JUSTICE 2 COMMITTEE

Tuesday 25 June 2002

Session 1

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JUSTICE 2 COMMITTEE
25th Meeting 2002, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Mr Duncan Hamilton (Highlands and Islands) (SNP)
*George Lyon (Argyll and Bute) (LD)
Mr Alasdair Morrison (Western Isles) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)
*Lord James Douglas-Hamilton (Lothians) (Con)
Donald Gorrie (Central Scotland) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Rhona Brankin (Midlothian) (Lab)
Dennis Canavan (Falkirk West)
Ross Finnie (Minister for Environment and Rural Development)
Murdo Fraser (Mid Scotland and Fife) (Con)
Phil Gallie (South of Scotland) (Con)
Mr Jamie McGrigor (Highlands and Islands) (Con)
Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)
Bristow Muldoon (Livingston) (Lab)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Fiona Groves

ASSISTANT CLERK

Richard Hough

LOCATION

The Chamber and Room G2 Cannonball House

Scottish Parliament

Justice 2 Committee

Tuesday 25 June 2002

[THE CONVENER *opened the meeting at 09:50*]

The Convener (Pauline McNeill): Good morning and welcome to the 25th meeting in 2002 of the Justice 2 Committee. Several MSPs who are non-committee members are with us today. There are too many to mention, but I welcome them. I am sure that they will all have something to say, which will get their names into the *Official Report*. As usual, I ask members to switch off their mobile phones and anything else that makes a noise.

I have received apologies from Bill Aitken, who unfortunately is in hospital. Members might know that he had an operation last week. I pass on our good wishes to him. Bill's absence means that we have a committee substitute, Lord James Douglas-Hamilton. As this is the first time that he has attended the committee as a substitute, I ask him to declare any interests.

Lord James Douglas-Hamilton (Lothians) (Con): I declare my interests as set out in the register of members' interests. I mention at the outset of proceedings that I am here on behalf of Bill Aitken.

Convener's Report

The Convener: There are two brief matters to raise under the convener's report. The first relates to an article in this week's *Scotland on Sunday*—I do not know whether members have read it. The article involves a potential leak of our report on the Crown Office and Procurator Fiscal Service inquiry, although it could be read as simply a report of what is already in the *Official Report*. Do members wish to comment on the article or to suggest possible actions?

George Lyon (Argyll and Bute) (LD): Like the convener, I was desperately disappointed to open a Sunday newspaper and once again read what seem to be quotations lifted from a draft report. We are nowhere near a conclusion on the report, but it has been splashed all over a Sunday newspaper. We should ask the clerks to check the relevant parts of the *Scotland on Sunday* article to discover whether what the article says has been lifted from the draft report, which has been circulated to members.

I am equally concerned that the article appears to quote comments of a member of the Justice 1 Committee on the contents of the draft report. That should be investigated. It is utterly pointless to conduct inquiries and write reports if people can read about them in newspapers months before we reach a conclusion. That is a waste of time.

The Convener: Are members happy to follow George Lyon's suggestions?

Members *indicated agreement*.

The Convener: The second matter under the convener's report is petition PE336, which is on civil justice for asbestosis victims. The committee asked Bill Aitken and me to keep the matter going, because we decided that the issue is of prime importance. I will update members on the situation. We have met the Lord President and discussed with him the committee's view on what steps should be taken. He has subsequently written to me—a copy of the letter has been given to members.

I draw members' attention to the other responses that we have had on the petition. We have sought submissions from the Lord President, the Law Society of Scotland, the Faculty of Advocates and the Forum of Insurance Lawyers. As members will know, the Fairchild case has been decided, which makes a big difference to the substance of the petition. If members want a copy of the written judgment, they will be able to find it on the House of Lords website.

I have one simple question. Do members agree to write to the petitioner, Frank Maguire, asking him to respond to the material that we have received?

Members *indicated agreement*.

Land Reform (Scotland) Bill: Stage 2

The Convener: Item 1 on the agenda is the Land Reform (Scotland) Bill. Today is the first day of our stage 2 consideration of the bill. Members have the appropriate papers. I am told that, at this point, there are a record number of amendments.

I give advance warning that I will put the guillotine for stage 2 consideration at about 11.15 am, as the committee has other business. We will try to cut the debate sensibly, coming to an end when we have finished discussing a section rather than cutting someone off in their stride.

I welcome the Minister for Environment and Rural Development, Ross Finnie, and all his officials to the Justice 2 Committee. Their large number is not a record, however—we have seen more officials than are here this morning.

Section 1—Creation of access rights

The Convener: Amendment 19, in the name of Scott Barrie, is grouped with amendment 40.

Scott Barrie (Dunfermline West) (Lab): It does not seem that long since we were discussing the Land Reform (Scotland) Bill at stage 1—so quickly we return to it at stage 2.

Amendment 19 goes to the heart of a debate that was rather inconclusive at stage 1, when we considered Scots law on access and, therefore, trespass. We heard conflicting and strongly held views about the current position. The committee did not come to a firm conclusion on the issue, although we sided more with one side of the argument than with the other.

In the spirit of the bill as introduced, amendment 19 suggests that the purpose of the bill is to clarify and improve existing rights and freedoms, not to create or confer new ones. It proposes a change in terminology, so that the bill would state that we are not creating anything that we do not already have, but ensuring that people understand more clearly the current law and what they can and cannot do. The word "created" would be substituted by the word "secured" in section 1(1), which refers to

"the rights created in this Part of this Act."

I think that that would make the intention of the bill clear.

Amendment 40 is consequential to amendment 19, and affects the long title of the bill, which, no doubt, we will reach at the very end of a very long process. I hope that the committee will support the amendments.

I move amendment 19.

The Convener: Amendment 19 is fundamental to what we are doing through the bill. The committee has spent a lot of time in discussions about the principles that run through the bill, which we believe tries to enshrine what already exists in the common law and in people's common understanding and view of Scots law. Therefore, the wording in section 1(1) is crucial. It is important that we support Scott Barrie's amendment.

The Minister for Environment and Rural Development (Ross Finnie): I can understand where members are coming from. This is not a new discussion. As Scott Barrie has pointed out, the matter has raged through the Justice 2 Committee and was raised during the stage 1 debate in the Parliament.

