OFFICIAL REPORT
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DRAFT

Net Zero, Energy and Transport Committee

Tuesday 9 December 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 9 December 2025

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE

37th 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:

Sarah Boyack (Lothian) (Lab) (Committee Substitute)
Ailidh Callander (Scottish Parliament)
Dr Joanna Dingwall (Scottish Government)
Fiona Hyslop (Cabinet Secretary for Transport)
Eilidh Macdonald (Scottish Government)
Gillian Martin (Cabinet Secretary for Climate Action and Energy)
Lee Shedden (Transport Scotland)
Roz Thomson (Scottish Parliament)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 9 December 2025

[The Convener opened the meeting at 09:04]

Decision on Taking Business in Private

The Convener (Edward Mountain): Good morning, and welcome to the 37th meeting in 2025 of the Net Zero, Energy and Transport Committee. Our first item of business is a decision on taking items 6, 7, 8 and 9 in private. Item 6 is the consideration of today's evidence on the Ecocide (Scotland) Bill. Item 7 is consideration of evidence on the legislative consent memorandum on the Biodiversity Beyond National Jurisdiction Bill. Item 8 is on our work programme. Item 9 relates to the contract of our adviser on climate change. Are we agreed to take all those items in private?

Members *indicated agreement.*

Subordinate Legislation

Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2026 [Draft]

09:05

The Convener: Our second item of business is consideration of a draft statutory instrument. The Delegated Powers and Law Reform Committee, in its report, made no comment on the instrument. I welcome Fiona Hyslop, Cabinet Secretary for Transport, and her supporting officials, Ninian Christie, lawyer for the Scottish Government, and Lee Shedden, head of rail sponsorship and regulation for Transport Scotland.

The instrument is laid under the affirmative procedure, which means that it cannot come into force unless the Parliament approves it. Following the evidence session, the committee will be invited to consider a motion to recommend that the instrument be approved. I remind everyone that the Scottish Government officials can speak under the current item but not in the debate that follows.

I invite the cabinet secretary to make a brief opening statement.

The Cabinet Secretary for Transport (Fiona Hyslop): Good morning, and thank you for inviting me to attend to discuss the draft SSI.

Scottish Rail Holdings Ltd oversees the delivery of rail passenger services by its wholly owned subsidiaries ScotRail Trains Ltd and Caledonian Sleeper Ltd, on behalf of the Scottish ministers. The Scottish ministers are the sole shareholder of Scottish Rail Holdings Ltd, which was established as a company under the Companies Act 2006 and is classified by the Office for National Statistics as a central Government body.

In June 2022, an order was made under section 483 of the 2006 act to require the accounts of Scottish Rail Holdings to be audited by the Auditor General for Scotland. That engages the relevant provisions of part 2 of the Public Finance and Accountability (Scotland) Act 2000. Although ScotRail Trains Ltd is a subsidiary company and therefore part of the Scottish Rail Holdings Ltd group in terms of section 479A of the 2006 act, the order did not extend the requirement for the Auditor General to audit individual accounts. That was due to a lack of resource capacity on the part of the Auditor General at the time. That has subsequently been addressed.

I now seek the support of the committee to progress the draft order to enable the accounts for ScotRail Trains and Caledonian Sleeper to be

audited by the Auditor General for Scotland. Currently, the audits for both subsidiaries are undertaken by an external auditor at significant cost, and the order will enable more efficient and effective audits to be undertaken at less cost to the taxpayer.

I am happy to answer any questions that members have.

The Convener: Thank you very much, cabinet secretary. I understand the reasons that you have given.

How much were the people of Scotland paying for the previous audit?

Fiona Hyslop: On the basis that that audit was not being done by the Auditor General, due to lack of capacity, it was outsourced. In 2023-24, the cost totalled £515,000; in 2024-25, it was £490,000. However, we understand that, if the Auditor General conducts the audit, that should be better for the taxpayer.

The Convener: That sum—£515,000—is a huge amount of money for that business. You will save money on that. I assume that there will be some cost to the Auditor General in carrying out the audit. Are you making additional funds available from the money that you are saving, or are you just expecting the Auditor General to do it for free?

Fiona Hyslop: No, we will ensure that the Auditor General is recompensed for the duties that are carried out on behalf of the public.

The Convener: How much will that be?

Fiona Hyslop: Well, the audit has not been done yet.

Lee Shedden (Transport Scotland): There should be a significant saving compared with the costs of the external auditor. We do not yet know the amount, as the Auditor General has yet to advise, but there should be a significant cost reduction.

Fiona Hyslop: It is a good thing.

The Convener: Sorry, I am scratching my head at the fact that the Auditor General has agreed to take it on without any indication of what additional resources will be given to him. If I know the Auditor General, he would not do that. He is quite a sharp cookie, and will have worked out what the implications are, surely.

Fiona Hyslop: I am sure that he has. It is not for me to speak on behalf of the Auditor General, but it has been agreed.

The Convener: Given that it has been agreed, you will know how much money is involved. How much is it?

Fiona Hyslop: We are expecting the cost to reduce to £300,000 to £350,000. It is wider in scope, because public finances are involved, which the Auditor General has expertise in.

The Convener: So you are saving about £165,000?

Fiona Hyslop: Yes.

Douglas Lumsden (North East Scotland) (Con): I have one question. The subsidiaries can be audited by Audit Scotland because they receive all or most of their funding from a public body that is already audited by the Auditor General for Scotland. What percentage of its funding comes from the public? What happens if that funding goes down because more income comes from passengers? Am I understanding the situation completely wrongly?

Fiona Hyslop: I am not quite sure. The funding for Caledonian Sleeper and ScotRail comes to more than £800 million, which is a significant amount. You refer to the duties and responsibilities of the auditor. I am not an accountant and have not exercised audit functions, but the audit function would be the same regardless of whether the income from fares goes up, because the audit looks at the accounts, rather than at the absolute amounts from fares or elsewhere. I hope that I have understood your question correctly.

Douglas Lumsden: I am looking at the Companies Act 2006, which refers to companies that are “entirely or substantially” funded by a public body. You have said that the figure is £800 million.

Fiona Hyslop: It is fair to say that there are a few lines with good levels of income, not least the Glasgow to Edinburgh line, but the vast majority of our rail services, particularly those that are not commissioned by Network Rail, need a substantial amount of public funding. The subsidy that rail receives, not only in our country but across the United Kingdom and elsewhere, is substantial.

Douglas Lumsden: I am trying to work out whether that is where the company gets most of its funding from.

Fiona Hyslop: No.

Douglas Lumsden: The act refers to all or most of a company’s funding.

Fiona Hyslop: The Scottish Government provides most of the funding, because the service is subsidised.

Douglas Lumsden: So, you are saying that it is not most of the funding overall. Is that correct?

Fiona Hyslop: Convener, can you help me understand where the question might be going? I am not really sure.

Douglas Lumsden: I am trying to make sure that what we are being asked to approve today is actually legal.

Fiona Hyslop: Lee Shedden might want to come in and explain the overall funding situation. The vast majority of the funding is public, which is why the company is audited as it is. There is scrutiny in line with the Companies Act 2006, but the relevant provisions of part 2 of the Public Finance and Accountability (Scotland) Act 2000 also come into play because, as you pointed out, the subsidiaries are publicly funded.

Lee Shedden: It is right to say that most of the funding is provided by the Scottish Government, which covers just over 50 per cent of the normal operating costs. On top of that, we also provide funding for the fixed track access charges that ScotRail pays to Network Rail, with that additional figure being about £350 million. That takes the balance way over half, but it is really just a wash through because of the subsidy of Network Rail.

Douglas Lumsden: So, there is not really any risk of us having to undo this because the funding is not mostly public. That is what I am trying to understand.

Lee Shedden: I cannot see a scenario where that would happen, although reforms to rail are currently under way and the funding mechanism might change how that is paid.

The Convener: Cabinet secretary, are any other companies in the same position as ScotRail and are privately audited?

Fiona Hyslop: I would prefer to get back to you about that.

The Convener: Does CalMac Ferries Ltd fall into that position?

Fiona Hyslop: It would, but we have just moved to a contract with direct award aspects. CalMac will exist as an entity that needs to have its own audited accounts. I would rather get back to you about the technicalities of our provision.

The Convener: Most, if not all, of CalMac's money comes from the Government, does it not? It comes from contracts. CalMac gets all its money from us.

Fiona Hyslop: Our transport system is heavily invested in and subsidised by the Scottish Government.

The Convener: I am looking for other opportunities to save money because I do not know what it costs to audit those accounts. Perhaps Lee Shedden knows.

Lee Shedden: That is not my area any more, but the figures are significant because, like ScotRail, it is a big industry.

The Convener: Maybe the cabinet secretary could get back to us after the meeting to let us know.

Fiona Hyslop: I am happy to do so.

The Convener: Thank you.

As members have no other questions, we move to agenda item 3, which is the debate on motion S6M-20027. I invite the cabinet secretary to move the motion.

Motion moved,

That the Net Zero, Energy and Transport Committee recommends that the Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2026 [draft] be approved.—[*Fiona Hyslop*]

The Convener: Thank you. I raised most of the points that I wanted to raise during the previous item. They were about the savings that will be accrued and what the costs will be to the Auditor General. I was slightly wary about whether he will have sufficient funds and resources to cover the additional work, but it sounds as if he has already negotiated those with you, cabinet secretary.

Does anyone wish to raise any points?

Members: No.

The Convener: On that basis, do you want to sum up, cabinet secretary?

Fiona Hyslop: I have nothing to add, convener. I am happy to take the committee's guidance on this.

The Convener: Thank you. The question is, that motion S6M-20027, in the name of the cabinet secretary, be approved.

Motion agreed to,

That the Net Zero, Energy and Transport Committee recommends that the Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2026 [draft] be approved.

The Convener: The committee will report on the outcome of our debate on the draft order in due course. I invite the committee to delegate authority to me, as convener, to approve a draft of the report for publication. Is the committee happy to do that?

Members *indicated agreement.*

The Convener: Thank you. I will suspend the meeting briefly to allow a changeover of officials.

09:16

Meeting suspended.

09:17

On resuming—

Biodiversity Beyond National Jurisdiction Bill

The Convener: Welcome back. Agenda item 4 is consideration of the legislative consent memorandum on the Biodiversity Beyond National Jurisdiction Bill. The bill was introduced to the House of Commons on 10 September and the Scottish Government lodged the LCM on 25 September. The bill will enable the UK to implement the biodiversity beyond national jurisdiction agreement, which seeks to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

We have a very tight timescale for the LCM. We are told that the bill must be in force by January for the UK to meet new treaty obligations. In effect, that means that the committee must agree a report next week. We have therefore had little choice but to agree to have this evidence session this week, even though we are still waiting for a supplementary LCM to be lodged.

I welcome the Cabinet Secretary for Climate Action and Energy, Gillian Martin, and her supporting officials from the Scottish Government. Eilidh Macdonald is head of marine climate and biodiversity and Dr Joanna Dingwall is branch head lawyer. Before we move to questions, I believe that the cabinet secretary wishes to make a short opening statement.

The Cabinet Secretary for Climate Action and Energy (Gillian Martin): Thank you, convener, and good morning. I welcome the opportunity to discuss the Biodiversity Beyond Natural Jurisdiction Bill and legislative consent in relation to it. As you have just said, the bill will implement the BBNJ agreement, which is a significant United Nations landmark agreement to protect biodiversity. We support the aims and we are keen to ensure that, with the Parliament's consent, the UK can ratify the agreement in time for it to take place at the first conference of the parties.

However, our support for the UK bill as introduced is, unfortunately, not straightforward, due to two significant challenges. First, it spans a complex mix of devolved and reserved competences covering a wide range of policy areas, which was not reflected in its initial drafting.

Secondly, the timeline has, from the off, been incredibly difficult. We were not afforded sufficient time prior to introduction to engage with the devolved aspects, which meant that, although we managed to secure rapid amendment to certain clauses for introduction, the remainder have had to be analysed and negotiated in parallel with the bill's passage. Consequently, I have lodged an initial LCM for some clauses, but have reserved our position on the rest.

I must put on record my deep disappointment and frustration that the timeline has been so tight, and that I have not been able to provide a full LCM to the committee. The Scottish parliamentary scrutiny process—our democratic devolved legislative process—should not, I believe, be rushed, and I have highlighted my concerns in that respect to the UK Government. I had a meeting last week with the lead UK minister, Seema Malhotra, and prior to that I set out all our concerns in a letter.

I can speak to the initial LCM that has been lodged and the amendments to clause 18 that were tabled in the House of Lords yesterday, and where we are still engaged in intensive negotiation, I can speak to our general approach to robustly protecting devolution, despite the challenges presented by the timeline.

Negotiations are still on-going, and we want to keep the committee informed of their outcome as quickly as possible. You have my word that we will do so.

The Convener: Thank you, cabinet secretary. It is fair to say that, with LCMs, the committee keeps finding itself in the position of having to agree—or not agree—things without having the time to take evidence. The committee has written twice now to the UK Parliament about that. We wrote to the speaker only three weeks ago, I think, suggesting that, to respect devolution, we ought to be given more time and that the Parliament in Scotland should not be considered just as a rubber stamp, but should be able to actually take part in these things. There are genuinely lots of reasons why I feel uncomfortable about this, as I have done with other such bills. I think that sidelining the Scottish Parliament when we are sitting here, trying to do a job, is disrespectful.

I am glad to have got that off my chest and on the record, as it were. My question is this: what high seas activities intersect with devolved competences? Can you give me some practical examples of where there is going to be friction or where this is going to work in conjunction with what the Scottish Government does?

Gillian Martin: The sorts of activities that will be impacted are in the marine protection and marine research areas, including sea fisheries management, marine licensing and the implementation of international agreements with regard to Scotland. I cannot foresee where things might come into conflict, but it brings us back to the point that you have just made, convener. The

bill covers issues of devolved competence in which the Secretary of State for Scotland would be the sole actor. That would go over the Scottish Government and the Scottish Parliament, and they would not be able to scrutinise the secretary of state's decisions in those areas.

This is a fundamental issue that we have seen with other LCMs in the past—and believe me, I completely share your frustration about the timeline, convener. We have not been able to do our analysis as fast as that, and we need to be sure what we are signing up to. Moreover, as everyone in this place knows, we must ensure that the Sewel convention is adhered to.

Therefore, I cannot give you a list, as such, of all the potential issues—I think that you used the word "conflicts", convener—that might arise, because I cannot foresee what might happen. However, the fundamental point is that we cannot have a situation in which a UK minister is making all the decisions on what is a devolved competence without the consent of the Scottish Parliament and the Scottish Government.

