JUSTICE 2 COMMITTEE

Tuesday 8 October 2002
(*Afternoon*)

Session 1

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 8 October 2002

JUSTICE 2 COMMITTEE
† 34th 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)
Dr Sylvia Jackson (Stirling) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

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

The Chamber

† 33rd Meeting 2002, Session 1—joint meeting with Justice 1 Committee.

Scottish Parliament

Justice 2 Committee

Tuesday 8 October 2002

(*Afternoon*)

[THE CONVENER *opened the meeting at 12:07*]

Land Reform (Scotland) Bill: Stage 2

The Convener (Pauline McNeill): Good afternoon, everyone. Welcome to the 34th meeting this year of the Justice 2 Committee. I ask members to do the usual and switch off anything that might make a noise or disrupt the meeting.

Item 1 is day 7 of our stage 2 consideration of the Land Reform (Scotland) Bill. Members should have the marshalled list in front of them. Like the rest of the committee, I am pretty keen to finish part 1 of the bill by the end of tomorrow. The suggested timings that have been given to members are so that they can follow what the chair is doing. I will try to draw debates to a close at scheduled times so that we know roughly where we can get to. I hope that business will go a wee bit faster that way.

I welcome Allan Wilson and the rest of his team.

Section 16—Acquisition by local authority of land to enable or facilitate exercise of access rights

The Convener: Amendment 127 is grouped with amendment 128. I ask Jamie McGrigor to speak to both amendments and to move amendment 127.

Mr Jamie McGrigor (Highlands and Islands) (Con): The effect of amendment 128 would be to ensure that a local authority would have to consider the public interest before exercising its powers of acquisition under section 16. The reason is that article 1 of protocol 1 of the European convention on human rights states:

"No one shall be deprived of his possessions except in the public interest".

As drafted, section 16 makes no reference to the public interest. The inclusion of the phrase that amendment 128 would insert is necessary to ensure compliance with ECHR provisions.

Amendment 127 would leave out "or expedient". I consider that the word "necessary" is quite enough. The word "expedient" is unnecessary in section 16(1).

I move amendment 127.

Bill Aitken (Glasgow) (Con): From his experience in local government, the minister will be aware of the ways in which land can be acquired in the public interest through compulsory purchase. When any local authority or the Scottish Executive seeks to purchase property in the public interest, it must do so for the public good. As a result, amendment 128 is required because it is not clear that the public good would be considered under section 16. I share Jamie McGrigor's view that the section is not ECHR compliant and could cause considerable difficulties if it were tested in the European Court of Human Rights.

Stewart Stevenson (Banff and Buchan) (SNP): Amendments 127 and 128 are based on a misapprehension. People already have a right of access to land under common law. Even if a local authority were to exercise its authority under section 16, that would be an issue only if it deprived a landowner of something. However, landowners are being deprived of nothing whatever. Other sections of the bill allow people to manage land.

As far as section 16 is concerned, acquiring land "by agreement" is obviously not an issue. As for acquiring land "compulsorily" and

"with the consent of Ministers",

it is unlikely that ministers will grant such consent if it deprives people of the ability to manage their land. Agreement to amendments 127 and 128 would only open the door to more areas of litigation or to situations in which local authorities would find it increasingly difficult to exercise their duties under the bill. I will not support the amendments.

The Deputy Minister for Environment and Rural Development (Allan Wilson): On amendment 127, section 16 as drafted will allow a local authority to acquire land only where it is

"necessary or expedient for the purpose of enabling or facilitating the exercise of access rights".

The use of the word "expedient" in section 16 means that a local authority must consider whether in all circumstances it is appropriate to acquire the land in question. It is appropriate for a local authority to have that discretion because the bill emphasises that there should be local management of access. As a result, to limit the use of powers of acquisition to where it could be shown that such acquisition is "necessary" to enable or facilitate

"the exercise of access rights"

would be too strict a test.

Moreover, land may be acquired under section 16 only where the relevant landowner agrees, or

with the consent of ministers. Given those checks and balances, we consider that it would be unduly restrictive to limit the use of powers of acquisition of land to instances where it can be shown to be "necessary" rather than "expedient" to enable or facilitate

"the exercise of access rights".

Amendment 128 would qualify further the criteria under which a local authority may exercise the powers in section 16. As I said, section 16 already provides that a local authority can acquire land only where that is

"necessary or expedient for the purpose or enabling or facilitating the exercise of access rights".

I believe that the test is sufficiently onerous and that there is no need therefore to qualify it further by making specific reference to the public interest, even if it were possible to define the public interest, which could be difficult.

In determining whether it is appropriate to exercise the powers under section 16, local authorities will be required to weigh different interests. They will have to weigh the interests of the public—including those of visitors to the area—landowners and recreational users and conservation and natural heritage interests.

We do not want to be overly prescriptive about the considerations that would be relevant in determining whether acquisition is

"necessary or expedient for the purposes of enabling or facilitating"

the access rights that we are creating. That is why I ask Jamie McGrigor to seek to withdraw amendment 127 and not to press amendment 128. I ask members to oppose the amendments if they are pressed.

12:15

Mr McGrigor: I accept the minister's points, but he did not mention ECHR, which is the point of amendment 128. I repeat that the first protocol of the European convention on human rights states that

"No one should be deprived of his possessions except in the public interest".

There is no mention of public interest in section 16. I think that there should be.

Allan Wilson: I will respond briefly. I do not want to delay matters unnecessarily, but I should have said that the entire bill has been checked for compliance with the requirements of the ECHR. That means that section 16 has been checked for compliance.

The Convener: The question is, that amendment 127 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)
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 5, Abstentions 0.

Amendment 127 disagreed to.

Amendment 128 moved—[Mr Jamie McGrigor].

The Convener: The question is, that amendment 128 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)
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 5, Abstentions 0.

Amendment 128 disagreed to.

Amendment 37 moved—[Scott Barrie]—and agreed to.

Section 16, as amended, agreed to.

After section 16

The Convener: Amendment 391, in the name of Scott Barrie, is grouped with amendment 272.

Scott Barrie (Dunfermline West) (Lab): Amendment 391 seeks to establish a Scottish path record. I understand that a number of local authorities are collecting information on paths and that that information is being collated by Scottish Natural Heritage. It is important for that information to be made available so that people know the locations of core paths in Scotland. The record could form a useful resource that would facilitate public access the countryside.

Sylvia Jackson's amendment 272 makes a sensible suggestion for the Ordinance Survey to collate such routes so that paths can be included in future maps. I am aware that Ordinance Survey is reserved, so I am not entirely clear about the legality of placing a duty on it. Perhaps the minister will advise us on that.

I move amendment 391.

The Convener: Sylvia Jackson, who is not here, was to speak to amendment 272. Will anyone else speak to amendment 272 in her absence?

Scott Barrie: It would be interesting to hear whether the minister thinks amendment 272 is competent.

Stewart Stevenson: In Sylvia Jackson's absence, I am prepared to move amendment 272, subject to what we hear.

The Convener: Amendment 272 does not need to be moved. Do you want to speak to it?

Stewart Stevenson: When we come to it.

The Convener: I take it that no other member wants to speak, so I invite the minister to do so.

Allan Wilson: I am sorry, convener; I am just getting to grips with my changed running order.

Amendment 391 proposes the establishment of a Scottish path record by SNH, with information provided by local authorities. Members will know that SNH, in conjunction with local authorities, is establishing such a record. That record will be used by local authorities as an important tool to assist them in planning the system of core paths that the bill requires. Therefore, I am not convinced that there is a requirement to go down amendment 391's route—excuse the pun.

In answer to Scott Barrie's question, there will be a duty on local authorities to compile information on core paths. However, we have not met Scott to consider what the terminology "recognised route" constitutes in that context. As members can see, amendment 391 refers to showing the line of

"all paths, tracks, rights of way and other routes"

without having the qualification of "recognised route". I do not believe that it is necessary or desirable to seek to place statutory duties on SNH and local authorities for such a comprehensive record. Obviously, tracks will vary; all sorts of tracks exist in the countryside and will be of differing duration depending on who or what uses them.

The Scottish path record's development would depend a lot on the continuing needs of local authorities. That is as it should be—those needs will evolve as local authorities develop their work on access and the path record must adapt to meet those changing needs. I am therefore not attracted by the idea of a record for a record's sake. It would be an enormous task to create a Scottish path record such as amendment 391 proposes. The bill requires local authorities to list all the paths comprising their systems of core paths and there is clear merit in doing that because core paths are an essential element of provision of access throughout Scotland.

I notice that Bill Aitken is looking at me. The committee rejected an amendment from him that would have required SNH to compile a list of rights of way. That was a sensible decision by the committee; it was the correct approach. Amendment 391 would go further than Bill Aitken's amendment in its requirement to list all paths, tracks, routes and so on, the purpose of which is not clear. We have always said that the exercise of access rights should not be restricted to paths and tracks, although I suspect that some members, such as Bill Aitken, would favour such an approach.

The bill provides for access to all land except that which is specifically excluded. Therefore, what would be gained from requiring local authorities and SNH to list every path and sheep track, which might be here today and gone tomorrow, irrespective of how distinct they are on the ground or of their legal status? Obviously the compilation of such a record would be extremely time consuming and would demand considerable resources. Such a record would be worth while only if it assisted local authorities in their future role of providing for and managing access. There is already statutory provision for that in relation to the core path network.

I see merit in a Scottish path record as an aid to local authorities in determining the extent of the paths and tracks that currently exist, but not as an end in itself. As I said, work is under way on that record on a non-statutory basis. It is probably more appropriate that we have the SNH record to advise and inform local authorities rather than impose a statutory duty on them to compile a record of every path, track or route, notwithstanding the difficulty of distinguishing what each of those is under the bill.

Scott Barrie asked me to respond to amendment 272. That amendment would require local authorities, in adopting the core paths plan, to give public notice of confirmation and to compile lists of core paths. The list, plan and maps to which section 18 refers are to be made available for public inspection and copies are to be made available for sale at a reasonable price. Copies are also to be provided to ministers.

Amendment 272 would place an extra requirement on local authorities to send a copy of each document to the Ordnance Survey and, on request, to other publishers of maps of their area. I am reliably informed that it is legitimate for us to impose such a requirement on a reserved institution. It is fair to say that there is no question of competence.

However, we do not support the amendment. The information is in the public domain, so the

Ordnance Survey and the other bodies that are specified in amendment 272 would be able to get copies of the documents free of charge. We do not consider the amendment to be necessary because the information is already in the public domain and the Ordnance Survey will be able to access it in the same way as everyone else. Although I do not believe that there is any question about competence, the amendment is not necessary.

The Convener: If we clear away the questions of duty and resources—which I know is an important issue for the Executive—what is the intention behind the core path network? If we want to give people the confidence to access the countryside, one way to do that would be to ensure that there is a path network and that people know where to walk. When they pick up a map they will be able to see where the paths are. Do you agree that that is the general intention of the core paths?

Allan Wilson: The way to give people confidence about exercising their access rights is to create a new right of responsible access, which is what we are in the process of doing. That right might not necessarily be confined to pathways. However, it will give people increasing confidence in their right to roam responsibly.

I accept the basic premise of what the convener says; that having ready access to a core path network in one's local authority area, or any other local authority area, would be a useful adjunct to the fundamental right that we are creating. The convener is right to say that that would give people greater confidence, but it might also have the effect that Bill Aitken seeks by increasingly restricting or confining people to the core network—I do not know about that. Pauline McNeill's point that that would give people more confidence is fair, but that is why we are requiring SNH to draw up the Scottish plan, and why we are placing a statutory duty on local authorities to have a core paths plan.

