RURAL DEVELOPMENT COMMITTEE

Monday 21 January 2002
(*Afternoon*)

Session 1

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3rd Meeting 2002, Session 1

CONVENER

*Alex Fergusson (South of Scotland) (Con)

DEPUTY CONVENER

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

*Rhoda Grant (Highlands and Islands) (Lab)
*Richard Lochhead (North-East Scotland) (SNP)
*Mr Jamie McGrigor (Highlands and Islands) (Con)
Mr Alasdair Morrison (Western Isles) (Lab)
*John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Irene Oldfather (Cunninghame South) (Lab)
*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
Elaine Smith (Coatbridge and Chryston) (Lab)
Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Dr Sylvia Jackson (Stirling) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Con)

WITNESSES

Craig Campbell (National Farmers Union of Scotland)
John Kinnaird (National Farmers Union of Scotland)
Willie Macleod (VisitScotland)
Dave Morris (Ramblers Association Scotland)
Fran Pothecary (Scottish Outdoor Recreation Network)

CLERK TO THE COMMITTEE

Richard Davies

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Jake Thomas

LOCATION

Kilmaronock Millennium Hall, Gartocharn

Scottish Parliament

Rural Development Committee

Monday 21 January 2002

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:04*]

The Convener (Alex Fergusson): Good afternoon everybody, and welcome to the Rural Development Committee. We are absolutely delighted to be holding today's meeting in Gartocharn. The Parliament has a long-stated principle that, through the committees, it should go out all over Scotland as often as possible. I am delighted to be in Gartocharn, because I have been to other meetings of parliamentary committees at which public attendance has been poor. It is wonderful to be here today and to see the public benches full, and I thank members of the public for giving up the time to come. We are delighted to be here and I am only sorry that the view behind me is not what I am sure it can be on a nice summer day such as you normally experience in this part of the world.

As I always do at the start of any meeting, I ask everyone to check that their mobile phones are turned off.

We have received apologies from Alasdair Morrison, Stewart Stevenson, Elaine Smith and Irene Oldfather, who are members of the committee. I am delighted to welcome Sylvia Jackson as a visiting MSP.

When today's meeting was planned some months ago, we hoped that the designation order for the Loch Lomond and the Trossachs national park would have been published by now and that it could be part of our agenda. I am sorry to say that the order has not yet been published, and it would be strange to discuss it prior to publication. Nonetheless, today's meeting is relevant to this part of the world because we will be concentrating on the Land Reform (Scotland) Bill that has started its progress through the Scottish Parliament.

Land Reform (Scotland) Bill: Stage 1

The Convener: Agenda item 1 is evidence on the Land Reform (Scotland) Bill. I remind members and witnesses that today the focus is on part 1 of the bill, which is about access. I further remind the committee that our focus is the impact of the proposals on rural businesses. Although we will deal principally with the access provisions, we can also ask the witnesses about the other two parts of the bill—the community right to buy and the crofting community right to buy—that we have been considering over the past two weeks.

I am delighted to welcome John Kinnaird, the vice-president of the National Farmers Union of Scotland, as our first witness. I invite you to give a brief introduction, to explain about the numbers of people that you represent and to introduce those who are accompanying you today. We have received your written submission and, given the amount of time that is available, it would be most beneficial for members to ask questions.

John Kinnaird (National Farmers Union of Scotland): Thank you, convener, and thank you for giving us the opportunity to give evidence as part of what will be a long and difficult process for the committee, the Parliament and for the NFUS.

On my right is Craig Campbell, who is our senior policy adviser, and on my left is James Withers, who is our parliamentary correspondent. Everyone has a copy of our submission in front of them and I do not plan to repeat all its points.

From the start, we have to explain that agriculture, by its very nature, is a workplace. It is the primary link in the food chain, but production of high-quality food is not its only function. We want, and welcome, improved access to the countryside for the public. It is important for the farming community that people outside the industry have the opportunity to appreciate better the work of the countryside and its contribution to Scotland. However, that must not be done in conflict with those who are trying to earn their living. Recreation and work must operate side by side; they must not be in conflict with each other.

We seek legal clarity and certainty from the bill and it is our opinion that that does not exist at the moment. We would openly welcome people to the countryside, but access has to be through a core path network where the public are not exposed to any dangers from machinery or animals. In that way, those who use the countryside for recreation and those who work in the countryside could all do so in harmony, not in potential conflict.

The Convener: Thank you. I now open up the meeting to questions from members.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): This morning, we were fortunate enough to visit Fergus Wood's farm at Ledard and David Young's land at the Devil's Pulpit nearby. It is fair to say that both Fergus and David are near to parts of Scotland that are visited by, respectively, 40,000 and 4,000 or 5,000 people a year. They argue that it is only a small minority of the people who walk on the land or use the land that cause problems.

Do you agree that we are concerned with the irresponsible activities of a small minority? Do you also agree that, during the dark months of the foot-and-mouth crisis last year, those who relied on a right of access to make their living behaved responsibly and respected the access restrictions? I am talking about people such as mountain guides, climbing instructors and others who lost all their income for a period of two or three months and received no compensation.

John Kinnaird: I agree that the public and those who are employed outwith agriculture adhered to any limitation of access to the countryside. We applaud and thank them for that.

At the same time, I have an example from my own farm. During the foot-and-mouth crisis, a family were out sledging with two dogs that were not on leads. Unknown to them, there was a flock of sheep in the field. More important, while they were sledging that day, my next door neighbour's livestock was undergoing blood tests to ascertain whether there was foot-and-mouth disease on his farm. I agree that the problems might be caused by a minority, but those problems can be immense.

Should the bill be passed in its current form, the number of people accessing the countryside will increase. Therefore, the risk of people accessing the countryside and being irresponsible will also increase.

We have to address the issue of liability, which concerns us greatly. As Fergus Wood pointed out this morning, access to open hills is not a problem and he applauds those who take that access responsibly. He does not have any difficulty with that. He does, however, have difficulty with access to enclosed land, and we also have grave concerns about that. That is where the greatest difficulty lies and where Fergus Wood has had problems in the past.

Fergus Ewing: I was going to ask about liability. I understand that NFUS has two concerns, one of which is that a farmer or landowner might be liable if someone came on to their land and was injured—for example, someone might slip down the Devil's Pulpit to a watery grave. Would not that concern be dealt with by existing law, which says that those who ignore a danger sign and act irresponsibly do so at their own risk? I believe that the legal principle is volenti non fit injuria.

I think that I am also right in saying that section 5(2) of the bill makes it clear that

"the duty of care owed by an occupier of land to another person present on the land is not affected"

by the bill. I thank Craig Campbell for drawing that to my attention. The bill would therefore not increase the duty of care of a farmer or land manager. I am not sure that there is a flaw, but if there is, it is in the existing law of negligence and the existing Occupiers' Liability (Scotland) Act 1960. The flaw is not part of the bill.

John Kinnaird: I disagree with you. When the bill becomes an act, the owners, occupiers and tenants will have a duty of care and, as such, our risk of liability will be increased. Someone who is on the land and ignores a warning sign might be liable. What about those who do not read the sign, or take access by another route where there is no sign? Such a case would go to court. If someone is injured, I am sure that they will seek redress from someone and the chances are that that will be the land manager. Such cases will be cleared up only in court, but the bill does not address the matter.

Any legislation that increases access will increase liability. We will have a duty of care and that cannot be dismissed.

14:15

Fergus Ewing: I hear what you say and we are all concerned to ensure that farmers and land managers should not be liable for the irresponsible activities of a minority. It could be my own ignorance, but I am not aware of any example where a farmer or land manager has been sued successfully by someone who has behaved irresponsibly, ignored a warning and injured himself as a result. We can, and will, get legal advice about that as part of our evidence, but can you give us any clear example of a farmer's being successfully sued for such an occurrence?

John Kinnaird: Not if a person has taken a liberty. However, if there is a right of responsible access and a person has not taken a liberty, risks are increased. The word "responsible" is not defined in the bill, so an individual must decide what is responsible. In those circumstances, cases will go to court and only the courts will decide who is right and who is wrong. That will increase the work load, worry and expense for land managers.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Fergus Ewing mentioned section 5(2) of the bill. I listened to your answer to his question, but I do not understand how section 5(2) could be any clearer. It states:

"The extent of the duty of care owed by an occupier of land to another person present on the land is not affected by this Part of this Act or by its operation."

I am unclear why you responded to Fergus Ewing's question in the way that you did. I do not know how things could be clearer.

John Kinnaird: We will have a duty of care to people who take access because we will know that, as a right, they can take access at any time during the day. I hope that there will not be access at night.

Farmers work with animals day in, day out. If, for example, a farmer knows about a potentially dangerous animal and someone is injured by it while taking responsible access, who would be liable? I have a funny feeling that the land manager—the farmer—would be liable. That is where liability and danger come in. As a duty of care, we should remove any potentially dangerous animal from the production cycle.

Mr Rumbles: Do you agree that the bill does not give any more onerous tasks to land occupiers?

John Kinnaird: No—quite the opposite.

Mr Rumbles: I still do not understand—never mind.

Craig Campbell (National Farmers Union of Scotland): When we first considered that issue in examining the draft bill, we thought that there had been an omission. Therefore, when the Deputy First Minister and Minister for Justice introduced the actual bill, his underlining that people taking access under the proposed arrangements would do so at their own risk was extremely welcome. We are grateful for section 5(2) and think that it aspires to that objective. However, the legal advice that we have received is that it does not go far enough to achieve its intentions. In paragraph 13 of our first submission in June 2001, we suggested a better form of words. I do not think that there is a dispute about intention—the question is whether the intention is realised by the form of words in the bill.

Mr Jamie McGrigor (Highlands and Islands) (Con): You referred to night-time access. The bill makes no distinction between daylight hours and hours of darkness, but section 11 states that local authorities can extend powers to close down land at certain times. Are those powers enough? Will there be uneven access to land? How would that affect inland fisheries? I would like Craig Campbell to say something about that after John Kinnaird.

John Kinnaird: For the sake of clarity, night-time access should be denied. There is absolutely no reason for anyone to be on land at any time during darkness hours. It would make things much easier and clearer if there was no night-time access. Individual local authorities would not be responsible—every local authority would work to the same rules and regulations.

