JUSTICE 2 COMMITTEE

Wednesday 25 September 2002
(*Morning*)

Session 1

£5.00

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JUSTICE 2 COMMITTEE
32nd 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)
Phil Gallie (South of Scotland) (Con)
Dr Sylvia Jackson (Stirling) (Lab)
Mr Jamie McGrigor (Highlands and Islands) (Con)
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

Committee Room 1

Scottish Parliament

Justice 2 Committee

Wednesday 25 September 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:49*]

Land Reform (Scotland) Bill: Stage 2

The Convener (Pauline McNeill): Good morning and welcome to the 32nd meeting this year of the Justice 2 Committee. The only item on the agenda today is day 6 of our stage 2 consideration of the Land Reform (Scotland) Bill, which we left off at section 14.

Section 14—Prohibition signs, obstructions, dangerous impediments etc

The Convener: Amendment 124 is grouped with amendments 262, 173, 236, 91, 282, 125, 193, 275 and 57. If amendment 124 is agreed to, I shall not call amendment 262. If amendment 125 is agreed to, I shall not call amendment 193. I ask Bill Aitken to speak to the amendments and to move amendment 124.

Bill Aitken (Glasgow) (Con): Amendment 124 seeks to ensure that an owner of land must respect his or her obligations under section 3 to use, manage and conduct ownership of the land in a way that respects access rights. Section 14(1) will prevent owners of land from preventing or deterring the exercise of access rights by placing restrictions on the owner to prevent him or her from obstructing access takers by means of signs, fences or the placement of a large animal or similar obstacle.

As drafted, the bill will prevent an owner of land from carrying out the legitimate operations that are required for the responsible management of his or her land, such as putting up signs or notices to warn access takers of shooting or logging operations. Such operations would clearly constitute a danger to the public, but the bill as drafted would require that any such sign or notice that was erected to warn the public would need to be removed. Indeed, owners of land may not put up such signs in the first place, for fear of breaching the terms of the legislation.

The difficulty can be resolved by inserting a reference to section 3. That would ensure that owners of land do not carry out such operations with the sole purpose of restricting the exercise of access rights. We are trying to acknowledge that the countryside can present certain dangers from time to time. Amendment 124 is in no respect a wrecking amendment. We recognise that the bill will prevent any irresponsible landowner from frustrating the rights of those who wish to take appropriate exercise in country areas.

I move amendment 124.

Dr Sylvia Jackson (Stirling) (Lab): Amendment 262 would amend section 14, page 10, line 4. As section 14 stands, it will allow for remedies to actions that have the explicit purpose of impeding the exercise of access rights. However, it is argued that it will often be difficult to determine when any such actions meet the test of whether their purpose is to impede the exercise of such rights. Actions that obstruct a route might be undertaken through ignorance, accident or other intention. Section 14 needs to be strengthened to allow councils a specific remedy for the wide range of actions that might, for reasons other than intent, obstruct access. Section 13 as it stands provides only a general injunction to act. That is why amendment 262 is necessary.

The Convener: I call Stewart Stevenson to speak to amendments 173, 236, 91, 282, 275 and to any other amendments in the group.

Stewart Stevenson (Banff and Buchan) (SNP): I draw members' attention to the fact that, when amendment 173 was originally lodged, it used the phrase "dump materials", but it has now been changed to read "leave or deposit materials". I just want to clarify that, in case members had an older copy of the marshalled list that had the word "dump".

Amendment 173 seeks to ensure that landowners and land managers do not use materials to block a path without providing an alternative route. It does not attempt to address other people's dumping of material on the land; that is another issue altogether. Addressing that would place an unreasonable burden on landowners and land managers.

Amendments 236, 282 and 91 are about gates and openings in walls. Amendments 91 and 282 are alternatives. I commend amendment 282, which would insert the words.

"keep locked any gate without providing a reasonable and convenient alternative".

From time to time there may be proper reasons for locking a gate in the interests of public safety. However, we must not allow that to become a way in which to deprive people of reasonable access. The same argument applies to amendment 236. Amendment 275, again, simply addresses issues relating to reasonable alternative routes.

I am minded to support Sylvia Jackson's

amendment 262, which makes considerable sense. I am not sure what Bill Aitken's amendment 124 would add, but I will listen to the debate.

The Convener: Murdo Fraser will speak to amendment 125, and to any other amendments in the group.

Murdo Fraser (Mid Scotland and Fife) (Con): Amendment 125 would delete section 14(1)(e), so removing the wording

"take any other action similar to any in paragraphs (a) to (d) above."

The obligations on the landowner or land manager must be clear. If, in section 14(1), we are going to specify those obligations in some detail, we cannot then add in section 14(1)(e) the rather general phrase, "any other action similar". To be fair to landowners or land managers, we must tell them what they can or cannot do. It would be better to include the detail of the obligations in the access code, rather than including something vague and imprecise in the legislation.

Sylvia Jackson's amendment 262, when examined closely, reveals an effect that I think was not intended. Section 14(1)(c) does not allow the landowner to

"position or leave at large any animal"

on the land, and section 14(1)(d) does not allow the landowner to

"carry out any agricultural or other operation on the land",

if that is done for the purpose of deterring access. I feel that the wording of amendment 262, which refers to actions

"likely to have the effect"

of deterring people from taking access, would cause problems. If a farmer puts a bull in a field, that is likely to have the effect of deterring people from taking access. So amendment 262 seems to me to prohibit any farmer from keeping a bull, or any animal that is likely to cause a threat to humans, on the land. Similarly, if a farmer ploughs a field, or plants a crop, that is likely to have the effect of deterring people from taking access. Amendment 262 does not therefore achieve what I think Sylvia Jackson is seeking.

The Convener: The minister will speak to amendment 193 and to any other amendment in the group.

The Deputy Minister for Environment and Rural Development (Allan Wilson): On several occasions during the past couple of weeks, I have referred to the importance of section 14 in securing the creation of the responsible right of access.

Section 14 provides that landowners must not take certain actions

"for the purpose or for the main purpose of preventing or deterring"

the exercise of access rights. The provision is additional to the requirements of section 3, which provides that landowners should use or manage responsibly land over which access rights are exercised.

Amendment 124, in the name of Bill Aitken, would replace the test of whether the action is considered to be for the purpose or main purpose of preventing or deterring the exercise of access rights with the test of whether the action contravenes any obligation in respect of responsible land management, as imposed by section 3. It may be argued that the amendment would widen the powers of local authorities, but in my view the test as currently drafted is appropriate.

10:00

In determining whether section 14(1) has been breached, local authorities are required to consider the purpose of the action in question. I see no advantage in changing the test by referring back to the provisions of section 3. That would introduce a very general test that would be likely to result in considerable dispute. That might be the intention behind Mr Aitken's amendment, but no responsible legislator could contemplate making such a change. Section 14(1) as drafted provides a very clear power. I hope that Bill Aitken will seek to withdraw his amendment.

Executive amendment 193 also seeks to widen the provision, but would retain the test of whether the landowner is acting with the purpose or main purpose of deterring the exercise of access rights. In a moment I will deal with the points that Sylvia Jackson and Murdo Fraser made. The effect of amendment 193 would be to prohibit an owner from taking, or failing to take, any action for the purpose or main purpose of preventing or deterring the exercise of access rights—not just the actions that are listed. It is appropriate that local authorities should have that catch-all power. I hope that the committee will agree this time. If amendment 193 is agreed to, that should address the concerns behind amendments 236, 91 and 282. The provision as it would be amended by amendment 193 would cover all the actions that are listed in the amendments, so it would not be necessary to mention those actions specifically on the face of the bill. I hope that Stewart Stevenson will agree not to move his amendments, the aims of which are encapsulated in our catch-all provision.

The same arguments apply in respect of amendment 173. However, I have a number of other difficulties with the terms of that amendment. Each of the new paragraphs that the amendment

would insert refers to

"a path, track or other route".

As members are aware, access rights are not restricted to particular routes, so to focus on such routes is wrong. The last new paragraph would extend curtilage. The curtilage of a building can be extended only for purposes connected with that building. It is not possible to extend curtilage for purposes that are unconnected with the building in question—for example, in order to prevent the exercise of access rights. For that reason, I resist the inclusion of amendment 173 in the bill, if only to provide an example of the type of actions that might be caught by section 14(1). The amendment is flawed, and I hope that Stewart Stevenson will agree not to move it. It would not have the effect that it is designed to have.

Amendment 262 also seeks to widen the scope of section 14(1)—probably with good intent—by removing the purpose test. Sylvia Jackson's aim is to ensure that the exercise of access rights is not prevented by accident rather than design. As Murdo Fraser said, it is unfortunate that the amendment would instead prevent a landowner from carrying out the actions that are listed if those actions prevented or deterred the exercise of access rights, irrespective of whether that was his or her intention. Murdo Fraser mentioned a couple of possibilities in that respect. The power in the amendment would be so wide that it would in effect prevent owners from managing their land. I do not want to go back over the debate, but I argue that agreement to the amendment would mean that planting a field of crops would prevent the exercise of access rights over that land. Erecting a fence would be likely to prevent or at least deter the exercise of access rights and many people might be deterred from exercising access rights to fields in which there is livestock—a bull being the classic example. All those activities could be caught by the approach that amendment 262 proposes. I hope that Sylvia Jackson agrees that that would be nonsense—I am sure that that was not her intention—and that she will not move amendment 262.

Amendment 125, in the name of Murdo Fraser, would—members will not be surprised to hear—have quite the opposite effect to the other amendments in the group. That amendment seeks to limit the actions in respect of which a local authority might act. I have explained why I consider that the power that local authorities will be given should be widened. That is our position and I hope that Murdo Fraser will accept the arguments that have been made, subject to the caveats that I outlined in relation to amendment 262, and that he will not move amendment 125.

Amendment 275 appears to be aimed at providing a get-out clause to enable landowners to take actions for the purpose or main purpose of deterring any person from exercising access rights in a particular area, provided that an alternative, reasonable, signposted route is available. I am not sure that that was the intention. If the amendment were agreed to, it would leave it to landowners in the first instance to decide what comprises a "reasonable alternative route". My fear is that the term "reasonable alternative route" could be open to different interpretations and that some landowners could abuse it. For example, some landowners might block an access route and be content to argue for some time whether a reasonable alternative exists.

More important, I do not think that amendment 275 is necessary. It would be difficult for a local authority to argue that where a path was blocked, but a suitable alternative existed, a landowner had acted for the purpose or main purpose of deterring the exercise of access rights. Consequently, there is no need for amendment 275; if it were agreed to it could result in another potential area of dispute. I do not think that it would achieve the purpose for which it was intended. For those reasons I ask Stewart Stevenson not to move amendment 275.

