JUSTICE 2 COMMITTEE

Tuesday 24 September 2002

Session 1

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JUSTICE 2 COMMITTEE
31st 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)
Murdo Fraser (Mid Scotland and Fife) (Con)
Dr Sylvia Jackson (Stirling) (Lab)
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

Scottish Parliament

Justice 2 Committee

Tuesday 24 September 2002

[THE CONVENER *opened the meeting at 11:05*]

The Convener (Pauline McNeill): Good morning and welcome to the 31st meeting in 2002 of the Justice 2 Committee.

I have been holding off opening the meeting to see whether Dennis Canavan, who is to speak to and move the first amendment on the marshalled list, would appear. He has not appeared yet, but I hope that he will do so while I deal with a few other bits and pieces.

I welcome the Deputy Minister for Environment and Rural Development, Allan Wilson, and his team of officials. As usual, I ask members, if they do not mind, to switch off their mobile phones. I suppose that I should do so myself.

I advise members that tomorrow the Standards Committee will consider whether to investigate the alleged leak of the committee's stage 1 report on the Criminal Justice (Scotland) Bill. I want to take members' views on how the matter should proceed, as the Standards Committee will take those views into account. I will allow members a few minutes to give me feedback on that point.

Stewart Stevenson (Banff and Buchan) (SNP): I missed the beginning of your comments, convener.

The Convener: Tomorrow, the Standards Committee will consider whether to investigate the alleged leak of our stage 1 report on the Criminal Justice (Scotland) Bill. After the press reports appeared, I wrote to Mike Rumbles to say that I thought that an investigation should be carried out. However, the Standards Committee will want to hear how seriously members of the Justice 2 Committee think that the matter should be treated. Do members have a view?

Stewart Stevenson: I take a very serious view of the matter. The first media reports were specific and contained details that, to be blunt, I could not have commented on unless I had made notes. Indeed, the reports reminded me about some of the issues that we discussed. I would be surprised if anyone who was part of the committee would have been able to give that detail. A closer investigation is required. Like all committee members, over the period that led up to the publication of the stage 1 report, which happened at 8 am on the day of the stage 1 debate, I received telephone calls from journalists who were clearly very well informed, not just about the report—that is one thing—but about the debates on the report that we held in private. They gave details that I could not have recalled. There is certainly an issue for the Standards Committee to investigate.

Bill Aitken (Glasgow) (Con): This is a matter for the Standards Committee.

The Convener: I need members to tell me how seriously they view the situation. My view is that the press reports were accurate. One accurately described the vote on a particular issue before it appeared on the record. I think that the matter is serious, but I will not go it alone if other members do not agree.

George Lyon (Argyll and Bute) (LD): It was clear from the next day's newspapers that someone walked straight out of the private meeting at which we discussed the report and briefed journalists, giving them chapter and verse on the committee's internal discussions. Basically, the committee became a complete laughing stock, to the extent that, according to one of my colleagues, the following day journalists in the black-and-white corridor were rolling about laughing when the convener made an official complaint. It is pretty serious that journalists are in hysterics when the committee makes its views known and registers a complaint about a leak.

I think that the matter is very serious. I do not think that the committee will have any credibility if such a detailed briefing as went on immediately after that private meeting happens in future. Such briefings have been given about the work of other committees of which I have been a member. My great worry is that the Standards Committee will find nothing and that nothing will be done. To be honest, I think that the integrity of the Justice 2 Committee has been shot to pieces; it has been completely blown. No one considers the committee to have much integrity after what happened with the stage 1 report.

Mr Alasdair Morrison (Western Isles) (Lab): I agree that the matter is serious, but I do not agree with George Lyon's last point. The fact that the report was leaked to the media does not discredit the work that the committee did in public and private. The matter is for the Standards Committee, which has ways of dealing with such situations. I do not belittle what happened, but I do not believe that the committee's work has been discredited.

The Convener: I agree with Alasdair Morrison. There are two ways in which to view the matter: we say absolutely nothing and condone the leak by our silence, or we say something that creates an atmosphere in which people realise that to leak a stage 1 report before it is published is not acceptable.

George Lyon is correct to say that we will never really get to the bottom of the leak. We never do with such matters. However, we have a choice: we comment that it is not acceptable for anyone to go to the press with a stage 1 report or we consider that the report was leaked in some other way. To do nothing would dent our integrity.

Mr Duncan Hamilton (Highlands and Islands) (SNP): You said that you had written to the convener of the Standards Committee. Did you get a reply?

The Convener: We have had a reply. The Standards Committee will consider the matter tomorrow. We have been asked to consider how seriously we regard the leak. I take it that the committee considers it to be serious and would at least like it to be on the Standards Committee's agenda.

Members *indicated agreement*.

The Convener: We all agree that the leak was accurate. That is all that we can say.

Mr Morrison: I do not want to interfere with the workings of another committee, but "How serious do you consider the leak to be?" is a rather silly question to ask. It was a leak. However, how to phrase the question is a matter for the Standards Committee.

The Convener: We will leave the matter at that.

Land Reform (Scotland) Bill: Stage 2

The Convener: Item 1 is the Land Reform (Scotland) Bill. This is the fifth stage 2 meeting on the bill. Members have the usual papers in front of them. I propose that we finish at about 12.30 pm for lunch, reconvene at 1.30 pm and finish at 3.30 pm.

Mr Hamilton: The committee should doubtless do that. Unfortunately, I have a clash with the Local Government Committee at 2 o'clock. I may have to flit between the two meetings, if you will excuse that discourtesy.

The Convener: Are you happy that we stick to those general timings?

Mr Hamilton: Yes.

Mr Morrison: I am in a similar situation to Duncan Hamilton's, but I am committed to attending this committee.

Stewart Stevenson: Similarly, I have advised the convener of the Rural Development Committee that I shall be at this committee as long as is necessary.

Bill Aitken: We will still be quorate.

The Convener: I thank you for that. I appreciate that members have lots of other business and that they are coming to this meeting as an extra. I hope that we will finish part 1 of the bill by tomorrow so that we can move on to part 2. However, I appreciate that committee members have other commitments. We will try to accommodate them all.

Section 9—Conduct excluded from access rights

The Convener: We are dealing with section 9. We still do not have Dennis Canavan. Unfortunately, he did not appreciate that we were starting at 11 o'clock. Does someone else want to move amendment 243, which is in his name?

Stewart Stevenson: I will move it.

The Convener: Amendment 243 is grouped with amendments 30, 155, 55, 31, 139, 157, 32, 56, 76, 281, 77, 161, 162, 163, 245, 164, 165, 246, 166, 247, 167, 98, 98A and 79. Amendment 30 does not pre-empt amendment 155; if amendment 30 is agreed to, amendment 155 will become an amendment to replace the text inserted by amendment 30. Furthermore, amendment 56 does not pre-empt amendment 76 or amendment 281 and amendment 76 does not pre-empt amendment 281. If amendment 55 is agreed to, I will not be able to call amendment

156, which we have debated with amendment 140.

11:15

Mr Morrison: Could you run through that again, convener? [*Laughter.*]

The Convener: There is more to come, in fact. However, if members are happy to be guided by me during our consideration, I am happy to forgo reading out the whole text in front of me now. Do members agree to that suggestion?

Members *indicated agreement*.

Stewart Stevenson: I will move amendment 243 for the sake of good order, rather than because I am entirely persuaded by it. The amendment would remove the provision whereby conduct excluded from access rights includes

"being on or crossing land and doing anything … which is not an offence but for which a sanction is provided by or under an enactment".

It would be useful if the Deputy Minister for Environment and Rural Development would advise the committee—as we assess whether we wish to proceed with the amendment—whether any such sanction is provided for something that is not an offence under another enactment. I have to confess that I am not aware of any examples.

I will comment on amendments 55 and 56 in Dennis Canavan's absence. Amendment 55 would remove golf courses from the access exclusions. Golf courses provide a resource that is widely used by the community for recreational purposes. In deleting their exclusion, we are more likely to retain the status quo than we would be by saying that the access rights that are secured under the bill will not apply when the land is a golf course. On that basis—and as members will have noted from the fact that I am named as a supporter on the marshalled list—I strongly support amendment 55.

Similarly, amendment 56 would remove angling from the list of exclusions. The committee has already debated the removal of the whole of section 9(2), which I support, but, notwithstanding that, we wish to delete the word "angling" from that subsection. I remember many happy days before the law changed, fishing for brown trout with my father. I deeply regret the legislation change that now prevents that. There is no need to deny people the access rights that are necessary for them to fish in rivers species that are not otherwise protected.

Amendments 161 to 167 are in my name, and delete lines running from subsection (2)(d) to (2)(j). If we conclude that we do not wish to delete the entire subsection, we have the opportunity to consider its individual paragraphs. I recognise that there may be some concerns about deleting paragraph (e), at line 12, which refers to

"damaging the land or anything on or in it".

Deleting those words might appear to give sanction to what they describe. Of course, the intention behind the amendment is to show that it is for the access code to make it clear that damaging the land or anything on or in it is not within the exercise of responsible access. Nonetheless, I will listen to the arguments on that. As I said, the deletion of section 9(2) is by far the best way of proceeding, but we have the opportunity to consider the individual provisions of the subsection.

I move amendment 243.

The Convener: I call Scott Barrie to speak to amendment 30 and the other amendments in the group.

Scott Barrie (Dunfermline West) (Lab): I am not quite sure of the procedure, convener, because I do not propose to move amendment 30. I believe that amendment 155, which is in your name, is better because it uses a different wording—it contains one significant difference. Is it the correct procedure for me to speak to the other amendments in the group?

The Convener: You can speak to amendment 30 and then choose not to move it later.

Scott Barrie: As I said, amendment 155 is better than amendment 30. In our stage 1 report, we argued that it is better for matters to be dealt with in the code rather than in the bill, which is the intention behind those amendments.

Amendment 32 proposes to remove section 9(2). I am in favour of that amendment, because the matters that the subsection covers would be better dealt with in the access code. However, as Stewart Stevenson said, we must be careful that we do not inadvertently give the impression that it is okay to damage crops in the pursuance of access. We must ensure that in all cases we give rights of responsible access and that there is no interference to land management or damage to land. There are ways of ensuring that other than through the bill. If the code is robust enough and has everyone's agreement, it would be a better place in which to deal with such matters. That is the purpose of amendments 30, 155 and 32.

The Convener: Scott Barrie mentioned amendment 155, which takes us back to the committee's discussion on the first day of stage 2 about how to resolve the question of commercial activity and access to land. The issue is how to establish which activities interfere with the work of land managers. We need to provide a way of distinguishing commercial activities that should be excluded and activities that are generally

acceptable at present. As Scott Barrie said, our stage 1 report argues that such issues should be clarified in the access code, rather than in the bill. Amendment 155 would replace section 9(1)(b)(iii) with the words

"which constitutes wilful or reckless interference with the owner's use of the land or causes significant damage to the land or anything on or in it".

Earlier, we accepted Ross Finnie's amendment 141, but the question of what will happen to photographers, birdwatchers or people on their own who are not necessarily carrying out a commercial activity remains unresolved. I ask the minister to come back on that issue.

Although amendment 32 seeks to delete section 9(2), amendment 31 attempts to exclude from access rights people who are not in proper control of an animal or dog. I am not so concerned about amendment 31 because I realise that that situation might be covered in other legislation. However, amendment 31 is an attempt to put something back in the bill as reassurance that the bill is about responsible access.

Amendment 157 must be seen in the context of amendment 154. Amendment 157 would exclude from access rights conduct

"causing significant damage to crops through failure to follow guidance in the Access Code".

