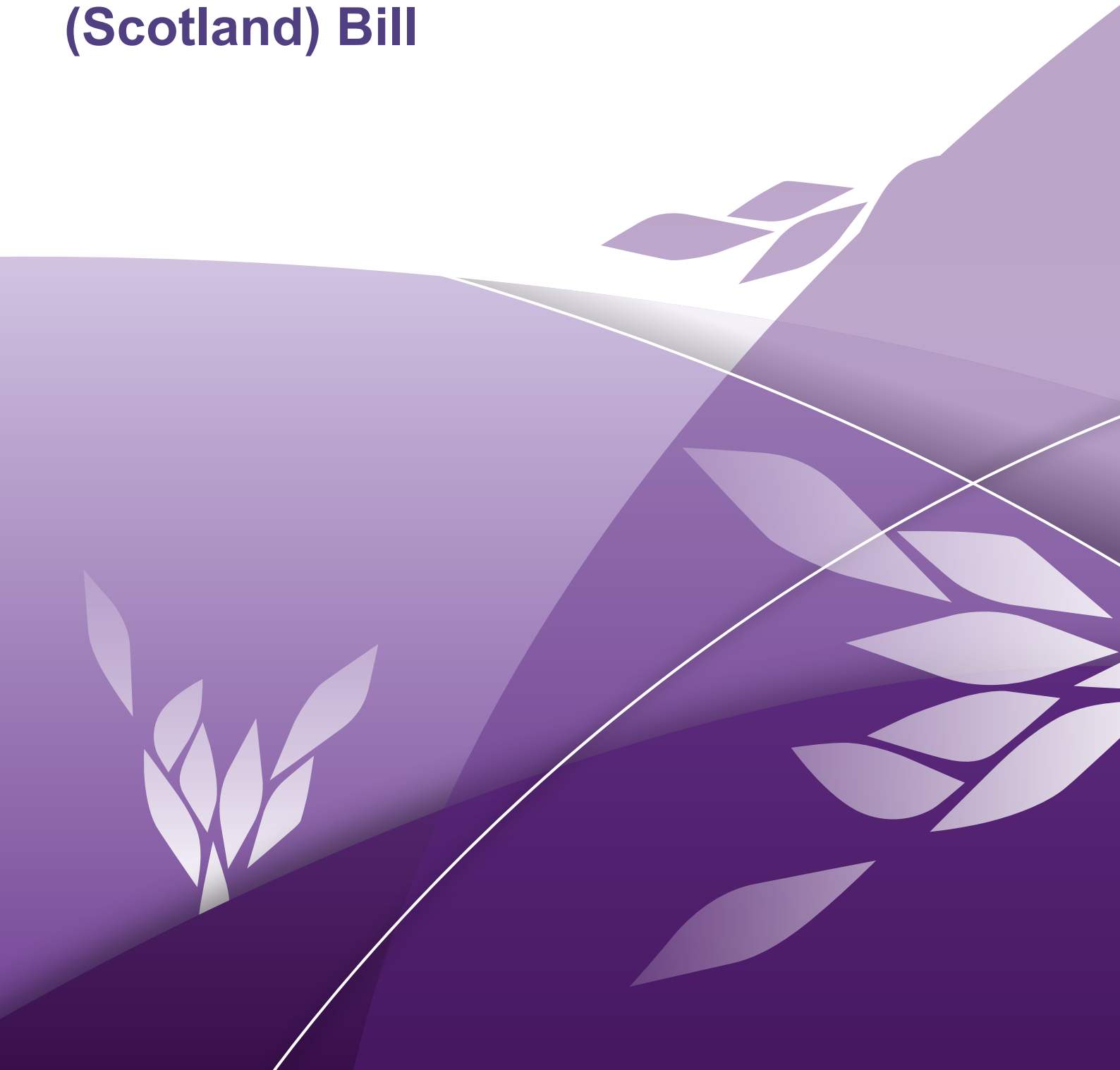
Published 23 January 2026
SP Paper 968
4th Report, 2026 (Session 6)

The Scottish Parliament
Pàrlamaid na h-Alba

Net Zero, Energy and Transport Committee

Stage 1 report on the Ecocide (Scotland) Bill



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Net Zero, Energy and Transport Committee

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Executive Summary

1. In preparing this report, the Committee has heard a wide variety of views: from environmental regulators, prosecutors, legal experts, academics, industry bodies and environmental organisations, as well as the Scottish Government and the Member in Charge. There was broad support for ensuring that the most serious environmental harm is treated as grave criminal wrongdoing but no consensus on whether the Bill, broadly as drafted, is the best way forward.