Following a review of the existing arrangements and of the consultation that has taken place, the conclusion was drawn that a new act was required, which would give a legally enshrined right of access, given the various and many interpretations that were being placed on the existing situation.

The whole intention of part 1 is to create a new statutory right. The distinction may seem rather a fine one and I am not denying what the convener said about there being people who—I think rightly—believe that there are existing rights, but the bill proposes to create a new statutory right of access for the public. The bill does not seek to secure an existing right; it tries to improve on that and confer a statutory right.

As members are well aware from the conflicting evidence that was received at stage 1, the current legal position causes confusion. I hope that the bill will get rid of that confusion by putting a new right of access on to the statute book. That is why the word used in section 1(1) is "created", not "secured". That may sound like a technical explanation, but I think that the use of the word "secured" is inappropriate in the context of the bill. Therefore, I hope that Scott Barrie, in considering the bill and its intention, will agree to withdraw amendment 19.

10:00

Stewart Stevenson (Banff and Buchan) (SNP): The committee took the view that the Land Reform (Scotland) Bill, very welcome as it is, would entrench many things to which we believed people already had rights. One has to consider whether any new rights that are created will be sustainable, given that there will be no new obligations on landowners as a result of people being granted access under the bill. If, as amendment 19 proposes, we said that we were securing existing rights, that would also secure the

position that there will be no new obligations in relation to landowners. On that basis, I strongly support the amendment.

Scott Barrie: The minister has acknowledged that the issue that amendment 19 deals with strikes at the heart of the debate. At stage 1, we heard conflicting evidence, with different people on different sides of the argument. The committee took the view that the bill created no new rights of access. I think that amendments 19 and 40 are in keeping with the view that the committee reached in its stage 1 report and that many members articulated in the stage 1 debate in the Parliament.

I listened to what the minister said and I take on board the fact that we have to be careful about wording, but we have to ensure that we get that one word in section 1 correct. I do not think that replacing "created" with "secured" would in any way lead to a deficiency in the bill. In fact, I think that it would improve the bill. As the convener suggested in her short contribution, it would set the tone for the rest of the stage 2 debate about what the bill is trying to achieve.

The Convener: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Lyon, George (Argyll and Bute (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Douglas-Hamilton, Lord James (Lothians) (Con)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 19 agreed to.

The Convener: Amendment 140, in the name of the minister, is grouped with amendments 141, 105, 142, 143, 106, 156, 1, 158, 159, 42, 118, 160 and 129. If amendment 1 is agreed to, amendments 158, 159, 42, 118 and 160 will be pre-empted. The large number of amendments cover an important aspect of the bill, so I will allow a bit of time for debate to enable all those who wish to speak to do so.

Ross Finnie: The matter that we are about to debate is the one that has exercised the most people—including me. I hope that there is no confusion about the purpose of section 1(1) and section 1(2) of conferring on the individual the individual right of access. Following very wide consultation, we wanted section 9(2) to clarify that simply conferring a right of access was not intended to confer an absolute right to conduct commercial activity. However, I acknowledge that there is an issue about certain classes of persons who use land, as the Justice 2 Committee pointed out at stage 1. The most frequently cited class includes those who provide guidance and assistance to others to ensure that they properly enjoy the recreational activity that they pursue.

I hope that in one crucial respect my amendments in the group will provide for certain of those people to exercise rights even when they are carrying out an activity that has a commercial purpose. Amendments 140 and 141 will enable commercial enterprises to exercise access rights on any land where they provide

"a service which enables or assists other persons to exercise that right for recreational purposes".

It is clear that that provision will include mountain guides and outdoor centres. However, we do not consider that access rights should be exercisable by persons providing a commercial service to others who exercise such rights, where those persons do not themselves participate in the relevant recreational activity. An example of such a person would be someone who sets out to organise activities simply to exploit someone else's land. In that respect, my amendments strike a fair balance.

In our drafting, we have had enormous trouble with persons who engage in a category of activity such as photography. Indeed, the whole drafting of sections 1, 2 and 9 is extraordinarily difficult. It is hard to define a class in a way that permits the kind of activity about which discussions were well rehearsed in the committee. There is a question about commercial photographers. I concede that amendment 141 does not address that issue, but almost every other form of activity that has been drawn to the committee's attention and to my attention is dealt with.

The approach that amendment 106 adopts offers a possible way forward. There are two technical problems with amendment 106. I do not wish to be picky, but amendment 106 amends section 2. We are not wholly persuaded that its positioning as drafted would meet its intention, as it fails to interrelate to recreational activity as defined in section 1, which would affect its subsequent impact on section 9(2). However, the approach in amendment 106 offers a possibility and, if it would be constructive, I would be happy to consider the matter further with a view to lodging another amendment that embraces the general principles that are set out in amendment 106, while interweaving those principles into section 1 through section 2. That would enable the new amendment to have the ultimate desired effect in relation to section 9(2).

However, my amendments on the matter offer a

much better way of retaining the essential balance between, on the one hand, giving a right of access for recreational activity and those who assist in it and, on the other, giving absolute rights of conducting commercial business. They are preferable to amendments 1, 42 and 118, which also seek to address that issue. Amendment 1 would simply delete section 9(2)(a), which I do not think would achieve the desired effect, as that approach does not tackle the essential principle. Amendment 1 would allow people to have access for commercial purposes, but it would not permit them to exercise the right in section 1(2)(a), because such people would not be considered to be on land "for recreational purposes". We should not go down that route and I hope that amendment 1 will not be pressed.

I understand the thinking behind amendment 42, which seeks to prohibit exercising access rights for commercial activities except where such activities can

"reasonably be carried on with no significant adverse impact".

My difficulty with amendment 42 is that its key terms are wide and it is potentially open to very different interpretations. The words "reasonably" and "significant" would only lead to dispute. I do not find the amendment attractive. Moreover, it would enable any type of business, not just businesses that are directed at providing recreational services, to exercise rights over land that is owned by others. All the evidence pointed to allowing access for commercial activity only to persons providing assistance to recreational activity. That is not the policy intent behind amendment 42. Amendment 159 provides greater clarity and I hope that Lord James Douglas-Hamilton might be persuaded not to press amendment 42.

