

# **LOCAL GOVERNMENT COMMITTEE**

Tuesday 22 January 2002  
(*Afternoon*)

Session 1

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## LOCAL GOVERNMENT COMMITTEE

### 3<sup>rd</sup> Meeting 2002, Session 1

#### CONVENER

\*Trish Godman (West Renfrew shire) (Lab)

#### DEPUTY CONVENER

\*Dr Sylvia Jackson (Stirling) (Lab)

#### COMMITTEE MEMBERS

\*Mr Keith Harding (Mid Scotland and Fife) (Con)

\*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)

\*Tricia Marwick (Mid Scotland and Fife) (SNP)

\*Iain Smith (North-East Fife) (LD)

\*Ms Sandra White (Glasgow) (SNP)

\*attended

#### WITNESSES

Donald Balsillie (Stirling Council)

Richard Barron (Stirling Council)

Councillor Andrew Campbell (Convention of Scottish Local Authorities)

Bob Christie (Convention of Scottish Local Authorities)

Rona Gibb (Argyll and Bute Council)

David Hill (West Dunbartoshire Council)

Debbie MacKay (Argyll and Bute Council)

Councillor Sandy Park (Highland Council)

Bob Reid (Convention of Scottish Local Authorities)

Councillor Iain Robertson (West Dunbartoshire Council)

Geoff Robson (Highland Council)

Bob Shannon (Convention of Scottish Local Authorities)

Alex Sutherland (Highland Council)

#### CLERK TO THE COMMITTEE

Eugene Windsor

#### SENIOR ASSISTANT CLERK

Irene Fleming

#### ASSISTANT CLERK

Neil Stewart

#### LOCATION

Committee Room 1

## Scottish Parliament

### Local Government Committee

*Tuesday 22 January 2002*

*(Afternoon)*

[THE DEPUTY CONVENER *opened the meeting at 14:02*]

### Items in Private

**The Deputy Convener (Dr Sylvia Jackson):** I open this meeting of the Local Government Committee. Before I introduce our witnesses, I ask members to agree to take items 3 and 4 in private. Both items involve consideration of draft reports. Is that agreed?

**Members** *indicated agreement.*

**The Deputy Convener:** I pass on the apologies of Trish Godman, our convener, who will join us later.

## Land Reform (Scotland) Bill: Stage 1

**The Deputy Convener:** I welcome from the Convention of Scottish Local Authorities Councillor Andrew Campbell, COSLA's rural affairs spokesperson and the convener of Dumfries and Galloway Council; Bob Christie, COSLA's head of policy; Bob Reid, the assistant director of planning and strategic development for Aberdeen City Council; and Bob Shannon, head of planning policy and Europe for Highland Council.

I invite the witnesses to speak to COSLA's submission for a few minutes, following which we will ask questions.

**Councillor Andrew Campbell (Convention of Scottish Local Authorities):** Thank you for your kind welcome. This is my first opportunity as rural affairs spokesperson to attend such a meeting. We hope to meet the Minister for Environment and Rural Development and the convener of the Rural Development Committee on 8 February—we are quite excited about that opportunity.

Local government, the Parliament and the Executive have shared responsibilities to the people of Scotland to work together. I am sure that the comprehensive programme of consultation and debate on the Land Reform (Scotland) Bill will ensure that we meet those responsibilities.

Members will be either relieved or disappointed to meet in Edinburgh today, as I read in the press that the Rural Development Committee met near Loch Lomond and the Justice 2 Committee has been in Stornoway. I hope that COSLA will have the opportunity to give oral evidence to the Justice 2 Committee on the Land Reform (Scotland) Bill.

The deputy convener introduced my fellow team members, so I will not go through that part of my introduction. I will take a couple of minutes to outline five key areas that we wish to discuss with the committee in relation to part 1 of the bill, then my colleagues—who all happen to be called Bob, for members' ease—will pick up on some of the detailed and technical issues in relation to parts 2 and 3. Members have received our written evidence. Many councils were active in the debate before and after the bill's publication.

First, we would like the bill's emphasis to be on confirming and managing public rights of access, rather than conferring and regulating them. That would be in the spirit of other initiatives that are being promoted by the Executive, Parliament and local government, such as the power of well-being in the future local government bill, and would be an endorsement of human rights legislation. Moves towards local discretion and empowerment

provide for more sustainable arrangements and demonstrate maturity.

The second issue that I draw to members' attention concerns core path networks. We firmly believe that a duty on local authorities to create and manage core path networks is essential for the successful implementation of the bill. A commitment that there will be further discussion of funding, the timetable, the development plan and the process in relation to paths and core path networks would be warmly welcomed.

The third main issue is curtilage and its legal definition in the bill. We would be interested to hear members' views and whether other submissions have raised the issue.

Fourthly, on liability, there must be guidance on personal responsibility as part of the Scottish outdoor access code. Some warnings about weather and physical risks would also be appropriate.

My fifth point is to underline the request to remove the power for ministers to alter sections of the act. That power goes against the ethos of mutual respect and partnership working, which we all strive to achieve.

Finally, we request that resources and the financial memorandum that accompanies the bill be examined again. The definition of adequate funding for paths will require further discussion. The formula that was recently used to allocate funding is, I understand, based on parks and open spaces. That formula works against rural authorities, where most of the pressure for countryside access exists.

On parts 2 and 3, the committee has COSLA's written submission, which was developed with Highland Council. Our main concern is that the proposals are so complicated and inflexible that few rural communities will be able to take them up.

I hope that I have highlighted the issues that we would like to discuss with the committee today and that I have given the committee a picture of where local government is coming from in relation to this welcome and positive contribution to the countryside debate.

**The Deputy Convener:** Thank you. If no other witnesses want to contribute at the moment, we will move to questions.

Yesterday, I was at the Rural Development Committee meeting at Loch Lomond. It was an enjoyable day and important issues were raised, which we will follow up today. There was a particular emphasis on the implications of the bill for local authorities.

I have a question, which I asked at the Rural Development Committee meeting yesterday,

about curtilage and farm steadings. There may be many routes through farmyards that could be closed under the Land Reform (Scotland) Bill. What is the enforcement role of local authorities in such cases? How will local authorities have to act if the bill remains as drafted?

**Councillor Campbell:** Thank you for the question. We asked that question but I see that you have thrown it back at us.

I am a farmer by profession. As members know, we had the foot-and-mouth crisis in Dumfries and Galloway. Whether a farmyard is a place that people can go through is an issue that we should take seriously, especially in relation to the spread of disease.

Farmyards of today are not play areas; in many cases they are workplaces that are full of high-tech equipment. They can be dangerous for people who are not familiar with what happens in them. I can see that that should not be a reason to stop footpaths. There must be an easy way to get around the issue—or to go around the farmyard, if you understand what I mean.

**Bob Reid (Convention of Scottish Local Authorities):** The answer that I will come up with on a few occasions is that we need an interim process. I do not think that the problem can be overcome overnight. Throughout its work, the access forum agreed that it is difficult to take access through farmyards. Although there are traditional routes through many farmyards, in the future they might not be as safe as we would like them to be. We cannot solve the problem overnight.

It is likely that local authorities will have to be involved in a gradual process in which the problem will need to be studied case by case. Using the powers set down by the proposed legislation, we will need to consider how we can plot or chart routes around some of the very busy farm steadings.

The issue intersects with that of existing rights of way and we must remember that rights of way will continue. On balance, we came to the conclusion that there should not be access through farmyards. The way to deal with the situation is gradually to mark out new routes that avoid farmyards. We cannot see there being difficulties with that; such things are straightforward and can be achieved through planning and procedures under the proposed legislation. We will then end up with a better path network than we have at present.

**Mr Michael McMahon (Hamilton North and Bellshill) (Lab):** I represent an urban constituency where access to people's property generally comes under the heading of burglary. It is difficult to get into the subject with that point of view.

One issue that local authorities have in common is finance, which has been raised. How would you like the proposed new legislation to tackle your concerns about the adequacy of finance?

**Bob Christie (Convention of Scottish Local Authorities):** The first concern is to ensure that the overall sum is adequate. That is our main concern.

We appreciate that there is a drive to simplify the way in which allocations to local authorities are calculated and so it would not be welcome for us to suggest a new calculation for the specific purpose of creating and managing path networks. The issue might best be referred to the working party on local government finance.

The funding that is being considered for the bill is long-term—10-plus years. We think that there is an opportunity to consider how best to meet funding needs through the working party. We are concerned that the parks and open spaces formula does not meet the needs of the bill. Although urban areas will require to enhance access in their surrounding areas, the bulk of the need will be in other areas.

14:15

**Mr McMahon:** You said that you see funding on a long-term basis. Will there be an immediate impact after the bill is enacted that will cause particular difficulties?

**Bob Christie:** The financial memorandum acknowledges that it will be two years after the enactment of the bill before the paths plans will create new paths. If we get our act together quickly, we will have time to start the discussion on how funding is best allocated to individual local authorities. I am suggesting that the discussion is important because the funding will last for a long time. It is important to get it right and to do so early.

**The Deputy Convener:** I have a question for Mr Reid. How will the bill give the citizens of Aberdeen more access to the countryside that is adjacent to the city?

**Bob Reid:** Aberdeen is fairly typical of most large urban areas. It has a fairly firmly defined urban edge. In my career as a planner, I have worked in a number of city areas throughout Scotland, from Easterhouse to the suburbs of Aberdeen. The areas always have a distinct urban edge. It has been said that urban areas produce what has been called a no-go area—an area that is right against the built-up areas and to which it is difficult to get access.

The present system—which stems from the common-law rights of way and the Countryside (Scotland) Act 1967—does not provide us with the

tools and resources with which to sort out proper path networks. Over the past few years, we have gravitated towards the idea that the right way to help people in those areas is to provide decent path networks. We are sure that, for the most part, people want to walk on paths. All the research that has been carried out—going back 15 years, to when the Countryside Commission considered the matter in its early days—shows that people prefer to walk on paths. The difficulty we have is getting those paths recognised and designated as paths that people can use.

The bill will enable us to do that. We can now go ahead and plan a network, which we will try to designate all at once and which will enable people to go out for a short loop walk in confidence and in the knowledge that the path on which they are walking is safe.

There has been many a cause célèbre in Scotland. For example, people should be able to walk along the River Dee, which runs into Aberdeen, but it has been difficult for us to secure a footpath along what is one of the most prestigious rivers in Scotland. Since 1990, we have spent many thousands of pounds, principally on legal fees, trying to protect and keep open that route.

The bill sets out the right. Because the right is there, we will be able to follow it through with procedures to make the footpath networks work. The short loop walks—for taking the dog for a walk—will be easy.

With respect to my colleague, I say that it will take more than two years to get that up and running. We will make good headway, but the implementation of the projects on the ground will take more like five years. I am sure that we can embark well on the planning work at the outset, but I worry about the two-year time scale.

**Iain Smith (North-East Fife) (LD):** In paragraph 4.1 of your written submission, you raise concerns about the fact that although you have a duty to create a core path network, you do not have a duty to maintain and manage it; you have only powers to do so. Why are you concerned about not having that duty?

**Bob Reid:** The situation is worse than that. The bill includes only a duty to plan the network. I do not think that we want to end up with planning departments—or whichever department—throughout Scotland producing reports that get written into papers, but do not get implemented. That is why we have said in our submission that we should have a duty to create and manage the core path networks. It will take a couple of years to introduce the plans. It is important that we have a follow-through duty that ensures that things happen on the ground and a parallel duty to

ensure that the paths persist and that we recognise their importance when development proposals come along.