2. A central issue is whether there is a significant gap in our criminal law. Prosecutors and some regulators had some doubts about this, considering that existing legislation, particularly section 40 of the Regulatory Reform (Scotland) Act 2014, is capable in principle of addressing serious environmental harm. Witnesses also struggled to identify Scottish cases that would clearly have met the proposed ecocide threshold, even going back some years.

3. Others considered that the current framework lacks an “apex” environmental offence that explicitly recognises intentional or reckless severe environmental destruction as a crime of exceptional gravity, with penalties that reflect that seriousness.

4. The Committee also considered arguments that the Bill could have important deterrent and “signalling” value, even if prosecutions are rare. Witnesses described the potential for a new ecocide offence to influence corporate behaviour, regulatory culture and risk appetite. The Committee recognises that deterrence is difficult to evidence, particularly for offences intended to be prosecuted only rarely, but accepts that new criminal laws can play a role in driving cultural change.

5. The Bill should also be considered within a wider European and international context. The revised EU Environmental Crime Directive requires Member States to strengthen criminal enforcement for the most serious forms of environmental harm, including conduct comparable to ecocide, and to ensure robust penalties. The Bill likely meets - indeed in some respects, such as penalties, exceeds - the minimum requirements of the Directive. It would place Scotland among a small number of jurisdictions adopting an explicit ecocide offence in domestic law. Witnesses had doubts that the current Scottish law “keeps pace” with the Directive, which EU Member States must ensure is implemented by May 2026. The Committee notes that there are other ways in which this matter could be addressed in the future.

6. Evidence has underlined substantial concerns about the clarity, robustness and workability of some terms used in the Bill such as “severe environmental harm”, “widespread”, “long-term” and “serious adverse effects”, and the Bill’s treatment of cumulative harm, omissions and courses of conduct, with differences of views as to what these terms might mean in practice. Prosecutors and regulators queried whether the definitions provide sufficient clarity to support investigation, expert evidence and prosecution to the criminal standard of proof. These must be taken seriously and addressed if the Bill is to become law.

7. The Committee is also concerned by evidence that the Bill creates new legal uncertainty within the planning system and could potentially have a chilling effect on decision-taking and on activities carried out in furtherance of a planning decision,

especially in the absence of a provision making expressly clear that it is a defence to a charge of ecocide to be exercising a lawful function competently and in good faith. This could potentially apply to other permitted activities outside the planning system.

8. Unlike the offence under section 40 of the 2014 Act, the Bill does not create a strict liability offence. Having to prove intention or recklessness seems appropriate given the gravity of the offence and the level of prison sentence or financial penalty that could apply. However, evidence did highlight the practical challenges of establishing mens rea in corporate prosecutions. It also raised questions about the Bill's approach to individual liability within organisations, including whether it is sufficiently aligned with established formulations in Scots environmental and criminal law.

9. Looking at the current enforcement landscape, the Committee was struck by the lack of prosecutions and convictions under section 40 of the 2014 Act. Understanding why existing powers have been so rarely used is essential, irrespective of whether a new offence is created. The Committee has therefore recommended that the Scottish Government undertake or commission a short, targeted review of section 40 (together with the Environmental Liability (Scotland) Regulations 2009), examining whether procedural, evidential or resource constraints are limiting its effectiveness.

10. Considering next steps, if it is agreed that reform is necessary, there look to be two possible legislative routes. First, to amend section 40 of the 2014 Act to create an additional tier for ecocide-level harm, committed intentionally or recklessly, with higher maximum penalties. Second: to proceed with a standalone ecocide offence, as in the Bill. In either case, the Committee would in principle welcome courts or juries having the option of convicting the accused of the lesser offence (i.e. the existing section 40 offence), as is the case in some other areas of the criminal law.

11. These two legislative routes are two different means to broadly the same end. The most important question is which would work best, especially from the practical point of view of prosecution and enforcement. The difficulty for the Committee is that, whichever is preferred, it is clear there are (as outlined) significant concerns around definitional issues and unanswered questions around enforcement. These must be addressed before legislation is passed. These require careful joint consideration by prosecutors, environmental regulators and other expert stakeholders, as well as the Scottish Government and Member in Charge.

12. The Committee commends the Member in Charge for her work on this Bill and, through this, for launching an important discussion about how we deal with ecocide. The Committee agrees in principle with having stronger criminal penalties for severe environmental damage. However, a majority[i] of the Committee does not consider that there is a realistic prospect of the key concerns raised in this report being addressed comprehensively within the limited time remaining before the end of this Parliamentary session. In that context, a majority[ii] of the Committee cannot support the general principles of the Bill. Other recommendations in this report, such as on reviewing the section 40 offence, stand independently of the Bill's progress. The Committee would like to see this work taken forward, with a view to further action, including possible legislative reform, in the next Parliamentary session.