On amendment 391, it would be quite a step to impose a statutory requirement on local authorities to list every sheep track in their area. I do not think that that is necessary to give people confidence to go out there.

The Convener: I want to press you on that point. I agree, as should the committee, that the core path network is not the key way to access the countryside; we were clear about that. We believe that there should be general access to the countryside, but the core path network has its place.

How does the Executive propose to ensure that paths and tracks are on the maps that people use for accessing land as part of the tourism industry? I take the minister's point that the Ordnance Survey is a reserved body, but how does the Executive propose to ensure that there is consistency and that people who want to access the path network can pick up a map and know what is there?

12:30

Allan Wilson: We will come later to the sections on core paths plans. I imagine and expect that most core paths plans will be accompanied by maps that display clearly the routes that the core path network would follow. We have discussed the matter with Ordnance Survey and it is relaxed about our providing guidance to local authorities. Ordnance Survey does not necessarily want us to provide it or local authorities with the detailed path networks. We will have a Scottish paths plan. Local authorities will have a core path network that will, in most if not all instances, incorporate the maps and guidance that Scott Barrie seeks.

We will come later to the planning system and its compatibility with the core path network, to which another amendment relates. The planning legislation will require to be renewed and adapted to take account of the core path network. There are plenty of safeguards and provisions in the bill beyond what is absolutely necessary to ensure that people can exercise their access rights and know what the core path network constitutes. Listing every sheep track in a local authority area is a bit excessive.

George Lyon (Argyll and Bute) (LD): I have two points to make in opposing amendment 391. First, given the huge width of the duty, the amendment asks local authorities to perform an impossible task. Anybody who has ever walked over, or driven round, a hill will know that there are literally hundreds of different routes that could be designated, whether they are sheep tracks, cattle tracks, four-wheel drive tracks, bike tracks or tractor tracks. Local authorities would find it impossible to do what the amendment asks them to do.

Secondly, we keep missing the point of what access rights are about. The creation of responsible access rights has nothing to do with paths; it is to do with giving people access at any time to any piece of land, with the proviso that no crop is growing on the land. That is about it. The need for paths is a bit of a red herring—people can walk through any gate into any field on any bit of land without needing to look for a path to take them there.

We are giving people the right to take access anywhere. That access is not linked to paths. Perhaps we are getting too hung up on the paths issue and, as a result, amendment 391 is trying to go way too far. The amendment would set local

authorities an impossible task. I do not think that it is relevant to the general access rights that we are creating.

Scott Barrie: I listened carefully to what the minister said and I accept that amendment 391 perhaps goes slightly further than is strictly necessary. The intention behind the amendment, which the minister accepts, was to enable people to know where to go and to gain access with confidence. However, I take George Lyon's point that people should not access the countryside only by paths. If the information will be available and people can get it in another way, that is as far as we need to go, as the minister indicated. Given that, I seek to withdraw amendment 391.

Amendment 391, by agreement, withdrawn.

Section 17—Core paths plan

The Convener: Amendment 249 is grouped with amendment 268. Amendments 249 and 268 are alternatives; that is, if amendment 249 is agreed to, amendment 268 will become an amendment to leave out "3" and insert "5".

Allan Wilson: Section 17 requires local authorities to draw up core paths plans not later than two years after section 17 comes into force. The Convention of Scottish Local Authorities has argued that that is too short a time for some local authorities, in particular those that cover large areas of land. We have considered that representation. As we have just discussed, core paths will be a vital element in the success of the new access arrangements that we are creating by virtue of the bill. Work has started in a number of forward-thinking local authorities to plan for the core paths. I accept that core paths are not the be-all and end-all of access rights, but local authorities should give priority to their development.

In that context, I am not convinced that the five-year period that is being sought is necessary. However, we are willing to extend the time that is allowed for drawing up core paths plans to three years, on the clear understanding that that is a maximum period and not a target. We want to see progress within that period. As I said, a number of forward-thinking local authorities are making progress. On the basis that we are seeking to change the period to three years, I ask the committee not to support Sylvia Jackson's amendment 268, which seeks to make the period five years, and to support our amendment 249.

I move amendment 249.

The Convener: Sylvia Jackson is not here. Does anyone else wish to speak to amendment 268? If not, does the minister wish to wind up?

Allan Wilson: No.

Amendment 249 agreed to.

Amendment 268 not moved.

The Convener: Amendment 277 is grouped with amendments 284, 269, 390, 270, 271, 278, 392 and 393.

Stewart Stevenson: Amendment 277, together with its sister amendment 278, is straightforward. It attempts to provide clarification and to ensure that we recognise the importance of water in providing access. It is clear that the word "land" in law includes water, but it would be useful to ensure that we provide water routes that are clear of obstructions and that are managed in a similar way to core paths. Indeed, paths may from time to time be interrupted by water, such as fords or other forms of water. Amendments 277 and 278 make it clear that water is part of the land to which we wish to give access, and over, through or under which paths pass.

I move amendment 277.

Allan Wilson: This is a fairly substantive group of amendments, so I ask members to bear with me while I work my way through them.

At a previous meeting, Stewart Stevenson asked whether the core paths plan would be required to comprise all the paths in a local authority area that fall within sections 17(2)(a) and 17(2)(b). As I explained then, the core paths plan need include only those paths that the local authority considers to be sufficient for the purpose of giving the public reasonable access throughout the area covered by the plan. As we have just discussed, the core paths plan need not include all rights of way and other paths referred to in sections 17(2)(a) and 17(2)(b) if there is good reason not to include them in the system of core paths. For example, the right of way may have been long out of use.

Consideration of that question alerted us to the fact that the bill could be interpreted to mean that paths that fall within sections 17(2)(a) and 17(2)(b), although not included in a core paths plan, could still be considered core paths. Amendment 284, in the name of Mr Finnie, seeks to make it clear that only those paths that are identified in the core paths plan will form the system of core paths. In other words, the system of core paths will be defined by the core paths plan.

I turn to Sylvia Jackson's amendments 269, 270 and 271. The bill places a duty on local authorities to draw up core paths plans within the time specified—we have just agreed that that will be three years. The core paths plan in each local authority area must then be sufficient to provide reasonable access for all those who wish to exercise access rights

Section 17(2) allows for three classes of paths to be included as core paths. Those are rights of way; paths established under other legislation, predominantly the Countryside (Scotland) Act 1967; and paths delineated under the bill, either under section 20 by agreement with the landowner, or by order under section 21, which we will discuss later. Our intention is to issue guidance to local authorities to assist them in drawing up their core paths plans and in deciding which paths should be included. That guidance will, of course, be subject to Parliament's veto.

Amendments 270 and 271 seek to widen the classes of paths that might be included as part of the system of core paths. I hasten to add that there is no reason why the paths described in those amendments should not be delineated by a local authority or by order under section 21. That would be the appropriate route for a local authority to take.

Amendment 271 refers to an agreement between a landowner and a local authority about the inclusion of a particular path as a core path. That is precisely what is provided for under section 20. I am therefore not clear what advantage would be gained by providing the alternative procedure that would be introduced by amendment 271. Section 20 already provides that authority.

Given the fact that amendment 271 refers to correspondence, perhaps Sylvia Jackson was looking for a less formal and more straightforward agreement. However, if correspondence were to form the basis of a legal agreement, it would need to be legally watertight, so I am not sure how that would differ from an agreement that was drawn up under section 20. I envisage that the procedure would be fairly straightforward, because the local authority could use a simple standard form of agreement that would meet the majority of situations. As it is currently constituted, section 20 would not require any unnecessary bureaucracy. I do not see a need for amendment 271.

Similar arguments apply to amendment 270. I should add that this is where things might get quite complicated. Although some paths and tracks clearly exist on the ground and are there for all to see, they do not exist legally. George Lyon has mentioned some such paths. Although they are not rights of way and have not been created under any statute, they clearly exist. I accept that many of those paths should not be incorporated as core paths. However, they require to have some status or legal identity, which could be achieved by delineating them under section 20 or section 21. The bill provides for including such paths in the core paths plan. Once the plan is adopted, simple delineation establishes the precise route of any existing or proposed path or track. That goes some way towards serving Scott Barrie's purpose in amendment 391.

12:45

With amendment 270, Sylvia Jackson might be suggesting that we should try to avoid the need for delineating such paths and that we should roll up the whole process with the core paths plan. Although that might appear superficially attractive, such an attempt at streamlining the process—if that is the intention—would be unhelpful. The core paths plan will include rights of way and other paths and tracks with a legal identity; it will also include paths and tracks that exist physically but which have no legal identity, and proposed new paths. I do not consider it necessary for a local authority to determine the precise line of any proposed path before including it in the plan. As the committee might imagine, that could involve considerable work, which might be aborted if, after consultation, the proposed path was dropped from the plan.

Equally, after consultation, it might be decided that a path from point A to point B within any local authority area should form part of the core paths system. Again, I do not see the need for a local authority to determine and then consult on the path's exact line. I think that we would be getting into the realms of the ridiculous.

Consultation on the core paths plan should concentrate on whether the proposals as a whole meet the bill's requirements. In other words, the consultation should be about whether the proposed system of core paths is sufficient to provide reasonable access throughout the local authority area; it should not get bogged down on the exact line of individual paths. That potential nightmare scenario would only divert attention from what we are seeking to do in the consultation.

Once the plan is adopted, the delineation of paths, where required, provides opportunities for consulting all interests on the exact line of each path. There is considerable advantage in separating out the adequacy of the whole core paths plan and the detailed line of particular paths that might be the subject of contention in individual local authority areas. The bill provides for that.

I hope that, with that explanation, I have convinced the committee not to accept Sylvia Jackson's proposal as outlined in amendments 270 and 271. The bill makes appropriate provision to allow the classes of path that are covered by the amendments to be included in the core paths plan. Perhaps more important, the procedures that are stipulated in the bill are straightforward and appropriate and I do not think that what has been proposed would be an improvement. Indeed, it would act as a distinct disadvantage. If amendments 270 and 271 are rejected, amendments 392 and 393, which are consequential, would also fall. I will not speak to those amendments in detail.

I turn to amendment 390. The rights of access under the bill are intended to be exercisable by persons on foot, bicycle—including mountain bike—and horseback. Where practical, it is intended that access rights should be exercisable by those in wheelchairs including, as we have discussed, motorised wheelchairs, notwithstanding our proposal for the exclusion of other motorised vehicles. Core paths will have to be drawn up with specific regard to all those people with disabilities who seek to exercise their consequential access rights.

Although I understand the intent behind amendment 390, I do not consider that it would be meaningful to amend the bill as proposed. Section 17(2)(a) refers specifically to

"rights of way by foot, horseback, pedal cycle".

As far as I am aware, there are no specific rights of way for wheelchair users; I suspect that they would be free to use their pedestrian rights of way. I therefore have doubts about the wording of amendment 390 and, as I have said, we do not consider it to be necessary.

It is clear that the core paths have to cater for the needs of those with disabilities, and that will be reinforced in the guidance to which I referred. Under section 18(9), the list of core paths will indicate those that are suitable for use by wheelchairs. The public should therefore be in no doubt which paths are suitable for wheelchair use. I hope that amendment 390 will not be moved.

With amendments 277 and 278, Stewart Stevenson has confused me—not for the first time, it has to be said. The amendments seem to place on local authorities a requirement to identify routes over water that would be the equivalent of core paths on land. I have some difficulty with the concept of paths over water. I know of only one man who could walk on water and he is not among us, certainly not in person. I assume that Stewart Stevenson has something in mind that is akin to core routes.