All of us must consider greenfield release through the planning process. When we examine that, it is important that routes that are in the core path network are protected, planned for and become an asset. The duty to manage goes far beyond simple aspects such as signposting, gates and stiles—it becomes an issue of protection.

We considered the duty to manage in the access forum. There was great pressure for local authorities to get involved in all paths. I have made it clear that the difficulty with that is the sheer resource burden. We could not do that, which is why we have returned to a formula that comprises on the one hand the necessity and on the other the practicality of ensuring the longevity of the paths and people's ability to use them.

**Councillor Campbell:** If the management of paths were made a duty for which the local authority had the lead responsibility, the finance would most likely follow, which would mean that we would, without question, achieve a good, integrated path network. Our belief is that leaving the management of paths to a power creates a weakness in finance and delivery. The people of Scotland have waited a long time for this achievement and we have a responsibility to take hard action.

**Iain Smith:** Although I am keen to give local authorities more powers, additional duties always concern me, because a duty can be legally enforceable. I am concerned that if maintaining the core path network becomes a requirement—signposting it and ensuring that it is adequate, that there are stiles and so on and that people can access it—there might be a danger that the financial implications would tempt some local authorities to reduce the number of paths that they include in the core network as a way of reducing potential financial burdens in the future.

**Bob Reid:** I quite agree with your fears. That is why I attach a great deal of importance to documents such as the guidance circular that should accompany the act, the national planning policy guideline on the relationship to planning and the planning advice note that will set down standards. Those documents must accompany the act so that we can state the density of the path network and its length per head of population. Those are the kinds of things that we will need further advice about. It is not appropriate for such information to be in the bill.

**Bob Christie:** The attraction of a statutory duty for local government is that, when a duty is incorporated in a bill that is enacted, ministers recognise that they have created a new burden on

local government and that is reflected in our funding. Laying down a statutory duty to create and manage the paths—to do the physical work in perpetuity—makes it more likely that we will obtain the necessary funding than if there was merely a power in respect of paths or a duty just to plan for them.

**Iain Smith:** Things are a lot more optimistic in local government than they were in my day.

Is there a risk that sources of funding other than central Government and councils—which you might be able to access if the management of paths were a power rather than a duty—might be lost if the work becomes a statutory duty, because some sources of funding are not available to assist councils in fulfilling their statutory duties?

**Bob Reid:** I and some of my colleagues from other authorities around Scotland think that there should be a parallel duty that ensures that other Government—that is, public—bodies recognise that the right exists. Such a parallel duty is quite common in some of the other legislation that the Parliament has dealt with.

The committee will hear evidence of good partnership working in achieving path networks around Scotland. Path networks have health, economic and commuting benefits, as well as the well-being advantages in which local authorities are interested. All those benefits can be traced back to other funding channels, which it would be appropriate to draw into the process in some way. Members will hear good examples of how such partnership can work. We think that by including a parallel duty in the bill—and making sure that all bodies recognise it—we will achieve a much better network in a much shorter time.

**Councillor Campbell:** There is a directive from the Scottish Executive to encourage partnership working. Although partnerships are working wonderfully well in many areas, there must be a leader. We believe that the local authorities should be the lead party in this instance.

**Ms Sandra White (Glasgow) (SNP):** I apologise for being late.

Today is the first time that I have heard it said that new burdens mean more money. If that is the case, I wish the witnesses well.

Iain Smith explored most of the financial aspects of the bill. I have a couple of questions on financial matters and one on the two-year period for introducing the core paths plans. Bob Reid mentioned that the plans will be long term. Do the witnesses think that the two-year period for introducing the plans is long enough? COSLA's submission and others state that it should perhaps be longer. What are your reasons for thinking that the period should be more than two years? Why

do you want the committee to take that suggestion on board?

I have a question about finance. The bill is good and amendments will be lodged to improve it. We want the bill to be passed, as does everyone in Scotland. However, there is no point in having something on paper if we do not also have action. Core paths plans and rangers have been mentioned. Do you envisage rangers as having an educational role? As Sylvia Jackson said, they could educate people about using the countryside.

There is also the financial aspect of the forums. Section 24(7) states:

"The local authority may pay to members of the local access forum ... expenses and allowances".

Would that be another burden on local authorities?

**Bob Reid:** I will answer the questions in reverse order. I was a founding member of the national access forum. If I recall correctly, that relates to another omission in the bill. The bill should state that, because of the benefits of the national access forum, it must continue to exist. We find that in order to resolve issues it is better to get round the table. From correspondence, it might seem that there is an argument, but arguments often disappear at a meeting. Talking is not the answer to everything, but it helps a great deal.

We support the continuation of the access forums. Custom and practice will show how well they work. A few authorities are involved with the forums and members will be given one or two examples from the witnesses later this afternoon. It is better to have the forums than not to have them. I hope that they will run efficiently. I believe that many people who are on access forums will not claim expenses; they will become members because of the forums' aims. However, section 24(7) of the bill is good, because people should not be excluded. I am sure that that counts a lot in Ms White's area. On balance, we should have access forums and we must cover the financial implications.

Rangers are vital to the process. I have talked to rangers throughout Scotland. It is important to bear it in mind that they do not want to be thought of as police, but as educators. We will achieve far more if they act as educators. For example, we will achieve a much better outcome in terms of people's well-being and attitudes—think of Michael McMahon's point about burglary. If we police too much, we will store up problems for the future. The rangers do not want that.

It seems to me from the policy memorandum that the responsibility for funding rangers will be transferred to local authorities. It is important to ensure that the transfer does not erode current funding. To provide adequate ranger services, we

will probably need more funding.

On the two-year period for introducing core paths plans, I asked the Executive what position authorities should be in after the two years. I asked whether the consultation and inquiry must be completed and the plans must be finished and implemented. The answer was no, but when I pressed further, I was told that after two years the work on paper—the surveying, mapping and publication—should be done. It is reasonable to expect a substantial number of plans to be published by then, but it is unreasonable to expect them to be implemented. That will take much longer. The bill should contain a few extra words to say that a substantial part—about 75 per cent—of the network should be begun within five years. It is important to retain the imperative—I know from various environmental forums in Aberdeen that people feel that they have had to wait for too long.

14:30

**Mr Keith Harding (Mid Scotland and Fife)**

**(Con):** I share the concerns that my colleagues have expressed about funding. I am surprised by Bob Christie's assumption that the new burdens will be funded, bearing it in mind that, in recent years, one of COSLA's biggest arguments about the level of local government finance settlements has been that new burdens have not been funded.

I will ask about the exclusion of commercial activities, which COSLA addresses in paragraph 4.5 of its submission. What activities do you understand would be covered by section 9(2)(a)?

**Bob Reid:** Our understanding—this goes back to a lengthy discussion of the matter at the access forum—is that section 9(2)(a) is intended to address the kind of events that occupy or use land. The problem is—which is the reason why we strongly object to the section—that we think that section 9(2)(a) would have a much wider and potentially damaging effect. The matter could be dealt with easily by more careful choice of words and better explanation in the access code.

The intention of section 9(2)(a) is not to prevent guides in the Highlands—I am sure that my colleagues from West Dunbartonshire will speak about potential employment for folk in the Vale of Leven—from guiding folk. The landowners, when they gave evidence to the Justice 2 Committee, said that that is not what they want. They said that they want to be contacted and dealt with in relation to big events that would use the land. The bill should cover big events, such as an orienteering event or a charity walk, which will use the land. Because the landowners have said that, what is required is to produce a better form of words that does not potentially exclude tourism, which is one of Scotland's burgeoning industries.



Remember that many guides run very small businesses. They should not be discriminated against in the way that section 9(2)(a) would do. Although assurances have been given that guides could perhaps continue to operate under the common law, that would not wash when they came up against an aggressive landowner who said that they should not be operating on his or her land. The wording in the bill should be tightened up to govern—with the access code—the specific activities that we agree should not be covered by access rights.

**Mr Harding:** Should exemptions be granted to, for example, activity centres at which clay-pigeon shooting takes place and model aircraft are flown? Should dangerous activities, such as rallying, be granted exemptions? It would have an impact on tourism if there were problems about access for those activities.

**Bob Reid:** Those activities all use the land. People go somewhere and anchor in a certain area to do something. The access forum recommended that there should be arrangements with landowners and that access rights should not cover those circumstances. There is much custom and practice in dealing with such activities. The best example relates to the Forestry Commission, which has time and again to deal with orienteering events. It comes easily to arrangements about those events. The right of access should not extend to such circumstances, but I do not want small groups and individuals—perhaps a guide and a client who are going for a hill walk up a Munro—to be excluded from access. It should be easy to come up with a form of words that enables the meaning to be clarified.

**Mr Harding:** Are you suggesting that there should be a better form of wording, rather than the removal of section 9(2)(a)?

**Bob Reid:** The access code will cover events. As we suggested, if section 9(2)(a) was removed, the code could be relied upon to cover events, such as big charity dos and so on. That might be the safest route. It will definitely be the safest route unless a suitable form of words can be found for the bill, which could be difficult.

**Bob Christie:** The committee might be aware that VisitScotland has grave reservations about section 9(2)(a), which it expressed to the Rural Development Committee. VisitScotland has asked whether COSLA could cite its concerns at this meeting. It has fears about the impact of that section on the walking and wildlife tourism industries in Scotland, which are already worth £500 million a year and have major growth potential. Section 9(2)(a) could, in ways that are not intended, undermine the rural economy.

**The Deputy Convener:** It is useful that you

have attempted to give a balanced account of the current situation, which you do not want to stop. Am I correct in assuming that, at the moment, landowners would generally be informed of any large events that were to take place on their land?

**Bob Reid:** Yes, absolutely.

**The Deputy Convener:** In essence, the current situation should be codified. Part of that codification might be done in the bill, but most of it should be done through the access code. Is that your view on the way forward?

**Bob Reid:** Yes, absolutely. I was pleased to see that, when representatives of the Scottish Landowners Federation gave evidence to the Justice 2 Committee, they agreed that that is what the SLF intended.

**The Deputy Convener:** Before Sandra White's question, which will move the discussion on to a different subject, I want to ask a question that is slightly related to the issue of how much should be in the bill and how much should be in the code. Will you go through with us your concerns about liability? COSLA's written evidence stated that the bill

"should stress the need for persons exercising access rights to bear personal responsibility for their actions, be correctly clothed, etc."

I wonder whether some of those things should go into the code rather than into the bill. Will you elaborate?

**Bob Reid:** It must be stated clearly that COSLA has always said that, where possible, issues of liability should be resolved in the bill. All along, we have said that we see no reason why there should be additional burdens or why the issue should not be manageable. In the discussions and debates that went on in the access forum, the foundation of our position has always been that people should—for the most part—take access at their own risk.

We have found that, following the consultation with the Executive's lawyers, the grave concerns about the Occupiers' Liability (Scotland) Act 1960 have proved to be intractable. The bill as drafted does not quite match up to the bill's supporters' expectations. A way round that might be for the code to make a much stronger statement using the sort of approach that is mentioned in our submission. The code is a valuable way in which responsibility could be dealt with. We would prefer responsibility to be dealt with in the code, rather than in the bill.

