respond to what some would suggest was a focus that was too much away from responsible access and too much on just access. That came at about the same time that ring-fenced funding for ranger services across Scotland was cut. Do you have the same view as Peter Rawcliffe—that the balance was right—or were there additional pressures on the ability of the decreasing number of rangers across Scotland to police those extra people, who did not have, historically or culturally, the same view on how to access responsibly?

Mark Johnston: Obviously, as a member of the Scottish Countryside Rangers Association, I take that view. Provision across Scotland is probably not equitable. In some places, such as in the national parks, in particular, we have well-resourced and good ranger services. That is probably not echoed across the country.

On the ground, nothing can beat well-trained rangers, who can interact with the people who are coming in, help them to understand responsible access, connect them to the landscapes and make them care about where they are.

Finlay Carson: Are we now getting it right? Does it look as though that balance is now changing? We have gone from five years of trying to reinforce the code, through 10 years of saying, "Fill your boots—come into our countryside, because it's good for your health and it's accessible and you've got the right to roam," to saying, "Oh, my goodness—we've been through Covid, and now we need to do something about this because there's an issue." Are we moving in the right direction?

Mark Johnston: Yes. I echo what Peter Rawcliffe said about separating the access code from visitor management issues. Some of the issues that we experience—for example, toileting, dogs and things that are new, such as paddle boarding—were not around at the time of the access code and are visitor management issues. Certainly, where I work—I am working with the Cairngorms national park—we are managing those and are always adapting to what is coming.

Peter Rawcliffe: I echo that point. Rangers are essential to engaging with the public about the access code and their rights and responsibilities, but also to managing visitors. We should therefore be looking seriously at whether the provision is right.

Richard Barron: To echo what has been said, one big challenge is resourcing. Six access authorities, I think, currently have no dedicated access staff, and seven do not have local access forums—or it could be the other way around; my mind is a bit short on that.

When Covid arrived, there was an assumption that nobody would be going outside and nothing would be happening. For example, one of my access forum colleagues was moved from his job in access into cemeteries. Then, almost immediately, people were starting to go out, and it was like, "Oh, we need you back here." There was, therefore, no resource for people to cope with the onslaught, to use a provocative word.

Now, as Mark Johnston said, some councils have fantastic resources and are on top of things. That is great. However, in other areas, that is not remotely the case. That gives us problems, because someone who stays in an area that has no resource will have no rangers to do the education side and, if they go somewhere else, they will take their existing cultural perspective with them; those might not be appropriate, but nobody has corrected that person. It is about getting the balance correct.

Finlay Carson: Peter Rawcliffe, exactly how much does NatureScot spend on promoting the code at the moment? My understanding is that it is less than £100,000 a year. Is that right? What are we looking at, currently, for promoting the code?

Peter Rawcliffe: In the past few years, it has been less than £100,000. The reason that we do not need to spend too much is because we are not doing big TV or similar campaigns. We are using social media. There was talk in previous evidence about the bads of social media, but it is also a very effective communication tool, and we are spending much more on influencing through it.

Jamie Langan: To build on some of the topics that Finlay Carson alluded to, I am keen to know what has been done, in practical terms, to tackle irresponsible access. In your opinion, can we proactively do that or, by the nature of outdoor access, will it always be a reactive process?

The Convener: To mix things up a bit, we will go to Stuart Chalmers on that first.

Stuart Chalmers: After Covid, in 2020 and 2021, various partnership approaches looked at visitor management across the country. That has been really helpful. That collaborative approach of access authorities, land managers, the police and the Scottish Fire and Rescue Service, all working together, at both national and local levels, has really made a difference. It has been spearheaded by the two national parks but has rolled out more widely, I think. Where that partnership approach exists, it has made a big difference.

It is about sharing how we communicate messages together, the joint working of our ranger services and investment through, for example, the rural tourism and infrastructure fund to tackle some of the infrastructure issues, such as parking, that

have been problems in particular areas. That collaborative partnership approach has made a big difference.

Mark Johnston: There are actions that land managers can take, such as using waymarked trails and providing information and signage. On Glenlivet, we provide a dedicated mountain bike centre, which improves people's experiences, provides a place to get across the message about SOAC and helps to manage visitors. Despite the right of responsible access applying across the whole estate, 90-plus per cent of visitors stick to the areas that are managed for them.

10:15

Jamie Langan: Is there a group of people who still irresponsibly access the land that you manage, or are people who visit the countryside responding to the proactive work that is being work by bodies such as yours?

Mark Johnston: There are still some problems as a result of the increase in the use of campervans, as has been discussed by the committee previously. However, the dedicated facilities provide a place for us to engage with people and spread the message to people who do not yet understand the code.

Peter Rawcliffe: NatureScot, which is also a land manager, has been taking proactive steps on the national nature reserves that we manage to try to better manage visitors. When people have been causing conflict with the nature interests of reserves, we have restricted access. Recently, we closed a car park at Loch Leven because of issues with informal wild camping at the weekend, so land managers can be proactive. Ultimately, the police need to be involved when illegal activities take place. There is continuity from education and promotion of the code at one end through to enforcement at the other end. We need to use the whole toolkit to resolve some of the issues.

Richard Barron: Partnership working is definitely needed. There is an assumption that local authorities manage everything to do with land reform and access rights, but the reality is that it is better to tackle a lot of the antisocial behaviour through other means. That might involve a different department in the local authority, but we need the police and other people to tackle the issues within a reasonable time. If there are problems, we want a fast response. Historically, such issues have not always been treated as a high priority.

It helps if there is a place where information can be provided in advance and where people can be educated, exactly as Mark Johnston has described. Nudge signs are still needed to remind people to shut gates and so on, but it helps if there are those little things.

There will always be a minority of people to whom we will not get the message through, no matter what any of us do, but the vast majority of people want to do the right thing. They might not know what the right thing is, so, if we can engage in education, that can make a big difference.

Laura Mitchell: Ramblers Scotland has set out its view to the committee that, ultimately, any problems are due to poor awareness of and compliance with the code, not due to the content of the code. What are your views on that assessment?

Richard Barron: I agree. The 2003 act and the code work really well. With the court cases relating to the act, nobody has ever challenged the act; implementation has always been the issue.

The code was designed as a guidance document. It was always anticipated that more specific guidance would be provided—on camping, for example—but that the code would form the base.

The problems tend to come from the fact that people think that the code does more than it is supposed to do. It is very specific in setting out the responsibilities for land managers and people who use their access rights under the 2003 act. Issues such as motorhomes, which were mentioned by Mark Johnston and by those in previous evidence sessions, are not covered by the act and the code. However, given that people are aware of SOAC being the big thing, everybody assumes that it covers everything in the countryside. It does not.

We need to use the right tools to get through to people. If we are talking about problems with motorised camping, we need to consider other avenues to properly tackle them. The visitor management group, which has been mentioned, has been considering the problems with camping as a whole. We need to provide support to ensure that the information that we want people to have so that they can act responsibly, whatever they are doing, is out there.

Peter Rawcliffe: You have seen our written evidence. We would concur with that view, too. Our emphasis has been on keeping the code under constant review through the various mechanisms that we have for doing so, supplementing the code with access guidance with the support of NAF, and refining, sharpening and targeting key messages about the code. No one reads the code—it is a very long document. There is a history behind that.

Effective key messaging is really important in promoting the code. We could review the code. We discussed that in the run-up to the 20th

anniversary of the code, but we felt that better priorities were continuing to prepare guidance, promoting the code more effectively and to different audiences in different ways, and making the case for visitor management and the investment that is needed in that area.

Mark Johnston: Some of the issues have been about clear and consistent messaging. As a land manager, it is useful to have guidance in the code. I do not read the code, but I still refer to it occasionally. We are very proactive with regard to messaging, and I know that other land managers are, too. However, there are gaps in the middle, where people are not getting the same message. When people visit different places, they need to receive the same core message, albeit interpreted by people who know that local area. There is a bit of a failure in that respect currently.

The Convener: Stuart Chalmers, do you want to come in?

Stuart Chalmers: Yes, please. Broadly, the 2003 act and the guidance are good. There are five areas that present challenges for us in land management and on which there might be a need for additional supplementary guidance, as Pete Rawcliffe suggests. I will go through each area.

The first is visitor safety around harvesting sites. We, quite rightly, close areas for forest harvesting, to keep people safe. However, people often go through the sites thinking that they have access rights to do so.

The second area is environmental protection. We have sensitive habitats or habitats with certain species where we would like to keep visitor numbers down or keep people to a path. Further guidance could support that.

