JUSTICE 2 COMMITTEE

Wednesday 11 September 2002
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE
† 28th 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)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Allan Wilson (Deputy Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Richard Hough

LOCATION

The Chamber

† 27th Meeting 2002, Session 1—held in private.

Scottish Parliament

Justice 2 Committee

Wednesday 11 September 2002

(*Morning*)

[THE CONVENER *opened the meeting in private at 09:48*]

11:38

Meeting continued in public.

The Convener (Pauline McNeill): Good morning everyone. Welcome to the 28th meeting this year of the Justice 2 Committee. I apologise to members, ministers and officials for keeping them waiting for so long. At last, we have reached the end of our stage 1 report on the Criminal Justice (Scotland) Bill. You will all be relieved about that.

Before we come to the second item, I will give a convener's report. Bill Aitken and I have been working on behalf of the committee on petition PE336, on asbestosis. I will give a fuller report when we have more time, as I want to keep things running on the issue. Over the summer, Bill and I were invited to look at the by-order roll, as it is called, in Lord Mackay's court. We went on separate days and have a report on the issues that arose. There are one or two matters that I want to raise with the committee, but those will be put on the agenda for discussion at a future date.

I remind the committee that there will be a joint stocktaking meeting with the Justice 1 Committee next Tuesday at 2 pm in the chamber. As a quorum is required from both committees, it is important that members who cannot attend should let us know, so that we can ensure that we have a quorum.

Mr Alasdair Morrison (Western Isles) (Lab): I shall be at the Rural Development Committee.

The Convener: I realise that our meeting will clash with other committee meetings, but I ask members to let the clerks know who will be there. At the meeting, we will take evidence from the Minister for Justice and the chief inspector of prisons.

Land Reform (Scotland) Bill: Stage 2

The Convener: Item 2 is stage 2 consideration of the Land Reform (Scotland) Bill. This is the third stage 2 meeting on the bill. Members have the usual papers in front of them and we will try to get through as many amendments as possible. We propose to run to about 1 o'clock and stop at an appropriate point. We should try to avoid stopping in the middle of a grouping of amendments if possible. Unfortunately, we were not able to do that at out last meeting, as I wanted to ensure that everyone had the chance to speak in the debate. We finished by voting on the lead amendment 110, so we will move on from there. We welcome Allan Wilson, the Deputy Minister for Environment and Rural Development, and his officials.

Section 6—Land over which access rights not exercisable

The Convener: Amendment 138, in the name of Scott Barrie, has been debated with amendment 110. I remind members that, if amendment 138 is agreed to, amendments 111, 41, 188 and 189 will be pre-empted. I invite Scott Barrie to move amendment 138.

Scott Barrie (Dunfermline West) (Lab): I will not move amendment 138, in favour of a later amendment, amendment 256, which is in my name.

Amendment 138 not moved.

The Convener: Amendment 111, in the name of Murdo Fraser, has been debated with amendment 110.

Bill Aitken (Glasgow) (Con): Murdo Fraser is unable to be with us today. I therefore move amendment 111.

The Convener: The question is, that amendment 111 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division—

Bill Aitken: Forgive me for interrupting, convener. Having checked my brief more thoroughly—as I should have done—I seek the committee's agreement to withdraw amendment 111.

Amendment 111, by agreement, withdrawn.

Amendment 41 not moved.

Amendment 188 moved—[Allan Wilson].

The Convener: The question is, that amendment 188 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Lyon, George (Argyll and Bute) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 188 agreed to.

Amendment 189 moved—[Allan Wilson].

The Convener: The question is, that amendment 189 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 189 agreed to.

The Convener: Amendment 146, in the name of Stewart Stevenson, has been debated with amendment 110. I should point out that, if amendment 146 is agreed to, under the rule of pre-emption, I cannot call amendment 24.

Amendment 146 not moved.

Amendment 24 not moved.

The Convener: Amendment 4, in the name of Dennis Canavan, is in a group of its own. I ask Dennis Canavan, who has waited a long time, to speak to and move the amendment.

11:45

Dennis Canavan (Falkirk West): Under the bill as drafted, the public would have no statutory right of access to land that is held by the Queen in her private capacity. I raised the matter during the stage 1 debate, but received no explanation for the exclusion. I have therefore lodged amendment 4.