My amendments offer a reasonable way forward. They make clear the type of commercial activity to which the exclusion would not apply. I am not saying that the amendments represent my final word on the matter. I have indicated that the wording of amendment 106 might give us a basis for progress.

On amendment 105, the bill provides for rights of responsible access to land and inland water for recreational purposes. Recreation is a fairly wide term and would include activities such as bird watching. Access rights would also extend to amateur naturalists whose work might well contribute to wider scientific studies. However, I am not convinced that a statutory right of access should be conferred on professional naturalists and other scientists by way of section 1, which is intended to create that right for individuals who engage in recreational purposes, not for those who regularly engage in other types of activity. There should be no difficulty in people who wish to undertake professional scientific or other work continuing to be required to need consent.

My reading of amendment 118 is that it would have a similar effect to amendment 159, so I hope that Sylvia Jackson will agree not to press it. Amendment 129 seeks to ensure that those engaging in the commercial activities that are covered by the access rights by virtue of the amendments that I have lodged should be consulted by local authorities on the core paths plan that will be drawn up under section 18. I suspect that that proposal might be perfectly reasonable, but I would like the opportunity to consider it further and, if necessary, to lodge another amendment to that effect. Given that reassurance, I hope that Sylvia Jackson will not press amendment 129, either.

I move amendment 140.

The Convener: Sylvia Jackson is not here, but I can allow another member to speak to amendments 105, 118 and 129.

Scott Barrie: I would not necessarily want to speak on behalf of Sylvia Jackson, as I do not know exactly what she wanted to say. However, I know from a conversation that I had with her yesterday that she is keen that there should be nothing to prevent those who carry out the activities that she wants to be named explicitly in the bill from doing their legitimate work. I think that the minister highlighted that issue and said that it is covered, which I believe will satisfy the points that she wished to raise through her amendments.

The Convener: I invite Rhona Brankin to speak to amendment 106 and to any other amendments in the group.

Rhona Brankin (Midlothian) (Lab): I welcome what Ross Finnie has said. The intention of amendment 106 could be described as providing a positive affirmation of tradition and common practice, while reassuring landowners that their land will not be invaded by organisations that hold events such as T in the Park. It aims to make a distinction between general commerce that may benefit from the right of access and commerce that is linked specifically to activities covered by the right. Ross Finnie was correct to say that activities such as photography would not be allowed under amendment 140. That explains the intention behind amendment 106.

10:15

The Convener: I believe that Stewart Stevenson will speak to amendment 1, which is in the name of Roseanna Cunningham.

Stewart Stevenson: Amendment 1 is straightforward. It simply removes from section 9

the reference to commercial activity and profit. In speaking to amendment 1, I go back to the basics of the bill. Section 1 says that rights are created, or confirmed, for people to be on land or to cross land for recreational purposes. Section 2 says that access rights are conditional on those rights being exercised responsibly.

The minister and others will know from the discussions that the committee had at stage 1 that there was a view that the best place in which to define responsible access was likely to be the code rather than the bill. By lodging amendment 1, which would delete the words

"conducting a business or other activity which is carried on commercially or for profit",

we are proceeding on that basis. T in the Park would clearly not constitute responsible access, nor would any similar activity, such as a circus or large-scale commercial activity. The reason that such activities would not constitute responsible access is that they deny the owner of the land, or the land manager, the right to operate as the owner or land manager for a period of time.

On the other hand, there are a large number of activities whose exercise takes nothing from the owner or land manager. We would not want to specify them all, because we would be certain to exclude some, but photography is one that has been named. Another is the work of mountain guides or those escorting walkers, who in fact contribute to the responsible exercise of the access rights that those people are using.

To remove section 9(2)(a) from the bill is by far the safest way of addressing the issue. It would ensure access for those people who contribute to responsible exercise of access rights and to the countryside in general. The responsible access on which all access is conditional will be properly addressed in the code.

The Convener: I call Lord James Douglas-Hamilton to speak to amendment 42 and the other amendments in the group.

Lord James Douglas-Hamilton: Perhaps I should explain the purpose of amendment 42. It was lodged in an attempt to strike a balance between allowing some commercial activities, such as those of mountain guides and photographers, and preventing commercial activities that could be detrimental, such as mass raves that take place without the land manager's permission. I would be most grateful if the minister could confirm that mass raves held without permission will not be permitted and that his amendments cover that point. I think that they do.

We recognise that the minister has gone some way towards addressing the concerns of land managers and we will therefore not oppose his amendments, but we would like him to clarify the point that I have raised. We welcome the assurance that he has given Rhona Brankin about photographers and we welcome his offer to lodge another amendment. For the reasons that I have given, I will not press amendment 42, nor will I oppose the minister's amendments, but I would be most grateful if he could clarify that point.

George Lyon: I welcome the minister's response to the real and genuine concerns that have been raised on the issue. Most of the concerns that have been raised with me by constituents and by those involved in the leisure industry have been on the subject of commercial access. We must strike a proper balance. We should allow what is happening on the ground at the moment, where lots of individuals are involved in guiding groups of people through our hills and mountainous areas—a traditional practice that has been going on for many years. At the same time, we should give some comfort to those who own land that their land cannot be exploited without their having at least some hope of recompense for any commercial activity that takes place on it.

The minister has gone a long way towards reassuring those people who have traditionally operated in hills throughout Scotland guiding walkers and providing a service to holidaymakers in our country. He has recognised that his amendments do not address the specific concerns about photography that Rhona Brankin had in mind. His amendments are to be welcomed, but Roseanna Cunningham's proposal to remove completely the reference to commercial access goes too far. I support what the minister has said.

Scott Barrie: Section 9(2)(a) is the bit of the bill that most members concentrated on in the stage 1 debate in the chamber. The minister is to be congratulated on going some considerable way to trying to resolve the problems with that section that were highlighted by the committee. However, he has acknowledged that his amendments do not resolve all the difficulties that were raised in the debate, particularly concerning outdoor photography. That is an important issue, which a number of members have mentioned and which goes to the heart of the debate and the premise on which the bill is based. The question whether someone can own a view is one of the main points raised in the committee's stage 1 report and in the debate.