The third area is fires, which is a really big issue, especially over the past couple of years. Last year, an area in Galloway the size of Edinburgh was burned as a result of a campfire. Most of you will also be aware of the fire in Glenmore. The code has a single line stating that there should be no fires in forests or peatland, but it is hidden away. Additional guidance or further clarity on lighting fires is really important.

The fourth area is unauthorised trail building with mountain biking. There is supplementary guidance from the national access forum. However, mountain bikers are building trails on private and public land without permission, which is an issue.

The final area is car-based camping. People park in a car park and pitch their tents nearby. In some cases, they drink lots of alcohol, leave a mess and use the site as a toilet. That causes lots of issues for land managers. True wild camping is rarely an issue. People take a small amount of gear and always take it away with them. Car-based campers are often the ones causing antisocial behaviour problems.

Laura Mitchell: I seek clarification on that. Is it your view that those challenges could be addressed by updating the guidance rather than carrying out a review of the code?

Stuart Chalmers: Both are options and either could work—but, yes, supplementary guidance could work.

The Convener: I will bring in Andrew Baxter.

Andrew Baxter: We seem to be pussyfooting around whether we need to review the Scottish outdoor access code.

My first question is for Peter Rawcliffe. Your written submission says that NatureScot will consider the findings of the committee's inquiry "carefully", but it then says that none of the criteria for a review have been met.

Is NatureScot generally open to changing its position as a result of this inquiry, or has it, in effect, already concluded that a review is unnecessary?

Peter Rawcliffe: I think that the word "yet" is in our written evidence. Yes, we are listening and we are open to the conclusions and recommendations from the committee. We do not have a closed mind on the issue.

Andrew Baxter: On that basis, will NatureScot commit to taking our eventual recommendations back to your board for a fresh decision, rather than simply noting them?

Peter Rawcliffe: We will take them back to the board. We will discuss them with NAF and with the Scottish Government.

Andrew Baxter: You say that you will discuss them with the Scottish Government. Surely NatureScot and the board will have their own decision-making process on proceeding with a review of the outdoor access code, rather than asking Scottish ministers whether they should proceed with a review.

Peter Rawcliffe: The board will take a view, but we will then relay that view to ministers and have a discussion with them about it.

The Convener: Do you have a further question, Andrew?

Andrew Baxter: Yes—I have a question for the other witnesses. Do you support NatureScot's decision to retain the existing code, or is there support more generally for a structured review, including in relation to incorporating some of the guidance notes or explicitly setting out in the code that things such as car camping are prohibited, while retaining existing access rights?

Richard Barron: We need to be careful about what the code is. The code sets out what is responsible under the Land Reform (Scotland) Act 2003. The car camping that you mentioned involves motorised transport, and that is not covered by the Land Reform (Scotland) Act 2003 at all. If it was to be part of the code, you would have to modify the Land Reform (Scotland) Act 2003 to say that it applies to motorised vehicles. In doing so, you would be saying that people in motorised vehicles have a right of access to all land and inland water in Scotland, which is clearly not what anybody wants and not what anybody means.

That is what I meant earlier when I said that we have to think about what the code's job is. We keep hearing that we need to add a bit to the code on motorhomes. They are not covered by the code, so we need to look at other ways of dealing with that—that is the visitor management stuff. The more specific you make the code, the more you need to continually review and update it. There is more flexibility to put things in supporting guidance, as that can be much more easily changed and refined to reflect current issues.

Andrew Baxter: In our inboxes, members get lots of examples from our constituents of problems with antisocial behaviour that is not covered by the code but is covered by other legislation. However, when people are challenged on that, they will refer to the outdoor access code—maybe not by name, but they will say, "I'm allowed to do this because I have a right to roam." That is a misunderstanding of the outdoor access code, so maybe we should be more explicit about what is and is not in the code, which is why there is a need for a review.

Richard Barron: You are right, and I think that we all suffer from the same problem. People constantly write to us, email us and phone us about the bad things. They rarely come to us and say, "Oh, I had a fantastic day in the hills," unless you know them as friends. The result is that we focus on the bad and forget that the majority of people—landowners and the public—go about their day-to-day lives without any issues at all. However, when problems happen, such as the classic antisocial behaviour that you mentioned, that can be devastating for the people who are affected—it can be really bad. The challenge for us is to do what you said, which is to make people aware of what the code is about and what it contains.

That goes back to the education points that Mark Johnston and Pete Rawcliffe mentioned. The more that we educate people on what the code means and the more that we get people culturally to accept what the countryside was historically and bring them back and make the connection that has disappeared as people have stopped being involved with the countryside so much, the more they will start to appreciate it and the more normal its protection will become. We can do that with boots on the ground and by getting appropriate information to people.

Sometimes, there are cultural issues that predate the act and that are still ongoing. However, unless you put in the resources and get people in there to tackle those issues, you are not going to change anything. Reviewing the code itself and adding new bits to it will not change anything—the problems will still exist.

The Convener: Mark Johnston, I saw you nodding.

Mark Johnston: I have had my fair share of the "right to roam" issue on the ground, and I think that it provides an opportunity for education. We are already able to do something about that, so I do not feel that anything needs to change in that respect. We could update the guidance on visitor management issues, but I see no need for a complete review of the code.

Stuart Chalmers: I do not agree with Richard Barron's point about the need to change land reform legislation in order to deal with vehicles, because what we are talking about is car-based camping. The act in question is camping, which happens on land and is therefore covered by the land reform legislation.

I am not enough of an expert to know whether there needs to be additional guidance or whether the code itself needs revision. However, there are a number of points that I think it would be worth clarifying for the public, and that could easily be done through either guidance or revision of the code itself.

The Convener: Finlay Carson has a brief supplementary.

Finlay Carson: My question is specifically for Stuart Chalmers. Stuart, you talked about visitor safety and restricting access. I know, anecdotally, that the Forestry Commission had been developing visitor access for years, whether through the 7stanes mountain biking centres, the new visitor centre at Kirroughtree or whatever. However, it appears that far less of that work is now being carried out, and far less investment is being made by Forestry and Land Scotland, which is not doing very much to enable responsible access.

During Covid, Fergus Ewing reduced the restrictions on motorhomes using Forestry and Land Scotland car parks. Indeed, he encouraged that activity, and there were fewer restrictions than there are on commercially run campsites. Has investment in visitor facilities on Forestry and Land Scotland land increased? Similarly, has the

number of full-time-equivalent employees involved in visitor access increased over time, in line with more people being encouraged into the countryside? In short, has Forestry and Land Scotland increased investment to enable responsible access?

Stuart Chalmers: I would say that, overall, there has been a slight reduction in the number of staff involved in visitor services and the amount of funding that we have, so we have been targeting our funding more wisely and looking at long-term financial sustainability.

You mentioned a number of sites in the south. We have also invested £6 million in Glentress, which allowed us to host the cycling world championships a couple of years ago, and, as part of the Borderlands growth deal, we are working on a £5 million investment in two sites in the south of Scotland. Furthermore, we have been looking at funding from the rural tourism infrastructure fund as well as other sources of funding, and we have been looking to grow our car-parking income, too.

Things are tight, so we need to spend our money wisely. We will be putting in a lot of effort, over the next few years, to really prioritise things and spend every pound that we get wisely. As I have said, things are tight, and the number of staff that we have on the ground is tighter than it has been in the past, but we are using our funding as wisely as we can.

The Convener: It seems that the absolute backbone of access in Scotland is the core paths network, because that seems to be where most people enjoy the countryside. I know that access authorities have a responsibility to plan for a system of core paths—that is set out, I think, in the legislation—but I would like to hear your reflections on whether the current core paths network meets the needs of people in Scotland. In particular, is the quality of the core paths network, and is the investment in it, adequate right now?

Peter Rawcliffe: We reviewed that in 2015, and there is a research report on it. We looked at the provision set out in the first round of core paths planning, and what came out of that was that core paths provision was uneven across Scotland. In the communities where the core paths could make the most difference in addressing social and economic disadvantage, there was probably underprovision. Of course, that is partly because of the consultation process, because articulate communities voice their interests and get what they need from local authorities in a way that other communities might not. That is definitely an issue. There is also the ongoing maintenance and upkeep issue, which takes us back to the issue of resources, which it is fair to say local authorities struggle with. Aspects of the core paths network have not yet been delivered.

The Convener: Are the core paths networks being updated, and could guidance reflect that? The 2005 guidance is quite out of date. Are we planning for the paths networks that we actually need?