The Balmoral estate is the obvious example of land in Scotland that is held by the Queen in her private capacity. Perhaps the Deputy Minister for Environment and Rural Development can tell us whether other land in Scotland falls into that category. Balmoral contains some of the most scenic countryside in Scotland, as anyone who has walked up Lochnagar can testify. It would be outrageous to exclude such magnificent countryside from public access just because it happens to be held by the Queen.

I do not know why the Executive has excluded such land from public access in the bill, but it has been suggested that it had something to do with security. I am no royalist, but I believe that the Queen, like everyone else, is entitled to security. I have never heard a serious argument that public access to Balmoral would cause a security problem. Even at present, a reasonable degree of access exists to the Balmoral estate. I am unaware that that has resulted in a threat to security.

On the contrary, the Queen is probably much safer doing walkabouts with her corgis at Balmoral than she was when she was doing walkabouts with armed escorts through the streets of London or any of the other cities or towns that she visited during her recent jubilee tour. Only last week, when two gliders were forced to land unexpectedly in the grounds of Balmoral, in full view of the Queen and Prince Philip, the Queen, to her credit, seemed to be more concerned about the glider pilots' safety than her own.

Ross Finnie has added his name to my amendment, but I suspect that he would like to assure the committee that that is not a sign of republican brotherhood. What with cryptosporidium and genetically modified crop trials—not to mention Digby Jones—the minister has not had to seek problems recently. However, I am pleased that, on this issue, he is showing good sense by supporting my amendment.

Can I assume that the Queen supports amendment 4? Perhaps the deputy minister can tell us of the communications that took place between the Executive and the Queen or her representatives and that led to the Executive supporting my amendment.

I hope that the committee will give its unanimous support to amendment 4, which would extend the right of access to land that is held by the Queen in her private capacity. The mountains, rivers, glens and lochs of Scotland are not simply the property of royalty or other landed gentry; they are part of our national heritage and, as such, the people should have a statutory right of access to them. That is the declared purpose of the bill and that is why I am asking the committee to support amendment 4.

I move amendment 4.

Bill Aitken: Dennis Canavan's amendment 4 has some merit, particularly as it was moved in such an amusing manner. He has not, however, dealt adequately with the question of security. As we all know on this day of all days, we live in times in which security is a real consideration for any public figure. As Dennis Canavan correctly pointed out, much of the Balmoral estate is open land of a particularly attractive nature. However, the royal family could face real danger when it was in residence if the public had unfettered access to the estate.

If some sort of compromise could have been arrived at, under which a restriction could be placed on public access during periods when the royal family was in residence, I might have felt disposed to go along with the proposal. However, I do not feel able to support amendment 4.

I conclude by saying that Dennis Canavan's prospects of a knighthood have certainly not been improved by his comments today.

The Deputy Minister for Environment and Rural Development (Allan Wilson): First things first. In relation to the point about Ross Finnie, we would have lodged an amendment using much the same text as Dennis Canavan used for amendment 4 had he not beaten us to the draw, so to speak; consequently, we are supporting his amendment. I do not speak for the palace, but it has advised us that it would be content for section 6(e) to be removed, provided that there are powers to restrict access on the grounds of defence or national security.

Our intention has never been that access rights should not apply to areas such as the Balmoral estate. We were asked whether there are other such areas—there are not. Access should be subject to the appropriate measures being taken in the interests of security. That issue is thrown into stark relief today of all days. We now have the agreement of the palace that access rights should be exercisable in relation to land held by Her Majesty in her private capacity on the basis that concerns about the defence and national security implications of extending access rights in that way can be dealt with by an order made by the UK Government under section 104 of the Scotland Act 1998.

Defence and national security are reserved matters, but agreement has been obtained in principle from the Scotland Office as regards its making such an order, which covers Bill Aitken's point. I am therefore content to support amendment 4.

The Convener: The question is, that amendment 4 be agreed to. Are we all agreed?

Bill Aitken: Having heard what the minister has said, I agree to amendment 4.

Amendment 4 agreed to.

The Convener: Amendment 25, in the name of Scott Barrie, is grouped with amendments 112, 241, 68, 69, 147, 53, 153, 242 and 29. If amendment 25 is agreed to, I will not call amendments 112, 241 or 68, because of the pre-emption rule.

Scott Barrie: I propose in amendment 25 to delete lines 13 to 15 in section 6 on page 4 of the bill, because the issues to which they relate would be dealt with much better in the access code than they would in the bill. I am concerned, and I would like to hear the minister's opinion on this, that under paragraph (f)(i) and paragraph (f)(ii) access to large areas of land might be restricted unduly. For example, some landowners might understand the wording to apply to pheasant woods, grouse moors or fishing beats. That would extend the scope of the sections much further than the Executive intends. The access code should be about regulating specific incidents and areas and it would be more appropriate to include the areas to which paragraph (f)(i) and paragraph (f)(ii) refer in the code, which is the intention behind amendment 25.