Notwithstanding the difficulties that the minister and others have had in defining how we regulate that, we must try to do so. It is heartening to hear the minister acknowledge that he will be working on that, as that is what I was going to ask about. Does the minister hope to lodge a further amendment at stage 3, or is he inviting committee members to lodge another amendment at stage 3

to resolve the question? We must try to tie down that point, as it strikes at the heart of what the bill is trying to achieve.

The Convener: It is clear from the stage 1 report that the committee felt strongly that the provisions in the bill would not be acceptable, for some of the reasons that members have already given. Our attitude to the bill all along has been that it should create what we think already exists. As we said in our stage 1 report, we want to enshrine the status quo. George Lyon is quite correct when he says that we felt that it was important to draw a distinction between those who can currently use land for all sorts of reasons and those who currently pay for the use of land. Rhona Brankin has mentioned events such as T in the Park, which is a useful example. We have tried to make a distinction, because it is right to ensure that those who interfere with land management or the landowner's use of the land should have to make a different arrangement. Making such distinctions is always difficult in legislation, as the minister will no doubt tell us.

In the stage 1 report, the committee said that there were two choices. The first is to delete completely section 9(2)(a), which is what amendment 1 would do, although I am not sure whether amendment 1 goes further than the committee suggested. The committee suggested removing section 9(2)(a), but recommended that all references to guidance should be contained in the access code. That might have been a way of drawing a clear distinction between who should be able to use land under the access rights and who should not.

Our other suggestion was that, if ministers were adamant that the guidance should be contained in statute, they would have to come up with a longer formulation of the objectives of the bill. I am pleased that the minister has produced an amendment that attempts to address the committee's concerns in its stage 1 report.

What you are saying must be clear, minister. I could not support your amendments to the bill in its current form. However, if you give a commitment that you will produce an amendment at stage 3 that will address the specific question of individuals—for example, photographers—not being able to exercise access rights, I would be happy.

George Lyon: I support what the convener has said. Without a guarantee that the minister will produce an amendment at stage 3 to address the issue that is highlighted by amendment 106, I would not support the Executive amendments. We need guarantees that that will happen.

The Convener: I invite the minister to wind up.

Ross Finnie: I shall deal with amendment 1 first. The principle that the committee enunciated was that the intention of part 1—and we are now discussing the delivery of that intention—is simply to confer on the individual an absolute right of access. Section 9(2) makes it clear that conferring that right of access does not also give an additional right to conduct commercial activity and, in a sense, to abuse that right of access. If section 9(2) is simply deleted, there is a risk that that would confer a new right, which was never the intention. Scott Barrie and Stewart Stevenson have mentioned that in relation to section 1. If someone is given an absolute right of access and a right to exploit that for commercial purposes, that almost confers a new right. That is why I hope that amendment 1 will not be supported.

The real issue is the way in which we deal with the use of the right to access by people who are assisting commercial activity or people who are using the open space for other purposes, such as photographers. Amendment 141 excludes mass activity, which is what Lord James Douglas-Hamilton talked about. There is no question of that amendment encompassing large gatherings. The principles that are set out in amendment 106 offer an interesting way forward in dealing with the issue of other persons—not to be specific, but including photographers. I give an undertaking to lodge an amendment at stage 3 that will embrace those principles. I will ensure that the amendment's failure to deal with section 1 and relate properly to section 9(2), because of slight technical deficiencies, is addressed. Scott Barrie asked me to lodge such an amendment, and it is on that basis that I will press amendment 141.

Amendment 140 agreed to.

Amendment 141 moved—[Ross Finnie].

The Convener: The question is, that amendment 141 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Lyon, George (Argyll and Bute (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)

AGAINST

Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 4, Against 2, Abstentions 0.

Amendment 141 agreed to.

Amendment 105 not moved.

Amendments 142 and 143 moved—[Ross Finnie]—and agreed to.

10:30

The Convener: Amendment 64 is grouped on its own.

Stewart Stevenson: Amendment 64 is a technical amendment that seeks to ensure that, if one is passing over land for the purposes of accessing something that is on the land, that is not excluded. As it is drafted, the bill covers only passing over the land and leaving it to get from a place outside the land to another place outside the land. The amendment would permit one to cross land to access something—for example, a standing stone—that is on the land.

I move amendment 64.

Scott Barrie: Stewart Stevenson makes a valid point. It is incongruous to give somebody the right to go through land to get from one place to another but not the right to access anything that may be on the land.

Ross Finnie: We are debating a semantic point, but it is nonetheless important. I have difficulty in imagining what difference the amendment would make. The amendment refers to

"getting from one place to another place"

and does not require those places to be outside the land. In my view, therefore, it does not capture adequately the concept of crossing land. There is a presumption that one starts within the place to which one is trying to gain access. However, to gain access, one would have to start from somewhere else. I am not satisfied that, as a technical amendment, amendment 64 would improve the position at all. I ask Stewart Stevenson to reflect on that in the hope that he will withdraw the amendment. I understand what he wants, but I do not think that the wording of the amendment would achieve that.

Stewart Stevenson: I will press amendment 64 unless the minister is prepared to indicate another way of addressing the issue that I have raised.

Ross Finnie: Perhaps I can help Stewart Stevenson. I call on members to look at section 1(3)(a)(i)—I am sure that that reference is enormously helpful. Subparagraph (i) refers to remaining on land, so the bill allows for the standing stone concept. The broad definition is that a person starts from a place outside the land, traverses it and leaves, so the basic idea of gaining access and leaving is enunciated in the general principle. The provision says that "being on land" includes

"going into, passing over and remaining on it"

for recreational purposes. All the circumstances that Stewart Stevenson described are covered by section 1.

The Convener: I detect support for the spirit of Stewart Stevenson's amendment. Is the minister saying that the bill provides for the situation that Stewart Stevenson described?

Ross Finnie: Yes. I confess that when I first read the provision, I thought, "Gosh—have we demanded that people must keep moving?" We have not. We define the gaining of access as starting from a place outside the land, moving on to land and leaving land, to complete the purpose.