However, the problem needs to be referred to the Executive's lawyers rather than to us. I get the impression that the reason why there has been no substantial change since the earlier draft of the bill is because of the possibility that alterations would need to be made to the Occupiers' Liability

(Scotland) Act 1960. I am sorry for that complicated legal answer.

**The Deputy Convener:** In every forum that I have attended, it has been agreed that the issue is complicated.

**Ms White:** My next question is on the right to buy—which is perhaps not a good phrase, given the current situation in relation to local government housing stock transfer, with which this right to buy has nothing to do—and, in particular, the community right to buy. How much will COSLA be involved with communities? Would local authorities actively help communities with advice and so on? What is your reaction to the community right to buy?

**Councillor Campbell:** Perhaps the third Bob can answer that question.

**Bob Shannon (Convention of Scottish Local Authorities):** The history of the past five to 10 years shows that local authorities have been supportive of communities and have helped them acquire assets that are important to their well-being. For example, Highland Council has helped the communities of the island of Eigg, the Knoydart Foundation and Assynt. Most rural authorities would want to support their communities. Local authorities are community leaders; they seek to assist their communities.

**Ms White:** Will the right to buy apply to large-scale transfer of land rather than to, for example, a small piece of land that has always been a kids' play area? Will you support all community buy-outs, or will you be inclined to support large scale rather than small-scale buy-outs?

**Bob Shannon:** All community bids to acquire assets would, I think, be supported. The vast majority of the cases that Highlands and Islands Enterprise's community land unit has dealt with in the past few years have been for small sites such as playing fields, community facilities, affordable housing or workshops.

**Ms White:** Does the bill adequately cover that type of transfer?

**Bob Shannon:** The bill allows a community that is interested in shaping its future and securing assets only to register an interest. The community can acquire that asset only if it comes on the market. In relation to the kind of examples that Ms White talks about, the bill does not go far enough. The bill is important in that it will encourage communities to start exploring the opportunities to acquire assets and, if the procedures in the bill were simplified, that might also encourage communities to register interest. Communities would be more interested, however, if local authorities had the power of compulsory purchase on their behalf in order to acquire key strategic

sites that are important for those communities' well-being.

**Ms White:** You have pre-empted my final question, which was about compulsory purchase.

**The Deputy Convener:** Mr Shannon, I believe that you will speak to us again when we take evidence from Highland Council. Is that correct?

**Bob Shannon:** No.

**The Deputy Convener:** In that case, are there any issues that you would like us to be aware of in relation to the implications for local authorities of the issues surrounding community ownership and transfer?

**Bob Shannon:** I would like to emphasise one of the points that we made in our written submission. We are concerned about the fact that the definition of communities in part 2 of the bill is based on polling districts. In many sparsely populated rural areas, polling districts can be large and might contain a number of disparate communities. We recommend that the definition be based on postcode units, which are small building blocks. It makes a lot of sense to use them, particularly in a situation in which the community must register an interest in a piece of land or proceed to purchase. For example, the island of Eigg is within a polling district that also includes the islands of Muck, Rum and Canna. However, each of those islands is a postcode unit. It would be invidious for one island community to have to seek the support of other island communities if it were seeking only to secure the use of a piece of ground for a playing field—that would be nonsense. We have produced a number of examples that show comparisons between polling districts and postcode units. I would be happy to leave those with the committee so that members can peruse them at their leisure.

**The Deputy Convener:** From talking to farmers, I have picked up on the idea that, as well as having an educational role, rangers might be given more of an enforcement role in remote areas where there is known vandalism. Could you comment on that? If you had the responsibility for that task, which could be seen as a burden, would you want ring-fenced money for that purpose?

**Councillor Campbell:** The use of rangers would be beneficial because the process that is required is educational rather than dictatorial. As we know, about 80 per cent or 90 per cent of people live in urban situations and it is not always easy for infrequent visitors to the countryside to recognise dangers. Given that we want to encourage more people to come to the countryside, there will inevitably be increasing numbers of people in rural areas who have little knowledge about what they might face in the countryside.

On the duty, we would gain more by taking responsibility for the duty than we would lose through the burden of having to pay for it. I appreciate what you said about ring-fencing the money, but a tremendous amount of the money that comes to local authorities is ring-fenced and COSLA is not supportive of that principle.

14:45

I appreciate what you said about the difficulty of financing. However, I mentioned partnership working earlier and I envisage the Executive being very much a partnership worker in the path network system and COSLA being more involved with delivery—as we are with local authorities. Therefore, financing is as much the Executive's responsibility as it is councils'. Nothing can be attained without partnership working and the funds that run with that.

I want to touch on the point that was made about liability. Legislatively, it is difficult at this time—when we have rights of way but not of access—to deal with liability, because legislation does not provide for people if accidents happen. Case histories prove that. That situation is one of the other drivers for provision of rights of access, because we want to encourage more people into the countryside. The bill will provide a far safer and surer way of giving access to the country to the majority of people.

Bob Reid may want to speak now.

**Bob Reid:** I will return briefly to rangers. My experience is that the best outcomes from the deployment of rangers come from education. I know in particular that the day that a ranger visits a school classroom is always one of the highlights of the year. If you ask any eight-year-old what they want to be when they grow up, many say, "I want to be So-and-so"—the name of the ranger who visited. The children are so enthused by the rangers that the benefits that can be delivered to the farmer through that educational route are probably greater than those that are obtainable from detaining the ranger in patrolling up and down paths—time that might largely be wasted. The vital message is that the wider benefit is best achieved through interpretation and education. That is absolutely the best way in which to involve rangers.

**Bob Christie:** You will not have been surprised to hear that COSLA is not comfortable with the notion of ring fencing. However, we are comfortable with the basic drift of the bill. We agree that Scotland needs a general right of access to land. We acknowledge that such a right will not be exercised without routes of access: the paths. People must have the confidence to use those paths, which must exist. Local authorities

must make that happen.

Therefore, although we do not support ring fencing, we hope that a statutory duty that leads to the recognition of a new burden will lead to funding. We hope that, although ring fencing is not appropriate, we can agree with the Executive some form of traceability that will ensure that expectations are met.

**The Deputy Convener:** I realise that that was a difficult question for you. I thank you very much for giving evidence today and wish you a safe journey home.

**Councillor Campbell:** Thank you very much indeed.

**The Deputy Convener:** I now welcome officials from Stirling Council. We have here today Richard Barron, who is the council's access officer, and Donald Balsillie, who is the countryside service manager. In common with the request that was made to those who gave evidence before you, I ask you to give us a précis of your written submission, after which we will put questions to you.

**Donald Balsillie (Stirling Council):** On behalf of Stirling Council, I thank the committee for the invitation to present evidence. Stirling Council believes that the bill is significant and important and that it will deliver the right of access to the people of Scotland.

I understand that members of the committee were in Stirling yesterday. I will not therefore go into great detail about Stirling and the attractions of its surrounding countryside, about which there are important access issues. Although I am not aware of the detail of the sites that the committee visited, I am sure that members will have pointed questions to ask us.

I would like to highlight two or three key issues on behalf of Stirling Council and COSLA. The first is maintenance of routes. We must ensure that local authorities have the powers to maintain routes. More important, if a duty is placed upon councils to prepare and manage core path networks, it seems to be obvious that we will need to have some means to ensure the maintenance of those routes. It might be that a duty to do so is placed on local authorities or that legislation is passed to assist us to do that in association with other partner agencies.

The second issue is that the bill is ambiguous. It is clear that, to deliver the core path networks, a subject local plan would need to be prepared. The bill also includes the phrase "path agreement", which seems to suggest that path agreements will underpin some of the routes in the core path network. That is a complicated and over-burdensome mechanism to achieve such

agreements. If the appropriate steps in the local plan process have been gone through, there should be no further need to secure delivery by legal agreement. However, we accept that that view is open to debate.

It is clear, as has been mentioned by members, that the third key issue is finance. The enactment of the bill will have a number of consequences for local authorities, including higher public expectation of good countryside access, better understanding of rights and greater demand for local authority action—key to which is the need to establish core path networks. Very few local authorities are in a position to do that and will need to assess their staff structures and financial arrangements to ensure that resources are put in place.

It is highly unlikely that current local authority budgets will be able to stretch to the extent that is indicated in the financial memorandum that is included in the explanatory notes to the bill. I refer to page 42 of the memorandum, on which continued Scottish Natural Heritage funding is set out. That information is ambiguous. At the moment, SNH funds about 30 per cent to 40 per cent of the salaries of rangers and up to 75 per cent of the salaries of access officers. If the intention is to phase out that support, local authorities—in addition to the demands that are to be placed on them to prepare core path networks—could be hit with a double whammy of financial demands.

That said, we support the spirit of the bill. I will now hand over to Richard Barron—Stirling Council's access officer—who will draw out some aspects of our support for the bill.

**Richard Barron (Stirling Council):** I have one point to add to what Donald Balsillie said about core path networks. It relates to the question that Iain Smith asked Bob Reid. The core path network planning system, as set down in the bill, is excellent. However, the bill does not give reasons for a path to be designated as a core path, although it sets out the detailed planning process to provide a core paths plan. However, once a path is designated as a core path, the only benefit is that it is recorded on a plan. That needs to be adjusted. One way of doing that would be for the bill to provide not only discretionary powers to cover all paths, as is envisaged, but a duty to cover the core paths. That could be achieved by the inclusion of a paragraph along the lines of, "A council has the duty to implement the core paths plan and to manage it." That would give core paths some sort of substance, which they lack at the moment.

**The Deputy Convener:** You mentioned the local plan. Perhaps you can tell us about your circumstances, as quite a bit of Stirling Council's

area is within the Loch Lomond and Trossachs national park. What will the implications of the local plan be for the national park authority?

**Donald Balsillie:** That is a good question. Stirling Council supports the national park, even though it has significant implications for us. We see the local authority's access duties simply being transferred to the new national park authority. The bill does not make explicit how national parks figure in its provisions. We see the responsibility for access and visitor management being transferred to the national park authority.

**Iain Smith:** I will ask you more about the duty to maintain—or manage, as I think you said—the core path network. You heard my questions to COSLA on the potential risk of local authorities minimising the core path network to minimise their financial liabilities. Do you have any thoughts on that? Are you concerned about it?

**Donald Balsillie:** Your point is right. If a local authority had an early indication that there would not be a great deal of resources for the core path network, it would be prudent for it to prioritise routes. Local authorities are already consulting local communities to identify the routes that they feel are the most important. Stirling Council certainly is. We recently carried out a consultation in and around Stirling to identify routes that the community councils, members of the public and other interest groups felt were important.

I acknowledge the danger that local authorities could, when developing routes, minimise the extent of the core path network. However, it is important to realise that the access provisions allow for freedom of access. The core path network is a beneficial management tool for landowner and local authority to identify the key routes.

One of the fundamental issues is where the funding comes from to establish new routes as well as to maintain the existing ones. That is a dilemma for us. We have a reasonable track record, if you forgive the pun, of working with other partners and drawing down money from the heritage lottery fund and Scottish Natural Heritage's Paths for All initiative in creating such routes. Rather than having the sole burden of establishing access and core path networks placed on the local authorities, we would like a partnership approach with business and Government agencies.

**Richard Barron:** The core path network plan will be an evolutionary process. A lot of routes may be identified initially, but the resources might allow only half a dozen paths to be made. As time goes on, the plan will be revisited and additions will be made as further resources become available.