I opted to the use the phrase "significant damage" to try to distinguish between what might be regarded as trivial damage and what might be real damage. We could have a discussion about the meaning of "damage"—I am not implying that damage to crops could be acceptable.

Amendment 32 would remove section 9(2). I felt that the conduct excluded from access rights would be better dealt with in the code. Like Stewart Stevenson, my primary concern about subsection (2) is the phrase

"the land or anything on or in it".

However, I do not believe that it is necessary for all the different types of conduct to be listed in subsection (2).

Bill Aitken: Amendment 139 highlights a basic difference between me and other committee members about whether the code is likely to be effective in deterring activities that could be damaging in the countryside.

The unqualified right to fly kites or mechanised toy planes could clearly have serious implications for the welfare of ground-nesting birds. There are other conservation issues. It is important that the bill should recognise that rural Scotland is not only a place of recreation, but a place of work. Rural people care for and maintain rural Scotland, from which they derive their livelihood. It is clearly important that we acknowledge that their right to that livelihood takes precedence over the right of people to enjoy free access for recreation alone. For example, noise disturbance from a mechanised biplane could cause a pregnant ewe to abort.

Shooting, stalking and fishing are big business in rural Scotland, particularly in some areas where the economy is fragile. The money that sporting activity brings to local economies pays for much of the maintenance of rural Scotland. That must not be put at risk by the right of access. Without that source of income, many of the landscapes that give recreational users such pleasure and enjoyment and make Scotland so attractive to visitors may be lost through lack of finance to fund essential land management and conservation. The bill must be balanced if it is not to destroy the very thing that it seeks to open up.

I believe that amendments 30 and 155, lodged by Scott Barrie and Pauline McNeill respectively, would greatly reduce the clarity of the bill. They would make it harder for those who own and manage the land to protect their interests and for users of access rights to know the extent of their rights. It is essential that the key areas that are excluded be stipulated in the bill; that should not be left to guidance contained in the access code. The bill must not only be fair; it must be seen to be fair. It must adequately protect those who are responsible for land.

Amendment 31, in the name of Pauline McNeill, deals with domestic dogs. In most instances, dogs are totally compatible with the countryside, but there are times when dogs that are under no great control roving the countryside pose a threat to livestock and ground-nesting birds, particularly in the breeding, lambing and nesting season. Working dogs are used by experts, who are used to handling such highly trained dogs and who know the country and terrain in which they operate. That is why it is important to distinguish between those who live and work in the countryside and have a knowledge of its activities and those who are casual visitors, albeit that they are in the countryside to enjoy its recreational facilities.

I have to intimate that Murdo Fraser, in whose name amendments 98 and 79 are lodged, is held up at another committee meeting. With the convener's consent, I will deal with amendments 98 and 79 on his behalf. Does the convener want me to deal with them now or later?

11:30

The Convener: I will call the amendments later.

Stewart Stevenson: On a point of order, convener. A question of vires arises in relation to

Bill Aitken's amendment 139. The amendment includes the words "or being above land", which is in the purview of the Air Navigation Order 2000. That means that the provision may be ultra vires for the Scottish Parliament, as it relates to reserved powers. I apologise for only just realising that; it might have been helpful if I had given you notice of that point.

The Convener: I will allow you to make that point in the debate, once all the amendments have been dealt with.

Stewart Stevenson: The point is a procedural matter; it is not a debating point. It would be useful to get a ruling on it before we cause problems by incorporating a provision that could mean that the bill was ultra vires.

Bill Aitken: Perhaps Stewart Stevenson could use his undoubted expertise in these matters to let us know whether the height at which a kite or mechanised toy aeroplane might be able to fly would cause concern to the Civil Aviation Authority and, as such, come under the appropriate legislation.

The Convener: I do not propose to have a debate about the matter. Stewart Stevenson's point is not a point of order. If the provision is ultra vires, that is a matter for the Parliament. If Stewart Stevenson has a problem with the wording of amendment 139, he can speak to the amendment and vote against it. That option is open to any other member.

Does the minister wish to speak to amendments 76 and 77?

The Deputy Minister for Environment and Rural Development (Allan Wilson): I am sorry, convener. I was debating paragliding with my officials in the context of the point that was being made.

Amendment 32, which is the critical amendment in the group, proposes to remove section 9(2), which lists conduct that is excluded from access rights. Amendments 30 and 155 seek to replace subsection (2) with slightly different versions of the general provision that is set out. Amendment 31 seeks to expand section 9(1)(iii)(e) to exclude from access rights

"being responsible for a dog or other animal which is not under proper control".

I will explain our approach to drafting subsection (2). The subsection sets out a number of clear and uncontentious exclusions from access rights; for example, committing an offence is conduct that is not included within access rights. Conduct

"which is not an offence but for which a sanction is provided by or under an enactment"

is also excluded from access rights. It seems entirely appropriate that that is the case. If someone breaches a statutory condition, their action will certainly be irresponsible and that will put them outside the scope of access rights.

I looked at amendment 31 in the context of the point that was raised by Mr Stevenson on behalf of Mr Canavan. In anticipation that I might be asked to give an example of just such an eventuality, I sought but was unable to identify a sanction that might be relevant to the specific exercise of access rights. It appears that section 9(1)(b)(ii) serves no useful purpose. I am happy, therefore, to accept amendment 243, in the name of Dennis Canavan, which was moved by Stewart Stevenson.

However, subsection (2) seeks to address a number of specific concerns. It refers to the most obvious forms of conduct that should be excluded from access rights. It provides that angling is not a recreation activity that is included in access rights. That accords with the recommendations of the access forum and the advice that was given by Scottish Natural Heritage, which acknowledged that angling requires management and can be of significant commercial value to the landowner. A considerable body of common law and statutes relating to fishing could also be at odds with a general right of access for fishing.

Put simply, the bill is not the place to deal with the issue. There is scope to improve access for fishing and we intend to review that matter. I would assure Dennis Canavan if he were here, and I assure Stewart Stevenson and all concerned, that we will consult fully all who are interested on legislation to extend that access. With those assurances, I hope that amendments 56 and 281 will not be moved, which will allow the subject of those amendments to be dealt with in other legislation.

We also have concerns about the unregulated use of metal detectors. We received several representations about that during the consultation on the draft bill.

It is an appropriate time to explain the items that are listed under subsection (2), as most are lifted from pertinent legislation. Members are familiar with paragraph (a) and understand that we will return to that at stage 3, as my colleague Mr Finnie has assured members. We propose to replace paragraph (b), which excludes angling—I just dealt with that—and paragraph (c), which refers to

"taking away anything in or on the land".

I will talk more about that later. The words

"using or having a metal detector"

are similar to a provision in the Countryside and Rights of Way Act 2000, whose effect we wish to

replicate in the bill.

Paragraphs (e), (f), (g) and (h) are similar to provisions in schedule 2 to the Countryside (Scotland) Act 1967, which provides

"General restrictions to be observed by persons having access by virtue of Part II of this Act to land which is or which gives or forms part of access to open country."

That schedule says that section 11(1) of that act

"shall not apply to a person who, upon the land in question, commits any crime or offence, or who without lawful authority …

(c) takes, or allows to enter or remain, any dog not under proper control"

or

"(d) wilfully kills, takes or molests any animal, bird or fish or takes or injures any eggs or nests"—

I will talk more about that in connection with amendment 139. The schedule also refers to a person who

"(e) bathes in any non-tidal water in contravention of a notice displayed near the water prohibiting bathing, being a notice displayed, and purporting to be displayed, with the approval of … the general or district planning authority;

(f) engages in any operations of or connected with hunting, shooting, fishing, snaring, taking or destroying of animals, birds or fish, or brings or has any engine, instrument or apparatus used for hunting, shooting, fishing, snaring, taking or destroying animals, birds or fish;

(g) wilfully damages the land or anything thereon or therein;

(h) obstructs the flow of any drain or watercourse, opens, shuts or otherwise interferes with any sluice-gate or other apparatus, or neglects to shut any gate or to fasten it if any means of so doing is provided".

Section 9(2)(i) of the bill excludes

"in respect of canals, swimming, diving, sailing and wind surfing"

and is a reference to existing British waterways legislation. The Executive introduced paragraph (j) in the context of sections 11 and 12.

I hope that that has explained in some detail, which it is probably worth while doing, that the exclusions in subsection (2) are not new but are lifted from existing legislation—in particular, from the Countryside (Scotland) Act 1967.

I therefore consider it a better and clearer approach to exclude specific activities rather than to rely on general provisions such as those in amendments 30 or 155, the wording of which is wide open to interpretation. For example, what exactly would constitute

"reckless interference with the owner's use of the land"

and what might constitute

"significant damage to the land"?

I submit that those are high tests. The clear inference is that doing damage that falls just short of being "significant" is permissible and that is certainly not what I or, I believe, a committee as responsible as yours, convener, would intend. We must cover irresponsible conduct.

One of our main purposes in introducing the bill—a purpose that I believe the committee supports—is to establish clear and unambiguous rights of access to land and to cut through confusion where confusion exists. Section 9(2) is clear. Amendments 30 and 155 would serve only to muddy the waters and perpetuate any confusion that exists. I therefore hope that members will agree not to move them.

Amendments 161 to 167 would also delete most of the provisions in subsection (2). I have already spoken about those provisions and their origins, and explained why we believe them to be the appropriate way to proceed. In that context, I hope that Mr Stevenson will agree not to move the amendments.

Amendment 245 would establish a higher test for the exclusion from access rights of conduct that interferes with drains. Rather than requiring only a demonstration that the interference was deliberate, the amendment would require a demonstration that there was malice. Again, I consider that too high a test. If he were here, I would hope that Dennis Canavan would agree not to move the amendment and I hope that anyone else who was intending to move it will do the same. The bill covers deliberate interference. Such interference would be irresponsible, irrespective of whether or not it could be shown to have been done with malicious intent.

I have already referred to amendment 55. The consultation draft of the bill made no specific provision for golf courses. As has been said, that meant that access rights would have been exercisable on golf course except when in use for golf. During consultation, some people argued that the "in use" test was difficult to apply to large areas such as golf courses and that access to golf courses should be allowed at all times. The point was made that it is often necessary to cross golf courses to get to beaches, for example. At present, that happens regularly and without problems. Others argued that golf courses could be dangerous places and that there should therefore be no general right of access to them.

As I have explained on other occasions and in a different context, the bill takes a compromise approach to those conflicting opinions. It allows people to cross golf courses responsibly but not to enter them for recreational purposes such as a picnic or a game of football. That is a reasonable approach. Access across golf courses to areas such as beaches can continue, but people cannot stop for a picnic on the way. I hope that Stewart Stevenson will agree not to move amendment 55.

11:45

Amendment 139 seeks to introduce a new provision that would exclude from access rights doing anything to disturb animals or commercial activity on land. Amendment 98 would introduce a similar provision relating to the disturbance of wildlife and would exclude camping on enclosed land. Amendment 98A would have the effect of removing from amendment 98 the words "camping on enclosed land".

Section 2 already provides that access rights must be exercised without undue interference with the rights of others. The access code will contain more detailed guidance on the responsible exercise of those access rights, and that is something that we have discussed at great length. That will cover situations where commercial activities are under way. I am satisfied that existing legislation, which refers to anyone who

"wilfully kills, takes, molests or disturbs any animal, bird or fish or takes or injures any eggs or nests",

provides for offences of intentional disturbance of wildlife. As members will shortly learn, we intend to address reckless disturbance in a forthcoming bill on wildlife crime. I believe that that bill will come to the Justice 2 Committee for consideration. I am not convinced of the need for a specific provision in the Land Reform (Scotland) Bill relating to the disturbance of wildlife. That view is shared by Scottish Natural Heritage and the issue will be addressed in the legislation on the nature of Scotland.