Peter Rawcliffe: It is a mixed picture. Some local access authorities are doing that; others are further behind. The guidance could be updated, and that would undoubtedly be useful, based on the experience so far. On whether more funding is needed, proposals for a paths fund are being discussed post-election. Those things would all be useful.

Richard Barron: When the core paths concept was introduced, the idea was that it would be a network that was sufficient to meet the needs of the people in an area. The decision was made that the local authority would create it—as in map it—but that was it. To make it usable, as a minimum, you need signs and gates. You need to be able to access it, but, of course, that was never a statutory duty. Part of the logic was that, if it became a statutory duty, you would not be able to attract funding from other sources—you would be stuck with the money that local authorities get from Government. However, the reality is that money was not forthcoming from other sources, so there are areas where core paths have been put in that have been well developed and there are areas where the line is there but you would not be able to use it.

People do not know where the core paths are. The only way you will find them is by looking at the core paths plan on the NatureScot website, knowing that it might exist on a local authority website—some were there, but some have now gone—or that you might need to download a book to get them, or you might have an online map. However, that is not where people look when they are going for a walk. If you want to go out and about in the countryside, you will go to your traditional sources, such as Walkhighlands. That is where people tend to go.

When the plans were put together, the routes could be absolutely anything. There are examples across Scotland of where a public road is a core path, but that does not add anything, because you could walk, cycle or horse ride there anyway. In other areas, the core path is an off-road route that links up. There are all sorts of things that we could have done differently, but to go back now to improve that—to replan it—would be an awful lot of work. When the act came into force, a lot of time and resources went into preparing the first maps, which was a big thing. That resource was available at the time, but we do not have the same level of

resources now. Redoing that now would not deal with the visitor management issues that people are reporting as being more problematic. It would be really nice to do it, but there would be implications for other things that people would perhaps want to see happen first.

The Convener: Do you believe that the guidance should be updated?

Richard Barron: Oh yes. We have been waiting for that for quite a while, so it would be nice to get updated guidance.

Mark Johnston: I will just add that what has been said reinforces the message about inconsistency. Where we are based, in Cairngorms national park, there has just been a review of the core paths, which we fed into, and we supplement the work that we do around our core paths with additional paths. However, we are hearing that that is not the case across Scotland.

Stuart Chalmers: It was important in the early days because it provided a massive access network, but the reality is that the network is not well maintained or managed. As Pete Rawcliffe said, the picture is inconsistent. Some local authorities mapped every forest road. If the core paths are to be reviewed, we should be looking at a much smaller set of paths that are really important to communities or working to create access networks so that the process is more supportive of prioritising investment.

At the moment, the network of paths is so extensive that it is not helpful. We maintain core paths on our ground where we have the resources to do so, but most of them are underused, whereas our promoted trail networks are far more important and more highly used. Core paths do not represent the same levels of use.

Dawn Black: How do we find out where those core paths are? There is not one place where people know to go to get information on them. Why are the paths not on Ordnance Survey maps?

Richard Barron: Years ago, when rights of way were added to Ordnance Survey maps in England and Wales, there was a definitive legal process for creating the routes. There was not the same process for rights of way in Scotland, so Ordnance Survey said that it was not prepared to add them. When core paths were introduced, we had a definitive process and the assumption was that they would appear on OS maps, but Ordnance Survey was not supportive and that has never happened. When those paths were mapped in Scotland, the level of detail that was used was as variable as the core paths—a main road could also be a core path, but, from OS's point of view, showing that would not be beneficial for the use of its map.

With modern technology and things such as the Ordnance Survey app, which many people use—although not everyone does—a layer could be turned on and off, which is a much more practical proposition. The core paths could be added now, whereas, historically, there may have been good reasons for not adding them.

Laura Mitchell: Last week, we spoke a lot about new technology and some of the challenges that come with it. One of the issues that came up was the problems that can arise when people use route-finding apps. It was suggested that there should be some moderation of them, to place more responsibility on those who are providing the apps, and that the national access forum could be the prime candidate to do that. What is your view on that, Richard?

Richard Barron: I am up for roaming across Scotland and checking out all the routes personally. That would be absolutely no problem. [*Laughter*.] Seriously, though, it is not a modern issue. Years ago, when I was in a previous role, I was approached by a local family who had noticed that people had started to go up a hill and they wanted to know what was going on. By sheer fluke, we had conducted a literature review for what would become the Loch Lomond and the Trossachs national park and we were able to find the book that people had been using. The book had not been written as a guide, but it described a person's journey of such-and-such peaks, or whatever it was. It did not set out a complete route, but there was enough information in it for people to pick one, and people ended up throwing their mountain bikes over a six-foot deer fence because that appeared to be the route.

It would be really nice to say that we could provide moderation and guidance, but, practically, if we said yes and started doing that, we would never complete anything successfully, because there are so many walking routes. That said, apps and websites such as Walkhighlands, which has built its reputation on accurate information, the OS app, and possibly Strava or AllTrails are organisations and we could get them to include more information on responsible access. One of the latest features on the OS app is the ability to record problems. That is fantastic, but what happens to them? Absolutely nothing. The technology is great, but we need to join up some of those things.

I would love to say yes and go for it, but my colleagues in NatureScot and the secretariat would have their heads in their hands and say, "We'll never see him again."

The Convener: Peter Rawcliffe, do you have your head in your hands?

Peter Rawcliffe: I emphasise that some of the moderation is happening anyway. My team was in Glencoe last week, with the National Trust for Scotland ranger team, which has three permanent rangers. We were looking at the newly improved, RTIF-funded Three Sisters car park and the Strava lines from that. One of the National Trust's responses to that is to complain to Strava and get some of those lines removed. We also talked about the need for ranger intervention—they need to talk to people and say, "Don't go there; go there instead. Follow this path, not that path." There are things that you can do. I expect that Stuart Chalmers's organisation does them, and the other organisations that are represented today will do them, too. It is about active moderation, which we do on some of our national nature reserves, too. We have a look at what is happening on our land and try to moderate it, and we address it if we cannot moderate it.

10:45

Mark Johnston: As rangers on the ground, we notice patterns and strange things happening, and we talk to people in order to find out why they are happening. Then we go out and try to fix that.

Stuart Chalmers: There are a wide range of platforms that people use. Mostly, users are self-moderating when there are big issues such as paths failing. If there is a genuine issue on the ground, we try to deal with it on the ground rather than on a social platform, but we have had success with things such as asking camper van companies not to promote specific sites. If there was a specific issue, we would challenge it, but generally having information on the ground is more valuable than trying to police the many social platforms that guide people round the country.

The Convener: Is the current system of dispute resolution working? Is there a need to look at the role of the local access forums in dispute resolution? How does that work with the national access forum?

I ask Richard Barron to start, because his role is pretty critical in that.

Richard Barron: It works, but it is not necessarily easy or cheap. We have seen that court cases can go on for years before you get a resolution that suits anybody or any resolution at all, and the amount of money that goes into those is not good. I hope that the move from the sheriff court to the Scottish Land Court will make a difference as it comes in.

The local access forums have an important role to play through mediation, but you need to have an access forum for that, and not every area has one. Everybody on the forums is a volunteer and not everybody wants to have that dispute resolution side, even though that was the concept of the local access forums. If you can talk about things, there is a good chance that you can resolve them.

Over the past few years, colleagues in the Scottish outdoor recreation alliance have been looking at mediation to see whether it could have a role. It would be better to have a process in which the local authority comes in to deal with things through mediation, because sometimes there might be legitimate reasons why something occurs. Then, we would have as a backstop notices and then court action. The more that can be done earlier, the better.

Again, there would be a resource issue, at least in relation to training access forum members to do that, but it would certainly help. Some local access forums currently go to meet people and will provide mediation. Sometimes, the decisions that they come to are perhaps not what people—the landowner, for example—want to hear, but they appreciate that somebody has taken the time to come and listen to them and hear their side of the story and the other side of the problem. People might not agree with the outcome, but they go with it. There is good evidence on that mediation role. More support to get our local access forums up to the level that we would like them to be at has to be welcomed.

The Convener: Can you highlight particular local access forums that have done a lot of dispute resolution work successfully?

Richard Barron: Now, that is a question that I never thought I would get.

The Convener: You can always write to us.

Richard Barron: I will get back to you on that. I will ask and then get back to you, rather than answering that question on the hoof.

The Convener: We have talked about guidance. Is the case law on access reflected enough in guidance, or do local authorities and access forums feel that perhaps there is not appropriate guidance on what has been tried and tested through the courts?