Initially, the network that develops could be small and compact. As time passes, it will develop and grow as local authorities and others explore the mechanisms that are available, gain experience of the practicalities of the work and put those experiences into practice.

15:00

**Iain Smith:** I am trying to think this issue through as the evidence goes on. Is there perhaps a case for having a duty to manage—by which I mean not so much looking after the physical state of the paths as ensuring that they are kept open for access—and a separate power to work with others in partnership to maintain, improve and signpost paths? Would keeping those two aspects separate allow you to fulfil your duty to manage the network without having the financial burden of fulfilling a duty to carry out physical maintenance of the network?

**Richard Barron:** The duty to manage would give us the duty to maintain or to promote, but it would not necessarily dictate how we did that. For example, we could set up a maintenance system whereby local volunteers report defects that they find when walking routes. We could then prioritise what they find. If there is a safety issue, we might send out a member of staff to check the problem immediately and deal with it. If the issue is a large one, it may have to go on to the back burner until funding becomes available for that project.

When prioritising the work, we could use volunteer groups. There are community groups in our area whose members are very proactive, going out and doing the work themselves. The council could tell them, "This is something you could tackle." Larger and more complicated tasks that might require machinery would be left to the council or handled by contractors. If there is just a duty to manage, it would be up to the council to decide on the best method of implementing that duty.

**Donald Balsillie:** The bill has come at the right time for many local authorities. Because of the growing demand for recreation and the increase in tourism, we already have to address issues such as rights of way. We are sometimes put in a difficult position if we do not own the land or do not have a great deal of power to intervene to make infrastructure improvements such as bridges and signage.

Maintenance is fundamental. The core path network system would allow us to prioritise routes in consultation with the local community, and the local plan process could assist us in that. In the Stirling Council area, there are more than 400 recorded walking routes, which can be extensive. The demand is out there. The issue is prioritising

the routes and reaching the quality that people expect in terms of footpath surfacing, signage interpretation and maintenance of fixed structures such as bridges.

The current position on rights of way—of which there are very few in Scotland—is that members of the public find the routes as they come across them. There is no liability, either on the council or on the landowner.

**Mr McMahon:** I shall change the subject to nature conservation. I shall let my colleagues deal with the rangers issue and I shall deal with the green issue.

Section 26 of the bill gives Scottish Natural Heritage powers to act where the exercise of access rights poses a threat to natural heritage. Are you satisfied that that will safeguard nature conservation?

**Donald Balsillie:** Scottish Natural Heritage is the Government's agency for nature conservation and protection. There are areas where one might want to restrict public access. We would rely on Scottish Natural Heritage to make the case on that aspect.

**Richard Barron:** As Bob Reid said, the majority of the public want to follow paths and do not want to walk just anywhere. The power for SNH to protect natural heritage is probably adequate. If a site of special scientific interest or national nature reserve is managed properly, and if there is a path that goes to the top of a Munro or guides people round more sensitive areas, current nature conservation could continue.

The bill also deals with the idea of leaving the field margins when ploughing. The public could use that space, which would also provide a wildlife corridor that might enable some existing oases of wildlife sites to be reconnected.

**Mr McMahon:** Would other organisations have to get involved? If what you say is accurate, other bodies might have some responsibility in that area and should fall within the remit of the bill.

**Richard Barron:** I come back to the partnership approach. We set up an access forum on to which we brought the Farming and Wildlife Advisory Group. If our forum continues in its present format, the council will be the lead agency for protecting access. However, we could use the forum to enable us to fulfil our duties and to promote nature conservation activities. A potential site for a path might be across an open field between two areas of trees; the farmer might agree to a path being built to join those two areas. If we work with organisations such as FWAG, we might be able to pull in agricultural grants that would allow the farmer to reinstate an old hedge. The Paths for All Partnership was successful in obtaining funding

from the Bank of Scotland for just that sort of work. When the partnership installed a path, funding in the form of a small-scale grant was available to plant up the side of the path, which encouraged the re-creation of the habitat.

**Donald Balsillie:** The creation of a path is a useful visitor management tool, whether we are trying to protect the natural environment by steering visitors away from ecological areas of importance or whether we are trying to steer people away from safety hazards or farm steadings. Generally, people follow paths and stick to them. When we have been addressing difficult issues, we have found that paths are beneficial, both to the public and to the landowner.

**Mr Harding:** I declare an interest, as I am a member of Stirling Council. Obviously, I support the council's submission.

In your understanding, what activities are covered by the exclusion of commercial activities from access rights?

**Richard Barron:** My understanding is much the same as Bob Reid's. The intention seems to be to prevent a commercial enterprise from coming on to a site and setting up a stall in order to sell goods. However, the exclusion would not apply to mountain guides. Given the way in which the bill is worded, I would not like to say what the Executive's intention is, but, in time to come, the exclusion could become a bone of contention, as people might ask what enterprises it applies to. For example, organisations such as C-N-Do Scotland, which is a company that is based in Stirling, would be able to run a mountain leader training or assessment course, but it would not be able to lead a walking holiday for a group of 10 people. However, the argument could go the other way; it could be argued that someone who undertakes a C-N-Do mountain leader course would pay fees that would go towards the company's overheads, because a profit element is involved. I am a bit unclear about the intention behind the provisions on excluding commercial activities.

**Mr Harding:** Let me take you a bit further. Where would Blair Drummond Safari and Adventure Park fit into the picture?

**Richard Barron:** The safari park would not fall under section 9. I refer members to section 6(g), which covers sites to which the public is admitted

"for not fewer than 90 days in the year ending on 31st January 2001".

My interpretation of that provision is that access rights would not apply to the safari park if it has been a chargeable operation for that length of time.

**Mr Harding:** What would happen if the safari

park were closed for more than 90 days?

**Richard Barron:** I would have to think about that, as I do not know for sure.

**Mr Harding:** My interpretation of the bill, and of section 6(g) in particular, is that the phrase "commercial activities" covers places such as the safari park, the Scottish Wool Centre, which is in your area, and activity centres such as the Gleneagles Hotel. Is that your interpretation?

**Richard Barron:** No, not in the case of the safari park or the Scottish Wool Centre, as those operations own the land on which they are situated. As landowners, they would be entitled to do whatever they saw fit, within reason and within planning controls. However, activity centres might own buildings only and undertake their activities on surrounding land that is owned by someone else. The commercial aspects of the bill are aimed at groups that use someone else's land.

**Mr Harding:** Surely a farmer owns the land where his farmyard is. Earlier, we were talking about access through farmyards. What is the difference?

**Richard Barron:** Bob Reid commented on that. In our area, for example, we have Glen Arklet; until recently the route through Ledard farm up to Ben Venue went through the farmyard. We are probably not going to be able to do anything about such cases in the initial phase. In some cases, those routes are established rights of way, which will exist after the bill is enacted.

We will probably be working with farmers and local communities to find a suitable alternative route that might go around the farm steading. For example, in the case of Ledard farm, we were able to help the farmer to put in a bridge lower down the valley. That replaced a dangerous bridge that was right outside the farm and it stopped people walking through his farmyard. It meant that, after 200m of track that was shared, the public went on to their own track, through the farm surrounds and up on to the hill. The farmer's steading was therefore secure. It will not always be possible to achieve that kind of agreement so easily. However, we would work towards that situation.

**Donald Balsillie:** I will deal quickly with the organised group question. Bob Reid covered the issue, some aspects of which we expect to be picked up in the code of conduct.

Historically, the issue of organised groups has been difficult. Cases range from one in Arran, where landowners talked about charging students for access to the land for geological purposes, to large-scale sporting events. The current practice is that organisers of group events are expected to reach agreement with the landowner. Sometimes that will involve financial recompense. However, if

we are talking about smaller commercial groups where the footfall would be less, we have to interpret the right of access more generously.

**The Deputy Convener:** You are saying that section 9(2) needs to be considered more closely and clarified.

**Donald Balsillie:** Yes, it needs to be clarified.

**Ms White:** I was around in local government before the word “partnership” became fashionable. I think that we used the phrase “working with agencies”. I seem to remember that one of the successful agency projects of the time was the Sustrans scheme for cycle tracks and rangers. However, it showed one of the continuing problems with local government—once the scheme was up and running, there were not sufficient resources for it to continue.

I want to get to the nub of the problem, which I think is funding. I hope that the funding will be made available under the bill. Would it be beneficial—or essential—to the bill's being fruitful for the Executive to commit extra moneys to local authorities?

**Donald Balsillie:** Yes, it would be essential to commit revenue funding to local authorities. As you rightly point out, the establishment of routes has been relatively easy in the past. Stirling Council has a track record of working with Sustrans and attracting lottery money for cycle routes. The establishment of those routes is fine, but there is little central Government money for maintenance. At present, Scottish Natural Heritage does not offer any grant aid for maintenance. The fundamental issue for local authorities is how we maintain new and existing routes.

**Ms White:** You mentioned Scottish Natural Heritage. I brought the explanatory notes to the bill along with me and noticed that you picked up the fact that SNH grant aid to local authorities will be phased out once the bill is enacted. It is therefore even more important that the Executive should make it clear in the bill that it will give moneys to local authorities.

Another point that has not been made is that SNH will continue to give grant funding to landowners. Although the funding is being taken away from local authorities, it is still going to landowners. For fairness and equity, the position should be the same for both.

You said that you need more money. I know that you have come here to give evidence and have made submissions. However, local authorities should be upfront and say, “Yes, the bill has to place an obligation on the Executive to provide the money, otherwise it will be a useless piece of legislation.”

15:15

**The Deputy Convener:** I will pick up on two questions that were asked at the Rural Development Committee meeting yesterday. Members of that committee visited two farms, owned by Fergus Wood and David Young respectively. I think that the witnesses will be familiar with those farms. In the first instance, we heard how Fergus Wood had negotiated and consulted with Stirling Council. We saw where a route had been diverted around the farm steading. That is just the kind of matter that we are talking about. In the second instance, we saw David Young's farm. He has a pretty impressive gorge, which runs around the Devil's Pulpit, but he has not been able to come to a resolution over access to it. The opening has been blocked off. Would the bill be able to resolve that kind of issue or does it need to be altered further?

**Richard Barron:** The bill will probably not affect Fergus Wood's situation up at Ledard, because of the way in which we have worked with him. He probably has the best solution already.

David Young's problems stem from when his insurers came to his farm and discovered that it contained a gorge, which they did not know about before. They felt that he required extra insurance premiums to cover it. He did not see why he should have that extra burden. His insurance company advised him that, if he did not want to pay the excess, he should take measures to prevent public access to the gorge. There was a claim to a right of way from the gap that you mentioned to his farm and on to the road. However, when that was investigated, no evidence was found to support the right of way.

The bill, as it stands, would re-establish public access to the gorge, the Devil's Pulpit and most of David Young's land. The biggest issue for him is liability. Earlier, Bob Reid talked about the need for solicitors to deal with liability, which is a complex issue. If the right of access were framed in such a way as to ensure that the public took responsibility for their actions, that would allay David Young's fears. It is possible that the bill does that at the moment. However, that is not clear to the layman, and it would be beneficial if the liability issue were clarified by lawyers rather than by us.