That apart, we are not convinced of the need to identify core routes over water. The purpose of core paths is partly to provide for access. We have discussed that. Many people prefer to walk on paths. The purpose of core paths is also partly to assist local authorities in the management of access. The creation of a path involves altering the surface of the land to make the exercise of access rights easier and to provide a measure of reassurance to those who use the path that they are heading in the right direction. If they are following the path, they will get to where they want to go.

Those issues do not arise to the same extent in respect of water. The advantage of core routes over water would appear to be limited to ensuring routes where access rights could be exercised without the threat of interference from other users of the water. Perhaps that is what Stewart Stevenson had in mind. Where that is liable to be an issue, the appropriate approach would be not to try to identify routes but for the local authority to use its byelaw powers to zone activities over the area of water in question, if there were to be some dispute.

As the access forum and Scottish Natural Heritage recognise—and as we all recognise—access to water raises different issues from access to land. It would be ridiculous to translate core paths on to water. It is not appropriate to read across directly from one issue to the other in the way that the amendments attempt to do. I understand what Stewart Stevenson is seeking to do, but it cannot be done in that way.

The best way to zone activities to ensure access over water would be for local authorities to exercise their byelaw-making powers for any particular piece of water where there might be contention between water users. Fishermen and canoeists spring immediately to my mind, but there are probably others. It is not possible to translate paths on to water, because people cannot walk on water.

The Convener: So you say.

Allan Wilson: At least I cannot.

The Convener: Sylvia Jackson and Rhona Brankin are not here, but that does not mean that members cannot speak to the amendments that are lodged in their names.

Scott Barrie: As the minister said, amendments 392 and 393 are consequential to amendments 270 and 271 respectively. Before turning to amendments 392 and 393, I wish to return to Sylvia Jackson's amendment 270. I heard what the minister said, and I can accept most of his explanation; I think that he was right. My reading of section 17 was that it intends to make the process simpler than it is at the moment, but there will be difficulties where there is no agreement to establish a core path.

Can the minister think of any way—perhaps using the provisions of another section—to speed up that process? The real difficulty concerns the length of time that may be taken in cases of disagreement. If we could find another way round that, we would not need the amendments that have been lodged. The amendments were lodged, in any case, with the desire to speed up the process and to make it less complicated legally. I am referring to the references to exchanges of letters and other forms of agreement. I ask the minister to reflect on that, as that will help us when we come to discuss the amendments in turn.

Bill Aitken: The bulk of the amendments in this group are unnecessary. The minister articulated that fairly well.

Stewart Stevenson's amendments 277 and 278 are arguably of some merit. Although there is a distinguished, albeit somewhat restricted, precedent for people walking across water, I question whether the example that he cited in fact involved someone walking upon water. If someone is walking across a ford, their feet are obviously in regular contact with terra firma. As such, it could easily be argued that they are walking across land. By Stewart Stevenson's argument, it would seem that someone walking through a large puddle could be said to be walking across water. I doubt whether the amendments are necessary. If Stewart Stevenson can come up with any more compelling examples, however, I will listen carefully.

The Convener: I am sympathetic to Stewart Stevenson's wish to have the phrase "land or water" included in the bill. As the committee emphasised in its report, it is important to realise that the bill is about access to both land and water. Where there are opportunities to make that clear, we should take them. However, I question whether those words fit in section 17. I now give Stewart Stevenson the opportunity to come back on the subject of walking on water and I invite him to wind up.

Stewart Stevenson: The minister has obviously never had the very great pleasure of participating in the bonspiels at Laigh of Menteith or on Lindores loch. With climate change, it may become increasingly popular to walk on water from time to time—that privilege thereby being extended beyond the one who was able to do so with the water unfrozen.

There is an important distinction to draw between the minister's belief that the matter can be handled through local authority byelaws and the amendments in my name. Local authority byelaws are more likely to be to be made post hoc. The creation of a core path network including paths or routes that depend on water for their viability will establish protected paths at the outset, rather than providing the local authority with a way of responding to difficulties after they have arisen. The whole thrust of the bill is to remove barriers at the outset. On that basis, routes and paths that are accessible via water deserve the same consideration.

13:00

For example, canoeists could find that fishing and tree-felling operations on a stretch of water prevented them from conducting a cross-country canoeing activity. Indeed, the core path management agreement places a continuing duty on the land—and water—owner and the local authority to maintain routes so that they remain clear. As debris, gravel and stone is brought down rivers, there may be a need to maintain core paths that are provided via water.

Another minority sport that might benefit from the designation of core paths via water is sub-aqua caving. I understand that it is a most dangerous sport, although I know several people who participate in it and have survived. It is perfectly possible for a range of activities to destroy people's ability to enjoy sub-aqua caving.

There seems to be no particular reason not to include water routes as core paths. To do so would benefit a group of people who deserve equal access to the countryside. On that basis, I shall press amendment 277.

The Convener: Before I put the question, I will seek two points of clarification from the minister. The first relates to Rhona Brankin's amendment 390. Given that there is no mention of disability access in section 17, will the minister say how the issue is covered? Section 17 makes no specific reference to wheelchairs.

Allan Wilson: Section 17 applies to all those who exercise access. The provision is broadly drawn.

The Convener: Section 17(2)(a) lists

"rights of way by foot, horseback, pedal cycle or any combination of those".

That seems to exclude wheelchair access.

Allan Wilson: No. In my view, section 17(1) is drawn sufficiently broadly in relation to the core paths plan to impose a duty on the local authority to draw up a plan for a system of paths

"sufficient for the purpose of giving the public"—

whether able bodied or disabled—

"reasonable access throughout their area."

I am not aware of the existence of specific rights of way for wheelchair users that would set them apart from other members of the public. When we set out that a path has to be

"sufficient for the purpose of giving the public reasonable access",

the requirement also applies to disabled members of the public.

The Convener: Surely people will have to read the requirement under section 17(1) into their interpretation of section 17(2)(a).

Allan Wilson: No. Section 17(2)(a) refers to

"rights of way by foot, horseback, pedal cycle or any combination of those, being rights which are or may be established by or under any enactment or rule of law".

We are not aware of a right of way that refers specifically to wheelchair users, otherwise we would include a reference to them in section 17(2)(a). Wheelchair users are covered by pedestrian rights of way in that context.

The Convener: I just want us to be clear about that before we vote.

Allan Wilson: I asked the officials similar questions before I came to the meeting.

Stewart Stevenson: I put it to the minister that, under planning regulations, any new property requires to give access to wheelchair users regardless of whether there is any prospect of that access being exercised. By the same logic, it would be appropriate—it would cause no difficulty in practice—at every possible opportunity simply to include in the bill references to wheelchair access similar to those in planning law.

Allan Wilson: My view is that provision for wheelchair users is included in the bill, but specific provision for such users could be made under section 17(2)(c) by agreement. We will discuss core paths and rights of way in the context of planning and, as the committee wants, we intend to make the paths plan compatible with future planning legislation. However, I do not see the need to go beyond current provisions. I do not agree with the analogy that Stewart Stevenson makes with planning regulations. As I said, the rights of wheelchair users and disabled members of the public are enshrined in the bill along with everyone else's.

Stewart Stevenson: Would it create any difficulties if we were to incorporate provision for wheelchair users in section 17(2)(a)?

Allan Wilson: I am advised that it would not make sense to do so. As I explained, the core paths plan will give the public, including disabled people, reasonable access throughout the local authority area. We are not aware of rights of way that are confined to wheelchair users per se; ipso facto, there is no requirement to specify such rights in the bill. If we did, we could end up going down the road that we do not want to go down—restricting access rights to routes that someone might consider more suitable for wheelchair users than for others.

The Convener: The second point of clarification relates to Stewart Stevenson's amendments 277 and 278. Having listened to his arguments, I am worried that the bill might need to address the points that he made in relation to water. I am not convinced that section 17 would be the right place for the words suggested in amendment 277, but I think that he made important points. To address some of those points, would you be willing to consider emphasising somewhere in the bill that access means access to both land and water?

Allan Wilson: There were several points there; I am being assailed on all sides.

On the core paths plan, the bill will impose a duty on the local authority to give

"the public reasonable access throughout their area."

That provision includes water. Section 29—"Interpretation of Part 1"—states:

"'inland waters' means any inland, non-tidal loch, non-tidal river, lake or reservoir".

On the point that Bill Aitken and others made, section 29 continues:

"'land' includes … bridges and other structures built on or over land … inland waters … canals".

Therefore, rights of responsible access apply to inland waterways and water more generally, except where such rights are qualified by virtue of exclusion or activity, as we discussed.

I am entirely with Stewart Stevenson and the convener on the general point that has been made. The simple point that I am making is that we cannot translate paths from land on to water. Stewart Stevenson asked about the canoeist who would be excluded from access by virtue of a tree-felling operation. I say sensibly so. I imagine that sensible canoeists would wish to avoid tree-felling operations. Stewart Stevenson also referred to sub-aqua caving, which at least has the benefit of keeping people safe from falling trees. I suppose that, instead of talking about white-water rafting, we should be talking about white-knuckle rafting. All that I am saying is that we will make provision for access over inland waterways, but in this context it is not appropriate to translate core paths on to water.

The Convener: That is what I am seeking to clarify. You accept the basic point that Stewart Stevenson makes, which is that, although we cannot translate paths directly on to water, we should emphasise that access to water, where appropriate, is important.

Allan Wilson: I have highlighted the areas where we provide access to water. My other point is that, where there might be conflict between recreational water users, such as canoeists and fishermen, local authorities have the power to zone activities in inland waterways in favour of one or another recreational interest. In my constituency, when water-skiers and fishermen come into conflict on Kilbirnie loch, the local loch management committee manages that problem. What I am proposing is not dissimilar to what happens in other areas where such problems arise.

The Convener: Stewart Stevenson has already wound up. Do you still wish to press amendment 277, Stewart?

Stewart Stevenson: No, I seek consent to withdraw it.

Amendment 277, by agreement, withdrawn.

Amendment 284 moved—[Allan Wilson]—and agreed to.

Amendment 269 moved—[Stewart Stevenson].

Allan Wilson: Given that amendment 269 has been moved, may I take this opportunity to answer Scott Barrie's question about making the process simpler?

The Convener: Very briefly.

Allan Wilson: We are having talks with COSLA with a view to simplifying the process by which paths are designated and delineated. I hope that that will go some way towards doing what Scott Barrie, like us, wants to do. There were difficulties under the Countryside (Scotland) Act 1967, but we have changed our approach. The difficulties in the 1967 act should not be in the new act. A simplified system of administration with local authorities should get us to where we want to go.

Stewart Stevenson: Can I take it that the Executive intends to introduce an amendment at stage 3?

Allan Wilson: I would enter into an administrative arrangement with COSLA to facilitate the process of delineating core paths under sections 20 and 21. I acknowledge the intent behind amendment 269, but I do not think that it would have the intended effect. It would add unnecessary bureaucracy. The best way in which to go about simplifying matters is to work with COSLA.

Amendment 269, by agreement, withdrawn.

Amendments 390, 270, 271, 278 and 392 not moved.

13:15

The Convener: Amendment 174 is grouped with amendments 239 and 175.

Rhona Brankin is not here to move the lead amendment—amendment 174. I propose that amendment 239, in the name of Stewart Stevenson, become the lead amendment—unless anyone else wishes to move amendment 174. If we proceed in that way, members will still be able to debate amendment 174.

Amendment 174 not moved.

Stewart Stevenson: Amendment 239 is a simple technical amendment. I note that the minister said earlier that the routeing of core paths would be flexible. Amendment 239 fleshes that out to some extent by saying that the paths must be "well defined and accessible". It is simply directed at assisting the local authorities to clarify the purpose of the core paths so that, when maps are published and lists of core paths are provided, access takers can understand where the core paths are with sufficient precision and make choices about whether they wish to use the core paths and other routes.