Amendment 57 follows earlier amendments that Dennis Canavan lodged, and has the purpose of removing the exclusion of angling from access rights in section 9(2)(b), which has now disappeared. Amendment 57 seeks to ensure that landowners should not be able to put up signs for the purpose or main purpose of deterring angling without permission in an area that is not covered by a protection order under the Freshwater and Salmon Fisheries (Scotland) Act 1976. We discussed the matter to a certain extent yesterday in Dennis Canavan's absence and I listened to his summary of the debate. I suspect that I covered much of the same ground as Dennis Canavan did in relation to the issue.

As I have explained, we acknowledge that there could be scope to improve access for fishing. I am now considering that and—as I assured Dennis Canavan, the committee and the Parliament—we will consult fully with all interests. We will in any event examine the consequences of removing section 9 from the bill. I ask members to agree to amendment 193, and I urge Bill Aitken, Stewart Stevenson, Murdo Fraser and Dennis Canavan to withdraw or not to move their amendments.

Dennis Canavan (Falkirk West): There are far too many notices littering the countryside telling people "No Trespassing", "No Walking", "No Picnicking" or "No Fishing". Of course, there may be circumstances in which such notices are justifiable. For example, during last year's outbreak of foot-and-mouth disease, such notices were necessary in many areas. Although most walkers behaved responsibly during the foot-and-

mouth outbreak, some landowners did not and kept the notices up long after the risk had disappeared. In fact, some landowners have such notices up almost permanently.

Notices are often put up by landowners to intimidate people and in attempts to prohibit activities that are not unlawful. For example, it is not a criminal offence to fish for trout in an area that is not covered by a protection order under the Freshwater and Salmon Fisheries (Scotland) Act 1976, but some landowners put up "No Fishing" signs in such areas in order to deny access. The notices imply that it is a criminal offence to fish in such an area, but that is not so. I note what the minister said about future legislation on freshwater fishing following the current review of the 1976 act, and I look forward to the introduction of legislation that will improve access for ordinary anglers. In the meantime, however, there is a strong case for accepting amendment 57, which would empower local authorities to take action against such landowners by telling them to take down the offending notices, thereby improving access for anglers, walkers and people engaging in other lawful activities in the countryside.

George Lyon (Argyll and Bute) (LD): I would like to speak to amendments 262, 173, 236, 91 and 282. As the minister said, the test under section 14(1) is whether any actions taken by the landowner or farmer are

"for the purpose or for the main purpose of preventing or deterring any person entitled to exercise"

their access rights. That seems to me to be the proper approach. We should remember that the countryside is a living and working countryside, where fences and agricultural activities are designed by farmers and landowners who are trying to earn a living. As the minister pointed out, if we accept amendment 262, in the name of Dr Sylvia Jackson, virtually any action could be interpreted as being likely to have an effect on people's access rights.

We should remember why fences are put up, which is to restrict animals to a specific field. One of the great challenges that we, as farmers, face every day is ensuring that animals are actually in the field that we left them in the day before. Whether we are dealing with sheep or cattle, we have the on-going daily chore of going round and making sure that they have not opened up a hole in the fence or jumped over and broken it. The main point of fences is to restrict animals to their fields. If farmers put barbed wire on the top of fences or hot-wire them, it is to stop animals jumping over the top, not to obstruct walkers or others who seek access.

The test of whether any action

"is likely to have the effect"

of preventing or deterring the exercise of rights would preclude any agricultural activity, because it could be interpreted as being likely to have an effect on access rights.

10:15

Similar considerations apply to Stewart Stevenson's amendment 173. He seems to think that access rights are about paths. Access rights are about walking anywhere in the countryside on any field. If we accepted the logic behind that amendment, anyone who dared to tip a trailer-load of earth anywhere on any field would contravene the law. That is ludicrous and would mean that no activity could be conducted on any field. On that basis, the amendment makes no sense and might show a misunderstanding of how access rights are supposed to work.

Amendment 236 would insert the words

"block any opening in a fence or wall".

An opening in a fence or wall is usually intended to allow animals to be transferred from one field to another. Such openings would be blocked to keep animals in one field, so the amendment should be rejected.

Executive amendment 193 will widen the take-all provision of section 14(1)(e) and deal with many of the issues. The fundamental interpretation of section 14(1) is about intention—whether the purpose of action is to deter or prevent access. That is the logical way in which to judge action that has been taken. Extending section 14(1)(e) with amendment 193 should satisfy the concerns that have been expressed.

Stewart Stevenson: I will pick up a few points from the debate. George Lyon and the minister talked about amendment 173. I remind my colleagues that the three paragraphs that amendment 173 would insert are subsidiary to the purpose or main purpose of the person who takes any such actions being of "preventing or deterring". They do not prevent the leaving or depositing of materials

"across a path, track or other route"

except when such action has the main purpose of restricting access.

George Lyon is correct to say that a variety of reasons exist for leaving or depositing materials on land. The application of the provision would be conditional and contingent on the intent or main purpose of the person who undertook the activity. The same applies to the other paragraphs in the amendment.

The minister drew it to our attention that curtilage can be extended only for purposes connected with the building. I offer the minister the

example of a rural dwelling that has a comparatively modest garden forming part of the curtilage. The family that lives there is extended by triplets so the owner wishes to extend his garden to put in play equipment for the children. To keep the garden secure for the children's safety—particularly, as George Lyon reminded us, because there can be many dangers in the countryside—the owner wishes to fence off that area. That person extends the curtilage, which could cover

"a path, track or other route".

If it could be shown that his purpose did not relate to the growth in his family and was merely a spurious excuse to extend the curtilage under the cloak of extending it for the purpose of the building, my amendment would make sense.

The minister will probably argue that, ipso facto, if the curtilage is being extended for the purpose of denying access, it cannot be held to be extended for the purpose of the building. I understand the minister's point, but before I consent to not moving amendment 173, I would like him to put it on record that that example and any similar examples would be covered by the definition.

Allan Wilson *indicated agreement*.

Stewart Stevenson: The minister nods, so I expect to hear about that in due course.

I recognise the fact that, to some extent, the conjunction of section 14(1)(b),

"put up any fence or wall",

and section 14(1)(e),

"take any other action similar",

could include the extension of a wall to cause a blockage or the restriction of a gap in a wall or fence by the locking of a gate. If the minister can put on record the fact that section 14(1)(b), in conjunction with section 14(1)(e), addresses the points that are raised in amendments 236, 91 and 282, he may persuade me and other members that those amendments are not necessary.

Amendment 275 tries to allow access to continue and co-exist alongside the proper rights of the land managers to exercise their stewardship of the land and derive benefits from their ownership of the land. I did not follow the minister's line of argument against that amendment, and I invite him to try to penetrate my early morning fog with another attempt to put a reasonable case for opposing it.

Mr Alasdair Morrison (Western Isles) (Lab): I shall say a few words on amendment 57 and reinforce what Dennis Canavan said about the way in which, during the foot-and-mouth disease crisis, landowners selfishly and irresponsibly erected signs that they had no right to erect. The landowners happily jeopardised the viability of many rural businesses by erecting such signs and showed no appreciation of the importance of informal access to the countryside. That helped to illustrate the mindset that is, sadly, prevalent among the landowning classes and the type of behaviour that they think is acceptable. That is an important point, which is worth emphasising. Nonetheless, having listened carefully to what the minister said, I am happy to align myself with the Executive's thinking on the matter and I am prepared to wait for the impending review of the fishing legislation.

Dr Jackson: When I first heard what the minister said, I was sympathetic towards it. However, having reread the bill, I do not think that his line of argument is correct. The bill states:

"The owner of land in respect of which access rights are exercisable shall not, for the purpose … of preventing or deterring … carry out any agricultural or other operation on the land".

That raises two concerns. First, Murdo Fraser's argument still holds. Secondly, there seems to be the potential for legal argument about whether prevention of the exercise of access rights is the main purpose of what the landowner does. As drafted, section 14(1) is not helpful and needs to be reconsidered.

As the minister said, the intention of section 14(1) was to allow consideration of whether the exercise of access rights was being prevented on purpose or whether it was being prevented unintentionally, by accident. The aim of section 14(1) was to allow local authorities—which we hope will act responsibly—to remove an obstacle to allow the exercise of access rights. That is the thrust of section 14(1). It is also clear elsewhere in the bill that—just as Stewart Stevenson said—we have a balance between farmers carrying out their business and responsible access rights. Against that backdrop, there is nothing wrong with amendment 262.

To be honest, because of the way in which section 14(1) has been drafted, we must reconsider it. We must thank Murdo Fraser for pointing that out. We must consider how we can better draft section 14(1) so that, if there is an obstruction—whether its main purpose is to obstruct access or whether that is an unintentional effect—the local authorities have the right to remove it. That is what I would like.

The Convener: I will allow the minister to reply on some of those points. Will the minister give us an insight into how he envisages section 14(1) operating? What evidence will the local authority need or what attitude is it meant to take if it suspects that a landowner is contravening section 14(1)?

One of the arguments in favour of listing everything that someone should not do and which would be considered to show intention to prevent access is that that would make the local authority's job easier. If we do not list everything, we leave it entirely up to the local authority to determine whether something was done to prevent access. How will that operate in practice?

I ask the minister to respond to that point. I think that Stewart Stevenson would like some further words from you on his amendments. You can also, of course, respond to Sylvia Jackson's comments.

Allan Wilson: You make an important point. The debate is getting quite complex because of yesterday's deletion of section 11. I say to Sylvia Jackson that, under section 13, we impose a duty on local authorities to uphold access rights. That duty is superimposed on any action by any landowner or any other person to seek to deny those rights. The problem is that, under section 11, we gave local authorities powers, which are no longer in the bill.

The way in which I envisage section 14 operating is that, where any action is taken—or any action not taken—with the purpose or main purpose of denying access rights, the local authorities would have the power to restore said access rights. The problem with amendment 262 is that, if we delete purpose and intent from section 14, any land management practice could be construed as being practised with the intent or effect of denying access rights, which would clearly be nonsense in a number of the examples that George Lyon and Murdo Fraser gave. Including the purpose of denying access rights is critical to section 14; to remove it would have a detrimental effect. Ultimately, whether a landowner acted with such purpose would be a matter for the courts to determine.

Ultimately, I concur with Stewart Stevenson's point. The extension of curtilage to which he referred was not the best example that he might have chosen. If triplets were born to a family and that family wished to extend its curtilage to accommodate a play area for those triplets, the purpose of extending the curtilage would arguably be to accommodate the new family, rather than to deny access. Where the purpose of the action is to deny access, it is caught by section 14 and the extension and widening of powers that we propose.

I nodded at Stewart Stevenson's point that the series of circumstances that he described would be caught by our new extended definition. That new definition is extension enough. Sylvia Jackson's amendment 262 is an extension too far—a bridge too far, if you like.