We provide for the possibility, and the frequent occurrence, of

"going into, passing over and remaining on"

land, so that, having gained access, people can conduct a recreational activity while remaining on the land. That seems to be what Stewart Stevenson intended to clarify. Section 1 allows people to access a standing stone and to leave the land. The circumstances that were described are covered.

Stewart Stevenson: At the risk of prolonging what is becoming a discussion about the number of angels who can dance on the head of a pin, I ask the minister to say whether any activities are excluded by the provisions that we are discussing. Is it the minister's firm belief that everything is included?

Ross Finnie: The activity that was described is included. What is important, if ever tested, is the provision that Stewart Stevenson found difficult at the start, which says that the starting point of gaining access is a place outside the land and that, eventually, no matter what is done in the interim, those who gain access must leave the land. They have gained access and exercised that right of access.

I take Stewart Stevenson's concern to be that the definition appeared, at first reading, to insist that people had to move through the land. Section 1(3)(a)(i) makes it clear that, having gained access, one can remain on land. I do not think that that excludes any activity.

Stewart Stevenson: Now that that is on the record for courts to refer to in the future, I am happy to withdraw amendment 64.

Ross Finnie: I am sure that their lordships will be delighted to quote me. The clarity with which I uttered my statement will be of enormous help to them.

The Convener: So you do not want to remove the word "think" from the *Official Report*.

Amendment 64, by agreement, withdrawn.

The Convener: Amendment 63 is in a group on its own.

Rhona Brankin: Amendment 63 is intended to make explicit the position on charging. I am interested to hear what the minister says about that and whether the amendment is necessary. Concern has been expressed that people may be charged for access. I await with interest the minister's response.

I move amendment 63.

Lord James Douglas-Hamilton: Would the amendment affect honesty boxes? What is the present law in relation to honesty boxes? Is it compulsory for people who pass them to put something in them, or is a contribution voluntary?

Ross Finnie: I am always nervous when one of Her Majesty's senior counsel in Scotland seeks legal advice from me—a mere humble member of the Institute of Chartered Accountants of Scotland—but we will let that pass. There is no doubt that a contribution to an honesty box is voluntary and therefore falls outwith the scope of any charge, intended or otherwise.

Rhona Brankin raised a central point of substance. An important principle relates to the way in which section 1 is drafted. The section confers on people a right of access. It is wholly incompatible and inconsistent in law for someone to charge for the exercise of a right. The right would cease to be a right and would instead be part of an arrangement whereby people were granted access for a charge. It is explicit in section 1 that, because we are granting a right, there is no way in which anyone has a legal basis for charging people for exercising that right. That is such a fundamental principle that spelling it out is unnecessary. It is clear in law that if someone has a right, no one has a basis for charging for the exercise of that right.

Stewart Stevenson: On the basis of those remarks, can I expect a refund of the fee that I have just paid to renew my passport, to which I have a right?

Mr Duncan Hamilton (Highlands and Islands) (SNP): That is a reserved matter.

Ross Finnie: Stewart Stevenson makes an interesting point. Section 1 confers on people an absolute right of access. Although your colleague is right that the matter is reserved, people have the right to receive a passport on the payment of a fee.

Stewart Stevenson: We are beginning to understand why amendment 63 was lodged. The connection between conferring a right and paying a fee may well exist. I am sure that the amendment would remove any such confusion.

Ross Finnie: I am reluctant to introduce into the law concepts that ought to be covered elsewhere. The bill is complicated and long enough. If, in every section, we had to provide for what it says and does not say, we would create a complex and convoluted legal instrument.

The Convener: It is important to have that debate on the record. As members know, there are different types of right in law. I presume that the right that the bill confers is conditional on responsible access and that the details of the contract for that right are in the bill. For the avoidance of doubt, it is helpful that the minister makes it clear that the right is conditional on its being exercised responsibly and not on payment.

Stewart Stevenson: I take it that the minister can confirm that it is not intended to exercise the minister's right, by order, to introduce a charge in future.

Ross Finnie: I think that I would have to pass an act to acquire the land to give me a right so to do. I confirm that no such intention exists.

10:45

Rhona Brankin: On the basis of Ross Finnie's assurances, I will not press amendment 63. Concerns arose because groups of people such as horse riders have been charged in the past. If the minister is giving us an absolute assurance that free access is implicit in the bill, I will seek the committee's agreement to withdraw amendment 63.

Amendment 63, by agreement, withdrawn.

The Convener: Amendment 65 is grouped with amendment 65A.

Bristow Muldoon (Livingston) (Lab): Rights of access are fairly well established for pedestrians but there is no perception that the same rights of access are enjoyed by cyclists or horse riders. The aim of amendment 65 is to make it clear that the bill covers access by cyclists and horse riders as well. I hope that members will also support amendment 65A, in the name of Rhona Brankin, with the result that a more substantial amendment will be made to the bill.

The same issues apply as arose during discussion of amendment 63. Cyclists and horse riders sometimes face difficulties in gaining access to land. We should ensure that the passing of the bill makes things crystal clear; I believe that amendment 65, which amends the opening page of the bill, will achieve that.

I move amendment 65.

Rhona Brankin: I have introduced a series of amendments to make explicit the rights of access for people with disabilities. Amendment 65A refers to vehicles such as electric buggies, and further on in the bill there is a reference to motorised vehicles. The amendment is an attempt to get the

debate going, to ensure that wherever the bill mentions rights of access for walkers, horse riders and cyclists, it also mentions rights of access for people with disabilities, who may need to use other forms of transport for access.

I move amendment 65A.

Stewart Stevenson: I have grave concerns about introducing lists into the bill. Of necessity, lists are not exclusive. For example, the lists in amendments 65 and 65A do not include access to land by canoe—we must remember that water is included in the definition of land. Moreover, the lists do not include access by hang-glider over the land and they do not include access using scuba equipment or aqualungs under the land. I say that to illustrate some of the difficulties with lists.

I certainly agree that all the activities mentioned in the lists should have access. However, I am concerned that lists will create difficulties for those not on the lists. I therefore hope that amendments 65 and 65A will not be pressed.