The proposed exclusion of camping raises the issue of enclosed land, which we discussed last week in relation to amendments lodged by Bill Aitken. SNH and the access forum recognised the difficulty of attempting to treat enclosed land differently from any other land. I do not want to go through all those arguments again, as they are all on record. The issues that amendments 98 and 98A seek to address are either being addressed elsewhere or are more appropriate to the code. I hope that Bill Aitken will agree not to move amendment 98. If that happens, amendment 98A, in the name of Dennis Canavan, will fall, which will be a good thing.

Amendment 157 relates to amendments that we discussed earlier, which sought to remove the exclusion of cropland from access rights in section 6, leaving that to be dealt with in the code. We had a great debate on that last week, and I am happy to elaborate again on our thinking in that regard. As I explained at the time—and I think that it was accepted—it is an important issue for farmers. I am not convinced that the public should be free to exercise access rights over land on which crops have been sown or are growing. We discussed at some length exactly what the effects of section 6(h) would be, and I hope that I clarified the position on a number of areas, including tramlines, field margins, outrigs and endrigs, and even Mr Stevenson's potato field. I also explained the relevance of section 14 and the code in dealing with any potential abuse of that provision by landowners in an attempt to restrict access unreasonably. Section 14 gives us reserve powers to prevent crops from being sown with the express intent of restricting access.

I also undertook—at your behest, convener—to introduce an amendment at stage 3 to address the concerns that have been expressed about grass grown for hay or silage. Although such grass is included in the bill and designated as a crop, I recognise that it is not so liable to damage resulting from access as wheat, barley or vegetables are. In fact, there is a potential problem only in the period shortly before the grass is to be cut, and I accept that that must be reflected in the bill.

Amendment 148, which would have removed the exclusion of cropland from access rights in section 6(h), was, properly, not accepted when we discussed it last week. As a result, access rights are not exercisable over land on which crops have been sown or are growing. Therefore, the risk that someone who is exercising access rights will damage crops is small. I am not convinced that amendment 157 is necessary. As we discussed last week, the code will include guidance on the exercise of access rights in the vicinity of crops. I consider that to be sufficient. Any damage to a farmer's crop is unacceptable. If amendment 157 were accepted, it would give the wrong message, because the implication would be that damage that falls short of significant damage is acceptable in the exercise of access rights. That approach would be contrary to the ethos of the bill, to which we all subscribe. It would contradict the logic of Pauline McNeill's comments last week and I hope that she will not press amendment 157.

I come to amendments 246 and 247. As members know, the bill provides for responsible access rights for recreation and passage. I submit that the rescue of one person by another is not something that is done for recreational purposes. In my considered opinion it has nothing to do with access rights or the reasonableness of access rights. That applies equally to all forms of rescue, except, I suspect, if they take place in the air. Amendments 246 and 247 are inappropriate and unnecessary. I invite members not to move the amendments.

I understand the concerns that have been raised about the exercise of access rights by people with dogs, which are provided for currently. The code will have to address the issue of responsible conduct of dog owners. In addition, those exercising access rights will have to comply with

existing legislation that relates to dogs. The Dogs (Protection of Livestock) Act 1953 makes it a criminal offence to be in charge of a dog that is worrying livestock. There is also legislation that relates to fouling by dogs.

The bill excludes from access rights people with dogs that are not under proper control. Although I understand the desire to define what that means, I am not convinced that amendment 79 helps. Being under proper control might, depending on the circumstances, go beyond what is laid down in the amendment and strict compliance with the terms of the amendment would in some circumstances still mean that the dog was not under control. Worrying and molesting livestock are already addressed in legislation. Provision is already made for guidance in the code. We think that it is preferable to address the issue in guidance, as guidance can explain the dos and don'ts more fully. The question of "proper control" would depend on the circumstances and statutory provision is unlikely to cover all the circumstances. I hope that Bill Aitken and Murdo Fraser will accept that the matter is best addressed in the code and that they will agree not to move amendment 79.

I return to section 9(2). As I have said, I have considered the need for certain exclusions. Section 9(2)(c) raised concerns that people exercising access rights would not be able to pick berries—members will recall the discussion that we had about that. Picking berries could, in some circumstances, be considered theft, but in others it is perfectly acceptable. I see no reason why the responsible picking of berries should not be included in access rights, so amendment 77 will delete paragraph (c). I make it clear that hunting and shooting are excluded from access rights and amendment 76 will provide for that.

Amendment 76 replaces the reference to the exclusion of angling from access rights with a wider and more appropriate reference to the exclusion of hunting, shooting and fishing, for the reasons that I mentioned. The amendment complies with the existing legislation and with our legislative intent for section 9.

Murdo Fraser (Mid Scotland and Fife) (Con): I apologise for my late arrival, convener. I was at the Public Petitions Committee meeting, which overran considerably. Could I have a minute to catch my breath until I work out where we are on the agenda? Are we on amendments 98 and 79?

The Convener: Yes. We are on section 9.

Murdo Fraser: Amendment 98 seeks to insert in section 9 further activities to be excluded from the right of access, the first of which is "camping on enclosed land". The point about camping is an important one. As I understand it, at the moment camping is not permitted except with the permission of the landowner. Under the bill, that exclusion would in effect be removed. There is a long tradition in Scotland of a right of wild camping, such that, providing one is not in the vicinity of livestock or a dwelling house or a place of business, nobody particularly objects to people camping. I see no reason to disturb that long-standing practice.

However, the issue is different in relation to enclosed land, which is land that is used for livestock or is actively farmed. It is entirely reasonable that somebody who wishes to camp on enclosed land should be required to seek the permission of the landowner or land manager before camping there. That would not, of course, apply to unenclosed or hill land, where it is reasonable for people to have the right to camp without seeking permission.

The second paragraph of amendment 98 refers to

"deliberately or recklessly disturbing any wild mammal or bird."

That is self-explanatory. If people exercise rights of access, they should do so in a reasonable manner. They should not disturb birds or wild mammals in their nests or dens, or as they go about their legitimate activities, as wild mammals do.

Amendment 79 seeks to tighten up the wording of the bill by defining when a dog is "under proper control". Amendment 79 states that when on enclosed land, a dog must be

"on a lead not longer than 3 metres".

When it is on open ground and in the vicinity of stock, it should be on a lead, but the amendment does not specify the length of lead. Finally, when a dog is in other areas, it should be

"under such other control as is specified in the Access Code".

I reiterate that the point of amendment 79 is to define more correctly "under proper control" in the bill.

12:00

George Lyon: I reinforce what the minister said about amendments 30 and 155. Those amendments seem to take the wrong approach and I oppose them. The issue is about clarity and certainty versus the subjective approach that is implied by the amendments. For access rights to work in the countryside, we need clarity and certainty on both sides of the equation about what that means. If we ensure that there is clarity and certainty in the bill and restate provisions that are in other bills, we will lay out clearly what can and

cannot be done. Going down the road of trying to ascertain what is "wilful or reckless interference" and what is "significant damage" would leave us open to disputes arising all over the place. As a land manager, I think that any damage to land or crops—never mind damage that goes as far as being "significant damage"—is unacceptable. I therefore oppose amendments 30, 155, 31 and 32.

Amendment 139, in the name of Bill Aitken, would insert

"being on or crossing land, or being above land, while doing anything which disturbs, or is likely to disturb, any wild animal or farm animal or commercial activity being carried on on that land".

If we take that to its logical conclusion, being alive while on land might be excluded, because breathing or any movement is likely to disturb animals. That could be described as a wrecking amendment; it is certainly not in the spirit of the bill.

Amendment 245 would take out "wilfully" and replace it with "maliciously" in section 9(2)(f). Paragraph (f) is crucial to the success of the access provisions. The greatest disputes tend to arise with walkers who access land and leave gates open or damage them. Nothing is more frustrating on a Sunday afternoon than getting a phone call from a neighbour to say that the cattle and sheep are all heading to town because someone has accessed the land and left the gate open. That is what most disputes usually centre around. Taking the test up to "maliciously interfering with any drains, ditches, fences, gates" would take it far too high. The use of the word "wilfully" is a much more appropriate approach, because my experience, which comes from land that walkers access 12 months a year, is that the issue that always gives cause for concern is the failure of walkers to shut gates properly behind them when they access the land. Therefore, I reject amendment 245 and endorse the approach that is being taken by the Executive.

I was interested in amendment 77. Could the minister define responsible cherry picking—or should I say berry picking?

Allan Wilson: That which does not constitute theft.

George Lyon: Very good, minister. I think that that is a subjective point of view.

The Convener: The minister can come back on any of those points during the debate.

Stewart Stevenson: On behalf of Dennis Canavan, I welcome the minister's acceptance of amendment 243. It at least seems to be, as "The Hitchhiker's Guide to the Galaxy" said, "Mostly harmless".

In opposing amendment 55, the minister appears to wish to protect from danger those who are taking access. Unfortunately, the logic of that would suggest that the minister should also deny us access to dangerous hills, lochs or wetlands in Scotland. I am not certain that excluding people from golf courses on the ground of danger is a particularly appropriate argument. Is it the minister's intention to prevent the harmless exercise of access for recreation by our youngsters in the winter for sledging?

I return to my point about amendment 139 and the phrase "or being above land". Bill Aitken referred specifically to mechanised toy planes and kites. I confirm that those are covered by the Air Navigation Order 2000, certainly when they fly at more than 500ft above the ground and probably in general.

In any event, amendment 139 is not exclusive. The Air Navigation Order 2000 provides for what is called the 500ft rule—it is not permitted to fly within 500ft of a person, animal or building, except for the purposes of making an approach and landing. As phrased, the amendment would overlap with the 2000 order, which clearly covers such instances.

I put it to Bill Aitken that crossing land and doing anything to disturb a wild animal is a test too far. It is reasonable to suppose that one might be crossing land for access in a proper fashion and might, without malice aforethought, disturb a mouse that happened to be nesting. That is unavoidable. Indeed, it could be argued that it is likely that one would disturb a wild animal at some stage, even during the exercise of responsible access. On that basis, I cannot see how we can proceed with amendment 139.

When speaking to amendment 56, the minister mentioned further consultation on angling. Will the minister advise us what legislation will proceed, and when it will be put before the Parliament? It seemed clear that it was not the minister's intention to deal with those issues in the bill.

I turn to amendment 76, with which the minister seeks to replace the word "angling" with the phrase "hunting, shooting or fishing". I put it to the minister that there is a practical difficulty, in that people who are equipped to go hunting, shooting or fishing might require to take responsible access over a piece of land other that on which they are going hunting, shooting or fishing. In incorporating his suggestion into the bill, the minister is giving irresponsible landowners yet another opportunity to create difficulties for those who would be taking responsible access.

On Dennis Canavan's amendment 245, I think that George Lyon made a good point when he suggested that malice would be too high a test, for

example when people take access and leave gates open. Using the word "wilfully" would give a proper test.

In relation to amendments 246 and 247, the minister quite properly referred to a rescue not being recreation—I accept that reassurance. Will he also reassure us that, even if the person who is in the water and requires to be rescued is there for recreational purposes, he will still be covered and we do not require amendments 246 and 247? If one of the people in the water is there for recreational purposes, amendments 246 and 247 would remove any ambiguity.

Allan Wilson: In response to Stewart Stevenson's final point, I confirm that drowning is included in access rights.

