OFFICIAL REPORT
AITHISG OIFIGEIL

Net Zero, Energy and Transport Committee

Tuesday 11 November 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 11 November 2025

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE
33rd Meeting 2025, Session 6

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Michael Matheson (Falkirk West) (SNP)

COMMITTEE MEMBERS

Bob Doris (Glasgow Maryhill and Springburn) (SNP)
*Monica Lennon (Central Scotland) (Lab)
*Douglas Lumsden (North East Scotland) (Con)
*Mark Ruskell (Mid Scotland and Fife) (Green)
*Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Iain Batho (Crown Office and Procurator Fiscal Service)
Sarah Boyack (Lothian) (Lab) (Committee Substitute)
Dr Suwita Hani Randhawa (University of the West of England)
Dr Rachel Killean (University of Sydney)
Murdo MacLeod KC
Dr Clare Frances Moran (University of Aberdeen)
Dr Ricardo Pereira (Cardiff University)
Rachael Weir (Crown Office and Procurator Fiscal Service)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 11 November 2025

[The Convener opened the meeting at 09:16]

Decision on Taking Business in Private

The Convener (Edward Mountain): Good morning, everyone, and welcome to the 33rd meeting in 2025 of the Net Zero, Energy and Transport Committee. I welcome to the meeting Sarah Boyack, who is attending as a substitute member for Monica Lennon for consideration of the Ecocide (Scotland) Bill. Under rule 9.13A of our standing orders, Monica Lennon is not entitled to exercise the rights of a committee member in relation to the bill, because she is the member in charge of the bill. That means that she cannot participate as a committee member in any item of business that relates to the bill. However, as we can see, Monica is present for the evidence session and, as is the case with all other members of the Scottish Parliament when they attend a committee, she will be entitled to ask some questions at the end of the session.

I would like to make everyone aware that, at an appropriate moment after 10:50, I will pause the meeting to allow members to observe the armistice day two-minute silence in the garden lobby. I have said to the witnesses that I will escort them to the event if they are here at that time and would like to attend.

Under our first item of business, do committee members agree to take in private item 3, which is consideration of the evidence that we will have heard earlier in the meeting on the Ecocide (Scotland) Bill, including consideration of our approach to further scrutiny at stage 1?

Members *indicated agreement.*

Ecocide (Scotland) Bill: Stage 1

09:18

The Convener: Our second item of business is an evidence session on the Ecocide (Scotland) Bill. We are gathering evidence on the general principles of the bill before we report to the Parliament at stage 1. The Parliament has not yet set a stage 1 deadline.

Today, we will take evidence from two panels of witnesses, and these will be our fourth and fifth evidence sessions on the bill. I welcome our first panel: Dr Clare Frances Moran, lecturer and co-director of the Aberdeen centre for constitutional and public international law at the University of Aberdeen; Murdo MacLeod KC; Rachael Weir, head of policy and engagement at the Crown Office and Procurator Fiscal Service; and Iain Batho, head of the Crown Office and Procurator Fiscal Service's wildlife and environmental crime unit. I thank the witnesses for attending the meeting.

My first questions are a gentle warmer into the bank to get you into the swing of answering questions. Do you agree with how ecocide is defined in the bill, or do you have suggestions for how the definition could be strengthened? Does the bill target the appropriate level and type of environmental harm? Does it deal with the issue of future challenges in interpreting the definitions?

Dr Clare Frances Moran (University of Aberdeen): Thank you for inviting me to speak today. I think that it is a good idea to criminalise ecocide, but there are a few issues with the definition as it stands. First, the definition of "harm" is taken directly from section 17(2) of the Regulatory Reform (Scotland) Act 2014. That definition is very broad and does not necessarily pertain to the sort of harm that ecocide might cause. For example, section 17(2) talks about

"offence to the senses of human beings",

which we might not consider to relate to ecocide.

Secondly, I think that the phrase "serious adverse effects" requires a bit of definition. We can see that there is a connection between the definition of ecocide in the bill and section 40(2) of the 2014 act. Further definition is needed in that regard so that we understand what is meant by ecocide.

I do not want to dominate the discussion, so I will hand over to other members on the panel.

The Convener: I will bring in Iain Batho, followed by Rachael Weir and Murdo MacLeod. That will put them out of the pain of waiting.

Iain Batho (Crown Office and Procurator Fiscal Service): Arguably, there is some ambiguity about some of the terminology. For example, there is a lack of clarity about the term

"beyond a limited geographic area"

in relation to the definition of "widespread". The term "serious adverse effects" is used in section 40 of the 2014 act, but neither piece of legislation includes a definition of what "serious" means—when is the threshold crossed?

From a prosecutorial point of view, the more important issue is not what we think of the definitions but what the Scottish Environment Protection Agency and, in particular, its scientists think of them. In relation to the endgame, ultimately, we will be asking a jury to make a final decision on guilt. As prosecutors, we would present a case to members of a jury in such a way as to help them to come to that conclusion. In these kinds of cases, we would probably do that by leading the evidence of expert witnesses, who would most likely be SEPA scientists. At a trial, if we put a SEPA scientist in the witness box, we would—in an ideal world, although it is never quite as easy as this—be looking for them to say that the adverse effects of the incident were serious or widespread and to provide evidential backing for that statement. It is important to know the position of SEPA scientists on the definitions so that the conclusions that they come to can help us to lead members of a jury to the verdict that we want them ultimately to reach.

We have some key questions. Are the current definitions formulated in such a way that SEPA scientists would be willing and able to stand up in court, under oath, and say that those standards had been met? Do scientists understand the terms sufficiently to be able to do that? Will the science ever be sufficient for them to adopt such a clear position? On a slightly broader issue, among the scientific community, is there a clear enough understanding of, and consensus on, what the various definitions mean practically?

Without clear definitions or guidelines to create objectively measurable standards, proving that the thresholds have been crossed will come down to the subjective view of expert witnesses. We can foresee life being made slightly difficult if there was a vast array of subjective views on, and interpretations of, the definitions among the scientific community. For example, we could lead evidence from a scientist who might say that the standards have been met, but the defence might produce an expert witness with a different subjective view who thinks that the standards have not been met, with the potential outcome being that the jury is left with reasonable doubt. Without clarity among the scientific community, particularly among SEPA scientists, prosecution could be quite challenging.

The Convener: That sounds as though you have given us more questions than answers. We will see how we get on with Rachael Weir. Are you going to give us more answers than questions?

Rachael Weir (Crown Office and Procurator Fiscal Service): I feel as though I am setting myself up for failure and will disappoint you. There is probably not much that I can add, given that Iain Batho provided such a thorough exposition of our position.

It is important to reflect on the point that defining any kind of criminality is always complex. There are always difficulties with that, and there is always scope for interpretation. That does not take away from the policy intention behind the bill. I think that we can say that we could support that, because it raises awareness of environmental offending, but it is important that we get the detail right. Otherwise, despite the good intention, if the definitions are not quite as sharp as they need to be and, as Iain Batho said, do not match up with scientific evidence, as prosecutors, we would find ourselves in a difficult position in bringing life to the legislation. Therefore, I encourage the committee to take evidence from those experts to inform its consideration of what the definitions should be.

The Convener: Murdo MacLeod, is there enough wiggle room to cause seeds of doubt to be sown?

Murdo MacLeod KC: I take a slightly different view on what Iain Batho said about the divergent views of expert witnesses. That situation commonly occurs in criminal courts when one is dealing with regulatory offences. One thinks of health and safety matters, in particular. There might be a phalanx of experts to set out, for example, whether a legionella outbreak caused a death or what steps were taken to counteract that possibility.

I have a few issues with the bill, but, in general, I think that it is very well drafted. The 2014 act, which has been referenced, includes a list of the different environmental harms that can be caused, and that is probably adequate in the circumstances.

My one caveat, which Iain Batho mentioned, relates to the distinction between "significant" harm and "severe" harm when they are both defined as being "serious adverse effects". It is not clear to me what the distinction is. If we drill down into the issue, we see that section 40(9) of the 2014 act states:

"environmental harm is 'significant' if ... it has ... serious adverse effects, whether locally, nationally or on a wider scale".

That could encompass the “widespread” definition in the bill.

Subject to those comments, I think that the definition of ecocide is appropriate. Indeed, I note that ecocide is not mentioned as a specific crime in the European Union environmental crime directive—different examples are just given of what that could be.

The Convener: One of the issues that we have been considering is that the Regulatory Reform (Scotland) Act 2014 is quite clear. I am trying to work out why we need this bill as well. My question to Rachael Weir is: do we need this bill as well or is there sufficient coverage under the 2014 act? I will ask each of you that, so the other witnesses have time to think about it.

Rachael Weir: We do not identify any existing gaps in the current legal framework that the bill would fill. Incidents that involve environmental harm can generally be addressed within the existing framework. It is not entirely clear to the Crown Office and Procurator Fiscal Service what circumstances would be covered by ecocide offences that could not already be addressed within the existing framework. I know that you will turn to Iain Batho next, and I am grateful for that because I think he might be able to breathe a little bit more life into that than I can.

Iain Batho: The reality is we can only really go on reports that we have received. In the two and a half years that I have been in position, we have received about six cases from SEPA relating to serious environmental offences, and we considered the existing legisflation sufficient to prove offences in each of those. Practically, with regard to the cases that we have received, we have identified no gaps in the legislation. A caveat to that is that we only receive cases for which reporting agencies consider there to be offences, so there may be things behind the scenes that have never been reported to us. We cannot comment on that; SEPA would be best placed to comment on that.

I work closely with SEPA, and I have meetings with it every six weeks to discuss live investigations. In my time, SEPA has not flagged up to me any incident that is being investigated for which it cannot find legislation that covers it. Such an incident has not been raised with me and it is not something that I have encountered practically.

I could give examples of the cases that we have put into court and successfully prosecuted under a variety of different legislative provisions. I will not waste your time listing them, but we have used several provisions, some of them repeatedly.

09:30

The Convener: Murdo MacLeod, will a new law provide more opportunities, or is what we have sufficient?

Murdo MacLeod: There would be more opportunities if cases were ever prosecuted but, as we know, prosecutions are quite thin on the ground in this field. The bill is clearly designed to cover some sort of catastrophic event—I presume that that is the reason for this new piece legislation—and it does what it says on the tin. There is a current offence on the statute book in the 2014 act, which is buried in a lot of other regulatory offences. I think that it is alongside an offence that is something to do with the supply of polythene bags. This bill would not become a symbolic act. It would certainly spring to the public’s mind, and I suspect that it would be brought home in boardrooms around the country.

I should say that I am speaking today in an entirely personal capacity, but the fact that there will be two separate crimes does not bother me. We know that this Parliament is very close to enacting the Dog Theft (Scotland) Bill and, of course, in common law the theft of a dog is just another theft. You can legislate for what you want, but I will leave the question of whether the bill is desired or merited to you. I am sorry to pass the buck—we only implement the law. It is a matter for the members of Parliament.

The Convener: Could you give one example of an event that has taken place since 2014 where the provisions in the bill would have been more appropriate than the legislation that we have already?

Murdo MacLeod: I cannot think of any disasters that have occurred in that period that would merit the new offence, but who is to say that there would not be one next week or within a month or two? I just do not know. It is entirely for Parliament to decide whether it goes in thfe general direction of travel of other countries and other organisations.

The Convener: I know that Parliament thinks carefully about enacting new legislation. Clare Frances Moran, do you want to say anything on this?

Dr Moran: I agree with what has been said. In general, international law is set out to capture events that are deemed very serious. There has been research on events that have happened in Scotland in the past few years, and there has been nothing that would meet the definition in the bill, but that is not to say that it could not happen.

I would identify that the bill goes further than the existing legislation because the “widespread” element of the offence means that it goes beyond

a limited geographic area. I do not think that that is captured by section 40 of the 2014 act. In addition, the definition of ecocide would not permit the defence that a permit or authorisation of any sort had been issued. In the scholarship with which I am familiar, the example is given of projects that have emissions associated with them—I am not going to talk about anything in particular, but one example is a large project that had a great deal of emissions. Such a project could be ecocide and therefore be caught by the provision in the bill but perhaps not by section 40 of the 2014 act. That is my understanding.

The Convener: Thank you. Mark Ruskell has a brief supplementary question.

Mark Ruskell (Mid Scotland and Fife) (Green): To what extent does case law help us to make a distinction between "significant environmental harm" and "severe environmental harm"?