The Convener: It is quite difficult for the committee to consider this, cabinet secretary, if we do not fully understand the implications of what we are doing, because we do not have the final LCM in front of us. That causes me concern.

Let me push you on this issue slightly. Is the Scottish Government seeking concurrent powers to those being granted to the secretary of state in relation to implementing these obligations? Are you looking for the same powers in Scotland, or are you just going to be in a position where you will give those over to the secretary of state?

Gillian Martin: We are exploring all options. I will not alight on one in particular. We are exploring a range of options and my officials have been working hard to try to get an agreement that we could be satisfied with. Obviously, having concurrent powers is an option. If I can put it this way, we are looking at any potential protections to ensure that devolution is properly respected in the bill.

The Convener: Cabinet secretary, I understand that, and I have confidence that you are doing that, but can you try to give me an example, please, so that I can understand it? In what areas are you happy to give over powers to the secretary of state, and in what areas are you not happy to do that?

Gillian Martin: I have to be very careful about what I say, because we are negotiating at the moment, although I understand that the committee might want the detail of what we are negotiating on. Concurrent powers is one area that we are looking at. It is not a case of being able to tell you all the potential areas for compromise; what we want is consent powers. We want consent for Scottish ministers and, indeed, the Scottish Parliament. That is the bedrock of the Sewel convention and the bedrock of devolution. If I were—

The Convener: Cabinet secretary, come on—I am trying to understand. You are bringing this to the committee and I am trying to understand how the committee—or how I, as a committee member—can say that we agreed to the LCM, when you are not telling me anything about it. I am as much in the dark as I was at 5 o'clock this morning, when I was rereading the papers.

Gillian Martin: We are negotiating sufficient protections. A number of protections are on the table, which means that they are matters of discussion between me and the UK Government minister right now. I said that I would try my best to let the committee know the outcome of those negotiations, so that you will have notice of what we have agreed to. However, while those negotiations are on-going, you will have to forgive me if I do not run through a list of potential protections that we would or would not seek to have in the bill, because those are still being negotiated. I hope that you will respect that.

The Convener: I find it impossible to do my job as a member of this Parliament if I do not know that. We are in a position where the House of Lords committee is sitting on 16 December and we have got to report by 4 January. You have promised to keep us updated, and I will look forward to that—maybe it will be under the Christmas tree. We are not going to get this before next week, and we are going to be in recess until 4 January, so I am struggling.

Gillian Martin: I understand that, convener. You say that it is difficult for you to do your job, but I would not be doing my job if I did not ensure that we protect devolution in absolutely everything that comes across my desk from the UK Government.

The Convener: I absolutely concur with that, but we are an armour of this Parliament, as a committee, and one of our jobs is to scrutinise the things that are put before us. It is difficult to do that if we do not have that information.

Michael Matheson (Falkirk West) (SNP): Parts 2 and 3 of the bill provide regulation-making powers to UK Government ministers. What is the Scottish Government's position on those powers?

Gillian Martin: At the moment, we cannot agree to part 2, because the schedule will impose obligations relating to the collection and utilisation of MGR and associated DSI from a BBNJ. That includes—

Michael Matheson: I am sorry, cabinet secretary, but can you decipher that for me, please?

Gillian Martin: Yes, I can. Clauses 2 to 10 impose obligations relating to the collection and utilisation of marine genetic resources. I am sorry for using acronyms, which I always said that I would not do. I usually like to give the full names for things. These clauses impact on devolved matters through the level of impact of the provisions on Scottish actors. We think that the impact will be limited, but the bill provides an exemption of the provisions for fishing and fishing-related activities. Only a small number of organisations are involved in collecting and utilising marine genetic resources. However, part 2 raises questions about the impacts on devolved matters and the role of devolved institutions.

As I said, the clauses are still subject to on-going negotiation with the UK Government in order to bottom that out. As we explore the protections with the UK Government, we need first to ensure that we have consent associated with any devolved areas, but we are hopeful that we can then conclude the negotiations.

That is, in effect, a summary of what is in part 2 and why it is important that we have consent.

09:30

Michael Matheson: Just so I understand this clearly, you are saying that the Scottish Government is opposed to all of part 2.

Gillian Martin: Clauses 2 to 10 are the ones with which we have issues.

Michael Matheson: In part 2.

Gillian Martin: In part 2.

Michael Matheson: And part 3?

Gillian Martin: I am just double checking that I have got that right. It is part 2, clauses 2 to 10.

Eilidh Macdonald (Scottish Government): Yes, that is right. We provided no position in the initial LCM for all of part 2. As the cabinet secretary has just set out, clause 9, which gives the secretary of state sole power potentially to legislate in devolved areas, is one particular area of concern that has been raised through letters from this committee and from the Delegated Powers and Law Reform Committee.

Michael Matheson: And part 3?

Eilidh Macdonald: Sorry—part 3, which is on area-based management tools, is another area on which no position was taken in the initial LCM, and which is subject to on-going negotiations.

Michael Matheson: Okay. Your position is that you are opposed to the existing provisions in part 2, on the regulation-making powers—subject to negotiations, from what you have said.

Gillian Martin: Yes—subject to negotiations. As it stands, we cannot support those provisions, and we need to ensure that the negotiations put mechanisms in there that give the Scottish Parliament oversight and respect devolved competence.

Michael Matheson: That is clear to me with regard to part 2.

With regard to part 3, you are opposed to clauses 11 and 13, subject to negotiation.

Gillian Martin: Subject to negotiation.

Michael Matheson: You are opposed to it as it stands—is that correct?

Gillian Martin: Yes.

The Convener: The next questions come from Mark Ruskell.

Mark Ruskell (Mid Scotland and Fife) (Green): Cabinet secretary, can you say a bit more about area-based management tools and how you anticipate the legislation working in a devolved context? What is the potential fix or amendment, or negotiated outcome, that you are looking for in relation to those tools? I am just trying to picture what, in practice, this all actually means.

Gillian Martin: At present, clause 9 provides the power for the secretary of state to make regulations in relation to genetic resources, including benefit sharing, enforcement and conflict avoidance. That may apply to devolved matters, and there is currently no requirement in the bill to secure the consent of Scottish ministers for the secretary of state to act in those areas that are within devolved competence.

The fix would be to put in the bill a provision that the secretary of state would seek the consent of the Scottish Government and the Scottish Parliament. I have had a meeting with the UK minister to outline why that is so important.

Will that impact on a lot of our activities? No, but the fundamental bedrock is to ensure that the UK Government does not act in a way that overrides devolved competence, so that is what we are seeking.

My Scottish Government legal colleague has asked to come in.

Dr Joanna Dingwall (Scottish Government): I thank Mark Ruskell for the question about area-based management tools. We are focused in particular on clause 11 in that regard.

The BBNJ agreement is, at present, essentially a framework agreement that puts in place processes for the eventual adoption of area-based management tools. Right now, we do not know exactly what those will be, per se. We could anticipate that they would include marine protected areas, and there might be other types of controls on marine activities that mean that, in effect, they would become area-based management tools.

Our main focus is clause 11 because it is clause 11 that enables the secretary of state to implement the area-based management tools through regulation. The particular concern for the Scottish Government is to make sure that, for any area-based management tools, Scottish ministers have an appropriate oversight role and input regarding the impact on Scottish actors. That could take the form of consent or, as the cabinet secretary has explained, it could be concurrent powers or some other approach. We are considering all options, and that is the subject of on-going negotiations.

Gillian Martin: Clause 13, which is on emergency directions, has also been negotiated, and it is probably a more straightforward area of negotiation. However, clauses 11 and 13 need to be bottomed out, because we need to make sure that, even in emergency situations, we are aware of what is happening and that we are involved when the secretary of state takes action.

Mark Ruskell: I think that I understand that. We are talking about the waters beyond 200 nautical miles. Is much of the Scottish fleet operating beyond 200 nautical miles? Are we looking mostly at the pelagic sector?

Dr Dingwall: There are two elements to that. On the one hand, there could be activities in the area beyond the national jurisdiction, which is 200 nautical miles. In some respects, the BBNJ agreement is trying to create a regime for the future, because the types of activities that take place out there are increasingly different. As the cabinet secretary has already mentioned, at the moment there is not a huge amount of Scottish activity out there, but it is a growth industry.

The other thing that I would flag up is that Scotland is in a unique position as the part of the UK that has an area of extended continental shelf that goes beyond 200 nautical miles, because of the prolongation of Scotland's continental shelf. The UK has claimed that.

Under the BBNJ agreement, area-based management tools and protections could be put in place for that area, where Scottish ministers currently have executive functions in relation to the seabed and subsoil. Those area-based management tools would relate to the water column that is beyond 200 nautical miles, but which lies within our extended continental shelf. We have a particular interest in respect of our executive powers there.

Mark Ruskell: I can see that it is about the ecological coherence with the continental shelf and how it extends beyond that. I think that that is a good example.

You mentioned notification, storage, access and reporting around marine genetic resources, as well as co-ordination of potential area-based management tools. How do you anticipate that being organised? Would the UK Government lead on it, or would the Scottish Government want to feed in? I am just trying to picture what the activity is and the reality of the Scottish Government's function within that.

Gillian Martin: In reality, most of the actions that are associated with the bill will be exercised by UK Government ministers. We do not have any problem with that. It is just a case of them having our consent to do so. In emergency situations, such as conflict between marine craft, the UK Government has responsibility.

The consent of Scottish ministers is the issue here, not the deployment or the response.

Mark Ruskell: Some of those functions could therefore be co-ordinated at the UK level, but the Scottish Government would seek to input into that process rather than leading on it.

Gillian Martin: Yes. It is about awareness and consent.

Mark Ruskell: I think that that is clear.

The Convener: Douglas Lumsden is next, and then I will go to Bob Doris.

Douglas Lumsden: I want to continue on the theme of area-based management tools, to get a better understanding.

Is it possible that the UK Government could bring in another highly protected marine area by the back door? Can it make changes to toughen up the rules about where fishermen can fish?

Gillian Martin: I suppose that the provision of area-based management tools, such as MPAs, would be a component of that. That is why it is so important that we have consent.

I do not know whether I can answer the question about HPMAs, but, as Douglas Lumsden has pointed out, fisheries management tools are the domain of the Scottish Government and it is for the Scottish Parliament to scrutinise what is happening in that area. I do not think that that potential scenario is likely to happen.

In effect, marine protection is a power that sits with the Scottish Parliament and the Scottish

Government, so we would not want to see a UK Government minister having powers over marine protection.

Eilidh Macdonald: It might be helpful to give a bit of context for what the decisions would be and their status. Those decisions will be taken at the BBNJ conference of the parties, which is the international decision-making body. We expect it to meet for the first time next summer. There would be a period leading up to meetings of the conference of the parties, and we would expect to be involved, as part of the memorandum of understanding between the UK Government and the devolved Administrations—the concordat on international relations—in the lead-up to the UK taking its seat at the conference of the parties. Decisions would be made there, together, on what is necessary to protect biodiversity in the high seas, and then—this is the bit that we are referring to—those decisions would be implemented under clause 11, and clause 13 in emergency situations, with the power to make regulations to do so. It is not so much that the UK Government would have a policy of its own to introduce something; it is a decision that would be taken with the involvement of the Scottish Government in the lead-up to those meetings—then, the decision would be taken together by the signatories to the agreement.

Douglas Lumsden: So it is not the case that the UK Government can change, by regulation, where fishermen can fish. That would be an agreement between—

Gillian Martin: It could sign up to something that is decided on at the conference of the parties. Obviously, Scotland does not have a seat, because we are not a nation state at the conference of the parties, so we are reliant on the UK Government to negotiate the situation on our behalf. We are looking for mechanisms in the bill to ensure that the Scottish Government is consulted and included in the discussions at the conference of the parties. When an agreement is made by the conference of the parties, we mean to have consent over its devolved aspects, because we cannot have the implementation of things that we have not signed up to. It is as simple as that, I suppose.

Douglas Lumsden: In that case, may I ask about consultation and engagement with the fishing industry? Has the industry had an input to this? Has it raised concerns about the legislation?

Gillian Martin: That discussion might more be one to have with the UK Government, but Scottish institutions are included in the explanatory notes for the bill. As the guidance is developed after the bill is passed, we want to ensure that the Scottish Government has engagement with all stakeholders that might be affected. The UK Government is running a public consultation, which was published on 21 November and which closes on 19 December, on the implementation of part 4 of the BBNJ agreement, as it relates to licensable marine activities. We were involved in what the consultation looked like, so it is a joint consultation. For information, I say to anyone who is watching this evidence session and is concerned about licensable marine activities that they have until 19 December to put their points. However, once the bill is enacted and we have a better understanding of where we have got to on consent, we will want to ensure that all our Scottish stakeholders have the opportunity to be involved in the guidance that we put together.

Douglas Lumsden: Yes, that is my concern—that the Parliament will be asked to approve this without understanding the implications for Scottish fishermen.

Gillian Martin: There is another aspect to this, which is about ascertaining the breadth of activities that might happen in this area. The consultation will also give both Governments an understanding of what is taking place beyond national jurisdictions. I have given the convener a few instances of things that we know with regard to marine research and whatever, but, through the consultation, we hope to have a better understanding of who is carrying out what activities, and what the connection is to both the UK and Scotland.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I am going to try valiantly to understand this. Cabinet secretary, as things stand, what regulatory or legislative powers does the Scottish Government have in relation to boundaries beyond national jurisdictions for the Scottish fleet—for Scottish vessels that go out beyond 200 nautical miles? An agreement is going to be reached internationally on all that stuff, so what levers does the Scottish Government have within its devolved competences?

Gillian Martin: I will have to turn to the lawyer for that, if that is okay.

09:45

Dr Dingwall: We currently regulate some activities that are beyond national jurisdiction. The way in which the legislative competence of the Scottish Parliament works under the Scotland Act 1998 relates to the phrase “in or as regards Scotland”. The “as regards Scotland” element is really crucial, because we are talking about activities that have some nexus with Scotland—for example, a Scottish actor undertaking a particular activity beyond national jurisdiction. Because the marine environment is a devolved matter, we have legislative competence beyond national jurisdiction, provided that it is “as regards

Scotland". I will give you a concrete example. Scottish ministers have the licensing authority for deep seabed mining operations beyond national jurisdiction, but no Scottish actors are currently doing that, and there have been no applications. Things such as that are currently regulated.

Another example is that, under our current marine licensing regime, we already legislate for certain activities anywhere at sea. This is where clause 14 of the bill comes in, with the rethinking of the division of responsibilities for marine licensing between the UK and Scotland. At the moment, we have some administrative arrangements in place, meaning that we use the marine management organisation to regulate some Scottish actors beyond national jurisdiction; that is within the legislative competence of the Scottish Parliament. I will give you the concrete example of rocket launches in Scotland. At the different stages of a rocket launch, parts peel off, typically falling into the ocean. That might need a licence, possibly from the MMO at the moment or from Scottish ministers in future.