**Donald Balsillie:** The key point is that David Young has always thought that he had, in the gorge, an asset to which many organised and informal groups have sought access. He has been seeking financial recompense for that access so that he can, as he would argue, carry out land improvements. On many occasions he has been successful in obtaining financial compensation from groups that have used the gorge. The most recent of those was nva organisation, which staged an event called “The Secret Sign”. In that

case, SNH gave him a grant to create steps down into the gorge. I recall that, at the time, there was a great deal of debate within SNH because it could not secure agreement with him about future public access. Public money has gone into the site to create safe access into the glen, but agreement has not been secured because of ambiguities in the right-of-way legislation.

The problem would not exist if we had the right of access and a freer legislative basis on which to sit down with the landowner and offer maintenance opportunities for places where the public gain access. The crux of the issue from David Young's point of view is that, if the public are gaining access and are paying someone for that access or for any events, the landowner should get a proportion of that money.

That relates to the difficult matter of how to handle organised groups. To me, the issue is the size of those groups and perhaps the financial revenue that is coming in. That is a key example where we feel that, if the bill were a lot clearer, we could have good and amicable relationships with landowners and achieve good public access to beauty spots.

**The Deputy Convener:** So you feel that, if the provisions on liability were tightened up, we would get round the problem.

The second issue is what you refer to in your submission as clause 7(7)(a), but which is actually section 7(7)(b). The issue is the difficulty that people may have in recognising whether a field of grass is being grown for hay, silage or rough grazing. Great concern was expressed about the issue at yesterday's meeting of the Rural Development Committee. What problems will that provision give to local authorities?

**Richard Barron:** Once the growing season is established, the problem will not exist, because hay fields have longer grass. The same applies to fields for silage. The key time will be early in the growing season, when it will be difficult to distinguish the cropped grass for rough grazing from the grass for hay or silage. We would have a problem where a farmer said that a field was for hay or silage and then stopped people going through it. An access taker might say, "The grass is not for hay or silage, so what will you do about the farmer stopping us going through the field?"

The national access forum suggested that it might be better to address that issue in the access code. At the moment, the code suggests using signage—a standard sign could be produced that was freely available to farmers. I do not have a clear answer to the problem. I would have to view a few examples and try to establish best practice. I am not 100 per cent sure of the best way of dealing with the matter.

**The Deputy Convener:** Another issue—I will take Fergus Wood's farm as an example—arises where rough-grazing land goes down to the lochside. People may go over the fence to get to the lochside and then leave litter. That was a problem for Fergus Wood. Pathways and designated areas for picnics might be a solution, but do you have any further thoughts?

**Richard Barron:** What you say is exactly right. The educational role will be important, which is where the local ranger services and Scottish Natural Heritage will be vital in teaching the largely urban population that the countryside is a special place, that it is a working environment and that litter must be taken home. There will probably still be people who park in lay-bys, cross fences and go down to the loch. That will probably never be stopped, but education will help to ameliorate its impact. Beyond that, I do not think that there is a lot more that we can do.

**The Deputy Convener:** If there are no more questions, I thank the witnesses for giving us their evidence. I wish them a safe journey home.

We will have a five-minute comfort break.

15:24

*Meeting adjourned.*

15:32

*On resuming—*

**The Deputy Convener:** To continue our evidence taking for stage 1 of the Land Reform (Scotland) Bill, I introduce from West Dunbartonshire Council Councillor Iain Robertson, who is convener of economic planning and environmental services, and David Hill, who is section head for forward planning and regeneration. I ask you to speak to your written submission for a few minutes, after which we will ask questions.

**Councillor Iain Robertson (West Dunbartonshire Council):** West Dunbartonshire Council has welcomed the opportunity to provide its written submission and to appear here today. We welcome the bill's principles and believe that the bill will clarify the position on access and facilitate improvement of access in a responsible, managed way.

It may be interesting for the committee to note that I did not mention the countryside when I mentioned access because we are very much an urban authority that is on the fringe of the countryside. We consider that access refers to more than just the countryside.

West Dunbartonshire is recognised as one of the UK's most deprived areas. Fifty per cent of our



population are estimated to be on the margins of poverty and 30 per cent of our residents live within social inclusion partnership areas, which stretch from our boundaries with Glasgow right to the shores of Loch Lomond. Therefore, it should come as no surprise that social inclusion and health are major issues for West Dunbartonshire Council. The introduction of new legislation must be viewed in that context, along with the impact the bill could have on the people affected by it and the implications that it could have for our limited resources.

As you will see from our written submission, we are preparing for the new bill. We have prepared a draft access strategy and are interviewing for an access officer. We are making progress and accept that the bill is a good way forward.

However, we are concerned about aspects of the bill, particularly resource implications. The duties to assert and project access, combined with the duty to prepare and publish a core paths plan, will inevitably put pressure on local authorities to improve and maintain path networks.

Why is delivery important for West Dunbartonshire and what benefits can be achieved from improved access? The authority is fairly unique in that it is sandwiched between Scotland's largest conurbation, Glasgow, and the proposed Loch Lomond and the Trossachs national park. Studies suggest that we currently have 2,500 people per kilometre of paths, compared with the Scottish average of only 353. That takes no account of potential users from Glasgow or further afield. With an estimated 50 per cent of all walks starting from home, it is unlikely that we will have a shortage of users for our paths.

We have high unemployment in West Dunbartonshire—in fact, our unemployment rate is the highest in Scotland. We have also a mortality ratio that is 12 per cent above the Scottish average and significantly higher average death rates from smoking and coronary heart disease. Critically, we have low levels of car ownership—the third lowest in Scotland—which can put pressure on access to our path networks.

It is common knowledge that regular exercise has an impact on certain diseases, including heart disease. Providing opportunities for better access has a part to play in making that impact, but benefits can be realised only if access is provided at a suitable level and is readily available to all. Therefore, the major priority for our access strategy is to ensure that the people who stand to gain most from it in terms of their health can use that access. Our strategy recognises those issues and identifies opportunities for access to contribute to social inclusion within our communities and to bring them improved physical

health and psychological and social benefits.

There are also employment and economic benefits to consider. As I mentioned, there is huge potential for the usage of paths within West Dunbartonshire. That could be a significant boost to us, given our levels of unemployment, if we get the strategy right.

Improving the supply of paths will go only part of the way to encouraging healthier lifestyles. In addition to the local authority's participation, a range of local agencies will have to play key roles in the promotion of access. Other submissions have told you that we need to have a parallel duty throughout all our organisations on the issues of health and access for our people.

Success in promoting the provision of good quality, safe and well-managed core paths will inevitably lead to pressure on the local authority's resources and budgets. Since its inception, West Dunbartonshire Council has had to make year-on-year cuts in its budget. It is likely that that trend will continue, if we are to keep within Government guidelines. The work that we have so far undertaken on access has been without doubt at the expense of some of our other services. We recognise the considerable benefits that access can bring, but that does not lessen the difficult choices that we will have to make when we draft our budget.

Success comes at a price and it will take more than our access officer and our one ranger—who, I am assured, is affectionately known as the lone ranger—to deliver the aspirations of West Dunbartonshire Council.

I will leave it at that and welcome questions.

**The Deputy Convener:** With the flying registrars and the lone ranger, we are becoming an interesting committee.

**Mr Harding:** I congratulate you on your written evidence. You are the first council—I think—to make a stab at costing the core path network. You quoted a figure of £500,000 for capital costs, plus £70,000 for revenue costs. My reading of that is that you will then have 77km of paths—an increase of 10 per cent. Is that correct?

**David Hill (West Dunbartonshire Council):** The figure of £500,000 is based on rights of way and other paths that are available in the council area. The total length of those paths comes to 110 kilometres. From figures used in national calculations by land use consultants, we believe that that figure would be the cost of providing a core path network of reasonable standard throughout the area with good access for a range of users. Furthermore, it would cost £70,000 a year to keep those paths in good condition.

**Mr Harding:** I want to return to the capital figure

of £500,000. What is your council's annual capital consent?

**David Hill:** It is about £8.9 million.

**Mr Harding:** So £500,000 is a substantial amount, which could hardly be addressed in your capital programme.

**David Hill:** That is right. New money would need to be identified to cover it. That said, in the lead-up to the introduction of the access provisions in the bill, we have been allocating some limited resources that have been matched with funding from the West Dunbartonshire partnership, SNH, the Paths for All Partnership and the health board to kick-start the process.

**Mr Harding:** But without the funding, there is no way that West Dunbartonshire Council could proceed with the proposal. You could draw up the plan, but you could not implement it.

**David Hill:** That is right.

**Councillor Robertson:** The statistics suggest that, although we see the benefits of a path network, we have many other more important priorities. It is not at the top of our list.

**David Hill:** Aside from funds that are being made available to local authorities for access, it would be of considerable assistance if other organisations in the agriculture and forestry industries could target some resources for access improvements.

**Ms White:** I thank the witnesses for their submission, which mentions that the area has a population density of 2,500 people for every kilometre of path. The area's proximity to Glasgow means that it is probably the first port of call for Glasgow people to get away from the smoke in the city and enjoy fresh air. Keith Harding has already highlighted a question that I have asked other councils that have made submissions. Is it possible to implement the plans if the money is not available in the bill or if the Executive does not promise any extra finance for that purpose?

**Councillor Robertson:** It will be very difficult to implement the plans unless additional money is made available. Although capital can generally be found somewhere or other, the big issue is the running and maintenance costs. Because many houses in the council area are band C or below, we have a very low council tax base, which means that we do not have the affluent conditions that would allow us to raise any finance. We need to address the issue of running costs, which are a big problem year on year. There is no point in building beautiful paths if we then find that we cannot maintain them. Maintenance and year-on-year revenue considerations are critical for us.

**David Hill:** We could face an interesting

dilemma. We have taken some steps to prepare ourselves for the new legislation; for example, we have issued a draft access strategy and considered a draft core paths plan. We have also examined one particular zone in the council area—the Vale of Leven, which is next to the new national park. We have carried out fairly extensive consultations with local community groups, community councils and neighbourhood groups. Our communities are very enthusiastic about improved paths, particularly paths that are safe. Although they have said that there is a reasonable network of existing paths in the council area that nevertheless require to be extended, they want to feel safe on those paths and use them for a wide variety of reasons. They also want short alternatives and longer loops. With the introduction of the bill, those communities now expect something to happen. We need to do our best to access funds so that we can put our money where our mouth is.

**Ms White:** I want to get some idea of the plan, and link it with other issues. Your submission mentions

“the exclusion of business activity in certain circumstances from access rights.”

What do you mean by that? Trekking and walking companies are mentioned. If those are excluded from business activity, could other money-raising ventures in West Dunbartonshire also be excluded?

15:45

**Councillor Robertson:** There is concern that the bill will exclude business activity. We are trying to rejuvenate our economy and get people into work. There is potential in the path network to do that.

An interesting piece of information that emerged from a study that was carried out for Lomond Shores was that some 80 per cent of all people who visit Lomond Shores come into Dumbarton along the A82. At a meeting, I made a mistake in saying that we do not need any more visitors in Dumbarton. Someone asked me to expand on that. I said that visitors stay in Dumbarton for only five minutes—it takes them that long to drive from the Dumbuck lights to the roundabout at the exit of the town. If we gave visitors a reason to stop in the town, that could boost our economy. We are close to Glasgow and people can stop in Dumbarton or Alexandria for a walk. They would then spend money in the area and perhaps provide employment opportunities for people. If we get things right, there is huge potential—that is a way forward for West Dunbartonshire Council.