I move amendment 25.

Bill Aitken: Amendment 112 seeks simply to protect parks and gardens from automatic access. Clearly some parks and gardens in city centres, including some that are within walking distance of the chamber, fall into that category. I do not think that the Executive's intention is to allow open season on parks and gardens that are of a semi-private nature and to which local residents contribute.

Amendment 53 is a probing amendment, which I may or may not move, depending on what the minister has to say. I put forward the following scenario: Murrayfield, which lies within a couple of kilometres of the Parliament, is of course a rugby football ground and is used for professional sport. I suspect that the minister does not intend for Murrayfield or any other football stadium to become an area to which the public would have automatic access.

The minister may well argue that section 6(a) or section 6(b)(i) copes with that situation. If that is the case, I look forward eagerly to his explanation, as he could satisfy me in that respect. It would clearly be undesirable if the public could walk across the hallowed turf of Firhill in Glasgow, for example, causing damage to the groundsmen's best efforts, or if they could attempt to walk across Murrayfield the day before an international. I will listen with great interest to what the minister has to say.

Rhona Brankin (Midlothian) (Lab): Amendments 241 and 242 have been lodged because of concerns expressed by those who play golf. In Scotland, golf is a commonly played game. I believe that as many as one person in 10 plays golf. Scotland is the home of golf and golf tourism is a valuable sector of the Scottish economy. Golf is important for many reasons.

Amendments 241 and 242 have been lodged because of concern that the rights of those who play golf could be interfered with and that, because of the liability of golf clubs, there could be increased litigation as a result of more people taking access across golf courses. I seek assurance from the minister that the importance of golf to Scotland will be acknowledged. I also seek assurance that, given that golf is a dangerous game—not only when I play it—and can cause a great deal of injury, some consideration has been given to liability. Amendment 242 is consequential on amendment 241.

Amendment 147 would add synthetic pitches to the list of areas that are excluded from the right of access. As the need for amendment 147 might not be immediately obvious, I will give the committee one or two reasons why it is important that synthetic pitches be excluded. The types of surface to which I refer are made from synthetic grass such as Astroturf, polymeric and acrylic, as are used in some athletics tracks and the tennis courts on the Meadows, for example. There is no concern about blaes pitches or concrete and tarmac pitches. Indeed, such pitches are being phased out.

The problem with synthetic pitches relates to the dirt that can be carried on to them and the fact that they are often used by those without sports shoes. The pitches cost a lot of money to install and require a lot of maintenance and there is a concern that damage may be done to them.

I see no recreational advantage to including synthetic surfaces in the right of access. It is important that we maintain the rights of people undertaking recreation to access synthetic pitches and to maintain them properly. Synthetic surfaces are specially designed for sports. They are not designed for general access and will suffer if the right extends to them.

The Convener: I call Bill Aitken, representing Murdo Fraser, to speak to amendment 68.

12:00

Bill Aitken: The purpose of amendment 68 is straightforward and can be best characterised by the Skibo Castle situation. As we know, Skibo Castle is in a remote part of the country where employment prospects are limited and the local economy is fragile. However, it has successfully attracted large celebrity events, such as the wedding of Madonna, which have injected significant amounts of money into the local economy.

The problem is that, if the privacy that such celebrities require were to be restricted or vanish altogether, the attraction of Skibo Castle and other comparable venues in Scotland would be limited. The important consideration is economic, rather than anything else. Those areas need the money that such events bring, but that money will not come in without a degree of privacy.

The Convener: Thank you. I call the minister to speak to amendment 69 and the rest of the group.

Allan Wilson: The intention behind the exclusion in section 6(f) is that the exercise of access rights should not interrupt or impede sporting activities. There is no reason why the public should not be allowed to walk in areas or parks marked out as football, hockey or rugby pitches. However, it would not be responsible to exercise access rights when a game is in progress. The same principle applies to any land developed or set out for a particular recreational purpose, such as archery, mountain bike events or slaloms. People engaging in those activities should be free to enjoy them without interference. In addition, there could be issues of public safety.