George Lyon: I am also concerned about creating huge lists. As I understand it, a right is conferred on an individual so, regardless of how they are travelling across the land, that individual will have that right. I therefore do not understand why we have to include all these different modes in the legislation. Once the right is conferred, an individual will have that right regardless of whether they are on a bike or whatever. Will the minister clarify whether my understanding is correct?

The Convener: I welcome these amendments because there is a need to discuss what is meant by access rights. In the committee, we did not spend a lot of time discussing cycling or horse riding. It is therefore important to discuss such matters at this stage, so that we clarify who can exercise rights of access.

Stewart Stevenson is right to point out that we must ensure that any list includes not only land activities but water activities. It is important that such matters are raised.

Scott Barrie: I take Stewart Stevenson's point that, if a list is not exhaustive and if something is missed out, that something could, by default, be excluded in an interpretation of the bill. However, we must make it clear that we are not talking only about access on foot. The other activities that have been mentioned are quite legitimate and people should have the right to access land in those ways. That may be implicit in the bill, but I feel that it needs to be made explicit. Amendments 65 and 65A have addressed that point. It may be that we will return to these issues at stage 3.

Bristow Muldoon: I would like to clarify some points—particularly in relation to Stewart Stevenson's contribution. Obviously, I would not want to exclude the activities that Stewart mentioned. However, amendment 65 would not do that, because it includes the phrase

"or by any other means which is not conduct within section 9."

My knowledge of these matters may not be sufficient, but a question mark is raised over the use of a cycle by section 9(1)(d), which refers to "a mechanically propelled vehicle". It may be that I am not aware of a robust definition that exists elsewhere but, by some definitions, a cycle could be a mechanically propelled vehicle. That could allow it to be said that someone on a cycle did not have access rights. The aim of amendment 65 is to provide absolute clarity that a cyclist, or indeed a horse rider, would not be excluded.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): Despite what Bristow Muldoon has said, there is still a discussion to be had on why certain means of access have been mentioned while others have not. That is a problem. Nevertheless, I agree that there is a need for clarification, although by some other means.

I come back to what Rhona Brankin said earlier about horse riders being charged for access. It may be that a landowner will say, "I am not charging you for access, but I am charging for you to bring your horse on to the land." I suspect that that point will have to be clarified.

Stewart Stevenson: I want to draw Bristow Muldoon's attention to amendments that we will discuss later—amendments 75 and 78, which are in my name. Where the words "mechanically propelled" occur in the bill, those amendments will substitute the word "motorised".

Ross Finnie: A number of interesting points have been raised. The bill creates rights of access for the purposes of recreation and crossing land. Bristow Muldoon's amendment 65 specifies two or three activities but is then content to rely on the phrase

"other means which is not conduct within section 9."

There is no logic to support the view that we should specify three activities and that the other 63 would be defended by the reference to the exclusion. The logic of that argument is that we accept that we have a right of access for recreational purposes only unless it is excluded by section 9. That would take us into the argument that George Lyon and Stewart Stevenson referred to about lists. If we make a list and do not refer to something, are we excluding it automatically? The amendment poses several difficulties. We should proceed on the basis that people have a right of access for recreational purposes.

I have concerns about the second point made by

Rhona Brankin—perhaps we need to reconsider specifying access for those with disabilities. Section 9(3) says:

"For the purposes of subsection (1)(d) above, a motorised wheelchair is not to be regarded as a mechanically propelled vehicle."

I give an undertaking to consider the clarity of that element of the bill as a whole. I think that section 9(3) might need further amendment to ensure access for those requiring other assistance, by wheelchair or whatever means.

Although that is the thrust of Rhona Brankin's amendment, I ask her to withdraw amendment 65A as it is drafted. I give an undertaking to lodge an amendment at stage 3 to ensure that disability access is not excluded by inadvertence. I suspect that that amendment will be to section 9(3), although I am not sure. Rhona Brankin made a good point, but I think that lists are undesirable because they may lead to the inadvertent exclusion of a perfectly innocent activity. It is safer to proceed on the basis of the right of access for the purposes of recreation and crossing land that is conferred by the bill.

George Lyon: Could the minister clarify that that includes people on horseback or on a bicycle? That is very important in relation to the section on crops.

Ross Finnie: Yes, indeed.

Rhona Brankin: In the light of the minister's comments, I am happy to withdraw the amendment. My intention at this stage was to raise the issue and mention concerns about later references in the bill to motorised vehicles and so on. I am happy with the minister's reassurances.

Amendment 65A, by agreement, withdrawn.

Bristow Muldoon: Given the response in the debate and the minister's comments, I will withdraw amendment 65. I note the comments made by Stewart Stevenson and agree that amendments 75 and 78 will raise important matters for the committee's consideration.

Amendment 65, by agreement, withdrawn.

Section 1, as amended, agreed to.

Section 2—Access rights to be exercised responsibly

The Convener: Amendment 106 was debated with amendment 140.

Amendment 106 moved—[Rhona Brankin].

The Convener: The question is, that amendment 106 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Hamilton, Duncan (Highlands and Islands) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Lyon, George (Argyll and Bute) (LD)

ABSTENTIONS

McNeill, Pauline (Glasgow Kelvin) (Lab)

The Convener: The result of the division is: For, 4, Against 1, Abstentions 1.

Amendment 106 agreed to.

11:00

The Convener: Amendment 20, in the name of Scott Barrie, is grouped with amendments 21, 34, 80 and 81.

Scott Barrie: The bill should be not about regulating public access, but about improving the opportunities for responsible access. We should try to avoid over-regulation as that would go against the original intention of the bill. In evidence at stage 1, the access code was likened to the highway code, which contains both instruction on things that are prohibited by law and good guidance on what we should do as drivers. That is how the access code should be seen. Amendments 20 and 21 try to indicate that the purpose of the access code is not to act as a rulebook, but to offer good guidance and practice. The codes will contain much of the information on what we should do.

I move amendment 20.

Ross Finnie: I recognise that there has been much discussion about the interpretation of the use of the access code. The code provides an essential link between the legislation and how access rights should operate in practice. The relationship between the bill and the code is important and I believe that we have struck the appropriate balance between the two.