10:30

Amendment 173 makes specific reference throughout to routes. As Stewart Stevenson knows—and, I presume, accepts—access is not restricted to routes. The purpose of conferring a new right of responsible access is not to restrict that right to paths, routes and tracks but to let people roam freely within the confines of the law.

Perversely—this is where the situation gets complicated—as a result of yesterday's decision, the bill no longer excludes angling from access rights, whether that is right or wrong. Therefore, section 14, without any amending, covers the example that has been given. If angling is not excluded for the purpose of exercising access rights, nor would be the right of anglers to cross land to get to the place where they want to fish. The erection of any sign or notice to prohibit them so doing would be covered by the provision in the bill.

Dennis Canavan: Can we have an assurance that, at stage 3, the Executive will not try to reinsert the reference to angling that was deleted from section 9 by the committee yesterday?

Allan Wilson: For the reasons that I gave yesterday and again today, I cannot give that assurance. The deletion of section 9(2) will make us think about what happens at stage 3. I will have to consider whether any or all of the provisions need to be reinstated. I can repeat what I have said to you personally and to the committee publicly: we intend to consult widely on our proposals in a separate piece of legislation to extend access to angling. I do not think that this bill is the place to deal with that matter.

The Convener: Is Stewart Stevenson happy that his issues have been dealt with?

Stewart Stevenson: Yes.

George Lyon: Sylvia Jackson makes her argument well. However, if we go down the road that she suggests in amendment 262, the words

"is likely to have the effect"

could be interpreted in such a way as to stop any agricultural activity whatsoever. If an old fence was renewed, a gate installed or a field filled with stock or sown with crops, a legitimate complaint could be made to the local authority on the ground that the act was likely to have an effect on an individual's access rights. I do not think that that result is what Sylvia Jackson is arguing for.

The Convener: We should go back to the question of the operation of the law. If Stewart Stevenson's amendment 173, which deals with the extension of a curtilage to cover a track, were to become part of the bill, surely the local authority would investigate the situation if a complaint were

made. If it was claimed, as was suggested, that the arrival of triplets required that extra garden space be obtained, surely the local authority would investigate that claim to see whether it stood up.

Would not it be important to detail in the bill that a local authority should question why something is there? To take George Lyon's example, if a fence is put up and that is questioned by someone who thinks that their access is being blocked, surely the local authority will examine why the new fence is there and what its purpose is. Is that how the provision will operate?

Allan Wilson: Yes—in effect. That is what we propose. We will discuss Dennis Canavan's amendments to section 14—amendments 58, 59 and 60—later. Those amendments would impose a duty on local authorities to do certain things in such circumstances.

I would prefer it if the local authority became involved in the event that a dispute arose about whether a landowner had acted to deny access. In such circumstances, the local authority would of course investigate the allegation with the landowner concerned and with the local access forum, to determine whether the landowner had indeed acted with the alleged purpose in mind.

In my opinion, the hypothetical circumstances that Stewart Stevenson described were not the best analogy. If someone had triplets born to them and extended their curtilage modestly to accommodate a new play area, one would expect that that person's reasoning was to accommodate the triplets rather than to deny access. We would expect the local authority to have a role in the process. Its role would be to identify whether the dispute was well founded.

The Convener: If you are not willing to accept the need to include in the bill the further detail that is set out in amendment 173—for example, the requirement that a landowner shall not

"leave or deposit materials across a path"—

do you expect that such details will form part of the code? If a local authority is to determine whether something might have been deposited across a path to prevent access, it might be important to provide guidance on that, so that the local authority would know where the starting point was. When one tests a situation, one comes to the conclusion that the action in question was either taken to prevent access or not taken to prevent access.

Allan Wilson: The issue is dealt with under section 14(2)—it is implicit in that part of the bill. In issuing guidance to local authorities and others—depending on whether we have returned to local authority powers in that regard; the situation becomes complex at this point—we would expect that local authorities would have regard to that guidance.

I urge the committee to be cautious about where we are going. If the committee is to continue with the process of seeking to secure and create new rights of responsible access, amendment 262 would need to be returned to at stage 3. I urge the committee to consider that condition.

George Lyon: Amendment 262 is fundamental. Section 14(1) describes the test—in other words, what the local authority will take action on or go to court on. The test that is laid out is whether the action that is taken by the landowner is

"for the main purpose of preventing or deterring any person entitled to exercise these rights".

That is the key test and it represents the basis on which the council will step in to carry out any of the actions that are listed in sections 14(2), 14(3), 14(4) and 14(5). That is what we are discussing.

The definition of the test that is provided in amendment 262 is whether the action that is taken

"is likely to have the effect (whether or not intentional)".

It is possible to envisage circumstances in which any agricultural activity that is undertaken in the normal course of running a farm or a farming business could be subject to that test. That could lead to the farmer or landowner landing up in court just because he was conducting his normal agricultural activities.

If the committee is seriously proposing to go down that road, that is a completely different story. We are trying to design access rights that strike a balance between the right of the farmer or landowner to earn a living from the land and the right of those who want to access the land. If we go down the road that Sylvia Jackson proposes in amendment 262, we would be left with no balance whatever. We would be saying that any agricultural activity could be interpreted as

"likely to have the effect (whether or not intentional)"

on an individual's access rights. I am sorry, but I cannot accept that. I also do not think that rural Scotland—those who live and work on the land—could accept that.

Dr Jackson: I must come in at this point. First, as Murdo Fraser rightly said, section 14 is not well drafted. That is what has led George Lyon to make those assertions, which go totally against the ethos of the bill. I do not know why he keeps on saying the things that he has just said.

We need to consider how we can improve section 14. As the minister rightly said, section 13(1) gives local authorities a duty to uphold rights. Perhaps we could link that section to section 14(1) in some way to achieve the intention behind amendment 262, which is for local

authorities to be able to get rid of obstructions, whether they are in place as a result of the main purpose of agricultural activity, whether they are unintentional or whatever.

Local authorities need to be able to enable reasonable access. Perhaps we could include a provision at stage 3, as that could get us over our present difficulty. I repeat that bad drafting of section 14 means that it is not easy for us to change the original provisions. That bad drafting also led George Lyon, quite rightly, to make his assertion. Who wants to go to endless court cases when what we are trying to do is to get the balance right between the farmers' right to conduct their activities and the upholding of access rights?

Mr Duncan Hamilton (Highlands and Islands) (SNP): I want to return briefly to the section that is referred to in Dennis Canavan's amendment 57. The minister made the point, almost on a technicality, that the removal of section 9(2) meant that there was no need for amendment 57. Given that the minister may wish to reintroduce provisions of section 9(2) at a later stage, is he opposed to amendment 57 in principle or is his opposition to it based on a technicality? If he intends to lodge a stage 3 amendment to replace what was removed, there is every point in our passing Dennis Canavan's amendment 57.

Allan Wilson: I will take the latter point first. We oppose amendment 57 in principle. As I have said, this is not the right bill for its provisions. I have put on the record our opposition in principle to the proposition that is contained in the amendment, as well as the fact that the bill is not the right vehicle for securing an extension to access rights to angling. My position is clear. Given that the exclusions are now omitted from section 9(2), we will have to consider whether we will return with a stage 3 amendment to deal with the exclusion.

The de facto position as of yesterday is that angling is included in access rights. Perversely, the position that Dennis Canavan sets out in amendment 57 is now accommodated in the bill as amended.

Stewart Stevenson: Under section 14(1)(d), a landowner may not for the purpose of deterring or preventing persons from exercising access rights

"carry out any agricultural or other operation on the land".

Would that provision catch all the activities that are listed in my five amendments?

10:45

Allan Wilson: Amendment 193 is the catch-all provision that Stewart Stevenson seeks, although it does not provide all that Sylvia Jackson seeks. The amendment would deal with the activities to which Stewart Stevenson's amendments refer.

Stewart Stevenson: I do not want the minister to think that I oppose amendment 193—it is a sensible addition to the bill—but I am not sure that the amendment covers the leaving or depositing of materials. The phrase "other operation" could cover that, bearing it in mind that such activity must be for the purpose or main purpose of deterring or preventing the exercise of access rights. That is the qualification. Would the minister be happy to confirm that on the record?

Allan Wilson: I am happy to repeat what I said earlier. Amendment 193 is a catch-all provision that relates to anything that a landowner does or fails to do with the purpose of excluding access.

Stewart Stevenson: You can stop there.

Allan Wilson: The point that I am making is relevant to the points that Sylvia Jackson made in support of her amendment or of a hybrid approach to the issue. Section 13 must be read in conjunction with section 14, as they form part of the same bill. They are linked by virtue of that fact. Section 13(2) states specifically:

"The local authority may, for the purposes set out in subsection (1) above, institute and defend legal proceeding and generally take such steps as they think expedient"

to uphold rights of access. The bill can be no more specific than that.

Bill Aitken: I am disappointed that the minister has misinterpreted my motives for lodging amendment 124. The amendment is in no way an attempt to inhibit the rights of walkers on land. As Alasdair Morrison and Dennis Canavan indicated, it would be foolish to deny the fact that some landowners use the mechanism of posting signs irresponsibly to inhibit the rights of walkers. We recognise that that happens from time to time, although not as frequently as Alasdair Morrison and Dennis Canavan suggested.

The purpose of amendment 124 is to ensure that the land manager or landowner can put up signs that promote public safety. If they use signs to inhibit or frustrate the workings of the bill, they will be subject to the provisions of section 3(1), which states:

"It is the duty of every owner of land in respect of which access rights are exercisable—

(a) to use and manage the land; and

(b) otherwise to conduct the ownership of it,

in a way which, as respects those rights, is responsible."

If someone is, to use the Glasgow vernacular, "at it" in respect of the erection of signs, they will be subject to the catch-all provision that is contained in section 3. Action could be taken under that section to prevent the irresponsible use of signage.

As we have said before in various debates, the

countryside can be a dangerous place. I suggest to Dennis Canavan that the vast majority of those who frequently utilise the countryside, as he does, will find "No fishing" or "No walking" signs no more than a slight hindrance and largely will ignore them. However, if a sign said "No walking" on a date when shooting was taking place or when logging operations were commencing, walkers would certainly note it and perhaps would think that it might not be a terribly good idea to take the route. Section 3 ensures that those who use signages do so responsibly. I urge the minister to accept amendment 124 in the spirit in which it has been lodged. It cannot possibly inhibit walkers' rights in the context of the proposed legislation.

Allan Wilson: I have some sympathy with Bill Aitken's arguments, but the test of responsible land management is not the same test that one would apply to denying the right of responsible access. There may be some overlap between the two tests, but they are not the same. Section 14 is explicit. Its provisions would catch those who took action with the express purpose of denying responsible access.

The Convener: Does Bill Aitken wish to press amendment 124?

Bill Aitken: Yes.

The Convener: The question is, that amendment 124 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 124 disagreed to.