**David Hill:** If young people in West Dunbartonshire—particularly those who are

unemployed—with a responsible attitude and who know the hills around West Dunbartonshire like the back of their hand proposed to start guided walks based on the increased visitor opportunities provided by Lomond Shores and the national park, it would be a shame if they were required to pay for that service as a result of the bill.

**The Deputy Convener:** That is an important point, which builds on one that the COSLA representative from Aberdeen City Council made. He spoke about spin-offs for people who live in urban areas in accessing the locality.

**Iain Smith:** I return to my recurring theme. Paragraph 4.6 of your submission mentions that the requirement or duty to prepare a core paths plan is not backed up by any requirement to manage and maintain paths. Do you support the views of COSLA and Stirling Council that there should be a duty on local authorities to maintain or manage the core path network?

**David Hill:** If there is no such duty, local authorities will be expected to manage core path networks physically in many communities. Under the bill, we will have a duty to prepare and publish plans within two years. In the longer term, paths will be used for the promotion of walking and cycling networks in the area. If the issue is not tackled in the bill, local authorities will be the responsible organisations anyway. They have a central role in access legislation and, as a result of discussions and debates that will take place in the access forums and pressures from local communities once initial core paths priorities are identified, communities will tell us that we need to carry out physical improvements. It is almost inevitable that such pressure will be put on local authorities and we must face up to that in the bill.

**Iain Smith:** I think that Councillor Robertson said that there are competing priorities and that paths—although they are important—are relatively low on the list of priorities for additional capital or revenue expenditure. If a duty were placed on councils, would that improve paths' priority? If a council had a duty, it would have to find the money.

**David Hill:** Such a duty would increase the priority for everybody—not just for our council but for the Scottish Executive—to identify additional funds and would involve other agencies. That is where the social inclusion agenda is quite important to West Dunbartonshire. We have a fairly extensive social inclusion partnership—it is not just one community, but a series of communities which, as Councillor Robertson said, stretch from Glasgow to Loch Lomond. We already have some limited funds from the West Dunbartonshire partnership to help us to develop our strategy and to improve our paths. That is intended to promote access as a way of improving

individual health, by providing walking and cycling opportunities.

The links that we can make to other initiatives are important. We can provide the paths if we have the money; we can promote the paths and put pamphlets in Dumbarton library telling people that there is a core path network and asking them to use it. However, if we are to achieve health benefits, we have to link up with local health care providers, general practitioners and the scheme for exercise referral. We have to consider whether local leisure centres could provide some form of fitness assessment based on the benefits to be gained by walking as a form of exercise. We have to examine ranger services and the guided walks that they provide. We must also consider how to tie into charity walks more effectively. We also have to consider links with national initiatives, such as sportscotland's active primary schools project. We need to tap into such initiatives in relation to access. That might secure additional funds and it will enable us to get across the message that we are providing core paths not just as nice places to walk, but because there is a definite community and health benefit to be gained.

**Iain Smith:** I want to follow up your responses to Keith Harding's questions about finance. Have you made any guesstimates of how much the bill will cost Dunbartonshire in capital and revenue costs? Do you think that the figures in the explanatory notes—the £5 million per year in additional revenue costs, the £10 million per year over 10 years in capital costs and the £5 million per year for maintenance—are realistic? Could you explain how those figures relate to developing the core paths plans and the costs of additional staff?

**David Hill:** All I can say is that the figures in our draft access strategy, to which our written submission refers, are calculated on the same basis as the national figures. Having prepared the draft access strategy, we are now drilling down to the next level of detail. We are carrying out more intensive consultation, walking the routes with community groups and having discussions with individual landowners. I do not know what the figure would be, but I am fairly convinced that those in the explanatory notes are somewhat conservative.

**Mr McMahon:** Section 11 enables local authorities, whether in response to applications from third parties or on their own initiative, to exempt a particular area of land from access rights, or to exclude particular activities from access rights or to restrict those access rights. Are those powers justified?

**David Hill:** The bill could lead to confusion. Section 11 provides a local authority with powers

to exclude areas of land or particular types of activity on that land. However, it does not give any guidance on what the defining principles on which the local authority would make the decision might be. That is the key. If that section remains in the bill, local authorities will require guidance. Otherwise, the situation across Scotland could become very confused. Different authorities will react to third-party pressures in different ways.

For example, in relation to the idea that access rights cannot be exercised during the hours of darkness, if certain local authorities agreed to go down that line and others did not, the walker, horse rider or cyclist could find themselves able to access their legal rights on one part of a path and not on another. It is a difficult piece of legislation to deliver effectively. I think that it will cause many problems for local authorities.

**Mr McMahon:** Would a great deal of clarification be needed? Would that clarification include an appeals procedure?

**David Hill:** A great deal of clarification would be required. I suspect that other interests will try to get local authorities to implement this part of the bill as local authorities might not want to do so in the first instance. I am not sure whether an appeals procedure would help. Perhaps the access forum will have a lot of responsibility and can deal with that matter.

**The Deputy Convener:** Are there any areas in the bill on which you think that you might be particularly heavily lobbied by certain groups in a way that might make life difficult for you and the local access forum?

**David Hill:** In relation to the right of access to land in Scotland, the bill gives a wide range of people every opportunity to lobby local authorities on a range of fronts. The key to the situation will be an effectively resourced access forum where such issues can be raised and dealt with. I mentioned the section that deals with the powers of local authorities to exclude land from access. The question about grass as a crop was asked earlier and I think that we might be asked interesting questions on issues such as that. We will probably find that if we publish an access strategy and do not maintain it, we will have many constituents who will come chapping on councillors' doors.

**Councillor Robertson:** We recently introduced a new format of council meeting. Every two weeks, we have an assembly meeting, which gives various local activists a forum to ask questions. I would like to put it on record that I am sure that the first question on the subject that we are discussing will come from a member of my ward, as questions about access are already being asked in my area.

**The Deputy Convener:** I am sure that the same questions will be asked of MSPs as well.

You will be pleased to know that, at yesterday's meeting of the Rural Development Committee, one of the witnesses said that they envisaged the level of detail of the access code as being similar to that of the highway code. That would stop there being a variety of interpretations across the council areas. Would you welcome that?

**David Hill:** That is a good question and, not having read the highway code recently, I do not know the answer to it. The important issue is that the interpretation of the code and the associated learning process will be central to the work of the access forum and the broad range of bodies that will be on it. Without any effort, we have identified at least 22 organisations that will probably lobby to be on the access forum.

There is a willingness on the part of the various parties who are involved in the access debate in West Dunbartonshire to work together. During the foot-and-mouth crisis, the authority attempted to manage the news information that was coming out about whether access was allowed on to various pieces of land. That process raised all sorts of interesting issues relating to risk assessment. We worked closely on that issue with the landowners and the walkers associations and took a prominent role—with colleagues in other councils such as Stirling Council and the park authority—to ensure that our signposting was co-ordinated. Some landlords were grateful for the work that was done and, at the end of the crisis, put up signs thanking the public for their tolerance during the crisis and welcoming them back on to the footpaths. That sort of positive response is a good base on which the access forum can build.

**The Deputy Convener:** You said that you could think of 22 bodies that would want to be on the local access forum. Stirling Council's submission, I think, recommended that local access forums should not have more than 20 members. What is your view on that?

16:00

**David Hill:** The problem of putting a quart into a pint pot sums up our view on that question. There is keen interest in the local access forum from various organisations that represent different aspects of land ownership, land management and use of the countryside, and from those who want to create links between communities. Over the years, we have developed a strong community consultation network in West Dunbartonshire.

In addition to the groups that one would expect to be involved in the local access forum—community councils, the Scottish Landowners Federation, the National Farmers Union of

Scotland and the various walking bodies, such as the Ramblers Association Scotland—quite a few people in the community feel that they should be actively represented. The bill suggests that there should be at least one access forum in every local authority area. Given the number of people who are keen to express a view, sub-groups of access forums might have to be created to enable people to feel included in the debate.

**The Deputy Convener:** I asked that question because I remembered that the point had been made in a previous submission. I thank you for giving evidence today, especially for explaining how you are trying to bring social exclusion and health matters into the access issue.

I welcome the witnesses from Highland Council and Argyll and Bute Council. They are: Councillor Sandy Park, chairman of the planning, development, Europe and tourism committee on Highland Council, who will be the lead speaker for Highland Council; Geoff Robson, head of environment for Highland Council; Alex Sutherland, access officer for Highland Council; Debbie Mackay, senior economic policy planning/development officer for Argyll and Bute Council, who will be the lead speaker for Argyll and Bute Council; and Rona Gibb, access project manager for the Argyll and Bute core path network for Argyll and Bute Council.

I invite the lead speakers to say a few words about their submissions before we ask questions.

**Councillor Sandy Park (Highland Council):** On behalf of Highland Council, I thank the convener for allowing us to have an excursion for the day and providing us with the opportunity to give the committee evidence on the Highland dimension. As we are the council with the largest area and cover 35 per cent of Scotland, we are very much involved in this matter.

Highland Council welcomes the opportunity to contribute to the creation of legislation for Scotland that supports the principle of improved access by members of the public to private land. Freedom to move over the surface of the planet should be one of life's basic rights, alongside the freedom of speech and the freedom to worship as we wish.

In the past, there has been a great deal of legislation to prevent access, influenced by vested interests in Government, but exclusion without reason or rationale simply does not cut ice any more. An increasingly well-informed public are endowed with more leisure time and encouraged to take exercise to reduce stress and the burden on our national health service. We know that the public are capable of behaving responsibly. That was more than amply demonstrated during the recent foot-and-mouth disease crisis.

Unfortunately, some landowners and farmers did

not reciprocate. I can give an example of that. Only a few weeks ago, just before Christmas, I went hillwalking to do a Munro. I went on to a farm road and was confronted with massive signs—"No admittance. Private. Keep out. No dogs." An aggressive farmer came down the road and told me in no uncertain terms that he did not welcome people on his hill. That was on a clearly defined tourist route, and unknown to the farmer, I had phoned the estate factor the day before, so I quietly put him in his place. His signs came down as well. That is an example of what is still going on in the Highlands.

There is a great deal of popular—even emotional and romantic—interest in wilderness and mountains. Such areas are important, particularly in the Highlands, but we also have many urban areas that share the problems, which can be found in Raploch or Easterhouse. Parts of Alness in Easter Ross or High Ormie in Thurso can demonstrate those problems. Better public access through core path networks could be a powerful tool in the rehabilitation of socially and economically deprived areas, and that could be one of the most exciting opportunities that the bill presents. Paths may be expensive, but I assure the committee that they are a lot cheaper to build and maintain than sports centres, for example.

Of course, the committee knows what I will say next. Give us a simple, well-crafted piece of legislation. Give us good and continual advice from SNH and the national access forum. Give us partners and national agencies that are imbued with the message that responsible access to land makes economic and social sense. Finally, and most important, give us the resources to deliver a system that will be sufficiently forward-looking to take us into the new century.

**Debbie Mackay (Argyll and Bute Council):** I thank the deputy convener and members of the committee. We appreciate the opportunity to present evidence to the committee on an issue that is live and burning in Argyll and Bute.