Iain Batho: I am not aware of case law on that. My primary awareness of the definition of "significant environmental harm" is that it is in the 2014 act, and that has not yet been prosecuted or tested in the courts. As a prosecutor, I would be relying on the definitions in the legislation. I am not aware of any key cases that would aid that interpretation. There may be some, but I am not aware of any.

The Convener: I will bring in the deputy convener, Michael Matheson.

Michael Matheson (Falkirk West) (SNP): Good morning. We have had a bit of a rear-view look at potential instances that could be covered by the bill. No one has identified any instances that have occurred since 2014—I think that Mr MacLeod went as far as saying that.

I am interested in the witnesses' views on looking forward. Given your experience, are there gaps in the existing legal framework in this area that could interfere with your ability to prosecute a case in which severe environmental harm or significant environmental harm has occurred? Iain Batho, are you able to comment on that, given your expertise in prosecuting in this area?

Iain Batho: We have struggled to identify a scenario where the existing legislative framework would not be sufficient. If we are talking about a one-in-20-years significant incident, there are already offences, most notably in section 40 of the 2014 act, under which one could obtain a conviction.

Parliament is looking for a sentence of up to 20 years. In the existing legislation, most sentences are essentially capped at five years. If you are wanting to find a gap, I think that the gap relates to massive incidents where we would be limited in sentencing. However, offences under which we could prosecute such an offence already exist, as we have outlined.

Murdo MacLeod: I agree with Iain Batho. The only reason why I mentioned 2014 is that that is when the last act came into place.

Michael Matheson: Of course.

Murdo MacLeod: Frankly, in my working memory, I cannot even remember one incident prior to 2014 that would have necessitated the section that deals with a one-off catastrophic event. I agree about sentencing but, of course, if Parliament thought that the sentence was lagging behind what it should be to mark the gravity of the offence, that five-year penalty could be amended and increased.

Michael Matheson: Can I pick up on the point about the overlap in law that would exist if the bill was passed? I am interested from a prosecutorial point of view. Obviously, it is not uncommon for there to be areas of criminal law that cross over one another. Does that present any challenges for you as a prosecutor in deciding which route to follow to take forward a prosecution?

Iain Batho: Potentially, yes. To explain the way that we would do it, every case comes down to its own specific facts and circumstances. We would look at the facts and circumstances of the case and the evidence available, and step 1 is identifying which offences we could potentially prove. If there are a number of offences that we could potentially prove and we need to choose one over the other, essentially there is a wider public interest test. The key thing that we would look at is which charge is most likely to result in a conviction. There is also the element of sentence: does the charge that we are proving enable the sentence that we envisage?

It is important to stress that, if we make a direct comparison between the offence in section 40 of the 2014 act and the new proposed ecocide offence, in every sense the section 40 offence is the easier offence to prove. Looking at specifics and comparing the two, we see that ecocide requires evidence of actual harm; the section 40 offence requires evidence of the likelihood of causing harm or more.

From the prosecution's point of view, the factor that makes the biggest difference is that ecocide requires intention to cause harm or recklessness as to whether harm is caused, whereas the section 40 offence is a strict liability offence. The importance of strict liability cannot be overstated, as it means that that significant evidential hurdle does not need to be overcome. Ecocide also has the additional tests of requiring serious adverse effects to be either widespread or long term, which the section 40 offence does not.

In every comparison of the two, a section 40 offence is the easiest one to prove. If we are looking at the public interest, we can see that the public interest will probably be which offence is most likely to result in a conviction. My position is that the section 40 offence fits that the best.

The difficult situation that I could foresee occurring is in relation to the big situation that we have been talking about. We are comparing the two offences. The section 40 offence is the easiest one to prove, but it will cap the sentence at five years, whereas the ecocide offence will be harder to prove and potentially has a lower prospect of conviction, but if we get the conviction there is scope for a higher sentence. That is a difficult situation to be in as a prosecutor. It could be seen almost as a gamble—a double-or-quits situation—which I would suggest is not the most ideal scenario within which to be making important prosecutorial decisions. That is my position on that.

Michael Matheson: That is an interesting concept. From what you are saying, if you are looking to increase your chances of getting a conviction and we have both the section 40 offence and the offence that is in the bill, you are more likely to pursue prosecution under section 40, even though that will have a capped sentence, because that may be easier for you to prosecute. Is that what you are suggesting could happen?

Iain Batho: Yes, exactly. The solution that would avoid that difficult situation for a prosecutor is for section 40 to also have the higher sentence. Arguably, if both offences have the same sentence, one would sway towards the section 40 offence, because it is the easier to prove.

Michael Matheson: That could be potentially one of the unintended consequences of having two areas of law that overlap one another on this matter.

Iain Batho: Yes.

Michael Matheson: Is the bill clear enough on harm that is caused by a course of conduct that impacts over a period of time? The bill also covers one-off incidents, but does it give sufficient clarity on incidents that occur over time that could be considered ecocide? Does the bill give sufficient definition on that or is there need for further clarity in that area? I will give Iain Batho a rest and put that question to Rachael Weir.

The Convener: I am not sure that Rachael Weir is thanking you for that.

Rachael Weir: It is fine—prosecutors are used to working on the hop.

We are clear that the definitions in relation to course of conduct are pretty clear in the provisions. Courses of conduct are not an uncommon feature of criminal prosecutions in Scotland; increasingly we see it in relation to domestic abuse. In the Domestic Abuse (Scotland) Act 2018, the foundation of the offence is a course of conduct, so it is a concept that is not only familiar to prosecutors but familiar to Scottish courts.

From looking at the provisions on that, without delving into it in more detail, it seems clear enough. I can offer to follow up in writing afterwards. It is our intention to consider the thoughts of the committee and submit a written submission thereafter.

Michael Matheson: Okay. I will bring in Murdo MacLeod.

Murdo MacLeod: I am sorry, but I am not sure where the bill says that there is a requirement for there to be a course of conduct. Section 1 says:

> "A person commits an offence if—
>
> (a) the person causes severe environmental harm, and
>
> (b) the person—
>
> (i) intends to cause environmental harm, or
>
> (ii) is reckless".

That suggests to me that it does not really matter whether what happens is a one-off event or occurs over time. In fact, in my experience of environmental crimes, pollution—although that might not be quite as serious—is not just a one-off event. Perhaps it can be, such as in an offshore incident where a pipe has burst, but that may not be discovered for two or three weeks. I am not that fussed about whether there is a course of conduct as opposed to a one-off incident.

The Convener: Douglas Lumsden has a supplementary question.

Douglas Lumsden (North East Scotland) (Con): Iain, you discussed whether you would go down the ecocide route or the section 40 route for prosecution. If you went down the ecocide route and that was not successful, would you then be able to go down the section 40 route?

Iain Batho: We would have to tie our colours to the mast and decide which offence we were prosecuting under.

09:45

The Convener: That is interesting—thank you.

Mark Ruskell has the next questions.

Mark Ruskell: I want to go back to the threshold for liability. The bill requires intent or recklessness, but could it extend to negligence or provide for strict liability for organisations? That would be moving more into the territory of section 40 of the 2014 act, rather than staying purely with

intent or recklessness. As Iain Batho said, that involves a much higher bar for proof, and there would then be a choice about which provisions to go for.

Iain Batho: The bill could do that, and it would then become even more similar to section 40. On a number of elements, the ecocide offence is harder to prove. What you suggest would overcome one of the additional challenges that is not present in section 40, but there are a few others. That is an approach that Parliament can take. It was done in section 40, in legislation that has been passed.

I do not know whether that is helpful.

Mark Ruskell: I guess that it would depend on whether the harm was severe or significant, in which case the higher sentencing would be available.

Iain Batho: Yes. I am perhaps struggling to identify that difference. Maybe Parliament has a clear vision of two tiers of harm and sees the ecocide offence fitting one and section 40 fitting another. For me, section 40 covers the most severe eventuality. We could prosecute under section 40 for the big event that we are envisaging. I perhaps do not see those two tiers of harm.

Mark Ruskell: Can I get other views on the threshold for liability in the bill?

Murdo MacLeod: One equivalent would be the statute that I mentioned earlier—the Health and Safety at Work etc Act 1974, which has almost qualified strict liability, as there is a defence of reasonable practicability. The onus is thrust back on the company to discharge that.

Obviously, that is not what is in the bill, which I think is fair enough. The extension of the Health and Safety at Work etc Act 1974 to corporate homicide—although we have not had a prosecution for that since its inception in 2007—has a higher standard, which requires the prosecution to be on the front foot because the offence is so serious.

For the offence in the bill, prosecutors should be on the front foot, too, and should be required to prove it. I presume that that is the intention of the bill. That is why there is a distinction between the regulatory framework under the 2014 act and the specific crime in the bill. I think that it would be too big a step to make it a strict liability.

Dr Moran: I agree with that, in the sense that I wonder whether the current drafting of the crime of ecocide has perhaps been inspired too greatly by the 2014 act and by other elements of legislation. I meant to mention earlier that we have a definition of serious adverse effects in the Environmental Liability (Scotland) Regulations 2009. It is not particularly clear, but there is one there, so there are definitions of these things.

Based on what other countries are doing and on the movement regionally and internationally, ecocide is supposed to be very serious, so I do not think that strict liability would be appropriate—the harm has to be intentional. Consequently, one might need to divorce the bill slightly from the 2014 definitions and aim more towards what we are looking at here.

I want to point out something that other documents have done in the area. I am thinking of the definition in Belgium that has come into force recently as well as the Council of Europe convention that essentially criminalises violations of environmental law and the EU directive. Both the EU directive and the Council of Europe convention set out examples and then say that the worst examples of those would qualify as very serious crimes. In the preambles, both documents say that those might be things allied to ecocide, and they give examples in that way.

For law makers, practitioners and even academics, it is much easier to conceive of what ecocide might mean if we are deriving it from an existing criminal law or regulatory provision. That is maybe where the difficulty lies. Ecocide is supposed to be the very worst that one can do on a cumulative basis or through a one-off event. Essentially, it is the worst of the worst.

Rachael Weir: On the question of strict liability—or not, as the case may be—ultimately, we can sit here and advise that the offence would be more difficult to prove if there was no strict liability, but that is a matter for Parliament to decide. Clare Frances Moran has highlighted some of the reasons why Parliament might want to take a different approach, but that is a question of policy and not for practitioners such as myself.

The point that I endorse, adhere to and recommend to you as a committee is the one that Iain Batho made. Obviously, to a degree, we are all futurecasting and trying to anticipate the cataclysmic event that has not yet happened and may happen in the future, but we cannot envisage any set of circumstances where we could not use the existing framework, subject to the caveat that Iain Batho mentioned around the difference in sentencing. Again, sentencing is also a matter for the court.

Mark Ruskell: How can criminal liability be established within large corporate entities and multinational organisations?

Rachael Weir: On that, I will hand you over to Iain Batho, because he has greater expertise in the prosecution of corporations. As a headline, I would say that it is not uncommon for us to prosecute companies, and Iain has an apposite

example that he might share with you. It is something that arises day and daily for prosecutors, so no specific difficulty arises in relation to a corporation. I will pass over to Iain to give you some practical examples.

Mark Ruskell: I am particularly interested in the threshold of intent and recklessness.

Rachael Weir: It is a question of looking at the controlling mind of the company and establishing what the company was aware of and knew. Although a company is not a person, it is a legal person, so you can establish through the thorough investigation of the corporate actions what was within its knowledge or contemplation and the extent to which it has acted intentionally or recklessly. Rather than thinking about it in terms of a company and that being more complex, in fact, it is just a different type of person.

Mark Ruskell: Yes.

Iain Batho: The slightly wishy-washy answer is that how we prove that depends on the very specific evidence that we get in every individual case. Because it is so complicated, trying to describe how we prove it in the abstract is almost impossible.

The issue of recklessness can prove challenging when it involves companies, particularly when incidents involve multiple companies with multiple levels of management. Step 1 in proving who was reckless is proving whose duty or responsibility it was to carry out the necessary due diligence, and that is often a point of contention. You might have multiple companies pointing at each other and saying, "That was your job." The challenge from a prosecutorial point of view is that the evidence that can establish the truth of that is usually held by the very individuals and companies that are potentially being investigated and looked at from a criminal perspective. That can be challenging.

A real benefit that SEPA has over Police Scotland is that SEPA has powers to compel individuals to answer questions and hand over documents. SEPA is sometimes better placed than others to wade into companies and obtain the evidence that it needs from employees or obtain the documents. The evidence on recklessness usually comes from internal company employees or internal company documents, such as minutes of meetings. That is the kind of thing that we would practically be relying on to establish recklessness on the part of the company.