Those are the main activities that are beyond national jurisdiction now, but we are conscious of the fact that a lot of activities are coming along, including marine geoengineering, carbon capture and storage, and different types of energy, such as wave converters. That takes us back to the complicated mix of reserved and devolved responsibilities in different areas.

Bob Doris: Thank you for making that tangible and concrete, Dr Dingwall. It has been quite a challenge for me this morning, but I think that I understand that.

The conference of the parties that the cabinet secretary has referred to will involve the UK Government trying to reach an international agreement on a range of matters that are reserved to it—quite rightly, under the current constitutional settlement, anyway—and on matters that are devolved. That means that both Governments in Scotland will be in lockstep in relation to those negotiations. What is the process for the Scottish and UK Governments signing up to that? Has the Scottish Government been given any assurance in relation to any of that?

Gillian Martin: That is why it is important that the Scottish Government has a presence at any conference of the parties, wherever that might be. Before the UK Government goes to negotiate at a COP—at COP30 last month, for example—it will give us an indication of how it is negotiating. When you are at COP, the hope is that you are at least able to find out from officials on the UK ministerial team how the negotiations are going.

It is not very official and not very concrete, unfortunately. We do not have a particular constitutional role in the UK negotiations. However, the Northern Ireland Executive and the Welsh and Scottish Governments usually attend the conference of the parties, and we all have meetings with the UK Government ahead of attendance. I would prefer it if those discussions with the UK Government were formalised.

As it stands, the UK Government makes decisions as to what it can sign up to on behalf of the whole UK. I would like the Welsh and Scottish Governments and the Northern Ireland Executive to be more involved in those agreements but, as it stands, they are not. How much the devolved nations are included also depends on the flavour of the UK Government. Ahead of COP30 in Brazil, we had a certain amount of sight on the UK's negotiations, and we expect that respect between the devolved Governments and the UK Government to continue.

The fundamental problem with the BBNJ bill is that, when it was put together, there was a complicated mix. We heard about rocket launches, carbon capture and storage and all sorts of things that may or may not happen in those areas beyond jurisdiction. It is a complicated mix of devolved and reserved impacts. That is why it is important that, as we agree to the BBNJ bill and there is legislative consent, we are absolutely satisfied as a Parliament and as a Government that we will not have situations in which future secretaries of state could make decisions on what happens in the areas that affect devolved competence.

Eilidh Macdonald: I will add a bit to that. You asked about forming positions at the conference of the parties for the BBNJ agreement. On where we are heading with things, as the cabinet secretary said, we are all working to very tight timescales for a very complex and technical bill—I think that that is what the Delegated Powers and Law Reform Committee called it. As the cabinet secretary set out, we have been exploring legislative and non-legislative means to protect devolution and ensure that Scottish ministers and institutions have their right and proper place.

We expect—this is part of what we will bring forward—that there will be non-legislative agreement between the Governments, which we will share with you, as well as any on-bill changes to protect devolution. We have already discussed that with the UK Government and we expect that the BBNJ agreement conference of the parties will follow the concordat on international relations, which is part of the memorandum of understanding between the UK Government and the devolved Administrations. It stipulates that we will be consulted on matters to be decided at the conference of the parties should they have devolved impacts. We are exploring that with the

UK Government, but we expect there to be quite weighty involvement when there are devolved matters.

Bob Doris: Irrespective of what is agreed at the conference of the parties, I take it that the UK Government will have to bring in a suite of powers and regulations to give effect to whatever is agreed internationally, in order to make sure that organisations across the UK comply with the UK's international obligations. That is perhaps where it impinges on devolved competences.

Dr Dingwall said that agreements might be made more generally, but there are deep seabed mining and marine licensing regimes to consider. I will not comment on rocket launches, but there is also carbon capture and wave power. The Scottish Government would be acting in accordance with its rules, licensing regimes and regulations, but there would be a UK layer that could dictate what that looks like at a Scottish level on matters that were previously devolved. Is that where the rub is? Is that why you are looking for consent to be required from the Government and the Parliament, rather than just to be consulted?

Gillian Martin: A requirement to be consulted is not worth pursuing, because what does that mean in practice? We could just be told what is happening quite quickly before something is agreed, or whatever. With the BBNJ bill, you can see how late it was when we were able to find out that devolved competences were being looked at.

It comes back to the fundamental point that, in the future, in areas known and unknown, a secretary of state could in effect leapfrog the Scottish Parliament. Well, they would not be leapfrogging the Scottish Parliament because, if we consent to the bill as is, that would be perfectly legitimate. However, we cannot consent to the bill as it is. We need consent so that we have the protection of devolved competence and we cannot be leapfrogged in future situations.

Bob Doris: I understand that. The word "alignment" is forming in my head. I am thinking about a situation in which the UK Government decides, perfectly reasonably, that, under its international duties, it wishes—after consulting the Scottish Government—to implement its own regime within international boundaries, beyond the Scottish Government's direct control. If there is one regime there but a different regime within Scotland's boundaries, is there any possibility that the UK Government could think, "We're doing carbon capture differently beyond 200 nautical miles; at 195 nautical miles, it's being done in a different way, so let's align those"?

I am thinking about the idea of alignment—I am not saying that there is a danger of alignment, but we could perhaps have a situation in which there is one regime for both the international jurisdiction and the Scottish jurisdiction, as the UK Government could bring in conditions for something that is overtly devolved.

I hope that I have expressed that correctly. My question is about the idea of alignment between what we currently do within the boundary of 200 nautical miles, which we keep hearing about, and what will be agreed internationally beyond 200 nautical miles.

Gillian Martin: I suppose that that is a possibility. Again, I will defer to the lawyers to give me the lowdown on what that could mean, because I do not know how I can answer that without legal advice.

Bob Doris: I think that we are all flying blind.

Gillian Martin: Yes. That is the issue: what could happen in the future and how might that have an impact? You have raised a good point. I will bring in Joanna Dingwall.

Dr Dingwall: It is a good point. Part of the difficulty is that there are quite complicated competences in the marine space in particular. It would really be considered case by case, depending on the types of activities that are involved.

Under international law—the United Nations Convention on the Law of the Sea—there are typically various high-seas freedoms, so there would be limits on the extent to which the UK could regulate in relation to the water column, say, beyond 200 nautical miles.

On certain topics, it would be hard to conceive of there being comparable regimes within national jurisdiction waters and beyond. It would be a case of looking at all the different activities and thinking through the current legal rules, devolved and reserved competences and executive competences, and then working out things such as high-seas freedoms under the UN Convention on the Law of the Sea.

Gillian Martin: A general point is that, because we cannot foresee what might happen if we did not have consent, or if we were not even merely consulted—again, I think that "consult" is a very woolly term, and we not should sign up to being consulted; we should have consent—we could not, case by case, figure out the consequences that might arise in whatever scenario there was. Without having consent, Parliament would not have the ability to scrutinise the consequences of a decision that was being made in which we were not included.

Bob Doris: I am not sure where that leaves the committee, but thank you, cabinet secretary.

Gillian Martin: We are trying to negotiate. As I said, we want to be able to tell the committee that we have been successful in our negotiations and that we have come to conclusions with which we are satisfied, in the same way that we were with the amendment to clause 18 that was tabled at the House of Lords bill committee yesterday. We are happy with that amendment, which related to environmental impact assessment obligations. It can be done, therefore, and we are hopeful that it will be done.

The Convener: I wonder whether you can help me on a wider point, cabinet secretary, so that I can understand it. There are, I think, 193 UN member states plus two observers, so there is a total of 195. There are 75 signatures to the BBNJ agreement, which means that 38 per cent of UN members have signed up to it. We are, therefore, going to be putting in force an agreement that fewer than half of the member states of the UN have agreed to.

Can you explain to me how that is going to be enforced? It is not good enough just to say that Scotland will enforce it with the actors that it has. How are we going to do it on the high seas, or are the high seas just going to remain the high seas and anyone can do whatever they want? We do not seem to have full agreement to all of this. I just want to understand what policing is going to be done. What policing do you know—

Gillian Martin: I can understand why you are putting that question to me, but we have not been a signatory to the BBNJ agreement as a nation state—

The Convener: If you are signing up to the LCM, you must have asked that question. You would not sign up to something without knowing how it will be policed, surely.

Gillian Martin: With regard to the previous question about who would enact everything associated with the BBNJ, it is the UK Government. We would scrutinise the devolved areas on which it impinged, and Parliament would scrutinise that as part of having a consent mechanism embedded in the bill. I cannot pick out a potential scenario and predict what would happen and how the UK Government would respond to it. It is an impossible question to answer.

The Convener: I am saying that, if you sign up to or consent to an agreement, you must know what Scotland's obligations are. I am asking you whether you know what they are, and you are not saying anything at the moment.

Gillian Martin: You are creating potential scenarios in which the UK Government acts in an area of devolved competence and you are asking how we would interact with that. That is why it is important that we have the consent mechanism. I cannot possibly answer that question at the moment, but Joanna Dingwall might be able to help. Maybe I do not understand your question.

The Convener: I can rephrase it, if you like.

10:00

Dr Dingwall: I will have a go at it. It is a difficult question that has several layers. On the one hand, you are right that the BBNJ agreement is not a universal agreement, so it very much relies on states parties enforcing it against their nationals, primarily, and against their Government vessels and suchlike. It relies on everyone enforcing it against their own people and vessels. Various civil and criminal sanctions for people who do not comply are already contemplated in the bill.

Enforcement on the high seas is a challenge, but there are methods such as remote surveillance. Something to keep in mind is that actors on the high seas will typically be part of a corporate structure with funding and financing, and important legalities are involved in that. There is a huge investment risk for people who go out there and act illegally. We see that with deep seabed mining, for example.

The Convener: It is only illegal if you are signed up to the agreement. If you are not signed up to the agreement, you would not be doing anything illegal, and 62 per cent of the world is not signed up to the agreement. That is my problem.

Dr Dingwall: Our focus is on ensuring standards for Scottish actors.

The Convener: I am not sure that there is an answer to my question.

Kevin Stewart wants to come in.

Kevin Stewart (Aberdeen Central) (SNP): I have a couple of simple questions. Cabinet secretary, neither you nor the Scottish Government has signed up to the agreement because it is an international agreement and, as you pointed out earlier, we are, unfortunately, not a nation state at this time. Would that be correct?

Gillian Martin: That is true. We are not a signatory because we are not a nation state. We support the aims of the BBNJ agreement and are working hard with the UK Government to support ratification, but your fundamental point is absolutely correct. I was not at the negotiations on the BBNJ. We do not have a seat at the table of the conference of the parties. We rely on the UK Government to give us information about how it is negotiating and what is it is negotiating about.

We have no issues with the BBNJ agreement, but we have to make sure that, when it is enacted by the UK Government, we have consent in

relation to the devolved areas in which we have an interest. That is the least that we should expect.

Kevin Stewart: It is not great that we are dealing with the LCM in this manner and that, once again, the UK Government seems to be riding roughshod over devolved competences. It would be much better overall if this was an independent Parliament deciding on this as a whole, as an international signatory—

The Convener: Mr Stewart, we leave politics at the door, and I do not think that that is an appropriate question.

Kevin Stewart: This is a Parliament—

The Convener: Mr Stewart, with respect, you have made your point, which you have got on the record. I actually do not think that it is appropriate and I am not going to allow—

Kevin Stewart: I am sorry convener, but this is a Parliament and we have politics—

The Convener: Mr Stewart, are you challenging my position as convener?

Kevin Stewart: I am suggesting, convener, that you should point out to me where, under standing orders, you feel that my question is inappropriate.

The Convener: I have made a ruling from my position as convener. You have made your point. You have got it on the record. I do not think that it is appropriate to take it any further. If you want to challenge my position, I will suspend the meeting and I will deal with it in private. What would you like me to do?

Kevin Stewart: We will deal with it after the meeting, convener.

The Convener: Thank you.

As there are no other questions, I thank the cabinet secretary for giving evidence this morning. I will suspend the meeting to allow for a changeover of witnesses.

10:04

Meeting suspended.

10:15

On resuming—

Ecocide (Scotland) Bill: Stage 1

The Convener: Welcome back. Our fifth item of business is an evidence session on the Ecocide (Scotland) Bill with the member in charge, Monica Lennon. I welcome Monica's committee substitute, Sarah Boyack, to the meeting.

This will be our final evidence session before the committee reports on the bill's general principles early in the new year. No stage 1 deadline has been set by the Parliamentary Bureau yet, but the committee has proposed a deadline of the end of January. I believe that we are close to agreeing on a timeline, and will hopefully do so this week.

I welcome to the meeting Monica Lennon MSP and her supporting officials: Roz Thomson, the principal clerk in the non-government bills unit and Ailidh Callander, a senior solicitor from the legal services office. Both are from the Scottish Parliament.

Monica, as is often the way, I will start with some easy questions, but before I do, you get to make an opening statement.

Monica Lennon (Central Scotland) (Lab): Good morning. I welcome the opportunity to give evidence on the general principles of the Ecocide (Scotland) Bill, and I thank the committee for the extensive scrutiny that it has undertaken so far.

Scotland must be more ambitious and effective when it comes to environmental protection. I hope that the bill helps us to recognise that the most egregious acts of environmental destruction must be treated as the serious crimes that they are.

I have found the scrutiny process at stage 1 incredibly valuable, not least in providing reassurance to stakeholders about the bill's scope and, crucially, what it will not do. Let me be crystal clear that the bill will not criminalise legitimate licensed activities. It will not go after businesses that are operating responsibly under current regulations. I will happily support the Scottish Government's proposed amendments on permits, which will make that fact abundantly clear.

I also reassure the committee that the bill will not clog up the planning system. As a former planner, I know that the planning system already considers environmental impacts and requires mitigating measures to prevent long-term harm. The bill is designed to sit far above that, at the top of the regulatory pyramid, to deter and punish acts of severe environmental destruction.

The definition of ecocide in the bill is not a new legal invention but is underpinned by familiar

concepts in existing law, drawing on the Regulatory Reform (Scotland) Act 2014—known as the RRA.

I welcome the Cabinet Secretary for Climate Action and Energy's confirmation that the Scottish Government is content with the definition. However, simply tweaking the RRA is not enough. The offence under the RRA is one of strict liability; it is not designed for the extremely serious nature of an ecocide offence. For example, changing the penalties from a maximum of five years imprisonment to eight years will not fundamentally alter how that offence functions.

That is why we need a stand-alone crime where the mental threshold and the associated penalties are high and which is designed to sit above the RRA. The new offence will give the Crown Office and Procurator Fiscal Service an essential additional option for prosecution for the most serious environmental crimes.