We represent the viewpoint of a local authority that is trying to implement the principles of a core path network and those aspects of the bill ahead of its becoming law. We chose to proceed ahead of the bill for a number of reasons. The general reason was that we realise the opportunities that well-managed and well-promoted access can offer to our communities through recreation, healthy lifestyles, safe routes to school, sustainable transport, economic development through tourism and providing a high quality of life to attract people to the area.

In Argyll and Bute, despite a top-quality natural environment, access opportunities remain limited and are spread unevenly throughout the area. Notably, the best provision for access in Argyll and

Bute is on Forest Enterprise land. That situation means that Argyll and Bute is not realising all the benefits that access can offer. An area such as Argyll and Bute, which suffers from all the characteristics of rural deprivation, cannot waste one of its key economic and lifestyle assets: its rich natural heritage.

We also proceeded ahead of the bill to try to help landowners to adjust to a new access context ahead of the law being in force and to help communities to become more involved in access and recognise their role in it. Our area varies from the urban fringe of Helensburgh to the lower Hebrides, so we have a range of different types of communities. For some of those communities, access is top priority—there are some very active groups in our urban fringe areas. In other areas, the key point in life is jobs, jobs, jobs. We have a range of communities with different aspirations. We are trying to raise their understanding of what access can do for them. We are also becoming aware of their needs.

We want to form meaningful partnerships between agencies—local authorities, landowners and communities—ahead of the legislation. That will allow us to begin to understand what would be involved in our approach to a properly managed core path network. So far, our approach is working well and communities have welcomed it. It involves partnership, good, thorough planning and community-led prioritisation of paths.

My colleague Rona Gibb can expand further on our submission, the appendix to which contains details of our core path network planning process. The process has helped us to understand what the legislation needs to do for us and, over the remainder of this year, it will give us an appreciation of the resources that we need to implement the legislation properly.

If the new legislation addresses the following key issues, it has the potential to assist us in that process. First, it must create a complementary duty on all public bodies to support access—in its widest sense—and the local authorities as they carry out their new duties under the act. Without that complementary duty, there is the real danger that placing a duty on local authorities alone would allow other bodies to avoid becoming involved in an area in which it is vital that they make an input.

Members have heard from other colleagues who represent more urban fringe areas that health is a major issue; it is also an issue for us. The enterprise companies in Argyll and Bute need to become involved. In the Highlands and Islands, enterprise companies are involved—the context is that of promoting tourism facilities. In parts of our urban fringe areas, because of fears about walking in certain areas, it is important to have the police on board. It is clear that a matrix of different

partners, each of whom has a significant role, is needed to bring about the provision of well-organised access.

The second issue, which has been mentioned by colleagues, is that the bill must be accompanied by Government intention to resource local authorities to deal with the essential extra duties that will be created. We want to see additional funding going directly to local authorities. We have no doubt that the funding formula will be debated further but, most of all, we want to see clarity in the amounts and the linkage of those amounts to the extra duties that are created by the bill.

The recent additional financial allocations to local authorities, which were intended to support access provision, were issued without accompanying guidance. The financial settlement did not set out the commitments and obligations that were placed on local authorities. As a result of that lack of clarity, few local authorities realised that they had been given extra funds for access, so they treated the funds as part of their general settlement. I am not asking for ring fencing, but we require clear advice on the additional responsibilities that are involved.

If we want the bill to be successful and to achieve a significant increase in access provision across Scotland, it must be accompanied by co-ordinated working across all central Government departments. In our written submission, we list examples including the public transport challenge fund. If the fund broadened its remit from one that is purely about transportation to one that is about the multiple uses of paths and cycle ways, that could reinforce access. Where public money goes into the countryside, it should reinforce and assist access wherever possible.

We have an agricultural forum in Argyll and Bute, at which a number of farmers have said that they would like to see more opportunities flow from their existing grant assistance. They see access in a positive light and want to promote it on their land. For those farmers to accept that access is part of how they manage their land shows how good and wise is their approach. It is good that they are examining the support that they receive and saying that it should be used to assist in providing what the public want to get from that land.

Argyll and Bute views the core path process as an opportunity to develop a sustainable access network that will have benefits across the social spectrum. We want the network to strengthen the economy of our area. We seek assistance from the bill and the continuing support of the Scottish Parliament to help us to achieve that.

**The Deputy Convener:** As the witnesses know,

the bill is at stage 1, which means that we are considering its general principles. Debbie Mackay said that the importance of access should be promoted among landowners, as happens with environmental issues by means of the rural stewardship scheme, for example. Should the bill make provision for that?

My second question is for the representatives of both councils. The duty on local authorities to promote access has been mentioned. Which parts of the bill do the witnesses take exception to and what would they like to change?

16:15

**Debbie Mackay:** We feel strongly that the bill should contain a parallel duty on public agencies to promote access. That underpinning is essential, although it is not the entire answer. Good partnership working is part of the answer.

You have thrown me a fast ball on the inclusion in the bill of the agriculture side of things, so I will have to think on my feet. I would say that there is no harm in the issue of promoting access with farmers being mentioned in the accompanying memorandum, which mentions implications for other bodies. That is possibly the correct place for it, although I am open to argument. The memorandum should also outline a duty on Scottish Executive departments to consider how they promote access, which could perhaps be done in a cross-cutting way, especially for rural development issues. Access is becoming a key issue in rural areas.

I have forgotten your second question.

**The Deputy Convener:** You covered many points that you think ought to be changed in the bill. I wanted to find out how you would incorporate the issue of funding for agricultural spin-offs of the access right.

**Geoff Robson (Highland Council):** We concur with what the representatives of Argyll and Bute Council said. We would probably go further and say that all agri-environment schemes should have some perspective on access. There should be recognition of that and joined-up thinking between the various parts of the Scottish Executive on how the money will be put into access. The responsibility is not only for the local authorities. Forest Enterprise could help through initiatives such as woodland grant schemes. Many other initiatives in the rural economy that are underpinned with Government moneys should assist in developing local access.

You asked, in your second question, which parts of the bill we have difficulty with. I have three points, the first of which concerns the local access forums. For an authority such as ours, which

covers 25,000 sq km, one local access forum will not be sufficient. The question is how many forums will be sufficient and what resources we will have to employ to service them—suggestions have ranged from 12 up to 16 local access forums. Members can imagine the resource implications on a local authority such as ours of delivering that extent of local involvement, which will be required if we are to be truly respected when we arbitrate on access matters.

Secondly, COSLA and other authorities have mentioned the issue of defining and managing core path networks, which are fundamental to the bill. The information from the land use consultants that underpins the bill suggests that there are around 72,000km of paths in Scotland. Initial analysis from the Ordnance Survey suggests that there might be as many as 15,000km in the Highland Council area. We do not know how many of those will comprise the core path networks. Our submission states that around 43 towns or villages of various sorts will expect to have a core path network or something similar in their area, particularly if funding is likely to be available. Members will appreciate the difficulties that we will have, not only in defining the core path networks, but in creating them in the two-year time scale. We are a unique authority and we expect to have difficulties with the core path networks.

We have nine local plans and it takes on average four to five years to go through them. We do an average of two a year, so you can see that logistical difficulties are involved in our doing that.

Thirdly, we have great difficulty with what the local authority will have to do to promote section 11 orders. We can imagine that a number of estates, or perhaps unique places such as Skibo, which depend on their ability to keep the general public out of their environs, might feel that they have to approach the local authority as soon as the legislation hits the ground. Our difficulty is that we assume that places such as Skibo would be asking for access rights to be dropped in perpetuity. I suspect that it would fall to Scottish ministers to make the decision on that. There seems to be a suggestion that there will be a 30-day limit. We are not sure about the rationale behind that and we would like some clarification.

Together with the issue of resources, those are the three key difficulties that Highland Council has with the bill.

**Mr McMahon:** The bill provides for the creation of an access code, which will be key in implementing the new rights of access. How far, in your opinion, does the bill go in clarifying the role and status of the code? Is it clear what is mandatory and what is advisory?

**Alex Sutherland (Highland Council):** I find the

code an encouraging document. The second draft certainly goes further than the first, as it introduces for the first time a reciprocal responsibility accruing to the land occupier and manager. Given the various scenarios in which the new legislation might have to be applied, the code, like the highway code, is very succinct. It needs to be broken down into smaller specific units, with perhaps a code for mountain biking and a code for horse riding, and I am sure that that will happen in time. It would also be beneficial to retain the services of the national access forum to give an overall perspective on how the code is operating. The forum did a great deal of good work in arriving at a consensus that formed the foundation of the bill.

**Mr McMahon:** You say that there was a consensus, but some of the responses to the consultation show that there are questions about the establishment of the code and about its implementation being fixed on a separate date. Are you satisfied with the arrangements for the introduction of the code? Do you envisage any difficulties with using the code?

**Alex Sutherland:** Successful implementation of the code must run alongside the new legislation. I believe that SNH has been charged with delivering the code, but I am sure that that will downstream to local authorities and, specifically, to their ranger services. Clearly, the two must hit the ground together and run together. Provided that the resources are in place to get that information to the public, I am optimistic that we can improve the present system. The public are willing and able to behave responsibly in the countryside. That is the whole premise on which the bill is based.

**Iain Smith:** The Argyll core path project has been successful in drawing funds from other agencies; only a small amount of the funding comes directly from Argyll and Bute Council. We heard quite a lot about the desire of other councils and COSLA that the management and maintenance of the core path network should be a statutory duty rather than a power. Do you envisage any of that funding being more difficult to obtain in the future if there were a duty on local authorities to maintain the core path network?

**Debbie Mackay:** I shall start to answer that question, and Rona Gibb may want to come in.

Our approach reflects the climate prior to the bill's introduction, which was very much a climate of partnership funding. The council has been a small player when it comes to funding for access. There is no tradition of our having a countryside section. Any work that we have done on access has been done on a project-by-project basis and we felt that, at officer level, that was a shortcoming in our approach. That is why we jumped on the back of the Highlands and Islands access strategy

and the good principles that it introduced. We have capitalised on the impetus behind the preparation for the bill. All of that created a climate in which we felt that we could really move forward on access, as we have wanted to do for some time.

Preparation for the bill also created a strategic partnership. The Highlands and Islands access strategy created a partnership involving Highlands and Islands Enterprise, Scottish Natural Heritage and the Forestry Commission, and all the local authorities in the Highlands and Islands agreed on the principle of implementing access comprehensively and ensuring that it is equitable across the whole area.

We have grasped all those principles to help provide us with an answer for our area. That made knocking on the doors of the various agencies much easier, in that the ground was already prepared. Each of them came on board and accepted our lead role, which is very much as a benign dictatorship, and then brought in their own funding. The European transitional programme is in place for six years, which seem to be going by extremely fast, and we have been able to capitalise on its having been built in.

Given the current climate, we decided that it was best to proceed with a project officer to manage the plan. As we move to the next phase, when the bill will have become law, we think that the atmosphere will be a more positive one to work in, and that the work will be less time-consuming. We hope that good resources will be directly available to local authorities. That will not stop us working in partnership, because we need to do so for many reasons other than access. We will still need each of the agencies concerned to bring its share of the financial pot to the table, and things other than financial resources may also be required. We are witnessing a changing financial climate, but one that is changing positively and reinforcing an area that is important for rural and urban parts of Scotland.