The Convener: The deputy convener has a follow-up question.

Michael Matheson: It is for Iain Batho. If an employee in a company acted negligently and outwith the company's procedures and that resulted in an act that caused serious or significant environmental harm, who would be prosecuted in that instance? Would it be the company or the individual who had acted outwith the company's procedures in a way that resulted in the harm being caused?

Iain Batho: Again, I tread carefully when talking in the abstract but, if a company had exercised every level of due diligence that it could and should have done, and if there were clear guidelines and instructions to the employee as well as clear oversight and management of the employee, yet the employee went rogue and caused harm, my expectation is that we would focus on prosecuting the employee as an individual for causing the environmental harm. I would expect that, but there are many permutations and nuances, so I am wary of speaking about that in the abstract. However, I hope that that gives an indication of where my head would be.

Michael Matheson: That is helpful, because there has been some suggestion of the bill being amended so that only senior managers in an organisation could be prosecuted. I am trying to understand the situation where an employee carries out an act that causes significant environmental harm but was outwith the company's procedures and that they should not have done. How would you then prosecute a senior manager or director of an organisation who knew nothing about that and was not involved in it? If a person acted outwith the company's procedures, you might then pursue a prosecution against a senior manager that could result in that person being imprisoned for up to 20 years. I do not understand how you would take that forward as a prosecutor or how our courts would look at it.

Iain Batho: Do you mean a prosecution against a manager who had done everything that they should have done?

Michael Matheson: Yes. I am talking about a situation where the company or corporate organisation had done everything that it should have done and all the procedures were there, but an employee acted in a way that was outwith the company's procedures and that resulted in significant environmental harm. Some have suggested that the bill should be amended so that, irrespective of that, the directors of the company should be prosecuted. That is not in the bill, but it has been suggested that the bill should be amended to do that.

The Convener: Murdo MacLeod is buzzing to come in, because he wants to defend somebody.

Murdo MacLeod: Both those eventualities are covered by sections 3 and 4, which are on corporate responsibility and vicarious liability. We

might come on to defences, which I have a slight problem with, but there are defences there. In your scenario, the company could say, "We didn't know that the employee opened the valve," or whatever, and that would be a defence. Looking at it the other way round, you can pin responsibility on management, and section 3 contains a table on that. Again, you have to pin it on the company, and then you are looking at a senior manager to see whether they knew about it and did nothing.

I have one comment on the table in section 3 that sets out the relevant organisations and individuals. Under the Corporate Manslaughter and Corporate Homicide Act 2007, which I mentioned, there is reference to senior management, as opposed to management. I am concerned that for public authorities, which I defend quite often, the reference in the bill is not senior enough. As you will be aware, they are quite flat organisations and can have hundreds of people in middle management. I am concerned that the bill does not address the fact that, for a body or organisation, it should apply to a senior manager. The bill refers only to someone who

"is concerned in the management or control"

of the organisation's affairs. If the bill is to come in, it should be—

Michael Matheson: My issue is that we have received evidence suggesting that there should be an amendment to the bill so that it could be applied only to senior management.

Murdo MacLeod: Right.

Michael Matheson: If the bill was framed in such a way and an act was carried out by a member of staff operating outwith the company's procedures and where senior management knew nothing about what they were doing, I am struggling to understand how you would then prosecute.

Murdo MacLeod: It would be up to the Crown to prosecute that. It would have to fix the knowledge on to the company. As I said, that is covered in section 4, which is on vicarious liability. It is a defence for the company to show that it did not know what was happening at the time.

10:00

Michael Matheson: What if that defence was removed?

Murdo MacLeod: If that defence was removed, it would almost become a strict liability. My view is that that would be a little bit unfair.

Iain Batho: The fact that the bill uses the word "causes" is significant. If a company did not instruct the individual member of staff to do that thing and it was an entire folly of their own, can we prove that the company caused that harm? There is an argument that that is maybe the first level of protection for the company in the scenario where, frankly, it had nothing to do with the issue and it was an employee going rogue. I think that the "causes" provision is the first level of test that might assist the company. Then, if you are delving into consent and connivance of directors, you have clarification on that later in the bill as well.

Murdo MacLeod: The wilful blindness or negligence aspect has gone. I think that the 2014 act refers to consent, connivance or negligence, but the negligence aspect is not in the bill, so it makes things a little tougher for the prosecution.

Michael Matheson: My point is not about the provisions that are in the bill; it is about the suggestion that those provisions should be removed in a way that would mean that the only individuals who could be prosecuted are senior managers.

The Convener: I think that in our first evidence session we heard that an absolute protection against individual workers was wanted and that only companies should hold responsibility. We are getting the impression from today's panel that that is not a sensible way forward.

Douglas Lumsden: I will stay with vicarious liability to start with. I am trying to understand this. If a company subcontracts work to another company, how far would liability flow up to the original company? Do you have any thoughts on that, Murdo?

Murdo MacLeod: Not really. I noticed that there is a defence in section 40(2) of the 2014 act. That provision reads:

"no offence is committed under subsection (1) by a person who permits another person to act or not to act as mentioned in that subsection if the permission was given by or under an enactment conferring power on the person to authorise the act".

That is now gone.

I am not sure how far up liability goes. I am not a planning lawyer, but if one imagines that consent has been given and there is a very difficult environmental regime to get over, where does the buck stop? The company will maybe subcontract something, and a valve is turned by mistake. That company may, I suppose, have caused that to happen in instructing the subcontractor, but if it is legitimately acting under some sort of environmental permit, I wonder why that defence is not now open to it under the new legislation. I am sorry if that does not answer your question.

Douglas Lumsden: No—it does. Iain, do you have anything to add?

Iain Batho: I think that it comes down to what the internal agreement was between all parties. If

company A subcontracts company B and says, “It is your job to do all the due diligence and to get all the ecological surveys and so on done before you carry out the work”, but company B does not do that, I think that there is an argument that company A has discharged its duties, done everything that it should have done and would not be liable. If company A subcontracts company B and neither of them has a conversation about whose responsibility those things are and then it all goes wrong, there is an argument that both are liable. I think that it comes down to specific agreements between companies, which can be quite challenging to prove.

Douglas Lumsden: Yes, I would imagine that that would be a bit of a legal minefield—almost a lawyers’ holy grail.

Rachael Weir: I will come back on that to emphasise two points that have already been made today, but which I do not think can be said often enough. First, both examples given by my colleagues on the panel indicate the importance of looking at the facts and the circumstances of individual cases. You cannot escape from that.

The second point is the one that Iain Batho referred to earlier around causation, because the bill as presented is very clear about looking at the person who causes something. That goes to the essence of the question “Who did it?” It is a literal whodunit, and that is the guiding light. Then you drill down to the level of detail that Iain has outlined for you.

Douglas Lumsden: I guess that it is about checking whether the instructions flowing from the main contractor down to subcontractors were clear.

I turn to my next question. The threshold for liability for senior responsible officials of an organisation is one of consent or connivance. The committee has heard views that consent, connivance or neglect would be preferable. Do you have views on that? Maybe we can go to Clare Moran first.

Dr Moran: I think that it depends on what direction the bill is to go in, based on what has already been said—it was raised quite pertinently just now—about who might commit this sort of act and how you want to hold them accountable. If you include neglect or any sort of negligence within the definition, you broaden it and make it much more open, so acts that lack intention would also be included. However, I am not certain whether, if you already have a test of recklessness, that would add anything in particular. Once you have identified who you are going after—or, rather, who would be held accountable—you would then go back to the crime itself, which is either intentional or reckless in terms of the standard—[*Inaudible*.]

Douglas Lumsden: Sorry, Clare, are you saying that adding negligence would not add anything at all?

Dr Moran: Yes—at least, not to my mind, but others might have a divergent view.

Douglas Lumsden: Murdo, can I come to you?

Murdo MacLeod: I think that it would add something. As I mentioned earlier, the concept of wilful blindness or negligence—or even negligence drifting towards carelessness, as opposed to recklessness—must be lower than reckless. I think that that is in the original legislation, which, as Iain Batho says, makes an offence easier for the Crown to prove. However, with such a serious offence as we are discussing, I think that, arguably, it would be a step too far to include carelessness. I do not know why it is not there in the new section, but I think that it is right that it is not there.

Douglas Lumsden: Okay. Iain, do you share that view? Would it make your job easier if that was there?

Iain Batho: I think that proving a negative is always challenging. Proving consent and connivance is challenging enough. In the absence of the specifics of a case, I can envisage proving neglect being a slightly challenging hurdle to overcome.

Murdo MacLeod: It is more than having to prove connivance or consent, though.

Iain Batho: Yes, it is easier than the others, but still, yes.

Douglas Lumsden: Rachael Weir, do you have anything to add?

Rachael Weir: No, I have nothing to add on that.

Douglas Lumsden: Thanks. I will hand back to the convener.

The Convener: Perfect. Kevin Stewart has some questions.

Kevin Stewart (Aberdeen Central) (SNP): Thank you very much, convener, and good morning.

The bill does not explicitly set out that undertaking licensed or consented activities cannot constitute ecocide or provide a defence along those lines. Different sectors have raised a number of concerns about that, including in evidence during our hearings on the bill from representatives of farming, fishing and renewables. Is the approach in the bill

appropriate? What are the implications for regulatory certainty? I will go to Clare Moran first.

Dr Moran: I understand that certain sectors might be concerned if there was another sort of criminal environmental offence in discussion and debate at the moment. My understanding is that this is about very, very severe harm—very serious harm—and I think that clarity on the definition of "serious adverse effects" would help people to understand when such activities might be identified. The lack of a permit defence, which I view as a development from the 2014 act offence, is a positive step, because these harms are supposed to be very, very serious harms.

Kevin Stewart: I will stop you there. Let us say that something is found out to have caused serious harm later, but it has been permitted or consented. Do you think that that should be an offence under the bill?

Dr Moran: Do you mean if it is currently permitted under the current state of scientific evidence, as it were?

Kevin Stewart: Yes.

Dr Moran: I think that that goes back to the definition and to what we understand by "serious adverse effects", or "severe environmental harm". I mentioned the Council of Europe convention and the EU directive. They outline what sort of harms they cover and say that severe environmental harm is a very serious form of that harm. Greater clarity around the definitions would be very helpful because it might allow for things that are permitted now not to be caught by the bill, if you see what I mean.

Kevin Stewart: Thank you.

Iain Batho: I do not think that I have sufficient knowledge of the wider regulatory regime and the permit schemes to meaningfully comment. All that I can comment on is a recent example. In a case against ExxonMobil, the offence that we prosecuted was one of breach of permit. We considered that that was the appropriate offence to use because the penalties for a breach of permit were suitable and it was the most apt offence to prosecute. It may be that in a breach of permit situation, there is specific legislation that we could use. I do not think that I can comment meaningfully further on how that would interact with the bill.

Kevin Stewart: But if something has been permitted but is later found out to be a bit difficult, it has still been permitted. You would not be able to challenge anybody for a breach of permit in that situation.

Iain Batho: If something is within the terms of the permit, there is no breach of permit. However, I then think that you are struggling to reach the intent to cause harm or recklessness element, because if you had a permit, why would you be fulfilling either of those requirements?

The Convener: I will come in briefly as I am not understanding something. I think that the suggestion is that the issuing of the permit may have been reckless because it was not properly considered, unless I have got that wrong. Kevin, is that what you are asking about?

Kevin Stewart: Well, that where I was going next.

The Convener: I apologise.

Iain Batho: I think that we would be looking at the mindset of the accused. Whether the permit had been rightfully or wrongfully granted, if they had a lawful permit that they thought they were entitled to act under, I think that we would struggle to argue that they were reckless or intended to cause harm.

Kevin Stewart: Okay.

Murdo MacLeod: I think that the situation that you are referring to is covered in the 2014 act, but, as I said earlier, it is missing from the present bill. I do not know why that is. I am not a politician and it was not my idea, but it is a curiosity.

All that I would say is that if one drills down into the bill a little bit and looks at corporate responsibility, it is a defence—in my valve scenario, for example, or for a subcontractor that has made a mistake—for the company to say that it took all reasonable precautions and exercised all due diligence to prevent ecocide, and maybe having that permit could allow it to avail itself of that defence.

However, you are right. Underpinning your point is that there is no reason for amending the legislation in this way, and it makes things tougher for companies.

Kevin Stewart: We will maybe come back to some other curiosities in a minute.

Rachael Weir: We could follow this up in a little bit more detail. I think that the example that you have given is useful. If members have any other specific examples around that element and how it would give rise to concern, we would be happy to take them away and come back in writing later.