Furthermore, I welcome the Government's proposed amendments that would ensure if the higher threshold for an ecocide conviction cannot be reached, alternative penalties under the RRA are still available. That tiered approach has precedent in other legislation and is a sensible step that strengthens the bill.

Turning to deterrence and changing behaviours, the severity of the penalty is an intentional and necessary deterrent. As the Law Society of Scotland observed in their submission, the new offence is expected to foster a

"change of behaviour towards environmental risk",

acting as a clear, dissuasive message to those who might cause environmental harm.

This is about changing corporate culture and sending an unmistakable signal that Scotland places the value of its nature above illegal profit.

The support for the bill comes not just from environmental groups, but from within the compliance system, including Scottish Environment Protection Agency trade union members, who recognise the limits of the current legal framework. I am confident that the issues raised during stage 1 were carefully considered during the drafting process. However, I am pragmatic and have been listening. Where there is significant evidence that a tweak would strengthen the bill, I am prepared to act. I will happily work with the Government on amendments, specifically on: a clear permit defence, re-examining the reverse burden of proof, amending the reporting obligation and adding an explicit alternative conviction procedure, to ensure that the bill is robust and delivers its core purpose. Finally, although my bill does not address the issues of existing resources for regulatory bodies or the lack of prosecutions under existing legislation, I hope that those areas will be addressed by the Government as a complementary action to the bill.

The movement to criminalise ecocide is international, with many countries and the European Union recognising the need for action. Scotland's nature is extraordinary, but we are also one of the most nature-depleted countries in the world. The level of support for the bill should reassure us that the people of Scotland care and that they want to see severe environmental damage criminalised to protect current and future generations. That is why I hope that the general principles of the bill will be welcomed by the committee. I look forward to your questions.

The Convener: Thank you, Monica. I am glad that you made your opening statement, because it negated some of my questions. I will go to the questions that I am still keen to ask.

Can you briefly outline what engagement you had with stakeholders and the wider public before you lodged the bill? Were stakeholders either for or against any areas of the bill?

Monica Lennon: There was a 14-week consultation on the proposal, which started in November 2023 and ran until the beginning of February 2024. There was a significant response to the consultation, with more than 3,379 responses, including from 134 organisations. The majority of responses were from members of the public. A high majority—just over 95 per cent—of responses were fully supportive of the proposals; a further 3 per cent were partially supportive; and a very small minority of 34 respondents, or just over 1 per cent, were fully opposed to the proposal. The convener asked about opposition. Only one organisation, the Scottish Fisherman's Federation, was fully opposed to the proposed bill.

Alongside the formal consultation process, I initiated an expert advisory group, bringing together the legal profession, academia, trade unions, scientists and people who represent the community voice. A bit like the committee, it has been another forum for robust scrutiny and challenging questions. There have been drop-in sessions in the Parliament and people have asked their MSPs about the bill, and there has been a lot of media interest in it. Alongside the formal process, I feel that the initial consultation was extensive and seemed to capture the public's imagination.

The Convener: You have heard during the evidence sessions, which you have attended, that there is some concern about an overlap between section 40 of the RRA and the bill. The cabinet secretary has alluded to the fact that, in principle, she is happy with the general principles of the bill. Can you explain to the committee and to me why

you decided to pursue a separate offence, rather than amending section 40 of the RRA?

Monica Lennon: It is fantastic that the Scottish Government is supportive of the general principles of the bill. For a number of years, we have had discussions about the direction of travel with ecocide law internationally, particularly given the decision that has been taken by the EU. I am very aware of the Scottish Government's policy to keep pace with the EU.

We wanted to explore how the current regulations work and whether simply amending the RRA, if that were possible, would be sufficient. My position is that that would not be sufficient. As I touched on in my opening remarks, the RRA includes a strict liability offence, whereas, as I hope the committee has learned through this process, when we talk about ecocide offences, we are talking about events that cause the most severe environmental harm, which would probably happen only once every 10 to 20 years.

In relation to the gravity of the harm and of the penalties, the bill differs from the RRA because, under the bill, it must be proven that the guilty party had a guilty mind when carrying out a guilty act. That is not the case under the RRA in relation to strict liability. Under the bill, it must be proven that someone acted with intent or recklessness, and it is right that there should be that test, because we consulted on the punishment being up to 20 years in prison, which the public have said that they support.

For other reasons that the committee is aware of, the Government or the Parliament could amend the RRA to increase the penalties, but that would not fundamentally change the offence—it would still be a strict liability offence.

I prefer to think of this as a regulatory pyramid, which has been mentioned by other stakeholders, including the Environmental Rights Centre for Scotland. It is not about having one or the other. I hope that having an ecocide offence at the apex of the pyramid will strengthen the RRA. Obviously, I will consider the amendments that are lodged, but, fundamentally, we need both a stand-alone bill on ecocide and the RRA to operate properly. I know that people have concerns about the enforceability of provisions in the RRA, given the low number of prosecutions. However, the need for a separate offence has come through in the consultation and in a lot of the evidence on the bill.

Douglas Lumsden: You said that it is not about having one or the other. If there was not enough evidence to go down the ecocide offence route, the Government could switch to the route involving amending the RRA, but, as we heard from the Government last week, that would require alternative conviction provision. Since you introduced the bill, have you had any discussions with the Government about alternative conviction provision?

Monica Lennon: During this parliamentary session, I have had regular discussions with the Scottish Government about how we can give effect to an ecocide law in Scotland. Those discussions have included the issues that the cabinet secretary referred to in her evidence and the issue that you have raised today.

I have been quite clear with the Government that I am very open to what it and, indeed, other members bring forward. It is clear that there is precedent in law for prosecutors and the courts to consider other routes to prosecution. That is the case with domestic abuse legislation, and there are other such examples. I want the bill to provide another tool in the toolbox. I do not want to tie the hands of prosecutors and the courts, and I do not think that the bill will do that. However, if a stage 2 amendment would help to provide clarity, I am absolutely happy to work with the Government on that.

Douglas Lumsden: The Crown Office and Procurator Fiscal Service was concerned that, if prosecutors went down the ecocide offence route and someone was proved to be not guilty, they would not be able to go down the RRA route afterwards. However, last week, the Government said that alternative conviction provision would enable prosecutors to go down the RRA route if it looked as though they would not get a conviction by going down the ecocide offence route, and the Government seemed open to that. Have you had any discussions with the Government about how such provision could be added to strengthen the bill?

10:30

Monica Lennon: I can reassure the committee that I considered that at the drafting stage. That is not covered in the bill, but the constructive points made by the Crown Office and Procurator Fiscal Service and by the Government have been helpful. A number of statutory provisions already allow a court to convict for an alternative crime to the charge that is in the indictment. That means that the alternative charge is implied in the libelled charge without having to be specified. The minister and her officials have said that, in this case, that would mean that, if the charge in relation to ecocide is not proved, it would be possible to convict the accused of the lesser charge of significant environmental harm under section 40 of the RRA, if the facts proved against the accused amount to that offence. I do not have a problem with that.

I have had informal discussions with the Government since last week, and what I am hearing loudly from the Government is that it supports the general aims. It has set out areas where amendments would be desirable, and I am more than willing to work with the Government on those.

Douglas Lumsden: I am trying to understand how the bill could be amended to incorporate the alternative conviction provision. I guess that the Government might bring forward a proposal on that at the next stage, if the bill gets that far.

Monica Lennon: The question is fundamentally about the power to convict under alternative offences. It is a matter of ensuring that that discretion still applies to the Crown Office and Procurator Fiscal Service. After my time discussing that with the committee, I will be happy to discuss it with the Government. If the Government wants to lodge amendments on that in the cabinet secretary's name I will respect that process and work with the Government; I am not putting up any obstacles to that. I think that the issue can easily be cleared up at stage 2.

Mark Ruskell: I want to ask you about the stand-alone offence of ecocide. Is there something quite different if somebody is convicted under the heading of ecocide? Leaving aside the penalties, which are obviously a lot higher, is there something quite different between that and a conviction under section 40 of the RRA? Is there a sense that a corporation might be fined or get a heavy penalty under section 40 of the act whereas, to a certain extent, individuals can hide behind that within a corporation? The committee is still trying to wheedle out the real strength of the stand-alone offence, so it would be good to get any reflections that you have on that from your expert working group or from wider consideration, referring to the value of the ecocide offence as compared with what COPFS might pursue through section 40 of the act, if it were to make a choice between one and the other.

Monica Lennon: Stepping back from some of the more legal and technical points, I heard from the expert advisory group and many other stakeholders that, when ecocide is discussed internationally and with corporate organisations, it brings to people's minds the risk of being prosecuted for ecocide and the huge reputational damage that comes with that. Serious people understand that we are talking about the most catastrophic environmental harm; we are not talking about low-level offences that can be covered by the RRA just now. I hope that the bill will ensure that decision makers and the controlling minds of organisations will not be at all flippant or casual with environmental risks. It is about changing corporate behaviours and changing attitudes to risk.

In a Scottish domestic setting, the bill will give our compliance system and our justice system another lever to pull. I hope that the bill, if it becomes law, does not have to be utilised, because if we were to deal with an ecocide event in Scotland, that would be very serious. The intention is for the provisions in the bill to be a strong deterrent, given the reputational risk to corporations.

We also need to consider the activities of organised criminal gangs and remember that environmental crime is a fast-growing area of crime around the world. There is a particular study of it in the European context, and it has been noted that it is seen as low risk in terms of fines and custodial sentences. There is a feeling that the consequences are not that serious. With ecocide law, we are trying to change that. It is about ensuring that Scotland keeps up with our neighbours across the European Union and the many other countries around the world that are seeking to act.

We have talked a lot about what is happening in the EU to criminalise ecocide-level crimes. There is an important distinction between that and what we have in regulations at present. The bill is about saying to people, "You could go to prison for up to 20 years," and it is about getting that into the mindsets of decision makers as well.

Last week, Douglas Lumsden put a question to the cabinet secretary—I think that he was playing devil's advocate—about whether the bill would put off investors from coming to Scotland. However, the concern that we should all have is why any corporation would want to get away with ecocide. It is about making sure that ecocide is beyond the pale and something that will not be tolerated in any jurisdiction. The examples of the revision to the Belgian penal code and what we are seeing in France and other countries show that Scotland will not be the first to act, or the outlier. We are seeing many other jurisdictions do this.

Mark Ruskell: We have received some evidence on the bill's provisions being a deterrent. Will you expand on that? I am interested in what has been put in place in the European Union. As you say, there is now more emphasis on ecocide as a criminal offence. How has that changed the conversation—or not—with regulators and corporations? What is the impact of having ecocide in legislation? Is it a deterrent? What evidence do you have on that?

Monica Lennon: It is difficult to quantify that. When something has not happened, it is hard to prove why it did not happen. However, on your point about whether it is changing the

conversation, the answer is yes. When I first stumbled across the concept and the movement for ecocide law in 2021, in the build up to the 26th UN climate change conference of the parties—COP26—I did not know much about it. In the years since then, it feels as if there has been an announcement about it every week from another country or part of the world. Whether at the UN or in the discussions that have been taken to the International Court of Justice, it is becoming a more mainstream topic.

I have also seen a number of briefings from high-profile law firms to their clients to prepare them for ecocide law becoming a reality not just domestically but internationally. Even the prospect of that has got people thinking. Jojo Mehta, the chief executive officer of Stop Ecocide International, talks about the business engagement that it has been having around the world. Big corporations are now putting ecocide law on their risk registers because they are taking it very seriously. They are forecasting that ecocide could become an international crime in a matter of years. We are already seeing it emerging in lots of jurisdictions.

Ecocide law is no longer an abstract concept. It is becoming mainstream, and European member states will have to fully transpose and adopt the environmental crime directive by May next year.

Mark Ruskell: That sounds pretty concrete. If corporations are putting ecocide into their risk registers, that goes right to the top, to board level, and it cuts across their legal fiduciary duties as companies. I am interested in that. Is there any more evidence from the corporate world about how practice is changing as a result of the concept of ecocide?

Monica Lennon: Some of the submissions to the original consultation picked that up—I am not certain whether it was in the responses to the call for views, but organisations such as Pensions for Purpose are trying to do things more ethically and responsibly. We have all seen examples of companies being lobbied due to being perceived not to be acting ethically. There is huge public support for ecocide law, not just among those who responded to my bill. Extensive public polling across the G20 nations shows significant support in every one of the G20 countries.

It is hard to prove the deterrent effect, but a number of stakeholders have touched on it, saying that they believe that the bill would have such an effect. If the bill is passed, we would expect some publicity around it and for the Scottish Government and others to bring it into mainstream conversation in Scotland, alongside any training for people who might be professionally impacted by it.

I am happy to provide the committee with more information that is specifically from the business and corporate world, but I am confident that those conversations are happening.

Mark Ruskell: Thank you—that is helpful. I think that it adds to the evidence that we have taken already. Before other colleagues come in, I will move on to briefly discuss the definition of ecocide. The committee has spent a bit of time looking at the terms in your bill, such as “widespread” and “long-term”, the latter of which has been defined in the bill as 12 months. There is no definition of “serious adverse effects”. I am interested in your reflections on the evidence that we have taken, particularly in relation to the concerns around those specific terms. What is your response to those concerns, as you head into stage 1?

Monica Lennon: As I said in my opening remarks, I am not trying to invent something new here. That is why we see similarity with the RRA in terms of definitions. It is positive that the Scottish Government is saying that it accepts the definition in the bill. There are, rightly, questions about clarity, for example about how we would define “widespread” and how we can be sure what that term means. Again, it would depend on the exact circumstances, and we would have to look at it on a case-by-case basis. I ask colleagues, when they are thinking about ecocide, to think about the harm that is being caused. Would something that is quite low level—someone last week asked me about something like silly string on the high street that is causing nuisance and littering—constitute ecocide? Obviously, it would not, because it is not causing widespread, long-term environmental harm. It is easier to rule out what is not ecocide. I hope that the committee sees that I have tried to stick to established definitions. If the committee wants reassurance on particular points, I am happy to try to provide that.

Mark Ruskell: You might have seen that we took evidence from NatureScot in which it suggested that 12 months is not an ideal definition of “long-term”, because it is very difficult to see how any ecosystem can recover, even from a relatively minor environmental impact over that timescale, so there are some questions about particular definitions in the bill. The question for us as a committee is whether we have the opportunity to think through a lot of that detail ahead of stage 2, which could come quite quickly on the back of stage 1. Therefore, your response to those questions at this point is quite important.