Section 6(f)(ii) is further qualified by section 7(6) to allow the exercise of access rights even where the land is in use if that can be done in a way that does not interfere with the recreational use to which the land is being put. For example, there is no reason why someone should not exercise the right to cross a golf course when golf is being played if that is done in such a manner as not to interfere with the game. One can envisage crossing the 18th fairway when someone is on the second tee without interfering with that person's enjoyment of their golf game.

Amendment 25 would remove the exclusion in section 6(f) completely and bring that category of land within access rights. For the main reason that I have outlined, which is that access should not interfere with or impede sporting activities, I consider that section 6(f) is an appropriate provision. I hope that Scott Barrie will agree to withdraw his amendment. We do not agree that the provision would extend to grouse moors, because such land is not developed or set out for a specific sporting purpose.

Amendment 68, in the name of Murdo Fraser, seeks to extend the provision to exclude not only land developed or set out for a particular recreational purpose, but land developed or set out for a particular commercial purpose while in use for that purpose. I am not convinced of the need for that potentially very wide exclusion.

Provisions in the bill relating to responsible exercise of access rights already ensure that the types of commercial activity that Bill Aitken and Murdo Fraser have in mind can take place without interference. More important, it might be argued that much agricultural land is developed or set out for a commercial purpose and so the effect of amendment 68 would be to exclude such land from access rights. That could undermine the whole purpose of part 1 of the bill, which is to increase access to the countryside. I am sure that that was not Bill Aitken's intention.

Concern has been expressed that section 6(f) does not go far enough or provide sufficient protection for sports surfaces that might be damaged by access and inappropriate use. Those would include grass tennis courts, golf greens, bowling greens, cricket squares and, perhaps, croquet pitches. Amendment 69 excludes those surfaces from access rights at all times, not just when they are in use.

Amendment 147, in the name of Rhona Brankin, would extend that exclusion to remove access rights to grass sports pitches and athletics tracks at all times. I see no reason for football or rugby pitches to be excluded from access rights at all times. The amendment goes too far.

Amendment 147 would also remove access rights to all "specialist synthetic sports" surfaces. Those would include virtually all hard sports surfaces, because the term "synthetic" has a wide application. In my view, the provision is not necessary. What types of surfaces require protection, and why should they require it? If particular types of synthetic surfaces are liable to damage from access—I think of the expensive water-based hockey pitch at the national sports centre in Largs in my constituency—I would be willing to consider lodging an amendment to deal with that problem at stage 3. However, it will be necessary to define those surfaces carefully, so that the provision does not apply to outdoor football pitches. It would be unreasonable for access to such surfaces to be removed. Given that assurance, I hope that Rhona Brankin will withdraw her amendment. We will seek to identify which specialist synthetic surfaces require protection from casual usage.

Amendment 153 seeks to ensure that, where the fisheries management works detailed in the amendment have been carried out on a river, such works will not have the effect of including stretches of river within the ambit of section 6(f) of the bill. If section 6(f) were to apply to such stretches, canoeists would be unable to pass along them when someone was fishing. In my view, there is no reason why activities such as canoeing and angling cannot co-exist. I understand that the current voluntary code that is in place to prevent problems works well. I see merit in amendment 153 and am happy to accept it.

Amendment 112 would exclude all gardens and parks from access rights. I am not convinced that that is appropriate. Section 6(b)(iv) excludes from access rights sufficient land that is associated with or adjacent to a house

"to enable persons living there to have reasonable measures of privacy and undisturbed enjoyment of the whole".

Section 6(c) further provides that, where the land forms parts of a common garden—last week we talked about Queen Street gardens and Queen's Crescent in Glasgow—it will be excluded from access rights. Under section 6(g) of the bill, access rights may not be exercisable in relation to gardens and parks where an entry fee has been and continues to be payable. All those are appropriate protections. However, I am not convinced that it would be appropriate to exclude all gardens and parks from the access rights that the bill proposes. I ask the committee to reject amendment 112.

Bill Aitken described amendment 53 as a probing amendment. As he made clear, the purpose of the amendment is to make more explicit the exclusion from access rights of the designated sports grounds that are listed in the order to which the amendment refers. However, as Bill Aitken said, grounds such as Firhill and East End Park appear already to be excluded from access rights under section 6(a) and section 6(b) of the bill. They all have stands for spectators and changing facilities for players, of which they are liable to form part of the curtilage or enclosure. The amendment would not have any practical effect. It is also worth noting that the purpose of the order to which amendment 53 refers is to designate sports grounds in which, for obvious reasons, the consumption of alcohol is controlled. I have doubts about the desirability of linking the exclusion from access rights to legislation that is concerned primarily with the control of alcohol. Given the assurance that the bill already adequately addresses the issue of sports grounds, I hope that Bill Aitken will agree not to move amendment 53.