There is general agreement that the code would have evidential status. That was the recommendation of the access forum, formed part of the advice from Scottish Natural Heritage and is what the bill provides for. Section 2(2) states that in determining whether someone is exercising access rights responsibly

"regard is to be had to whether the person exercising or purporting to exercise access rights is, at the same time—

(i) contravening any rule of responsible conduct set out in the Access Code".

Section 3 makes a parallel provision in respect of whether land is being managed responsibly. The clear message is that regard is to be had to the code—in other words, the code has evidential

status. Amendments 20 and 21 would delete reference to rules of responsible conduct in sections 2 and 3, replacing that with guidance.

Perhaps it would be helpful if I explained how the code would set out a range of guidance, some of which would be specific and some of which would carry more weight. In simple terms, some guidance will be of the "should" variety and other guidance will be more of a "must". Although the "must" guidance will carry more weight, it will still be no more than guidance to which regard should be had.

Executive amendments 80 and 81 to section 10 try to clarify the purpose of the access code and SNH's role. Amendment 80 would make it clear that the code may contain guidance on how the rules of responsible conduct should be interpreted in particular circumstances. That would provide that any decision on what is responsible behaviour would have to take account of all relevant circumstances.

Section 10(7)(b) places a duty on Scottish Natural Heritage to promote compliance with the access code. There is concern that that suggests a policing role for SNH. That is clearly not our intention. Amendment 81 amends the duty on SNH to one of promoting understanding of the code. That reflects more accurately the role envisaged for SNH in educating the public in the responsible exercise of access rights and landowners in the responsible management of land.

I understand where Scott Barrie is coming from, but if the code is to have the correct evidential status, we should not drift towards enshrining existing rules, notwithstanding the committee's very proper position. We should not start to diminish the status of the code. We need to be left with a framework that is robust in its interpretation. I hope that Scott Barrie will consider that amendments 80 and 81 and the assurances I have given will address his concerns and that he will consider withdrawing amendment 20.

Murdo Fraser (Mid Scotland and Fife) (Con): I have a comment to make on amendment 81. I appreciate that the minister has explained why he does not believe that it is appropriate for SNH to be promoting compliance with the access code. Will the minister explain who he thinks will promote compliance with the access code if SNH does not to do that? In the bill as it stands, there are burdens of responsibility on the landowner or land manager, and there are sanctions attached to that. Where are the reciprocal sanctions and enforcement in relation to the people who are taking access to the land?

Ross Finnie: My point is more about SNH's position. I do not think there is anything in the regulations under which SNH was set up that effectively or adequately gives it a policing role for guidance. It is a question of interpretation where, beyond a certain point, SNH should promote compliance with the access code. However, SNH is there to promote understanding of the code—that is all it has the powers to do. I do not think that SNH has power to insist upon compliance. That would be an unfortunate juxtaposition and I do not want to put Scottish Natural Heritage into a difficult position. If it does not have those powers, we would be asking it to do something that it is not set up to do. By insisting that, as our statutory natural heritage body, it exists to promote understanding of the access code, we are asking it to do a job for which it is better equipped.

The Convener: It would be useful if you could indicate what status the Executive gives to—

Ross Finnie: I am sorry. I cannot hear.

The Convener: It would be helpful if you could indicate what you regard the status of the access code to be. There has been debate about whether it should have the same status as the highway code, for instance. Is it considered to be less important than that?

Ross Finnie: Additional clarification of sections 2 and 3 of the bill will be provided within the access code. The code will play a very important role. As I tried to explain in my opening remarks, the code will contain general guidance, but there will be other sections of the code which local access forums will insist should have more of a "must" status. If the code is going to be a major facilitator, and if it is going to make sections 2 and 3 of the bill work, it will be a very important document. At the end of the day, the code will require to have proper evidential status. That is why I am keen that references in the bill to it and its duties are robust and not watered down in any way.

Scott Barrie: It is interesting that the word "guidance" is used in amendment 80, along with the word "rules". We must be clear about what we are saying when we talk about the status of the access code.

When the Executive published the draft bill, there was considerable disquiet. The bill that we have before us today is a great improvement, and that has been acknowledged by all sides in the debate. I am reluctant to leave the access code to possible amendment at a future date through regulation if it is codified in terms of rules. It is important that the access code offers good practice and guidance about responsible access. It would be up to the local access forums to decide on disputes where they arise. We should emphasise guidance, good practice and consensus rather than regulation. That is what I

am struggling to do by lodging amendment 20 and the other amendments in my name.

Mr Hamilton: I support what Scott Barrie said. My confusion has not been dispelled by what the minister said about the status of the code. There is real confusion as to what status the minister imagines the access code will have. I do not understand the argument of trying to get rid of amendments 20 and 21, which mention guidance, when amendment 80 mentions guidance in the same terms. I do not understand the logic of that at all. If amendment 80 was accepted, it would make no difference to the point that is made in section 2 because regard would still be had to the access code, irrespective of whether it is called a rule. For the sake of consistency, if nothing else, does it not make more sense to back the logic of amendment 20?

The Convener: That is an important question. What is the material difference in evidential value if the code was to be used in deciding whether someone had breached their responsible right of access, whether by contravening the rule or disregarding the guidance? Would it make any material difference to the evidential value of the code?

Ross Finnie: I will take Mr Hamilton's point first. Earlier, a criticism was made that it is difficult to simply express a rule and then seek to expand upon it, especially because the code is not an act but a working document. The original intention was that the code would be a set of rules.

As I understood the earlier debate—and I was sympathetic to that debate—there was going to be an element of compulsion in the code and if people were to use their access rights responsibly, they must comply with those regulations in all circumstances. In terms of interpretation of certain ways in which someone might conduct themselves, there was going to be further guidance but there was not going to be a "must" element. I was not seeking to introduce confusion. I was merely seeking to permit that both sets of circumstances could properly be provided for under the access code and that general guidance could be included along with the rules, and the rules would be closer to what I described earlier as the "must" element.

The proof of the pudding will be in how the access code is written. However, there is a need for rules and guidance because I do not believe that every part of the access code will have equal status. All of the debate that has gone on in the committee and all of the evidence that was produced made clear that there were at least two general elements required in the access code. One is a specific set of rules and one is more general guidance on conduct and responsible access.