10:45

Monica Lennon: The issue of the definitions of “widespread” and “long-term” has come up a few times. The definition of long-term damage comes

from the expert panel international definition of ecocide, which I have tweaked a little bit. The panel defines long-term damage as damage that is

"irreversible or which cannot be redressed through natural recovery within a reasonable period of time".

We used 12 months because it is recognisable and there is a body of case law around it. NatureScot is an important stakeholder in this conversation, and I appreciate that you have heard everyone suggesting that a derogation for 12 months could be required in certain circumstances. If the committee thinks that the addition of a specific timeframe is not necessary and that the bill should be amended to reflect that, I am amenable to that.

Mark Ruskell: Thank you.

Bob Doris: We are reading over the evidence on what we mean by ecocide. Is it a catastrophic single incident that causes widespread and obvious damage? Is it a course of conduct by a single operator over a much longer period, with incremental damage leading to what some might interpret as ecocide?

Environmental Standards Scotland said that it was not clear

"how the cumulative impact of a number of events over an extended period would be captured",—[*Official Report*, *Net Zero, Energy and Transport Committee*, 4 November 2025; c 26.]

but the Crown Office took a different view, saying that

"the definitions in relation to course of conduct are pretty clear in the provisions".—[*Official Report*, *Net Zero, Energy and Transport Committee*, 11 November 2025; c 9.]

There is therefore a bit of conflict in the evidence that we have heard. It would be helpful to know what the policy intent is, and whether you considered all that in developing the bill. What is your view on how the definition might capture that type of harm? Are the provisions clear in the bill, and what is the policy intent in relation to it?

Monica Lennon: I will pick up on the policy intent first, because I hope that that will be helpful. The intention behind my bill is to prevent mass environmental damage and destruction through crimes of ecocide. One way in which I am trying to do that is by having strong punishments to act as a deterrent.

I will run through the policy objectives if that is helpful. They seek to ensure that serious environmental offences are treated as criminal offences. That is the distinction from the RRA. The intention is to act as a deterrent to individuals and companies, and to ensure that our domestic legislation maintains alignment with EU legislation.

On some of the points that you have made, particularly around the cumulative impact—or maybe you were getting at incremental steps—the starting point is to look at the extent of the harm that has been caused and work back from there to see whether the elements of the offence are established. To bring it back to what the bill says, that is about whether the person intended to cause environmental harm or was reckless as to whether harm was caused. That is what is different from the RRA, under which there is strict liability and the mens rea test is not applied; it is simply that the act has happened and the court does not have to prove that there was intent or reckless conduct. An ecocide-level event could be something that happens over a period of time, but the main point that I am asking the committee to think about is the harm that was caused and whether it can be proved that intentional or reckless conduct led to that harm.

Bob Doris: That is helpful. I know that there is a threshold that would apply to whether the test for the criminal offence has been met. However, you have talked about the offence happening over a period of time and I am trying to flesh that out a little bit. There is an event and there is a process and there could be a distinction between those, although maybe not in the eventual outcome of what could be defined as an ecocide. Whether a company, a farmer or an organisation is doing something in good faith or not, as the case may be—that would have to be established—in the past 10 years, the test for an ecocide might not be met from one year to the next.

If we do a compare and contrast from 2011 to 2021 on biodiversity or anything else, we might find that there has been a stark change and that the test has been met. Is there a particular time period that must apply, or are the provisions completely open ended, covering a course of conduct over one year, two years, five years or 10 years, irrespective of what the threshold is for reckless conduct and so on?

Monica Lennon: I want to be clear about the starting point, which should be to ascertain what harm has been caused. That may involve SEPA investigating and the Crown Office and Procurator Fiscal Service then looking at the evidence as to what caused the incident to happen and what the intent was. As I hope I set out in my opening remarks, I have listened to evidence and I have heard about the Government's intention to provide clarity for activities and individuals who have a permit. If an activity has a permit and if people or organisations are acting within the limits of that permit, they will not cause environmental harm. Ecocide will not arise if people are sticking to the parameters of a permit. If there is an incident of ecocide and a case is prosecuted, the starting point is what the actual damage is. It could be that,

according to analysis, the offence was occurring over a period of weeks or months, or the incident could have just happened—boom—in a single day. It will very much depend on the circumstances of the particular case and the offence.

I am trying to show that there is a difference between the provisions of the RRA and those of the bill. We are not looking to go after individuals and businesses that have a permit and are carrying out an activity lawfully. The bill concerns instances of severe environmental destruction where there is evidence of intent or recklessness—where the perpetrator closed their mind to the potential damage that they were causing.

Bob Doris: That is helpful, Monica. I will not push further, other than to ask for a tiny bit of clarity. What you have said previously about operating under a licence or permit has been helpful, but there is no specific time period for that. Theoretically, if someone meets the threshold that you have put on record, but the process concerned occurred over a longer time—perhaps a number of years—that could still meet the threshold for ecocide. You have spoken about weeks and months, but an individual event could take place over a number of years, theoretically. I just want to get clarity on that.

Monica Lennon: I think that I understand your point, but I bring it back to the questions of what harm has been caused and what harm has been investigated. What does the evidence say? Was there intent? Was there reckless conduct? If it is evident that mens rea cannot be proved, the regulators or the police could look to ascertain whether an activity has breached the limits of its permit. That would be considered under the existing regulations—which others who are more expert than me can comment on.

If someone has a permit and it has not been apparent initially that there has been a breach of that permit, damage could have been occurring over a period of time. However, that would be down to individual circumstances. In all such matters there would be case-by-case assessment. That is why I think that it would be good to have the option of investigating whether something is an ecocide offence—which should be a very serious criminal matter—or something that comes under the current regulations, which is a strict liability offence. You are familiar with how that operates.

Bob Doris: That is helpful. A number of witnesses have suggested to the committee that an ecocide offence should explicitly cover omissions or failures to act, as is the case under section 40 of the RRA, as I understand it. However, last week, the cabinet secretary seemed to say that that would not be necessary, because, as it stands, the bill would already cover that. Is it the policy intention of the bill to include omissions as well as acts? If that is the case, are you satisfied that the bill is clear on that?

Monica Lennon: I want to reinforce the point that, under the bill, the ecocide offence would not be a strict liability offence, unlike the offence of significant harm in the RRA. Under the bill, a person would commit an offence if they intended to cause environmental harm or were reckless about whether environmental harm would be caused. Recklessness requires that the person closed their mind to the consequences of their actions and to whether any environmental harm would come about as a result.

Recklessness is accepted as sufficing to constitute a criminally guilty mind. I felt that that was important, given the serious nature of the proposed crime and the punishment for it, which would be up to 20 years in prison, unlimited fines, publicity notices and compensation orders. Omission, in contrast, does not necessarily involve knowledge or a high degree of culpability. That was my reasoning.

Bob Doris: For the record, I know that the Government does not think that the bill needs to be amended in that respect, but, as the member in charge of the bill, do you think that there is a need for greater clarity?

Monica Lennon: I would be open to looking at any of the committee's recommendations, but I am in the same space as the Scottish Government on that. Some strong points have been made on the matter, but given that we are looking at criminal law, which has high penalties, it is very important that the mens rea test is included. Omission would not necessarily involve knowledge or a high degree of culpability. From where I am sitting, if someone potentially faces 20 years in prison, it is really important that there is proof of intent or recklessness.

The Convener: Michael Matheson is next.

Michael Matheson: Good morning. I want to stick with the thresholds for liability in the bill. You will have heard and read some of the evidence that the committee has received, which raises questions about whether the thresholds are appropriate, largely on the basis that the provisions do not include negligence. Currently, section 1 requires intent or recklessness, and the threshold for responsible officials is "consent or connivance". Could you explain why you have chosen not to include negligence in the provision?

Monica Lennon: That was given detailed consideration during the drafting process. It was recognised that all three possibilities—consent, connivance or neglect—are provided for in the RRA, but neglect is not provided for in some

circumstances. The rationale is that consent and connivance both require a high degree of knowledge and fault, whereas neglect does not involve knowledge or a high degree of culpability. Therefore, in some circumstances, it might be unfair to allow individual criminal liability to be founded on the basis of neglect alone.

Michael Matheson: Are you of the view that the existing thresholds are sufficient, or do you think that there might be a need to amend them on the basis of the evidence that we have heard to date?

Monica Lennon: In what way?

Michael Matheson: To include negligence.

Monica Lennon: At the moment, I am not persuaded on that, but if the committee felt strongly about it based on evidence, I would look at it for stage 2.

11:00

Michael Matheson: Will you clarify the bill's policy intention with regard to the definition of a "responsible individual"? We have received evidence that suggests that the table that you have provided in section 3(4) is likely to include people who might be viewed as non-senior staff. Is that the bill's intention? If it is not, how will you seek to address that?

Monica Lennon: My intention is to ensure that only individuals at a senior level in organisations are covered by section 3. That goes back to the point that I made to Mark Ruskell about the controlling minds in an organisation, where the power lies in an organisation and those who have overall oversight. My view is that prosecutions should be aimed at those people.

My clear intention is that individuals at a lower level in an organisation—those in middle management and below—should not be subject to prosecution under section 3. That point came across strongly from the expert advisory group, which has been in place for a while and includes representatives of trade unions and other groups. In the consultation, Unison Scotland and the Centre for Climate Crime and Climate Justice raised concerns about the punishment of workers, and recommendations were made that the bill should include additional protections for whistleblowers, although I did not feel that I could put such provisions in the bill. There has been quite a lot of discussion about the issue, and I know that it has played out in the stage 1 evidence.

Michael Matheson: In relation to the definition of "responsible official", if a non-senior member of staff acted in such a way that they committed an offence under the bill, including under section 3, who should be prosecuted?

Monica Lennon: It would all depend on the evidence. The evidence would point to the guilty mind.

Michael Matheson: What if the evidence pointed to a non-senior member of staff? If their actions resulted in an offence under the bill, who should be prosecuted?

Monica Lennon: It is important to be clear that this issue is not unique to the bill. Employees are not immune from potential conviction if it is proven that they have committed a criminal offence—in this case, ecocide. For an ecocide offence to occur, the person—whether it is an employee or an employer—must have caused severe environmental harm and have intended to cause that harm or been reckless. I go back to the point about intent and recklessness. It will be for the Crown Office and Procurator Fiscal Service to determine, based on the evidence that is available, whether an ecocide offence has been committed and, if so, who should be charged.

I do not say this naively, but I really hope that we do not have to use the ecocide law. As is set out in the policy memorandum and the financial memorandum, we estimate that such events will be rare—they might take place once every 10 to 20 years. If the offence did not meet the ecocide thresholds, it would be dealt with under other regulations. However, by having an ecocide law, organisations will have a responsibility to ensure that good practice and knowledge percolate throughout their organisations. I hope that that will protect workers and middle managers from the threat of prosecution and from the impact of any ecocide crime.

These are important questions, and a lot of it will come down to what the evidence says in any particular case, but I hope that workers and managers will not be in a situation in which their organisation is investigated for ecocide.

Michael Matheson: Sure. As you have mentioned, the policy intention is to target senior management, but the threshold for liability in section 1 relates to intent and recklessness, so the actions of a non-senior member of staff could make them liable under the bill if it were enacted. Is my understanding of that correct?

Monica Lennon: At that point, it might be helpful to bring in Roz Thomson.

Roz Thomson (Scottish Parliament): On the drafting process, I note that the Regulatory Reform (Scotland) Act 2014 includes managers in its definition of responsible officials, who are considered to be lower-level members of staff. Monica Lennon specifically asked for the term "manager" to be left out of the table that Michael Matheson referred to, in response to concerns from Unison and others about members of staff on

very low grades being caught by the provision. The drafting deliberately seeks to avoid that. Should somebody feel that they have been coerced to act in a particular way by somebody senior in an organisation, there are provisions in existing legislation that they would already be able to use as a defence, so that does not need to be in the bill.

The other thing to add is that, if somebody did something and somebody much more senior in the organisation was aware of that, the more senior individual could be prosecuted through vicarious liability.

Michael Matheson: I want to be clear in my understanding of this. Under section 1, the requirement for intent and recklessness means that, if there were evidence to suggest that a non-senior member of staff had acted in such a way, they could be prosecuted under the bill. I know what the policy intention is, but I am trying to be clear about whether, despite the stated intention, the provisions of the bill would not prevent a non-senior member of staff from being prosecuted. Is that correct?

Monica Lennon: I have made the policy intention clear, as Roz has helpfully explained. However, on that particular legal point, it is probably best to bring in the lawyer. Ailidh, would it be okay if you addressed that point?

Ailidh Callander (Scottish Parliament): Yes. If the elements of the offence were made out, a non-senior member of staff could be prosecuted. Obviously, whether to bring a prosecution would be a decision for the Crown Office and Procurator Fiscal Service.

It would also be important to consider the vicarious liability provisions in section 4, which would provide that, if that person was an employee, the employer could be prosecuted, too. Section 4(4) confirms that proceedings could be taken against the company or the employer, irrespective of whether they were taken against the employee.

Again, it would come back to whether the elements of the offence were made out. The prosecutorial decision would be for the Crown Office and Procurator Fiscal Service.

Michael Matheson: Just so that we are clear, although there is a certain policy intention, the provisions of the bill could be applied to any employee.

Ailidh Callander: They could be applied to any individual.

Michael Matheson: Any individual could be prosecuted under the bill as it is drafted.

Ailidh Callander: Yes—any individual, regardless of what capacity they were acting in.

Michael Matheson: Okay.

You will have heard in last week's evidence from the Cabinet Secretary for Climate Action and Energy that the Scottish Government considers that the bill as introduced is not compatible with the European convention on human rights. She referred specifically to section 2(3), which is on establishing a defence of necessity

"on the balance of probabilities".

Do you believe that the Scottish Government's view that that is not compatible with the ECHR is correct? If so, what consideration did you give to that when you were drafting the provision in the bill?

Monica Lennon: I do not disbelieve the Scottish Government. As you know, the Scottish Government does not share its legal advice with people who are outwith the Government, but we have had good discussions about that. It was raised early on in our dialogue and, to an extent, I have had to accept what the Government says about it. If it is helpful, I can set out why I included the defence of necessity in the way that I did. I reinforce the point that I made in my opening remarks: I am happy to work with the Government on the amendment that it intends to lodge.

Section 2 provides for a defence of necessity that a person may use if they are charged with ecocide. The defence is that a person's actions were carried out to prevent greater harm from occurring and that the prevention of harm was necessary and reasonable. Under the bill, the person who is charged with ecocide is responsible for demonstrating, on the balance of probabilities, that they had such a defence. I included that defence because I felt that there might be very rare circumstances in which a person could conceivably act in a way that may risk ecocide in order to prevent greater harm, such as avoiding significant loss of human life.