I move amendment 239.

Allan Wilson: Section 18(8) requires a local authority, on adopting its core paths plan, to

"give public notice of its adoption"

and to

"compile a list of core paths".

The plan, and any maps to which it refers, must be made available for public inspection. Copies of it must be made available for sale at a reasonable price and be provided to ministers.

In addition, as members know, section 13 places a duty on local authorities to keep access routes open and free from obstruction. We have discussed that. That provision would clearly also apply in the case of core paths.

We therefore see no need for amendment 239. We also have doubts about the wording of the amendment. It states:

"During the planning and implementation of the plan, the local authority shall ensure that its core paths are well defined and accessible."

We have already discussed why we would not want to get into a debate about the detailed routes at that stage. While a local authority is still planning its core paths plan, some core paths will not exist. When the plan is adopted, a large part of the core path system will be in place—the vast majority, I suspect. As I have said, the local authority will have a clear duty under section 13 to keep those paths free from obstruction and to ensure that they are accessible and publicised so that everyone knows where they are.

I do not see a need for amendment 239. The reference to ensuring that the paths are well defined and accessible during the planning stage is an unnecessary complication. It would be confusing.

Stewart Stevenson: I take note of what the minister has said. As I said, I am interested in his previous comments about precision perhaps running counter to the objectives. On that basis, I am prepared to withdraw amendment 239.

Amendment 239, by agreement, withdrawn.

The Convener: Amendment 285 is in a group on its own.

Stewart Stevenson: Amendment 285 seeks to strengthen section 17 by ensuring that core paths

plans include maps, because, to be blunt, understanding plans without maps will be rather difficult. It seems reasonable to place a duty on local authorities to produce maps, because, as the bill stands, that appears to be optional.

I move amendment 285.

Allan Wilson: Section 17(4) already provides that if a core paths plan does not include maps—which I suspect is an unlikely prospect—it must refer to them, so the provision already exists. Section 18(8) requires a local authority, in adopting a core paths plan, to give public notice of its adoption and to compile a list of core paths. I agree with Stewart Stevenson's intention. I cannot conceive of a situation in which a plan would not include a map. Describing a core path without direct reference to a map would be a fairly esoteric exercise.

A duty is placed on local authorities to make available for public inspection the plan and any maps. That will ensure that the public are in no doubt of the location or route of any core path. I suspect that core paths plans generally will consist of or include maps. The bill leaves local authorities with some discretion, which has been our general approach to the matter, but I cannot conceive of a situation in which a local authority would produce a list that did not include a map. Indeed, if a list did not include a map, it would have to refer to a map.

Stewart Stevenson: I would be happy to withdraw amendment 285 if the minister could give me two assurances. First, there should be a requirement for any maps to which reference is made, rather than just the maps that are provided, to show the core paths, because it is not clear from the wording of the bill that the paths would necessarily have to appear on the reference maps. It could be that a plan simply refers to geographical or man-made features on the reference map. I am relatively satisfied that that is what the minister will say to me, but I would like to be clear about that issue.

Secondly, I would like to be assured that the other maps that may be referred to while the paths plan is being drawn up will be made available at no additional cost, so that people who wish to see the maps incur no costs other than those that the local authority would be entitled to levy for the maps that it provides.

Allan Wilson: The second point is provided for in the bill. Section 17(4) states:

"The plan may consist of or include maps showing core paths and, where it does not, shall refer to such maps."

For some local authorities, producing their own maps might be inordinately expensive. Local authorities may have discretion, but, where they do not provide maps that show core paths, a requirement is imposed on them to refer to maps that do. There is no loophole whereby members of the public might not know where the core path network lies.

The more that I consider the matter, the less problem I have with amendment 285. I am not particularly worried whether the amendment is agreed to. The bill aims to give discretion to local authorities, but in most instances I expect that they would meet their obligations by way of a map.

Stewart Stevenson: Can the minister assure us that no cost will be associated with using a third-party map rather than a local authority map?

Allan Wilson: Section 18(8)(c) states that the local authority shall

"keep … any maps it refers to … for sale at a reasonable price".

Stewart Stevenson: On that basis, I am prepared to seek permission to withdraw amendment 285.

Amendment 285, by agreement, withdrawn.

The Convener: Amendment 250, in the name of the minister, is grouped with amendments 251 and 252. I ask the minister to move amendment 251 and to speak to the other amendments in the group.

Allan Wilson: Amendment 251?

The Convener: Sorry, there is a mistake in my brief. You have to move amendment 250 and speak to the other amendments in the group.

Allan Wilson: Thank you. I am trying to keep up to speed with the changes in the running order.

Section 17 of the bill currently makes provision for ministers to give guidance to local authorities in the drawing up of core paths plans and for local authorities to have regard to that guidance. We consider that the power to give guidance should apply in respect of all the duties and powers given to local authorities under part 1 of the bill and not only to those under section 17. Amendment 252 addresses that by inserting a new provision after section 24 of the bill. Before giving guidance, ministers will have to consult the relevant local authorities and, as we have discussed, the draft guidance would have to be laid before—and could be vetoed by—Parliament. Amendments 250 and 251 are consequential to amendment 252.

I move amendment 250.

Amendment 250 agreed to.

The Convener: I propose to stop for lunch, if members so wish. The meeting will be suspended for a maximum of 30 minutes.

13:27

Meeting suspended.

14:00

On resuming—

The Convener: I welcome everyone to part 2 of day 7 of our stage 2 consideration of the Land Reform (Scotland) Bill. We are considering section 17. Amendment 38 is grouped with amendments 257, 286, 287, 288, 289 and 130.

Scott Barrie: Amendment 38 tries to ensure that core paths plans are changed and updated regularly by seeking to tie the process to the time scale in which local authorities review their local plans, which would make sense. There would be a difficulty if the core paths plan were deemed to be part of the local planning process, because the two are separate. Amendment 38 tries to provide the process with a time scale.

I move amendment 38.

Allan Wilson: This is another substantial set of amendments, so I ask members to bear with me. We recognise Scott Barrie's argument that core paths plans should be incorporated into local plans so that they are integrated with the local authorities' policies on other matters, which will principally be transport and housing. We see merit in that proposal and we are considering whether it is best achieved through guidance or through an amendment to planning legislation. In either case, section 17 is not the appropriate place.

Given our intention to review planning legislation, it is unnecessary for the bill to require local authorities to review local plans and core paths plans simultaneously, as proposed by amendment 38. The review of local plans will require the local authority to review its core paths plan as part of the process. As members are probably aware, a review of the planning system is under way. Given that assurance on core paths plans and local plans, I hope that Scott Barrie will withdraw amendment 38. After core paths plans are drawn up, it will not be possible to review local plans without having regard to core paths plans. We intend to address the issue through planning guidance and/or legislation—whichever is the most appropriate. Any legislation would be made under the Town and Country Planning (Scotland) Act 1997 and would be produced in the next parliamentary session.

Amendment 257 seeks to correct an inaccurate reference in the bill. Members have probably noticed that the procedures that relate to the adoption of core paths plans are set down in section 18, not section 17. Amendment 257 will correct section 17(11) to reflect that.

I move on to amendments 286, 287 and 288, in the name of Stewart Stevenson. Amendment 286 seeks to place a duty on local authorities to consult only on any proposed change to the core paths plan, rather than on the plan as a whole. We have just discussed the policy that a local authority has a duty under section 17 to draw up within the period specified—which we have now amended to three years—a plan for the system of core paths sufficient to provide reasonable public access throughout its area to land and water. When local authorities draw up those plans, we envisage that they will consider what the access requirements will be. We also envisage that they will take an holistic view of the requirements of their area in order to ensure that those requirements are met within the plan. Local authorities will be under a duty to consult on the proposed core paths plan before they adopt it. That will provide all those with an interest with an opportunity to comment on the proposed system of core paths and the extent to which it will meet local access requirements.

If that exercise is carried out properly, we do not envisage that, at a later stage, the local authorities will need regularly to add new paths to the core paths plan. In the event that such an addition were required, it would not be appropriate to consult only on each individual change to the plan. The plan would have to be considered as a whole, on the basis of whether it meets the requirements in section 17(1) on the provision of reasonable access.

Amendment 287 seeks to amend section 17(12) by inserting a new provision that would provide that

"Ministers may, by regulations, make further provision about the circumstances in which and the means by which changes may be made to core path plans."

We do not consider that amendment 287 is necessary, as that matter can be addressed by the guidance that will be given to local authorities under the bill. I referred to that guidance when I spoke to amendment 252, which will insert a new provision after section 24 to permit Scottish ministers to give

"guidance to local authorities on the performance of any of their functions under this Part of this Act."

That guidance may be given generally or to a particular local authority and local authorities will be required to have regard to it. When the Parliament approves the guidance, ministers will have the power to refer a local authority back to it if we—or others—feel that the local authority has not met the duty imposed on it to provide reasonable access in respect of a particular core path.

Ministers will also be required to consult each local authority to which they propose to give that guidance and to lay a draft of the proposed

guidance before Parliament. The guidance cannot be given until 40 days after the date on which it is laid. During that period, the Parliament can direct that the guidance may not be given—as members know, Parliament has the right of veto. In addition, ministers may require modification by direction.

Amendment 288 seeks to provide that local authorities should be able to

"adjust the line of a core path"

and sets down the circumstances in which that would be allowed. There are already provisions in the bill that address Stewart Stevenson's concern. A path may be delineated by agreement under section 20 of the bill or under the Countryside (Scotland) Act 1967. I make the point that the paths that are designated under the bill will not be the only paths affected, as pre-existing paths that may have been designated under the 1967 act may also be affected. Questions of diversion may be directly addressed in such agreements. If those questions are not addressed in an agreement, the parties may amend the terms of the agreement at any time. The contents of paragraphs (a) and (d) of the new subsection proposed by amendment 288 are already addressed in the bill. I argue that there is no need for any additional provision.

Paragraph (c) talks about temporarily facilitating

"land management operations, construction or development works".

Land management requirements are a matter for the land manager and appear to be covered already by paragraphs (a) and (d). We see no need for that provision, because the matter is already covered.

Construction and development that are carried out by the land manager fall into the same category. It is difficult to see why the owner would not agree to a realignment of the path, even when someone else was doing the work. We are examining the question of development planning and access rights. We intend to consider the issue of realignment of paths where those could be obstructed by development—either on a temporary basis, during construction, or more permanently. We have undertaken to consider the issue at stage 3 and to make the provisions of the bill compatible with planning regulations. The situation is the same as with amendment 38. We may proceed by guidance or by amending the regulations, but the provisions of the bill must be made compatible with planning.

Paragraph (b) of the proposed new subsection relates to new paths where, for example, an existing path has been lost by erosion or landslip. In those circumstances, I would consider it appropriate for a local authority to use the procedures that are set out in sections 20 and 21 to create a new path. Path creation can involve drainage construction work. A local authority should not be allowed to create a new path that may be several feet wide and may have a finished surface that is suitable for cycling without the agreement of the owner or without meeting the consultation requirements of section 21. In cases of landslip, we would expect a new path to be created.

The bill provides that local authorities will give public notice of their core paths plans and make the plan and associated maps available

"for public inspection for a period of not less than 12 weeks".