Amendments 241 and 242 deal with golf courses. During the consultation on the draft bill, golfing interests raised a number of concerns with us about the exercise of access rights over golf courses and sought to exclude golf courses completely from access rights. However, recreation and other interests were concerned that, because of their size, golf courses can often pose a barrier to getting from point A to point B. Like Scott Barrie, they also pointed out that many people walk or even jog on golf courses without causing any difficulty for golfers.

We have attempted to find a way through that will satisfy all those competing interests. Section 9(1)(e) effectively excludes the exercise of access rights over golf courses for the purposes of recreation. In other words, the bill does not allow, for example, playing football or picnicking on golf courses, but confers a right to cross golf courses, provided that that is done responsibly.

The combined effect of section 6(f) and 7(6) is that anyone seeking to exercise the right to cross a golf course can do so only if that will not interfere with those playing golf. Not only should that provide reassurance to golf clubs, which were concerned about their members' ability to continue to enjoy their game, but it should mean that there is a minimal chance of anyone being struck by a golf ball, which was another concern of the Scottish Golf Union.

I accept that there could be potential safety implications of allowing access to golf courses, but the safeguards in the legislation mean that they are reduced to an absolute minimum. Moreover, I can advise Rhona Brankin that those safeguards will be backed up by guidance in the code on the responsible exercise of access rights over golf courses and on the responsible management of golf courses in relation to access, so that the two interests can co-exist.

Amendment 242 seeks to restrict the exercise of access rights over golf courses to designated routes. We are not convinced of the desirability of restricting rights for people crossing golf courses to so-called designated routes as opposed to paths. That apart, I have doubts about the practicality of such an approach. For example, who would be responsible for designating routes? Could the golf club designate a route? Would there be any requirement for consultation? Would there be scope for appeal? If a third party, such as a local authority, were to be responsible for designating routes, what provision would be required for that? Would it be required to consult? What appeal mechanisms would be appropriate in those circumstances? If we take all that on board, we find that amendment 242 is neither necessary for the purposes of responsible access nor desirable.

The approach to access rights and responsible management that we have adopted in the bill, which will be backed by guidance, is a better way forward and will secure consensus in this contentious area. I am not convinced of the need for amendment 241. I am satisfied that section 6(f) already encompasses golf courses, so the amendment is unnecessary. Given those assurances, I ask Rhona Brankin not to move amendments 241 and 242.

The Convener: Stewart Stevenson will speak to amendment 153 and any other amendments in the group.

Stewart Stevenson (Banff and Buchan) (SNP): I am sure that croquet players everywhere will be grateful for the minister's attention to their ancient and interesting sport.

I thank the minister for his indication that he is minded to accept amendment 153, the intention of which is to allow the continued successful co-existence of anglers and canoeists. The minister referred to the voluntary code, which is an important part of that co-existence. Our attitude when we voted on amendments 20 and 21 was to move towards removing unnecessary detail from the bill. We indicated a desire to incorporate such detail in the code, which will be published and agreed in due course. In that regard, amendment 153 should say what it does as long as section 6(f) remains in the bill.

Amendments 241 and 242, on golf, are more properly dealt with in the code. Throughout, the bill refers to responsible access and not simply to access. The code is the correct place in which to develop an understanding of what responsible access means.

Similarly, amendment 147, on synthetic pitches, amendment 69, on sports areas, and amendment 53, on sports grounds, involve matters that are far better dealt with in the access code.

Any reasonable interpretation of the intention of amendment 68, the Skibo Castle amendment—if I may so term it, Bill—would probably allow the whole of Scotland to be blanked off from responsible access under the bill. We must oppose that clearly and unambiguously.

12:15

The Convener: As no other member wants to say anything on this grouping, I ask Scott Barrie to wind up.

Scott Barrie: Far be it from me to suggest that we should interfere with the legitimate playing of sport, although that might have been an advantage at East End Park a couple of weeks ago, but we must acknowledge that we should not use the provision of sports fields, playing fields and ground for recreational purposes to extend the scope of the bill more than is intended. The minister addressed that point. I take the minister's assurance that the provision will not extend to pheasant woods, grouse moors or fishing beats. That is an important point, because if recreation were defined as including those activities, which are recreational activities for some people, that would drive a coach and horses through the bill's principle of reasonable access to the countryside. With that assurance and given the qualification for legitimate sports fields and playing fields, it is perhaps appropriate that I ask the committee

leave to withdraw amendment 25.