In relation to article 6(2) of the ECHR, I considered the reverse onus provision, as did the Presiding Officer, and we concluded that it was within the reasonable limits permitted by the convention and was, therefore, within the legislative competence of this Parliament. That said, the Scottish Government's points are persuasive, because it says that the reverse burden could be problematic during a trial in practical terms, which is why an evidential burden might be more suitable.

You asked whether I believe the Government; I do not disbelieve the Government, and if it is happy to lodge amendments, I will not object to that.

Michael Matheson: That is helpful. I am conscious that, as the member who introduced the bill, you are relying on advice from the non-Government bills unit and the Parliament's legal team. This question is specifically for the Parliament's legal team: why did you not identify the bill's lack of compatibility with the ECHR?

Ailidh Callander: As Monica Lennon set out, the issue was given careful consideration during the drafting of the bill. As the committee heard last week, it comes down to a question of proportionality. The convention does not prohibit reverse onus provisions or reverse burdens within criminal offences, and they are found in other bits of legislation, including around mental disorder and domestic abuse. It was felt that it was an appropriate provision in this context, in which the individual accused would be best placed to know their mental state at the time of the offence, and it was considered that that was within the reasonable limits permitted by the convention.

However, as Ms Lennon set out, if it is a question of putting that beyond doubt for the reasons that were set out by the Scottish Government, the member is considering that.

Michael Matheson: From the Parliament's point of view, do you consider that the bill is compatible with the ECHR?

Ailidh Callander: It is for the member and the Presiding Officer to separately consider that.

Michael Matheson: I am asking you directly, given that you are the lawyer who has been giving advice on the matter. Do you consider that it is compatible with the ECHR?

Ailidh Callander: It is necessary to look at both the statements that were given when the bill was introduced. The Presiding Officer's assessment is separate from the member's.

Michael Matheson: So you consider that the bill is compatible with the ECHR.

Ailidh Callander: I think that it comes down to a question of proportionality, and it is a fine line. The issue is where that line is drawn.

Michael Matheson: Okay—thank you.

Kevin Stewart: I refer members to my entry in the register of members' interests. Unison has been mentioned, and I am a member of Unison.

The bill does not provide a defence for an operator of permitted, licensed or consented activities. You will be aware that the committee has heard mixed views on that, with some people considering that consented activities would be unlikely to reach the mens rea standard of "intent of recklessness". Extremely serious concerns about regulatory certainty have also been raised. Why did you take the decision not to include a permitting defence in the bill, and what is your current position on the issue, having heard all the evidence?

Monica Lennon: Thank you for your questions, today and throughout the evidence at stage 1. Those has helped to improve people's understanding of what the RRA already does, and have brought into the discussion the important role of planning authorities and others in the consenting regime.

11:15

I am reassured that, in principle, the planning authorities that have responded have said that they support the aims of the bill, but legitimate questions have been asked, so—

Kevin Stewart: We will come to consenting bodies, including planning authorities, in a little while, but first I am asking about the operator viewpoints. We heard from the likes of NFU Scotland, the Scottish Fishermen's Federation and others that they have concerns about the fact that the bill could cover activities that have been consented to, permitted or licensed. Perhaps we could deal with the operators first, if you do not mind, and then we can come to the individual consenting bodies.

Monica Lennon: Sure. I have set out these points in earlier answers. The bill seeks to introduce a criminal offence of ecocide, and for a successful prosecution to happen, there has to be evidence that there was intent or reckless conduct. There is a distinction with those organisations that have permits, which are already subject to the provisions of the RRA regarding strict liability offence. I cannot think of an example of where a member of the NFU or the Scottish Fishermen's Federation has gone out with intent or recklessness to cause ecocide.

You mentioned the Scottish Fishermen's Federation. The SFF opposed the bill in the consultation because it said that it did not think that there was a need for any more legislation. NFU Scotland gave a fairly neutral response in writing to the committee; when it came to committee, it went a bit further. Nonetheless, we had a round-table discussion with NFU Scotland at which I spoke to many members; they were really positive about the bill and felt that it would give them protection from bad actors.

The bill is not about going after businesses in your region or my region that engage in legitimate business and have a consent or permit and operate within that. It is about situations in which there has been intent or recklessness that has caused severe environmental destruction on the scale of a one-in-20-years event—something pretty catastrophic.

Kevin Stewart: The SFF has suggested that the bill as drafted creates a huge amount of legal uncertainty. Are you willing, at a future stage, to accept amendments that will provide a defence for operators of permitted, licensed or consented activities?

Monica Lennon: I do not think that I accept that the bill will cause a huge amount of legal uncertainty. We heard good evidence from the Law Society of Scotland, from King's counsel and from a number of stakeholders that the bill will sit at the apex of environmental law. I know that the member disagrees, but we have heard that it will sit at the top of the pyramid, and I hope that it will also help to strengthen the application of the RRA, which would give the Crown Office and Procurator Fiscal Service options.

It unsettles me that there are certain trade bodies, industries or businesses that are very frightened by the prospect of ecocide law. We are trying—collectively, I think, given that, although I am the member in charge of the bill, it has been a cross-party endeavour and has a huge amount of cross-party support—to ensure that we can prevent ecocide from happening as far as possible.

However, it is important that if a business or an individual has a permit or a licence, they can operate in good faith within the confines of that. It is also important to give certainty to those in the regulatory space. I do not have any concerns about that, having worked professionally in that space for a long time before I came to Parliament.

We have legal certainty about when the RRA can and cannot be applied and we set it out clearly that the threshold for ecocide crime is very high and there needs to be evidence of intent or recklessness.

Kevin Stewart: You mentioned the RRA. It provides for certain defences. Do you not think that your bill should act in a similar manner in that regard?

The fear and legal uncertainty that some organisations express is not necessarily because they think that they are doing anything wrong at the moment that would lead to ecocide but because some future scientific discovery might show that something that they did over a long period might have caused difficulties. Those folks are quite worried about the unknowns. That is a genuine worry; it is not a blockage for the sake of blockage.

Monica Lennon: That is a helpful recap. I can provide reassurance on that point. I repeat the point, which I made in my opening statement, that I am happy to work with the Government on amendments, including for a clear permit defence. However, I make the distinction that, if there is intent and recklessness that goes beyond what is covered in a permit, a behaviour could be an ecocide offence. However, if the people who you have in mind operate lawfully within their permits, they do not have to worry about it.

Kevin Stewart: It is not me who has to be convinced on that but them.

Monica Lennon: I said that I will work on an amendment with the Government, which said last week that it wanted to address that point. A clear permit defence can be addressed easily at stage 2.

Kevin Stewart: Equally, there is no defence in the bill that would prevent a consenting body from being held liable for ecocide. You started to go over some of the issues that we have heard about from planning authorities. Those letters came in after I raised issues at the committee on aspects of that matter. Some people did not really think that there was an issue with it. However, the letters from local authorities clearly show that they have concerns about that aspect of the bill. You said that you will work with the Government on amendments, but are there circumstances in which you believe that regulators should be held liable for causing severe environmental harm through authorised acts?

Monica Lennon: I bring you back to the policy aim of the bill. I seek to prevent environmental destruction. That is the motivation. We are trying to prevent ecocide-level crimes. Every day, planning authorities, for example, assess environmental impact. They look at potential harm. If an element of harm is identified that could result from a development, they also then consider mitigation that could be put in place. Planners are pretty skilled in dealing with that every day.

On why there is no defence for a regulator or licensing body against being held liable for ecocide under the bill, I will go over what is in section 40 of the RRA. There are specific provisions in that section to provide that those who grant relevant permits—for example, regulators such as SEPA—are not committing an offence. That is necessary, because it is a strict liability offence.

Under the bill, for an ecocide offence to occur, the person must cause "severe environmental harm" and either intend to cause it or be reckless as to whether it is caused. I am finding it difficult to think of a scenario in which a regulator or licensing body would intend to cause or be reckless as to whether it causes environmental harm when permitting relevant activities.

Kevin Stewart: I will give an example. In taking decisions, planners, councillors and planning ministers often have to perform a fine balancing act in looking at everything that is going on in a

particular place before giving permission for an activity. Sometimes, advice is given to the effect that there might be an impact on a particular species, possibly a rare species, and folk are not certain about what might happen if permission is granted but have to make a decision about it. If they have made a decision in favour of granting permission and it is later found that there has been a major impact on a species—which some might regard as ecocide—what then happens and who is liable? Those are the unanswered questions that are in the minds of many folk. Again, that is about the creation of legal uncertainty.

Monica Lennon: We could get into hypothetical situations, but I will say that, when planning authorities are weighing up the likelihood of possible environmental harms, they already have to apply the precautionary principle under existing legislation, whether through national planning framework 4 or other guidance that is available to planning authorities. We have a very established regime of environmental impact assessment. As a former planning minister, you know that planning authorities have to set out their reasoning and be very clear on the material considerations that have been taken into account if they approve a development or depart from the local development plan in any way.

Take, for example, a situation where there is an awareness of a particular protected species in a locality that could be affected in some way but reasoning has been given as to why the planning authority is satisfied—perhaps because mitigation could be put in place through a buffer zone around an area where bats are known to fly, or whatever—and there then comes a point where the Crown Office is looking at an ecocide case and is trying to work out how the severe environmental destruction happened, who was responsible, who closed their mind to the possible harm and who intentionally caused it to happen or acted in a reckless manner. I cannot think of a circumstance in which planning officers, councils or a planning minister could, based on the best available evidence, be found guilty of intending to cause ecocide in that situation.

Kevin Stewart: I go back to my point that some folk feel that there is legal uncertainty around that. Having explored this, I think that there could be a number of unintended consequences from some parts of the bill as drafted. You have said that you are willing to work with the Government and others to amend it. That is admirable and we would expect that. I do not think that anyone is against the spirit of the bill.

However, I think that there needs to be some further exploration around potential amendments. Would you be favourable to that? Do you think that there is enough time in this session for us to take cognisance of the real concerns that have been raised by operators and consenting authorities?

11:30

Monica Lennon: I am confident that the Parliament has time to progress the bill if it goes beyond stage 1. As we know, it is for any member to lodge amendments and, as I have said to the Government, I will work with any member and will listen carefully to them. If there is significant evidence that amendments are required in the areas that Mr Stewart is talking about, I will be open to listening.

Points have been made about planning authorities already feeling a burden with workloads, resourcing and having another thing to take into account. I am very sympathetic to planning authorities, who are saying that they already deal with very complex issues and that, if we ask them to think about anything else, they will need resources. I am very alive to that point.

I have wanted to be clear today that ecocide offences go way beyond what is covered in the RRA: they are the most serious, catastrophic environmental impacts that you can think of. For an individual—a natural or legal person—to be prosecuted and convicted, it has to be proven that there was intent or recklessness.

I worked as a chartered town planner for more than 12 years before I came here, and I declare that my husband is currently in a planning authority. I do not want him to go to jail—who would make my dinner every night? The serious point is that I respect the important work that our planning authorities and others involved in the consenting regime do. The bill is not aimed at them. I have been very clear—given the criminal sanctions, including up to 20 years in prison—why the mens rea test, which does not occur under the RRA in relation to strict liability, is really important.

I cannot think of a circumstance that would involve a planning authority, given all the checks and balances from the case officer to the planning committee. Mr Stewart is correct that the planning minister would be the decision maker in some cases. I have sat in the offices at Victoria quay and provided advice to ministers on such matters. Knowing about all the checks and balances, I cannot imagine a situation where anyone in the planning system would have the intent or would act with recklessness to allow something like ecocide to occur.

I am confident that all the other countries that are legislating to give effect to ecocide law, including Belgium and others that the committee has heard about, will have had the same discussions, and they are able to progress the law in their own jurisdictions. I have every faith in my

colleagues in this committee room and across the Parliament that we can focus our minds on the policy aims and the general principles of the bill. A number of amendments have been discussed already, particularly by the Government, and we are advancing those discussions.

Kevin Stewart: A lot of the evidence has suggested that stronger enforcement of the existing law is as important as, if not more important than, creating a new offence. At any point did you consider strengthening section 40 of the RRA? At any point did you think that one of the ways of putting ecocide on the statute book would be through an amendment to the existing act?

Monica Lennon: Absolutely: I have looked at everything. I have considered the current legal framework and the number of prosecutions and convictions under the RRA.

I return to the point that, although it is of course possible to amend the RRA to increase the punishment, that would not fundamentally change the offence—it would still be a strict liability offence. To deter something as serious as ecocide from occurring, we have to get into the space of criminal law and impose much stronger penalties. It is only right and fair that, if you are proposing to take someone's liberty away for up to 20 years—and considering all the other measures in the bill around punishment—there has to be a higher bar. That is where the mens rea test comes in. We have to prove not just that what was done was a guilty act, which can be done under the RRA's strict liability provisions, but that there was a guilty mind as well. That is the point about intent.

I will always support measures to boost enforcement powers. When I was a young planner back in 2001, the planning enforcement officers were the people who moaned the loudest: they felt that they were at the bottom of the food chain in the planning system. They probably still feel that way. The committee has scrutinised resourcing for SEPA and NatureScot over the years. We know that our local authorities are feeling hollowed out and able just to do the bare minimum around their statutory functions. They are feeling the pressure.

I am very sympathetic to all those arguments but, even if we fully resourced all the regulatory bodies with respect to their current responsibilities, that does not give us the equivalent to an ecocide law. I hope that the member understands the point that I am making.

The Convener: There are some follow-up questions in this area. I will move to Mark Ruskell first, and then I have a question. I am looking to see whether any other committee member has a question, too.

Mark Ruskell: I am picking up the point that there is now consensus on a permitting defence, which would potentially extend to consenting bodies. Everybody would covered by that. Can ecocide still occur, even within that regime? I am aware that there is a provision on overriding public interest in the habitats regulations, which are designed to protect species and habitats. A consenting body can effectively allow environmental damage to occur if it is seen to be in the wider public interest, whether because of climate change or some other issue. Have you considered that? We are considering the creation of a defence for consenting bodies, but a consenting body could intentionally and wilfully allow environmental damage to take place because it is in the wider public interest to do so.

It feels like the ground has shifted a little bit with respect to the bill, which I think is good, given the evidence that we have heard on the impact on consenting bodies and on those that have been granted permits. Within that space, however, I am now wondering whether that has been or needs to be considered.

I hope that that question is clear—it is probably not.

Monica Lennon: No—I understand the points that Mr Ruskell is making. This is an opportunity for me to be clear that, when I am talking about trying to protect Scotland's natural environment, I am not saying that having an ecocide law is the silver bullet or will be the answer to absolutely everything. I hope that I have been clear, in the policy memorandum, that an ecocide offence is extremely rare—there are between one and 10 in 20 years. We have existing regulations for lower-level offences—although they could still be very significant—including the Environmental Liability (Scotland) Regulations 2009, which cover

"significant adverse effects on ... protected species or natural habitat".