Richard Barron: There is no doubt that the national guidance that we have been waiting for from the Government would be appreciated. That goes without saying. The court cases that have been reviewed usually end up in the knowledge base on the ScotWays website, so they are available for people to view. Reading purely through the court documents can be tiresome, so having a decent précis of what has been said and how it applies is useful. Having more user-friendly guidance would definitely be beneficial.

The Convener: Are access authorities cautious because, if they step over the line legally, that leaves them exposed?

Richard Barron: Some definitely are, yes. Some have been to court, had their fingers burned and are reluctant to take another case to court. Other cases have been successful, and some are of national significance, such as the Renyana Stahl Anstalt case in Loch Lomond and the Trossachs. Should cases of potential national significance be funded or progressed at a more national level, rather than being left to local people? Things can be tackled in different ways.

Peter Rawcliffe: I echo that. There is probably a training need that we, alongside the National Access Forum, need to think about.

Case law drives change in the system. We are probably waiting until we get case law on drones before we have anything definitive to say in a code or revised code, so it is really important that that happens. I guess that it comes back to resources. Going to court is expensive, and that has to be a factor in any public body.

The Convener: Do you have thoughts on where dispute resolution is best exercised?

Peter Rawcliffe: The access legislation and the code provide a general framework. The role of local access authorities is critical to resolving issues on the ground. The role of local access forums in facilitating ongoing discussion and engagement with the public, in communities and with land managers is really important, and they are vital to the way that the system has been set up.

The Convener: Stuart, do you have anything to add?

Stuart Chalmers: No. We work with the local access officer and deal with issues that they raise with us directly, so they never go to a local access forum.

Dawn Black: I want to move the conversation on a little in this area and look at the byelaws that some local access authorities have introduced alongside the code, almost to reinforce it. First, do witnesses consider that those byelaws have worked?

Mark Johnston: I am probably repeating a lot of my previous answers, but we want consistent messaging. Working on the ground in the Cairngorms national park, where the fire byelaw has been introduced, we have been able to communicate a consistent message across the park. It is a simple, clear message and, when we engage with people, it makes things much easier, rather than getting into protracted conversations about what could or should be done. The message is simple.

Dawn Black: Are there any other views, or does everyone agree with that?

Richard Barron: In your next session, it might be worth speaking to somebody who was involved with the camping byelaws. It would be good to get their feedback. That would probably be the safest approach.

Dawn Black: Do you feel that having that legality behind it has been effective in preventing irresponsible behaviour?

Mark Johnston: I refer to Richard Barron's answer. Somebody who works at Loch Lomond and the Trossachs would be better placed to speak about those byelaws. In the Cairngorms, we have only introduced the fire byelaw, and it has been in place for only a year. Colin Simpson from Cairngorms National Park Authority, who is a witness on the next panel, will be able to answer better, but I think that the statistics show that there were fewer fires this year as a result of the byelaw.

Dawn Black: Do the byelaws provide enough enforcement power, or is education more powerful?

Richard Barron: It is not so much about whether they give you enforcement options, because those are included. Penalties can be used. The issue is the resourcing around the enforcement itself and education about the byelaws. If you do not educate people, they are none the wiser. They might repeat behaviour or, in the worst-case scenario, the case will reach the procurator fiscal and they will claim that they did not know. That is no defence in the eyes of the law, but, if you are to introduce a byelaw, you need a way to enforce it.

That comes back to the question about the best way to manage resources. Should you have rangers going out and essentially acting as police officers by issuing fixed-penalty tickets, or should they be focusing purely on education and getting the police to come and deal with stuff, which would have knock-on effects on their resources? There is no straightforward answer. Undoubtedly, having a set of byelaws in place, which are properly signposted so that people are aware, will hit a lot of people, and they will respect them. That minority of people who are there to have a good time and do whatever they want to anyway will probably just take your sign down and burn it, so the byelaws would perhaps not be quite as useful as we would hope.

Dawn Black: Considering all of that and the cost benefit analysis of putting a byelaw in place—it can cost more than £30,000 and can take three or four years—are byelaws actually worth while?

Richard Barron: I am not 100 per cent sure. I err on the side that you could possibly better spend that money, assuming you can ring fence it, on the boots-on-the-ground education side, but there are sometimes specific needs that require you to be able to say, "You've had the carrot; here's my stick."

Peter Rawcliffe: Byelaws have a role in the toolkit. Fire is an interesting example, because we probably need to change our approach to it. We could do so through the existing code and through the implementation of individual byelaws; we could go for an educational approach; or we could develop a national byelaw template so that the messages and the rules are the same across Scotland, if a local access authority chooses to adopt it. That is certainly the discussion that we will have in the visitor management group in December.

Byelaws are not a panacea and they cost money to maintain. People accept some long-standing byelaws, but some people totally ignore long-standing byelaws, such as around littering, so they are only part of the solution.

Andrew Baxter: I want to very quickly follow up on Mark Johnston's point that we need to take a consistent approach. I wonder whether the witnesses can tell me whether they would support nationally consistent guidance that is linked to wildlife and wildfire danger assessments, including clear expectations for visitors, perhaps within the code or as further guidance, alongside enforceable restrictions where they are justified, rather than the piecemeal approach that is taken across the country at the moment.

Peter Rawcliffe: Yes. That is what we are working towards with the Scottish Fire and Rescue Service. We have put a lot of effort into simplifying the code and being much more directive about the messaging that NatureScot and all the visitor management partners put out. That is where we want to get to: a point of clarity and being a bit more black and white. The code is quite black and white, but people do not read it and we need to communicate it better.

Richard Barron: Consistency is the key. If you are supposed to do the same thing wherever you are in Scotland, it makes life so much easier for everybody.

Stuart Chalmers: Forest fires and fires on peatland are huge issues for us. The forests and peat create the fuel, and the risk of habitat destruction and loss of human life is really significant. It is really important that there is a nationally consistent approach to help tackle the problem.

Mark Johnston: Again, we need consistency. I agree with everybody else.

The Convener: Okay. I thank you all for attending this morning. We will now have a five-minute comfort break to allow for a change of witnesses.

10:59

Meeting suspended.

11:05

On resuming—

The Convener: Welcome back. We resume our evidence session on outdoor access. I welcome Kenny Auld, head of visitor services at Loch Lomond and the Trossachs national park; Colin Simpson, head of visitor services for Cairngorms national park; and Philip Waite, outdoor access manager at Highland Council, who joins us online.

I will start by asking the same question that I asked the previous witnesses. We have had two decades since the changes to Scotland's system of outdoor access were introduced. What have been the main impacts over that time and how can we measure them?

Philip Waite (Highland Council): Good morning. I hope that you can hear me.

The Convener: Loud and clear.

Philip Waite: Great. I had not seen a change on my screen, so I was not sure whether I was connected.

I agree that the Land Reform (Scotland) Act 2003 has increased levels of awareness and participation in the countryside. The numbers of people participating had slowly increased, but, since the pandemic, they have increased drastically, which has led to some issues. Awareness has been raised among the public and land managers, with most land managers now considering access when carrying out their operations. Overall awareness has increased, and the appreciation and enjoyment of the countryside has been a great benefit on the whole. However, there are issues, which we will explore.

The Convener: How do you monitor and measure the impacts?

Philip Waite: Highland Council now has a ranger team, and we ask members of that team, when they visit sites, to fill out forms with information on participation levels, the numbers of cars and people observed, the behaviour of dog owners and the behaviour of other people. In addition, we collect anecdotal evidence as we visit sites and speak with communities, access-taker groups and land managers. There is evidence on

the ground—it is evident that paths are becoming more worn, for example. We also use online apps, tools and activity trackers, which show increased levels of activity. All those mechanisms show that participation levels are increasing.

Kenny Auld (Loch Lomond and the Trossachs National Park Authority): I agree with Phil Waite and the previous witnesses about awareness. The previous witnesses also talked about confidence, which has been one of the key words over the past 20 years, not just personally but for the sector. We are dealing with interesting new ideas relating to the responsibilities of landowners and the public. Having that basic framework can provide confidence for the profession and the sector, confidence through partnership working and confidence for the public.

I am one of many people across Scotland who, in their teenage years, said, "Well, there is no trespassing in Scotland," with no context to understand what that meant. Even if people do not know what SOAC is, there is a perception about responsibility, as the phrase "responsible citizens" is used a lot across the nation. We are still in a transition, and there is more work to do, but there has been a shift in that regard. The basic framework of norms has been established through case law.