Members have raised a couple of substantive points that deserve a reply. First, I should point out that, if amendments 246 and 247 are not moved, the bill will still provide for the circumstances to which Stewart Stevenson refers.

As for the phrase "hunting, shooting and fishing", I quoted extensively from the existing legislation in support of the inclusion of that provision. Indeed, I quoted the entire legislative content of paragraph (f) of schedule 2 to the Countryside (Scotland) Act 1967. However, if we had incorporated that in the provision, it would have caused problems, as it refers to

"any engine, instrument or apparatus used for hunting, shooting, fishing, snaring, taking or destroying animals, birds or fish".

We did not include that provision precisely because we needed to address the question of accessing the place where one wishes to hunt, shoot or fish. What is precluded from access rights is not going to the point where one wishes to hunt, shoot or fish, but the actuality of hunting, shooting or fishing itself. I hope that that provides the assurance that Stewart Stevenson was seeking.

For the record, I did not say that golf courses were dangerous places. Others have said so as part of their rationale for arguing against a general right of access. I simply stated—and support—the compromise position that we have promoted. Access rights are exercisable in golf courses, except when they are in use for golf.

Although I am not surprised that the issue of sledging has been raised, I would be surprised if Stewart Stevenson or anyone else claimed a right to sledge in golf courses. Where greenkeepers have not objected to sledging in the past, there is no reason to suggest that they will object in future. It would be wrong to open up golf courses to all recreational activity, whether that means football or picnicking, throughout the year for fear that some golf clubs might attempt to restrict sledging on a few days in winter. In any case, any concerns about the matter could be addressed in the access code. As I said, it would be wrong to legislate for a tiny eventuality and permit access for more general recreational purposes. I think that we have reached a fair compromise.

Stewart Stevenson: Given the minister's comments—and continuing one of my personal obsessions—I wonder whether he is minded to include on the same basis the more than 100 unlicensed airstrips in Scotland, given that no one is seeking an exclusion for them.

Allan Wilson: I do not believe that such an amendment is currently under consideration. I would be happy to consider it at the proper time.

Stewart Stevenson: I am not suggesting that you should. My point is that there appears to be no necessity to exclude people from access to unlicensed airstrips. For example, commercial flights sometimes use the airstrips at Dornoch and Mull, which have a public path over them. Apparently, even under those circumstances, it is not necessary to exclude people from such sites. Indeed, as someone who exercises aviation rights from time to time, I do not think that that is necessary.

Allan Wilson: At the risk of going off at a tangent, I should point out that we are not talking about public paths in relation to golf courses. The analogy is not exact; indeed, to be honest, I do not think that there is an analogy at all in that respect.

I have explained why we have adopted the approach that we have adopted in connection with golf courses; it is a compromise between the recreational interest and the golfing interest. It is a commonsense approach and a commonsense solution, which should find favour with the committee.

12:15

The Convener: I would like to come back on a couple of issues. To take up George Lyon's point, I make it clear that I do not propose to take the view that damage to crops or land is acceptable. I am trying to highlight that trivial damage might be used to prevent responsible access. I concede that I have not done that successfully, but I want to put it on record that I do not think that damage to land is acceptable. I was trying to sort out what I think could be a grey area.

In relation to section 9(2)(a), on commercial activity, I feel that we are not making progress in a way that is consistent with our stage 1 report. On balance, it seems to me that it would be easier to remove any reference to commercial activity, so that we do not have to consider any of the amendments that relate to it. My amendment 155 and Scott Barrie's amendment 30 were an attempt

to try to explain in the bill the type of activities, commercial or otherwise, for which people use land now that the bill would not exclude from access rights. I do not know whether there is a better way of doing that, such as completely removing the provisions on that and putting them in the code. I note that the minister is considering some of the issues that remain unresolved in relation to section 9(2)(a).

I note what the minister said about amendment 157 and I will not press it.

I am pleased that the Executive has responded to the question of golf courses. There should not be an absolute ban and the Executive's amendment 156 addresses some of the issues that the committee raised in its stage 1 report. I take it from what the minister said that, on sledging, the Executive is distinguishing between when a golf course is in use and when it is not in use.

Amendment 32 deals with the whole of section 9(2). When I first looked at section 9(2), I thought that it should be in the code. I was not clear why various references had to be made to what was to be excluded. I note that the minister said that most, if not all of the provision is contained in other legislation and that he was trying to draw it together. However, I have a problem with section 9(2)(e), which refers to

"damaging the land or anything on or in it".

Although the language is used in other legislation, it does not refer to an activity that is banned in other legislation and the provision is very wide. That goes back to what I said earlier—I do not support the damaging of land, but the phrase, "or anything on … it" seems extremely wide. I am inclined to say that I am pleased that the Executive has agreed to amend some of section 9(2)(a) to reflect the committee's concerns, but section 9(2)(e) remains a problem for me.

Allan Wilson: I will take the last point that you made first, because it is significant. The reason why we propose to include section 9(2)(e) is precisely because it is already contained in the Countryside (Scotland) Act 1967, schedule 2 to which provides for

"General restrictions to be observed by persons having access by virtue of part II of this act to land which is or which gives or forms part of access to open country."

The provisions in section 11(1) of that act do not apply to a person who

"wilfully damages the land or anything thereon or therein".

In comparing sections 9(2)(e) and 9(2)(f), I note that paragraph (f) refers to

"wilfully interfering with any drains"

but that paragraph (e) omits the word "wilfully" from

"damaging the land or anything on or in it".

I presume that that is because the inclusion of "wilfully" would set a higher test, and its omission dilutes the test. I propose to lodge an amendment at stage 3 to insert "wilfully" before "damaging" in

"damaging the land or anything on or in it".

That would address the point that the test has been drawn too widely, and would be consistent with our general approach—which I know has support—that people who set out to damage the land or anything thereon or therein are not exercising responsible rights of access.

Mr Hamilton: I seek clarification from the minister on golf courses. He referred to access when a golf course is in use, so does he support the deletion of section 9(1)(e)? If he does not, can he explain why not? The issue is wider than section 9(1)(e). I refer the minister to section 6(f)(ii), which refers to land that has been developed

"for a particular recreational purpose while in use for that purpose".

Does not that cover precisely the point that the minister is trying to make? Does not the inclusion of section 9(1)(e) muddy the waters, as the minister said?

Allan Wilson: I am not sure whether Duncan Hamilton was here when we discussed section 6(f)(ii). We have sought to define better what we mean by responsible rights of access to or across golf courses. In so doing, we seek to retain section 9(1)(e), as I said in resisting Dennis Canavan's amendment 55. We do so because that would result in a better compromise between extending the right of access to a golf course for any recreational purpose—be that picnicking or playing football or whatever—and restricting the rights of access by virtue of the provisions that we have already made, which allow persons to cross golf courses responsibly, but not to enter them for recreational purposes, such as those that I have outlined. Picnicking or playing football would clearly disrupt a game of golf when the course is in use for that purpose.

As I said in my explanation on sledging, there is insufficient justification for extending the wider recreational use of golf courses, which the deletion of section 9(1)(e) would provide for. The compromise is fair.

Mr Hamilton: The minister seems to be saying two entirely opposite things. Perhaps I am confused, but the minister appears to be saying that access should be restricted only when the golf course is in use for golfing, which I support. At least, that is what I think he was saying. Perhaps his position is as he claims, but it strikes me that

there is a direct contradiction between sections 9(2)(e) and 6(f)(ii). I am not sure whether the bill will be clear on the matter if we go ahead with the wording that the minister suggests.

The Convener: Does the minister wish to reply?

Allan Wilson: I have stated my position consistently here and in debates. It would be wrong to open up golf courses to all recreational activities throughout the year just because we were worried that some golf clubs might attempt to restrict sledging for a few days in the winter. I cannot be more explicit than that.

The Convener: I see that Dennis Canavan has arrived. I am sorry, Dennis, but you have missed most of the debate on your amendments.

Dennis Canavan (Falkirk West): I am sorry about that. I knew nothing at all about the meeting until about an hour ago, when I was in my constituency office. I got here at top speed in the hope of speaking, if briefly, to my amendments.

The Convener: I am sorry, but you will not be able to do so other than to wind up the debate. Stewart Stevenson had to move the amendments for you so that we could at least allow them to be debated. I can allow you to wind up and make the points that you would have made. The problem is that you have not heard what the minister has said about your amendments.

Dennis Canavan: I understand that the minister has accepted amendment 243. I am pleased about that because I cannot think of an example of the conduct referred to in section 9, but I do not want to dwell on the matter too much if the minister has been persuaded in my absence.

I am grateful to colleagues who have moved and spoken to some of my amendments in my absence.

Amendment 56 proposes to leave out the reference to angling in the bill. Another amendment of mine is opposed to the reference to fishing in the Executive's amendment 76. The minister might have explained this, but the common law on angling in Scotland is that fish in free-running water or in an open loch are res nullius, which means that they are not the property of anyone. When they are caught, they become the property of the person who caught them, irrespective of whether that person has permission to fish.

Of course, that common law is often overridden by statute law, particularly with regard to salmon fishing. Indeed, the Freshwater and Salmon Fisheries (Scotland) Act 1976 makes it a criminal offence to catch any freshwater fish without permission in waters covered by a protection order. However, in unprotected waters, if the owner of the fishing rights wishes to take action against the person who is fishing without permission, they would have to seek a civil interdict in a court.

If someone is crossing land or accessing water to commit a crime or is in breach of interdict, that would be excluded under section 9(1)(b). Therefore, the inclusion of angling in section 9(2) is unnecessary because appropriate action could be taken by the landowner or owner of the fishing rights under another part of the bill. I submit that the inclusion of angling in section 9(2) is not only unnecessary but undesirable, because it would deprive people of the statutory right of access to land or water in order to fish, even in circumstances in which it would not be unlawful to do so.

12:30

The minister may also have referred to the fact that the Freshwater and Salmon Fisheries (Scotland) Act 1976 is under review. He knows that I hope that it is repealed in its entirety and replaced with better legislation to allow more access for ordinary anglers. However, in the meantime, I do not think that there is a case for a specific reference to angling or fishing in the bill, which is a land reform bill rather than a bill to review the existing law on angling.

I will comment briefly on amendment 55, which would remove from the bill the reference to a golf course. I do not know why that reference has been included. There are many cases of rights of way and other footpaths crossing golf courses in Scotland. It is common sense not to cross a section of a footpath if there is a danger caused by people playing golf. There is no need to have a general exclusion of golf courses from a statutory right of access.

There may also be particular times of the day or seasons of the year when golf courses are not being used at all. For example, in the winter a golf course could be under several feet of snow. However, under the bill as drafted there would be no statutory right of access. Common sense should prevail and if there is a case for defining restricted access to golf courses, it should be included in the access code rather than in the bill.

I turn briefly to my other amendments. I promise that this will take only a couple of minutes. Amendment 245 seeks to replace the word "wilfully" with the word "maliciously". Let us suppose that, when I am out for a walk, I come across a closed gate and I want to exercise my right of statutory access by going though that gate. I would have to interfere wilfully with the gate in order to open it. The gate may be unlocked, but there may be a latch on it; or the gate could be tied with a piece of rope or wire. I submit that if I remove the string or wire or lift up the latch to

open the gate, I am wilfully interfering with that gate but not maliciously interfering with it. That is just one example of bad drafting in the bill. If we were to remove the word "wilfully" and replace it with "maliciously", the definition would be narrower and better and would cater for problems caused by people wanting to damage gates, fences, ditches, drains and so on.