**Rona Gibb (Argyll and Bute Council):** We need to consider what communities can offer. Their ability to access other sources of funding provides a possible route for some of the maintenance, but we need to consider the duty of other agencies and organisations to put that particular pot on the table. Otherwise, we will have to go back to the begging bowl and continue to go round in circles, asking people for more money.

**Iain Smith:** I would like to put a question about funding to Highland Council. In your submission you express concerns about the funding model that is traditionally used for dispersing additional resources. I can understand that: if the model is based largely on population, it will not really work for Highland Council in the context of an action



strategy. Do you have any thoughts on the sort of funding model that would be appropriate for dispersing any additional funds that may become available to support the access strategy?

**Geoff Robson:** At present, Highland Council has the largest local authority ranger service in Scotland, consisting of 20 rangers. We receive funding to the tune of £690,000 in a block grant over three years from SNH to provide that service. The service does not cover the whole of Highland, nor does it give us seven-day-a-week cover, nor do we have the facility to have rangers shadowing one other. We simply have individuals working on the ground, and for us to implement the proposed legislation we will need considerable extra revenue investment just to provide the officers. That is before we can even consider the additional burdens that will be imposed by the need to set up local access forums. Thereafter, if we inherit the responsibility to maintain, as well as to manage, the core path networks, we will need considerable additional revenue investment.

It is fundamental that that funding comes through the local government grant settlement. The exact mechanism for doing that is a matter for the working party on local government finance, in conjunction with COSLA. It is exceedingly important that those moneys are identifiable to officers. My colleagues and I will have to implement the legislation. We must be able to identify the sum of money concerned so that we can approach our political masters, tell them what the Scottish Executive has put in the kitty for implementation and then ask whether we can have that money. If councils put the money into education, social work or other priorities, that is up to them. In the first instance, it would be helpful for us to know where the money is being allocated.

As for the mechanism, ring fencing is not entirely popular with directors of finance or councillors, who feel that it dictates to local authorities. Although ring fencing is not the most politically expedient solution at this time, I would say, with my hand on my heart, that it is the easiest for us, as officers.

We have had considerable success on the capital side. We are drawing down £1 million a year on average, and that has been consistent over the past 10 years, through local enterprise company funding, Scottish Natural Heritage, European transitional funds, European regional development funding and lottery funds, all of which have provided capital moneys. The maintenance of the path networks that have been developed is a huge obligation to inherit.

Community groups have done similarly well—they have received lottery money and created networks, but have been unable to maintain them. The moral obligation to try to maintain public

access to those networks falls back on the local authority. Invariably, the maintenance obligations are pushed in our direction and we have great difficulty in resisting that burden.

16:30

**Ms White:** I congratulate Highland Council on its 20 countryside rangers, its access officers and the £10 million that it has spent over the last 10 years. The sum of £690,000 from SNH was also mentioned. Once the plan is up and running, that money will no longer be available, which is a worry to all councils.

I want to ask both councils about the funding. It was mentioned that money from the Forestry Commission, the social inclusion partnerships or other agencies might be accessible. That is a dangerous precedent, because everybody will go for the same pot. The submission from Argyll and Bute Council mentioned obtaining £10,000 from Scottish Enterprise Dunbartonshire for the Helensburgh and Lomond area. Obviously, West Dunbartonshire Council will also go for that pot. In the case of Highland Council, other council areas will wish to get into the pot of Highlands and Islands Enterprise.

If you are unable to access money from those pots, what should the Executive do to implement the path projects and the Land Reform (Scotland) Bill? I think that you have given the answer, but I would like you to do so for the record.

**Geoff Robson:** In the first instance, our position is that sustainable funding, targeted directly at the local authorities, is a fundamental requirement for the bill to be implemented and to have an impact on the ground. Funding needs to be sustainable—three-year or five-year funding is very difficult, because it does not ensure that such things as maintenance obligations will be continued in perpetuity. The suggestion that we use volunteers for maintenance is dangerous, because it cannot be guaranteed that they will always be available to do the work when it is required. We can provide evidence of community groups who have fallen by the wayside over time and have left us to pick up the pieces for the path networks that they have developed.

Grant assistance is unnecessarily burdensome—members would not believe the bureaucracy and form filling that we must go through to get moneys out of other agencies. Under Treasury rules, as members will be aware, there is a 50 per cent limit to what other agencies can provide in the way of match funding. Local authorities will still have to find a substantial amount of the money if they are not given it directly.

**Ms White:** My question was for both councils.

**Debbie Mackay:** I do not have much to add to that from our experience. I return to the need for the parallel duty to be in the bill, so that other agencies will be signed up to reinforcing the core path plan every time that they act on access. From the partnership that we have set up—which is not quite an access forum, but more of a steering group that manages the core path network project—we have found that it is difficult to keep partners round the table over a sustained period of time and to get them to keep remembering what the priorities are.

The inclusion of the duty in the bill will give greater weight to our asking the partners to reinforce the core path plan in everything that they are doing. If everybody works to the same priorities—in an ideal world somewhere—that should make the resource side of things a lot easier to manage. Forest Enterprise would do paths on its land that have been identified by local communities and are in the core path plan. Similarly, SNH would give grant aid to landowners only for paths that are in the core path plan, or are addressed as being the next extension to it. There would be principles along those lines in the plan.

If we can get the partnership right, everything will flow well from that. We need the bill to underpin the partnership.

**The Deputy Convener:** Before Tricia Marwick comes in, let me ask whether I am right that there is a slight difference of opinion between the two groups. Debbie Mackay is asking for a parallel duty, but I think that Geoff Robson is saying that the duty should be on local authorities so that the moneys go to local authorities. Debbie, are you thinking that the moneys would come as they come at the moment, that is, from other organisations as well?

**Debbie Mackay:** No, I agree with Geoff Robson. Both situations will happen. Agencies will still have money to implement access. I assume that Forest Enterprise will continue with its role, where it implements access on its own land. The memorandum accompanying the bill mentions that Scottish Natural Heritage will have grant-giving abilities in relation to landowners. So where people already are given grant for access—whether or not it is called access; it could be something different, related to public transport, for instance—it should reinforce the core path plan.

As Geoff Robson said, however, we also need the funding to come direct to local authorities. While funding will continue to come from a range of sources, it is fundamental that to get the core path plan up and running, established and maintained, the money will also have to go directly to local authorities.

**The Deputy Convener:** Geoff, do you wish to

add to that?

**Geoff Robson:** I have a point for clarification. I fully endorse what the representative from Argyll and Bute Council said. From long experience we have found that capital funding is relatively easy to come by, but it gives you a maintenance and obligation burden. You cannot revisit the funding partners who have already assisted in funding the path network unless you can demonstrate additionality. For example, if we are talking about a local enterprise company, are we going to get more tourists and visitors? The issue can be dressed up once or twice, but you cannot keep going back and revisiting the same funding agencies and the same networks time and time again. They eventually say, "Enough is enough."

The other issue that one must recognise is that if a duty is placed on local authorities, we will not be able to get matched funding from Europe under the objective 1 transitional funds.

**The Deputy Convener:** So if you have the duty, you will not be able to apply for European funding.

**Geoff Robson:** Yes, in due course, although the legislation is not yet in place.

**Councillor Park:** Landowners could be major partners. There are tremendous Government schemes that farmers and landowners have access to, such as regeneration schemes, woodland grant schemes, environment improvement schemes and farming diversification schemes. Some sort of path network should be part and parcel of those schemes, because we are talking about massive amounts of money.

**The Deputy Convener:** That is a very good point to come out of the discussions.

**Tricia Marwick (Mid Scotland and Fife) (SNP):** The bill excludes commercial and business activities from the new access rights. Highland Council in particular raised the issue in its submission and said that it could seriously affect commercial organisations, such as mountain guides, outdoor centres, canoeing businesses and the like. What impact will that measure have on your areas and on the commercial organisations that are providing help and guidance in the countryside?

**Alex Sutherland:** You are right to highlight that point. Access is sometimes described as the industry that we never knew we had. We discovered that we had it during the foot-and-mouth crisis, because we fielded so many wails of complaint and inquiries from members of the public, but also from commercial operators. It highlighted also the investment that has been made by many companies to provide access, yet ironically there is uncertainty over their guaranteed right to that access. Immediately that access was

withdrawn, the effects became apparent.

I was just listing the number of different types of access operators that we have in our council area. At Glenmore Lodge in the Cairngorms there are 70 full-time instructors and 60 part-timers. When you go from Strathspey to Lochaber, every small community has a mountain guide or a mountain operator, rafting operator or canoeing operator. Activities that you have never dreamed of—such as white-water rafting, hang-gliding, orienteering and mountain biking—take place in the countryside. It almost seems as if a new activity is invented every week to cope with our increasing leisure time and our desire to stay fit and relieve stress.

Safety is an important part of having people in place to deliver access and to advise people how to take access. Most people who go to the mountains or who go white-water rafting have had the benefit of some safety instruction. Accident statistics show that, per capita, there are fewer accidents involving those who take part in such activities. It is important that instruction is available to serve the cause of outdoor and mountain safety.

The message about how to behave in the countryside that those professionals put across is also important. In my view, delivery of the countryside code is dependent on the service that can be offered by access professionals, whether they are individual mountain guides or involved in outdoor centres and the Duke of Edinburgh award scheme.

**Tricia Marwick:** What impact will section 9 have on communities if it is not amended, and what are your suggestions for amending it? We all understand the reasons for the exclusion of commercial organisations, but I cannot believe that, when the Executive drew up the bill, it thought that section 9 would exclude all the groups that you suggest might be excluded.

**Alex Sutherland:** The intention behind section 9 is to deal with the use of land for events such as raves or enterprises such as sporadic hamburger bars. We are talking about having access to the land, which falls into a different category of land use. The problem is that section 9, as drafted, invokes uncertainty and could allow landowners to be difficult, to create obstructions and to discourage the fragile flower that is the person who wants to go out on the hills and who is responsive, aware of his actions and wants to be seen to be doing the best thing. If there is any hint of discouragement, that person will go somewhere else, where the restrictions do not apply. The bill must be clearly defined, so that the intention behind section 9 is clear and covers use of the land for an activity that generates profit directly from that use.

**Tricia Marwick:** By and large, you have been extremely positive about the bill. If section 9 is not amended to remove the exclusion of small commercial operators who provide mountain guides or activities such as canoeing and white-water rafting, will that have a serious economic impact on the communities that you serve?

**Alex Sutherland:** If a mountain guide is unable to operate in Kinlochewe, Ullapool or any small community of which they are respected members who pursue what is by now an established activity, the bill will seriously jeopardise their ability to attract custom or to operate at all. Other people are competing for the same customer base, and customers may go to the Alps or to some other location.

I share the operators' fears that the bill is a significant threat to the continued operation of their activity. It could also affect their ability to access funding. If I was an accountant looking at an operator's business plan, and I was aware of uncertainty over the operator's activity, I would have some reservations about investing in that operator.

Providing a sound economic base and investing more in the access industry are fundamental purposes of the bill. I am optimistic that we can get the balance right and I believe that we have an opportunity to generate a responsible access industry.

**The Deputy Convener:** As there are no more questions, I thank the witnesses for their evidence. Some of the witnesses have come from far away and I wish them a safe journey home.

I advise members that we will consider a summary of the evidence next week. I ask the public, the press and the official reporters to leave the meeting.

16:44

*Meeting adjourned until 16:50 and thereafter continued in private until 17:59.*

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