Craig Campbell: My reading of the bill is that it is possible for local authorities to provide an exclusion from land that is adjacent to water, which includes fisheries. The problem is that that would have to be carried out place by place through individual action by the local authorities, which would inundate them with work. The purpose might be served if the general exclusion that applies to golf courses under section 9 were extended to land adjacent to fisheries.

Mr McGrigor: How would local authorities react to your members' request for restriction to land access?

John Kinnaird: I do not think that local authorities would have great difficulty with such a request. It would probably save a lot of inconvenience and time, because individual local authorities would not have to make rulings. It must make things an awful lot easier if the situation is the same across the country.

Mr Rumbles: John Kinnaird has just said that he can envisage no circumstances in which one would need access rights in darkness. We will hear about that later from the Ramblers Association Scotland, but you must see that there will be times when darkness falls as people are returning from their walk. I do not understand why you cannot see any reason for access rights in darkness. Is such a measure not very logical?

John Kinnaird: We should remember that we are talking about responsible access. If you know that you will not be back before night falls, why are you walking so far? If you are on a clearly defined core path network, it would not matter whether access was needed at night, because you would know exactly that you were going from point A to point B. That is what most people want.

It concerns me that access should be needed to someone else's property, be they a tenant, landowner or owner-occupier. We should not make a distinction between the three categories.

Mr Rumbles: The whole point is reasonable access. Although people should aim to get back in daylight hours, often they do not. Is it not reasonable for them to maintain access rights in darkness?

John Kinnaird: It might seem reasonable. However, darkness must make it more difficult for someone to see where they are going. For example, in inclement weather, most livestock tend to shelter on the boundaries of fields, which is the very place where responsible access should be taken. Those two issues do not go hand in hand, and certainly not at night.

Richard Lochhead (North-East Scotland) (SNP): My first question relates to the issues that we have just been discussing. If responsible access is the whole essence of the debate, how can we draw a distinction between the hours of darkness and daylight as far as such access is concerned? If the access is responsible, why should it matter whether it is taken during the evening or during the day?

Furthermore, where would such a measure leave campers? When I was a kid, I used to go camping with friends and we would just pitch the tent anywhere. You are saying that that is not responsible access, as it would happen during the hours of darkness.

John Kinnaird: That brings us back to access on enclosed land, which is our greatest concern. I find it difficult to believe that anyone who took access on such land could tell whether there was any livestock in a field during the hours of darkness until it was possibly too late. In daylight, they might—and only might—be able to do so. During the hours of darkness, they would obviously run the risk of disturbing animals.

In addition, no one would know what crop was growing in any particular field—it might be grass, spring barley, spring wheat, winter wheat or winter oats. People certainly could not tell during the night, and I do not believe that most people could tell the difference during the day.

Richard Lochhead: Measuring up such factors—for example, checking the field before walking through it—could be interpreted as responsible access.

John Kinnaird: I agree, but how would someone check such things in the middle of the night or even late in the evening? We have great difficulty with that issue, because the word "responsible" has not been defined. That is why we are at great pains to suggest that a properly set up and funded core path network would allow recreation and work to take place in the countryside for everyone's benefit.

Richard Lochhead: My general question centres on the thrust of the legislation. Clearly, the Parliament must balance the interests of farmers, who want to carry on with their livelihoods without interference, and the interests of the people of Scotland, who want access to the land on which they live.

There seem to be two different approaches. Many of the submissions that we have received from outdoor associations have suggested that the bill contains too much regulation and that most of the aspects that have been determined by provisions and stipulations in the bill could be addressed in the access code that will be drawn up by the access forum. However, your organisation talks about some of the sections being vague and you suggest that you want more specific regulation in the bill to ensure greater clarity. The NFUS withdrew from the access forum last year. Does that mean that you have no faith in the code?

John Kinnaird: Not at all. The code lacks legal certainty and has no legal standing, whereas the bill has. That is why we want any rule that manages responsible access to be clearly defined in the bill and not left to a code. It is very important that that happens. The code can be quite woolly and it is far too long for anyone to read it or carry it with them. It is too big and unwieldy. A lot of what is contained in the code could be contained in the bill. That would give the bill greater clarity and more certainty, and it would make the access code easier to read and understand.

We withdrew from the access forum because it was not addressing a lot of the contentious issues that we had raised and continue to raise. Nonetheless, we are considering rejoining the forum—we have not dismissed the idea completely.

The Convener: The access forum originally approved unanimously the core path network as the best way of delivering responsible access. How would that network best be funded?

John Kinnaird: It has to be funded by local authorities but, by definition, the funding must come from central Government. There is no point in setting up a core path network that is not properly funded. There must be a clear steer from central Government that funding will be made available for the establishment and maintenance of a core path network.

The Convener: Do you envisage that your members would be involved in the implementation and maintenance of such a network?

John Kinnaird: I am sure that our members would be delighted to help with the maintenance of the paths and in agreeing where the paths could go. There is nothing like local knowledge of where the best sites are, and that is how our members could be involved.

Rhoda Grant (Highlands and Islands) (Lab): Some of the evidence that we have received has suggested that most of the people who would require night-time access—for example, people who are bird-watching at dawn or dusk—would know exactly where they were going and what they wanted to see. I do not understand your problem with such access. Quite often, members of the criminal element are out at night. If nobody else is around then, there is much more chance that people will get up to no good. Surely, it would be a deterrent to such people if there was night-time access.

John Kinnaird: Most of the bird-watching to which you refer is done by permission or in the open hills. We have no difficulty at all with that.

It is possible that permitting night-time access would have the benefit that people might see others who should not be there; however, if everyone had the right to be there at night, how could people's intentions be known? It would be impossible to tell.

We are concerned about responsible access—day or night—to enclosed land. To keep birds off crops at certain times of the year, we have to use gas bangers. Farmers know where they are and they can be activated only at certain times of the day. However, someone who accesses the land—even at night and if they leave the land in the early morning, after bird-watching—will not know where the bangers are. Who would be responsible if that person suffered, for example, a heart attack if one of the bangers was activated? The bangers make a tremendous noise, I assure you—I have been at the front end of one. That issue is not addressed in the bill. We need legal certainty and clarity about such things, which is why we need a core path network. Such a network would protect the public from any hidden hazards that may be there for a legitimate reason.

Rhoda Grant: Could not that be dealt with by a system similar to the hill phones network, whereby people can phone up and find out whether an agricultural activity is going on that would suffer if they accessed the land? You spoke about bird scaring, and farmers might have concerns about their animals. Could not such issues be dealt with in that way?

14:30

John Kinnaird: That may be one way of doing things, but pieces of machinery are constantly moved around and it may not be possible to keep information up to date. Updating the information would certainly be an onerous responsibility on local authorities and people would have to know how to use the system. We should remember that we can at times prevent access to certain fields when operations are being carried out, but how do we inform the general public of that, given that enclosed land tends to have a rotational form of agriculture? The land may be in cereals today, but in grass in a week's time. The concern is that conflicts will arise simply because people have been able to gain access to a field one month but cannot access it the next month.

Grass, for example, could be used for grazing, silage or hay. What is the difference? It is a crop. The bill says that, if grass is used for making hay or silage or for conservation for winter feed, access can be restricted through the local authorities, but that process takes too long. The bill says that if

"grass is being grown for hay and silage"

production, access can be denied. In a rotational system, grass may well be grazed in year 1 and cut in year 2 or possibly year 3. Does that mean that, as occupiers, we can tell people that they have no access in year 1 because grass is being grown for hay production? We want clarity about that; we need such questions to be cleared up in order to avoid any conflict. More important, if we say that responsible access is allowed in year 1, how do we tell the access taker that the grass is being grown for hay in year 2?

Rhoda Grant: That takes me to my next question. Am I correct to say that you would be quite happy for people to have access in year 1, if that is when the grass is being grazed?

John Kinnaird: No. It would be far better if the access was through a core path network, which would avoid dubiety, uncertainty and conflict. If grass is being grazed, it will, by definition, have livestock on it. Access takers could be put at risk from unruly or potentially dangerous animals. Animal welfare also has to be borne in mind. The majority of our members and producers are in quality assurance schemes, which contain clear and strict guidelines. Animal welfare is an important part of that. We cannot and should not put that at risk.

Rhoda Grant: What you are really saying is that people should not have a right of access, but should go only where you want them to go.

John Kinnaird: I would prefer it if access was through a clearly defined core path network. That core path network must be properly agreed to and must give benefit to the person using the land for recreational purposes, not just to the farmer—it must be of benefit to both parties. We have to work in harmony, not in conflict.

Rhoda Grant: There is a right of access now. Are you comfortable with withdrawing that right from people who currently have it?

John Kinnaird: There is a liberty at the moment, which we have no intention of taking away—that is not our aim. However, if access becomes a right, we would wish it to apply to a core path network, in order, purely and simply, to avoid placing people in potentially hazardous situations. That would allow safe access in terms of animal welfare, public safety and food safety—those are all important factors, which should be taken together, rather than being considered separately.

The Convener: You mentioned quality assurance schemes. I have had correspondence about the fact that, at least on stock farms, farm

dogs have to be wormed a certain number of times a year for the farm to remain within the assurance scheme. Is the concern justified that if people bring their dogs on to farms—however responsibly—the assurance scheme might be jeopardised if those dogs are not properly wormed?

John Kinnaird: That must be considered as a real concern. We have to worm our dogs twice a year under such an assurance scheme. Anyone who takes access with a dog, whether responsibly or otherwise, can put that quality scheme at risk, as we do not know whether the dog concerned has been wormed. One of the new diseases that has been discovered is neosporosis, which is spread by dogs to cattle. There is a risk that dogs will bring a disease on to a farm from another farm. That is unhelpful to the image of Scottish quality beef and lamb.

Dogs are a major problem. The bill states that a dog should be "under proper control". I am intrigued to know exactly what that means. Does it mean that the dog should be on a lead? Even when a dog is on a lead, if a cow takes a dislike to that dog—which can happen if the cow has a young or an old calf—it will chase it. People forget that, because the dog is attached to an owner via a lead, such a situation can be very dangerous. A dog may run out of the way in time, but I guarantee that the vast majority of people taking a dog for a walk will not outrun a cow or even a heifer. Such people are placing themselves in a potentially hazardous situation, which is irresponsible.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I was interested to hear you say that, under the new access code, landowners and land managers would be severely disadvantaged. We have spoken at length with members of the farming community, particularly earlier today. In their view, the access code that is currently in use affords them a degree of safety; they do not have the problem that you seem to envisage will develop if the bill is approved in its current form. Surely the landowner would be fulfilling his responsibility to provide responsible access if he put up a sign saying, "Beware—wild animal" on the gate to a field containing a bull or wild animal. If, as we saw at the gorge today, there is a possibility of someone being injured on a route and the land manager puts up a sign to indicate that the route is dangerous, surely he has fulfilled his responsibilities.