Amendments 246 and 247 are commonsense amendments that would allow people to enter water to save someone's life.

Amendment 98A is an amendment to amendment 98, which would exclude camping on enclosed land. What is enclosed land? There could be a huge piece of land, of hundreds of acres in size, with only one perimeter fence. Under amendment 98, rough or wild camping would be prohibited on such land. However, such camping is a legitimate activity, undertaken frequently by hillwalkers, climbers, scouts, guides, young people on adventure training and so on. I fear that if amendment 98 were passed, landowners could use it to prohibit camping even in large tracts of land.

Finally, the convener will be pleased to hear that I whole-heartedly support her amendment—amendment 32—to delete the whole of section 9(2). I hope that the amendment is pushed to a vote. If the committee accepts amendment 32, I would withdraw most of my amendments with the exception of amendment 243, which has already been accepted by the Executive, and amendment 55, which is about the reference to a golf course.

I thank the convener for allowing me to address the committee.

The Convener: Thank you.

I will continue only until we reach a point that will allow us to break at the time that we agreed.

Amendment 243 agreed to.

Amendments 30 and 155 not moved.

The Convener: That is a logical place to stop the proceedings. I suspend the meeting until 1.45 pm.

12:35

Meeting suspended.

13:55

On resuming—

The Convener: I welcome members to the second half of the 31st meeting in 2002 of the Justice 2 Committee, on the Land Reform (Scotland) Bill.

Amendment 190, in the name of the minister, is grouped with amendments 75, 191, 168 and 78. There could be pre-emption; if amendment 190 is agreed to, I cannot call amendment 75 and if amendment 191 is agreed to, I cannot call amendments 168 or 78.

Allan Wilson: Section 9(1)(d) currently excludes

"being on or crossing land in or with a mechanically propelled vehicle or vessel".

Some members of the committee were concerned that that would exclude cyclists from access rights. I think that that concern lies behind Stewart Stevenson's amendment 75. We are clear that that would not be the case. A bicycle is propelled by the person riding it, not by a machine. Although we do not think that it is necessary to make any amendment, we are prepared to adopt the alternative form of words in the Executive's amendment 190. Amendment 190 also addresses concerns that the specific inclusion of motorised wheelchairs within access rights is too narrow and would exclude other aids for disabled persons. The effect of amendment 190 would be to include within access rights a

"vehicle or vessel which has been constructed or adapted for use by a person who has a disability and which is being used by such a person".

Amendment 191 is consequential on amendment 190. Amendment 168 would address the same issue as amendment 190. Consequently, I hope that Rhona Brankin will agree not to move amendment 168 and that Stewart Stevenson will not move amendments 75 and 78.

I move amendment 190.

Stewart Stevenson: I am happy to support the minister.

Rhona Brankin (Midlothian) (Lab): As the minister has taken on board my comments about things such as electrically powered buggies, I will not move amendment 168.

The Convener: The minister has the opportunity to wind up, if he wants to do so.

Allan Wilson: I waive that right.

Amendment 190 agreed to.

Amendment 75 not moved.

The Convener: Amendment 55, in the name of Dennis Canavan, was debated with amendment

243. If amendment 55 is agreed to, I cannot call amendment 156, which was debated with amendment 140.

Amendment 55 moved—[Dennis Canavan].

The Convener: The question is, that amendment 55 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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)

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

Amendment 55 disagreed to.

Amendment 156 moved—[Allan Wilson]—and agreed to.

Amendment 31 not moved.

Amendment 139 moved—[Bill Aitken].

14:00

The Convener: The question is, that amendment 139 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 139 disagreed to.

Amendment 157 not moved.

Amendment 32 moved—[Pauline McNeill].

The Convener: If the committee agrees to amendment 32, amendments 1, 158, 159, 42, 118, 160, 56, 76, 281, 77, 161 to 163, 245, 164, 165, 246, 166, 247, 167 and 33 will be pre-empted.

The question is, that amendment 32 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)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Lyon, George (Argyll and Bute) (LD)
Morrison, Mr Alasdair (Western Isles) (Lab)

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

Amendment 32 agreed to.

The Convener: The amendments to which I referred have been pre-empted.

Amendment 98 moved—[Bill Aitken].

Amendment 98A moved—[Dennis Canavan].

Stewart Stevenson: For clarification, have we voted on amendment 98?

The Convener: No. Amendment 98A is an amendment to amendment 98, so we must vote on amendment 98A first.

The question is, that amendment 98A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
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)

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

Amendment 98A disagreed to.

The Convener: The question is, that amendment 98 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 98 disagreed to.

The Convener: Amendment 191, in the name of the minister, was debated with amendment 90. If amendment 191 is agreed to, amendments 168 and 78 will be pre-empted.

Amendment 191 moved—[Allan Wilson]—and agreed to.

The Convener: Amendments 168 and 78 are pre-empted.

Amendment 79, in the name of Murdo Fraser, was debated with amendment 243. Will Murdo Fraser move the amendment?

Bill Aitken: He is not here. I move amendment 79.

The Convener: The question is, that amendment 79 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 79 disagreed to.

Section 9, as amended, agreed to.

Section 10—The Scottish Outdoor Access Code

The Convener: Amendment 34, in the name of Scott Barrie, was debated with amendment 20.

Amendment 34 moved—[Scott Barrie].

The Convener: The question is, that amendment 34 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)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 34 disagreed to.

Amendment 80 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 103, in the name of Sylvia Jackson, is grouped with amendment 119.

Scott Barrie: Sylvia Jackson asked me to move amendment 103 in her name. The amendment seeks to establish the status of the access code. It also deals with consultation, which a number of bodies believe should be an important part of the code. The intent of amendment 103 is to ensure that those issues are contained in the bill.

I move amendment 103.

Rhona Brankin: Amendment 119 follows on from amendment 106, which was agreed to previously, when we discussed access rights in the course of commercial activity. The purpose of amendment 106 is self-evident: it seeks inclusion in the access code of guidance on how such commercial activity should be carried out.

The Convener: If no one else wants to speak to the amendments, the minister may respond.

Allan Wilson: Amendment 103 would require that the code should include guidance on how access rights and the rights of landowners ought to be reconciled so as to take into account cultural and natural heritage interests. However, I am confident that section 10, when read with sections 2 and 3, already makes provision for that.

We publish various codes of good land management practice that provide advice for land managers on conservation of natural and cultural heritage of land. As I am sure the committee will agree, the access code deals with land management specifically in respect of access rights. Wider issues of land management, such as nature conservation, are best addressed elsewhere. Given that fact and given the fact that adequate provision is already made within the bill, I hope that Scott Barrie will agree to withdraw amendment 103.

Rhona Brankin said that amendment 119 followed on from a decision that was taken at an earlier meeting. Given what has just happened, I am not sure that that has any bearing on what happens at subsequent meetings. However, section 10 provides that the code will contain guidance on how access rights will be exercised, including the access rights that are exercised by those commercial activities that will be given access rights. As Rhona Brankin mentioned, during the previous discussion on that subject, the committee accepted the Executive's amendment to section 1 to extend access rights to include

certain classes of commercial activity. We gave an undertaking—which I think is still extant, even after all the subsequent deliberations—to return at stage 3 after considering the approach that was proposed by Rhona Brankin in amendment 106.

The point is that, as the code's guidance on the exercise of access rights will be for all those who are given access rights, there is no requirement to make specific provision for commercial activities. On the basis of the assurances that I have given about what will appear in the bill, I hope that Rhona Brankin will decide not to move amendment 119.

The Convener: Will Scott Barrie wind up on Sylvia Jackson's behalf?

Scott Barrie: Having listened to what the minister said, I will not press the amendment.

Amendment 103, by agreement, withdrawn.

Amendment 119 not moved.

Amendment 81 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 82 is in a group of its own. I call the minister to speak to and move the amendment.

Allan Wilson: Amendment 82 is about ensuring that there is a continuing role for the access forum, which has proved useful in bringing together all parties with an interest in access. It will be important to continue that dialogue once the bill comes into force. If the committee's deliberations are anything to go by, it is inevitable that some difficulties will arise. The forum provides a means of resolving those difficulties through discussion among the main interests.

Under section 10(8), Scottish Natural Heritage will have a duty to keep the code under review. We consider that to be an appropriate duty on SNH, which is the statutory adviser in respect of access for outdoor recreation. However, we recognise the valuable role that the access forum could play in assisting SNH to monitor the new arrangements and in advising how best we might tackle any problems. As a result, we propose that, in reviewing the code, SNH should be required to consult relevant interests. We have agreed with SNH that it will convene an access forum for that purpose. It will be for SNH and the main interests to agree the forum's composition and remit. I understand that there has already been some discussion on the issue, and I hope that lessons have been learned from the experience that we and SNH have had to date. Such an approach is better and more flexible than simply making statutory provision for a forum.

I move amendment 82.

14:15

Stewart Stevenson: That all sounds very well as far as it goes. However, both amendment 82 and section 26—to which we will come—leave me with a little residual concern that the legislation basically allows SNH to do "as they think appropriate", to use the phrase in amendment 82. The committee—or at least this committee member—would find it very useful if you could indicate that you expect SNH to consult you and others about whom it should consult. I know that that sounds rather Irish. However, if we simply leave it to SNH to determine whom it should consult, the phrase "shall consult" in amendment 82 could mean that it will consult no one because it thinks that there is no one "appropriate" to consult about the code's operation. I would welcome a few warm words of reassurance, along with some specifics.

Mr Hamilton: The minister will be aware that, in some parts of the country, SNH is a fairly controversial body. Most of that controversy centres on a perceived lack of consultation. Given that, when the minister said that SNH should be required to consult relevant interests, he used a phrase that is more appropriate than anything in amendment 82. That wording would be a steer in the right direction, because there would be an understanding about what those relevant interests would include. As amendment 82 stands, SNH would consult only those "they think appropriate", which would cause some concern. Will the minister revisit that aspect?

Allan Wilson: I am familiar with the points that members have raised. Members might even be aware that I have some constituency experience of criticisms that have been expressed about SNH in that regard. However, in defence of SNH, I should point out that it convened the access forum. As Duncan Hamilton recognised, my preamble made it clear that, in reviewing the code, SNH should be required to consult relevant interests. Indeed, we have agreed with SNH that it will convene an access forum for that purpose. Of course, we have powers in reserve to direct SNH, if that were necessary in order to secure the desired result. Needless to say, I do not expect to have to use those powers in that context.

The Convener: The question is, that amendment 82 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)

ABSTENTIONS

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

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

Amendment 82 agreed to.

Section 10, as amended, agreed to.

Section 11—Power to exempt particular land and exclude particular conduct from access rights

The Convener: Amendment 120, in the name of Murdo Fraser, is grouped with amendments 83, 84, 85, 169, 170, 86 and 87. Murdo is not here, but Bill Aitken will speak to and move amendment 120 and speak to the other amendments in the group.

Bill Aitken: With amendment 120 I am, as ever, attempting to be helpful to the minister. The effect of the amendment would be to give local authorities the power to specify in orders the activities to be excluded from land. It is a fairly technical amendment that would clarify the fact that the activities that are referred to in section 11(1)(d) are the same activities that are referred to in section 11(1)(b). In other words, that they are

"such activities as may be specified in the order".

I do not think that that is especially controversial; neither are the Executive amendments. However, I take issue with amendment 169, in the name of Stewart Stevenson, which is unnecessarily proscriptive. A similar comment applies to amendment 170, in the name of John Farquhar Munro.

I move amendment 120.