The Convener: Amendment 262 has been debated with amendment 124. Does Sylvia Jackson wish to move the amendment?

Dr Jackson: I would like to clarify what the minister said about it.

The Convener: You should be brief.

Dr Jackson: I understand that the minister is saying that section 13 covers what I have said about unintentional barriers that may be put up to reasonable access—

The Convener: You will need to be briefer than that, as you should have the chance only to move or not move the amendment.

Dr Jackson: I will move the amendment if I am not allowed to find out what the minister will do. It is up to you, convener—I must find out what he will do. May I do so?

The Convener: Yes, if you are brief.

Dr Jackson: I was going to be brief. If section 13 means that local authorities could remove unintentional barriers, that would partly cover what I am saying. It would be good if the minister would promise to consider—

The Convener: I must stop you there. We note your point. Does the minister want to reply?

Allan Wilson: Briefly. I reiterate that the duty imposed under section 13 to uphold access rights includes the duty to remove obstructions that intentionally or otherwise deny access rights.

The Convener: Does Sylvia Jackson intend to move amendment 262?

Dr Jackson: Yes, as I still do not know about section 14.

Amendment 262 moved—[Dr Sylvia Jackson].

The Convener: The question is, that amendment 262 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

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)

ABSTENTIONS

Stevenson, Stewart (Banff and Buchan) (SNP)

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

Amendment 262 disagreed to.

Amendments 173, 236 and 91 not moved.

Amendment 282 moved—[Stewart Stevenson].

The Convener: The question is, that amendment 282 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 282 disagreed to.

The Convener: Amendment 125 has already been debated with amendment 124. If we agree to amendment 125, I will not call amendment 193, because of the pre-emption rule.

Amendment 125 moved—[Murdo Fraser].

The Convener: The question is, that amendment 125 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 125 disagreed to.

Amendment 193 moved—[Allan Wilson]—and agreed to.

Amendment 275 not moved.

Amendment 57 moved—[Dennis Canavan].

The Convener: The question is, that amendment 57 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)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

ABSTENTIONS

Barrie, Scott (Dunfermline West) (Lab)

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

Amendment 57 disagreed to.

The Convener: Amendment 58 is grouped with amendments 59 and 60.

Dennis Canavan: This group of amendments would oblige a local authority to take action against an obstructive landowner. The bill as drafted would allow a local authority to take certain action against an obstructive landowner, but that does not mean that such action would necessarily be taken. For example, there might be an extremely obstructive landowner who erects "No entry" signs all over the place and surrounds his land with electrified razor fencing that is patrolled by a pack of Rottweilers. The local authority would, rightly, conclude that that is a contravention of section 14(1), but it is not obliged under that section to take action. Therefore, the purpose of the bill would be thwarted, in that access would be denied and a selfish landowner would get away with extremely anti-social conduct.

If all that seems rather far-fetched we should bear in mind the fact that in some areas, particularly rural areas, local authorities might be quite supportive of obstructive landowners, or might be reluctant to take action against an offending landowner, perhaps because of their power and influence. It should not be left to the discretion of local authorities to take action. If an offence has been committed, the local authority must take action if necessary to enforce access.

Section 13(1) refers to

"the duty of the local authority 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."

The amendments in the group would make section 14 more consistent with section 13. I ask the committee to give the amendments positive consideration.

I move amendment 58.

11:00

Allan Wilson: I couch my opening remarks in the context of Dennis Canavan's comments and note that there seems to be a general distrust of local authorities. That has been evidenced yesterday and again today. I must say that I do not share that distrust of how local authorities will carry out the duties that are imposed on them under the bill.

Amendments 58, 59 and 60 all have the same objective of requiring local authorities to use the powers that are made available to them under section 14. As we have just discussed, section 14 prevents owners from acting, or failing to act, for the purpose of preventing or deterring the exercise of access rights by any person who is entitled to exercise those rights. Where an owner acts in such a manner, section 14(2) provides local authorities with powers to issue a written notice, requiring the owner to remedy the situation. If the

owner fails to comply with the notice, section 14(3) allows the local authority to enter the land to undertake remedial action and to recover the costs from the owner.

In our view, the written notice procedure should be only one of the options available to local authorities, as I mentioned in response to the convener's question. In some circumstances, discussion with the owner or, possibly, the involvement of the local access forum may resolve the issue. I argue that it is appropriate that the local authority should have a margin of discretion to decide how best to resolve any problems. I say that as one who has faith in our local authority system. Local authorities should not be obliged to resort to issuing a written notice whenever a problem arises.

Similarly, when an owner fails to comply with a notice that has been served, the local authority should have discretion in deciding what further action must be taken. For example, seeking to recover the costs of remedial action will not always be appropriate or practicable. It is not the job of the Parliament to second-guess the local authority in those circumstances.

I ask members to accept that the local authority is best placed to determine what action should be taken. It is right that the local authority should have the discretion that Dennis Canavan's amendments would remove. In the light of that, I ask Dennis Canavan to withdraw amendment 58 and not to move amendments 59 and 60.

George Lyon: I have listened to Dennis Canavan's arguments for toughening up the provision by changing the wording from "may" to "shall", but that seems to argue against local decision making and local democracy. Section 13 already provides local authorities with a duty to uphold access rights. That obliges them to use the powers set out under sections 14(2), 14(3), 14(4) and 14(5).

The decision on the most appropriate way to deal with an obstructive landlord is surely for the local authority in the local area to make. Local authorities should be given the flexibility to take a range of actions against landowners who refuse to remove impediments to the exercise of access rights. The Executive's approach gives flexibility to local authorities by leaving to them the decision on what powers they will use. That is the appropriate way forward, rather than us telling them from the centre what actions they must take if there is a problem.

I would argue that local decision making and local democracy are fundamental to making the bill work, so we should leave people to make the right decision as suits each case.

Mr Hamilton: I, too, am minded not to support Dennis Canavan's three amendments. I hear what has been said about section 13, but will the minister clarify the situation surrounding the famous Rottweilers? The matter is not a question of proven fact; in all such cases, it will be a matter of an allegation being made against a landowner, which they will have the opportunity to refute. What remedies would be available if an individual made such a complaint and the local authority was seen not to respond to it? Mr Canavan might get some solace were the minister able to outline those.

Allan Wilson: That is a good question, and it gives me the opportunity to elaborate on how I would view the circumstances that Dennis Canavan describes, whereby a local authority has failed to act to secure access. In those unlikely—from my perspective—circumstances, a duty is imposed on the local authority by virtue of section 13 to act reasonably to uphold rights. If an individual or organisation felt that the local authority had not done so, and had not acted in accordance with statute, a judicial review of the decision could, of course, be sought. The duty that is imposed by section 13 is to uphold access rights and to act reasonably in so doing.

The Convener: The question of what would happen if a local authority did not uphold those rights is one that I, too, wanted answered. I hear what the minister is saying—it is a matter of tying everything in with section 13(1), as Sylvia Jackson suggested. I would have been happier if the need to act in accordance with section 13(1) was tied in again in section 14. Would it be possible to consider such a measure at stage 3 to re-emphasise the provisions of section 13(1) in section 14? I do not want to take away the discretion of local authorities to act in the way that they think appropriate, but section 14 as drafted seems a bit weak. I would be happier if it stated that landowners had to act in accordance with the duties of section13(1).

Allan Wilson: I hear what you say, and the draftsman assures me that such a measure could be considered. However, my primary position is that section 14 succeeds section 13, and the two sections have to be read in that order and in the context of the bill as a whole. That said, we will consider the point that you have made and consider whether the drafting can be improved to ensure that the rights and duties to uphold access are consistent with the provision in section 14 to prohibit obstructions. I believe that those rights and duties are consistent, but we will consider the matter.

Mr Hamilton: Having had time to reflect on the minister's answer about judicial reviews, and although, given my future legal career, I am loth to resist expensive and long legal actions, I believe

that there is a danger that such remedies will not be readily taken up. Has the minister given any thought to introducing at a later stage a range of other remedies, which would fall short of a full judicial review but which would provide benefit to individuals who seek to review a local authority's decision?

Allan Wilson: I hesitate to say this in this context, but we have made provision for reserved ministerial powers in circumstances not dissimilar to this, which the committee chose to reject. Notwithstanding that, the circumstances are not dissimilar to any other circumstances in which local authorities have duties imposed upon them. The ultimate sanction would be a judicial review of whether or not the authority had acted reasonably in exercising its duties. There is no dissimilarity.

Mr Hamilton: Under the bill, the frequency of those challenges is likely to be greater.

Allan Wilson: That does not necessarily or logically follow, but such a conclusion could be drawn, if our deliberations are anything to go by. My intention is not to create a situation in which dispute becomes the norm, but one in which disputes are few and far between.

Mr Hamilton: We all agree with that, but—

Allan Wilson: Do we?

Mr Hamilton: I think that we do. However, the point of legislation is to provide a framework for cases in which dispute does arise. I wonder whether the Executive could reflect further and come back at a later stage.

The Convener: You have had your answer. I invite Dennis Canavan to wind up.

Dennis Canavan: The matter boils down to whether local authorities should have discretion or an obligation to act. My amendments would not completely remove the discretion of local authorities. Under section 14(2), the local authority would still have to consider whether anything had been done in contravention of section 14(1). If the local authority considered that subsection (1) had been contravened, my amendments would make it mandatory for the local authority to take appropriate action.

I was not satisfied with what the minister said about redress for someone who may be denied access in circumstances in which the local authority has failed to use its powers under section 14. The minister said that such a person or group of persons may apply for judicial review, but judicial review can be an expensive and prolonged business. It might provide a beanfeast for lawyers in the Court of Session, but it is a difficult way for an ordinary, humble hillwalker to achieve justice. Therefore, I will press my amendment to a vote.

The Convener: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

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

ABSTENTIONS

McNeill, Pauline (Glasgow Kelvin) (Lab)

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

Amendment 58 disagreed to.

The Convener: Amendment 59 has already been debated with amendment 58. Does Dennis Canavan want to move amendment 59?

Dennis Canavan: Due to the lack of support, I will not bother moving amendments 59 and 60, so that we can move on to the next group. However, I may return to the issue at stage 3.

Amendments 59 and 60 not moved.

Section 14, as amended, agreed to.

11:13

Meeting suspended.

11:26

On resuming—

Section 15—Measures for safety, protection, guidance and assistance

The Convener: Amendment 263, in the name of Sylvia Jackson, is grouped with amendments 264, 279, 276, 280, 237, 283, 265, 238, 45, 61, 62, 126, 194, 266, 267, 274 and 306. If amendment 264 is agreed to, I will not call amendments 279 or 276. If amendment 279 is agreed to, I will not call amendment 276.

Dr Jackson: Amendment 263 works in conjunction with amendment 266, which reintroduces at a later point in the section—and in a clearer manner—the elements that would be removed by amendment 263.