Amendment 25, by agreement, withdrawn.

The Convener: Amendment 112 was debated with amendment 25. Does Bill Aitken wish to move the amendment?

Bill Aitken: The minister's eloquence has persuaded me not to move it.

Amendment 112 not moved.

The Convener: Does Rhona Brankin wish to move amendment 241?

Rhona Brankin: In the light of the minister's comments and the reassurance that advice for golf clubs will be in the code of conduct, I will not move amendment 241.

Amendment 241 not moved.

Amendment 68 moved—[Bill Aitken].

The Convener: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 68 disagreed to.

Amendment 69 moved—[Allan Wilson].

The Convener: The question is, that amendment 69 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

AGAINST

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

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

Amendment 69 agreed to.

Rhona Brankin: In the light of what the minister said and given the fact that he is prepared to consider synthetic sport surfaces, I will not move amendment 147.

Amendment 147 not moved.

The Convener: Amendment 113 is in a group on its own.

Bill Aitken: The issue behind amendment 113 is straightforward; the amendment's purpose is safety. I want to ensure that people are kept apart from animals, for obvious reasons. I am sure that the Executive's thinking is that allowing people to walk through cattle pens, for example, is not conducive to a peaceful life.

I move amendment 113.

Stewart Stevenson: I will continue the theme that such matters are best dealt with in the code. More fundamentally, the amendment would give land managers—I reiterate that I am talking about a minority—the wherewithal to create excluded areas by using temporary enclosures, which they might put down at any convenient place, to restrict access. On that basis, I oppose the amendment.

Allan Wilson: The bill as introduced excluded from access land on which a structure exists, which would have excluded from access rights pens erected for the temporary enclosure of livestock, irrespective of whether livestock were present. That would have covered Bill Aitken's point. That provision was removed last week by Mr Stevenson's amendment 67. I suspect that one result of that amendment will be calls to exclude in the bill a wide range of structures. I suspect that we will have to seek an exclusion for canal lochs, in the interests of canoeists, for example. There may be others.

However, I am not convinced of the need to exclude livestock pens. I cannot imagine why anyone would want to walk through, rather than around, a livestock pen. Therefore, amendment 113 deals with a non-existent problem. Guidance on the exercise of access rights in the vicinity of livestock and close to working areas will be in the Scottish outdoor access code. Anyone who attempted to walk through a pen that held livestock would be likely to be considered irresponsible and therefore outside access rights. Consequently, I ask Bill Aitken to withdraw the amendment.

Bill Aitken: The point is thin, but the amendment has some value, so I will press it to a vote.

The Convener: The question is, that amendment 113 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 113 disagreed to.

The Convener: Amendment 114 is in a group on its own.

Bill Aitken: I will move amendment 114, although I realise that my suggestion is problematic to an extent because land that is used for shooting and stalking is, by definition, open land and thus should not be restricted. However, we must take on board a public safety consideration—shooting is a dangerous pursuit. If people walk without restriction on land on which shooting is taking place, there is a clear possibility of tragic events. As it is impossible to close such areas of land, those who exercise their right of access on them must take account of the terrain and their distance from the activity. People will have to take into account similar factors when they walk across a golf course, which was dealt with earlier. I accept that some of those matters should be contained in the access code, but we should not leave it at that. We should amend the bill to cover up the apparent loophole.

I move amendment 114.

Stewart Stevenson: Once again, the issue would be more properly addressed in the access code. Exercising access in the middle of a shooting party could not conceivably be deemed to be responsible. Therefore, the bill covers the matter perfectly adequately. Amendment 114 would also cut across many effective voluntary provisions, such as the hill phones initiative, which provide appropriate daily information for people who wish to access areas where it is likely that shooting will take place.

Allan Wilson: Amendment 114 would prohibit the exercise of access rights over land if the land in question was in use for hunting or shooting, but only to the extent that such use meant that access rights could not be safely exercised. Leaving aside the question whether the amendment is necessary or desirable, I believe that its practical application would prove to be extremely difficult. If shooting takes place on land that is used primarily by hillwalkers, is the land being used for shooting? Whose responsibility would it be to determine whether it was safe to exercise the access right across the land? Amendment 114 would serve only to generate the sort of dispute that—I hope—Bill Aitken is trying to avoid.