John Kinnaird: Putting up a sign can do one of two things. It can warn people of danger, as was the intention on the second farm that we visited this morning. However, under the bill a sign could be perceived as a way of limiting access for no apparent reason. A sign is only as good as those who care to read it or who take access only where such a sign is visible. I return to the example that I gave of a family—which I would describe as a professional family—sledging on our farm during the foot-and-mouth outbreak. That family took access over a double fence; they did not go through a gate. In that situation, a sign would have been of no use whatever. Signs have a very limited use. What good are signs to those from foreign countries who take access?

John Farquhar Munro: In your professional opinion, such signs would give land managers no protection in law.

John Kinnaird: None at all. In England, someone who was chased by dangerous animals, even though there was a sign warning them of that danger, successfully prosecuted the farmer concerned.

John Farquhar Munro: The other issue that I would like to raise is that of night-time access, on which I heard your comments. Hillwalkers who are taking part in a cross-country walk can be on the hills for two or three nights. We must be careful not to suggest that that should not be allowed. Who would restrict those individuals as they passed through different estates?

John Kinnaird: We are concerned primarily not about responsible night-time access to the open hills, but about access to enclosed land. We have less difficulty with access to open hill land. The real problems could arise on enclosed land, to which the majority of our concerns relate.

Mr Rumbles: I understand that the National Farmers Union is somewhat critical of the fact that chapter 3 of part 1 of the bill, which deals with the Scottish outdoor access code, does not set out the code as part of the bill. Would you accept that one of the reasons why it is not part of the bill is that, if organisations such as the NFUS or the Ramblers Association experience difficulties, it will be easier to amend the access code if it is not in the bill? It is far easier to amend a code by having a parliamentary committee approve a statutory instrument; amending primary legislation involves a huge exercise.

John Kinnaird: I agree that it would be a huge exercise to amend primary legislation. However, surely it is important to get legal clarity and certainty in the bill in the first place. If that happened, the need to make amendments would not arise. The code should be advisory, but the bill should be the lead. The code should need few, if any, amendments.

Mr Rumbles: You accept that many people throughout Scotland have been waiting for the bill for a long time. Getting such a bill 100 per cent correct is a major exercise, which is why several committees of the Parliament are examining it—

the whole parliamentary process is involved in ensuring that we get it right. However, occasionally, situations that are not envisaged and unintended consequences arise. I am sure that you would accept that, if such problems arise, it would be best if they were easy to put right.

John Kinnaird: The bill, as initially envisaged, dealt primarily with hill ground and open land. We had little or no difficulty with that. However, once enclosed land was included, problems arose. There must be clarity and certainty about that area, but that is not yet the case. I accept that it has taken a long time to get the bill to this stage, which is why I think it vital that we get it right. However, in its current form, the bill is anything but right. It is not responsible behaviour for any Parliament to place members of the public in hazardous situations by giving them a right to be there.

Mr Rumbles: Richard Lochhead mentioned the fact that the bill is an attempt to achieve a balance between various interests. Striking such a balance will inevitably upset some people and make some people happy. However, if your fears are borne out in the course of time and we realise that the rules governing access must be changed, would not it be easier to amend the access code if it were not in the bill?

John Kinnaird: If, at a later date, it was decided that a core path network was necessary, how would that be addressed if the bill had been passed in its current form? The legislation would have to be amended. More important, how would the access taker be informed that a right that they had been granted by an act of Parliament had been withdrawn? That would give us and the access taker problems and could lead to conflict.

On our visit to Fergus Wood's farm this morning, we heard how he has set up a core path network for access to which the access takers have adhered. That has allowed access and farming to work together without conflict.

Mr McGrigor: I wanted to ask about grass that is being grown for silage and grass that is being grown as a crop, but I think that the point has been made that enclosed ground for grazing should be excluded.

That brings me to the resurgence of deer farming in Scotland. I visited a deer farm the other day. It was during the rutting season, and the deer farmer told me that he would not enter the enclosed area because his life would be in danger. Deer parks are generally much bigger than enclosed fields. Do you have any views on that and on the point that some of those parks might extend to hill ground?

14:45

John Kinnaird: By their nature, deer parks may have to extend to hill ground. The bill might need to be amended on that point. We must address such matters. I suggest that, if such an area is fenced off, it is not open hill land. As such, it should fall into the same category as enclosed land and should be excluded.

Fergus Ewing: I know that the witnesses will be familiar with section 9(2)(a) but, for the wider audience, I should explain that the provision states that the right of access is for individuals and will not apply to those

"conducting a business or other activity which is carried on commercially or for profit or any part of such a business or activity".

I raise that issue because, in my constituency—Inverness East, Nairn and Lochaber—the economies of Badenoch and Strathspey and Lochaber are, like those of many other parts of Scotland, substantially dependent on outdoor pursuits. Outdoor pursuits are worth £400 million annually in the Highlands and Islands.

You have accepted that the behaviour of all those engaged in outdoor pursuits during the foot-and-mouth outbreak was to be applauded. They recognised the legitimate interests of farmers and worked with farmers. A them-and-us attitude is wrong; that is what we want to get away from. Many of the people in my patch who earn their livelihood from outdoor pursuits are one-person businesses—climbing instructors, mountain guides, path repairers and a host of others. To a person, they feel that section 9(2)(a) is the thin end of the wedge. They feel that they will be asked to make all sorts of payments that they simply cannot afford and which, perhaps more important, they believe are morally wrong.

I read in your submission that you support section 9(2)(a). Do you acknowledge that the provision might cause a problem for the people whom I have mentioned and who, you accept, behaved extremely well during your difficult period last year?

John Kinnaird: I repeat our grateful thanks to the general public who restricted their access during the foot-and-mouth crisis. We cannot thank them enough.

At no time do we suggest that the current liberty be removed. It should stay. However, I would have grave concerns about people having the ability to take a commercial interest in someone else's property. Let us take the discussion away from the landowners. What about the tenant farmer, who pays another individual for the privilege of farming the land? Someone else could come along and earn another income from that piece of land, to which the legal tenant has no right at all.

We agree that the right of access is for individuals. However, under the bill, that could be multiple individuals at any one time. That in itself could create bigger problems.

Fergus Ewing: You are not advocating that charges should be imposed where they are not currently imposed.

John Kinnaird: Not at all. We whole-heartedly support what is currently in place. We would not seek to remove the liberty that currently exists.

Fergus Ewing: Do you feel that section 9(2)(a) could be amended to make it absolutely clear that you are not trying to—and that no one, including the state, would be able to—extract a payment from the smaller businesses about which I talked?

John Kinnaird: It is difficult to define what is commercial. If we can define that, we might be able to go some way to answering your question. Until it is clearly defined, we have a potential problem. We must also remember that the responsible access about which we are talking applies not only to walkers, but to people on horseback or on bikes. I think that I am correct in saying that, currently, one cannot take horses on footpaths. How can walkers, cyclists and horse riders take responsible access at the same time, in the same place? That does not work.

Fergus Ewing: Do I have time for a final question?

The Convener: You do if the question is brief.

Fergus Ewing: Mr Kinnaird said that he believes that legal certainty is essential. I appreciate that argument. He also said that people would not read the terms of a complicated code. If they would not read a code, why would they read a complicated act? Would not it be better to have a much simpler bill that states that there should be a right of access, which people should exercise responsibly? The details of that conduct would be set out in a code, which—as Mr Rumbles said—could be changed more easily, because a code would be more flexible. Would not that be a far better model to proceed with than would an extremely complicated and detailed bill, about which only the lawyers might be happy?

John Kinnaird: Only the lawyers will be happy with the present proposals, because the bill must be a lawyer's charter. That is a personal opinion. Anything that is challenged will have to go to court for clarification. If legal certainty exists in the first place, there will be no problem because all parties will know where they stand from day one. I must re-emphasise that we are not considering—and would not propose—removal of the current liberty. We require clarity and legal certainty because the bill will take effect as an act of Parliament, but that certainty does not exist—the bill falls well short of what is required in that respect.

Fergus Ewing: I should have said that I am a lawyer, in case that is perceived to be an undeclared interest. I have no intention of availing myself of the apparently vast opportunities that the bill might provide me with, if it were to be enacted.

The Convener: I am sure that Mr Kinnaird will not change his remarks.

Richard Lochhead: On commercial companies coming on to land, you used the analogy of a tenant farmer who rents land, perhaps from another farmer or landowner. You asked why someone else should be able to use free of charge land that the tenant farmer pays for. However, would not the tenant farmer—and all other farmers—be protected by the enshrining of responsible access in the bill through the inclusion of the word "responsibility"? Surely all the tenant farmer wants is to achieve a return on his rent by being able to make his livelihood. Therefore, if responsible access means that somebody who comes on to the land—to train kids to abseil, for example—does not interfere with the tenant farmer's livelihood, does not that protect his interests?

John Kinnaird: Although that goes part of the way, it does not address the whole problem. We must go back to the farms that members of the committee visited this morning. Fergus Wood emphasised the importance of having to manage access to his enclosed land. Although he has vast tracts of hill land, enclosed land is very important to him because it has a cash value. One of the functions of better quality grassland is to maintain reasonably high conception rates. If that farmer cannot get his ewes in lamb or his cows in calf—if that is denied him—that will have a serious impact on him; it will place a financial burden on his business.

Richard Lochhead: Would not it be the people who came on to the land for commercial business who would be denied? If a bit of land were used for lambing, for example, responsible access would surely mean going elsewhere for the commercial activity in question, rather than using that bit of land. Therefore, the commercial business would be alienated from using that bit of land, not the farmer.