Amendment 264 widens the powers available to local authorities with regard to paths. It is anticipated that the enclosure and indication of routes and paths that is mentioned at this point would come within the definition of improving and keeping the routes fit for purpose, which is the concept that my amendment seeks to include in

the bill. However, the section contains many other powers that would be better dealt with by the wording that I am trying to include. The second change that the amendment would bring about is the replacement of the word "footpaths" with "paths", a more general term that clarifies that many paths will be used by a much wider range of users than simply walkers. I have been made well aware of that fact by the horse riding community in my constituency.

Amendment 265 adds stiles and gates to the list of objects that a local authority might feel have been constructed or adapted in a way that might be likely to injure a person exercising access rights.

All the powers that are listed in amendment 266 are considered necessary by local authority access officers to allow them to fulfil their duties as set out in section 13. Local authorities have argued that, in order to keep access routes in good condition and ensure that groups are able readily to use paths, it is essential that local authorities have powers to do more than sign or fence routes. With regard to access facilities such as stiles, gates, bridges and boardwalks—particularly given Scotland's wet climate—the ability to carry out reasonable drainage or surfacing work on paths is essential.

It is also vital to separate out seats and lavatories from the other types of work listed in the section. At present, subsection (7) means that the local authority would have to seek consent from the owner for all of the work that is carried out under subsections (4) and (5).

It is argued that only the installation of lavatories, seats and other structures that would contribute to the comfort and convenience of persons exercising access rights should require consent. Other work to facilitate access rights should require only notice. I gather that that is the current situation with rights of way, where local authorities can simply go on to the land to do work.

11:30

I turn now to amendment 267. Local authorities are granted a wide range of powers to erect and install a variety of structures and to do surfacing and maintenance work. However, the bill should acknowledge that some types of work or structures would not be appropriate in certain locations. For example, Ramblers Association Scotland would not consider it appropriate to erect a toilet block in the middle of Rannoch moor. Similarly, it would not be appropriate to tarmac certain paths in certain wild areas. Amendment 267 requires local authorities to take into account the natural and wild qualities of the land in any work that they do under the powers granted by section 15.

Amendment 274, together with amendment 266, seeks to clarify that local authorities can carry out work to facilitate access if reasonable notice is given to the landowner, whereas work to add to the comfort and convenience of those taking access requires consent.

I move amendment 263.

The Convener: The minister will speak to amendments 279, 280 and 194, and to any other amendments in the group.

Allan Wilson: I hope that members will bear with me because I suspect that this will take some time.

Section 15(1)(a) permits local authorities to take steps

"to warn the public of and protect the public from danger on any land in respect of which access rights are exercisable".

For the avoidance of doubt, the bill makes it clear that those steps include the putting in and maintaining of fences and notices. Amendment 263, which has just been moved, seeks to remove that clarification. In my view, which I hope the committee will share, the clarification is helpful and should be retained. I am not convinced that anything would be gained by deleting it and I hope that Sylvia Jackson will agree.

Amendment 264 would remove a local authority's power to

"indicate or enclose recommended routes or established footpaths".

That power would be replaced with a power to

"improve and keep fit for purpose recommended routes or established paths".

As I said earlier, section 15(1) is about safety, protection, guidance and assistance. Amendment 264 is about the improvement and maintenance of paths and in my view it does not sit at all comfortably in section 15(1). The bill addresses the maintenance of core paths and I am not convinced of the need to make provision for local authority maintenance of other routes. If a route is of sufficient importance to be maintained by a local authority, it should be a core path. I hope that Sylvia Jackson will seek to withdraw amendment 263 and that she will not move amendment 264.

Stewart Stevenson's amendment 237, as drafted, is very wide. It would allow a local authority to take appropriate steps

"to maintain or divert any path or route".

The power would therefore apply to all paths and all routes in respect of which access rights are exercisable, and not just to core paths. In effect, it

would allow a local authority to maintain or divert paths—such as stalkers' paths, farm tracks and forest tracks—that have been created by landowners for their own purposes, without the local authority being required to consult the owners or anyone else. In my view, such a wide power would be not only inappropriate, but unnecessary. The bill addresses the maintenance of core paths.

The question of who is responsible for maintaining the core paths mentioned in section 17(2)(a) and section 17(2)(b) will already have been decided. On rights of way on paths established by other legislation, the question of maintenance would be determined by that legislation.

Core paths that are created by the bill will be delineated either by agreement with the landowner, or by order. We have discussed that. The bill requires that, when a core path is delineated by order, the local authority maintains it. When a path is delineated by agreement, maintenance will form part of the agreement with the landowner. I am therefore not convinced of the need to provide a power to ensure that local authorities maintain paths that do not merit core path status—certainly not such a wide power as amendment 237 would introduce, which would extend to all routes, paths and forest tracks.

Procedures for the diversion of core paths are also set out in legislation. In all cases, such diversion requires full public consultation, which is entirely appropriate where such paths are in use by the public. I have already explained that I do not believe that local authorities should have the power to divert any path or route, especially without being required to consult. Amendment 237 does not require such consultation, even with the owner of the land. The second part of the amendment would allow local authorities to take appropriate steps to advise on or assist with the management of the land that formed any path or route. We have lodged amendment 197, which seeks to amend section 23, to clarify the role of rangers. That amendment will contain a duty on rangers to advise and assist the owner of the land and other members of the public on any matter relating to the exercise of access rights on the land. Local access forums will also offer assistance in such matters. Cumulatively, that seems to be a better approach. With those assurances, I hope that Stewart Stevenson will not move amendment 237.

Amendments 238, 45, 61, 62 and 126 all seek to amend section 15(2), which provides a power to local authorities to require a landowner to act to remove the risk of injury to the public that is posed by

"a fence, wall or other erection".

We have just discussed that in detail. Amendment 238 seeks to clarify the fact that a gate would be covered by the phrase "other erection". Similarly, amendment 265 seeks to clarify whether gates and stiles would be covered by that provision. I hope that the committee will be reassured that a gate or stile that is

"so constructed or adapted … as to be likely to injure a person exercising access rights"

would be caught by section 15(2) and that, therefore, those amendments are unnecessary. It would not be helpful to list in the bill examples of possible other erections. I suspect that, contrary to members' intentions, that would limit the scope of the provision. I hope that Stewart Stevenson and Sylvia Jackson will therefore agree not to move their amendments, with the assurance that gates and stiles are covered by the phrase "other erection".

Amendment 45 does not explain how a hedge or line of trees would be likely to injure someone who was exercising access rights. Phil Gallie may be seeking a power to allow local authorities to require the removal of trees that have been planted to prevent or deter access. If so, I advise him that we have already made provision for such action in the catch-all provisions that we have just discussed and agreed in section 14. If that is not what amendment 45 intends, I will be pleased to learn what is intended.

Dennis Canavan's amendment 61 would require local authorities to issue a notice in all circumstances when they consider

"that a fence, wall or other erection is so constructed or adapted … as to be likely to injure a person exercising access rights".

I understand Dennis Canavan's thinking, but given my approach to local authorities, which differs from his, I think that local authorities should have the discretion to try other approaches to the reconciliation of such problems, when they think that appropriate. The written notice procedure should be only one option and local authorities should not be forced down that road in every circumstance. That raises a similar argument to that which we just had, when the committee agreed with me.

We envisage a role for local access forums. When possible, I am keen to involve them in resolving problems such as those that Dennis Canavan expects. The power in section 15(2) is important. I hope that Dennis Canavan will agree that local authorities should have the discretion to deal with situations in the ways that they consider most appropriate. As I said, we do not intend to move to dispute in every instance. Scope for conciliation and agreement should exist in such circumstances. Local authority discretion is important for that.

The approach that Dennis Canavan's amendment 62 proposes is impractical. It would place the onus on the person who proposed to erect the fence to decide whether it was likely to injure someone who was exercising access rights, and if so, to apply to the local authority for permission. We suspect that, in most cases, few people would apply. No provision for appeal is made for someone who applies and is refused permission. The threat of being required to take steps to remove any risk of injury is sufficient to avoid problems, without introducing the unnecessary bureaucracy of prior approval. Most applicants would probably ignore the proposed system anyway.

Bill Aitken's amendment 126 is unnecessary. Section 15(2) allows local authorities by written notice to require a landowner to take only

"such reasonable action as is so specified … to remove the risk of injury"

posed to the public by any fence, wall or other erection that a landowner constructs. We discussed that comparatively recently. Therefore, the provision already prohibits a local authority from requiring unreasonable action.

Section 14(4) and section 14(5) apply to any notice that is served, so a landowner can appeal on the ground of the reasonableness of the contents of a notice. Bill Aitken's amendment would limit a local authority's power to requiring only such remedial action as would not

"interfere unnecessarily with the ability of the owner to carry on established practices of land management."

If the required action interfered unnecessarily with the landowner's ability to carry on established land management practices, it would be unreasonable. Therefore, the protection that the amendment would confer—which I support—is already provided by the bill.

In the light of what I have said, I hope that Phil Gallie, Dennis Canavan and Bill Aitken will not move their amendments.

11:45

Section 15(4) enables a local authority to install, on any land in respect of which access rights are exercisable, gates, stiles or other means of facilitating the exercise of those rights; and seats, lavatories—which have been mentioned—and other means of contributing to the comfort and convenience of persons exercising the rights. I submit that, where a local authority installs such facilities, it should follow that it also maintains them. Amendment 194 provides for that. I trust that the committee will agree that it is a suitable provision.

Amendment 266 seeks to amend section 15(4). The bill provides a power to local authorities to install gates, stiles or other means of facilitating the exercise of access rights. Amendment 266 would limit local authorities to the installation of gates, stiles, notices, fences or bridges. The power is a matter of local authority discretion. I see no need to constrain local authorities in the way that amendment 266 suggests. I trust that local authorities will exercise the powers responsibly and with due regard to the natural environment and to conserving our natural and cultural heritage. I ask that that be supported.

Amendment 266 would also provide a power to carry out drainage, surfacing and other similar works, and to carry out maintenance work on any land in respect of which access rights are exercisable. Critically, such work would not require the consent of the owner. I have several reservations about that approach. I do not wish to encourage the view that local authorities will be responsible for all maintenance work on any access land, given that access land will be a fairly substantial proportion of the total land. That is unrealistic and would be likely to result in considerable pressure on local authorities from landowners asking local authorities to carry out work that would otherwise fall to landowners.

It is not reasonable to provide for a local authority to carry out surfacing work on land without the owner's permission. Apparently, there would be no right of appeal. That is clearly inequitable and, consequently, flawed.

The bill provides appropriate powers to local authorities with the appropriate safeguards to back up the powers. The approach that amendment 266 outlines is a mixture of constraints on local authorities and an inequitable extension of their powers. I ask Sylvia Jackson not to move it or consequential amendment 274.