Allan Wilson: As Mr Aitken helpfully told us, amendment 120 is a technical amendment. It seeks to make it clear that land or conduct that are excluded from access rights by order are indeed, as Mr Aitken says, the land or conduct that are specified in that order. Although we consider that that is implicit in the provision, amendment 120 would make it explicit. I am therefore happy to accept amendment 120.

Concerns have been expressed about the powers that will be made available to local authorities under section 11. It has been suggested that some local authorities may, by restricting access unnecessarily, prove to be too zealous in making use of their powers. Others are concerned that different approaches among the 32 local authorities will result in significant differences in practice throughout Scotland, so that the uncertainty that we set out to remove with the bill would, in fact, continue.

I remain of the view that section 11 is required. In previous discussions, we spoke about the situation in Dollar glen. Local management of access is important and requires adequate local powers. The safeguards that are included in the bill will ensure that those necessary powers are not abused. As I said on the previous occasion when we spoke about this, we intend to issue to local authorities guidance on exercising the powers under the bill. I believe that those powers will be used sparingly, if at all. That guidance will be subject to full consultation. Any order that would have effect for longer than five days would require, as members know, consultation. Any order of a duration of more than 30 days would require the explicit approval of ministers. Consequently, I do not believe that any local authority would enter into the process lightly or without good and sound reasons.

Amendments 83, 84 and 85 will supplement the original provisions to ensure that even more information on the proposed orders is provided to the public. The amendments will improve the working of section 11. Amendment 85 will require a local authority to give notice not only of the effect of an order but of the purpose of that order. In the light of what has been said, I consider it an appropriate discipline that local authorities be required to set out their reasons for considering such orders to be necessary.

Amendment 84 makes it clear that the local access forum must be consulted on any order. I would expect the local authority to seek the views of the local access forum on the appropriateness or otherwise of proceeding by way of an order in any situation. Again, that will be made clear in the guidance that we intend to issue to local authorities. Amendment 84 will thereby strengthen the role of the local forum in that process.

I acknowledge that the procedures to be followed are unduly cumbersome in making an order when there is a need to exempt land from access rights for events that last only one or two days, such as a village show. Amendment 83 will provide that local authorities need not, when an order would have effect for five days or less, go through the consultation requirements that are set out in section 11(2).

Amendment 86 will require a local authority to give public notice of any order it makes, revokes, amends or re-enacts. When an order is confirmed by ministers, offering notice of that confirmation as soon as a local authority receives it will ensure that those who will be affected by the order will know about it.

Amendment 87 is technical and, to understand its purpose, it is necessary to consider section 11(10) of the bill, which makes it clear that the power to make an order includes the power to revoke, amend and re-enact orders. We recognise that it is not clear how the subsections that deal

with consultation and confirmation in section 11 will apply in relation to such revocations, amendments or re-enactments. Consequently, amendment 87 seeks to address that and to remove any doubt.

There is a conflict in amendment 169 in that it suggests that all orders that are made under section 11 will have a maximum duration of 90 days, but the amendment goes on to say that every order must be renewed by the local authority every 30 days. It is not clear how that provision was intended to work in practice, because it would limit to 30 days the maximum duration of an order in any given circumstances.

I consider that the procedures relating to the making of an order under section 11—reinforced by the amendments that I have lodged—provide what everybody wants: the appropriate check on local authorities to ensure that any order is necessary and justifiable. There might be good reason why an order should have effect for considerably longer than 90 days, so regular renewal would be an unnecessary additional burden on local authorities. Therefore, I hope that Stewart Stevenson agrees not to move amendment 169.

An order that would have effect for 30 days or longer must be confirmed by Scottish ministers. Amendment 170 seeks to provide for cases of timber felling. Orders would require confirmation by ministers only in cases in which the order would have effect for 90 days or longer. Our discussions with Forest Enterprise reinforce our view that section 11 does not provide an appropriate approach to issues surrounding timber felling. As a general rule, we would not consider it appropriate for a local authority to exclude land by order for reasons of timber felling, per se. Therefore, amendment 170 is inappropriate and I urge John Farquhar Munro—if he or a representative turns up—not to move it.

Stewart Stevenson: As members know, I believe that section 11 should be removed from the bill. Be that as it may, amendment 169 would make it more difficult for local authorities to restrict access. Local authorities have displayed little enthusiasm for doing that in any event, but there might be instances in which they will wish to do so. By moving various amendments on making the imposition of five-day restrictions easier, the minister is giving sanction to many of the ways in which the operation of access on the ground might have a deleterious effect. I agree, however, with the minister about John Farquhar Munro's amendment 170, which I will oppose.

Amendment 86 would insert the words:

"The local authority shall give public notice of their making … an order … as soon as practicable after—

(a) it is made".

In other words, it is perfectly permissible for a local authority to make and implement an order prior to its having giving notice. In that respect, I am rather uncomfortable with amendment 86.

14:30

The Convener: John Farquhar Munro is not here to speak to amendment 170. Would anyone like to speak to it?

Mr Morrison: I would be happy to seek to withdraw amendment 170, if that would meet with John Farquhar Munro's approval, rather than his disapproval.

The Convener: You cannot seek to withdraw amendment 170. We will come to the point at which I would ask John Farquhar Munro to move the amendment. If, when that time comes, he is still not here, the amendment will remain unmoved if no one else moves it.

Mr Hamilton: I have a brief question for the minister on amendment 86. I am broadly supportive of what he has said about the amendments, with the exception of amendment 83.

Amendment 86 will insert the words:

"The local authority shall give public notice of their making, revoking, amending or re-enacting an order".

What specifically is intended there? Would that require the same procedure as any public notice? Is there currently a minimum requirement?

Allan Wilson: Amendment 86 must be read in conjunction with amendment 87. Amendment 86 will allow the authority to make the order after it has gone through the process of consultation that is described in amendment 87. In that process, the authority would consult widely with the public in relation to its intentions.

Mr Hamilton: I have in mind a scenario in which a point of objection would be that sufficient notice was not given. Are you saying that there are current minimum requirements for the period of notice that must be given and that those would apply in exactly the same way to the orders that are provided for in section 11, or will there be a different arrangement?

Allan Wilson: We do not believe that it is necessary to define public consultation in that context. We are talking about giving notice. Having gone through the process of public consultation, the local authority will put into effect the making of the notice. Duncan Hamilton is possibly seeing difficulties that I do not see.

George Lyon: I want to clarify amendment 83. I take it that the minister has it in mind to make it easier to suspend access rights for more than five

days. He mentioned agricultural shows and highland games. It is clear that one of the great problems that any community has when holding a show or highland games is in trying to secure the perimeter of a field for the specific two or three days on which the show runs, in order to get income to finance the show.

Does the minister have it in mind to make it easier to suspend access rights for more than five days? If so, that is welcome because that is a concern for any community organisation that tries to run events. Many events are held in fields, rather than in playing parks because often we do not have the latter in villages. That is the case in my constituency and, I suspect, throughout rural Scotland.

Allan Wilson: Absolutely. The more I looked at section 11, the more I realised what an important provision it is. Stewart Stevenson proposes the deletion of section 11. I know that in my constituency there are many civic events—not just agricultural shows—that will for good community purposes depend, as George Lyon said, on the provision in section 11. The provision promotes community involvement and civic responsibility. That is why we examined the matter in relation to periods of fewer than five days. Therefore, George Lyon is right that it is an important provision whose deletion would have an important effect on communities.

The Convener: I call Bill Aitken to wind up.

Bill Aitken: The arguments have been well articulated and I have nothing further to add.

The Convener: The question is, that amendment 120 be agreed to. Are we agreed?

Members: No.

Mr Hamilton: I thought that the minister said that he would accept amendment 120.

The Convener: Yes, but the amendment must still be put to a vote.

Mr Hamilton: I see.

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)
Morrison, Mr Alasdair (Western Isles) (Lab)

AGAINST

Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

Barrie, Scott (Dunfermline West) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)

The Convener: The result of the division is: For 4, Against 1, Abstentions 2.

Amendment 120 agreed to.

Amendments 83 to 85 moved—[Allan Wilson]—and agreed to.

Amendment 169 moved—[Stewart Stevenson].

The Convener: The question is, that amendment 169 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Aitken, Bill (Glasgow) (Con)
Lyon, George (Argyll and Bute) (LD)
Morrison, Mr Alasdair (Western Isles) (Lab)

ABSTENTIONS

Barrie, Scott (Dunfermline West) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)

The Convener: The result of the division is: For 2, Against 3, Abstentions 2.

Amendment 169 disagreed to.

Amendment 170 not moved.

Amendments 86 and 87 moved—[Allan Wilson]—and agreed to.

The Convener: I call amendment 35, in the name of Scott Barrie. Amendment 35 has already been debated with amendment 149.

Scott Barrie: We discussed amendment 35 last week. I remind members that it seeks to leave out section 11.

Amendment 35 moved—[Scott Barrie].

The Convener: The question is, that amendment 35 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)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Lyon, George (Argyll and Bute) (LD)
Morrison, Mr Alasdair (Western Isles) (Lab)

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

Amendment 35 agreed to.

Section 12—Byelaws in relation to land over which access rights are exercisable

Amendment 13 moved—[Bill Aitken].

The Convener: The question is, that amendment 13 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 13 disagreed to.

Amendment 14 not moved.

Amendment 171 moved—[Stewart Stevenson].

The Convener: The question is, that amendment 171 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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)

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

Amendment 171 disagreed to.

The Convener: Amendment 234, in the name of Scott Barrie, is grouped with amendments 172, 192, 88, 121, 89, 90, 36 and 202 to 204. If amendment 172 is agreed to, I will not call amendment 192.

Scott Barrie: Amendment 234 is intended to clarify the bill. The insertion of the new wording would mean that, instead of local authorities being able to make byelaws for the "preservation of order", they would be able to do so for the "preservation of public order and safety". That covers the point that the minister talked about in relation to Dollar glen and the powers that local authorities would require. It would allow further safety aspects to be considered.

Amendment 36 would move section 12 to after section 13. That would put section 12 where it belongs, which is in the chapter that deals with local authority functions. That is an important point. As we keep saying, the bill is not about regulating public access; it is about improving the opportunities for responsible access. If we moved section 12 to chapter 5, which deals with local authority functions, that would conform with what we have been saying about the status of the code and the fact that more should be contained in the code rather than in the bill. The amendment is in the spirit of amendment 19, which we agreed to on the first day of stage 2.

Amendment 192, which represents a safeguard against over-zealous local authorities, is important and should be supported.

I move amendment 234.

Rhona Brankin: I lodged amendment 172 because of a concern about the term "amenity", which is particularly difficult to define. The provision in section 12 relating to "amenity" could mean that a local authority could pass a byelaw for just about anything. I seek some reassurance on that issue.

14:45

Allan Wilson: At present, section 12(7)(c) applies only to byelaws in respect of inland waters. It is clear that the consultation requirements are relevant to all byelaws that are made under section 12. Amendment 89 makes the necessary correction by replacing the reference to "inland waters" with the word "land".

I acknowledge that local access forums, which will be set up specifically to advise and assist local authorities on the exercise of their functions and powers under the bill, will play an important role. Therefore, it is appropriate that local authorities should consult local access forums on any byelaws that they propose to make under section 12. Amendment 90 addresses that fact.

Amendments 172 and 121 relate to section 12(1), which sets out the general purposes for which byelaws can be made. I acknowledge that concern exists about the use of the term "amenity" in section 12(1)(c)(iv). Because there is confusion about what the term means, the Executive has lodged amendment 192, to which Scott Barrie referred. Amendment 192 will replace the existing provision with a new provision that will permit local authorities to make byelaws for the

"conservation or enhancement of natural or cultural heritage".