11:15

The Convener: Scott Barrie can now wind up.

Scott Barrie: I thought that I had already summed up.

The Convener: You will wind up when I say you can wind up.

Scott Barrie: Okay—I had not realised that I would get the last word.

Members have raised some important points. The guidance that is contained in the access code should be made as useful and as practical as possible. The best way in which to do that is to offer guidance on good practice rather than to make regulations. That is the purpose of the amendments and that is the position that I want to press.

The Convener: To give everyone an indication of where we are, I will attempt to get to the end of section 3 today. That means that we have a few votes coming up.

The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Lyon, George (Argyll and Bute (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Douglas-Hamilton, Lord James (Lothians) (Con)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 20 agreed to.

The Convener: Amendment 66 is in a group of its own.

Murdo Fraser: Section 2(3) sets out that rights of access must be exercised responsibly and

"in a way which is lawful and reasonable and takes proper account of the interests of others and of the features of the land in respect of which the rights are exercised."

Amendment 66 seeks to add the words

"and of the purposes for which that land is being used".

The bill omits to make any reference to management of the land in respect of the way in which the land is being used. It is clear that that is an important aspect. Although the argument might be made that "the interests of others" includes the question of how the land is being used, that point is legally arguable. It does no harm to spell things out a bit more precisely. The use to which land is put is a significant issue. People who earn their

living from the land will want to see this important consideration inserted in the bill.

I move amendment 66.

Mr Hamilton: I do not support amendment 66. As Murdo Fraser has, in fact, identified, we do not need the amendment. I am unclear about which aspects of the purpose for which the land is used are not already covered by existing section 2(3). It would be useful if Murdo Fraser could spell out precisely what he means when he says that the purposes for which the land is used are not covered.

Ross Finnie: Murdo Fraser almost argued both sides of the case when he spoke to the amendment. Already, the rights will have to be exercised in a way that

"takes proper account of the interests of others and of the features of the land".

Reading those two phrases together, I find it difficult to see what the amendment would add. If one must have regard to the interests of others and to the features of the land, one ought properly to take into account the purpose for which that land is used. Amendment 66 does not add anything and is unnecessary. I hope that Murdo Fraser will, on reflection, consider withdrawing the amendment.

Murdo Fraser: I am afraid that I am not inclined to withdraw the amendment. At worst, the amendment takes a belt-and-braces approach by spelling out in more detail that the management of the land must be considered when looking at the question of reasonable access. I wish to press the amendment.

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Douglas-Hamilton, Lord James (Lothians) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Lyon, George (Argyll and Bute (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 66 disagreed to.

Section 2, as amended, agreed to.

Section 3—Reciprocal obligations of owners

The Convener: Amendment 107 is in a group of its own.

Mr Jamie McGrigor (Highlands and Islands) (Con): Before I speak to and move the amendment, I refer members to my land-owning interests in the register of members' interests.

The word "omission" would place an unquantifiable and wholly subjective burden on landowners. No description is given of what would count as an omission. For example, would it be an omission if a landowner did not provide extra gates, a bridge or stiles in fences? Such things should be provided by local authorities and the costs should be met from the public purse. There is provision later in the bill for negotiation with landowners, but section 3 does not provide landowners with legal certainty. They would have no way of knowing whether they had complied with section 3.

I move amendment 107.

Stewart Stevenson: It seems to be slightly strange that Jamie McGrigor should want us to write a blank cheque by allowing sins of omission—whereby landowners fail to provide for the safety of people on their land—to be struck out. On that basis, I am reluctant to vote for Jamie McGrigor's amendment.

Ross Finnie: Jamie McGrigor referred to persons not knowing what they have omitted to do, but such omissions would be acts of non-compliance with the Scottish outdoor access code, which is the basis on which landowners are asked to act. It seems unreasonable not to take account of any omission on the part of a landowner when considering whether the landowner has contravened the code and acted irresponsibly.

I agree with Stewart Stevenson's general point; to exclude omissions in the way that amendment 107 suggests would be most extraordinary. It would not make sense to leave a huge loophole in the provisions that will govern the conduct of landowners.

Mr McGrigor: The provision in section 3(2)(b) lacks legal certainty, which I am trying to clear up. For example, if a path went into a gorge and up the other side, the landowner would not know whether he would need to put a bridge over the gorge or whether it could simply be crossed on foot through a ford as had always been the case in the past. Will the access code say explicitly for what landowners will be responsible?

Ross Finnie: The access code will set out rules of responsible conduct. The act or omission to which section 3(2)(b) refers would be an act or omission in complying with those rules of conduct. That seems to me to be a perfectly normal and reasonable position for a landowner to be put in; it is not an unusual burden. There will be no uncertainty in determining whether the landowner has acted responsibly in accordance with section

3. I will continue to resist any diminution or exclusion of that responsibility.

The Convener: Do you want to press amendment 107, Jamie?

Mr McGrigor: Yes. Section 3(2)(b) could place a lot of extra obligations on landowners and land managers.

The Convener: The question is, that amendment 107 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Douglas-Hamilton, Lord James (Lothians) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Lyon, George (Argyll and Bute (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 107 disagreed to.

The Convener: Amendment 21, in the name of Scott Barrie, has been debated with amendment 20.

Amendment 21 moved—[Scott Barrie].

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Lyon, George (Argyll and Bute (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Douglas-Hamilton, Lord James (Lothians) (Con)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 21 agreed to.

Section 3, as amended, agreed to.

The Convener: The guillotine falls on our discussion of the Land Reform (Scotland) Bill for today. I thank everyone for coming along.

For the purposes of the *Official Report* and for those who are interested, the next day of stage 2 consideration of the bill will be 4 September. An announcement about the deadlines for amendments will be made in the usual way, through the business bulletin, during the recess.

Items in Private

The Convener: Before we break, we should deal with item 2, which is very short. I invite members to agree to take item 3, which is our discussion of the stage 1 report on the Criminal Justice (Scotland) Bill, in private and to consider any further drafts of the report in private. Is that agreed?

Members *indicated agreement*.

11:28

Meeting suspended until 11:42 and thereafter continued in private until 13:25. Meeting resumed at 14:41 and continued in private until 16:24.

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