Amendment 267, also in the name of Sylvia Jackson, appears to me to be very wide and open to interpretation. It is not clear what is intended by the

"wild qualities of the land".

Local authorities already have responsibilities in respect of landscape, and amendment 267 would not increase those. In practice, the amendment's very general terms would serve only to create uncertainty. I hope that Sylvia Jackson will agree not to move the amendment.

I am sympathetic to the intention behind amendment 276. However, on reflection I do not consider that it goes far enough. Amendments 279 and 280 would enable local authorities to indicate, enclose or give directions to any land in respect of which access rights are exercisable, not just paths. I see no reason to limit that power to paths. As we have already discussed, people will

exercise their rights of responsible access not simply on paths but on open countryside.

Amendment 283 appears to seek to introduce an alternative process to the one that was provided in section 11—now no more—to allow local authorities to exclude land or conduct from access rights. If the amendment is proposed as a replacement for section 11, it strikes me as far from satisfactory from the point of view of the owners of the land, the local authority and, dare I say it, those who are seeking to exercise access rights.

In addition, it appears to me that, perversely, amendment 283 gives rise to precisely the same concerns that Scott Barrie expressed about section 11 yesterday and in previous meetings. Arguably, it gives rise to such concerns more than section 11 did and I will expand on that. The amendment would allow a local authority to erect signs or to take other appropriate steps to advise the public about access rights, including advice on how, where and when access rights should not be exercised. It is not clear what the status of that advice would be or what would happen if, for example, someone ignored the advice.

However, if the public has to conform to that advice, what is the difference between what amendment 283 proposes and what Scott Barrie argued yesterday that we proposed in section 11, which was exclusion from exercising the right of responsible access by any other name? Where advice would apply for a period of more than five days, amendment 283 would place a duty on local authorities to take reasonable steps to consult the owner of the land affected by the proposed advice as well as any other persons with an interest in those access rights. They would also have to invite objections and any representations arising therefrom.

The decision whether to proceed to issue the advice would then be for the local authority to make. Unlike section 11 where, as you know, I proposed that there should be a requirement to seek the approval of ministers if the advice was to have effect for 30 days or longer, there is no such provision in amendment 283. If there were a dispute as a result of the erection of a sign, it would be open to the local authority to seek guidance from ministers as to how the dispute might be resolved, after providing them with copies of the consultation responses. Local authorities would be required to have regard to such guidance. That would allow anyone who had been consulted and who was opposed to the proposed advice to turn the simple erection of a sign into a dispute for ministers to resolve.

The committee will have to consider what to do about the issue in the context of what it decided to do with section 11 yesterday. As I said, the approach adopted by the Executive in section 11 was the better approach because ministers would have been involved at the consultation stage before an order was made or, in this case, advice was issued. On previous occasions, Scott Barrie has said that one of the principal arguments against section 11 was that local authorities are under pressure from landowners to make orders to exclude their land from access rights. They might—unfairly, in his view—give in to that pressure and exclude large sections of land for long periods of time, albeit with the safeguards that we sought to introduce. I was not convinced of that, particularly because we had introduced the checks and balances on ministerial order.

The procedure that amendment 283 proposes would be less onerous on a local authority. As I have explained, it would be subject to fewer checks. In my view, local authorities would come under greater pressure to erect advisory signs than they would have been to make an order under section 11. If we accept the argument that local authorities are going to come under pressure, they are liable to come under more pressure as a consequence of the demise of section 11 than would have been the case with the checks and balances that were in section 11. A local authority is now liable to find itself under more pressure than would have been the case previously.

In conclusion, whereas the approach that we set out in section 11 was clear and unambiguous, the approach proposed by amendment 283 is likely to create unnecessary confusion as to whether or not land or conduct is excluded from access rights. What would be the status of a notice on the exercising of access rights on a particular piece of land? Could the advice be ignored? What would happen if it were? I assume that it could be ignored, because the right to enter land could not be suspended simply by erecting an advisory notice. Presumably, the approach is based on the presumption that anyone who ignored advice would not be acting responsibly, and thereby would find themselves outwith access rights. However, there is nothing to say that that would be true in all circumstances. It might be argued that in certain circumstances, ignoring the advice was not irresponsible.

If amendment 283 were agreed to, we would be moving away from our original objective, which was to dispel the confusion that we hear exists and to create a right of responsible access that lays out where the public might reasonably go. A local authority would be required to consult on the proposed advice, but the decision whether to proceed would be for it alone. Ministers would be involved only if the local authority decided to go ahead and a dispute resulted. What would then happen? Would the advice be suspended until the

dispute was resolved, or would it continue to apply?

Amendment 306 provides that the test of the reasonableness of the advice could fall to be determined by a sheriff, but without criteria having been set against which to judge it. That could open up the scenario where different approaches were being taken and different judgments were being arrived at by different sheriffs throughout the country. Perversely, one of the arguments that was used against section 11 was that it would lead to different interpretations of access rights in different parts of the country, depending on the constituent local authority. Amendment 306 would open up the potential for different sheriffs to interpret differently the reasonableness or otherwise of an individual's actions in different parts of their sheriffdoms.

The approach that amendment 283 proposes is problematic, to say the least. Amendment 283 assumes that there is a need to provide local authorities with powers to restrict the exercise of access rights over some land or to exclude certain conduct in some areas. I believe that section 11 outlined the appropriate approach to take, subject to consultation with local authorities, but the committee decided that the powers under section 11 were not required.

If the committee is to be consistent and logical, it cannot agree to amendment 283, because it is poorly thought through and would serve only to create the confusion and uncertainty that the committee sought to dissolve by its decision to delete section 11. It is up to the committee, but in my view it would be acting inconsistently and illogically if it agreed to amendment 283, because that would lead to more inconsistency and create greater confusion without the safeguards, checks and balances that the Executive proposed with section 11.

Stewart Stevenson: I feel that we have gone 10 rounds with Muhammad Ali but, to use his immortal phrase, it felt more like the sting of a bee. I am not prepared to let the minister talk us into submission, but some of his points were well made.

Amendment 276 seeks to ensure that footpaths can be used by our colleague Rhona Brankin and others who are mounted on horses. As long as the minister can assure us that amendments 279 et al have that effect, I will not feel the need to press amendment 276.

12:00

I am rather puzzled by the minister's attempt to link amendment 237 to amendment 197, which—unless I misunderstand it—appears simply to clarify the role of rangers in relation to the exercise of access rights as far as the public and landowners are concerned. I am very unclear about how that relates to amendment 237, in which I seek to permit the local authority

"to maintain or divert any path or route and … assist with the management of such land".

Of course, I might have misheard the minister, who will no doubt take the opportunity to correct me.

In his address—that is the only way that I can describe it—the minister made much of the lack of an appeal and focused on amendment 237 as highlighting one such case. However, unless I have read it incorrectly, section 15(2) does not provide for a right of appeal but instead provides the local authority with an absolute right. Clearly, it is not a matter of principle that a particular provision should come with a right of appeal. The minister no doubt will seek to draw me to another conclusion if he wishes to do so.

Finally, I should mention that amendment 238 has been superseded by Sylvia Jackson's amendment 265, which covers the same area in a rather better way.

Scott Barrie (Dunfermline West) (Lab): I have listened carefully to the minister's comments. He will agree that a compelling reason for removing section 11 from the bill was that local authorities had not reached an overwhelming view that they wished to have such a power. Indeed, that influenced how I voted on that occasion. Amendment 283 seeks to introduce a more flexible approach to replace the very rigid approach outlined in section 11 and resolve the issue of access and guidance.

As Dennis Canavan, Alasdair Morrison and other members have mentioned, although some notices that were erected during last year's foot-and-mouth incident were not legally enforceable, they were equally as effective in keeping people out of the countryside as notices that had some statutory basis. I worded amendment 283 with that view in mind.

In regulating access to the countryside, we must ensure that people have the confidence to know that they are allowed to go into the countryside and that they receive appropriate guidance on the matter. However, we should also be explicit about where and when they should not go. That is why we should give local authorities the power to erect notices indicating that it would not be a good idea to access a particular area or route for a particular reason.

As the minister said, amendment 306 is consequential on amendment 283, and allows a sheriff to make the absolute determination in any dispute. I acknowledge that that might mean that different parts of Scotland would have different

access arrangements. However, given that the minister should make the same determination for one part of Scotland as in another, proposed new subsection (1C) in amendment 283 should ensure uniformity, as it would mean that any disputes would first be referred to ministers for advice.

Phil Gallie (South of Scotland) (Con): I apologise in advance that I will have to leave shortly after making my comments, but I have another appointment starting at 12 o'clock.

I was slightly surprised that the minister suggested that we should abandon amendment 45 before I had the chance to point out to him the benefits that it might bring. The objective of the amendment is shared by other MSPs—including Scott Barrie, who is a member of the committee, and Jim Wallace, who is the Deputy First Minister—who see a problem with leylandii trees. I recognise that, given the extent of the bill's objectives and the way in which the bill has been prepared, amendment 45 may be slightly tenuous, but I feel that we can use the bill to achieve the shared objective of bringing some control to the leylandii tree situation.

I accept totally the context of section 15(2)—albeit that I have some sympathy with amendment 126, which might somewhat enhance the bill—but my argument for amendment 45 is that that subsection is based on how access rights are to be interpreted. Access to land is important but so too is access to light in many circumstances. People could be injured when exercising their access rights because of the circumstances that I will describe with respect to leylandii trees. Also, the lack of access to, or blocking out of, light can cause considerable injury—particularly depression. In some cases, the ultimate effect might be an injury to the eyesight. Injury is built into my proposition, which we should consider in terms of the access rights that are covered in the bill.

Although I recognise that the bill is not an ideal vehicle, I suggest to committee members that, if an opportunity arises somewhere along the line whereby a shared benefit can be achieved, we should not turn our back on it. The legislative programme could be made easier because Scott Barrie's bill, the high hedges (Scotland) bill—to which, incidentally, I have already given my support—could be abandoned, as the need for it would have been removed. I expect that the minister will be slightly surprised at the direction that my reasoning for amendment 45 has taken. Although I intend to move the amendment, I would be happy if he could give an assurance that he will consider the issue with his colleagues and perhaps find a means of introducing an amendment to achieve the same objective at stage 3.

Otherwise, I hope that my colleague Bill Aitken will move amendment 45 on my behalf.

Dennis Canavan: Amendment 61 would place a duty on the local authority to take appropriate action in circumstances where the local authority considers that a fence, wall or other erection is likely to injure a person exercising access rights. Amendment 61 would not entirely remove the local authority's discretion because the local authority would still take the initial decision on whether the fence, wall or other erection was likely to injure a person. Once the local authority had made such a decision, the appropriate course of action would be compulsory.