I see no reason why the responsible exercise of access rights should not exist alongside shooting and stalking. The code will provide guidance to those who exercise their right across land where shooting or stalking might be expected to take place. Similarly, the code will provide advice to those who are involved in shooting and stalking. As Bill Aitken himself hinted, the appropriate approach is to leave the matter to the access code.

I have been impressed by the success of the hill phones initiative, which seeks to avoid conflict between walkers and stalkers. We know that the approach works and we require to build on it, rather than to adopt a legislative approach that will give rise only to dispute. I ask Bill Aitken to withdraw amendment 114.

The Convener: I ask Bill Aitken whether he wishes to press the amendment.

Bill Aitken: I will press the amendment although I am obviously anxious to avoid disputes. That is why I was quite keen not to introduce legislation on the matter. In response to Stewart Stevenson's point, I point out that people might not appreciate that a shooting party was at a particular locus until something happened. That is something that we want to avoid.

The Convener: The question is, that amendment 114 be agreed to. Are members agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 114 disagreed to.

12:30

The Convener: Amendment 70, in the name of Murdo Fraser, is grouped with amendments 26, 71, 72, 73 and 137.

Bill Aitken: I should indicate my intention to withdraw, with the committee's permission, amendment 70.

Amendments 71, 72, 73 and 137 seek to deal with country houses and walled gardens. At the moment, the bill provides that such areas are excluded from access where they are open to the fee-paying public for no fewer than 90 days a year to 31 January 2001 and for no fewer than 90 days in each subsequent year. However, the 90-day period is too long. If a house is open for three days a week for 20 weeks—which is the average length, at best, of a Scottish tourist season—that accounts for only 60 days. We should encourage houses to open to the public for as long as possible to ensure that the public have a higher quality of access instead of simply having the access that is provided for under the strict conditions that are laid out in section 6.

Moreover, we must protect such houses, which generate substantial income to pay for their upkeep by charging for access to their grounds. The public have a general right of access, and if they no longer wish to pay, those houses will simply lose income and could end up falling into disrepair. I am sure that the minister, with his keen interest in architecture, would not wish that to happen. As a result, amendments 71 and 73 seek to reduce the period in question from 90 days to 30 days.

Amendment 72 seeks simply to apply the provision to any new houses that are opening to the public for the first time, a classic example of which would be the Castle of Mey, the Queen Mother's former residence in Caithness.

Amendment 137 seeks to avoid any problems that would be caused by those who, in turn, attempted to avoid the bill's provisions. The 30-day exemption would apply only where facilities were provided that conformed to standards prescribed by the Scottish Tourist Board, so it would prevent an owner from trying to get round the bill's provisions by opening their house for 30 days and charging an exorbitant entry fee.

I move amendment 70.

Scott Barrie: Amendment 26 seeks to ensure that we have a system in which people are charged for access to a facility, not to the land itself. That is quite an important distinction. Given that we keep saying that the bill is about responsible access to our land, we should be clear that we are not charging people to access the land. The entry fee to managed visitor attractions—Bill Aitken mentioned one of them—should be paid in order to visit the attraction itself, not to access the land. The introduction of a licensing system would provide some control over that aspect and would ensure that legitimate visitor attractions that charge people for access to their amenities would be able to do so in the future.

Stewart Stevenson: Broadly, I am minded to support amendment 26 but not the other amendments in the group. However, I have an issue with the apparent introduction of a licensing system, because I think that that opens up a larger issue than Scott Barrie intended. Although I find myself perfectly able to support that, we might have to reconsider the phrasing on licensing to avoid creating a bureaucratic nightmare.

Nonetheless, I am confident that it would be possible to make an appropriate change at stage 3 to that part of amendment 26. If no one else were prepared to do so, I would be minded so to do.

Rhona Brankin: I do not have an amendment but I have specific concerns that have been drawn to my attention by people who ride horses. There are some instances—for example, in Eglington country park and on some forestry tracks—where horse riders are currently charged for access to that land. There is a concern that if that is not amended, walkers and cyclists will be able to access land free of charge whereas people who ride horses will not be able to do so. They feel that they are being treated unfairly.

Allan Wilson: Section 6(g) provides that where in the past a charge for entry to land has been levied for at least 90 days each year, and that charge continues to be levied, that land is excluded from access rights. That was included to allow those who have received an income from charging for entry to land to continue to do so. That covers the latter point.