Monitoring the growth in participation is key. We are not involved in the discussions, but VisitScotland is a key partner, because although public access has been thought of in quite narrow terms historically, it has become a key part of the visitor economy and our wellbeing economy over the past 20 years. With those kinds of metrics coming from other sectors, we are getting better at measuring those benefits with the economic spend that comes with public access.

Colin Simpson (Cairngorms National Park Authority): I agree with what the others have said. Our nation can be proud of the fact that we have world-class access legislation, and that is the case for a number of reasons. It is a key driver of the economy. Lots of people undertake outdoor activities as a holiday, and that is a huge benefit to our economy and contributes massively to people's health, probably increasingly so, because there is increasing recognition of the mental health benefits of the outdoors, for example. It has been a great bit of legislation. As Phil Waite touched on, although it clearly does not work 100 per cent of the time, it works the vast majority of the time.

On how we measure that, as others have touched on, there are more formal measures; for example, people such as rangers gather data when they are on the ground. However, typically, access teams—this definitely applies to our team—and ranger teams are outdoor people themselves. They walk, cycle, mountain bike, paddle board and so on, so they have their ear to the ground and they hear what other users are saying, not just in a professional sense but in their day-to-day lives. We also have a couple of groups that give us fairly constant feedback. We convene a managing for visitors group throughout the summer months, and slightly less frequently over the winter months, and we hear from landowners about what they are seeing on the ground. There is quite a lot of evidence, some of which is formally gathered and some of which is quite anecdotal but nonetheless really useful to us.

Kenny Auld: I will add that, sadly, the number of complaints is also a metric for us. The number of complaints and cases that we have to investigate as an access team has greatly reduced compared to what it was before. There still are—

The Convener: I am sorry—did you say "greatly reduced"?

Kenny Auld: Compared to what they were, complaints have reduced in number and frequency. I am referring to complaints about locked gates or misleading signage, for instance, that our access team have to investigate. We still get complaints, and we still work through them, but the number has reduced.

The Convener: What kind of infrastructure, resources and engagement do the two national park authorities provide that local authorities might struggle to provide?

Kenny Auld: I hope that you have read our written statement. We are acutely aware that we might have more resources than others. We can speak only for ourselves and say that we are proud to have three very experienced access officers who work alongside me, and I have 20 years' access experience behind me. We do single-point large investment programmes on paths. As I think the committee heard from other witnesses, paths infrastructure is intrinsically part of how we manage behaviour and design good experiences and manage out bad experiences and environmental damage. Some £1 million has been spent on the Conic hill path, but we also spend £100,000 a year on what we call stitch-in-time projects, which are so important. Those are smaller projects and points, but they will save the taxpayer a lot of money in the future.

A key point for the committee to understand is that we do not have a statutory responsibility to address the paths; we are doing it because we feel it is in the public benefit, and we want to work with landowners—as national park authorities, we are asset poor, so we do not have control in that way. Our whole existence is about working in partnership with landowners and with other public bodies and stakeholders to deliver. However, we

feel that we need to come to the table with something. We have expertise and we put a lot of money and resources into the work.

The local authority position is concerning. We are part of the peer-to-peer network sharing learning across the country, and there are a lot of people working in the sector who are passionate and really experienced—you heard from some of them earlier. However, sadly, none of us is as young as we were, and we need a transition in order for skills and awareness to come through the system. We know about the benefits that we can deliver.

11:15

Colin Simpson: I echo many of those points, particularly the point about collaboration. Park authorities are relatively well resourced compared to local authorities, but we still cannot do everything ourselves. We need to do a lot with our landowning partners, with whom we have good relationships.

It is useful to touch on investment in two senses. One element relates to infrastructure, which includes the things that Kenny Auld mentioned, such as paths and other related facilities—car parking, toilets, signposting and so on. However, there is also the softer side, a lot of which relates to investment in the ranger service, because rangers are out there giving people advice and doing bits of education.

Speaking of education, we feel that it is important to educate people and to catch them when they are young. Our rangers go into every school in the national park, and because many pupils from the national park attend high schools outside the park, we go into those schools as well. We educate people about SOAC, responsible access and other related things, such as wildlife, the environment and so on. We think that doing that is key, but we totally understand that we have the extra resource to do that. We are a relatively small area with a relatively small population, and such education may not necessarily be feasible in all parts of the country.

Philip Waite: The national parks are much better resourced when it comes to access than many local authorities. We do reasonably well in Highland Council—our access resource is possibly somewhere close to the level of grant-assisted expenditure—but some local authorities certainly do not; they are a long way from that. You heard earlier that some local authorities now do not have any access staff or an access forum. There is a lot of variation around the country in the amount of resources that local authorities are able to put into access.

I will respond to the convener's earlier question on how we measure access activity in the countryside. One aspect that has not been touched on is people counters. We have several people counters throughout the Highland Council area and I know that the national parks and some of the local authorities also have them. A stark example of the level of activity is provided by the people counter that we have had for more than 20 years on the Old Man of Storr, which you can see behind me. In the early days, about 20,000 people climbed the Old Man of Storr every year, whereas now, the number of people who climb it every year is in excess of 300,000. That is a stark contrast, and there has been a big change throughout the past 20 years.

The Convener: Thank you. Finlay Carson will ask the next question.

Finlay Carson: Goodness—where do I start? You guys are probably the elite when it comes to dealing with public access in national parks and wherever else. It is somewhat disappointing that we will not hear oral evidence from Dumfries and Galloway, a region that has been named as one of the top destinations in the world—it is the only place in the United Kingdom that was mentioned in National Geographic's list of places to visit in 2027. I hope that we will get the chance to hear from them, because you guys set the standard—there is no doubt about that. However, that may well be because you are well resourced, and we know that other areas are not as well resourced.

Colin Simpson, you touched on the issues of health and mental wellbeing. In a previous committee meeting, we heard that encouraging more people into the countryside saves money for the health service—I think that it saves £500 million. It is about getting the balance right. We have also heard about ring-fenced funding for rangers—Kenny Auld touched on that.

What is the one thing that prevents the Scottish outdoor access code from performing as well as it might? Is it a lack of resources or a lack of education? What one change would make the greatest difference in achieving better responsible access?

Colin Simpson: That is a difficult question to answer. The outdoor access code is helpful, but things clearly change over time. Our view as a park authority is that, in the past 20 to 25 years, some things have changed that may not have been predicted when the code was written. A key change for us, which will probably come as no surprise to members of the committee, is fires—the 10 warmest years in the UK have all been since the outdoor access code was written. Changes such as that are well beyond our control or the control of any people in the area. We feel

that the guidance has probably become a little dated in such areas—it was not wrong at the time, but the circumstances have changed.

Technology is also moving on, as was touched on briefly in the previous evidence session. There are now consumer-level drones, which were just not a thing in the early 2000s, so the code understandably made no mention of them.

To go back to earlier points about rights and responsibilities, it is probably a tricky thing to pin down, but I think that there is a feeling in society more generally that people have increased rights and they are very aware of those rights, but I am not convinced that there is quite the same level of recognition of the responsibilities that go with them. Where we have issues, it is not necessarily because the code itself is wrong; perhaps people are not complying with the code because, although they recognise the rights element of it, they do not recognise the responsibilities element to the same extent.

Finlay Carson: I will put this question on resources specifically to Philip Waite, from Highland Council. Are we just underresourced? In earlier evidence, we heard that Forestry and Land Scotland has reduced its resources for public access. We also heard about the Government removing funding that had been ring fenced for rangers. We do not have the funding for core paths. What part does the lack of resources play in people not being allowed to access the countryside responsibly?

Philip Waite: We can always improve and we can always do more. More funding would, indeed, allow us to do more. It has been touched on that the most direct way to get the message across is through a ranger service speaking to people while they are out in the countryside and can relate to what they are doing and where they are doing it. However, that needs boots on the ground, which is a relatively expensive service to provide.

The differences are stark. As you said, the national parks are the elite, and access to the countryside is one of their primary activities. However, in local authorities it is just one of many activities, and it comes way down the priority list. The number of staff that are available, or the time that they have to spend on responsible access and promoting good behaviour in the countryside, can be far less.

You can see that illustrated in the numbers of rangers. In Highland—which makes up 33 per cent of the country—we have 18 rangers in the summer months and just a skeleton crew in the winter, whereas the national parks can have around 50 rangers covering a much smaller area. Moreover, many local authority areas have no rangers whatsoever.