We have a number of tools in the toolbox already.

We can see the direction of travel for some stage 2 amendments, and I hope that I have shown willingness to work with the Government and colleagues.

However, the point that I want to leave with colleagues today is that having ecocide law sitting at the top of that regulatory pyramid would bring us into alignment with the EU and many other countries. Ecocide law is now out of the box and it is just a matter of time until all those other countries get around to enacting it. We can see that there is momentum towards having an international crime of ecocide. That is not a matter for us in this room to decide, but we can see the wider global context.

It is important that those who work in the regulatory space have certainty, and here I want to

make a point that does not really address Mark Ruskell's question. There have rightly been questions about whether the bill will cause uncertainty for those who are trying to build houses and Scotland's infrastructure while making a profit, which is perfectly legitimate. We are not going after legitimate businesses that have the right permits in place. To go back to the convener's original question, during the consultation and all the engagement that I had with many stakeholders, I heard that the bill is not anti-business; it is pro-responsibility.

Some businesses in Scotland are already saying that, although they are not impacted by ecocide, they are impacted when a minority of businesses and others do not do the right thing. That includes the criminal gangs who carry out business activities that impact on the environment and who feel that those activities are low risk because the penalties and punishment are just not there.

I am not saying that this is ecocide, but I give the recent example of a whole town in England becoming a dumping ground: people were collecting waste, charging for it and then dumping it on a site in the town. I do not know what the environmental impact is of that, but people are questioning how something like that can happen in plain sight, and under the current legislation in England, the maximum criminal penalty would be five years in prison.

Mark Ruskell: I appreciate that. I go back to my original question. Part of the argument that you make for creating an offence of ecocide is that it forces us to look from the top of that regulatory pyramid down at the regulatory framework, and there are questions that emerge from that. If we put a permitting defence into the bill, does that mean that we are totally okay with everything else in the regulatory framework that protects the environment and sits underneath that defence?

If we accept a permitting defence—there are a lot of other ifs in that regard, such as if the bill gets to stage 2—we are effectively creating a protection for regulators, consenting bodies and those who have permits. That leads to the question whether we are okay with that and whether we think that any potential ecocide events could happen under the current permitted regime. What I am getting from your answer is that the current regime is fine, but culpability and intention remain at the top of the pyramid and are not captured by the strict liability offence at its highest level. I will leave it there, but it is on the record.

Monica Lennon: The final word on that is that my policy aim is to prevent severe environmental destruction. That is what creating an offence of ecocide under criminal law is about.

If the bill is passed, it might open up a wider conversation about all the other regulations that we have. If we are keeping pace with the EU, for example, things might have to change anyway. If passing the bill encourages the Scottish Government and others to look afresh at the scope of existing regulations, how they operate and their resourcing, that can only be a good thing.

If we were not talking about ecocide law, perhaps all that would not receive the same level of attention. I therefore thank everybody on the committee for all your questions because we have put some things into the mind of the Government and others about whether we have all the right enforcement powers in place. I am thinking about some of the questions that have been asked about the marine environment, for example, or some of the cross-border issues.

It is very much a topical, on-going discussion and I know that conversations about ecocide law are also being held at Westminster. Things are moving pretty quickly, but if it means that we get a bit sharper and look at everything from planning to all the different regulations that Mark Ruskell mentioned, that can only be a good thing.

The Convener: Douglas, did you have a question on this subject?

11:45

Douglas Lumsden: Yes, I have a follow-up to Kevin Stewart's question. A couple of local authorities have suggested that the bill might cause some problems. For example, Moray Council said:

> "National Planning Framework 4 allows excavation of deep peat for renewable energy developments. This is an action that would otherwise possibly fall within the definition of ecocide."

Would it be a defence that NPF4 allowed that to take place?

Monica Lennon: Planning authorities make decisions based on current legislation and the policy of the Scottish Government; they also consider local circumstances. They will be informed by environmental impact assessments. If a private developer is responsible for a project, it will have to provide support and documentation, which will be looked at independently by the planning authority. There is already a very robust regime for that. If the Government's policy position on peat extraction changed, how the planners operate would also have to change.

It is right and proper that any planning authority, including Moray Council, considers NPF4 and all other relevant legislation, strategies, policies and guidance. However, if there was any concern

about whether a legitimate business with a planning application and consent had operated in a way that gave rise to environmental harm, it would be considered under the RRA, initially.

If what happened were to be considered ecocide—as I have said, we are looking to lodge an amendment related to this at stage 2—it would have to be very reckless and intentional, and it would have to be shown that no one tried to stop it. That is very far away from what Douglas Lumsden described.

Douglas Lumsden: There is another example in Highland Council's letter, which describes a few situations, including one involving an underground cable from Dundonnel to Beauly and one involving Coul Links golf course, which, it says,

"could be viewed as reckless if the development was granted against advice relating to environmental harm."

In that instance, an environmental NGO could put in an objection.

It is all about risk for planning authorities. If the bill were in place, would it make it too risky for the council to grant permission to some of those projects?

Monica Lennon: No, I do not think that it would. The bill does not change the assessment of environmental, economic and social impacts. We have very well-established processes in the land-use planning system that assess all the different considerations.

You were perhaps hinting at environmental damage that could be caused by an underground cable in the Highlands, but I am not sure what damage there could be. In each particular case, we would have to consider the harm that had been caused, its nature and gravity and whether it was widespread or long term. You said that an environmental NGO could object. Did you mean a statutory consultee that had given a response to the planning authority?

Douglas Lumsden: No. Anyone could write in and say, "This could be an ecocide event." I am just trying to understand whether that would plant a seed of doubt in the planning authority's mind. It might think, "Hold on; this is a bit too risky. We will not accept this application, because it might be seen as an ecocide event in years to come."

Monica Lennon: If members of the public or other interested parties respond to every planning application saying that it is ecocide, I do not think that that will be taken seriously. Again, this is about proportionality. We have a very robust and well-established tradition in Scotland. We have a planning system that works, and legislation is very clear about who the statutory consultees are, and they are trusted voices and experts. I am talking about SEPA, NatureScot and Transport Scotland—you know the list. It includes community councils, because the community voice is important. However, if someone writes to a planning authority advising it, "Don't do this, because it will cause ecocide," that has to be evidenced in some way.

If it is about statutory consultees—I think that you are saying that they were mentioned by that particular authority—and their objection was dismissed, there are checks and balances in the system to ensure that when something is raised as a very serious departure from advice, that could be notified to ministers or called in. There are well-established processes, but what you describe from those letters relates to fairly routine—albeit major—planning applications, which planning authorities look at every single day. In doing so, they weigh up all those considerations, always based on the best available evidence.

Douglas Lumsden: Convener, I was going to go on to my next point.

The Convener: I will ask a question first, if I may, and then I will bring you in on your next point.

Monica, I have just heard two members questioning you on concerns about the consenting aspect. There is a way of allaying people's concerns, because those concerns come from outside the committee, and that is for you, the Government or individual members to lodge amendments to get round them. I am not sure that I have heard this from you, and I might have got this wrong, but did you say that you were not going to lodge amendments and that it is up to other people to lodge amendments, or will you be lodging amendments in light of what you have heard this morning from committee members?

Monica Lennon: Just to clarify, convener, I understand that it is open to any member to lodge amendments. There could be members who are not here today who would want to lodge amendments. My general point is that I will act in good faith with all of them. I think that I have been clear about the areas that the Government is seeking to amend, which include the permit defence, re-examining the reverse burden of proof, amending the reporting obligation—we have not talked about that today, but I am absolutely fine with what Government says on it—and adding an explicit alternative conviction provision. That is all fine. I also hope that I have been clear in response to questions from members, including from Kevin Stewart.

I will reserve my position to see what is in the committee report, because I cannot prejudge what will be in it. However, if the committee makes recommendations on amendments or is still seeking clarity at that point, I will look at that. As

the member in charge of the bill, it is very much in my interest to try to be in the driving seat as much as possible. As I did with my previous member's bill, I will probably think about amendments. I am not trying to outsource that to others.

The Convener: I am just wondering, Monica, whether you have been swayed by the arguments that you have heard this morning from members around the table about concerns regarding the consent process.

Monica Lennon: I am sympathetic. I have read the responses from individual planning authorities, many of which, while not being identical, are very similar. I know that Heads of Planning Scotland met and that COSLA has responded, and there are a number of responses that echo one another. The planning community is a small community. I am not making light of that at all, because I know that people who work in a planning authority are under a lot of scrutiny. It can be a thankless job, particularly if it involves a development that attracts a lot of objection and a lot of community response.

There is sometimes pressure from developers. The vast majority of developers behave impeccably, but I know of cases in which planning officers and other officials have been bullied or intimidated. That goes on. I have discussed that with Unison. That is why the points about protection for workers and people on the front line are not lost on me.

I hope that I have been clear in what I have said about a permit defence. I will take away colleagues' comments and reflect on whether something needs to be done to provide the comfort that people in the planning world and others in the regulatory space are looking for. I hope that I have been clear about the policy aims and intentions. In discussions with me and the committee, the Government has mapped out areas where clarity and comfort can be provided through amendments.

As I said to Mr Stewart, I am confident that we can use the time that is left in the parliamentary session wisely and efficiently. My door is open—I will listen to colleagues and work with everyone. There will be further opportunities for other MSPs to drop in and have a chat with me.

The Convener: I always feel that I am in the hot seat when we get short of time, but the clock never stops, so short answers and short questions will help me. However, I do not want to stifle debate, especially on a member's bill that that has been introduced by a member of this committee.

Kevin Stewart: I welcome what Ms Lennon has said about her door being open to those who are likely to lodge amendments. My problem is that, as we have gone on with our consideration of the bill, other cans of worms have been opened. We have heard from the planning authorities, and, of late, I have been listening to elected members in councils who have just cottoned on to the bill. It is fine for us to be able to lodge amendments, but it is simply not possible to listen to all the concerns in the time available, and that causes me a huge degree of concern.

Some members were doubtful about how planners would see the bill, and those doubts have been shown to be justified. Now, I am hearing from elected members, who are saying, "I don't know whether I would vote for that." That must all be taken into consideration if we are to get the legislation absolutely right. I come back to my point about the level of unintended consequences that the bill might have, which we need to explore further.

Monica Lennon: I remind the committee that the consultation on the proposal for the bill started in November 2023 and ran for 14 weeks, so some of the questions and issues that you have raised are not new. Perhaps people are saying those things now because the committee proactively wrote to the planning authorities and asked them to respond. That might be why those views are being presented to the committee in a very concentrated way. However, such questions are not new and are not unique to Scotland. I could point you to elected members, planning professionals and others, including scientists at SEPA, who strongly welcome and agree with the bill.

I remind the committee that the planning authorities say that they support the general principle. These are not new issues. Glasgow City Council responded to the committee's call for views over the summer. The Convention of Scottish Local Authorities is taking a fairly neutral view—it is saying that it will look at the bill down the line if it needs to.

My door is open. I will speak to COSLA and to Heads of Planning Scotland. Obviously, my door is open to you, Kevin—I might even put the kettle on. There is plenty of time to do all that. Mention was made of the Royal Town Planning Institute Scotland. As a former member of that body, I would be happy to chat to it.

We have also seen compelling and clear support from many other organisations that the bill would do what it says on the tin. It is about trying to protect Scotland from severe environmental destruction that is carried out in an intentional or reckless manner. It has strong penalties and sends a strong signal to anyone who might think that they could get away with a crime of that nature. I hope that the bill will also strengthen people's understanding of the RRA.

12:00

Kevin Stewart: I have not come across anyone who is against the general principles of the bill. However, as the bill stands at the moment, there is a real fear about unintended consequences. I believe that some folk want to have time to feed in their concerns so that we get any amendments right.

My concern is that it is very late in the day in this parliamentary session, and I do not know whether we are going to do justice to the folks who have concerns, given the time that is required. I get Ms Lennon's point about the 14-week consultation that ran from November 2023, but she knows as well as I do that folk sometimes do not come forward at initial consultations because they do not see how something will impact them, just as I do not think that the planners realised how much the bill could impact them until they got that letter.

The Convener: I am sure that Monica Lennon will want to respond to that.

Monica Lennon: Yes. I am not sure what the question was, but I will push back a little, because there were a number of assertions in there. The parliamentary timetable is not a matter for me—we are in the hands of the Parliament. If people have minds that are closed to the bill and want to believe that we do not have time and want to try to wreck the bill, that is not under my control.

We have to be careful when we say things such as there being a lot of fear out there. I do not think that the evidence shows that. I will not repeat all the numbers, but we saw huge public support for the bill in the consultation, and a huge number of organisations from all parts of civil society, including business, support the bill. It is clear that the bill adds something different from the RRA.

We have had a batch of responses from planning authorities, who very politely responded to the committee's request. It is clear that there has been some collaboration and discussion. I think that, at the root of that, there is a bit of misunderstanding. If people are saying that they are frightened or scared and that there are unintended consequences, we all have a responsibility as elected members of Parliament to bring them back to the facts of the bill.

I will take that point away, because I have been speaking to elected members from different political parties who are very enthusiastic about the bill and who feel that it would help them to protect their communities from ecocide. I know that a number of local authorities are looking at possible motions. It is not for me to go out and mobilise a campaign to do that; I am just trying to take the Parliament through the rationale of the bill, in a calm and considered way, and to be clear about what the bill does and does not cover.

People out there are asking me whether the bill is a way to stop X, Y and Z sectors, and I am pushing back against that and saying no. I absolutely agree that, if businesses or operators have obtained a licence or permit and are acting within the law, they should be left alone to get on and do that, and the regulators should be allowed to regulate that in confidence. In a world post the introduction of an ecocide law, if new planning applications come in, the same tools and assessments will be available to planning authorities and judgments will be made. The bill might help to improve transparency about why decisions were taken and why an issue was settled on—there might be some environmental impact, but the authority could set out how that can be mitigated or why a decision has been taken. However, that is nothing new.

Therefore, I do not accept that there is widespread fear in Scotland or among planning authorities about the bill. I reinforce my point that there is significant public support for the bill. It will be on me to make sure that, at stage 2, we have amendments that address concerns, where there is evidence for them. I have said that I will work with the Government and members to do that. I will be an active participant, convener—I will not just sit back and leave others to do the work. Believe me, I have worked very hard on the concept since 2021. I do not know whether Mr Stewart has worked on a member's bill—it takes time. I do not have the whole of the civil service behind me, but I am working with the Government—that is an important point. I am working constructively with the Government, more than 50 MSPs signed the final proposal, and the Government did not intervene to say, "We are going to amend the RRA. We are going to give effect to this." The Government has allowed me to advance the bill, and there is a shared aspiration to keep pace with the EU—when we look around us and at our near neighbours, we do not want Scotland to be left behind.