The bill indicates who is to be consulted on the plan. I accept that it would be good practice for authorities to use a variety of means to make the plan available for public inspection. Authorities already do so in respect of planning. Structural and local plans are made available for inspection and I see no reason for authorities to treat core paths plans differently. Local authorities have developed and continue to develop methods and systems that are appropriate for use locally in consultations. It is not necessary to state in legislation that they must use different methods that "are appropriate and reasonable", as amendment 289 suggests. The matter is best dealt with in the guidance that we intend to issue to local authorities.

I assure members that we will address all the issues that have been raised in the guidance that we give to local authorities. We will also seek to ensure that development planning is compatible with the legislative content of the bill. As members know, we will lay the draft guidance that we have already agreed before the Parliament. I ask Stewart Stevenson not to move his amendments, given that all the issues that he raises have been dealt with either through the proposed guidance or through prospective changes to planning law.

In drawing up its core paths plan, a local authority is required to balance the interests of those exercising access rights with the interests of the owners of land in respect of the rights that are exercisable. A local authority also has a duty to publicise its core paths plan. It must consult the local access forum, persons representative of those living and working on the land that will be affected by the plan, Scottish Natural Heritage and anyone else whom it considers appropriate. That includes the owner of any land that is affected by the plan so, if anyone is thinking of picking up amendment 130, in the name of Jamie McGrigor, I assure them that there is no need for them to do so.

14:15

Stewart Stevenson: I thank the minister for his helpful set of comments on my amendments. On

the basis of his comments, I accept that amendment 287 has essentially been supplanted by amendment 252. Having listened with care to his comments about amendment 288, I also find myself content about that. However, I want to deal with amendment 286 and say a little about amendment 289.

The objective behind amendment 286 was simply to avoid the need for the whole core paths plan to be put back out to consultation when it appears to be necessary or expedient to make changes to the plan. I heard the minister say that if the plan is produced perfectly, it will need only infrequent amendment once it is in place, but I am perhaps a little more cynical than he is, as I suspect that the plan will need to be changed. Putting the whole plan back out to consultation might open up all the issues that had been dealt with during the consultation process. If the minister can assure me that individual changes could be made to the core paths plan without opening up the whole plan to consultation again, I will be content not to press amendment 286.

Amendment 289 simply tries to ensure that we reach every part of the community that has an interest. The provision would be an enabling rather than a compulsory one. After listening to what the minister said on that, I will consider my position further before concluding whether I will press amendment 289.

The Convener: Jamie McGrigor is not here to speak to amendment 130.

As no other member wishes to speak to any of the amendments, I will ask the minister for a point of clarification. He said that some planning issues would be more appropriately addressed in the forthcoming planning bill. What will the status of core paths be in relation to local plans? That seems to me to be the issue. For example, local plans provide a duty not to build on wildlife corridors, unless the developer can safeguard or in some way enhance the wildlife corridor. Presumably, the status of the core paths plan is the real issue.

Allan Wilson: Absolutely. The Executive's intention is that any review of the planning legislation—the Land Reform (Scotland) Bill will pre-empt that—will ensure that the local authority's local plan takes account of the core paths plan. There will be a requirement on local authorities to incorporate their core paths plan within their local plan or plans—a local authority could have a number of local plans.

The Convener: Will local authorities determine the status of the core paths plan in their local plan? If the status is not determined, the local plan could refer to the core paths plan without referring to the importance of the core paths plan.

Allan Wilson: No. The core paths plan will be an integral part of the local plan. The core paths plan will not be separate from the local plan but will be incorporated within it.

The Convener: I want to ask a further point of clarification. Is the minister's position on amendment 130 that the requirement to consult the landowner is already covered by the bill?

Allan Wilson: Yes, where that is practicable. It may not always be possible to identify the landowner.

The Convener: Would that be the case if the landowner was in a different country?

Allan Wilson: That could be the case. However, the owner of a particular piece of land is not always readily ascertainable. As a result, amendment 130 would put an unrealistic burden on local authorities by requiring them to consult every owner in every case. It is obviously very difficult to consult owners if they cannot be identified.

The Convener: I see that Jamie McGrigor is not present. However, it is important to clarify the matter on record. The Executive does not object to any specific mention of the landowner, but there is an issue to do with identifying the landowner in every case and ensuring that he or she is available.

Allan Wilson: In most cases, consulting the landowner would be a perfectly reasonable thing to do. However, in others, it would be completely impractical. That was the principal objection.

Scott Barrie: I am glad that the minister understands the principle behind amendment 38. It is a good thing that the issue is being considered. On that basis, I seek to withdraw amendment 38.

Amendment 38, by agreement, withdrawn.

Amendments 257 and 251 moved—[Allan Wilson]—and agreed to.

Amendments 286, 287 and 288 not moved.

Section 17, as amended, agreed to.

Section 18—Core paths plan: further procedure

Amendment 289 not moved.

Amendment 129 moved—[Stewart Stevenson].

The Convener: The question is, that amendment 129 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)

ABSTENTIONS

Hamilton, Mr Duncan (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 1, Against 3, Abstentions 1.

Amendment 129 disagreed to.

Amendment 130 not moved.

The Convener: Amendment 258 is grouped with amendments 16 and 16A.

Allan Wilson: A number of organisations have raised concerns that the bill requires a local authority only to draw up and adopt a core paths plan but does not place a specific duty on the local authority to implement the plan once it has been adopted. I am not entirely sure what amendments 16 and 16A seek to achieve with the use of the word "implement". However, I suspect that concerns might stem partly from a misunderstanding of how the core paths will come into being.

As a result, it might be helpful to explain briefly how the relevant provision will work. Section 17(1), which we have already discussed, requires local authorities to draw up a core paths plan. Section 17(2) sets out the classes of path that can be included in the plan: paragraphs (a) and (b) of that subsection relate to paths that are established by and under other legislation, and paragraph (c) relates to paths that are or may be identified by a path agreement under section 20 or that are compulsorily identified by a path order under section 21. Those types of path must be incorporated into the core paths plan.

Most of the paths that we expect to be identified in a core paths plan will be existing paths that are already on the ground—so to speak—before they become a core path. As soon as the core paths plan is adopted by a local authority, those paths will immediately become core paths. Once a core paths plan is adopted, section 18(8) requires a local authority to give public notice of its adoption; to compile a list of core paths; and to keep the plan and map available for inspection and sale—as we discussed earlier. All that is intended to ensure that, once core paths are adopted, the public is in no doubt about their existence and location. That is our joint objective.

The concern over amendment 16 seems to relate to the power in section 17(2) to delineate in the core paths plan paths that may in future be delineated under a path agreement, as in section 20, or under a path order, as in section 21. The concern seems to be that any paths that are identified in the plan as paths to be created may never be created in the absence of an express duty on the local authority to implement the plan. I do not envisage that many paths will be so created, and it is important to note that, even when it is necessary to use the powers in sections 20 and 21 to create new paths, those powers will be exercisable only

"within land in respect of which access rights are exercisable."

If the plan proposes new paths, once it is adopted, those routes will be core paths for the purpose of the bill, even if the path agreement or order is not in place. Although there will not be a formal path, the route—we are back to routes—will be a route over which access rights are exercisable. The public will be able to use those core paths and the duties in sections 13 and 15 will therefore apply in relation to such a proposed path even if, when the plan is adopted, it consists of an informal route across land rather than a formal path. That is designed to address some of the concerns of the Scottish Rights of Way and Access Society.

Section 18(8) adequately addresses the concerns that are raised in amendment 16, which Scott Barrie clarifies further in amendment 16A. That provision requires local authorities to give public notice of the adoption of a plan, to compile a list of core paths and to keep the plan available for inspection and sale. It is intended to ensure that, as soon as a plan is adopted, the public is in no doubt as to the existence and the location of core paths. Those core paths will not be created simply by the bill, as they may be pre-existing core paths that have been created by the Countryside (Scotland) Act 1967. We do not consider that anything further is required for their implementation.

Amendment 258 is a technical amendment to correct a reference in section 18(4), to reflect more accurately the duties that are placed on local authorities in respect of core paths plans.

I move amendment 258.

The Convener: Bill Aitken is not here to speak to amendment 16, so I call Scott Barrie to speak to amendment 16A. However, if amendment 16 is not moved, I cannot take amendment 16A. Therefore, Scott may want to address amendment 16.

Scott Barrie: The minister has helpfully clarified the situation. Amendment 258 clarifies the situation further, as it was lodged after amendment 16, which I sought to amend. On that basis, there is no need to discuss amendment 16.

Amendment 258 agreed to.

Amendment 272 moved—[Stewart Stevenson].

The Convener: The question is, that amendment 272 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)

ABSTENTIONS

Hamilton, Mr Duncan (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 1, Against 3, Abstentions 1.

Amendment 272 disagreed to.

14:30

The Convener: Amendment 273 is in a group on its own. Does any member wish to move amendment 273, as Dr Jackson is not here?

Scott Barrie: Section 18(9) states:

"The list of core paths shall be compiled and maintained so as to indicate the extent of the public rights in each of the core paths listed."

I am concerned about the word "extent", which suggests that access rights may vary, depending on the definition of the core path. I have no problem with the preceding subsection, which concerns the duties that will be placed on local authorities—it is clear and will make things clear for people who use the paths. However, we might be entering dangerous territory again in that there may be a curtailment of rights under section 18(9). I propose that we delete it, as it would lead to further confusion rather than clarity. The bill is trying to achieve clarity.

I move amendment 273.

Stewart Stevenson: I support everything that Scott Barrie has said and urge the minister to say why section 18(9) was included in the bill. In particular, what limitations did he imagine the list of core paths would document? If he can answer that question, we may understand the drafters' intention and conclude how we wish to proceed. As it stands, I oppose section 18(9).

The Convener: I would have thought that one either has or does not have access rights. An explanation of section 18(9) would be helpful. It seems that there are some rights that can be exercised fully and some rights that cannot.

Allan Wilson: The subsection was not designed to say that. We have had much internal debate about the issue in the past couple of weeks. Basically, section 18(9) requires that the list of core paths indicates the extent of public rights on each core path. The only point of that requirement is to determine whether the core path is suitable only for pedestrian use or for multiple use. Some paths could be included as core paths as a result of their strategic importance in providing access but, by their nature, might not be suitable for wheelchair users, horses or people on horseback. In other cases, there could be safety implications in allowing horses, cyclists and others to use the same path simultaneously. Not all paths will be suitable for access by those with disabilities.

It will be accepted that the majority of paths will be suitable for use by all those who exercise their access rights, so it would be wrong to exclude any path that is unsuitable for such use. If someone is planning to use a path for whatever reason, it is important for that person to know in advance whether the path is suitable for their requirements—that is particularly so in respect of horse riders, cyclists and the disabled.

That brings us to the intention behind section 18(9). I suspect that not all paths will be suitable for the disabled and the provision seeks to address that. It is not an attempt to mitigate in any way the more general rights that the bill bestows. The issue is whether the paths are suitable for every purpose in every instance and it is clear that they will not be. I would be happy to return to the issue if members think that there is a problem with what I have said.

The Convener: I do not think that there will be disagreement with your interpretation of the provision; the problem is with how it reads. The word that is used is "extent", but you are talking about the type of access. I will allow a wee bit of debate on the subject. There is no difference between our views, but we have to decide whether section 18(9) is worded correctly.

Stewart Stevenson: I do not disagree with the point that a path will be physically suitable for a variety of purposes. That is not the issue in relation to section 18(9). My issue with the subsection is the use of the words

"extent of the public rights",

which indicates to me that the list will limit public rights. That is entirely different from the issue of suitability, on which I am quite happy to associate myself with the minister's remarks, as they are manifestly correct. However, I do not think that the use of those words addresses that issue.