However, that provision applies only where a charge has been made in the past and not where a charge is introduced or is proposed to be introduced. Anyone who wanted to start charging for admission to their land would require to persuade a local authority to exclude that land from the right of access by order under section 11.

As Scott Barrie said, the accepted definition of the land in that context might have to be addressed to determine whether that land includes the amenity to which Scott Barrie referred. Amendment 26 takes that approach. However, the amendment would replace section 6(g) with a completely different approach. Would that approach be better? I doubt whether it would be workable. It refers to the public having been "admitted only on payment" but does not say how far back one would have to go to for evidence of that charging. It also refers to the use of so-called "non-natural amenities". What does that mean? What constitutes a non-natural amenity?

Amendment 26 refers to licences but does not specify what form of licence would require to be granted, nor by whom. It does not seem to offer a practical alternative to the existing provision.

Amendment 137 seeks to introduce an additional test relating to Scottish Tourist Board standards. It goes well beyond the original

purpose of the provision and would achieve very little. Section 6(g) relates to land, as I have said. In most cases, the land on which the type of facility or amenity to which amendment 137 refers is sited would be excluded from access rights. If the amendment was accepted, I doubt that it would have any practical effects. It would introduce unnecessary complication and bureaucracy with little effect.

Amendment 72, in the name of Murdo Fraser, would replace the word "and" in section 6(g)(i) with the word "or". That would allow charges for admission to land to be introduced in the future, thereby restricting access without the requirement to go through the procedures that are set out in section 11. We do not feel that that would be appropriate. Such an arrangement could be open to the sort of abuse that has been referred to. By introducing a nominal charge for entry, a landowner could effectively take his or her land outwith the scope of access rights, thus defeating the purpose of the bill.

Amendment 73 would reduce the effect of the test that is set out in section 6(g) by requiring that a charge for public admission be levied, and continue to be levied, for only 30 days each year as opposed to 90 days. We have reservations about widening that concession too far by choosing 30 days. Land for which a charge of entry is levied for only 30 days out of 365—about 8.5 per cent of the year—might, I would argue, reasonably be included under access rights. One might argue that the choice between 30 days and 90 days is a matter of judgment, but my preference would be to retain the more challenging 90-day period, which we feel is more appropriate.

In the light of what I said about amendment 26 not being workable, I ask Scott Barrie not to move that amendment and ask Bill Aitken to withdraw or not to move the amendments in Murdo Fraser's name in favour of our better provision.

Amendment 70, by agreement, withdrawn.

The Convener: If amendment 26 is agreed to, I cannot call amendments 71, 72 and 73 as they would be pre-empted. Does Scott Barrie intend to move amendment 26?

Scott Barrie: I hear what the minister says about my amendment being deficient with regard to a period preceding the period during which admission is on payment, and note Stewart Stevenson's point about the licensing system. On that basis, I will not move amendment 26 but I think that we will wish to return to the issue at stage 3. I may wish to discuss an appropriate wording with Stewart Stevenson, and we might tackle the issue by another route.

Amendment 26 not moved.

Amendment 71 moved—[Bill Aitken].

The Convener: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 71 disagreed to.

Amendment 72 moved—[Bill Aitken].

The Convener: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 72 disagreed to.

Amendment 73 moved—[Bill Aitken].

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 73 disagreed to.

Amendment 137 moved—[Bill Aitken].

The Convener: The question is, that amendment 137 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 137 disagreed to.

The Convener: If we consider the next group of amendments, that will take us past 1 o'clock. Are members okay with that?

Mr Duncan Hamilton (Highlands and Islands) (SNP): No.

The Convener: If continuing would mean losing members, I think that we should stop now, unfortunately. I thank the minister and the Executive officials for attending. I am sorry that this morning's session was so short. Now that our stage 1 report on the Criminal Justice (Scotland) Bill is complete, we will have much more time at our next meeting.

Allan Wilson: I understand that we will have a full session the next time. That being the case, we will be able to make more progress then.

The Convener: I am sure that we will. I can confirm that stage 2 consideration will continue at the committee's next meeting, on 18 September. An announcement will be made in tomorrow's business bulletin about the deadline for submitting amendments in time for that meeting. We will also consider some Scottish statutory instruments as well as any other business that arises between now and then.

I remind members about Tuesday's joint meeting with the Justice 1 Committee, on the budget. I ask members to let me know if they cannot be there, but we want to ensure that we have a quorum. I thank everyone for their hard work this morning.

Meeting closed at 12:46.

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