Douglas Lumsden: Monica, you are proposing a maximum penalty of 20 years' imprisonment. Why did you settle on that figure, rather than on 10 years, as they have in France, or the minimum of eight years that is in the EU environmental crime directive?

Monica Lennon: Again, the principal aim is for the bill to have that deterrent effect—up to 20 years in prison is a very serious punishment. In order for the bill to have the maximum deterrent effect, it had to go beyond the current penalty under the RRA, which is up to five years. There are some other examples in the European Union. I think that in Belgium, for example—sorry, it is getting late in the session and I will probably get this wrong—it might be 15 years. However, again, the aim is to set the bar really high.

Douglas Lumsden: Why did you rule out eight or 10 years? Was it just a case of you wanting to make it as high as possible in order to make that deterrent effect as big as possible?

Monica Lennon: I was listening to what stakeholders were saying. In its evidence at stage 1, the Environmental Rights Centre for Scotland said that the maximum term is aligned with the evolving criminalisation of ecocide in other jurisdictions, where it carries a penalty of imprisonment of up to 10 to 20 years. Again, examples include the Belgian penal code and the French climate and resilience law.

In the consultation, I asked a question about imprisonment to see whether people felt that such a penalty was right or whether they wanted something different. Some 2,600 people said that they supported imprisonment—79 per cent of respondents were fully supportive, and 14 per cent were partially supportive.

The aim is to reflect the seriousness of the crime. I have a wee list here—I have mentioned ERCS, but Unison Scotland and Scottish Environment LINK also fully supported the proposed penalty in principle, stating that it was proportionate to the harm that was caused and that it was aligned with approaches in other jurisdictions. I do not want Scotland to look like a soft touch on this. If we are going to have ecocide law, I want us to do it properly.

Sarah Boyack (Lothian) (Lab): I want to follow up on EU alignment and discuss the issue of penalties. We took quite a lot of evidence from witnesses who had a range of different views about the exact detail of potential penalties. Some witnesses said in response to the call for views that the bill should go further in some areas, including in relation to penalties, by looking at what has been discussed in the environmental crime directive and looking beyond traditional types of penalties. Some issues that were considered included restricting a company's operations, turnover-based fines and remediation orders.

I am keen to get your views on remediation orders, which is one issue that was discussed by witnesses. Having listened to, or seen in writing, the evidence that different witnesses gave, do you think that there is a case for expanding any of the penalty provisions in the bill?

Monica Lennon: One of the policy aims has been to align with the EU environmental crime directive while trying to ensure that we have the right penalties and punishments in place in a Scottish setting. As well as a custodial sentence and unlimited fines, the bill has provisions on compensation and publicity orders. However, I will turn to Roz Thomson to respond to that specific point.

Roz Thomson: In relation to remediation orders, there is already provision in the bill about fine levels, the extent that money can be taken back and compensation orders, which could be used to pay for restoration.

One of the thoughts about restoration is that the nature of an ecocide event might be such that the damage cannot be entirely undone, so it would not necessarily be possible to have full remediation. During the drafting of the bill, there was a focus on the collective impact of all the different measures in the bill combined with existing legislation. For example, there is already capacity to seize assets from organisations under other legislation.

Sarah Boyack: Basically, you do not think that there is a need to reference remediation explicitly because it could be delivered through other elements of the bill if it was appropriate and possible. I just want to get that on the record.

Monica Lennon: Yes. So far, I have not felt it necessary to state it in the bill. To reinforce Roz Thomson's answer, I note that there are other provisions on the proceeds of crime and, I suppose, the compensation element of the bill. Where work can be done on any sort of clean-up, that is another way to ensure that the polluter pays so that the financial burden does not fall on communities, local authorities or others.

I do not think that there is a gap in relation to remediation but, if you have further questions on that, I can take the point away and take some advice on it.

Sarah Boyack: No. It was just that one of the witnesses said that it is a curiosity that it is not specifically included in the bill. The issue is about explaining the options that come from the current legal provisions that are referred to in the bill.

Monica Lennon: I am trying to remember what SEPA said, so I am looking for that now. There are already civil remedies available to SEPA to drive restoration and, as we heard, there is existing environmental legislation that covers restoration. Given the gravity of ecocide, I did not include them in the bill and the focus is instead on compensation. We believe that that can include the cost of remediation.

I repeat the point that Roz Thomson made. Given the scale of ecocide, particularly if the damage that was caused was irreversible, remediation might not be an option. It has therefore not been made explicit in the bill. My understanding is that remediation would be covered under the compensation provisions, but I will take that away and double-check our thinking on it.

Sarah Boyack: What was appropriate at the time would depend on different cases in which legal proceedings were brought, but remediation is not excluded from the bill even though it is not explicitly referenced in it. Is that a correct interpretation?

Monica Lennon: Yes. That is my understanding, but I will bring in Ailidh Callander on the legal point, because it is considered case by case.

Ailidh Callander: Section 7 is explicit that the compensation orders can include the costs of remediation. It was felt that, given the severe nature of ecocide, the costs should be reclaimable by those who are responsible for the clean-up or have suffered from the damage that was caused. That could be anyone—it could be SEPA, a local authority or individuals—but they would be doing the remediation, as opposed to the perpetrator or the accused, given the serious nature of the offence.

12:15

Monica Lennon: Especially if the perpetrator is in prison by then.

The Convener: Michael Matheson has a supplementary question.

Michael Matheson: I seek clarification with regard to the Proceeds of Crime Act 2002. I remember serving on a committee, if I recall correctly, that dealt with aspects of that legislation. It deals with the pursuit of assets that have been obtained through illegal activity, rather than criminal offences being committed and some form of remediation being claimed from the perpetrator. Can you clarify how that would work in relation to the bill?

Under the 2002 act, the Crown Office would secure an order of confiscation, and it would then be for the individual to demonstrate that they did not gain those assets through illegal activities. I do not understand how that would apply in this instance. Can you help me to understand that?

Monica Lennon: Again, it would depend on individual cases. If it was at all relevant—it is highly possible that it is not—it would be a matter for the discretion of the courts on application by the Crown Office.

Michael Matheson: A criminal conviction is not required to pursue a proceeds of crime matter. The Crown Office can go to the court and say, "This person has so much wealth that we believe they got it through criminal activity", and seek a confiscation order. The individual then has to prove that that is not how they gained that wealth. I am just trying to understand how that would interact with the bill.

Monica Lennon: I will turn to Ailidh Callander on that. There are existing powers under the Proceeds of Crime Act 2002 to enable the police and other law enforcement agencies to investigate, search and seize assets that were obtained by criminal activity. There has been a question—not today, but previously—about why that is not in the bill. It is because that power already exists, and that is a matter to be left to the discretion of the courts on submission of a relevant application by the Crown Office.

Have I got that wrong, Ailidh?

Ailidh Callander: No. The question came up in response to concerns. If we look at the other options in the European environmental crime directive with regard to what happens with proceeds from the crime of ecocide, that is where the provision would kick in if we are talking about those proceeds. There is no need to legislate further on the proceeds of crime.

Michael Matheson: I think that I understand, but I am not entirely sure that the Proceeds of Crime Act 2002 is the legislation that would be referred to in that respect. Anyway, I will leave it there.

The Convener: We go back to Sarah Boyack.

Sarah Boyack: I move on to the financial memorandum and how the bill's provisions would be implemented. SEPA has raised concerns that the financial memorandum underestimates the costs of implementation. NatureScot has said that, as things stand, it does not think that the extension of enforcement powers would apply to it, so it would need to work with SEPA.

There are a few questions about the detail of implementation. Have you thought through how the implementation costs would be met by the public sector organisations that would be required to implement the provisions?

Monica Lennon: Careful consideration has been given to all those matters. The bill includes provisions to ensure that SEPA's existing investigatory powers can be used and it anticipates that SEPA will use existing processes and procedures to investigate any reported cases of ecocide, including liaising with COPFS. That was the basis for the methodology in the financial memorandum.

Although SEPA may be required to dedicate significant resource to the investigation of any reported instance of ecocide if the bill is enacted, any such offence would previously have been looked into as an offence under existing environmental legislation, including section 40 of the RRA. It is not anticipated that SEPA would incur notable additional on-going costs as a result

of the introduction of the bill's enforcement provisions.

Having said that, I acknowledge the point that SEPA made in evidence when it said:

> "the scale of such events ... will require significant effort/resource, training and support. Scale, resource implications and training requirements should also reflect the breadth of reporting agencies that could be involved."

It again emphasised the point about the scale of ecocide. On that basis, I acknowledge that SEPA's costs could be higher than those that are set out in the financial memorandum. I take that point.

Sarah Boyack: NatureScot has questions about funding, and local authorities also raised concerns that they would not be likely to have the resources that they would need to engage in an ecocide investigation. Will you clarify or explain how the expansion of powers in section 9 relates to the existing regulatory remits of public bodies? As the member who is leading on the bill, which bodies do you think would be expected to lead on an ecocide investigation?

Monica Lennon: I read the comments from COSLA and some of the planning authorities about resources. Although local authorities would need to be informed and made aware of any ecocide offences that could impact on their localities, it is not anticipated that the bill would generate any additional financial obligations for them. Councils can often be the first bodies to hear about environmental offences—people might phone or email their local council—but they have to report serious cases to SEPA, and it is SEPA that would be the primary enforcement or investigatory body for this matter.

I am always sympathetic to local authorities regarding their financial settlement and their capacity to do the jobs that they want to do. However, a severe environmental incident that occurs must, under existing regulations, be dealt with by our public sector regulatory bodies. In relation to the financial memorandum, other costs could kick in when a serious incident is dealt with that is likely to be at the level of ecocide. However, other adjustments would take out reporting costs from the financial memorandum.

Roz, is there anything about local authorities or SEPA that I have not mentioned?

Roz Thomson: As well as the focus on SEPA, another organisation's role that we considered is that of the police. However, I understand that there is an existing unit at Gartcosh where SEPA and the police work closely together. We took existing practices into account while acknowledging the point about the scale of an ecocide event.

Sarah Boyack: I just wanted to flag up that SEPA has raised concerns that the financial memorandum does not cover what it thinks the cost would be for it to proceed with an inquiry.

Monica Lennon: I have acknowledged the points that SEPA has made. When you put together a financial memorandum, you have to use the best information and evidence that is available at the time. However, I think that any rise in costs would be minimal. I do not want to say that this is a cheap bill, but the overall conclusion of the financial memorandum is that it is not an expensive bill compared with many others. I will be interested to see what the committee says about the costs in its report.

I reinforce the point that we already have well-established systems in place whereby highly expert SEPA officials are embedded in the Police Scotland crime campus at Gartcosh. I think that I learned that from Michael Matheson a few months back. I asked him, "Do you think I could get in to visit?" He said, "No."

Michael Matheson: [*Inaudible*.]—I do not think that they would.

Monica Lennon: That shows the seriousness of the investigations that they do. Bearing in mind that not everyone who they investigate is a legitimate businessperson and that there are lots of nasty people out there, it is important that those officers remain faceless and that we do not name any of them.

We have the systems in place already. Is there a question about resources? There always is, but let us remember that the bill covers ecocide, which is very rare. It might happen once every 10 to 20 years.

Sarah Boyack: Thank you. Back to the convener.

The Convener: I hoped that you were going to say that, Sarah. The final question will come from Mark Ruskell because, if we were not up against the clock before, we are now. I encourage Mark to ask a short question and Monica to give a short answer.

Mark Ruskell: There are two views on reporting. The Scottish Government would like the reporting requirements to be removed from the bill, but you have received some alternative views. Some stakeholders would like there to be an incident-level reporting provision so that, if an ecocide offence was committed and there was a conviction, there would be some kind of reporting after the incident. What are your views on that?

Monica Lennon: I have pretty much said that I agree with the Government on that. I will keep my answer short and not go over the background around the environmental crime directive, which I have tried to mirror. I appreciate that, if there has not been an ecocide event, a requirement to

produce a report would be burdensome against the potential to save some money—I cannot remember the exact amount, but it is something like £50,000. I am amenable to removing that provision at stage 2, if we get there.

If the committee says in its report that there would be merit in a report following an ecocide event, I will be happy to look at that. The Government might be amenable to that, but I do not have a strong position on it either way. I will be guided by recommendations and will work with the Government on it, too.

Mark Ruskell: I guess that it would depend on the event, would it not? If there was a public inquiry into a major catastrophic event, reporting might follow anyway. That is food for thought. Thank you.

The Convener: Thanks very much—

Kevin Stewart: Convener, before we move into private session, I would like to make a point of clarification, please. I have had a look at chapter 12 of standing orders, which is on committee procedures. Earlier, you said that politics should be left at the door of the committee room, which I thought was rather a strange phrase to say in a Parliament, including in a parliamentary committee. There is nothing in standing orders—in chapter 12, on committee procedures—that says that that is the case. Will you please reflect on what you said earlier in your decision to close me down for asking what I think was a relevant question?

The Convener: Of course, Mr Stewart—I will reflect on it. In the reasonable and responsible way in which I have tried to convene committee meetings for nine years, I will look back at the *Official Report*. I will check exactly what you said and exactly what I said. I will then reflect on what I said and whether it is correct, and I will come back to the committee on that. I do not have the benefit of being able to check standing orders during a committee meeting, but please be assured that I always try to convene this committee in a way that I think is reasonable.

Give me a chance to reflect on what I said and what you said, a chance to speak to the clerks and a chance to reflect on standing orders, and I will, of course, come back to the committee on that—I will be delighted to do so, Mr Stewart. I hope that you will accept that comment.

Did you say that that was a point of order?

Kevin Stewart: I said that it was a point of clarification.

The Convener: It was a point of clarification. That is good, because—

Kevin Stewart: We cannot have points of order in committee. I read the standing orders, which I am very prone to do. [*Laughter*.]

The Convener: Thank you very much, Mr Stewart. I will come back to you in the fullness of time, but it will be before we break up for the recess.

Monica, thank you very much for giving evidence to us this morning. By my calculation, unless I am corrected, you sat there for two hours and 12 minutes giving evidence on your bill. That is quite a marathon for anyone who comes in front of a committee, let alone a committee that you normally sit on.

Monica Lennon: I need a coffee.

The Convener: You could have had coffee, Monica. You are always welcome to drink coffee.

We will go into private session to reflect on the evidence on the Ecocide (Scotland) Bill. Monica, I think that we will see you again in the latter part of our private session, once we have considered the evidence on your bill.

12:29

Meeting continued in private until 13:02.

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