George Lyon: I agree with what Stewart Stevenson has said and also with the minister's explanation of the intention behind section 18(9). Clearly, the phrase

"extent of the public rights"

is confusing, especially as I believe that the Executive's desire is to indicate the accessibility of each of the core paths listed.

The Convener: I do not know what Duncan Hamilton's feeling is, but I sense that there is a consensus that we do not disagree with the minister's intention but are struggling with the wording. If the minister is willing to consider taking out the subsection and coming back with new wording at a later date, that might be a way forward.

George Lyon: I agree. If the minister could return with a modified form of words at stage 3, that would satisfy me.

Allan Wilson: I am happy to do that, but I am told that "extent" is the right term in this instance.

The Convener: Well, we do not like it.

Allan Wilson: The problem is that various rights could apply to a route. Rights over land that would otherwise not be accessible could be conferred by the Countryside (Scotland) Act 1967 and other rights could be conferred by this bill, which builds on the rights conferred by the 1967 act. The question of rights is complicated. It will not be simple, but we will come back to the committee with wording that satisfies us all. Obviously, I share the committee's concerns and I want to ensure not only that the legal position is maintained but that the intention is clarified.

Stewart Stevenson: I think that I am right in thinking that the wording is legally correct and I am quite content with that. However, I urge the minister to ensure that the amended wording that he comes back to us with at stage 3 cannot be used by that minority of land managers who wish to deny access. If the word "rights" is the legal word that has to be used, perhaps an explanation of the relevant rights, with reference to a statutory instrument or something, could be included in parenthesis. That would ensure that people could not misuse the legislation simply by plucking a paragraph out of context. That is the limit of my concern.

The Convener: The minister must understand that although "rights" might be the correct legal word, we are not happy with it.

Allan Wilson: I do not think that we need the word "rights" there at all, but we will consider the matter.

Scott Barrie: I am almost tempted to change what I was going to say on the basis of the minister's last remark.

Members of the committee agree unanimously in spirit about what we are trying to achieve. With one exception, we are not lawyers. I understood a different meaning from the strict legal meaning. I agree with Stewart Stevenson's point that we do not want anything in the bill that could lead to confusion and argument or anything that would do something different from what we thought it would do. That was the purpose of pursuing amendment 273 on Dr Jackson's behalf. I am happy to seek the committee's agreement to withdraw the amendment on the basis that we will return to the matter at stage 3. That is what the minister indicated he would do.

The Convener: I will ask the committee's permission to withdraw the amendment, but I want to be crystal clear about the minister's intentions. The committee is inclined to agree to withdraw the amendment if the minister is saying that he will return with something that reflects the intention he expressed earlier.

Allan Wilson: I will return to do that.

Amendment 273, by agreement, withdrawn.

Amendments 175 and 16 not moved.

Section 18, as amended, agreed to.

Section 19—Application of sections 13 to 15 in respect of certain core paths

The Convener: Amendment 290 is grouped with amendment 291.

Stewart Stevenson: Amendment 290 is one of a series that the Convention of Scottish Local Authorities has expressed an interest in having discussed by the committee. Amendment 290 attempts to ensure that a duty exists in relation to gates, stiles, keeping the core paths operational and removing hazards. It would give local authorities the powers to improve and keep fit for any purpose any core path. It would spring into action where landowners do not keep their part of the bargain. The amendment would not mean that local authorities would have additional expense because it would be for the local authority

"to ensure that provisions are made",

not for them to undertake maintenance. That would be the subject of the path agreement, which would lay down the conditions. The amendment simply allows additional powers.

Amendment 291 is similar in that it would give local authorities the power to take action when the operation of a core path has been disrupted by a land manager. I am interested to hear what the minister has to say.

I move amendment 290.

Allan Wilson: As Stewart Stevenson said, amendments 290 and 291 are COSLA amendments. We are content that the provisions that amendment 290 seeks to introduce are provided for elsewhere in the bill.

Later, I will talk about when access rights are not exercisable, but section 15(4) already enables a local authority to

"install, in any land in respect of which access rights are exercisable, gates, stiles or other means of facilitating the exercise of these rights".

We have further clarified the issue so that local authorities will maintain any items such as notices and fences that are installed.

Section 15(1)(a) already enables a local authority to protect the public from hazards and to remove hazards. Section 13 places a duty on local authorities

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

We have discussed the duties on local authorities quite extensively and we have also discussed section 14, which lists certain actions that a landowner may not undertake

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

As we know, local authorities may, by written notice, require a landowner to take remedial action; if the landowner fails to comply, local authorities may then take appropriate action.

14:45

We have discussed the maintenance of core paths that are created by agreement under section 20 or by order under section 21. In respect of core paths over land in which access rights are already exercisable, nothing in amendment 290 is not dealt with elsewhere in the bill.

Core paths over excluded land are subject to the legislation under which they were created. Such legislation also addresses the concerns underlying amendment 290. For example, the Countryside (Scotland) Act 1967 deals with the maintenance of rights of way, the duties of local authorities to protect and keep open rights of way and the powers available to local authorities in respect of the erection of stiles, gates and all the other stuff that we have talked about. The 1967 act also provides for the maintenance of paths created under that act and sets out duties on local authorities in respect of maintaining public paths.

For all those reasons, amendment 290 is not necessary. Its provisions are already covered in the bill.

Amendment 291 relates to

"Obstruction and damage to core paths".

As I have said, section 14 would prohibit an owner from doing anything

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

access. Again, sections 20 and 21 refer to core paths. Local authorities have powers to keep free from obstruction rights of way and other paths.

I acknowledge that some local authorities are concerned that a wider power is required for core paths; I also acknowledge that core paths are essential to the new arrangements. They are essential to facilitating access and, perhaps, to introducing people to the countryside who might not otherwise have gone. As I said to Scott Barrie before, we are to have further discussions with COSLA on the need for a power along the lines of that envisaged in amendment 291. There has been a problem in getting a single voice from COSLA on the issue, but we will meet COSLA and, if necessary, introduce an amendment at stage 3 to deal with the issues raised in amendment 291.

The general provisions of the bill offer extensive powers, without their being specific to the core paths. However, if, after discussion with COSLA, we agree that a power for core paths is required, we will introduce an amendment at stage 3. On that basis, I hope that Stewart Stevenson will agree to withdraw amendment 290 and not to move amendment 291.

George Lyon: I cannot support amendment 290 as it is currently drafted. As the minister has outlined, the provisions of the bill deal with most of the issues that Stewart Stevenson has raised in amendment 290.

Before I can support amendment 291, I would have to hear evidence from the local authorities on why extra powers are needed. The minister has assured us that he will enter into discussion with the local authorities and come back on the issue at stage 3, if necessary. I support that view. The minister has made sensible suggestions on the way forward on amendments 290 and 291.

The Convener: The minister said that COSLA is not speaking with a single voice in relation to the provisions in the amendments. The situation has to be cleared up. I am pleased that Stewart Stevenson lodged amendments 290 and 291, as the issues that they cover need to be discussed, but I would feel more confident if the committee were at least hearing the views of COSLA in relation to the powers that it thinks are required. COSLA's view would not bind the committee, but I would be happier if I knew what it wanted from the provisions.

Stewart Stevenson: I welcome the news that COSLA is to meet the minister to discuss amendment 290 and some of the other amendments that COSLA prevailed upon me to lodge at very short notice—it was 50 minutes before the deadline. I hope that the discussions will cover a number of the points that are included

in the other amendments that I lodged and that that will lead to appropriate amendments being lodged at stage 3. On that basis, I am content to seek the committee's permission to withdraw amendment 290.

Amendment 290, by agreement, withdrawn.

Section 19 agreed to.

After section 19

Amendments 291 and 393 not moved.

Section 20—Delineation by agreement of paths in land in respect of which access rights exercisable

The Convener: Amendment 292 is grouped with amendments 293 and 294. I ask Stewart Stevenson to move amendment 292 and speak to the other amendments in the group.

Stewart Stevenson: Amendment 292 is another of the COSLA amendments. I refer members back to the discussion that took place around section 18(9), as amendment 292 also relates to apparent restrictions that are to be found in the bill. I will move on to that in a moment. Amendment 292 seeks to remove from section 20(1) the words

"within land in respect of which access rights are exercisable".

The wording appears to introduce an unreasonable restriction. The same argument is true of amendment 293.

I move amendment 292.

Allan Wilson: Amendments 292 and 293 are similar. They seek to allow a local authority to delineate paths by agreement or order, depending on the relevant provision, over land that would otherwise be excluded from access rights. Sections 17(2)(a) and 17(2)(b), which we have discussed, provide for the core paths plan to include land that would otherwise be excluded from access rights.

Section 17(2) also allows for the inclusion in the core paths plan of rights of way and paths created under the Countryside (Scotland) Act 1967. Some of those paths will be over land that has been excluded from access rights. It is important to note that there is nothing to prevent either existing or future rights of access of the type described in sections 17(2)(a) and 17(2)(b) from being core paths, even if they cross land where access rights created by the bill are not exercisable. That is quite important.

It is expected that the core paths plan will identify the need for new paths to be created over excluded land. That is where the position becomes complicated. The powers in the Countryside (Scotland) Act 1967 will continue to be available for that purpose. The fundamental point is that we are building on the powers that are already incorporated in paragraph 6 of schedule 2 to the 1967 act. There is no need to duplicate those detailed powers in the bill as amendment 292 seeks to do. Not only is that unnecessary, but it could be confusing to have two sets of powers for the same purpose.

We have discussed today the fact that many of the paths identified in the core paths plan will be pre-existing paths that were established under the 1967 act. When the plan is adopted, they will become core paths. Local authorities will then have to deal with those paths according to the provisions of the 1967 act. That is why we have retained those provisions.

It would complicate matters to replicate in the bill the path creation powers that are available under the 1967 act. Where local authorities or ministers want to designate a core path over land that would otherwise be excluded from access under the bill, they would do so using the powers under the 1967 act, which remains on the statute book.

That is a rather complex explanation but—believe me—I have gone into the issue at length with colleagues in the past two or three days just to make sure in my own mind that we know what is going on. We build upon the powers in the Countryside (Scotland) Act 1967 to create a core path over land that would otherwise be excluded under the bill.

With that assurance, I ask Stewart Stevenson to withdraw amendment 292 and not to move amendment 293.

Stewart Stevenson: I am quite content with the minister's explanation. I would not wish to make things any more complicated by pressing amendment 292.

I encourage the minister, when he is advising SNH on the access code, to consider how the matter should be presented so as to reduce rather than increase confusion, because some of the core path provisions are provided for under a different act from the one that we are seeking to pass. I understand the legal point perfectly and I seek permission to withdraw amendment 292.

Amendment 292, by agreement, withdrawn.

Section 20 agreed to.

Section 21—Compulsory powers to delineate paths in land in respect of which access rights exercisable

Amendments 293, 294 and 43 not moved.

Amendment 195 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 196 is grouped with amendments 176 and 131. If amendment 176 is agreed to, I will not call amendment 131, due to pre-emption.

15:00

Allan Wilson: Amendment 196 provides that anyone who is authorised by a local authority and who requires to enter private land to carry out work related to core paths that have been delineated by an order, as opposed to by agreement, should first provide the landowner with reasonable notice. The amendment also provides that the land should be entered at a reasonable time. Everyone would agree that that is common sense, and I hope that they will agree that amendment 196 covers the points that Bill Aitken raises in amendment 131. I do not see the requirement to move amendment 131 if amendment 196 is accepted.