Kevin Stewart: That would be useful.

Equally, there is no defence in the bill that would apparently prevent a regulator or consenting body from being held liable for ecocide. Again, as mentioned by Murdo MacLeod, that is in contrast to the 2014 act, which sets out defences on the side of the regulator and on the side of the operator for authorised acts. Should regulators be protected from liability for environmental harm

when issuing consents under the relevant legislation, or are there instances where a regulator should be held liable?

I have to say that certain aspects of this issue have caused quite a lot of consternation as our hearings have gone on, certainly leading to food for thought for the likes of councillors who serve on planning committees. We will start with Rachael Weir this time.

Rachael Weir: I think that it is an apposite question, but it is a question of policy rather than practice.

10:15

Kevin Stewart: I thought that you would say that.

Rachael Weir: It really is. It is a question of whether Parliament would intend and consider it appropriate to place regulators in either of those positions—either to hold them liable or not to hold them liable. As it is currently framed, the bill indicates that it is a person who commits an offence, so it could be very widely interpreted. Again, that would come back to parliamentary intent. Among the factors that we would look to are not only the discussions that take place in committees such as this but the later-stage debates and the explanatory notes around the bill. It is something that would probably be worth clarifying.

Kevin Stewart: Okay.

Murdo MacLeod: There are scenarios where regulators could be prosecuted, but I do not think that this is one of them. As Rachael Weir hints at, the person must cause severe environmental harm, and intend to do that or be reckless about it. It is difficult to imagine a situation where SEPA would act recklessly in this context or would intend to cause environmental harm. I am not sure that that is a test that would be met easily by the Crown.

I go back to my original point, which is that I share your observation about the failure to mention the issue in the bill as a sort of belt-and-braces exercise.

Kevin Stewart: So it is a failure in your opinion as well.

Murdo MacLeod: I think that I would be happier with it in there, but, again, that is a matter of policy.

Kevin Stewart: I am sure that Iain Batho is going to tell me exactly the same thing.

Iain Batho: I have nothing helpful to add to my colleagues' answers, I am afraid.

Kevin Stewart: Okay, thanks.

Dr Moran: I was going to say more or less the same. I do not think that I can add anything. However, in relation to the earlier point, I think that the idea of intentionality or recklessness has been demonstrated very clearly. It means that if you had a permit, an offence would be much harder to prove. If that permit had been gained through corrupt means or something, I think that, to be very specific about it, that might speak to intention.

Beyond that, if a regulator issued a permit in good faith and if the permit that was granted was exercised in good faith, it would be very difficult to prove that there was intention to cause environmental harm or recklessness around whether harm was caused.

Kevin Stewart: But would you agree with Murdo MacLeod that it is a failure that that aspect has not been transferred from the 2014 act into the bill?

Dr Moran: I would not necessarily characterise it as a failure because I think that the drafting of the bill reflects the fact that it has been inspired not only by the 2014 act but by the international definitions, and international criminal law always focuses on the individual. Therefore, it is natural that the bill focuses on the individual in the same way. It focuses on individual criminal liability, essentially, and it has elements of the 2014 act.

There could be a bit of clarity on the intended purpose of the provisions. Whether public authorities might be responsible, whether the focus is on corporate criminal liability, what the crime is, what the definitions are in relation to the crime and who ought to be held accountable are the questions that need to be answered to be able to identify who should be held responsible.

Kevin Stewart: But it would be fair to say that the bill provides no comfort for consenters.

I have one final question, convener. Murdo MacLeod mentioned that this Parliament is currently looking at the Dog Theft (Scotland) Bill. The stealing of dogs is already a criminal offence, as we all know. That makes me wonder whether we get our legislative priorities right as a Parliament. There have been indications today from the panel that, rather than pass this new bill, one of the options would be to go back and look at the 2014 act, and maybe change aspects of it, including the possibility of increasing sentences under that act. Is it fair to say that, Iain?

Iain Batho: I think that that would potentially address the issues that I have identified, yes.

Kevin Stewart: Thank you. Does anyone else wish to comment on that?

Murdo MacLeod: Can I just say one thing? Lest it be thought that I think that the absence of a permitting provision is a failure, I think that what I

said was that I would have preferred it to be in there.

Kevin Stewart: Okay. Thank you for that. Thank you, convener.

The Convener: Sorry, can I just push a wee bit on this, just so I understand it? I will give an example. Let us say that an aquaculture company wants to use a chemical that has been approved by the veterinary medicines directorate to be used to kill sea lice in salmon pens. The company applies to use it, and uses it as per the permit that is issued by SEPA for an on-use licence for the on-use use of the chemical that has been approved by the veterinary medicines directorate. However, all the starfish, prawns, lobsters and crabs in the area are killed because they are affected by the chemical. Who becomes liable for that? You are sort of saying that no one is liable because if something has been done under permit, everything is hunky-dory. However, in my example, everyone knows that that is what the effect of that chemical has been. I am trying to give you a real example, which, to my mind, raises questions. It seems to me that if the chemical has killed off a substantial number of sea creatures, that could be ecocide in the locality concerned. Does anyone want to pass comment on that? Would you prefer to follow it up in correspondence? Murdo, do you want to comment?

Murdo MacLeod: I just go back to what has been said. There must be intention or a recklessness as to whether environmental harm is caused. You can almost sort of park the issue of permitting for a second. I think that your first port of call would be to identify the ultimate duty holder to the environment—

The Convener: Well, I am trying to find that out. I am not sure that I understand.

Murdo MacLeod: It depends on the particular facts and circumstances in each case, as Iain Batho said. This field is very complex. The point that you make about when there is knowledge that something is causing a problem is important, too, and then you come to pinning that on someone. Of course, science changes all the time. I am sure that we will all give that a bit more thought.

The Convener: Science does change all the time, but when the offence is known about and it continues, it would be reckless. We could end up like Australia. They introduced cane toads, which was thought to be a great idea at the time, but cane toads are now considered one of the biggest pests because they destroy every bit of natural wildlife in Australia, and everyone is encouraged to destroy them at every opportunity. I am worried that the bill does not address some of the things that are of concern.

Murdo, do you want to come back in? I thought you were taking a breath.

Murdo MacLeod: It is an interesting point, but these are, I suppose, matters of policy for this committee and for the Parliament to determine.

The Convener: Okay. Sarah Boyack will ask the next questions.

Sarah Boyack (Lothian) (Lab): The issue of penalties has been mentioned already, but I would like to dive into that a bit more. The bill references penalties of up to 20 years' imprisonment or an unlimited fine for an individual, and an unlimited fine for an organisation.

The committee has heard views that existing maximum penalties available under the 2014 act do not allow for alignment with developments in EU law under the environmental crime directive. We are interested in your views about the proportionality of the penalties in the bill.

Iain, do you want to come in first?

Iain Batho: Yes. One thing that is perhaps trite but worth stating is that the headline figure of 20 years applies only to individuals. Where we are prosecuting a company, the maximum penalty is a fine only, and it is an unlimited fine. That already exists in section 40 of the 2014 act and in relation to numerous other environmental offences. Therefore, for companies, the maximum penalty is on a par with that in various other pieces of legislation. The discrepancy between five and 20 years applies only to individuals, and I would anticipate—I think my colleagues would probably agree—that the scenario in which an individual was facing a prison sentence at all, let alone one of more than five years, would be rare. However, I think that we must accept that that is the discrepancy between this bill and the existing legislation, in most of which the maximum penalty for an individual is five years' imprisonment.

Sarah Boyack: Do you think that there is an issue about a lack of alignment with EU legislation on that issue?

Iain Batho: I think that that would be more of a policy issue than one on which a practitioner should give a view. I do not think that I could really share a view on that, I am afraid.

Sarah Boyack: Okay. Murdo MacLeod, do you have a view on the issue?

Murdo MacLeod: From recollection, the EU directive suggests starting at 10 years if there is a fatality and eight years otherwise. A penalty of 20 years would be a maximum one. Iain Batho is right to note that the legislation is geared for individuals, but the individuals that are mentioned in section 3 are those in very senior management, so, it is a sort of warning shot to let them know what they

could get. It is not uncommon to see directors charged in relation to health and safety matters. In that regard, there is a maximum penalty of two years, which is significantly less, and is arguably inadequate.

The only other thing that I would say is that the Scottish Sentencing Council is currently looking at environmental and wildlife crime, and it tends to set the range within which sentencers must work. For example, in road traffic matters, there is a maximum sentence of five years in cases involving death by careless driving, but the Scottish Sentencing Council has left open to sentencers a range of sentences between community payback orders and two years. I think that its guidelines will temper the effect of the 20-year maximum. On the one hand, there would be a backstop that would be set by the Scottish Sentencing Council, but, on the other hand, you would have that headline figure, which might act as a deterrent.

Sarah Boyack: That is helpful. Do other witnesses have any comments on that?

Rachael Weir: I have nothing to add to what Iain Batho said.

Sarah Boyack: Clare Moran, do you want to come in on this?

Dr Moran: I do not think that the penalties are out of step with international law or European law on the same point. The question is whether you would want to add in restrictions on sentencing. In the EU directive, for example, there is mention of the gravity of the offence, so the sentencer can temper the penalty according to how serious the offence is. As has already been mentioned, if someone had died as a consequence of the harm, the penalty should be more severe and the maximum length of sentence higher. Essentially, there is more detail in EU law and in the Council of Europe convention as well.

The penalty is not out of step with EU law, but it lacks the detail of the other instruments.

Iain Batho: I note that Murdo MacLeod referred to the fact that the Scottish Sentencing Council is currently looking at sentencing guidelines for environmental offences. I simply flag to the committee that such guidelines already exist in England, and the English Sentencing Council's sentencing guidelines for environmental offences are publicly available. As a matter of good practice, we will present those to the court upon conviction in Scotland. They are not binding on a Scottish court, but I think that there is case law that establishes that they can be used as a tool to assist the sentencing sheriff or judge.

As a point of reference, the recommended sentencing range for an individual who is at the highest level of culpability and is convicted of a charge involving the highest level of harm caused is one to three years. I simply draw that to the committee's attention.

Sarah Boyack: That is helpful.

My next question is about remediation being provided by an operator, rather than just a compensation payment, and the issue of the confiscation of the proceeds of crime. Does the bill go far enough in those areas, or should it go further? It has been suggested that those penalties could be imposed under existing laws, such as the Proceeds of Crime Act 2002. What do you think the best options are, whether in the bill or elsewhere?

Murdo MacLeod: There would be no impediment to an attempt to recover proceeds under the 2002 act. Remediation is an interesting aspect, because it was in the 2014 act, but it is not in this bill. The bill provides for a compensation package, which would involve the accused paying the costs for remediation, but not carrying out the remediation themselves. I thought that that was a curiosity in the bill.

10:30

Sarah Boyack: Does anyone else want to come in on the issue?

Rachael Weir: Moving away from the question of remediation, which is a policy issue relating to the intention behind the bill and the measures that should be available, it is worth mentioning that, although the issue of proceeds of crime is not mentioned in the bill, it is a separate provision that runs in tandem with any criminal proceedings in Scotland, so the provisions of the 2002 act would be available in the event of conviction, and confiscation of the proceeds of crime could take place. We would anticipate using those provisions in appropriate cases, which would be those where we could show that there was a benefit from criminal conduct.

Sarah Boyack: So, the issue of the proceeds of crime would be dealt with in parallel anyway.

Iain Batho: We have used the 2002 act in environmental cases after the conviction.

Sarah Boyack: Clare Moran, do you want to come in on this?

Dr Moran: Yes, just briefly. In the EU directive, there are penalties that go beyond those of a financial nature or imprisonment, including things such as placing a company under judicial supervision or closing the establishments that were used for committing the offence, which I think is particularly innovative. The directive allows for punishments to be imposed or methods to be undertaken to essentially deal with the problem as

it stands and prevent it from happening in the future.

That approach goes slightly beyond the traditional punishments of fines and imprisonment, and—I am happy to be corrected on this point by colleagues—is not typically found in a criminal bill. However, it might be worth thinking about the issue slightly more broadly. Given the examples that we have heard today, it might be more constructive to try to undo the damage and prevent a similar situation from happening in future by making it clear to those who might be responsible that the penalty will heavily impact their business, regardless of their turnover. It would be helpful if people in those positions understood that undertaking practices that caused the sort of harm that we are talking about would lead to consequences for their operations that might not necessarily be recoverable for them, beyond financial consequences, which seem much more recoverable in practice.