John Kinnaird: Yes, I agree entirely with that. The committee is more than welcome to visit my farm, where we have rotational grass and permanent pasture. Would any committee member who stands at the field gate be able to tell me whether there is any livestock in that field; whether the livestock is lambing or calving; or whether there is a bull, a wild animal, or an animal that is potentially dangerous in the field? Farmers would be able to do that—it is easy for them, but

members of the committee would not. The average responsible person does not have a clue, because they do not work on the farm or with the animals every day. That is why local knowledge is vital.

Dr Sylvia Jackson (Stirling) (Lab): You said that you wanted current liberties to remain. The bill seems to imply that going through farm steadings and farmyards would not be allowed. What do you think about that? What are the implications for established routes of that kind?

John Kinnaird: I agree that no access should be given to farm buildings. Perhaps there should not even be access to farm roads, because they are used regularly for machinery and for driving animals—dairy cows to milking, for example. There is nothing worse than someone who is taking access walking towards and frightening the cattle. That is stressful for the animals—we come back to animal welfare—and for the people who are leading the animals. For example, if a farmer attempts to move a flock of sheep and lambs—which might be only a month old—while someone is walking in the opposite direction, I guarantee that tempers will be frayed by the time that exercise is finished, because sheep are difficult to move.

Anyone who wants to take access along a farm road should be denied that access, because there is every possibility that that person will meet farmers who are going about their legitimate business, machinery or animals. There are obvious dangers around farm buildings, given the use of potentially hazardous equipment. It is difficult for farmers to keep alive to those dangers all the time and to look around to ensure that there is no one there, particularly if walkers are allowed access all the time. Access to farm buildings should be denied. After all, a farm, which is a primary link in the food chain, is a place of work—that is its main function.

Rhoda Grant: Many guides have local knowledge and know which fields have crops, therefore, which they are able to access. They see themselves as commercial players, but are not the provisions on commercial access restrictive? If a core path network is not established, surely it will be safer for people to take access with a local guide, who is probably in contact with farmers, than it will be for them to do so without a guide?

John Kinnaird: The guides to whom you allude work primarily on open hill ground. I repeat that we have no difficulty with access to open hill ground. Our difficulty is with access to enclosed land, and guides do not take people through enclosed land. Our biggest difficulty with the bill as introduced is not in relation to access to open hill ground but in relation to access to enclosed land. There seems to be a suggestion that guides who take walkers on to enclosed land are taking a commercial interest in land that does not belong to them. That refers back to the situation of tenant farmers who are trying to maximise their returns from a piece of land. Someone else might be able to make money from that land, which must be wrong. However, guides do not work on enclosed land and we have no difficulty with them having access to open hill ground.

The Convener: Thank you. Before I ask you to step down, I note that this is the only opportunity for the NFUS to give evidence on the bill to the Rural Development Committee. Although we are not focusing on parts 2 and 3 of the bill today, if you have any brief comments to make on those parts of the bill that are not mentioned in your written submission, I am happy for you to do so now.

John Kinnaird: We have nothing to add to our submission.

The Convener: In that case, thank you for your evidence and for answering our questions. I ask you to step down from the table. You are welcome to stay for the rest of the meeting.

John Kinnaird: Thank you.

The Convener: If the next set of witnesses is seated comfortably, I can begin.

I take this opportunity to welcome my colleague, the late Brian Monteith. He has just joined the meeting and I thank him for managing to get here.

I also welcome our next two witnesses who are Dave Morris, who represents the Ramblers Association Scotland, and Fran Pothecary, who represents the Scottish Outdoor Recreation Network. As the NFUS representatives did, will you both make a brief statement and introduce anyone whom you have brought with you?

15:00

Fran Pothecary (Scottish Outdoor Recreation Network): Thank you for the opportunity to give oral evidence. My name is Fran Pothecary and I work as the access officer for the Scottish Canoe Association. I have been a member of the access forum since 1999. On my right is Dr Dorothy Breckenridge, who is a member of Activity Scotland's board. We represent the Scottish Outdoor Recreation Network, which is a forum for umbrella bodies. We represent commercial, educational and youth interests as they relate to access to and recreation in the Scottish countryside.

Dave Morris (Ramblers Association Scotland): I am the director of the Ramblers Association Scotland and have been head of the association for 12 years. On my extreme left is

Cameron McNeish—president of the Ramblers Association Scotland—who is a writer and broadcaster and the editor of an outdoor magazine. Also on my left is Lucy Burnett, who is a campaign officer with the Ramblers Association Scotland. I have extensive experience from working with two international organisations that are concerned with conservation and recreation and I might wish to draw on that experience in some of my answers.

Ramblers are familiar with the pre-legislative process, because we were founder members of the access forum in 1994. I have attended every meeting of the access forum since then. Having studied the evidence that has been given to committees, we have four main concerns that we hope that the Parliament will address. The National Farmers Union of Scotland also talked about those issues.

First, it is important that the Parliament decides whether it is codifying the current situation, which is what ministers said to Parliament in November 1999. Secondly, is the Parliament working from the common-law position as we understand it today, or from a position on liberty about which John Kinnaird spoke? Thirdly, if the Parliament reaches a conclusion on that, what balance will it strike between the bill and the code? That is crucial. We argue strongly that the bill should be simplified and that most of the detail should be contained in the code. Fourthly, members must ask themselves what the code is supposed to be like. The access forum understood that the code was to be like the highway code. In the paper that it issued on 21 December 2001, the Scottish Executive's position on that had changed. Those four issues are uppermost of our concerns.

The Convener: I remind members that the committee's focus is the bill's economic impact on rural businesses. The Justice 2 Committee will go much deeper into the legal niceties of the bill. That is not to say that what the witnesses said is irrelevant; I simply point out that our focus of questioning is narrow.

Richard Lochhead: Farmers and landowners are concerned that if the bill is passed, they might be liable when people go on to their land. What risk is involved? Everything we do has a risk attached to it, but if ramblers go on to land, do they do so utterly at their own risk, no matter what happens, or is the landowner to some extent liable? If so, in what circumstances?

Dave Morris: The outdoor bodies and the land-managing bodies in the access forum do not disagree about the position: taking access under the bill would be the same as taking access today. One would enter land at one's own risk.

Richard Lochhead: That was my key question. My second question was prompted by a letter from the North East Mountain Trust, which is based in my area. It takes exception to section 6(e) of the bill, which excludes the Queen's estates from access. I also expect that that provision would send out the wrong message to tourists who visit Deeside, because Balmoral takes up a pretty big area. Does the Ramblers Association agree with the North East Mountain Trust?

Dave Morris: Yes. The issue is not major, but we would prefer the reference to the Queen's private estate to be removed. We are familiar with access arrangements on Balmoral; no difficulties exist at present and we do not expect difficulties in the future.

Mr Rumbles: Balmoral is in my constituency and I am unaware of any problems with access to the Queen's estate. I have received no intimations that problems exist there. I know that open access is encouraged at Balmoral. That provision exists in the bill for security and does not reflect practice.

Mr McGrigor: The bill implies that farmyards will be excluded from the access right, but many routes that are not necessarily rights of way go through farm steadings. Do you share farmers' concern about access to steadings? If so, what measures should be taken to avoid steadings?

Dave Morris: We agree that that is a concern. It has been discussed extensively in the access forum. We accepted the principle that farmyards and farm steadings should be included in the definition of curtilage and have said that—as Mr McGrigor suggested—many routes on low ground go through farm steadings. For horse-riders and cyclists, they are the only ways of travelling over enclosed ground.

We were disappointed that the NFUS did not agree to diversion routes. We wanted them to be a condition of a farmer's closing a route that went through a farmyard. This morning, we saw an excellent example of how that should be done, but I can show the committee many examples of the opposite and of farmers refusing to allow access to steadings. Near our office, a farmer has blocked all access to the low ground that leads to the Lomond hills and has made no alternative provision.

The answer is to write a provision into the code so that it is clear that a right of passage, but not of recreation, exists through curtilage. That would be useful not only for ramblers walking through farmyards, but for members of the Parliament who will walk to front doors and pass through curtilage when canvassing for the next election.

The Convener: Fran Pothecary should feel free to speak if she wishes to.

Mr McGrigor: Should the extra access that

would have to be provided be paid for by the landowner or farmer, or by the local council?

Dave Morris: If a farmer believes that he or she has a problem, his or her first action should be to approach the local authority or the relevant national park authority. The farmer should explain the problem and, I hope, reach agreement on a diversion route. The public purse would pay for that.

Mr McGrigor: This morning, we visited a farm on the banks of Loch Ard. We saw what the farmer described as his inby fields and heard his concern about people going on to those fields when they carry livestock. Do you share his concern? Should access to fields that carry livestock be restricted?

Dave Morris: No. As we understand it, the common law position is that one can walk through fields. Yesterday morning, I walked through a field and partly across a crop to visit two standing stones in the middle of a field. Nothing in present law stops people from walking through fields, provided that they do so sensibly and do no damage.

As we saw this morning, when a significant number of people cause pressure on land, arrangements must be made. Ultimately, a farmer who has a serious difficulty with large numbers of people on inby land could approach a local authority with a view to seeking byelaws for that land. An important new provision in the bill is the opportunity for local authorities to negotiate byelaws on land other than their own.

The Convener: You have stated that there is currently nothing to stop people going on to land as long as they do not cause any damage. Is there therefore any need for the bill's provisions on access?

Dave Morris: Absolutely. That is because there is huge confusion, as one can see in the evidence that the Parliament has received from many different sectors. Is there a law of trespass or not? Members will have heard opposing points of view. We believe firmly that there is no law of trespass and we have referred to the Government's 1959 position, which was clear that there was no law of trespass. Our view is consistent with what has been said previously.

John Kinnaird spoke about liberty. We agree with his view that people today have a liberty. The definition of liberty in my dictionary is:

"the power of choosing, thinking and acting for oneself; freedom from control or restriction."

That is the basis on which virtually everybody accesses land. The only reason for having to legislate is to secure that basis. We are not increasing rights of access; we are simply trying to secure the existing common-law position, which is what the minister said in November 1999.

The act is also needed to modernise the footpath arrangements so that we get away from the ancient system of trying to secure access through rights of way. We will keep our existing rights-of-way network, but build on to it the modern core path network that everybody supports. We need new legislation for that.

The Convener: So you accept that the best way to provide a responsible right of access, especially through enclosed ground, is through the properly funded provision of a core path network.