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i Sarah Boyack and Mark Ruskell dissent from this recommendation

[ii] Sarah Boyack and Mark Ruskell dissent from this recommendation

Introduction

13. The Ecocide (Scotland) Bill was introduced on 29 May 2025 by Monica Lennon MSP as a Member's Bill. Following its introduction, the Parliament referred the Bill to the Net Zero, Energy and Transport Committee for Stage 1 consideration. As a result, the Committee was responsible for taking evidence on the Bill from stakeholders and experts, and reporting to the Parliament on whether the Bill's general principles should be agreed to.

14. The Bill creates a new criminal offence of ecocide, which can be committed by individuals, organisations and 'responsible individuals' of organisations. It can be committed intentionally or recklessly. The maximum penalties are a custodial sentence of up to twenty years and an unlimited fine for individuals and an unlimited fine for organisations. The Bill provides for a statutory defence of necessity.

15. The Bill also enables courts to impose compensation orders (for example to fund environmental remediation) and publicity orders (requiring a convicted person or organisation to publicise the details of the conviction).

16. If enacted, the Bill will require Scottish Ministers to publish a report on the operation of the Act after five years (after consulting with various bodies), including providing information on the number of reported crimes, the number of convictions and associated sentences.

17. The Policy Memorandum says that the Bill seeks to prevent mass environmental damage and destruction taking place in Scotland due to crimes of ecocide by putting in place strong punishments for this crime. It sets out three main policy objectives:

    - To ensure serious environmental offences are treated as criminal offences rather than 'regulatory' breaches.
    - To act as a deterrent to individuals and companies from committing serious environmental offences, by establishing a specific, stand-alone offence with significant penalties.
    - To ensure that domestic legislation maintains alignment with the EU, specifically referencing the EU Environmental Crime Directive (more information below).

18. The Bill as introduced can be found on the Scottish Parliament website alongside its supporting documents:

    - Explanatory Notes
    - Policy Memorandum
    - Financial Memorandum
    - Delegated Powers Memorandum
    - Statements on Legislative Competence

19. An Equalities Impact Assessment has also been produced for the Bill.

20. Further information on the Bill can be found in the Bill briefing published by the Scottish Parliament Information Centre (SPICe).

Background to the Bill

21. Broadly speaking, the term 'ecocide' is a legal concept used to refer to the most serious environmental crimes. The term “ecocide” is not clearly defined and can be used in various ways. Sometimes it refers to the cumulative harm arising from the degradation of natural resources and the pollution that has accompanied modern industrialised development. Early discussions about specific legal recognition for ecocide centred around whether there was a need for a distinct international crime tackling environmental destruction stemming from warfare. Over time, the 'ecocide debate' has evolved to encompass environmental harm outside of armed conflict, focusing more on the issue of serious environmental damage caused in the course of commercial or industrial operations. More recently, the debate is also commonly framed around the need to tackle the twin climate and nature crises and associated drivers of Greenhouse Gas emissions and biodiversity loss at the domestic and global level.

22. There is an ongoing campaign or 'movement' for ecocide to be adopted as an international crime via the Statute of Rome, which established the International Criminal Court. This is spearheaded by global NGO Stop Ecocide International . Stop Ecocide International argue that adopting a new international crime of ecocide would "build on the existing crime of severe damage to the environment during armed conflict, whilst reflecting the fact that today, most severe environmental damage occurs during times of peace", and would offer State Parties to the Rome Statute the opportunity to meet current challenges.

23. Stop Ecocide International convened an Independent Expert Panel for the Legal Definition of Ecocide. In 2021, it put forward a proposed definition for ecocide for inclusion in the Rome Statute: “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts”. A proposed amendment to include ecocide in the Statute was formally submitted in September 2024.

24. Alongside this campaign, there are moves to have ecocide recognised in domestic criminal law. The Policy Memorandum for the Bill states that:

> “France has already introduced legislation in 2021 to criminalise ecocide in domestic law, as has Belgium. Other EU states, including the Netherlands, are considering progressing similar legislation.” [1]

25. The 2024 EU Environmental Crime Directive (2024/1203) (“the ECD”) broadly incorporates an approach to recognising ecocide as a crime across the EU. The ECD came into force on 20 May 2024 (replacing the previous 2008 ECD), and Member States are required to implement it by 21 May 2026.