Sarah Boyack: Sorry, just to clarify, should that be in this bill or in existing legislation? Are you saying that there are additional opportunities to hold companies to account?

Dr Moran: I think that you could look at the situation and ask whether something could be done that is perhaps more appropriate than a prison sentence or a fine. Community payback orders and so on have been mentioned, but—particularly if you are targeting one individual—would they have any impact if the damage were still capable of being done because, to refer to the earlier example, the factories were still able to run? Perhaps taking a broader view with regard to what could be done to remediate the damage might be productive.

Sarah Boyack: Do other witnesses have thoughts on those ideas?

Iain Batho: One issue to note is the timescale of a prosecution, given the time that it takes to investigate and to conclude the proceedings. Waiting on the outcome of the criminal case before starting to clear up whatever the incident was could be a problem, practically speaking.

We have encountered that issue in relation to offences concerning damage to sites of special scientific interest that we prosecuted under the Nature Conservation (Scotland) Act 2004. We have taken some cases all the way to trial, and, at the end, a restoration order was imposed. NatureScot found that the timescale proved problematic, so now, in a few cases that we have received, a collaborative approach was taken with NatureScot, and it was decided that it was not in the public interest to raise a prosecution and that, instead, it would be better to go straight in with a restoration order, because the priority was addressing the environmental harm. It is important to bear in mind timescales when thinking about remediation as the outcome of a prosecution.

The Convener: I am intrigued by that. Moving straight to a restoration order would appear to let someone off the hook, as it were, so that an area can be repaired. Is there anything in the existing legislation—or should there be something in the bill—that would allow the statutory bodies to start by repairing the damage to the environment that has been caused? Delaying the process by two, three, four or five years simply makes the problem more difficult to solve. Would the bill be enhanced if it gave powers to public bodies to leap in and start repairing the environment if damage is identified?

Murdo, you are looking concerned.

Murdo MacLeod: Only because of my lack of knowledge in this area. Certainly, in health and safety, which is the area that the bulk of my practice is in, there is a separate regime of improvement notices for the same sort of incident. I am not entirely sure whether the same thing exists in relation to environmental crime.

The Convener: The answer that one could give is that, if a track was built through an area of peatland that was a site of special scientific interest and a special protection area and was then left for five years, the drainage that would occur as a result of that track being put in would affect not only the small area of the track; it would probably affect quadruple the area to either side of it. Therefore, I am wondering whether that should be covered in the bill.

I am sorry, Sarah.

Sarah Boyack: That is okay.

Iain Batho: In a situation in which there has been damage to the equivalent of an SSSI, one option is that NatureScot can impose a restoration order. If it imposes a restoration order, that prevents us from prosecuting the company or the accused for the original offence. However, a separate offence of breaching a restoration order remains open. If they then fail to do that work, we have the option of prosecuting them for the breach of the restoration order, but we cannot do that for the original offence.

In the few cases that I mentioned, a careful discussion was had with stakeholders to decide what was best in the overall public interest. That is the approach in those cases.

The Convener: It sounds as though there is a back-door escape route here.

Sarah Boyack: That leads on to my next question. Section 9 of the bill extends enforcement powers in relation to ecocide. Is it sufficient to

ensure that the relevant authorities will have the power to investigate a potential offence? Is there a gap in the powers of any regulatory or enforcement bodies to investigate potential severe damage to the environment within their remit?

From reading the witnesses' expressions, I can see that they are looking reflective.

The Convener: Rachael, do you want to come in?

Rachael Weir: I do. I think that it would be best for us to follow that up with you after today's meeting.

Sarah Boyack: Okay. It seems that no one else has thoughts on that that they wish to share at the moment.

The discussion about what happens if an organisation thinks that an offence has potentially been committed follows on quite nicely from the time issue that the convener brought up and the options for action in that context. If anyone would like to get back to us with further thoughts on that, that would be helpful.

The Convener: As no other members have questions to ask, I will bring in Monica Lennon.

Monica Lennon (Central Scotland) (Lab): Thank you, convener. Good morning.

I was interested in the analysis that there is nothing lacking in the existing legislation with regard to being able to prosecute for an ecocide-level crime. We have heard from other witnesses who take the view that it could be argued that we are seeing some policy divergence between the situation that is emerging in the European Union in relation to how the environmental crime directive has been adopted by member states and the situation in Scotland.

I want to get some clarity on that. Is Scotland keeping pace with the European Union, or is there anything that could or should be done to make sure that everything is in alignment?

Rachael Weir: I do not think that it is really our place to comment on whether we are keeping pace with the European Union or any other international body. At the risk of repeating what I said earlier, whether our policy in Scotland is coherent in a European context is a determination of policy; it is not a question for practitioners.

Monica Lennon: Maybe I misunderstood what you said earlier, but the Government's position is that, in order to align with the policy and legal direction in the EU, we need to look at how we give effect to ecocide law. One option that the Scottish Government looked at was amending the 2014 act, but no such proposal has been made.

Other stakeholders, witnesses and people who responded to the call for views in an earlier consultation said that there are gaps in environmental governance in Scotland with regard to how people access justice and how things operate. Do you recognise or have a view on that?

Rachael Weir: Could you elaborate on what those gaps are?

Monica Lennon: In relation to gaps in environmental governance, the committee has heard evidence about Scotland not complying with the Aarhus convention and our not having an environmental court. Communities find it expensive and difficult to access things such as judicial review. If you do not recognise that, that is okay. Perhaps other witnesses would like to respond.

Murdo MacLeod: Such matters are perhaps more for the civil courts than the criminal component.

Monica Lennon: So there are no improvements that you want to bring to our attention.

Clare Frances, do you have anything to add on that?

Dr Moran: I will be completely transparent and say that I am not an environmental lawyer, so I cannot usefully add anything in that respect.

With regard to your earlier question about keeping pace with the EU and other European instruments, I find it interesting that the independent expert panel's definition of ecocide has been taken on by the Belgian Government. Its original definition will be discussed in December at the Assembly of States Parties.

The Council of Europe convention, which is open for signature in December, and the EU directive have both chosen to elaborate examples of what environmental crime might look like and, as I said earlier, to be much more specific about those crimes and to set out what might be quantified as a particularly serious crime and might therefore be tantamount to ecocide.

With regard to whether there are gaps in Scotland, the criminal law has a vast array of regulatory offences, and there is an overlapping regime, which has been spoken of favourably, in the context of the EU directive. Both are required—a regulatory system and a criminal system are required to deal with the problem of environmental degradation.

What is missing from the bill, which might speak to the problems that have been encountered, is a regulatory element. I am not sure that there are any existing provisions that are fully criminal or fully civil—"regulatory" is perhaps a better way of phrasing it. The provisions in the bill are purely

criminal. I wonder whether that might be the reason for its perceived shortcomings, even if those shortcomings are not borne out in practice, because, as the committee has heard today, practice can often differ quite widely from what exists. The practice and the decisions that are taken in practice encompass a wider range of considerations than what is written in the law.

Monica Lennon: Thank you—that was helpful.

I have a question on enforcement. Another issue that has been raised is whether SEPA currently has enough resources and expertise to deal with complaints and cases that come to it at the moment, because a lot of its work is intelligence led. If the bill was passed, would it raise any issues about enforcement for SEPA or any other body?

Iain Batho: All I can speak to is the very positive working relationship that I have with SEPA. As I said, I have meetings with SEPA every six weeks. We have discussions about on-going investigations and live cases. It is a very positive relationship.

I could not possibly begin to comment on resourcing implications for SEPA or its abilities behind the scenes.

Monica Lennon: As there are no more comments on that issue, I will move on to a final point. The notion of a deterrent has come up a couple of times. The witnesses have recognised that, when policy makers talk about ecocide, they are talking about the most severe instances—events that might happen only extremely rarely. In the bill, we talk about the likelihood of a sentence of between 10 and 20 years. Do you want to say anything about the sufficiency of the current deterrents?

10:45

Another issue that has been raised is that of how we can better inform and educate the public, given that science and knowledge of environmental harm issues change all the time. Could anything be done to raise awareness of the legal framework that we currently have in Scotland? How could we create more of a deterrent effect?

Murdo MacLeod: I go back to what I said an hour ago. Setting aside the question of duplication and any perceived inadequacies of the bill, it is in many ways a symbolic bill. The phrase that I used was, “It does what it says on the tin.” It would be at the top of the pyramid of environmental prosecuting.

I do not think that there have been any court prosecutions under the 2014 act. I envisage that there would be very few, if any, under the bill, if it is enacted. Of course, we have a treason act. We have never convicted anyone for treason, going back to the 1300s. We have the Bribery Act 2010. Everyone knows what that is. The Corporate Manslaughter and Corporate Homicide Act 2007 is another good example of how public and boardroom awareness has been raised.

Earlier, I made the point that the existing regime is tucked away rather obscurely in the 2014 act. If policy makers wanted to use the bill as an opportunity to encourage deterrence, that would be a laudable aim. The question for you is whether that is what this Parliament is about.

Monica Lennon: Thank you, convener.

The Convener: I will have to do some research on when the last prosecution for treason was. I am sure that Murdo is right. That was an interesting example to mention.

On that note, thank you very much for all the evidence that you have given this morning. It has been a helpful session that will help us with our stage 1 consideration.

I now suspend the meeting until 11:10, at the earliest, to allow members to take part in the armistice day service downstairs.

10:47

Meeting suspended.

11:13

On resuming—

The Convener: Welcome back to the meeting.

I inadvertently and wrongly missed out saying that we have received apologies from Bob Doris, who is attending another committee meeting for a stage 2 consideration. For those who noticed that he is missing, that is the reason why.

Our second panel on the Ecocide (Scotland) Bill will focus on the international context. I welcome Dr Ricardo Pereira, who is a reader in law at Cardiff University, Dr Suwita Hani Randhawa, who is a senior lecturer in politics and international relations at the University of the West of England, and Dr Rachel Killean, who is a senior law lecturer at the University of Sydney law school.

I will start off as I did with the previous panel. I will ask the easy question and give you each a chance to answer it. What are the key drivers in other countries of the development of ecocide laws? Is it because their law is lacking something? Why are they being driven to legislate?

Who would like to go first? That is a bit of a rhetorical question because I will go to Ricardo first. Would you like to start on that?

11:15

Dr Ricardo Pereira (Cardiff University): Thank you for the kind invitation to be here. Unfortunately, I cannot be present in the Scottish Parliament, but I appreciate the opportunity to present my views on the bill.

Certainly, since the 2021 independent expert panel, convened by the Stop Ecocide Foundation, released its proposed definition, it has held a leading position in contemporary debates on ecocide. There were developments prior to that. You can trace back the history of ecocide law to the 1970s, when proposals were made to criminalise ecocide. Since then, several international bodies have investigated the question of criminalising ecocide and potentially adding the crime to the International Criminal Court statute. Those proposals have never come to fruition, but many countries have taken a lead on criminalising ecocide. Most recently, in 2024, Belgium amended its criminal code. That is one example that closely follows the independent expert panel's proposed definition of ecocide. Prior to that, in 2021, France amended its environmental code.

Those countries are driven by the ecological crisis and by the climate emergency. A wide range of reasons are given, including that we need additional enforcement tools to make sure that environmental crimes are addressed effectively. Certainly, the most serious types of environmental crimes are comparable to ecocide. Since the European Union adopted the directive on environmental crimes, the 27 member states are more commonly criminalising acts comparable to ecocide—so-called qualified offences. Also, at the broader Council of Europe level, a new convention, which is not yet in force, criminalises particularly serious environmental offences, which are also meant to be comparable to ecocide. It should be borne in mind that Scotland and the rest of the United Kingdom are also part of the Council of Europe.

There will be more and different pressures. This started as a grass-roots campaign. At the European level, the introduction of qualified offences comparable with ecocide was mostly influenced by the work of the European Parliament, working closely with civil society organisations. The movement is also being driven by international developments.

An amendment to the ICC statute is still a long way down the road. That is partly why some countries are taking the lead on criminalising ecocide, recognising the seriousness of the ecological crisis and the climate crisis. Those are some of the key arguments that are made.

Dr Rachel Killean (University of Sydney): Thanks for having me along. Greetings from Australia. I will not repeat what Ricardo said about the history and different states' perspectives. Instead, I will focus on the motivations.

I recently coded the various speeches, background documents and public pronouncements of those who have been pushing for ecocide across different domestic contexts. The number 1 reason given is deterrence. There is a view that existing civil, regulatory and criminal frameworks do not effectively deter large-scale environmental harm and that a crime that specifically puts on notice those in positions of power is needed. Ecocide is largely conceived of as a crime of the powerful. The idea is that you need people in C-suites to fear for their personal reputation and freedom in order to prevent large-scale environmental harm. Deterrence is the number 1 motivator—at least, that is what comes through in the public pronouncements.