Dave Morris: The proper provision of a core path network is an essential component, but it is fundamental that we ensure that people have a right of access to all land—including all farm land—and that that right is exercised responsibly under detailed guidance in the code. I refer members to the submission from Shetland Islands Council to the Justice 2 Committee. That council spells out clearly the risks to people's traditional freedoms if those freedoms are not secured before paths are legislated for.

The Convener: I presume that you are fairly dissatisfied because the only reference in the bill to a core path network is where it says that, within two years, local authorities should come up with a plan. The bill calls for no further action.

Dave Morris: Yes, we are concerned about that. We agree with the National Farmers Union of Scotland and the Scottish Landowners Federation that a duty should be placed on local authorities not only to produce a plan and a map, but to establish core paths.

Fergus Ewing: This morning, Fergus Wood and David Young told us about various problems, which I guess would be typical of problems throughout the country. Those problems included: campers cutting down trees to use for fires; people regarding the outdoors as a massive public convenience; littering; dogs worrying sheep; and the trampling of crops. Only a minority would cause such problems, but how would you stamp out such behaviour?

Dave Morris: There was an interesting contrast between the two farmers whom we saw this morning. It was clear that Fergus Wood has had tremendous help from the public authorities—especially the council—in managing the situations that faced him. The situation at David Young's farm was in marked contrast. Ironically, that is one of the reasons why we have argued that the boundary of the national park should be drawn much wider in that area, so that a farmer such as David Young would be able to access national park funding. As things stand, he will not be able to do so because he is two miles outside the boundary.

Fergus Ewing: I do not really understand how a local authority will be able to stop campers cutting down trees, people littering, dogs worrying sheep or trampling of crops. I do not see how a local authority can be an effective policeman or how it can impose effective sanctions. Could you be more specific? These are real problems.

There is not massive confrontation in Scotland; in fact, I think confrontation is tiny and isolated to a few cases. Nonetheless, farmers and land managers have legitimate concerns. It is up to us to find a way ahead that is better for walkers and farmers. I am genuinely confused about how the Ramblers Association thinks that we will reach that destination.

15:15

Dave Morris: The situation is that, over many years, there has been little public funding to resolve the problem. That can be seen in Fergus Ewing's constituency, where considerable changes are now taking place as we move towards the creation of the Cairngorm national park. Much more help is now being given to farmers who are faced with those difficult problems. We should also remember that a much bigger educational effort would result from the bill so that people generally will be far more aware. Ultimately, to tackle vandalism of the sort that Fergus Ewing has described will require more rangers and police officers.

Fran Pothecary: This morning, Fergus Wood commented that most of the people who behaved irresponsibly on his land were ignorant of good practice. "Ignorant" was the key word that he used. We believe that the access code will have value if it is not merely a document, but is implemented properly. The key issue is the question of who delivers the implementation; it needs to be delivered through schools and through groups. That ties into our concerns about section 9(2)(a). The message about what constitutes good practice in the countryside will not be delivered if those who are able to get the message across are disenfranchised. Good relationships would then not be developed between users and land managers.

Fergus Ewing: Is the way ahead to have more education, rather than special criminal sanctions, to ensure better behaviour and to end irresponsibility?

Fran Pothecary: Yes, absolutely. We have touched on several ways in which the issue might be managed, such as the use of advisory signs or, in extreme cases, the use of bylaws. What we have said is underpinned by our belief that 99 per cent of people will voluntarily behave responsibly if they understand the reasons why they should do so. That is why we put a lot of emphasis on the way in which the code is delivered.

Dr Jackson: What I want to say is pertinent to that point. Fergus Wood and David Young both said that the people who create litter are often those who are not out for long walks and who do not stray far. Fergus Wood, in particular, made that point. As well as more signage, would the provision of lochside pathways help his situation?

David Young, whom we visited after we visited Fergus Wood, said that a considerable amount could be done to lead people through his land if funding allowed for it. There are many lines that could be followed to reduce litter and to help with the other problems that are experienced at the moment.

Fran Pothecary: I am aware that a number of groups have helped to clear litter from David Young's gorge. It is a shame that a natural feature that has attracted between 5,000 and 7,000 people a year has been so radically cut off from people, especially when one considers that the gorge has steps and has been accessible for over 100 years.

The way in which Fergus Wood diverted the path away from his farm and over a bridge is a useful pointer to the fact that if people are given the option they will follow signs. Perhaps providing ways in which people could be helped to make responsible use of the land around the lochside, where there is an access issue, would be a good way of managing the way in which people use the land.

Rhoda Grant: I start with the right—or non-right—of access for people who are undertaking commercial activities. Do you think that the bill will cut down the number of such people who exercise a right of access, or that it will affect the way in which they take that right of access?

Fran Pothecary: The main problem with the exclusion of the commercial right of access is that it would introduce uncertainty and doubt into the current situation. At the moment, people who are taking access to land commercially—as educators, as guides or as outdoor activity operators—do so under the same provision as people who are going into the countryside on a recreational and informal basis.

We have a real concern that the inclusion of section 9(2)(a) will open up the possibility of challenge to any group going into the countryside. The result will be that, if people are in the countryside and are challenged about their right to be there, they will lose confidence about being there. For example, those who want to lead walking groups will avoid areas where they will be challenged.

Dave Morris: I would like to add an example to supplement Fran Pothecary's point. Representatives of a trekking company told me that they do not go to Mull any longer because there have been too many situations in which there has been confrontation. Their clients, who are fairly well-off Americans, just cannot stand the fact that there has been some sort of interaction out in the field. The bill as drafted is really dangerous from that point of view. It would merely encourage land managers to confront people and ask them why they are on their land. They could ask anybody, "Are you on my land for commercial purposes?" If an individual with a camera were to walk on to the land, they could ask whether that person was there to take a photograph for a calendar.

The committee should be aware of a serious problem that was mentioned by Professor Jeremy Rowan-Robinson, a board member of Scottish Natural Heritage, when he gave evidence to the Justice 2 Committee. When asked what would happen to commercial groups if they found that they did not have the right of access, he said that they would continue to take access under the common law. The bill would create a situation in which part of the population will go on to land under what they regard as the common law and another part of the population will go on to land on the basis of the new statute law. That would be absolute chaos. That is why I said in my opening remarks that the only way for the Parliament to proceed is to make absolutely sure that the Parliament understands the existing common law and codifies it. The only real purpose of the bill is to give an instruction to SNH to produce a code that describes what the existing liberty or common law position is.

Rhoda Grant: You said that section 9(2)(a) would probably put educators off taking rights of access. Would that have a detrimental effect on the countryside, given that many people who exercise a right of access for the first time go with somebody who is educated and knows where they are going and how they should act? That gives guidance to people who are exercising their right of access so that, if they go again on their own, they know what to avoid and how to behave.

Dave Morris: That is a good sound point, but my concern about educators relates to the curriculum. In comparison to other European countries, we are in a dreadful position in Scotland when it comes to the extent to which we introduce children to the outdoors from primary school onwards. As far as I can see, children get virtually no real introduction to the farm or croft situation. That is a real problem. If—as we hope—the bill is passed, that situation can be corrected in the next five years. It does not matter too much in relation to the adult population at the moment because, as John Kinnaird indicated, the adult population has demonstrated during the past year how well it can behave in a situation like the foot-and-mouth crisis. The real focus needs to be on the curriculum, particularly for primary schools.

Fran Pothecary: I talked earlier about the idea of challenge. The bill is about the right of responsible access. Whether somebody is operating commercially is not relevant to whether there is a right of access. We want to move on from a position in which people are being questioned about whether they have a right to be on land; we want to consider how they are using their access to land.

Many people would challenge section 9(2)(a) and keeping it in would not allow the Executive to move on to consider what responsible access is.

The Convener: I want to tease out another point. You mentioned, quite rightly, the incredibly responsible line that the vast majority of the general public took in the wake of the foot-and-mouth tragedy, which so recently affected the whole of Scotland, despite the fact that the outbreak was confined to regions in the south.

Do you accept that there is an enormous difference between the reaction of the public for an intense period in the wake of a national disaster and that of the public five miles, so to speak, after the introduction of a general right of responsible access? I think that it is the fear of land managers' representatives that familiarity might breed contempt in some quarters?

Do you accept that there is an enormous difference between the right of responsible access and the right to roam? The difficulty that is faced by many land managers' organisations is how to educate the public about the right of responsible access when the public might think that they have a right to roam.

Dave Morris: I am not sure what your definition of a right to roam is. The phrase is often used within the Ramblers Association Scotland. We see no difference between our right to roam and the right of responsible access.

I tend to use the phrases freedom of access and liberty of access. I do not think that there is a problem, because the vast majority of the public respond to signs if they are reasonable. Problems arise particularly in remote parts of the Highlands where there are often pretty extreme signs relating to deer stalking. Some land managers do not want the public anywhere on their land. The content of the signs is usually the problem. As part of the educational process, we need to put a lot of effort into explaining to land managers what type of sign is appropriate.

In the Lowlands, when potato crops are sprayed

with sulphuric acid every year, signs are put in the affected fields asking people to stay out for three days. As far as I know, those signs are complied with. The public will nearly always comply with signs.

Fran Pothecary: We mentioned safety and liability. The Forestry Commission—the biggest public landowner—obviously deals with serious safety issues every day in its felling and land management operations. In conversations with us inside and outside the public access forum, the commission made it clear that it is able to manage public access not by excluding the public but by putting up advisory signs. The commission's open access policy works. Alongside that policy, the commission manages to undertake operations such as shooting deer and tree felling.

Mr Rumbles: I am pleased to come back to the question of rights of access. Dr Sylvia Jackson raised the point with the NFUS witnesses a few moments ago and Rhoda Grant has now raised it with these witnesses.

I emphasise section 5(3), which I will read out for the benefit of those people who do not have it in front of them. The section heading is:

"Access rights, reciprocal obligations and other rules and rights".

The section states:

"The existence or exercise of access rights does not diminish or displace any other rights (whether public or private) of entry, way, passage or access."

When Dr Jackson commented to the NFUS that the bill would remove access rights through farmyards, the NFUS was quite content to say that that would be a good idea. The intention of the bill is to do the reverse. Dave Morris asked earlier whether the purpose of the bill was to add to rights under common law. From section 5(3), it is clear that the statute law that the bill creates will add to rights that are held under common law. Quite specifically, the bill does not remove rights, so I imagine that it enhances the aspect that you are talking about. Do both organisations agree?