Amendment 36 would have no effect, other than to move section 12 from chapter 4 into chapter 5. I see no point in that.

As there is merit in enabling local authorities to make byelaws to provide for "public order and safety", I am content to accept amendment 234.

Executive amendments 202, 203 and 204 seek to address concerns that, in its use of the term "natural heritage", section 26(3) is too narrow and should be widened to include cultural heritage. That point has been made in the past. Therefore, we have removed the whole of section 26(3) and have defined natural heritage and cultural heritage in section 29. For the committee's information, I should explain that we use the definition of cultural heritage that is used in the National Parks (Scotland) Act 2000.

I ask Rhona Brankin not to move amendment 172, as the issue is dealt with in the Executive amendments. I am happy to accept amendment 234, but I ask Murdo Fraser, Bill Aitken and Scott Barrie not to move amendments 88, 121 and 36 respectively.

Bill Aitken: The issue that amendments 121 and 88 deal with is fairly straightforward. The amendments would grant local authorities the power to promote byelaws to preserve flora and fauna and, in certain parts of Scotland, game.

Let us take an example of what would happen if an endangered or a near-extinct species were to come to Scotland for breeding purposes. I know that the minister will say that the Executive is seeking to protect certain species under the Criminal Justice (Scotland) Bill by making the issue subject to criminal law. However, if, for example, the extinct and lamented great auk were to come to Scotland, we would naturally be inclined to do everything possible to ensure the preservation of that species.

The easiest and most expeditious way of doing that would be by the promotion of a local authority byelaw. Amendment 121 would enable that to be done in the shortest possible time. Once a species becomes extinct, it is irrevocable—I do not think that we would want to be a party to that. I commend amendment 121 to the minister.

Amendment 88 is similar, except that it would include game conservation under the appropriate heading.

Stewart Stevenson: Most of the foregoing amendments are perfectly straightforward and reasonable. Scott Barrie's arguments about relocating section 12 are particularly persuasive.

It is interesting that, as I am advised, Scottish Environment LINK, which includes RSPB Scotland, the Scottish Wildlife Trust and the Woodland Trust, sees no merit in amendments 88 and 121. It believes that sufficient protection is available through the byelaws that local authorities might make. It also believes that incorporation of the measure in an access provision is likely to give another excuse for certain categories of land manager to persuade local authorities to make byelaws that have the purpose of restricting access rather than supporting the authorities' apparent objectives.

I am minded to take the advice of people who are advocates for flora, fauna and avians in nature and therefore I am minded to reject amendments 88 and 121.

Allan Wilson: I point out to Bill Aitken that Executive amendment 192 will insert the words

"conservation or enhancement of natural or cultural heritage".

I argue that that would cover the reappearance of the great auk.

Bill Aitken: I am greatly reassured by that, minister.

Allan Wilson: I thought that you might be. I take it that you will not be moving amendment 121.

The Convener: We shall see. Scott Barrie will wind up.

Scott Barrie: I do not have anything to add, given that the minister has already said that he will accept amendment 234.

Amendment 234 agreed to.

Amendment 172 not moved.

Amendment 192 moved—[Allan Wilson]—and agreed to.

Amendments 88 and 121 not moved.

Amendments 89 and 90 moved—[Allan Wilson]—and agreed to.

Section 12, as amended, agreed to.

Amendment 36 moved—[Scott Barrie].

The Convener: The question is, that amendment 36 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)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 36 disagreed to.

After section 12

The Convener: Amendment 15 is in a group on its own.

Bill Aitken: Amendment 15 deals with a fairly straightforward issue, but I rather fear that I am likely to receive the same degree of support that has been forthcoming for other amendments that I have lodged. Indeed, the minister's visage at the moment suggests that he is not likely to find amendment 15 acceptable either.

The fact of the matter is that we have debated the issue in the past, and it seems to me that there should be a provision for temporary suspension of access rights by the owner of the land. Had I been saying that in splendid isolation, I might be prepared to concede that perhaps my thinking was slightly wrong. However, I am seeking merely to reinsert a section that was part of the bill from its inception but which was subsequently removed. The Executive obviously thought at some stage that there was justification for the proposals, and I cannot understand why it has demurred from that position. Powers to suspend access temporarily should be given to land managers where the situation merits it.

Some will claim that the section that amendment 15 would insert could be used by the unscrupulous to deny access to land to which people should have open access at all times. However, land managers using such a provision would be responsibly attempting to ensure, on grounds of public safety, that the public did not have access to their land for a temporary period. Various operations could be carried out on the land, including operations involving the use of explosives or forestry equipment, for example, where there could be a real danger. Those dangers were recognised by the Executive at the inception of this somewhat tortuous process.

I cannot understand the thinking behind the removal from the draft bill of what was a very sensible precaution. The provision seemed sensible to me then and it seems infinitely sensible now. I am seeking merely to reassure the Executive that it got it right the first time. In this case, second thoughts were certainly not best thoughts.

I move amendment 15.

George Lyon: I would normally oppose amendment 15. The reassurance that I had from the Executive was that, under section 11, local authorities would have the power to suspend access rights if that could be justified by any individual landowner. Section 11 has now been completely struck out by the vote that we have just had, virtually ending any prospect of a highland games or agricultural show taking place next year. It also rules out events such as the recent racing weekend at Mount Stuart on the island of Bute, which brought huge amounts of prosperity to the island. Such events could not take place if one could not keep people out and charge them an entrance fee to the ground. If section 11 remains removed from the bill, I do not see what communities can do to run the usual community-based activities that take place throughout the summer. That demonstrates a fundamental lack of understanding of what happens throughout rural Scotland.

Community activities are usually based in fields, because most villages do not have a local sports field. If we do not allow the suspension of access rights and the charging of an entrance fee into a field on such days, we will end at a stroke highland games, agricultural shows and big events such as the racing weekend based around Mount Stuart. For the life of me, I do not understand why we should take such action against communities throughout rural Scotland. I am tempted to support Bill Aitken. That seems the only way of reintroducing a mechanism that will allow such shows to take place next year.

15:00

Scott Barrie: I oppose amendment 15. Bill Aitken is right that the amendment contains roughly what was in the draft bill, which caused an outcry because it seemed to go against what we were trying to achieve. Almost every witness who gave evidence at stage 1 acknowledged that the bill as introduced is a vast improvement on the draft bill. Given that most people agree that the current provision is preferable, the Executive was right to have second thoughts. I disagree with Bill Aitken's contentions and I think that we should oppose the amendment.

Stewart Stevenson: I do not intend to say too much. My general observation is that Bill Aitken's amendment could make the most fundamental change to the bill. It would transfer back to landowners—not land managers—the right to decide when people are excluded from land access. The objective of the bill is to create access rights for all, when exercised responsibly. On that basis, it is clear that we cannot support the amendment.

I am disappointed by George Lyon. He has not been paying attention. We have discussed amendment 203 and will vote on it when we reach section 29. I am content that Aikey fair in my constituency will be able to continue in the field that is adjacent to Old Deer and that the fair at Crichie will continue to operate on the land that it uses, because that is "cultural heritage" that reflects and results from

"human activity of all periods".

If George Lyon reads section 12—please do, George—I am certain that he will see that, by failing to agree to Bill Aitken's wrecking amendment, we will not open the door to the abolition of the many fairs, highland games and other public events that take place in George Lyon's constituency and the length and breadth of Scotland.

The Convener: I will oppose Bill Aitken's amendment 15—surprise, surprise. I agree with Stewart Stevenson and Scott Barrie that it is fundamental to the creation of access rights that we do not restrict them in that way. During the foot-and-mouth crisis, many members had experience of owners who put up unnecessary notices to restrict access. I will not support anything that allows such action to be taken.

I remind the committee of what we said in our stage 1 report. In the main, landowners are responsible and believe in access. I am concerned about only a tiny minority. Furthermore, the majority who take access will do so responsibly. I am frightened that we are losing sight of that.

One reason why some committee members have taken a consistent view from the stage 1 report until now is that many matters can be dealt with in the draft code, which will be agreed by Parliament and will have an important standing. We must return to the beginning, before we run away with ourselves. If we believe that responsible land managers are out there, surely we also believe that people can take access responsibly. We are legislating for the minority of situations in which we will have to allow action to be taken.

Allan Wilson: I agree with the convener that it is important to go back to the beginning. Bill Aitken was correct to point out that the consultation draft of the bill, which was published in February 2001, included a provision to allow landowners to suspend access rights. We all recall that that provision attracted considerable criticism during the consultation period, mainly on the grounds that it could be open to abuse, as the convener and other members have said. We carefully considered those arguments—and the counter-arguments—and decided that, on balance, such a provision was not required. Bill Aitken proposes to reinstate that provision, but that would strike at the heart of what we are seeking to achieve in the bill. That said, I understand George Lyon's frustration with the process to date. I sympathise with the point of view that he expressed.

Responsible access should not compromise a landowner's ability to manage his or her land. It has been pointed out that guidance on the responsible exercise of access rights will be set out in the access code. I repeat that I understand George Lyon's frustration, but let us not throw the baby out with the bath water by supporting amendment 15, tempting as it may be to do so. It had been my intention to say that it would be appropriate to exempt particular land from access rights for a specified period in the circumstances described by George Lyon, such as village shows and fairs, and that local authorities would have the power to suspend access rights in such cases. Obviously, I am not now in a position to say that, but it is my express intention—I make the point to give George Lyon some solace—that, as a minimum, the Executive will bring back at stage 3 the provisions that were in section 11.

With respect, I do not believe that Stewart Stevenson was right to say that section 12 would cover those matters. Surely it is not appropriate to require local authorities to pass a byelaw for every village fair, fête or show. That cannot be what Stewart Stevenson proposes, but if it is, I cannot support him. Perhaps the people who organise local shows in his constituency would have something to say about that.

I say to George Lyon that we will consider making provision for the suspension of access rights for periods of less than five days, in order to cover fêtes and fairs. I understand and appreciate the contribution that such events make to all communities, not just rural communities.

Bill Aitken raised the issue of safety. Land managers may have responsibilities under health and safety legislation, under which they are required to advise the public of matters that relate to their health and safety. That requirement will continue. In those circumstances, the failure of someone who is exercising access rights to take notice of that advice would clearly amount to irresponsible behaviour on their part, placing them outside the right of responsible access that the bill confers on them. I am not convinced that any legislative provision in the bill is required to enable land managers to comply with the requirements of health and safety legislation, beyond those already provided for in section 6(d). Therefore, land managers do not require a power to suspend access rights for that purpose.

We have been over this ground before. The arguments in favour of amendment 15 have been rejected—on balance, that was right, notwithstanding the developments that took place earlier today. On that basis, I hope that Bill Aitken will withdraw amendment 15. If he does not, I hope that members will reject amendment 15. I will consider the position of village fairs and fêtes, in order to ensure that they can continue to make a contribution to our communities.

Bill Aitken: I heard with interest what the minister said, including his reassurances to George Lyon about local fairs. As the minister correctly identified, a fundamental principle is involved. The matter should be determined by the

full Parliament. Accordingly, I will withdraw amendment 15, but I reserve the right to raise the matter at stage 3.

Amendment 15, by agreement, withdrawn.

Section 13—Duty of local authority to uphold access rights

The Convener: Amendment 259 is grouped with amendments 260, 122, 123 and 261. I think that Scott Barrie will speak in place of Sylvia Jackson, who is not present.