The second most frequently mentioned justification is that it is expressive power. You heard a little bit about that in the previous panel as well. Ecocide, to some extent, is symbolic. It is not only about what prosecutions may or may not happen, but about the moral condemnation of how we treat the natural world. Although we have existing criminal, civil and regulatory frameworks, we are not doing enough to make it clear that some levels of environmental harm simply should not happen. Ecocide is part of that picture. It has been picked up so much in the past five years because, as Ricardo said, people feel increasingly desperate about the climate crisis.

Then there are the transformative implications. There is a belief that through this more severe penal framework, we will urge corporations to fundamentally change their practices. Of course, a variety of regulations already apply to corporations, including within the EU, in terms of their due diligence regarding environmental harm, but that is why the transformative and deterrent justifications speak to one another. It is about removing a business's ability to navigate through regulations to avoid liability and providing something that says, "No, you, individually, may face criminal penalties for this."

In Belgium, you see the influence of members of Parliament with academic backgrounds who had done research into environmental criminal law prior to becoming politicians. You see the real shift there. Then, in France, of course, there was the citizens assembly and a groundswell of push for the country to do something. There are slightly different contexts. Latin America, for example, places a greater emphasis on the relationship between environmental crime and economic crime. For them, it is about white-collar crime. You can see that the specifics of domestic context influence the approach that is taken.

The Convener: I should have said at the outset, thank you very much for attending. It is 20 past 10 at night, your time.

Dr Killean: That is all right—anything for the motherland.

The Convener: Very commendable. Thank you. Suwita, do you want to say anything?

Dr Suwita Hani Randhawa (University of the West of England): Thank you very much for having me here today.

I will not repeat what the other two witnesses have mentioned. I will articulate a couple of different points in terms of the key drivers in other countries. The broader context of the climate emergency has already been mentioned. The United Nations calls it the triple planetary crisis. That provides the impetus for change and action.

Another big driving factor has been Stop Ecocide International's role. I suppose that it is a real success story of norm entrepreneurship. They have had an idea that has blossomed and taken root quite globally. It would be important to factor in how that international global social movement is also influencing the domestic politics, particularly of European states, but also further afield.

Also, Stop Ecocide International has been framing this debate by placing an emphasis on the relationship between criminalising and justice. In this context, given that we are also seeing lots of ecocide legislation being enacted, particularly in the EU, the idea that meaningful climate justice can be secured only through criminalising acts that amount to ecocide is becoming a mainstream view. Those additional factors are also facilitating the drivers within local contexts.

I would also like to draw attention to how this is, of course, one aspect of climate justice. Climate justice itself can be secured in many ways. We have many examples across the world of how to do this in a way that may not necessarily involve criminalisation. For example, we have seen the rights of nature movement across the globe. In terms of accounting for the tremendous rise of the discourse about ecocide and the legislative change that we are seeing in particular contexts, Stop Ecocide's role has been quite pivotal.

The Convener: I will ask my next question. We have heard from our witnesses on the bill that we have fairly strong legislation in the Regulatory Reform (Scotland) Act 2014, and there has been some suggestion that adjusting the penalties in the 2014 act might achieve as much as the bill. Do countries that are looking to introduce legislation on ecocide already have legislation that is as strong as ours clearly is, or are they starting with a blank bit of paper? Who would like to answer that?

If you all look away, I will have to nominate somebody. If you are remote and want to answer, just raise your hand. You have all looked away, so Rachel, do you want to have a go at answering?

Dr Killean: Yes, sure. Again, countries all have different contexts. France has adopted a quite different approach, in that such a crime is a more serious version of crimes that the French already have to do with pollution and waste disposal. Of course, they already have existing criminal frameworks; they are adding an extra layer of severity with regard to intentional, more serious harm.

I will not comment on Belgium—I do not know enough about its domestic system. Countries in Latin America are trying to strengthen a relatively weak enforcement landscape.

I do not think that Scotland's pre-existing strong regulatory framework precludes the type of offence that Monica Lennon is proposing. Something is still needed at the apex of the regulatory pyramid. In some ways, I am not sure that your question is the right one. Even a country with a strong environmental framework could still discuss a crime of ecocide.

The Convener: Thank you, Rachel, but it is the question that I asked, so I will go to Ricardo.

Dr Killean: Sure.

Dr Pereira: I was intrigued by the debate over section 40 of the 2014 act. Although I do not know enough about it, I suspect that the new offence of serious environmental harm has not been triggered by global debates around criminalising ecocide. It is a domestic offence, and is unlike what is being debated internationally.

In relation to the range of definitions of serious environmental harm that are being adopted or proposed and the current conceptualisations of ecocide, there are some significant differences. The act has a strict liability offence, so it is already clear from the bill that some higher threshold of mens rea, such as intention or recklessness, or dolus eventualis, is more likely.

Also, the penalties are particularly low. On indictment, the penalties for legal persons would be up to £40,000, if I am correct, and up to five years' imprisonment for individuals. The penalties are much lower than has been proposed or adopted in a wide range of jurisdictions for ecocide-type offences. Also, section 40 is particularly concerned with regulatory offences, and not the autonomous crime of ecocide.

At the European level, the member states were somewhat reluctant to recognise offences as ecocide offences—so they are supposed to be qualified offences—but that is not to say that, at the member state level, the offences would be

autonomous offences. They still would be pretty much aligned with existing EU law and existing EU regulatory frameworks, but my sense is that section 40, as Rachel Killean has already mentioned, does not preclude a wider crime of ecocide in Scotland.

11:30

Since the 1970s, other countries have started to introduce criminal offences and enforce environmental laws, and there has always been a dependence on administrative law enforcement. Environmental criminal law is a well-established field of law within environmental law and within criminal justice, but, as Rachel Killean mentioned, the symbolic and deterrent effect of particularly serious offences that require prohibition cannot necessarily be achieved through existing environmental criminal law.

A study by the United Nations Office on Drugs and Crime found a landscape of criminalisation across the world. It is clear from that study that it is not just the global north countries that have strong legal frameworks for punishing environmental crimes; such frameworks exist pretty much all over the world, including in developing countries. It is a matter of how effective the enforcement is, ultimately. The criminalisation of ecocide is certainly a next step, and it could probably be the basis for the wider international criminalisation of ecocide, starting with the domestic level and then eventually reaching the ICC. That is my view.

The Convener: Suwita, do you want to comment on that?

Dr Randhawa: Yes, thank you. Although I recognise this important discussion around section 40 of the 2014 act and ecocide, in terms of the relationship, potential overlap and how things align, the question is, as Rachel Killean said, perhaps the wrong one. That is not to dismiss it as being unhelpful, but to highlight the importance of contextualising the issue. It is not only about whether existing law is sufficient; it is about the other moving parts, which we will lose sight of if we exclusively focus on the debate around section 40.

For example, another potential reason for criminalising ecocide and having a stand-alone offence would be that doing so responds to the existing limitations of current international environmental laws. I could also mention the global disillusionment with climate talks and negotiations. It is one way to address some of the limitations that are happening on the international field.

The other point that I would like to emphasise is the connection between the criminalisation of ecocide and broader foreign policy goals. The other countries that have created domestic crimes of ecocide are, for the most part, countries that also believe strongly in multilateralism, the rule of law and co-operation, particularly in the context of the ICC.

In some cases, criminalising ecocide domestically has been informed by the social activism of Stop Ecocide International, so that domestic goal has a foreign policy dimension as well. It might be important for Scotland to connect the two, because Scotland is quite progressive in its foreign policy agenda and there is a very clear link between criminalising ecocide and using that domestic legislative effort to further its own external relations goals.

The Convener: Thank you very much. I am going to move on. Douglas Lumsden has a few questions.

Douglas Lumsden: Yes—at least I did, but I have lost my place because I was listening intently.

The committee has been considering whether the bill will have a deterrent effect on individual and corporate behaviours and avoid instances of severe environmental damage. Are you aware of any evidence on how businesses or organisations have changed what they are doing because ecocide laws have been introduced? I will go to Ricardo first.

Dr Pereira: Ecocide laws have been adopted relatively recently—even the law that was adopted in Belgium last year will not come into force until 2026. The evidence is therefore limited on the impact of what you could perhaps call the more elaborate definitions of ecocide, with a lot of brainstorming taking place over how ecocide should be defined. Even in the countries that already had ecocide offences, such as the former Soviet countries, Vietnam and so on, my understanding is that the evidence on actual enforcement and whether those provisions have been effectively used in practice is also limited.

Deterrence can be linked to two things: the levels and types of penalties, and, ultimately, how provisions are enforced. Deterrence has two aspects. One is the principle of criminalisation and the ultimate penalties, including imprisonment, fines, restoration orders and so on. The second is how likely the penalties are to be enforced. Corporations will then take account of the entire legal framework to decide due diligence policies to make sure that they do not commit environmental offences. Studies suggest that introducing new criminal offences, for example, has a deterrent effect. However, once criminal penalties are introduced, any manipulation of the types and levels of penalties does not necessarily have the same deterrent effect. Certainly, the principle of

criminalisation, as in the bill, would add an element of deterrence. That is how I would see it in terms of my current criminological research on deterrence.

When it comes to ecocide laws in different jurisdictions, the evidence is limited for two reasons. The first is that some of those laws are new. The second is that, in the jurisdictions that have had them for a while—since the fall of the Soviet Union—there is not much evidence that they have been enforced.

Douglas Lumsden: You mentioned that the law in Belgium has not come into force yet. I do not know whether France is further down the road. Is there any evidence from France?

Dr Pereira: Rachel Killean's study showed that there have been some investigations in the region around Lyon. I have read some of the studies that she relied on in her research into ecocide. There is evidence of investigations, but as far as I am aware there have been no successful prosecutions in France.

The French law is supposed to apply a lower standard for ecocide. That could arguably be a facilitator for prosecutions. One of the criticisms of some of the ecocide laws is that the application of a high threshold means that, ultimately, prosecutions will be difficult and thus those laws will be difficult to enforce. There are what are typically described as conjunctive definitions: environmental damage must be linked to not only serious harm but harm that is widespread and long lasting or long term. In relation to environmental damage, all three criteria must be present. It depends on whether the law requires intention or recklessness.

I see endangerment offences in most jurisdictions. In the bill, the illegal act must cause serious environmental damage. It is not supposed to be an endangerment offence that is linked to potential damage from the offence. My sense is that more countries are adopting a relatively high threshold to make sure that there is fair labelling of serious offences and the serious penalties that are attached to those offences.

Douglas Lumsden: Rachel Killean, do you have any more information about how the ecocide law is working in France? How many successful prosecutions have there been? Have organisations made any changes because of the threat of breaching ecocide laws?

Dr Killean: Ricardo Pereira is correct in that various investigations have been launched in France and various complaints brought, with victims raising alleged instances of ecocide with prosecutors and seeking investigations.

The example that Ricardo mentioned is in Lyon, where there is an on-going investigation into a large-scale laundromat that had caused ground and water pollution.

In terms of which country has gone the furthest towards investigating the issue, the main example is France. Another is Ukraine, as one byproduct of the increase in attention to ecocide is that Ukraine has renewed its interest in its own ecocide law vis-à-vis the Russian invasion. A dedicated body within Ukraine's prosecutor service is specifically looking at ecocide in the context of that conflict, and that work is moving forward. Ukraine's definition comes from the previous post-Union of Soviet Socialist Republics period, so it lacks specificity. They have been open about the challenges with their pursuing that prosecution, but they are exploring that possibility. That is quite a different context to what we are talking about in Scotland, but it shows that prosecutors and investigators in different contexts realise the scope for what can be done.

Deterrence is mostly anecdotal because of how new this area is. Folks within Stop Ecocide International who are engaging with corporations will tell you that corporations are saying that the issue is on their radar and that they are thinking about how to pre-emptively get ahead of it, but, of course, would they say otherwise, given that they are talking to Stop Ecocide International?

You can always track progress in the aftermath of a state taking a further step along its pathway to criminalisation. On various law firms' websites, you will see explainers and advice to corporations about making sure that they stay ahead of the issue and get their house in order. That shows that a shift in thinking is happening. I do not know whether you could call that deterrence at this point, but you can certainly see a shift in the conversation that suggests that there is some fear around the potential implications of a new crime.