As you said, promotion is important, whether that is done through traditional media or through social media—which it is probably increasingly done through, these days. It is about making sure that the right messages get out. There is a fair bit of misunderstanding. We hope that people who are on social media are getting the right message, but we do not always know. Sometimes misinterpretations creep in or, in certain locations, there may be some nuance as to why responsible behaviour might be slightly different.

It is also about making sure that those right messages reach all sections of society. That is difficult. It needs more resource, as you said,

Finlay Carson: I put this question specifically to Kenny Auld. For ranger services, what is the one change that would make the biggest difference? Education is about potential control. Is that the best way? Should we be putting more funding into ranger services?

Kenny Auld: I will push it to two aspects, if that is allowed. As you have heard, we are really proud of our ranger culture. However, that has been created not on a whim but because of the nature of the visitor management issues that our landscape had long before the national park came into being. We have a long-term ranger culture and posts in the area. There is not what we might call a competition across the country.

It goes back to the benefits of land reform and the benefits of the SOAC. You have heard, in general, from a relatively small group of professionals who work on a shoestring with very little national guidance. In my view, it is remarkable where we have got to on achieving positive outcomes and working more with VisitScotland and others to make sure that it all connects into other points.

In terms of resources, yes, there must be boots on the ground, but there must also be the infrastructure and professional staff who understand how to bring money in.

As a sector, we are not asking for a lot of money over a long period. We are asking for investment in the sector because of the benefits and returns that path infrastructure brings, including improvements to health and wellbeing and, as I mentioned earlier, culture. We are talking about an estimated return on investment of between 7.1 and 15.1, based on examples from other countries.

However, without staff, you do not know where the issues or opportunities are. You need professional staff who can identify those opportunities and know how to make the case for investment. As a sector, we have been busy trying to understand the legislation and its implications, but we need to get better at making the case for

investment collectively. I hope that this committee will help us to do that.

I do not see widespread issues in national parks or across the country. Yes, there are undoubtedly hotspots, but, with resources, they can be tackled. Largely, in most areas, people are getting on; it is case of live and let live, and there is lots of positive engagement. Even without ranger services, land managers—you heard from Crown Estate Scotland earlier—would say that their estate is exceptional. It is not—we have many estates like that, which work positively within the legislation and seek to bring benefits.

Jamie Langan: We asked the previous panel of witnesses how we should tackle irresponsible access. The two main themes that came out were investment in infrastructure and cross-agency and cross-body working. Based on your experience, what could we be doing better to promote cross-agency working? We have been talking about the financial pressures, but is there scope for greater pooling of resources among different agencies with overlapping responsibilities?

Colin Simpson: The collaboration point is certainly a key one. I dare say that we are perhaps a little ahead of the game in that regard, because of where we are. Even collaboration itself requires resources, whether that is for getting people together to convene meetings or whatever else it might be.

Some pretty good collaboration is going on already at a local level within our national park. Through the national visitor management groups, there is also pretty good collaboration among the various national agencies, along with representatives from other local groupings, including local authorities. As I say, I would argue that a lot of that collaboration is already pretty good. We exchange information not just about what has happened but about how we have tackled issues, and we learn quite a lot from each other.

We may come on to byelaws later. We introduced a byelaw this year, and that process relied really heavily on advice from Loch Lomond and the Trossachs National Park Authority, which had already gone through it. A lot of collaboration is already taking place, and resourcing collaboration is an important part of addressing all the issues that we might talk about.

Kenny Auld: Absolutely. Infrastructure and services are key to that proactive approach. During the Covid pandemic, we were working in partnership at times, but some of that was peer-to-peer collaboration within the same sectors. One major positive development that has carried on is the overall approach to visitor management.

VisitScotland chairs the national visitor management strategy steering group. Participants include chief executives from the national park authorities and Forestry and Land Scotland, as well as, crucially, Transport Scotland and a number of other key bodies. You might not necessarily think of Transport Scotland as being part of the SOAC, land reform and tourism discussion, but it is absolutely part of that conversation. Some might also be surprised that VisitScotland takes the lead in that area.

Previously, different professional sectors might have used different measures of success. For example, if you had asked a marketer what success looked like, they would have said that it was about the numbers. However, that could sometimes come at a cost in terms of infrastructure and resources. We needed to work together more effectively to ensure that our infrastructure investment and where we were spending the money made sense.

The rural tourism infrastructure fund has been a game changer. It presents an opportunity to make Scotland a genuinely world-class destination for Scots and international visitors. That is the kind of conversation that we need to be having, but we need everyone to be around the table.

Jamie Langan: Philip Waite, do you have anything that you want to add, to build on the points that Colin Simpson and Kenny Auld have made?

Philip Waite: I certainly agree that partnership working is vital, and it has improved with the visitor management groups that have appeared since the pandemic. At a local level, it is all about working with local land managers, and members of the access forum have been vital in achieving aspects of that.

As has been said, improvements in infrastructure are also necessary, to ensure that people know where they can go and how to do so safely and responsibly, which can be difficult given the lack of resources. When we have fewer staff, it is something of a struggle to keep an eye on the infrastructure and ensure that it is maintained.

11:30

Jamie Langan: As we have heard, and as other committee members have said, the people on the panel represent almost the gold standard when it comes to looking at where things are going well. Indeed, Colin, you referred to the good process that is already in place and to which you are working. That said, there are other parts of the country where land access is perhaps not working as well as it could be. What are the core takeaways from your own experience that we could give to

other parts of the country where things are not working as well as they should be?

Colin Simpson: To an extent, this takes me back to what I said before. The aspect where we are in a much better place now than we might have been a few years ago is that things are much less adversarial. If we deal with a problem simply by going out and saying, "We have to stop this" without understanding the other side of the argument, we are never going to get to the right solution. People need to understand, for example, who is coming, the problems that they are causing and why they are happening. We need to try to understand them and work with them, or try to provide for their needs, instead of simply saying, "No, they're causing a problem, so we need to stop them coming here" or something like that.

We have to understand that, by and large, people are not going out to the countryside to cause harm and that, if they are causing harm, they are probably doing so inadvertently. We have a role to play in trying to stop that, and understanding and helping to provide for people's needs—some of which might be to do with infrastructure, as Kenny Auld has alluded to a couple of times now—might be the key approach to take in those areas that are still having issues and have no way of addressing them.

Jamie Langan: Great. I am happy to pass over to others, convener.

Andrew Baxter: In its submission, NatureScot argues that the problems that we are talking about are arising simply because people are failing to comply with the code—a point that I think Colin Simpson has made—rather than because the code itself is defective. Is that also the assessment of those on the panel? Surely, if that argument is true, the logical consequence is that we need more effective enforcement. Do you believe that the current enforcement framework is sufficient, or does it require wider reform?

I will go, first of all, to my old sparring partner from my Highland Council days, Colin Simpson.

Colin Simpson: Thank you, Andrew. That is quite a tricky question, because none of us came into this career or this line of business to enforce things against people. We did so because we wanted to help them enjoy the fantastic places that we have to offer.

Using our fire byelaw as an example, I would say that we have found that the backstop of having the ability to enforce has changed the behaviour of some people who were previously among the more problematic to deal with. The number of fires identified by our rangers has gone down quite considerably, from somewhere around 190 per year, a couple of years ago, to 36 this year, which is encouraging.

However, there is something that is little bit hidden behind those figures. In previous years, our rangers would have engaged with people, asking them to put their fire out and explaining why that might be the appropriate thing to do—and, to put it fairly bluntly, some people would have told us to get lost. They were going to have their fire anyway, because they thought they were entitled to do so. The number doing that sort of thing has dropped to virtually zero now.

It is not the actual enforcement that causes behavioural change; often, just having that ability to enforce gives us, in a sense, the extra power to say, "We want you to do this—and, by the way, if you don't, this is what the sanction might be." We have only had to take two cases beyond that point this year, and when you consider the number of visitors that we have, which is somewhere around the 2 million mark, including the pretty substantial number who go wild camping, that is, to my mind, a success.

The Convener: Hang on—did you say that there were two cases out of 2 million visitors?

Colin Simpson: We have reported two to the fiscal service. At the moment, we do not have the powers to undertake enforcement measures ourselves; we have to refer such cases to the fiscal service, and we have reported two this year. By our measure, that is a success, because it means that the rest of the people have complied with what we have asked them to do. To my mind, enforcement is a really useful backstop, but using it is not necessarily the end goal. Using it to change behaviour probably is.

Andrew Baxter: Colin Simpson, I will follow up on your comment about referring cases to the procurator fiscal. Reporting something does not necessarily mean that any action is taken by the PF. To your knowledge, is the PF taking further action on the reports that you have made, or is it a rather futile exercise whereby you report it and no further action is taken?