Scott Barrie: I am not prepared, but I will move amendment 259 and speak to amendments 260 and 261 so that we can have a debate. I am interested in the minister's comments on the matter. My understanding of Sylvia Jackson's intentions might be wrong, but I think that amendment 260 relates to her concern that if section 13 is not modified, there might be huge resource implications for local authorities. Sylvia Jackson is concerned that the bill does not get the balance right between what we are asking local authorities to take on and what they are being empowered to do.

With the convener's indulgence, I will speak against amendment 122, which would shift the balance too far the other way and would mean that local authorities would be responsible for the maintenance of the majority of the Scottish countryside. The duty on them would be too wide. Sylvia Jackson's amendments aim to achieve a balance on what local authorities can reasonably be expected to do to protect the countryside.

I move amendment 259.

Bill Aitken: Scott Barrie argued eloquently against amendment 122, but he arrived at the converse conclusion from the one that I arrived at. On many occasions, there are sound arguments for imposing on people a requirement to give access. However, if a route is to be provided, it is surely inequitable to suggest that the landowner or land manager should be responsible for the upkeep of that route. I accept that amendment 122 would have consequences for local authority budgets, but that would be a matter for the Executive to take into account in fixing the grant. That is a straightforward answer.

Amendment 123, in the name of Jamie McGrigor, is a technical amendment that seeks to delete the phrase "or other means" from section 13(1). The term "route" is sufficient to define any method of access and the use of the phrase "or other means" is unnecessary and redundant.

Stewart Stevenson: I want to speak against amendments 122 and 123. Bill Aitken's amendment 122 comes at the matter from a fundamentally flawed premise, given the decisions that the committee has already made. At the outset, we agreed that the bill secures the public rights of access that already exist. Given the pre-existence of those rights, it is perfectly proper for local authorities to

"assert, protect and keep open and free"

certain routes. To transfer to a local authority a responsibility for an existing right of access would be an onerous burden.

I am less concerned about Jamie McGrigor's amendment 123. I think that the phrase "or other means" can certainly include rivers, lochs, underwater caves or whatever. It is probably important that it is left open by the inclusion of the phrase "or other means", in case there should be any ambiguity in the word "route".

15:15

Allan Wilson: As I hinted, we are not clear of the necessity of the duty in amendment 259 in relation to access rights and

"the ability of the public to exercise them freely".

Section 13(1) provides that the local authority

"assert, protect and keep open and free … access rights".

In our view, that requires a local authority to uphold access rights and enable the public to exercise them. Amendment 259 does not add to that very clear duty in the bill; it should be withdrawn or not supported.

The emphasis in the bill is on the local management of access. That is consistent with the advice provided by SNH and the access forums. To impose a duty on local authorities to "keep open and free" routes

"by which access rights may reasonably be exercised"

will ensure that access will work on the ground. That is an important provision.

I am sympathetic to the concerns raised in amendment 260, and in other circumstances, that the duty to "protect and keep open" access rights may be too broadly drawn. In particular, it is not clear how the duty to uphold access rights should impact on a local authority, for example when it is acting in its capacity as a planning authority. There may be situations in which the local authority's obligations under section 13 and its obligations under planning law conflict. As I have said on previous occasions, we propose to introduce an amendment to address that issue and resolve any potential scope for conflict, with a view to narrowing down the specific duty that will be imposed on local authorities in those circumstances. I ask Scott Barrie not to move amendment 260, on the basis that we will come back to the concerns that it raises.

I am aware that some landowners consider that local authorities should have the duty to maintain all core paths. We do not consider that that is appropriate for all core paths. The bill provides for two methods of delineating core paths; it can be done by agreement with the landowner or by order. When a core path is delineated by order, the bill requires that the local authority maintain it. When a path is delineated by agreement, the question of maintenance will form part of the agreement between the local authority and the owner of the land over which the core path runs. Currently, we would expect that in certain circumstances the landowner might be willing to bear at least some of the costs of maintenance. We do not wish to preclude that amicable agreement by placing the entire onus on the local authority to bear the costs of maintenance in those circumstances.

Amendment 122 goes even further, in that it would place a duty on local authorities to maintain all routes

"by which access rights may reasonably be exercised."

That would clearly be an immense burden on local authorities. Given Bill Aitken's reputation for local authority prudence, I suspect that he does not propose to impose such a burden on local authorities.

Access rights may reasonably be exercised by innumerable routes, including forest and farm tracks. Amendment 122 would have the effect of requiring a local authority to maintain a forest track that was damaged by timber operations if it constituted a route

"by which access rights may reasonably be exercised."

That test could be applied to most forest tracks. As a result, it would be ridiculous in the extreme to expect local authorities to relieve the owners of the woodland of the burden of maintaining all tracks and forest paths used by heavy machinery, simply because someone might exercise their access rights along that particular route.

On amendment 123, the bill provides for rights of responsible access to all land and inland water. Local authorities will have the main role in the management of access over all land, not just paths. If we restricted local authority duties to routes as defined, we would be failing to recognise that clearly billed access rights will not always be exercised over those recognised routes. As a consequence, I ask Bill Aitken not to move amendments 122 and 123.

Amendment 261 is remarkably similar to amendment 233, in Scott Barrie's name, which would allow local authorities to use the powers of the Roads (Scotland) Act 1984 to enable blockages on core paths to be removed by vehicles. I recall that we discussed that issue a few weeks ago. I am happy to reconsider the matter at stage 3 to ensure that mechanical vehicles are able to access land to remove any blockages. As a result, I ask Scott Barrie not to move amendment 261 on the basis that we will return to the issue in the light of amendment 233 and powers under the Roads (Scotland) Act 1984.

The Convener: Does Scott Barrie wish to press or withdraw amendment 259?

Scott Barrie: I seek leave to withdraw amendment 259 on the basis of the minister's comments.

Amendment 259, by agreement, withdrawn.

Amendment 260 not moved.

Amendment 122 moved—[Bill Aitken].

The Convener: The question is, that amendment 122 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 122 disagreed to.

Amendment 123 not moved.

The Convener: Amendment 248, in the name of Tavish Scott, is grouped with amendment 240.

George Lyon: I will speak to amendment 248, as Tavish Scott is unfortunately in Denmark on Enterprise and Lifelong Learning Committee business.

Bill Aitken: Did you say "unfortunately"?

George Lyon: I was tempted to say "fortunately", but I thought better of it.

As I understand it, amendment 248 seeks to make it a duty for local authorities that grant planning permission for a development—whether it be a housing scheme or whatever—to ensure that planners take into consideration how people might access land from a new development and either preserve or create routes that give walkers access to land.

I move amendment 248.

The Convener: It seems grossly unfair that Mr Scott is in Denmark while we are slugging it out

here. Still, never mind—it is in a good cause.

Stewart Stevenson: Amendment 240 ought to be relatively self-explanatory. It simply seeks to ensure that, having established core paths, local authorities must take account of them as a material consideration when they consider planning applications. The effect would be that those seeking planning permission would have to provide alternative access in instances where a core path would be affected. That is the intention of the amendment.

Scott Barrie: Where would amendment 240 be inserted into the bill?

Stewart Stevenson: It would be inserted after section 21(9) on page 15 and before section 22, which is entitled "Ploughing of paths".

Mr Hamilton: Somewhat unusually, I have doubts about Stewart Stevenson's amendment, but perhaps he can explain. If the existence of a core path is to be a material consideration, one presumes that it is possible that outline planning permission might not be granted because a core path exists. Presumably, that could have an impact on the value of a property. As I understand it from Stewart Stevenson, the existence of a core path would not necessarily preclude the granting of an application, but it could impact on the application and could be, in and of itself, a reason for the application to be refused. Will Stewart Stevenson clarify the position?

Stewart Stevenson: My understanding is that such a material consideration could apply when outline planning permission is being considered, but it would be more likely to apply when a full planning application is made and when the implementation of the plan is seen. Amendment 240 would not be without effect on outcomes, but its intention is to protect the core path network that the local authority itself has delineated.

Allan Wilson: Let me address the two points that have been made by colleagues. Section 17 requires local authorities to draw up core path plans. Section 18 sets out the procedures for adoption of such plans by local authorities. Therefore, I can assure Duncan Hamilton and Stewart Stevenson that, if planning permission was sought for land on which there was a core path, the relevant core path plan would be a material consideration. The planning authority would be required to have regard to the plan in determining whether to grant the planning application.

As Duncan Hamilton mentioned, that would not preclude an application from being approved, but the core path plan would need to be considered. Planning authorities must take into account a wide range of such considerations in determining any planning application before them. Therefore, we consider that it is not necessary to legislate for that consideration in the bill. I hope that, on that basis, Stewart Stevenson will agree not to move amendment 240.

As I said in our debate on the previous group of amendments, section 13 places a clear duty on local authorities

"to assert, protect and keep open and free from obstruction or encroachment any route or other means by which access rights may reasonably be exercised."

If I may repeat my previous point—which was also made by George Lyon on Tavish Scott's behalf—that is a very wide duty, which, on reflection, we think may have an unintended impact on the performance of other core local authority functions, such as planning. Amendment 248 recognises that.

We accept that there is an issue to be addressed. At stage 3, we will lodge an amendment to ensure that whatever powers are conferred in the bill do not prejudice other core local authority functions. Our amendment at stage 3 will clarify and qualify the application of section 13, at least in respect of planning. With that assurance, I ask George Lyon to withdraw Tavish Scott's amendment 248.

15:30

The Convener: Before that, I wonder whether I might ask a further question on that point. I deal with planning applications daily, as do many others, and I would like to come back to the question of what a "material" consideration is. A national planning policy guideline on, for example, not building in a wildlife corridor does not mean that people absolutely cannot build there, but the guideline would be a material consideration. At a future stage, will you be able to indicate to us the situation with regard to NPPGs?

Allan Wilson: In what sense?

The Convener: I am interested in what is meant by a "material" consideration. Would that be a lower test than an NPPG or, for instance, a local plan? Normally, planning committees would make their decisions in accordance with a range of sources—including NPPGs, local plans and other planning guidelines. Would a material consideration be a lesser test or the same test?

Allan Wilson: You will appreciate that I am not the minister responsible for planning, but we will certainly try to clarify that issue by stage 3. Local authorities have to consider all relevant material considerations. A core path plan would be a relevant material consideration. I do not think that it would have any more or less relevance than local plans, structure plans or other planning guidelines, but we will certainly check that.

The Convener: That would be helpful. I call George Lyon to wind up in place of Tavish Scott.

George Lyon: Given the minister's assurances, I seek leave to withdraw amendment 248. I will pass on to Tavish Scott the news that the minister will come back at stage 3 with a further amendment.

Amendment 248, by agreement, withdrawn.

The Convener: Amendment 261 has already been debated with amendment 259.

Scott Barrie: In the light of the minister's comments, and given that he has invited me to discuss the matter further with him, I will not move amendment 261.

Amendment 261 not moved.

Section 13 agreed to.

The Convener: That takes us up to section 14, but I propose to close the meeting now and reconvene tomorrow at 9.45. I thank the minister for spending so much time with us this morning and this afternoon. I also thank all committee members.

Mr Hamilton: Just before you close the meeting, I note that we have received a paper on the role and proposals for the appointment of advocate deputes. The consultation period ends on 30 October, I think. Does the committee want to discuss the matter further?

The Convener: That is a good question. A deadline is approaching. Do members wish to respond to the proposals in the paper?

Members *indicated agreement.*

Mr Hamilton: I greatly appreciate that, because we said that we would return to the issue.

The Convener: If members leave the matter with me, I will discuss with the clerks how we can fit it into our business. See you all tomorrow.

Meeting closed at 15:32.

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