To back up what Ricardo Pereira said, there is also evidence that, in the context of environmental regulation, introducing criminal sanctions is slightly more impactful in terms of deterrence than having civil regulatory frameworks, because deterrence relies to some extent on rational decision making. We know that that is not an accurate way of understanding why many crimes happen but it is slightly truer in relation to environmental crime and crimes by corporations. When someone is making decisions for their business and for financial gain, they are engaging in a cost benefit analysis in a way that is not necessarily true for survival-type crimes or crimes of passion. Therefore, some evidence shows that, in this sphere, criminal sanctions work slightly better in terms of deterrence than civil regulatory frameworks. We always need to be cautious because, with

deterrence, you are looking for the absence of something, so it is a little bit tricky to measure anyway.

Douglas Lumsden: You mentioned one investigation taking place in France. Have there been any prosecutions so far? When they introduced the law, was it replacing an existing law or was it an addition to what they already had?

Dr Killean: It was an addition in that they took existing offences of pollution and waste abandonment, and then added a kind of—what is the word? Sorry, I am tired—a more severe version of those offences. The framework was already there, and they added a more severe version. At this point, I have not seen a successful prosecution completed. As far as I can tell, the case in Lyon is languishing in the investigatory phase.

11:45

Douglas Lumsden: Thank you. Dr Randhawa, do you have anything to add on the deterrent effect?

Dr Randhawa: I would echo that it is probably too early to tell because these laws are in the process of becoming operational. There would need to be a long-term study of deterrence, successful prosecutions and so on in order to answer your questions about those issues.

It is important to note that no law can be a perfect deterrent—you can see that even in international criminal law, where the crime of genocide does not necessarily prevent genocide from occurring. There will always be circumstances in which the crime or criminal behaviour will still occur, but it is important to consider what else that law aims to achieve. Deterrence might be one part of it, and another might be the expressivist function that Rachel Killean mentioned, which involves underlining a society's censure and stigmatising of certain acts. Also, thinking of future generations, there is an educational component. If, for example, ecocide takes hold across the world, newer generations would have already been taught about it, which is different from our situation, as we are all learning as we go along.

A law is most effective in its deterrence if it can strike at the heart of the power dynamics behind why that crime is being committed. If the key aim is to achieve deterrence, the crime itself would have to strike at the heart of power structures and the actors who are able to commit ecocide and get away with it. The deterrence approach needs to bear that in mind.

Douglas Lumsden: Could we do that by beefing up our existing laws as opposed to introducing a new law?

Dr Randhawa: I suppose that you could, but then you would also need to be sure that the existing law has executed that function effectively. In my understanding, one of the reasons why Ms Lennon is introducing this standalone crime is to reflect the fact that existing penalties and legislation have not achieved their intended outcome, as fines can be absorbed by corporations and do not give that incentive to change behaviour.

Douglas Lumsden: However, even if the law had been in place for a long time, we would not have had an issue in the past 12 years. I cannot think of an incident of ecocide that the legislation would have caught. Do we need to change behaviour if there has not been a problem up to now?

Dr Randhawa: It might not be a case of changing short-term behaviour, but one of the functions of law is to express a community's existing norms and provide a bit of a vision of what we want society to look like for future generations. That is important, especially in the context of how we live in an interdependent world. If Scotland had an ecocide law, that would not imply that its criminal framework was so inefficient that it had to introduce another law; it would be saying something else, which is that Scotland takes seriously its obligations and its climate justice agenda, and this is one more thing it is doing amidst its existing procedures and policies.

The Convener: Rachel Killean wants to come in on that point. At this stage, I will say that I always try to balance the answers and the questions, and I have to live with all the committee members after today, so, if I run out of time and cannot let them get their questions in, I get into trouble with them and my life becomes difficult. Therefore, I am looking for short questions and short answers.

Dr Killean: I will keep it short. On the point about there not having been an ecocide in Scotland yet and whether that means that there will be one in the future, you need to think about what corporations that are based in Scotland do abroad. That is a live concern. Secondly, it is not as if no ecocides are happening in the United Kingdom. For 10 years, I was based in Northern Ireland, where we are seeing the death of their largest body of water, Lough Neagh. To think that the fact that we have not had an ecocide means that none is likely in the future misunderstands the direction in which we are going in terms of environmental degradation.

Michael Matheson: Good morning—just—or good evening, in Rachel Killean's case. I want to

pick up on the issue about the experience in France, and potentially in other parts of the EU, where an ecocide law has been introduced. France moved from an administrative liability process for dealing with environmental crime to a criminal liability scheme. That was one of the main changes resulting from the introduction of the ecocide law—is that correct?

Dr Killean: France introduced a climate and resilience law that adds new articles to the French environmental code. It is a qualified ecocide offence.

Sorry—I am looking at my own notes about it now.

France's environmental law has two articles. One talks about a general offence of polluting the environment—which was a pre-existing criminal offence—and abandoning waste, and offences can then be qualified as ecocide with the additional element of intent. The key difference is the level of intention and the level of impact. Ecocide involves serious and long-lasting impacts, which are identified as lasting for at least seven years. So, there is an aggravated—that is the word that I could not think of earlier—offence of pollution or abandonment of waste rather than a new crime, and it is built on a criminal framework.

Michael Matheson: That is helpful. Thank you. Some EU countries have an administrative liability scheme as opposed to a criminal liability scheme when it comes to environmental crime, which is different from what we have in Scots law.

Deterrence is a key theme that has come through in the answers that we have had so far as to why we might wish to introduce a bill of this nature, with an ecocide offence. You will have heard the evidence that we received from the first panel. The head of environmental crime at the Crown Office and Procurator Fiscal Service of Scotland said that it has been unable to identify any such offences having been brought to it since 2014 and that it is struggling to anticipate something in the future that the existing law would not be capable of dealing with.

If we lack any identifiable evidence of cases over the past, let us say, 10-plus years, and if our prosecutors are saying that they cannot think of any offences that could occur in Scotland that the existing law could not deal with but that the bill seeks to deal with, where exactly is the deterrence in introducing a bill of this nature?

Dr Pereira: I have read quite a lot of the evidence that has been given previously to the committee on section 40 of the 2014 act, which has not been effectively—or ever—enforced. My research on UK environmental criminal law across a range of nations in the UK has shown that, since England implemented the Regulatory Enforcement and Sanctions Act 2008, which introduced civil sanctions, the Environment Agency in England has preferred to issue civil penalties, including so-called enforcement undertakings, and there has been a displacement of prosecutions. That has also been the case in other countries, such as Australia, that have introduced so-called civil penalties. So, although there has been much debate in the committee about whether section 40 is difficult to enforce, I think that there must be a more holistic look at what is happening outside Scotland.

It was mentioned in previous evidence that the sentencing guidelines that were introduced in England and Wales in 2013 have led to a significant increase in the number of penalties, including criminal penalties, and Scotland could consider having sentencing guidelines, too. Environmental criminal law is a broader field than ecocide, and there could arguably be a more holistic look at, or an overhaul of, the whole enforcement system. In my opinion, that would not prejudice the introduction of this offence for the most serious types of crimes.

Another point that was made in previous evidence is that such offences are likely to happen every 10 to 20 years. Only this weekend, we saw an example involving Southern Water, in Sussex, which has been presented by the news outlets as a major catastrophic event. Is it serious and severe enough? Probably it is. Is it widespread or long lasting? It is at least one of the two. Maybe it is localised enough that it is not widespread, but it certainly could be long term, although, within the terms of the bill, the environment could be recovered in the next 12 months.

The example of water companies is clear. In England in 2021, Southern Water was fined £90 million, which was a record criminal fine. Then we had several high penalties, totalling £20 million, issued against Thames Water. We have seen a lot more regulators using criminal penalties. If not currently in Scotland, certainly across the UK you can see examples of regulators thinking beyond only administrative penalties. It must be said that, before the reforms of the 2014 act and the 2008 act in England, the UK nations relied primarily on criminal law enforcement. However, the more that regulators such as SEPA have civil penalty powers, the more there is a preference for them to apply those penalties directly instead of going through the courts—through the COPFS, as is the case in Scotland.

So, my feeling is that there is a need to look at the system more holistically, without prejudicing the bill, and to be not only inward looking. Although the issue is Scotland's competency to deal with this as an offence in Scotland, looking

more broadly, it is the purpose of this panel to look at what other nations are doing—

The Convener: Sorry, but I am going to interrupt here. Ricardo, you are in danger of getting me into trouble with my fellow committee members. You have given a long and full answer, with a lot of facts in it, but I have to impress on everyone the shortness of time—otherwise, I will have to allow only a certain number of people to answer questions, which will upset the witnesses. I am asking you, please, to be as brief as possible.

Michael Matheson: Ricardo, can I clarify something? Are you suggesting that the regulatory authorities in England and Wales are issuing civil penalties for crimes that, based on the definition of ecocide in the bill, the bill would make a criminal offence in Scotland if it was enacted?

Dr Pereira: There was a bill before the UK Parliament that would have criminalised ecocide. It would have applied in England and Wales, but it never passed the first reading, if I remember correctly. There is no criminalisation of ecocide in England and Wales; it is a matter of whether the regulators prefer criminal sanctions or administrative sanctions, because they have discretion, or a lot of bargaining power, that they can apply. It is so-called responsive regulation, which starts with the carrot—a warning notice—and then eventually applies the stick. That is the approach to enforcement that we see publicised by each enforcement agency, and it gives them a lot of discretion.

12:00

I am not saying that there has been a stronger emphasis on criminal sanctions in England, because, since the 2008 act, as I mentioned before, England has had civil penalties. We have seen similar reforms across the other nations as well.

That is my comment on the need to look more holistically at the entire system. Ecocide is a very specific offence that is supposed to be used for only the most serious types of offences, and we have little evidence on its enforcement currently.

Michael Matheson: Could I ask Rachel Killean about deterrence? Our prosecutors in the Crown Office say that they cannot identify any cases, and they cannot envisage any cases in the future, that they could not prosecute using existing legislation. Therefore, what is the deterrent effect of having a bill to criminalise ecocide?

Dr Killean: It comes from a couple of different places. One is that it is likely that the future will bring environmental risks that we are not currently having to deal with. In Scotland, you might think about things such as North Sea engineering, oilfield services and subsea technologies that Scotland-based corporations might be involved in around Scotland but also further afield. You might think about the deterrent effect of a severe, serious crime in light of the possible future exploratory types of corporate activities that we will see as we proceed down this dark path that we are on in terms of fossil fuel use.

You might also think about how this fits into the global picture. Suwita Hani Randhawa was talking about this as well. Part of this is to do with building a consensus around ecocide as a crime in order to facilitate the creation of an international crime. I know that international crimes are not within Scotland's competence, but it can be understood as part of closing the loop and closing the places where corporations can hide from criminal accountability for severe environmental destruction. That is where it comes from.

Dr Randhawa: I will make brief comments. If the question is whether it has a deterrent effect, the evidence is not there. However, that is not in itself a reason to be concerned, because what is happening here is about shifting the perception. Ordinarily, you would regard environmental destruction as destruction, but the bill is saying that environmental destruction with these requirements—if it is widespread and on such a scale and so on—is criminal. The symbolic effect of that, especially in the global context, is powerful.

The Convener: Before I bring in Mark Ruskell, I will say that we have a hard stop on evidence at 20 past 12. I am trying to put some pressure on people to give short answers.

Mark Ruskell: And short questions—okay. The panel has already touched briefly on some of the definitions of ecocide, such as severe environmental harm and harm that is widespread and long term. Can you offer some comparison with how other jurisdictions have defined ecocide and say where you see the definition that sits in Monica Lennon's bill? Ricardo, you covered this briefly earlier. Do you want to say anything more about how those terms are defined in the bill?

Dr Pereira: Yes. The Scottish bill would most likely be perceived as one that follows in the tracks of the independent expert panel's 2021 proposed definition of ecocide. It closely follows some of the core elements of that, with a few tweaks.

When the bill was originally proposed following the consultation, there were a few important changes, such as the removal of "wanton". "Wanton" is supposed to indicate recklessness or dolus eventualis, which was criticised in the independent expert panel's definition. First, it is not possible to commit many Rome statute crimes through reckless acts. Secondly, the independent

expert panel introduced a socioeconomic test as supposedly providing a shield for companies, in that some environmentally destructive acts could be defensible if they were within the limits of sustainable development; they could cause some elements of environmental destruction, but not if it is severe, significant, widespread or long-term environmental damage.