15:30

Fran Pothecary: There are problems with the bill as drafted in that, although we heard from previous witnesses that current liberties should not be removed, we have already discussed a quite extensive example where it is clear that current liberties will be removed or made much more difficult to take.

Mr Rumbles: But that is my precise point; section 5(3) says that the bill does not do that.

Dave Morris: Supposedly, the bill tries not to do that, but as it is drafted it does. For example, today I could walk up a hill and pick blaeberries. I might not be able to do that in a year's time if the bill is not changed.

Mr Rumbles: Why do you feel that way, given that subsection (3) is quite specific?

Dave Morris: Yes, but another section of the bill talks about behaviour that might be excluded, and the bill states that people cannot take anything away from the land. We know many land managers who would interpret that as preventing the picking of blackberries and blaeberries. Another section states that people will not be able to undertake recreational activities on golf courses, so it is possible that the sledging, skiing and snowboarding that I did on a golf course at new year would not be possible under the bill.

Mr Rumbles: With respect, the bill does not say that. The bill specifically says that

"The existence or exercise of access rights does not diminish or displace any other rights"

in the bill. Rights are being given to individuals. There is no displacement.

Dave Morris: That is where the confusion arises. Suppose that the bill were passed as drafted, including the section relating to golf courses. At next new year, we would be faced with golf course managers saying, "Go away—you can't come sledging on this golf course," whereas I would be saying, "Oh yes, I can. I am not using the new statute right; I am depending on my common law right." That is exactly what is being said will happen in relation to commercial groups.

The principle that you are pointing to in section 5(3) is absolutely right and we understand it. The Government's intention is that no existing rights should be lost or displaced, but that is precisely what is happening elsewhere in the bill. That is why our advice to this committee and to the Justice 2 Committee is that you should go through the bill line by line and take out everything that represents a diminution of the common law right. If there is an issue that has to be addressed, it should be built into the code as advice.

John Farquhar Munro: I get the impression from your responses that you see little benefit in the access proposals in the bill. In simple terms, will you explain the access benefits that we currently enjoy and how they might be diminished if the proposals are implemented?

Fran Pothecary: Currently, people believe that they have an entitlement to take access to land and water as long as they behave in a responsible way. The bill introduces some fairly specific examples of where a statutory right of access will be excluded. We have talked about curtilages, golf courses, crop land and commercial access. A perception will be created among users that

access entitlements or rights will be less under the bill than they are currently.

John Farquhar Munro: Do I understand from that answer that the current code of conduct is acceptable to the Ramblers Association?

Dave Morris: The position today is as it was spelled out in 1942 by Tom Johnston, the Secretary of State for Scotland. We know of no diminution of that position. The view that was stated is that there is no law of trespass in Scotland and people have freedom to go everywhere. The only restraint is in relation to the curtilage of a property. That view was reinforced in 1961 by the Scottish Landowners Federation, which said exactly the same thing and added that the only thing that a landowner can do today to restrain access, even if someone is picnicking on their front lawn, is to seek an interdict. That is why I skied, over the new year, to Ardverikie castle—well known to most people as Glenbogle castle in "Monarch of the Glen". I had a picnic on the edge of the lawn. The keeper came along and we had a friendly chat—there was no problem. I skied home—it was dark part of the way, so I wore a head torch. I did not go beyond the edge of the lawn, because to go closer to the castle would have been an intrusion into the curtilage. Our view is that nothing should change under the new legislation. The only restraint is in relation to curtilage.

John Farquhar Munro: Fran Pothecary made the point that the issue is the perception of access. She said that people believe that the current situation is as she outlined. I got the impression that Fran Pothecary was suggesting that if the access code is implemented as is proposed in the bill, it will detract from the privileges and rights that currently exist.

Fran Pothecary: I am sorry, I did not hear the last part of the question.

The Convener: Could John Farquhar Munro repeat the last part of the question? Perhaps he should move closer to his microphone.

John Farquhar Munro: What I was trying to say, as lucidly as possible, was that people believe—that is the word that Fran Pothecary used—that they have an absolute right of access on to property and that if the bill is implemented in its current form, it will diminish or detract from the rights and privileges that people currently enjoy.

Fran Pothecary: A positive aspect of the bill is that conferring a right of access over land and water will clearly give a statutory right. That is particularly important for cyclists and horse riders, who have been more frequently interrupted in taking access and have been less clear about their rights.

I reinforce Dave Morris's point that the bill must be examined line by line to see where it codifies the current situation and confers or increases rights and where it removes or denies current liberties.

Mr Brian Monteith (Mid Scotland and Fife) (Con): I will ask Fran Pothecary to comment more expansively on a point in the SORN submission. Mr Morris might also want to answer, as he has mentioned the issue.

Paragraph 6 of the SORN submission states:

"SORN objects to the exclusion of access from golf courses for recreational purposes … This will restrict access for such traditional uses as sledging."

I thought the traditional use of a golf course was golf. I understand that the time when people go sledging is not a time when people play golf. I have been sledging and have seen many hills that have been used for sledging: the rutting can cause damage that requires repair. I expect that golf club secretaries have views on that.

Why is it that you feel strongly enough to point out to the committee your concern about that access being taken away? There are already several arrangements under which sledging can take place on golf courses. Is that because the golf club green-keepers and secretaries feel that they do not have the power to complain about or to prevent such activity? Perhaps you are highlighting the fact that if the bill is passed as it is drafted, golf clubs will be able to exercise a power that they would have liked to have previously?

Fran Pothecary: The issue centres on what is responsible and what is irresponsible. Clearly, activities that result in marking a golf course constitute irresponsible practice. Over Christmas, I went skiing in 10in of snow on my local golf course in Kingussie, along with 50 or so local families. It is important that golf courses are seen in the same light as land that is developed and set out for recreational purposes; they can support more uses than just golf, particularly when they are covered by snow—one would not want to play golf on a course at the same time as it could be used for winter recreation.

Dave Morris: This is a good example of a complex issue and demonstrates why we want all the details to be included in the code. It is not just about sledging, where the greens must be marked so that people do not sledge over the greens. Walkers need to stay off greens and tees. We need to give advice to people about how to behave if they are close to golfers—perhaps to say that they should stand still and not talk at the moment when people are playing. There are similar issues in relation to cycling and horse riding—people must follow defined routes across a golf course.

As Fran Pothecary said, golf courses are important recreational facilities for the population as a whole. That can be managed sensibly only if it is done through the code.

Richard Lochhead: I have a point of information for Brian Monteith. I was in the south side of Glasgow, where the local golf courses are the only places for the community to go sledging. The whole community was there and it was great fun. We should bear in mind the implications for urban communities, where the golf course might be the only area for sledging.

Mr McGrigor: The point about golf courses is very important. The reason why people like to sledge on golf courses is that the hillocks and bumps have been knocked out of them at great expense by the managers of the golf courses. Perhaps it would be logical to expect people to pay to use the golf courses for sledging, in the way that people pay enormous amounts of money to play golf. Would you be against that?

Dave Morris: I would certainly be against that. At the moment, there is a common law right that enables me to go on to land to cross-country ski or sledge. My point goes back to John Kinnaird's evidence, which exaggerated the problems enormously. In the new year, I was in a field sledging and cross-country skiing, while my son was snowboarding. There was a flock of sheep in the field. We shared the field with the sheep, which were feeding off big bale silage in the middle. There was no problem. We co-operated and the crofter was not concerned about it.

Mr McGrigor: My point was not about fields, but about golf courses that had been specially prepared.

The Convener: With respect, as Fergus Ewing has just pointed out, Mr McGrigor's suggestion would involve the introduction of a white fee on top of a green fee. Perhaps we should move on.

15:45

Fergus Ewing: I have two brief questions. Section 10(8) provides that Scottish Natural Heritage will be responsible not only for devising the code—that will be the critical point—but for modifying it from time to time. There is nothing in the bill to say how SNH will carry out that function or whom it must consult. In fact, the bill contains no duties to consult anybody. As members may know, not only does SNH not have a human being in its logo, it has no specific duty to consider the interests of human beings. I ask our expert witnesses on access whether they are happy or uneasy about the powers that the bill appears to confer on SNH.

Fran Pothecary: We would like a duty to be conferred on SNH to reconvene the access forum, as we believe that the code should be developed and modified, in future, by that forum. The access forum has the expertise and, crucially, the balance of interests of its members, which could make the code a workable document to which people could sign up.

Dave Morris: The national access forum must be mentioned in the bill. There is possibly a case for an arrangement whereby the access forum, with the assistance of SNH, would be made responsible for the production of the code. That might be the best solution. At the moment, we have a real problem because the NFUS has pulled out of the access forum. That has caused a great deal of difficulty over the past year.

Fergus Ewing: I know that the bill contains a duty on SNH to consult initially on the code. I was stating that, apparently, SNH can then modify it without any obligation to undertake further consultation. As Fran Pothecary says, the access forum would have a balanced composition of all parties. However, SNH's duty is specifically to look after the natural heritage. Would it not be better for the access forum to be given the responsibility for devising the code? That would seem to be the key to ensuring responsible access and better behaviour in future.

Dave Morris: Yes, there would be a good case for considering that idea if a suitable arrangement could be made whereby SNH would provide the right level of secretarial support to the access forum. It must also be ensured that the access forum contains a full membership of interests. People such as the Scottish Crofting Foundation and the foresters and deer managers are all signed up and want to be part of the access forum.

Mr Rumbles: I understand what Fergus Ewing has been saying. However, section 10(9) makes the issue clear. It states:

"Subsections (2) to (6) above apply to modifications of the Access Code as they apply to the Code."

Subsection (2) states:

"Scottish Natural Heritage shall consult local authorities and such other persons or bodies as they think appropriate about the proposed Access Code".

The bill already contains a requirement for consultation on any proposed modifications to the code.

Dave Morris: The problem is that that duty does not mention the access forum. We found the access forum an extremely useful forum for discussion of the fine detail of what was required.

Mr Rumbles: I agree. I am simply clarifying for members the fact that there is already a requirement for consultation in the bill. However, I take your point that the access forum should be

specifically included in that consultation.