Amendment 176 would delete the powers of entry for local authorities in respect of core paths that have been delineated by order. Those are necessary powers, and must be retained if local authorities are to be able to use the powers provided to them under section 21, otherwise they would have difficulty in fulfilling their duties in respect of providing core paths. Amendment 176 would provide new powers of entry for local authorities

"for the purpose of erecting or removing signs, or carrying out maintenance and repairs to paths or any other work"

that facilitates access.

Those powers would be inappropriate in section 21, which deals specifically with core paths. As I said in response to Stewart Stevenson, section 15 provides local authorities with powers to erect signs and section 14 provides them with powers to remove them, if that is what they require to do. Those are more appropriate powers. While we understand what John Farquhar Munro is thinking about, his amendment 176 is flawed. The powers would be inappropriate in section 21, as they are already in sections 15 and 14. I hope that no one will move amendment 176 and that the committee will support amendment 196. On that basis, there is no requirement for amendment 131 either.

I move amendment 196.

The Convener: In the absence of John Farquhar Munro, George Lyon will speak to amendment 176.

George Lyon: I am not moving the amendment; I am speaking to it. In my discussions with John Farquhar Munro, I pointed out to him that sections 14 and 15 already took care of the matter. I record my thanks to the minister for putting that fact on the record. I shall take that back to the gentleman concerned.

The Convener: Bill Aitken is not here to speak to amendment 131. Do other members wish to speak on the grouping? If not, I ask the minister to wind up.

Allan Wilson: That is fine.

Amendment 196 agreed to.

Amendments 176 and 131 not moved.

Section 21, as amended, agreed to.

Schedule 1 agreed to.

After section 21

Amendment 240 not moved.

Section 22—Ploughing of paths

The Convener: Amendment 295 is grouped with amendments 296 to 301.

Stewart Stevenson: With your consent, I will defer to my colleague Duncan Hamilton to deal with the amendments to section 22, as I might have to leave shortly.

Mr Duncan Hamilton (Highlands and Islands) (SNP): There are three separate parts to this. Amendments 295, 296, 297 and 298 all make essentially the same point. The point at issue is whether we restrict section 22 to the definition of "ploughed" or whether we should insert the phrase, "subject to land management". The logic of that is that other entirely legitimate land management operations such as forestry could damage the land and therefore should be included in the bill. No one is disputing that those operations are entirely legitimate, but the point is whether we should widen section 22 to include such operations. It would be entirely appropriate to reinstate all the paths, rather than just those created purely by a path order. Amendments 296, 297 and 298 are consequential to amendment 295.

Amendments 299 and 300 are about altering the time periods that are involved. In the first instance, amendment 299 would reduce the period of seven days to one day, which seems more appropriate. There was confusion about why it would take seven days for notice to be given. The point has been made with regard to section 22(2)(b) that to include the phrase

"8 weeks after the ploughing"

would in many cases take out the bulk of the season for those who wish to enjoy the countryside at that time. Amendment 300 suggests that the period of eight weeks be replaced with two weeks.

Amendment 301 again makes the point that paths should not only be repaired but restored to their original condition so that there is no long-term

deleterious effect. It is a perfectly reasonable amendment to lodge.

That is the rationale behind the amendments. I understand that the minister is due to have a meeting with local authorities. All the amendments in this group came from that source, so it may be that if he can give us consolation, we might find a point of compromise.

I move amendment 295.

George Lyon: I refer to amendment 300. My understanding is that section 22 refers to where land is being reseeded and that it refers specifically to ploughing. With regard to management and good husbandry, the eight-week period to reinstate the path is absolutely a minimum requirement, but it would take time for the sown grass to be established and firm up. We certainly would not want machines near or on that land until the process had taken properly, because of the damage that could be done. The eight-week period is justifiable.

I appreciate the point that was raised in relation to amendments 295, 296, 297 and 298 in that they would include in section 22 forestry operations. I would be interested to hear what the minister has to say on that before I make my mind up about whether there is merit in supporting the amendments.

Allan Wilson: The point about forestry is well made. We might have to discuss with local authorities wider applications of section 22. The section applies the same procedures to core paths that are delineated by order under section 21 as those that are applied to the ploughing of rights of way under the Countryside (Scotland) Act 1967. That is why we have included section 22. The amendments would widen section 22 to cover other land management operations that might damage paths; they make a fair point. They would also include in the section recommended routes and established footpaths, which is a bit more problematic, as we have found in other debates on these issues.

In my view, it is important that core paths be kept open and free from obstruction, as we have just debated. However, we acknowledge that it is impossible in some circumstances to plough a field without ploughing a right of way across it, which is George Lyon's point. That is why section 22 ensures that the core path is reinstated. The same need for statutory provision does not apply to other routes or paths, and that is apart from the old argument that it is unclear what a recommended route is, what—in another context—a recognised route is and what an established footpath that is not a core path is. The place to address that is in the access code.

Outwith the core path network, the code has an important part to play in ensuring the responsible management of land in relation to access rights and those who exercise them. It could be argued that the reinstatement of all paths that have been damaged by ploughing—whether core paths or otherwise—should be left to the code. However, given the statutory duty on core paths that we impose on local authorities and given that ploughing is unavoidable in some circumstances, it is right that we make statutory provision for the reinstatement of core paths at least. The other paths can be left to the code.

Amendment 299 would reduce the period for notification of ploughing of a path to one day and amendment 300 would reduce the time for reinstatement to two weeks from eight. I will take advice, but I have doubts about reducing the time to one day, which might be too onerous. However, we will consider that. We are open to persuasion about reducing the period for reinstatement, and I understand the points that have been made about that.

The best approach is the suggested one of discussing the issues with COSLA again, but only in so far as they apply to core paths. I am not convinced that the provisions should be extended to all paths, whether routes or otherwise. I give the assurance that we will talk to COSLA and consider the time scales, but discussion will be restricted to core paths. We could not agree to look beyond the core path network.

George Lyon: I thank the minister for his response. He made an important point about sticking to core paths. I am not clear about how other routes would be reinstated. Routes are created by people walking along or machines driving along, so no process establishes them, apart from the walking or driving.

I appreciate that the minister takes the point about forestry because a genuine issue has been raised. I would support our further considering that issue in relation not so much to the felling operation as to replanting, because when machines roll up all the rubbish and dig the track for the next replanting, they could go through a core path. We may require people to avoid that when the hills are replanted; that issue must be examined.

I would be interested in the minister's definition of the reinstatement process that is required of landowners. All that ploughing does is shift all the land in a field 14in across to the left or the right, depending on the way in which it is ploughed, so the only reinstatement process that I would understand would involve allowing the field to settle and be grazed with some sheep or cattle to tighten it back down. After that, people would be allowed to walk on the path. That is about it. I am interested in how people will decide whether a path has been reinstated. Apart from having

people walk on a path, which will happen after it has been re-established, what else is expected of landowners?

Allan Wilson: I do not want to reinvent the plough. All that we are doing is lifting wording from the Countryside (Scotland) Act 1967, so whatever reinstatement meant then, it means now. If a dispute arose over the matter, we could seek to define reinstatement better somewhere else. The wording was lifted from the 1967 act, which deals with ploughing rights of way. When a right of way is ploughed, it is subsequently reinstated. The same situation will apply under the bill.

15:15

The Convener: The questions that have been raised fall into the previous category. Before we can close the door on what will be said in statute, we must be absolutely certain that these are the time scales that we want. I understand how tidy it would be to reduce the reinstatement period from seven days to one; however, I am more concerned about section 22(2)(b), where the period is eight weeks at the moment. Two weeks might be too tight; however, eight weeks might be too long. I agree with what you said, minister, about the provision needing to be in the statute and not in the guidance. That principle is right: it should be a statutory requirement. However, we must be sure that we have the right time scales. If you are willing to reconsider the issue in the light of your discussions with COSLA, that would be helpful.

The final say is with Duncan Hamilton, in place of Stewart Stevenson. I ask Duncan to wind up.

Mr Hamilton: Of all the people to replace, it is a great pleasure to replace Stewart Stevenson. I agree with what you have said about the time scales, convener. We are not thirled to setting the periods at two weeks or one day, and if the minister accepts our point, that will give us some flexibility and I shall not press the amendments.

The minister started out by stating that he took the point about forestry; however, amendment 295 also refers—as others have said—to the use of large machinery. I am not convinced by what the minister said about addressing some paths in the reinstatement provisions but not others. He said himself that that almost implies that those areas should be reinstated while others, perhaps of a lesser quality, should not. Equally, I am not convinced by his argument that reinstatement means now what it meant in 1967. We are talking about different rights; therefore, the burden of reinstatement may be different. I hope that the minister can clarify that position.

There is a legitimate point in seeking to ensure that all the recommended routes and paths are reinstated, rather than just those to which a path order applies. I have not heard enough from the minister to convince me to withdraw amendment 295. However, if he has something substantial to say, we can come back to that.

Allan Wilson: There is a substantive point in terms of land management generally, rather than just the ploughing of rights of way, which is dealt with in the 1967 act, or core paths, which we will deal with in the bill. The matter is best left to the code. As I have said repeatedly, we do not intend to restrict the right of responsible access that we create to recognised routes, paths, tracks or anywhere else. People will have a right to roam responsibly outwith recognised or recommended routes—whatever they may be—and tracks and paths that are not core paths or rights of way, whatever they may be. We are creating a right of responsible access that supersedes any definition of recommended route, track, path or whatever. That is a fundamental point. To hark back constantly to the ploughing up of tracks or paths as an obstacle to the exercising of rights is a bit misplaced.

That said, we are imposing a duty on local authorities to establish a network of core paths and to facilitate the exercise of access rights. Whether the land is ploughed up or otherwise affected by forestry or other land management practices, it is appropriate that we make statutory provision to have the paths reinstated.

We will reconsider the time limits. The definition of reinstatement is already in the 1967 act, and reinstatement is already happening in respect of rights of way. We do not envisage that we will do any more or less than the 1967 act envisaged, unless it is necessary. Nonetheless, we will seek to define the term reinstatement better to ensure that no one can argue that their access rights are being infringed or impinged upon by section 22. Otherwise, we will address those matters in the code, which is the best place to address wider land management issues. However, it would also be worth while considering the specific inclusion of forestry in the statutory provision. We would be taking into account not simply ploughing, but changes in land management techniques between 1967 and now.

The Convener: Duncan Hamilton has raised a legally relevant question. We must be clear that the ploughing of paths relates to wider land management techniques, otherwise the legislation will be interpreted to mean what it says. Minister, you have said that you will deal with the issue in the code. Alternatively, you could define ploughing of paths and reinstatement in a schedule to the bill, to connect them with the 1967 act.

Allan Wilson: I said that we will make statutory provision on core paths and rights of way, which will be dealt with in section 22. Wider questions of

land management techniques will be dealt with in the code, as we discussed in relation to croft land.

The Convener: Perhaps we are misunderstanding each other. I am not unhappy with your explanation, but we are talking about the meaning of section 22.

Allan Wilson: Which particular aspect of section 22 are you referring to? I take your point about the meaning of reinstatement. We will try to define it better, but it is a pre-existing legal term that is used in the 1967 act, which provides for the reinstatement of rights of way that are ploughed. We are merely replicating that provision in respect of the core path network.

The Convener: Perhaps I am not making myself clear. I do not have any difficulty with that. I am just saying that the matter can be dealt with either in the code or in the bill. Presumably you would also define what is meant by ploughing of paths and so on. Anyway, I will leave that on the table and allow Duncan Hamilton a last word, as long as it is a point of clarification and not a speech.

George Lyon: I want to make a point of clarification on the distinction that Duncan Hamilton drew between "ploughed" and "land management operations" when he spoke to amendment 295. I am not aware of any land management operation, apart from ploughing, that disturbs or damages a path. Surface tillage and other new mechanisms simply go over the surface. As a result, "ploughing" is the right term in this respect. There is an issue about forestry, in which a path could be fundamentally disturbed and would require to be reinstated; however, those are the only two operations that spring to mind.