What is interesting here is that we may be looking at what is supposedly an international crime in the International Criminal Court statute and what is supposedly a purely domestic crime, which is what Scotland would ultimately do under this act. Rachel Killean's study, for example, has a few examples. The former Soviet countries had something more akin to international crimes but, more likely, Scotland would have something like a domestic crime.

On the conjunctive or disjunctive element, essentially, the question is whether you require that the act is severe, long lasting and widespread, or severe and either widespread or long lasting. A disjunctive definition is supposed to make it easier to prosecute or to establish that something is an ecocide offence. One criticism of a supposed conjunctive definition is that the environmental war crime in the International Criminal Court statute has never been prosecuted because it is applying a higher threshold that ultimately means a lower environmental protection standard. It is a high threshold that ultimately means that it cannot be enforced effectively.

We can have tweaks. Most jurisdictions are now using the independent expert panel's definition as a baseline and then adding variations to take account of domestic circumstances. If you look at the overall bill, you see that it is not just a definition of ecocide but also penalties and defences. There is a wide range of issues there that are supposed to bring the bill in alignment with existing Scottish law as well.

Dr Killean: I want to raise two issues that I have with the Scottish bill. First, it says that environmental harm

"is widespread if it extends beyond a limited geographic area, to impact upon an ecosystem".

That excludes the possibility of an ecocide that is specific to an entire ecosystem within an area. You should think about a definition of "widespread" that imagines the possibility of wiping out a species but in a smaller geographical area. You could look at the Belgian example, if you wanted to look at an alternative.

You should also rethink the idea of

"natural recovery within 12 months",

because that will be difficult to prove, and I do not see a clear reason why you would not go with a reference to a reasonable period of time.

The other thing to mention is that you could also consider defining "irreversible". The guidance provided by the University of California Los Angeles on the implementation of the EU directive has some useful wording as to how you might think about defining "irreversible".

Dr Randhawa: I emphasise that we are in unprecedented territory here. To contextualise how criminalisation has happened in the past, I can take genocide as an example: states agreed on genocide's definition first and then it was rolled out as a domestic crime within countries—the agreed-on definition animated the domestic definition of genocide.

We do not yet have an international definition of ecocide. We need to be cautious about relying so much on the IEP's definition. It has certainly received a lot of coverage, and it is indeed the starting point in many debates. However, if and when states decide to define ecocide, the chance that it will look different from the IEP's proposal is high. I am raising that point to highlight how what is happening before us right now is almost the opposite. We are seeing definitions of ecocide being created domestically ahead of an international definition.

The lesson that that demonstrates is that, although it might be useful to turn to other jurisdictions to see how they are defining ecocide, there is also a limit to how useful that is because, as a domestic crime, it needs to work within the Scottish framework. It is important to pay attention and not borrow excessively from how other countries are creating the crime within their domestic jurisdictions.

On the definition in the bill, I echo Rachel Killean's view on the 12-month recovery period. That seems to be quite anthropocentric in its idea of nature and how it recovers.

Also, if the purpose of the bill is to protect nature, some ambition is required. We all talk about ecocide as if it is some catastrophic event. Yes, that would be a good example that helps us understand it in a situation that we have not seen yet, but ecocide conceivably also can occur across a longer period. You want to be able to make sure that the law speaks to those two sorts of instances.

Sarah Boyack: My question follows on from the comment that you just made about how it is not necessarily a one-off catastrophic incident. Should the definition of ecocide in the bill also apply to incremental harm or a course of conduct over time?

Dr Randhawa: Certainly, yes. The danger of focusing on the spectacular is that it runs the risk of replicating problems that we see with other international crimes. Many things feed into a genocide occurring and, similarly, many things will feed into ecocide. It would be important to consider that.

Sarah Boyack: That was a very sharp response as well. Thank you. Do Rachel Killean and Ricardo Pereira agree?

Dr Killean: Yes, I do. That will be a challenge, and you will need to consider limitation periods and things like that. Ideally, of course, you would try to capture the slow violence of environmental degradation. I could also see that being a challenge in practice.

Sarah Boyack: Do we have experience of other legislatures that have taken that approach?

Dr Killean: Not explicitly. To the limited extent that we have practice in terms of investigations, they have focused more on the spectacular. In Ukraine, it is the demolition of dams. In France, we are talking about the pollution of land over time, but it is still a relatively short time. We do not have examples that we can look to yet of successful investigations and prosecutions relating to the slow drip that causes the most environmental harm.

Dr Randhawa: I will add that, when trying to think about how we might capture both the spectacular and the slower violence, it is worth reminding ourselves that this is one tool in a range of options. It would be a mistake to emphasise that the bill will do everything; it will not. Sometimes it is necessary to think about how Scotland might be able to do other things in conjunction with, for example, the work on human rights and the environment, and perhaps also the debates on the rights of nature. That would be complementary to an ecocide bill that is perhaps easier to execute in relation to catastrophic events.

12:15

Sarah Boyack: Thank you. Ricardo Pereira, do you have a brief comment on that issue?

Dr Pereira: I will be brief. My comment is essentially that we have the lex certa principle in criminal law, which involves legal certainty. If there are diffuse sources of pollution that lead to environmental damage through a cumulative effect over a long period of time, it is difficult to assign responsibility to anyone in particular, as there is a wide range of potential polluters. That is one consideration in relation to cumulative damage: responsibility can be assigned to a particular polluter or a wide range of polluters.

The other consideration is about climate justice. Although there is much emphasis on the climate emergency in ecocide debates, the debate around the intersection between criminal justice and climate law is in its infancy. Not much has been done on, for example, how we can use criminal law to enforce climate change mitigation obligations, including those around carbon emissions, as there is not much evidence that countries are doing that. However, the harm that is caused on a global scale by such emissions is a clear example of cumulative damage.

Sarah Boyack: I will follow up with a question on thresholds for liability. Section 1 says that an offence of ecocide is committed if the person

"intends to cause environmental harm, or ... is reckless as to whether environmental harm is caused."

Many stakeholders have agreed with that, but others have suggested that liability should be broadened to include negligence, as corporations might be unlikely to set out to cause severe harm.

To what extent do different jurisdictions agree on that issue and the appropriate level of liability?

Dr Killean: If you wanted to have a lower threshold for mens rea for corporations, you could look at Chile's example, which talks about the possibility of sanctioning corporations in the absence of sanctioning natural persons. The liability there arises from omissions of supervision, which involves something like serious negligence and allows you to look at what steps corporations are taking to prevent large-scale environmental harm. The attribution of liability rests on that organisational fault, failure of supervision, absence of effective prevention or, as they call it, "culpa organizacional"—sorry for that terrible accent.

Serious negligence has not been part of the international discussion, because international crimes tend not to be committed as a result of negligence. However, we are not talking about an international crime; we are talking about a domestic one. You could explore negligence without necessarily risking overcriminalisation if you focused on corporate liability, but that would not be an appropriate approach with regard to natural persons.

Sarah Boyack: That is helpful. I am conscious that we are running out of time—

The Convener: We are, indeed.

Sarah Boyack: I have a final question about the defence of necessity. It is included in the bill. Is it important to have it for exceptional cases?

The Convener: Can you direct that to one person? We cannot hear from everyone, given the timeframe.

Sarah Boyack: Have I got one volunteer who will be short and snappy?

The Convener: You do not have any volunteers.

Sarah Boyack: I see that Rachel Killean wants to answer. Please be brief, because I do not want to take so much time that my colleague cannot ask his questions.

Dr Killean: I am only volunteering in case no one else does. Does anyone else want to come in?

The Convener: No—you are in the firing line.

Dr Killean: The bill needs a rethink with regard to the defence of necessity. I do not understand how anyone will prove that defence. If you are asking people to prove that on the balance of probabilities, you will run the risk of running afoul of article 6 of the European convention on human rights. There is a human rights compliance issue, so I am not sure that the defence of necessity is currently serving you well. You will need to think about some form of defence, but I am not sure that that is the right one.

Kevin Stewart: Good afternoon. The proposed ecocide offence does not include a defence that the harm was caused by permitted or licensed activity. That has raised a lot of concern and uncertainty in industry. Is that a valid approach? Has a similar approach caused debate in other jurisdictions?

Dr Randhawa: I am not aware of any debate because it is outside my field of expertise. Again, I will caveat my response by saying that I do not have the specific knowledge, but my informed view would be that having no such defence is probably good because part of the reason for the bill is to ameliorate instances where the licensing system is open to abuse and there are loopholes that corporations can take advantage of.

Kevin Stewart: What happens if a licence or a permit has been granted and the system has not been abused, yet it is suggested at a later point that an ecocide event has taken place?

Dr Randhawa: There should be safeguards in the licensing regime that would limit any activity allowed by the licensing to its own boundaries. I find it difficult to imagine a situation in which a licence has been granted and an ecocide circumstance has resulted.

Kevin Stewart: We probably do not have time to go into that aspect in depth, but it has been suggested that that might be the case. Ricardo Pereira, can you share your views on the issue?

Dr Pereira: One approach that could be followed would be that which is taken in relation to the EU environmental crime directive, in which, essentially, there is a licence shield for most of the offences involving a breach of European law or national law. An exception to that shield applies if the licensee or the operator is found to be in

"manifest breach of substantive legal requirements"

under a licence, or if the licence has been obtained fraudulently or under circumstances involving financial crimes. So, there is a licence shield element, but there are exceptions when there is a manifest breach of licence conditions or fraud.

Kevin Stewart: How have they dealt with the issue in other jurisdictions?

Dr Pereira: A common defence in environmental criminal proceedings is that the operator was complying with its licence terms. That means that, although there could potentially be an administrative infringement, the incident might not amount to a crime, because the criminal offences are dependent on breaches of administrative law, including the terms of a licence. The licence shield has always been a problem, and European legislators have tried to move away from a situation that allows an overreliance on that defence on the part of operators.

Kevin Stewart: I get all of that, but the point is that the bill as it stands does not include any defence that the harm was caused by a permitted activity. Is that defence in play in the legislation of any other jurisdictions?

Dr Pereira: I would say that it is exceptional for countries to have so-called autonomous environmental criminal offences that a licence cannot provide a defence for. However, the arrangement should involve the most serious types of environmental crimes.

Kevin Stewart: Rachel Killean, could you comment?

Dr Killean: It is unusual to have an autonomous crime of that type. Belgium talks about "unlawful" incidents, which is more common language. If you perceive there to be a barrier in relation to the issue, the EU directive is a useful framework that you can use to rethink the approach. You could talk about "unlawful" incidents and, as Ricardo Pereira says, incidents in which the operator is in manifest breach of relevant substantive legal requirements.

You should join up your thinking about that with the work that you are doing on the right to a healthy environment. You could have a situation in which the behaviour is in line with a licence but fundamentally violates the human right to a healthy environment. That could be one way to balance the approach.

Kevin Stewart: I will leave it there. Thank you.

The Convener: I will bring in Monica Lennon. I am sorry, Monica, but, due to pressures of time, you get one question and one question only.

Monica Lennon: In September, the Scottish Government wrote to this committee to signal its support for the proposal to introduce an offence of ecocide. Notwithstanding what Suwita Randhawa has said today, the Government has been clear that it sees the offence as involving

"the most extreme, wilful and reckless cases of harm."

We do not have time for everyone, so I will direct this question to Suwita Randhawa, since I have mentioned her. Do you understand why the Scottish Government has framed its view in that way and wants to make that distinction in people's minds, that we are talking about the most severe examples? Are there other ways that what you described as the slow-burn or the cumulative impact could be addressed under the existing regulations that we have in Scotland?

Dr Randhawa: I certainly understand why the Scottish Government framed its view in that way, because that captures why we are talking about this new crime of ecocide: it is in order to deal with the spectacular cases. It is not a problem if the bill does not capture everything, but legislators need to be aware that those different aspects can be covered by other policies and initiatives. I would not necessarily place all my bets on the one approach, because no law is perfect.

It would be fine to focus on that spectacular level when conveying to the public why the law is there but, in reality, you want to avoid those situations occurring. That goes back to the point about deterrence. It is good if we do not have to use the law because, if we have to, that demonstrates that something has gone very wrong.

Monica Lennon: Thank you. Do we have time for any more answers, convener? I am in your hands.

The Convener: I wanted to have a hard stop at 20 past 12, so I am afraid that I will have to stop here, as we are seven minutes past that.

I thank all the panel members for giving evidence in such detail today. I give special thanks to Rachel Killean, as it is nearly half past 11 at night where she is. It shows remarkable fortitude that she can give evidence that late in the evening—I am not sure that I would be able to.

We will now move into private session.

12:28

Meeting continued in private until 12:59.

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