Colin Simpson: At this stage, we do not know. Both referrals were relatively recent. They happened in the middle of summer, so they have been reported but it might be that the referrals are in progress at the moment. We therefore cannot say one way or another at this point.

It is worth noting that we are moving towards a time when park authorities will have penalty powers. That will happen during the next 18 months or so, and there will be opportunities for us to do some enforcement at that point. However, we try to measure success by how often we can use

measures to change behaviour rather than by how often we enforce them.

Andrew Baxter: I put the same question to Kenny Auld.

Kenny Auld: I agree with NatureScot's original assessment that the core framework is okay and we need some refreshing of key aspects of it. We then need to focus on the guidance and the resource.

Credible deterrents are key as part of the enforcement pathway. If we did not have credible deterrents for land managers to behave responsibly, compliance and positive discussions would be on a different footing. There should be similar credible deterrents for the minority out there who flout the laws and who are being given multiple opportunities. As previous witnesses have mentioned, that is a minority of people. The vast majority are enjoying the outdoors responsibly. As I hope the committee will have seen from our written submissions, we are talking about a very small number of hotspots and incidents. Of course, society includes certain groups, however, and we need credible deterrents to manage them.

There are pathways, but they need resources and clear processes. We work with other authorities to help them to understand what is proportionate and credible in their situations. As I mentioned, our situation is different to others. Due to the intensity and volume of activity in relatively small loch shore areas, our interventions are justified there, but solutions in other parts of Scotland will be different, as is appropriate.

Andrew Baxter: Finally, I direct that question to Philip Waite.

Philip Waite: On the whole, I agree with the other two panel members. The vast majority of the code is fit for purpose and is followed as closely as possible. Likewise, there are some ambiguities that can lead to misunderstandings or misinterpretations. A formal review of the whole code is probably not necessary, but certain aspects of it need to be tightened up a little bit.

The other aspect, which has also been touched on, is that new activities have arisen during the past 20 years that are not covered by the code but need to be accounted for. Some parts of the code cover things that are similar to existing activities, and they are used—sort of—but the code might need to make specific reference to them and then people will know what it is referring to.

As to whether it needs to be enforced further, there is a lot in the code that is easier to enforce on static infrastructure elements or land management practices. We know who we need to talk to about such things, but when somebody is passing through as an access user or taker, it is a little bit more difficult, on the spot, to ensure that they are doing what they are supposed to be doing.

Andrew Baxter: I want to explore with Kenny Auld the evidence that enforcement works. Kenny, in your written evidence, you told us that the number of complaints associated with the national park's camping management arrangements has fallen dramatically since they were introduced, in 2017. That is a substantial improvement, but what proportion of those complaints do you think is down to ranger presence and what proportion is down to the camping byelaw that exists within the boundaries of the national park?

Kenny Auld: Education can play a part in our specific situation. It is all to do with how we manage our specific location-based camping byelaws, which are very much led by the principles of the SOAC and land reform. In our permit areas, for example, we require a very small amount to be paid, so that we can manage volumes and give people the confidence to go places knowing that they will have their own patch and will be able to enjoy their outdoor access rights with confidence in those locations. How we manage that creates confidence—

I am sorry—I have lost my train of thought. Can you repeat the question, Andrew?

The Convener: I think that he asked about camping management.

Andrew Baxter: What proportion of your success is down to education?

Kenny Auld: As I have said, education is a part of it, but it is also about our clear messages to, and communication with, stakeholders and the clarity that we and land managers have.

It is also about resource. As has been mentioned, we put a lot of money into this, but it deserves to have a lot of money spent on it, given what it delivers for our residents and, indeed, the larger visitor economy. That spending is deserved and appropriate to the environmental benefits that it brings. Of course, such an approach will not be appropriate in other places.

The fact that we are so clear about how we manage these things gives landowners confidence, and it also gives confidence to members of the public who are looking to enjoy their access rights. Indeed, I think that that is why the number of complaints has plummeted.

The Convener: Okay. I call Laura Mitchell.

Andrew Baxter: I have a very quick question in response to that. Does—

The Convener: I am sorry, Andrew, but I am moving on to Laura Mitchell. We might come back to you later if we have time.

Laura Mitchell: We have heard quite a lot about all the things that did not exist when the code came into force—social media, the rise in the number of people with dogs, drones and so on. Do we need to review the code, or do we need to just update the guidance, to address some of those challenges?

Kenny Auld: Our position is that there should not be a full review, because the principles are now established and are working really well. The energy, and money, would be far better spent on having clarity in the guidance about the new trends.

You mentioned dogs, and I absolutely think that, when it comes to dog ownership and behaviours with dogs, access authorities would have more confidence in approaching such issues if there were more clarity in the guidance. There is also the issue of fires, which has been mentioned, the new trends in participation and so on. That would be my position.

Colin Simpson: Largely speaking, I agree. The code is largely fit for purpose, all the principles within it are sound and I do not think that there is any need for an overall review. Perhaps one or two bits could be refreshed, and we have touched on a few such issues already. For example, there could be something more specific about the use of drones.

It might be just as valuable to look at how we communicate information about the code. By and large, people will not look at the whole code; instead, they will get bits of information about the particular activity that they might be doing. If they are, say, a mountain biker, they will get the information that they need from mountain biking sources, not directly from the code itself. It is not a consumer-facing document, and we could do more to spell out some of the detail.

That said, we do want some things to be clearer. Going back to our favourite topic of fires, I wonder how many city dwellers go out into the countryside and realise that they have just put their tent on peaty soil. Are they getting the level of guidance that they need in that respect? Possibly not.

Equally, though, we would support many of the principles contained in the code on flexibility and not being too prescriptive about things. I have used this example in other conversations, but we get people coming to us and saying, “Why don’t you ban camping within 500m of a road?” or some other predetermined distance. That might be relevant in some areas, but what about the cycle tourist in a remote part of the Cairngorms? Do we really expect them to hump their bike 500m across moorland before they can legally camp? I do not think that that would be appropriate in the circumstances. Therefore, we want to preserve the flexibility that is in the code to deal with different circumstances, although there are perhaps one or two areas where the guidance could be firmed up or could explain things slightly better.

11:45

Philip Waite: I absolutely agree with my colleagues. On the whole, the code meets its intended purpose, but there might well be some aspects that need to be refreshed or updated to take account of any ambiguities or new activities that have come online.

It is a tricky one, as Colin Simpson said earlier. We are trying to cover everything, and we are looking at whether we should be more specific about certain things that should remain ambiguous. Colin mentioned camping a certain distance from roads, which some people have looked at. There are other aspects, such as the appropriate size of tents or groups, with different people having different opinions on whether an appropriate size is two or three people, or five or six. Likewise, the code states that wild camping lasts only “two or three nights”. Well, which is it? Where do you draw that line?

Perhaps those things could be considered more deeply, but, on the whole, I would say, as my colleagues have said, that the code is doing what it is supposed to do.

Laura Mitchell: Kenny, did you want to come back in?

Kenny Auld: Yes. I just wanted to say that a refresh of specific areas would allow for behaviour change and communication campaigns to highlight any changes that are made. I hope that what the committee has heard this morning is that communication is absolutely everything, and any such changes will allow us to work with communications partners to send out messages in that respect. That is where we will achieve behaviour change. We might focus on changes in, say, dog ownership, but the message will still be one of responsible and considerate citizenship. If we do something about—dare I say it?—drones, we can send the same message, but we can also have a comms campaign around whatever we are doing that, while setting out the specifics, is still embedded in the principles of the code and land reform legislation.

Laura Mitchell: I am conscious of the time, convener, so I will let other members come in.

The Convener: I just want to pick up on the points that you have made about guidance,

because I asked the previous witnesses which areas of the guidance need to be updated. I know that the previous cabinet secretary committed to reviewing the guidance, but I am interested in unpacking that a little bit. Are we talking about guidance on the planning of the core paths network, for example, or are we talking about case law in relation to some of the issues that we have been exploring this morning? Do you have any thoughts on that?

Kenny Auld: The Scottish Government's guidance for access authorities has not been refreshed since 2005. The last draft, which was co-designed in a peer-to-peer way through the Scottish outdoor access network and the Scottish Government, was done in 2019. Understandably, Covid set things back. We need updates on case law and other aspects, because we have to give the access sectors the confidence to make these calls. I believe that a witness two weeks ago said that context is king here, and the many grey areas mean that guidance is needed to help access authorities to make those judgment calls. That would be a major step forward in giving confidence to the sector again.