Amendment 61 would also give more discretion to the local authority in specifying what action it could take against an offending or obstructive landowner, whereas the bill specifies that any such action must be

"calculated to remove the risk of injury".

Take the example of a landowner who erects a high wall or fence and puts barbed wire or spikes along the top of it. If the local authority considers that the barbed wire or spikes are likely to cause injury to a person exercising access rights, the local authority may order the landowner to remove them, because that would remove the risk of injury. However, it is questionable under the bill as it stands whether the local authority also has the right to order the complete removal of the high fence or gate. The purpose of the bill is not simply to remove the risk of injury to people accessing the countryside; its main purpose is to facilitate access. Therefore local authorities should have the statutory duty to enforce the removal of barriers to access.

Amendment 62 would provide that any person who proposes to erect a fence, wall or other structure that might injure a person exercising access rights would be obliged to apply for permission from the local authority in advance of constructing the wall or fence. Under the bill as it stands, the local authority can take action only after the event—after the dangerous fence or gate has been erected. In my experience, there are far too many unnecessary barbed wire fences in the countryside. In many cases landowners have erected those fences in order to impede access rather than simply to contain animals. Perhaps Farmer George can tell us why many farmers prefer barbed wire to ordinary wire.

In commenting on my amendments the minister said that there would be no right of appeal if the local authority refused to give the landowner permission. That is rich coming from the minister, because less than an hour ago he told us, in speaking to another amendment, that there would be the right of judicial review. Presumably the

landowner or farmer who was refused permission to put up a dangerous obstruction and thought that the local authority had acted unreasonably could apply for a judicial review.

I would like the minister to tell us what is the existing law on these matters. Are there any circumstances in which planning permission is required for barbed wire, razor wire, electric fencing or spiked fencing or for jaggy pieces of broken glass to be cemented into the top of a wall? Such fencing can cause terrible injuries, especially to children, and I have seen some such injuries being inflicted in my lifetime. The Parliament has a duty to try to protect children and other people who want to access the countryside. Quite apart from planning legislation, will the minister tell us whether there is any law to prohibit or restrict such fencing? If there is not, I am inclined to press amendment 62, because I do not want to see such fencing being erected in circumstances in which it is unnecessary and dangerous and can cause environmental damage to the countryside.

Bill Aitken: The minister, of course, got his retaliation in first, but I have to concede that there is not all that much difference between us. The issue comes down to an interpretation of the terms "such reasonable action" in the bill and "interfere unnecessarily" in my amendment 126.

Once again, it is important to stress that the countryside has the capacity to present dangers. It is not some sanitised Brigadoon, but a place where people work and seek to earn their living. Therefore, it contains some real dangers and there is a need from time to time to put up such constructions as electric fences to keep bulls restrained and so on.

I will listen carefully to what the minister has to say, particularly in relation to appeals, prior to considering whether to proceed further with my amendment.

12:15

George Lyon: The minister stated quite clearly why Scott Barrie's amendment 283 is a poor substitute for section 11, which we removed from the bill yesterday. Instead of bringing clarity and certainty to the issue of access, the amendment would lead to confusion about the status of local authority notices. I recommend that, at stage 3, the minister reinsert section 11 rather than going down the road that Scott Barrie is suggesting.

Dennis Canavan criticised the use of barbed and electric wire and his amendments 61 and 62 seek to enable local authorities to instruct the landowner to remove such wire if it is likely to injure a person exercising access rights. We have to think about the purpose of fences. Fundamentally, they are meant to keep cattle and sheep in the field.

As someone who has herded cattle and sheep for 20 years of his life, I know that one of the problems that farmers face with fencing relates to cattle rubbing against the top wires until, eventually, the fence breaks and the cattle can cross into another field or on to the road. The problem is especially bad in the spring, due to the sexual urges of the animals. That is why we restrict bulls and rams to certain fields.

A fence with a plain top wire will be knocked down in a short time. Farmers choose to use barbed wire because they want to ensure that the fence will last a reasonable length of time.

Dennis Canavan: There seems to be more barbed wire in this country than in many that I have visited in Europe or America. Why do we have such an abundance of barbed wire? I have seen barbed wire surrounding crop fields rather than grazing fields.

George Lyon: At some stage, those crop fields will be used as grazing fields as the farmers rotate their fields.

I cannot answer for other countries; all I can say is that one of the great problems here is the need to constrain the animals. Perhaps that is to do with the breeds of animals that we have. We now breed continental animals that tend to jump higher than the native breeds used to. That is certainly one of the problems.

I would like the minister to clarify the situation with regard to section 15(2). What action will the local authority take if it determines that a fence is dangerous or a risk to the public? I assume that it would create a stile to allow walkers to get over the fence. I take it that the intention is not for the local authority to come in, strip the fence down and remove the barbed or electric wire. Perhaps the minister will clarify that.

The Convener: Does the minister want to do that now or later?

Allan Wilson: I will take the amendments in order—that way I will keep myself right.

George Lyon: I would like to make a further point. It is about amendment 266.

The Convener: Please make it now.

George Lyon: Amendment 266 would give local authorities wide-ranging powers to carry out a wide range of actions. The minister pointed out that landowners would be keen for local authorities to be given the responsibility to carry out such work on their behalf. I cannot accept amendment 266 as it is worded, as it makes no mention of the consent of the landowner. Measures would be carried out without their consent, which makes the provisions impracticable.

Mr Hamilton: I have a few brief points and questions for the minister. I will start in descending order of importance. I support amendment 61 in Dennis Canavan's name, but I cannot support his amendment 62. I ask Dennis Canavan to accept the difference between amendment 61 and his amendments 58, 59 and 60, which would insert the word "shall" in place of the word "may".

We said that it was wrong to impose an obligation on local authorities to act simply because of uncertainty. However, in a situation in which a local authority has identified a risk of injury, it is unthinkable for the authority not to act on that information. If it is unthinkable for a local authority not to act, there should not be a problem in writing into the bill a provision for that obligation. That is common sense. I urge members to support amendment 61, which is entirely sensible. Its provisions are quite different from those that we debated in respect of obligations on local authorities.

My second point relates to Scott Barrie's amendment 306. The question was raised whether it was possible to require sheriffs to declare whether advice was reasonable. We do not need to tell sheriffs to do that and we do not have to include such a provision in the bill. Sheriffs have the powers to intervene in situations that they find unreasonable.

My third point relates to Ross Finnie's amendment 194. I heard the minister say that it would be absurd for a local authority to install a facility and not to maintain it. However, the bill currently sets out that the local authority "may install" such facilities, which means that they also "may" maintain it. That leaves the possibility of a local authority installing a facility without being obliged to maintain it over a longer period. Perhaps the minister and his team will consider redrafting section 15(4) to read: "The local authority may install, and must maintain". That would clarify the point.

My final point relates to Bill Aitken's amendment 126. I am persuaded completely by the minister's argument that it is unnecessary. I agree that the provisions are covered by reasonable action, although the minister may yet provide the clarification that Mr Aitken seeks. I see no need for Mr Aitken to press amendment 126.

Mr Jamie McGrigor (Highlands and Islands) (Con): I refer to Dennis Canavan's point about the barbed wire. The main reason why farmers need barbed wire has to do with cattle. George Lyon made that point, but I want to describe the reasons more fully. If cows are in a field that has little grass and there is grass in the field on the other side of the fence, they will put their heads down and push the fence with their necks. If the fence does not include a line of barbed wire, the cows will flatten the fence.

If ramblers require to cross the fence, a metre length of plastic pipe, cut with a slit, can be put on top of the barbed wire so that ramblers can cross the fence without damage to any part of their anatomy.

Dennis Canavan: I thank Jamie McGrigor for that tip.

The Convener: Dennis Canavan is pleased to have that clarification.

Scott Barrie: I listened to what the minister said about amendment 283, but I hope that he accepts that the local authorities are unclear about whether they wish to have the powers that they were to be granted under section 11. As I have made clear, that is one reason why I voted to remove those powers. Is there a mechanism that will allow us to find a definitive local authority view—whether from the Convention of Scottish Local Authorities, as the overarching body, or from all the individual local authorities—about which powers the local authorities require to make the access legislation work most effectively? Some clarification on that issue would help us to determine whether we will need to consider further amendments at stage 3.

The Convener: Before I allow the minister to respond, I ask Sylvia Jackson whether she wants to make some points now. She will also have the opportunity to wind up.

Dr Jackson: I would like to obtain a response from the minister on a couple of issues. In lodging amendment 263, I was trying to be helpful, but I take on board what he said.

I have some questions in relation to amendment 264. The first concerns the use of the word "paths" instead of "footpaths"—the word "paths" gives a wider interpretation and is less confusing for horse riders, for example. The bill uses the term "core paths". Why is the word "footpaths" used when it would be easy to substitute the word "paths"? However, I appreciate the point about the amount of work that local authorities would have to do if the measure concerned the improvement and maintenance of all paths.

On amendment 265, the reason for inserting reference to stiles and gates follows on from what Dennis Canavan said. If stiles and gates have wire on top of them, for example, they pose a risk of injury to walkers. The purpose of amendment 265 is to ensure that stiles and gates are covered by the measure, which is important. I welcome what the minister said about not wanting to limit the scope of the measure by listing only certain erections—if that is the appropriate term. However, amendment 265 relates specifically to walkers and the dangers that can be caused to them.

The minister's argument about not being too limiting also applies to amendment 266. I accept

that argument, provided that he assures us that notices, fences and bridges will be covered by section 15(4). I would like to give further consideration to amendment 266 in the light of what the minister said. I might decide to lodge a new amendment.

Amendment 274 seeks to separate the facilitation of access from the provision of facilities. As I understand it, the current situation relating to rights of way takes that approach, so I wonder why we are not being consistent in relation to consent. If the minister can tell me that I am wrong, that is okay, but I would like to hear his view.

Amendment 267 concerns the landscape. I invite the minister to elaborate on what powers exist to prevent inappropriate buildings from being built in scenic areas.

The Convener: I, too, am interested in what the minister has to say on amendment 264. In our stage 1 report, we made it clear that we did not want the right of access to apply just to walking. We were concerned about a range of activities, such as cycling and horse riding. The minister's reply on that will be important.

I want to make a couple of points on Scott Barrie's amendment 283. I reiterate what Scott said: we have been unable to get from COSLA a local authority view on the powers that are sought. COSLA's opinion would not be overriding, but we have struggled to get it. The committee made it clear in its stage 1 report that we did not want local authorities to have far-reaching powers that would restrict access. That is why some committee members were concerned about the powers in section 11.

As I said yesterday, some members feel that many of the issues that we have been discussing should be dealt with in the access code. We have not discussed the status of the access code; it may have a status unlike that of any similar guidance. However, the code will be agreed by the Parliament, so it will have to have relatively high status. Some issues—such as those mentioned yesterday by George Lyon—should be dealt with in the code and should be agreed by Parliament. The code would provide proper guidance for the bill. You may want to comment on some of those issues, minister.