Dave Morris: I return to another point about the code, which I made in my opening remarks. When we worked on the code in the access forum, it was always perceived that it would be a document similar to the highway code, of which I have a copy here. The highway code is 70-odd pages long. I therefore have some difficulty in understanding the NFUS position that the access code should be a short document. That seems to be the reverse of the advice that it gave us when we sat in the access forum.

The highway code is divided into two sorts of information. The first is advice about how to move sensibly along the road system; the second is the statutory requirements. The statutory requirements are spelled out by the word "must"—one must do this, one must not do that.

The access forum recommended that the access code be similar in structure to the highway code, and the same recommendation was contained in the Government consultation paper that was issued in February last year. The recommendation was dropped in the paper that was issued on 21 December, but we do not understand why. That leaves us with considerable reservations about the changes that the Executive may have been making in the past few months. We strongly urge the Parliament to return to the principle that the access code should be similar in structure to the highway code, in which the word "must" is used only with reference to statutory provisions.

Fergus Ewing: Obviously, the exercise of access to land involves the resolution of competing and sometimes conflicting interests. I want to ask Fran Pothecary, who I know has an interest in this matter, about access to inland waters. Section 29(b) states that land includes inland waters; I might not have phrased the provision like that, but there we are. I know that Fran Pothecary is involved in the canoeing world and that canoeing is important on rivers such as the Spey, where it provides young folk with opportunities for exercise that all of us want to encourage. Have there been difficulties, for example on the Spey, in securing access? I am thinking of potential conflict with angling interests. How does Fran Pothecary see the right of access to water being exercised? Does she anticipate any problems relating to the exercise of that right that need to be resolved in the bill?

Fran Pothecary: Fergus Ewing has chosen a good example in the Spey, as it is one of only two rivers on which rights of navigation have been asserted. That has put the competing uses of water on the same platform. A right of navigation is very strong and sits side by side with rights to other uses of water and the rights of riparian owners. We have been able to develop a code of conduct—a set of guidelines—that allows canoeing, angling and rafting interests to interact on the river. The Spey is a prime piece of water from the point of view of salmon fishing and of white-water canoeing and touring. Given the extent to which the river is used, conflict between those interests is very limited. However, there are a couple of issues outstanding relating to the right of access to the water. That underpins the need for a right of access to inland water and to land, as access problems may occur on land when people are on their way to the water.

Fergus Ewing: I understand that most landowners with riparian interests on the Spey have been extremely co-operative. Have you encountered any problems?

Fran Pothecary: One access point has been blocked off and it has become difficult to take access there, not just because of physical obstructions but because people trying to take access are subject to considerable harassment. On the river, which is very long, users are trying to use a number of access points, generally near bridges or where the path comes very close to the water. They are trying to spread the load of access and egress points. It is disappointing that, in one or two places, those efforts are being frustrated by riparian owners who do not want people on their water. Not only do those owners not want people on their water, but they actively discourage people from walking along the banks of the Spey.

The Convener: That wraps up this evidence-taking session. I thank all our witnesses for their time. They are free to remain with us for the rest of the afternoon.

By popular demand, I will call a comfort break. We will try to resume at 4 o'clock by the clock above the bar.

15:55

Meeting adjourned.

16:04

On resuming—

The Convener: This is the final part of our evidence taking today and I warmly welcome Willie Macleod, from VisitScotland, and his two advisers. Mr Macleod, I invite you to make a brief statement of your position on the bill and to introduce your two companions.

Willie Macleod (VisitScotland): Thank you for giving VisitScotland the opportunity to give evidence to the committee this afternoon. My colleagues are Neil Black, a manager in the tourism futures department of VisitScotland, and Euan Page, our parliamentary liaison officer.

Tourism is an extremely important contributor to the Scottish economy, particularly the rural economy, and to the sustainable development of rural areas. VisitScotland welcomes the introduction of the Land Reform (Scotland) Bill, which provides for responsible access, with which all parties with an interest in Scotland's countryside are concerned. The bill reinforces this country's national and international reputation as a place with open access to the countryside.

We have some concerns over the creation of a list of types of conduct excluded from access rights, as detailed in section 9. We recommend that section 9 be removed and that caveats and exceptions to the general principle of the right to responsible access be contained not in the bill but in the outdoor access code. For the same reason, we are concerned about some of the exclusions under section 6. We believe that it is generally unnecessary for legislation to go into the level of detail that the bill does. In our view, the place for such detail is the outdoor access code. The bill should be a simpler document, which would lead to less scope for confusion.

Mr McGrigor: The access code will form a large part of people's comprehension of the bill. Do you expect tourists, especially foreign tourists, to have read the access code? What would you do to ensure that they read it?

Willie Macleod: We could not expect foreign tourists in particular to be familiar with the access code, or indeed with the legislation. There are a variety of means through which VisitScotland and the area tourist board network can assist with the education of visitors from other parts of the UK and from overseas. They can make information available through tourist information centres, for example. The information would, by necessity, have to be much simpler than the access code, although that may not be a perfect way of making information available. We could also assist in making information available in foreign languages.

Mr McGrigor: We have received a written submission from Skibo Castle, which says that its business relies on high-profile people going there for privacy and that it requires its curtilage to be slightly extended outside the normal area. It also said that, if it did not offer such privacy within an area of several hundred acres, its business would disappear. What is your comment on that?

Willie Macleod: Skibo Castle is probably not alone in claiming such an exclusive market and the right to privacy for guests. Our view is that that could be dealt with through a definition of curtilage. Does curtilage extend to the whole estate or to a more confined piece of ground around which visitors would have access, for example?

Earlier, someone referred to public access to the Balmoral estate, which is a good example of where the right of public access can co-exist with the rights of the owner—in this case, Her Majesty the Queen. Her use of Balmoral, her security and her privacy do not seem to have been compromised by the agreed access.

The Convener: I want to expand briefly on that point. I come from the south-west of Scotland and know one or two perfectly normal farmers who have diversified by letting out one or two cottages. One farmer in particular receives trade almost the whole year round because of the total exclusivity and privacy that his two cottages offer. However, he would not be able to offer those features under the bill as drafted. Does the fact that his business rests on such exclusivity and privacy—and given what you have said about curtilage—suggest that curtilage has to be individually determined in every business situation?

Willie Macleod: I am not a lawyer, but I think that that issue is difficult as far as the legislation is concerned and might be better explained and dealt with in the access code. The definition of curtilage for a holiday cottage will probably have to be little different from its definition for a permanent residence.

Mr Rumbles: I want to clarify this point. Section 6 says:

> "The land in respect of which access rights are not exercisable is land … which … comprises, in relation to a house or any of the places mentioned in paragraph (a)(ii) above, sufficient adjacent or associated land to enable persons living there to have reasonable measures of privacy and undisturbed enjoyment of the whole".

Is this issue not something of a red herring?

Willie Macleod: I agree that using that as a definition of curtilage would probably provide adequate privacy for most people.

The Convener: I presume that such a determination would have to be made in a court of law.

Richard Lochhead: It is refreshing to see what is essentially a public agency refusing to sit on the fence in its submission. You have certainly not minced your words about the damage that might be done to commercial businesses if they do not have access. Do you have any statistics on the number of tourists visiting Scotland who use such companies and the value of that to the economy both now and in the future? Your submission says that you hope to develop that area of business as far as tourism is concerned.

Willie Macleod: We are currently completing some work on the product portfolio that we will use for the future marketing of Scotland. That will allow more detailed statistics, such as the number of

people enjoying various outdoor activities, to emerge. However, although information is rather scarce, I can tell the committee that watching wildlife as a tourism activity—which requires access to the countryside—has a value of about £57 million and that all forms of walking tourism have a value of about £450 million. Those two activities together have a value of about £500 million. Of course, other tourism-related outdoor activities, such as horse riding and cycling, as well as those that are based on inland waterways, such as canoeing and windsurfing, have a significant value. However, I cannot put a definite figure on those activities.

Richard Lochhead: Presumably there is—

The Convener: I am sorry to interrupt, but I must make an announcement. A grey Volvo with the registration number X347 OGB is about to have its shape altered by a lorry. The lorry is trying to get out, but its path is blocked by said Volvo. Will the owner please remove it as soon as possible?

I am sorry to interrupt, Richard. Please carry on.

Richard Lochhead: I presume that VisitScotland encourages tourists to use official guides and instructors so that they have a safe time when they are in Scotland.

16:15

Willie Macleod: For people who have no experience or do not possess the skills to have safe access to the countryside, the use of outdoor activity businesses is an ideal way of accessing the countryside and carrying out their chosen activity safely. It is also a way for people to acquire the skills that they need to become more self-sufficient.

Rhoda Grant: Is it true that there is an increase in the number of people who take part in activity holidays? People used to go on holiday to stay in a place and perhaps look at the scenery, but there appears to be an increase in the number of people who want to do something. It is important that organisations are available to help them to take part in activities.

Willie Macleod: The broad heading of activity holidays is a growth market in Scotland and internationally. Increasingly, people look for forms of tourism that provide self-fulfilment and self-enrichment. That means participating in an activity as part of a holiday—or as the entire purpose of the holiday—or acquiring skills that allow one to follow an activity during recreation time back at home.

There has been growth. In the past four or five years, the number of businesses that are engaged in activity tourism in Scotland has increased by around 37 or 38 per cent. There has been a corresponding increase in employment in those businesses, which, as we heard, are predominantly small to medium-sized enterprises or one-person businesses. They are often based in rural areas.

Rhoda Grant: If commercial interests were not given a right of access, would that harm Scotland's ability to compete against other areas that offer activity holidays?

Willie Macleod: Yes, it might have a negative effect on Scotland's competitiveness. VisitScotland intends to take a product-based, branded approach to marketing Scotland through the product portfolios on which my marketing colleagues are working. Work is in progress on five product portfolios, two of which have a bearing on rural and outdoor activities. One has the working title "The Freedom of Scotland" and is an informal group of touring products that will allow people to visit various parts of the countryside. During a touring holiday, people might go walking or participate informally in an activity. The other segment or group of products on which we are working is "Active Scotland", which encompasses a wide range of outdoor activities that people can enjoy, most of which are based on Scotland's natural resources.

We estimate that the cost to the tourism economy of last year's foot-and-mouth outbreak was around £200 million, which adequately demonstrates the importance to tourism of access to the countryside. The co-existence of tourism and access to the countryside is obvious.