Philip Waite: Guidance to access authorities is probably well overdue. As has been said, it could be updated in the light of the court cases that have gone through, and new—and, indeed, existing—access officers could get guidance on where things might have changed or on how to approach things in a slightly different way.

Colin Simpson: We tend to agree that there is probably a place for further guidance for access authorities. The previous evidence session touched on the issue of training for local outdoor access forum members, to ensure that they understand things to a different degree than might be the case at the moment. As the park authority, we feel that any refresh or review should focus on areas where there has been substantive change since the code was written, rather than reviewing the whole code for the sake of it. We feel there are four areas where that might be relevant, some of which we have touched on today, with fires being one and informal camping being another.

The Convener: Are we talking about the code or about the guidance for access authorities about enforcing that code?

Colin Simpson: There is probably a need for some refreshing of those aspects of the code to make certain things a little clearer, and that should feed through into the guidance for access authorities, so that they can have a slightly different understanding about how to approach things.

We have touched a little on technological advances. For example, we are dealing with e-bikes, which did not really exist 22 years ago. We recognise that many of the issues are caused not by e-bikes per se but by people who change and adapt those bikes in ways that are covered by other legislation.

Wildlife disturbance is quite a big thing in the Cairngorms because we have a huge proportion of the UK's rare and endangered species. I think there was far less recognition 20 years ago of the impact that people might have on wildlife. I do not say that to suggest that we should restrict access, because that is very much not what we want, but we need to understand what people are looking for and they need to understand the impacts that they might have. There is probably more work to do on that. That is not a criticism of the code as it was, because the issue was not seen as being so important at that time, but it has become so, particularly for certain species.

The Convener: The code is quite clear regarding e-bikes: people's rights do not apply if they take access by using motorised transport. I think that you are talking about e-motorbikes, but is there a grey area between those and power-assisted e-bikes? Is there an issue of definitions?

Colin Simpson: I think that there are grey areas in the public understanding.

There is something else that we need to be aware of, although I am not saying that we should bring in restrictions. Previously, when people were using entirely human-powered bikes, there was a limit on how far they could go into remote areas. Now, people with e-bikes can go considerably further, and that introduces some issues that are not necessarily access related, such as public safety. We are starting to see people getting into some areas that they would not traditionally have reached by bike, and there may be a need to manage that or to improve the guidance.

Finlay Carson: From what we are hearing, there seems to be some conflict. The witnesses on the previous panel said that some of the legislation should be black and white and that we need national guidance, but Kenny Auld has suggested that that is not necessary and that issues should be dealt with case by case. If we start bringing in byelaws and additional legislation, is there a risk of being too prescriptive instead of expecting people to make a judgment about what is or is not responsible?

I am hearing from this panel that we need a refresh of the Scottish outdoor access code, to update the language and reflect the culture that we are now in, 21 years on, but that we do not need a full review. Is that what you are all saying?

Kenny Auld: When I spoke about the guidance for access authorities, I did not mean that that is

black and white. There are grey areas, where the guidance will be able to empower and educate access professionals to make judgments, whether about privacy or about other areas.

Finlay Carson: My apologies—it was at the previous committee meeting that someone suggested that the legislation should be more black and white. I think that you have an alternative position.

You mentioned case law. Do we need more case law, to clear up the grey areas, rather than being prescriptive with legislation?

Kenny Auld: The case law is building organically. It is there; we just need to share it better. You mentioned byelaws, but it is not about byelaws, in my opinion. Byelaws are location-specific solutions that are communicated at a high level within a region. I do not see them as not working with the national picture of black and white—there are blacks and whites, and there are elements where context is key. It is about the whole picture.

Colin Simpson: I tend to agree. There are probably one or two areas where things could perhaps be more black and white, and that could be helpful, but I am very wary of the unintended consequences element. For example, by setting a certain distance from a road for camping, you might think that you are addressing an issue, but you would actually be causing another issue instead. We need to be very careful in working these things through.

On some key items, we probably need to be more black and white—again, I come back to one of our key issues, which is fires. We can maybe be more nuanced on some other issues.

The Convener: I want to ask about the core paths network. Obviously, the national parks have a role in helping to set out the plan for the core paths network and to manage that and other paths networks. What is your perception of whether the core paths network is meeting the needs of local people and visitors in enjoying access? Do you have any reflections on how the core paths network is planned by access authorities?

I will start with Philip Waite, because there is a vast core paths network across the Highlands. How do you go about planning that and understanding where there are areas that perhaps need enhanced access?

Philip Waite: Initially, back in the early 2000s, we spent a lot of time planning the network. We had a larger team then and spent a lot of time consulting communities, land managers and every other organisation that we could think of that had an input. We have been reviewing the network over the past few years, and that review has taken a lot longer, for a number of reasons. The pandemic got in the way, and our team has substantially reduced, plus other duties have become more of a priority. The planning of the core paths network has changed over time, but I think that we have done a reasonably decent job of getting a system of paths that are sufficient for the needs of locals and visitors to the area, which is the purpose of the network.

Where we have difficulties, however, is in maintaining that. There is a lot of variation in the core paths network. Some paths are very much just desire lines—just worn paths on the ground—whereas others are purpose built and acceptable to every type of access user. However, the network is checked to ensure that the infrastructure is of a reasonable standard and fit for purpose, and it is maintained thereafter. We had hoped that we would have a programme in which we checked the entire network over a three-year period, but we have not been able to do that. In recent years, when we have had more rangers on the ground, we have been starting to catch up a little, but we are still a long way behind.

We know that there are a lot of core paths that are not fit for purpose and require a lot of maintenance. We are reactive—when people complain that they have seen a problem, we will try to deal with it—but we cannot deal with every problem that comes in. On resourcing, it was mentioned earlier that the reason why maintenance was not made a statutory duty was because of the hope that other money could be found to assist with maintenance. Back in 2012, we did that in Highland. We used European funding to have a three-year programme of maintenance, and we did a lot of work on more than 200 paths. I think that about £250,000 was put into the core paths network at that time. Of course, we all know that that funding is no longer available. It has been a struggle, certainly over the past decade or so, to find substantial sums to assist in maintaining the core paths network.

12:00

Colin Simpson: That is a topical issue for us, because we are partway through a review of our core paths plan, which was previously adopted back in 2015, so we feel that a review is timely. Over the past year to 18 months, we have undertaken two public consultation exercises and, broadly speaking, the public view is that the network is fit for purpose. Obviously, some people feel that paths should be added and others feel that some paths should be reviewed or perhaps removed, but, broadly speaking, we think that the network is doing what it was set out to do.

However, that process really looks only at the legal status of the paths—whether a path is a core

path or not. As Phil Waite has alluded to, what is probably of greater interest to many members of the public is the standard of the paths. Is a path being maintained? Is access good? Does it have signposts? We have additional resource that perhaps helps us to do that a little more than others can, but, undoubtedly, there are still many sections of path that we would like to improve, and there are other things that we would like to do to improve access. For example, that is about having appropriate car parks to allow people to access some parts of the network.

There is undoubtedly a place for further investment in the standard of the infrastructure, but the legal entity of the core paths network is probably fairly well provided for at the moment.

Kenny Auld: On the general point, Phil Waite was exactly right. The exercise 20 years ago to have discussions with landowners, land managers and community groups to build the picture was hugely valuable. There was a concern that, with access rights coming in, everybody would go everywhere and do everything, and the core paths were part of the investment to create good infrastructure to mitigate that. However, that never happened—people like good paths. They value their access rights, but they do not necessarily want to run across a mountain without a good path, as that is pretty difficult.

The core paths network is there as a back-up now. It is an important statutory function, but, through technology, the way in which people access knowledge about how to enjoy the outdoors and opportunities to do so has moved well beyond that.

It is a useful statutory framework. However, I have a point on investment in paths generally. The west Highland way, which is in our area and goes into Phil Waite's area, is enjoyed by 45,000 to 50,000 people every year, with £12 million coming into the visitor economy. There are case studies on that, and it comes with investment. That is not a statutory requirement, but it is bringing public gain. There will be examples across the country where, for a relatively small amount of resource, either a public authority or a landowner could produce huge amounts of public gain. Whether that involves a core path or a future core path is up for debate.

The Convener: As members have no further questions, I thank our witnesses.

That concludes our meeting in public. We will have a five-minute comfort break to allow our witnesses to leave, and then we will continue the rest of the meeting in private.

12:03

Meeting continued in private until 13:02.

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