12:30

Allan Wilson: I will try to deal with the points in order, but members should feel free to come back to me. On amendment 237, Stewart Stevenson asked why I mentioned rangers. Amendment 237 is framed to allow local authorities to take such steps as appear to them appropriate to

"advise on or assist with the management of such land".

My point was that amendment 197, which seeks to amend section 23(2), was introduced to clarify the role of rangers. With the amendment, section 23(2)(a) would talk about advising and assisting the "owner of the land and other members of the public as to any matter relating to the exercise of access rights". That provision addresses Mr Stevenson's concern. I hope that he accepts that.

Mr Stevenson casts aspersions on our failure to provide for the right of appeal. I assure him that section 15(3), which refers to section 14(4), provides for the requisite appeal. Section 14(4) says:

"An owner on whom a notice has been so served may, by summary application … appeal against it."

So, he is wrong.

Stewart Stevenson: Mea culpa.

Allan Wilson: I think that Mr Stevenson accepts that the thrust of what we are doing is in accord with what he proposed.

Scott Barrie was next but I will come back to him in the context of the convener's remarks, which were important.

Phil Gallie was a bit unfair. I did not oppose his amendment before he had spoken to it; I simply questioned why it was there in the first place. Having heard his explanation, I am none the wiser.

The Convener: I think that we would agree with you there.

Allan Wilson: It seemed to be something to do with cutting leylandii hedges. All of us have met constituents with problems with those trees or hedges. I understand that the honourable member Scott Barrie is proposing a bill to address the issue. I submit—I hope that the committee will agree—that that, rather than this bill, would be the appropriate vehicle for such measures. We will consider Phil Gallie's proposal, perhaps in conjunction with Scott Barrie, but my initial reaction is that there is no way in which we could do what was described.

Dennis Canavan was equally unfair in casting aspersions on our intentions. I will tell him a story in response to his question about whether we have a clear intent. I will take him to Hunterston in my constituency, where a long-running dispute over access involves an owner who put up not barbed wire but razor wire, with the express purpose of denying access. Section 14 gives local authorities the powers to intervene and to uphold access rights. We propose to change the situation in favour of those who exercise access rights responsibly.

As for the technicalities of Dennis Canavan's proposal, which relate to Duncan Hamilton's point about the difference between the words "shall" and

"may", all that I am saying that differs from what Dennis Canavan says is that action will not be appropriate in every circumstance. I am listening to him and we may return to the matter at stage 3. A local authority will not have to resolve every dispute by written notice. It is possible to resolve a dispute by mature discussion and conciliation.

When local authorities require to exercise their powers, they will have the power to step in. That gives them local discretion. It would be inappropriate for us to sit here and determine what should happen in every eventuality. It is more appropriate for local authorities to have that local discretion.

That is my argument, but I will reconsider Dennis Canavan's proposal, because we are talking about a local authority identifying a possible threat to the safety of people who seek to exercise their access rights. That may imply that, to protect the safety of those people, a local authority should, as opposed to may, do something. I take the point and we will think that through. However, we do not expect local authorities to take action in every circumstance. They should address matters by discussion, mature debate and conciliation initially.

Dennis Canavan: Will the minister please answer my question about amendment 62? I asked whether any planning or other legislation prohibits or restricts the erection of barbed wire fences, razor wire fences, electric fences or spiked fences and the placing of jaggy pieces of broken glass in cement on walls.

Allan Wilson: That is what I meant by my Hunterston example. We are addressing the absence of local authority powers to act to prevent the erection of razor wire with the express purpose of denying access. I have been told about regulations on building walls and other matters, which I will check out, because I am not the minister with responsibility for planning. Section 14(2) is intended to give local authorities powers to prevent the circumstances to which Dennis Canavan referred.

The points that George Lyon and Bill Aitken made were similar and related to the reasonableness or otherwise of what is proposed. Reasonableness will govern action under section 15(2). As I said to Bill Aitken, I do not think that there is any difference in our approaches. Section 15(2) specifically includes the word "reasonable". If a problem arises with a wall or a fence that could endanger those who wish to exercise their access rights, local authorities will be able to take action under section 15(4)—they will be able to install stiles, for example—where doing so would be considered reasonable.

That brings me to the points raised by Scott Barrie, the convener and Sylvia Jackson. I advise members that, after some trials and tribulations, we have recently secured a meeting with COSLA. At that meeting, we will go over precisely some of the issues that members raised, in order to elicit from COSLA whether a common local authority perspective exists. We also want to gather information about the process, in order to determine what—if anything—we require to do following the deletion of section 11.

I said yesterday, and I reiterate today, that, even if we do nothing else, as a minimum we require to make provision for the suspension of access rights, so that village fêtes, fairs and agricultural shows can take place. Let me place that in the urban mindset by giving an analogy: the hogmanay celebrations in Glasgow and Edinburgh. Those who organise those celebrations do not erect notices that say "Do not pass here" or "Pass there". The local authorities issue orders to exclude access to the city centre for the duration of the celebrations and have in place the appropriate checks and balances that I envisage being attached to any exclusion of access in rural areas. That is a direct analogy of what I propose for rural dwellers, although I have no doubt that many rural dwellers take advantage of the cities' celebrations. We do not propose to deal with the matter in the way in which Scott Barrie proposes to deal with it—that is, by order.

When Scott Barrie spoke to amendment 283, he talked about the foot-and-mouth national emergency. I submit that not all the suspensions of access rights at that time were defensible and I accept Scott Barrie's basic premise. Nonetheless, that was a national emergency and does not easily translate into the circumstances we envisaged for which an order under section 11 would have been introduced. Amendment 283 would allow local authorities to put up notices to advise the public against entering land in respect of which access rights are exercisable. That is the same power to take action about which Scott Barrie complained in relation to foot-and-mouth. Amendment 283 would give local authorities powers to take such action without the constraints or time limits that we imposed during the foot-and-mouth outbreak. Had such powers been in existence at that time, access rights would have been suspended for the duration of the outbreak and beyond—local authorities would have been the sole arbiter when deciding to which land notices should apply, when to put up notices and when to take them down. I am sure that that is not Scott Barrie's intention, but that would be the effect of amendment 283.

In response to the point made by Scott Barrie and the convener, I repeat that we envisage holding talks with COSLA in the immediate future, in order to achieve a common local authority opinion—if one is possible—on the powers that

they currently enjoy and on those that they seek in relation to the responsible management of access rights.

I entirely accept what Sylvia Jackson said about paths and footpaths, but the Executive's amendment 279 widens the provisions of section 15(1)(b) to all access land, not just paths. I made the same point to Stewart Stevenson and Duncan Hamilton.

Inappropriate buildings are a matter for planning. As I said earlier, local authorities have duties in respect of landscape. I think that that covers everything.

The Convener: I have a point of clarification on Sylvia Jackson's amendment 264. You say that amendment 279 widens access to all land. What is your interpretation of "footpath"?

12:45

Allan Wilson: Our proposal includes the conduct by which someone might exercise their access rights, including cyclists and riders. It includes everyone in all circumstances. Your question is about what "footpath" applies to. Our argument is that amendment 279 widens and extends the proposal to include any access and all access land including paths. Does that answer your question?

The Convener: Yes.

Dr Jackson: From what the minister says, I think that he feels that amendment 279 deals with the argument about "footpaths" versus "paths". Moreover, I take on board his argument that the requirement in amendment 266 for local authorities to upkeep all paths would be too onerous.

However, there is a safety issue, as Dennis Canavan said. I do not know how the minister is thinking of addressing the matter, which seems to be a big issue for walkers. That was why, with amendment 265, I was keen that section 15(2) should cover stiles and gates. Will the minister say how he will deal with the safety issue? He did not really answer my question on separating out facilitating access and facilities. What will happen in respect of the existing legal position on rights of way? I gather that amendment 61 merely follows what already exists.

Allan Wilson: Section 15(2) refers to a situation

"Where the local authority consider that a fence, wall or other erection is so constructed or adapted…as to be likely to injure a person exercising access rights".

That has the effect of including amendment 265.

Dr Jackson: The other matter is the safety aspect.

Allan Wilson: As I have explained to Bill Aitken, George Lyon and Sylvia Jackson, we must strike a balance between the interests of the land managers and the walkers, but the safety of the walker is paramount and protected by the provisions that we are making.

As I said to Dennis Canavan, I will consider the "shall" versus "will" argument. However, local authorities should have discretion to resolve disputes without recourse to written order. One interpretation of amendment 61 is that it would force local authorities to use a written order, although I accept that that is not the only interpretation.

Amendment 263, by agreement, withdrawn.

The Convener: If amendment 264 is agreed to, amendments 279 and 276 will be pre-empted.

Amendment 264 not moved.

The Convener: If amendment 279 is agreed to, I will not call amendment 276.

Amendment 279 moved—[Allan Wilson]—and agreed to.

Amendment 280 moved—[Allan Wilson]—and agreed to.

Amendment 237 moved—[Stewart Stevenson].

The Convener: The question is, that amendment 237 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)
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)

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

Amendment 237 disagreed to.

Amendments 283, 265 and 238 not moved.

The Convener: Amendment 45, in the name of Phil Gallie, has been debated with amendment 263. Phil Gallie is not here. Does anyone wish to move the amendment?

Bill Aitken: I have the authorisation of Mr Gallie not to move the amendment.

Amendment 45 not moved.

Amendment 61 moved—[Dennis Canavan].

The Convener: The question is, that amendment 61 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)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

ABSTENTIONS

Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)

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

Amendment 61 disagreed to.

Amendment 62 moved—[Dennis Canavan].

The Convener: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

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)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 0, Against 7, Abstentions 0.

Amendment 62 disagreed to.

The Convener: Amendment 126, in the name of Bill Aitken, has been debated with amendment 263.

Bill Aitken: On the basis of ministerial assurances, I shall not move the amendment.

Amendment 126 not moved.

Amendment 194 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 266, in the name of Dr Sylvia Jackson, has been debated with amendment 263.

Dr Jackson: It was agreed that we will have to reconsider the issues that amendment 266 addresses. Therefore, I shall not move the amendment.

Amendment 266 not moved.

Amendments 267 and 274 not moved.

Section 15, as amended, agreed to.

The Convener: That brings us to the close of today's business on the Land Reform (Scotland) Bill. I thank the minister and his team for this morning's work. I inform committee members that there will be no stage 2 meeting next week, as we will be joining the Justice 1 Committee in scrutinising the next section of the budget. Thereafter, the committee will meet twice weekly. We are making slow progress: we have only got to section 15, although we expected to finish consideration of part 1 today. Unfortunately, we have not done that. Members should let the clerks know if they have any difficulties with the meeting dates.

Meeting closed at 12:55.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178