Fergus Ewing: I welcome VisitScotland's acknowledgement of the importance of outdoor activities and its acknowledgement that they are an area of growth. However, as Mr Page knows, I have advocated that VisitScotland should do much more to promote outdoor activities in Scotland. One example is the promotion of walking holidays on well-known paths, such as the west highland way and the Speyside way. Outdoor activities present a huge opportunity for the future and far more needs to be done. How much of its budget does VisitScotland spend on the promotion of outdoor activities? What is VisitScotland's total budget?

Willie Macleod: I will have to give the committee a separate breakdown of the promotional activities aspect of our budget. Perhaps naively, I have not prepared myself with that figure, as I did not expect to be asked about it.

An example of our activities is the walking wild promotion, which is a national walking promotion that is co-ordinated by the Highlands of Scotland Tourist Board. Last Friday, the walking-wild.com website went live. The promotion involves

VisitScotland and all 14 area tourist boards. The promotional budget is £400,000.

VisitScotland's total budget for the current financial year is in the region of £38 million to £40 million. That includes the significant, additional one-off funding that we were given to combat the effects on tourism of the foot-and-mouth outbreak. Our core budget, excluding the additional funding, is of the order of £28 million. I am sorry that I cannot give you precise figures, but those figures show the order of magnitude.

Fergus Ewing: To be fair, I sprang the question without notice.

Willie Macleod: You did rather.

Fergus Ewing: Once a lawyer, always a lawyer.

I welcome the clear stance that you have taken in saying that section 9(2)(a) should be scrapped. I thoroughly endorse that view. We have received hundreds of written submissions of which a huge proportion are from climbing instructors, walkers, mountain guides, canoeists and outdoor guides who educate children. All of them support that stance absolutely.

On Thursday, I received a written answer from the minister, Ross Finnie. It is his opinion that section 9(2)(a) is here to stay. He said that, because the people whom I have mentioned will be governed by the existing law, they will be unaffected. It seems that we are going to have two sets of laws—the new bill and the existing law. It is the latter that will apply to commercial operators who, in most cases, are one-person businesses. Do you agree that to have two sets of laws in tandem is not a sound or sensible way to proceed?

Willie Macleod: As I said, I am not a lawyer. However, it seems confusing for rights of access to be covered by both common law and statute. Picking up on an earlier question, I think that our overseas visitors, who perhaps do not have the benefit of speaking our language, will find that even more confusing.

Fergus Ewing: Just to spring another question along the same lines on you, would it be sensible to include on the VisitScotland website copies of the code translated into the various languages of the countries whose citizens visit Scotland most frequently? That would mean that people coming to Scotland for walking holidays could access the code on the web in their own language. As was pointed out by Jamie McGrigor, that would allow them to know what are the rules—the dos and don'ts—when they visit Scotland. Would VisitScotland welcome and finance that?

Willie Macleod: It is an option that we could examine. We have no hesitation in making information available to overseas visitors in commonly used languages. This is an aside but, as I am sure members are aware, we are working closely with the preferred bidder for the public-private partnership to provide an e-commerce platform for Scottish tourism.

It is intended that soon after it is established the contact centre, which will service all forms of inquiries from visitors, will deal not only with English, but with four other commonly used languages. French, German, Spanish and Italian are the main languages that our foreign visitors use.

Fergus Ewing: I welcome that answer. I presume that you will spend more in future on promoting outdoor activity.

Willie Macleod: That is undoubtedly one of the five market segments, niches or product groups that VisitScotland will focus heavily on in its future marketing plans.

Mr Monteith: Returning to the bill, I heard your oral evidence and read your written evidence. You clearly have a strong view about section 9(2)(a). Notwithstanding Fergus Ewing's point about the minister's answer, is it VisitScotland's opinion that the bill should not proceed if section 9(2)(a) is retained?

Willie Macleod: No. We welcome the bill overall because it formalises the responsible access issue. However, we remain concerned about the possible negative impact on tourism-related businesses of the exclusion of commercial activity from land. If section 9(2)(a) stays in the bill, we hope that the access code will interpret it and provide guidelines and rules of engagement to balance the interests of the activity provider and those of the landowner. We will be concerned if that section remains in the bill as it is drafted

Mr Monteith: On balance, you are generally favourable to the bill despite what your written submission says about the bill possibly putting obstacles in the way of legitimate business activity.

Willie Macleod: Yes. I mentioned in my opening remarks that two areas concern us: sections 6 and 9.

Richard Lochhead: We have read recently about how the "Monarch of the Glen" television programme has been used to promote Scotland as a visitor destination. Film and television productions are playing an increasing role in attracting tourists to Scotland by putting Scotland on screen. Do you think that section 9(2)(a) will hamper the ability of film and television companies to go about their business and thereby promote Scotland?

Willie Macleod: I guess that that section could prevent film and television work on land. However,

I understand that most locations are used with the full agreement of the landowner, because of the nature of the access. Those locations are less likely to be negatively affected, largely because they can be significant revenue earners for the landowner. Scottish Screen has produced a publication to promote Scottish film and television locations, which are regarded as significant earners for the Scottish economy.

Rhoda Grant: Given that large commercial operations tend to be carried out with the permission of the landowner, who gets revenue, for example, from open-air concerts and the like, do you think that section 9(2)(a) is required at all?

Willie Macleod: I think that the section is not necessary. When sizeable groups of people require access to land for an event, for example, they need to negotiate and make arrangements with the landowner, if for no reason other than courtesy.

16:30

The Convener: I would like to follow up on a point that Brian Monteith made. He mentioned the wording that you used, about

"putting obstacles in the way".

I am slightly concerned about the paragraph in your submission that states:

"While VisitScotland recognises and respects the right of landowners to manage and to gain economic return, is it not more appropriate that this is achieved through partnership and collaboration rather than confrontation and entrenchment?"

I got the opinion that that is exactly the view of most of the land management organisations to which the committee has spoken.

Your submission goes on to say:

"Would it not be better to put resources, energy and time into adding value and enhancing visitor experience rather than putting obstacles in the way of legitimate business activity?"

In his evidence, Dave Morris mentioned two things that he has done this year. One was sledging on a golf course and the other was walking across crops to visit some standing stones or a monument of some sort. Would you not argue that the bill is putting considerable obstacles in the way of what is currently legitimate activity?

Willie Macleod: Focusing on section 9, I think that the bill could put obstacles in the way of commercial businesses. The effect on activity businesses is VisitScotland's main concern. We are concerned to ensure that we have a healthy activity sector. We are also concerned to ensure that segments of the market that would prefer to access the countryside or pursue activities in the company of an instructor or qualified leader have the opportunity to do so.

The Convener: Other witnesses have referred to isolated incidents of confrontation that have occurred and currently occur under the status quo. I repeat that such incidents are, or seem to be, isolated. Most people seem to accept that, on the whole, there is not much of a problem with access. Do you share the view that the bill will promote confrontation to a national characteristic, given the reservations that the land management organisations have expressed? Is the status quo, as it is understood by almost everybody, preferable to the bill as published?

Willie Macleod: The bill, amended as we have suggested, is probably preferable to the current situation.

The Convener: As simple as that.

Willie Macleod: Nothing is as simple as it appears.

The Convener: Finally, on that very point, when you say,

"Would it not be better to put resources, energy and time into adding value and enhancing visitor experience rather than putting obstacles in the way of legitimate business activity?",

whom are you accusing of putting obstacles in the way?

Willie Macleod: There is the potential for obstacles to be put in the way if conflict arose between the land manager and an activity operator. We hope that that would not happen if there was dialogue between the two parties.

The Convener: Thank you for clarifying the position.

Members have stopped catching my eye, so I assume that everybody is satisfied with the questions that they have put. I thank the witnesses from VisitScotland for the time that they have given us.

That completes this afternoon's three evidence sessions and, indeed, the committee's evidence taking on the Land Reform (Scotland) Bill, which we have carried out over the past three weeks. Over the next two weeks, we will draw up a draft report on the evidence that we have heard on the general principles of the bill. That report will in turn become part of the report of the Justice 2 Committee, which is the lead committee on the bill. The Justice 2 Committee's report will then be debated by the Parliament in the stage 1 debate. Thereafter, the bill will move to stage 2, when it will be amended.

I ask members to note that discussion of our report will be the main agenda item for the next two weeks. I hope that the committee will agree to study the draft stage 1 report in private at its

meetings on 29 January and 5 February. Is that agreed?

Members *indicated agreement*.

Mr McGrigor: When will we receive copies of the draft report?

The Convener: A copy of the draft report will be sent this weekend with the papers for the next meeting.

Subordinate Legislation

Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 3) Amendment (No 2) Regulations 2001 (SSI 2001/483)

BSE Monitoring (Scotland) Amendment Regulations 2002 (SSI 2002/1)

The Convener: We have two items of subordinate legislation to consider. The first is the Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 3) Amendment (No 2) Regulations 2001 (SSI 2001/483). The second is the BSE Monitoring (Scotland) Amendment Regulations 2002 (SSI 2002/1). The Subordinate Legislation Committee considered the instruments on 15 January and has brought nothing to the attention of the Rural Development Committee. No members have asked to make comments in relation to the instruments. If no one has any comments to make, are members content with the instruments and happy that we make no recommendation to the Parliament?

Members *indicated agreement*.

The Convener: That concludes today's meeting. I finish by saying that the whole day has been an enjoyable and interesting experience for the members who have attended. I sincerely thank all those who have made it possible for us to come. In particular, I thank the two farmers who opened up their properties to us this morning. I also particularly thank our hosts here at the Kilmarnock Millennium Hall—[*Interruption.*] I beg your pardon. I meant to say Kilmaronock. That is what coming from Ayrshire does for you, I am afraid. I thank the members of the hall's board of management, Fiona Wylie and James Macrae. I have been asked to point out that the hall was part-funded by the rural challenge fund—and a splendid hall it is too. I also thank Bill Dalrymple, who is on the interim park authority and who has given us great help in setting up today's meeting.

Finally, I thank you, the members of the public, for attending, and for not intervening when I am sure, on many occasions, you wished to do so. Your restraint has been commendable. On behalf of the whole committee, I thank you very much for coming and for giving us such a good day here in Gartocharn.

Meeting closed at 16:36.

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