Mr Hamilton: The intention behind amendment 295 was to address not just forestry—which I will return to in a moment—but whether heavy machinery or trailers have the capacity to damage a path. We all agree about forestry. The point may be valid, but it is not covered by the bill. I do not think that the minister said he will include an additional provision on forestry.

Allan Wilson: I specifically said that.

Mr Hamilton: So you will come back with such a provision.

Allan Wilson: I said that we will include statutory provision to take account of changes in land management practices since 1967, which would include forestry.

Mr Hamilton: I did not hear that.

Allan Wilson: It will be dealt with in section 22.

Mr Hamilton: Right. The only outstanding question is whether the matter should be covered entirely in the bill or whether some of it should be in the code. If you are saying that the matters to be covered in the bill will be forestry and ploughing, which is already covered, I am happy—and happy to withdraw the amendment.

Amendment 295, by agreement, withdrawn.

Amendments 296 to 301 not moved.

Section 22 agreed to.

After section 22

The Convener: We now come to amendment 46.

Bill Aitken: I do not know whether to be encouraged or depressed at the rate of knots at which the committee has proceeded with its consideration of the bill since I left. In any event, amendment 46 seeks to be helpful.

It occurs to me that unscrupulous land managers might attempt to interfere with the rights of persons to walk in the countryside along core paths by the simple expedient of putting a dangerous or savage animal in the vicinity of that core path. Such animals could vary in nature: they might be bulls or dogs that are not covered by the dangerous dogs legislation. Such an action would either stop those who attempted to walk along the path doing so or divert them off the core path and into the countryside, perhaps through unsafe walking conditions or areas where it would be preferable that they did not walk. There is nothing sinister in amendment 46 and I commend it to the minister.

I move amendment 46.

The Convener: Bill Aitken has raised a pertinent issue. What do you think, minister?

Allan Wilson: I think that that is a bit of a departure for Mr Aitken.

Amendment 46 seeks to insert in respect of animals on core paths a provision that is similar to the provision in the Countryside (Scotland) Act 1967 in respect of bulls on rights of way. As we have just mentioned in the context of ploughing and forestry, the 1967 act is now out of date. The consultation on the draft bill included the suggestion of applying to core paths the provision in the 1967 act, but following that consultation we decided that the provision was neither necessary nor appropriate. Section 14(1) prevents any act that has

"the main purpose of preventing or deterring"

the functioning of access rights. Section 14(1)(c) refers to positioning or leaving at large any animal that might have that effect. If the intent of the unscrupulous landowner to whom Bill Aitken refers was to interfere with persons who exercise access rights responsibly, that landowner would not be

permitted to take the intended action under section 14(1)(c).

We recognise that farmers must keep their animals somewhere. The bill achieves a reasonable balance between farmers' rights and access rights, which will be backed up by appropriate guidance in the code. I invite Bill Aitken to withdraw amendment 46.

The Convener: Some of the more dyslexic committee members thought that section 14(1)(c) said, "position or leave any large animals".

As no other members wish to speak, I call Bill Aitken to wind up.

15:30

Bill Aitken: I concede that the minister has a point and I seek leave to withdraw the amendment.

Amendment 46, by agreement, withdrawn.

Section 23—Rangers

The Convener: We now come to amendment 302, which is grouped with amendments 303, 132, 197, 92, 93 and 304. Stewart Stevenson is not here. In his absence, will you be moving the amendments in his name, Duncan?

Mr Hamilton: I would be delighted.

The Convener: I ask you to move amendment 302 and to speak to the others in the group.

Mr Hamilton: Of course. Actually, convener, with your permission, I will not move amendment 302, or indeed amendment 304 when we reach it, but I will move amendment 303. I think that amendments 302 and 304 are unnecessary, although other members of the committee may wish to take them on.

Amendment 302 not moved.

Mr Hamilton: Amendment 303 relates to section 23, which begins:

"The local authority may appoint persons to act as rangers".

The amendment would leave out "as rangers" and insert

"in accordance with this section".

The point is that there may be circumstances when the local authority wishes to appoint people other than rangers. The intention behind the amendment is to give authorities the flexibility to do that. I can think of a few circumstances in which that might be appropriate.

I move amendment 303.

The Convener: Amendment 132 is in Robin Harper's name, but he is not here. If members wish to address it, they may do so when speaking to this group of amendments.

Allan Wilson: It is not like Duncan Hamilton to move amendments that are not supporting the rangers. [*Laughter.*] We are considering amendment 303 with a view to providing a general power of entry that will allow local authority officers to do what is required. That provides a better approach than extending section 23 to staff other than rangers.

On amendment 132—which may or may not be moved—section 23 provides for local authorities to

"appoint persons to act as rangers",

whose role will be

"to advise and assist the public as to any matter relating to the exercise of access rights".

Although section 23 sets out the purpose for which rangers may be appointed, we recognise that the functions of many rangers will not be restricted to the matter of access. Many local authority ranger services will continue to provide the full breadth of their current range of services. The bill makes no reference to their other functions, because it deals only with access rights and management. That in no way prevents rangers providing other services, such as those that are set out in the Countryside (Scotland) Act 1967.

I recognise the concern, which has been raised by organisations including the Law Society of Scotland, that there is an imbalance in section 23(2), which reads:

"rangers may be so appointed … to advise and assist the public as to any matter relating to the exercise of access rights in respect of the land".

The society feels that rangers should assist and advise both sides: land managers and those exercising access rights, as the bill will place roles and responsibilities on them all.

In my view, the bill already allows rangers to assist land managers. However, for the avoidance of doubt, Executive amendment 197 addresses the Law Society's concern by making it explicit that the role of rangers will relate to 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 in respect of the land".

That will deal with the point that Murdo Fraser, the Law Society and others have raised. I ask Bill Aitken not to move amendment 92, in favour of amendment 197.

Amendment 93 would confer more of a policing role on rangers. That is not envisaged or intended under the bill. Section 13 requires local authorities

to uphold access rights. The local authority has other relevant powers, which may or may not be exercised specifically by rangers, including that set out in section 14: to require remedial action to be taken in cases where an owner has put up a fence

"for the purpose … of preventing or deterring any person"

from exercising access rights.

Section 12 empowers the local authority to make byelaws in relation to land over which access rights are exercisable. It is appropriate that that power should lie with the local authority and it should exercise that power through whichever of its staff it feels are most appropriate. Amendment 93 would alter the nature of ranger services. Rangers should provide advice and assistance: they should not have the quasi-policeman role that Murdo Fraser envisages.

I ask Bill Aitken not to move amendment 92 or amendment 93. I also hope that amendment 132 will not be moved.

The Convener: The Law Society of Scotland did not put to the committee at stage 1 the view that section 23 was not properly balanced. We had quite a bit of discussion about the role of rangers. That is a difficult role to balance. We do not want the countryside to be policed in any sense—we do not want access-takers or land managers to think that they can refer to the police to sort access matters out. We hope that the act and the code will be enough to resolve disputes in 99 per cent of cases.

If the minister is saying that it is the local authority's duty to uphold access rights in that the balance of the ranger's role is to ensure that access-takers and landowners uphold access rights, amendment 197 is okay with me—but I am puzzled as to why that view was not put to us. Is that what the minister means by amendment 197? Does it relate to upholding access rights? Is the amendment intended to ensure that advice can be given in that context to those who are exercising access and to landowners?

Allan Wilson: Yes. The operative term is "advise and assist". The point has been made to us that local authority rangers are available to provide advice and assistance not only to members of the public or those exercising their recreational interests, but to land managers and others, with a view to dispute resolution where the occasion necessitates it. I do not know whether Bill Aitken shares Murdo Fraser's view, but we do not envisage rangers being the policemen of the act.

The Convener: My second point relates to the suggestion that we amend the bill to say, "The local authority shall appoint persons to act as rangers". I take on board your point that local authorities may decide to appoint other people. I wonder why the bill was phrased as it has been. Perhaps it should say "rangers or other persons who may be employed by local authorities". My worry is that local authorities may choose not to employ anyone to advise and assist landowners and those exercising access rights.

Allan Wilson: The simple answer to the convener's question—if there is one—is that rangers is a recognised and well-used term. Rangers' duties and responsibilities are understood. In amendment 197, we seek to clarify that they should not act in one interest without having regard to the other. Local authorities may appoint rangers to implement their duties under section 14. Alternatively, they may appoint other local authority officers to do that. Duncan Hamilton said that it would be too restrictive to insist that rangers alone should have the function of implementing local authorities' duties under section 14. I accepted that. Local authorities may want to authorise other officials to act on their behalf in this matter. I suspect that they will.

The Convener: I accept that local authorities may decide to appoint people other than rangers to implement their duties under section 14, but that means that the bill will not place a duty on local authorities—they may choose whether to act. Is it worth returning to this issue? If we take the view that it is important for land managers and those exercising access rights to have recourse to a ranger or another person, we may want to indicate more strongly what we expect of local authorities.

George Lyon: There must be a balance on this issue. The minister is attempting to achieve that. We hear incessantly about bad landowners and landowners who are obstructive, but we should not doubt that there are also bad ramblers. Some people cause damage and create excessive problems for land managers. It is the job of rangers to consider both sides of the argument when a dispute arises and to attempt to resolve it. The minister is taking a balanced approach. Rangers should not lay down the law. They should assist both sides in a dispute to reach agreement.

The Convener: I think that George Lyon has misunderstood me. I accept entirely the point that he is making and have signed up to it. My point is that, unless we support amendment 302, local authorities will not have to appoint someone to play the role the member has described.

Allan Wilson: I dispute that. If we impose a duty on local authorities to uphold rights of access and, under section 14, to ensure that persons are not prevented from exercising those rights, local authorities must fulfil that duty. To fulfil it, they must authorise someone—the bill does not specify whom—to ensure that that happens. I suspect that in most instances the person so authorised would not be a ranger.

The Convener: So you are saying that under section 23, which is entitled "Rangers", you would expect a local authority to appoint someone to ensure that its duties under section 14 were implemented and to assist both sides in disputes.

Allan Wilson: An authority would authorise someone to do that, rather than appoint them.

The Convener: But you are saying that the person concerned would not have to be a ranger.

Bill Aitken: I will speak briefly about the two amendments in the name of Murdo Fraser—92 and 93. Members of the committee do not differ greatly in their thinking on this matter. I am pleased that the minister has recognised that the bill is slightly deficient. That has made it necessary for the Executive to lodge amendment 197.

I am happy, on Murdo Fraser's behalf, not to move amendments 92 and 93. I think that we are now reasonably clear where we are heading with the issue of equity.

Mr Hamilton: Despite the minister's publicly outing me as the only Rangers fan in the Scottish National Party, I shall, as I said, not move amendment 304. Further, because the minister clarified that he will revisit the issue of rangers and because he has given an assurance that he will widen the powers available in section 23, I am happy to withdraw amendment 303.

Amendment 303, by agreement, withdrawn.

Amendment 132 not moved.

Amendment 197 moved—[Allan Wilson]—and agreed to.

Amendments 92, 93 and 304 not moved.

Section 23, as amended, agreed to.

The Convener: We will deal with section 24 next. Members will be surprised to hear that we are ahead of ourselves. However, I do not want people to get too excited and fall back tomorrow. I propose to stop at this point. I will see you back here tomorrow at 9:45 am.

Meeting closed at 15:47.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Tuesday 15 October 2002

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75
Special issue price: £5
Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178