26. While there are legal sanctions for serious environmental damage in the UK, there is currently no specific offence of ecocide**.** A Private Member’s Bill introduced to the UK Parliament in November 2023 by Baroness Boycott would have created an offence of ecocide in England and Wales. It fell when Parliament was dissolved

ahead of the 2024 UK general election, having not progressed beyond First Reading.

Committee scrutiny

27. The Committee launched a call for views on the Bill on 30 June, which closed on 9 September. Responses are available on the Committee's website , as is a SPICe summary of the evidence.

28. On 5 September, the Scottish Government provided a memorandum setting out a general view on the Bill and more detailed views on specific provisions.

29. On 23 September, the Committee heard from two panels. The first focused on legal and environmental rights perspectives. Witnesses were:

- Jamie Whittle, Chair, Environmental Law Sub-committee, Law Society of Scotland
- Valerie Fogleman, Professor of Law, Cardiff University School of Law and Politics; Consultant, Stevens & Bolton LLP
- Sue Miller, Chief Networks Officer, Stop Ecocide International
- Dr Shivali Fifield, Chief Officer, Environmental Rights Centre for Scotland (ERCS)

The second panel focused on industry perspectives. Witnesses were:

- Catherine McWilliam, Nations Director, Scotland Institute of Directors Scotland
- Professor Simon Parsons, Director of Environment, Planning and Assurance, Scottish Water
- Elspeth Macdonald, Chief Executive Officer, Scottish Fishermen's Federation
- Jonnie Hall, Deputy Chief Executive Officer and Director of Policy, National Farmers Union Scotland

30. On 4 November, the Committee took evidence from a panel of key regulators and experts in the environmental regulatory landscape in Scotland. Witnesses were:

- Ross Haggart, Chief Operating Officer, Regulation, Business and Environment, Scottish Environment Protection Agency (SEPA)
- Professor Sarah Hendry, Chair of Law, Dundee Law School
- Professor Campbell Gemmell, Environmental Consultant, and former CEO of the South Australian Environment Protection Authority and SEPA
- Dr Clive Mitchell, Head of Terrestrial Science, NatureScot
- Mark Roberts, Chief Executive, Environmental Standards Scotland

31. On 11 November, the Committee heard from two panels. The first focused on the definitional detail of the offence and on enforcement issues. Witnesses were:

- Dr Clare Frances Moran, Lecturer and Co-Director, Aberdeen Centre for Constitutional and Public International Law, University of Aberdeen
- Murdo MacLeod KC,
- Rachael Weir, Head of Policy and Engagement, Crown Office and Procurator Fiscal Service
- Iain Batho, Head of the Wildlife and Environmental Crime Unit, Crown Office and Procurator Fiscal Service

The second panel explored international perspectives on ecocide. Witnesses were:

- Dr Ricardo Pereira, Reader in Law, Cardiff University
- Dr Suwita Hani Randhawa, Senior Lecturer in Politics and International Relations, University of the West of England
- Dr Rachel Killean, Senior Lecturer, The University of Sydney Law School

32. On 2 December , the Committee heard from the Cabinet Secretary for Climate Action and Energy and Scottish Government officials.

33. On 9 December, the Committee heard from the Member in Charge, Monica Lennon MSP, supported by officials from the Scottish Parliament's Non-Government Bills Unit (NGBU) and Legal Services. Before this, following the first evidence session on the Bill, the Member in Charge of the Bill wrote to the Committee on 26 September. The letter highlights a willingness to consider amending the Bill at Stage 2 in certain areas, as discussed further below.

34. On 12 January, the Member in Charge wrote to the Committee to provide further information on the defence of necessity and its compatibility with the ECHR.

Engagement with Local Authorities, COSLA and Heads of Planning Scotland

35. As the inquiry progressed, the Committee explored the potential implications of the Bill for those exercising planning functions and agreed to write to Local Authorities, COSLA, and Heads of Planning Scotland. Responses are available on the Committee's website. As with all other evidence the Committee received, the detail of responses is included at relevant points in this report.

Consideration by other parliamentary committees

36. A Delegated Powers Memorandum (DPM) was prepared by NGBU on behalf of the Member in Charge of the Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. The Bill contains three delegated powers provisions. The first is the ability for the Scottish Ministers to modify the list of bodies and persons that they must consult when preparing a report on the operation of the Act. The second is to enable ancillary provision to be made where the Scottish Ministers consider it appropriate to ensure the Bill can be given its full effect. The third is to enable commencement regulations to be made. The Delegated Powers and Law Reform Committee, which considers technical rather than policy aspects of such provisions, was content with all the powers and published a report on the DPM on 1 October.

37. NGBU also prepared a Financial Memorandum setting out the estimated costs of the Bill. The Finance and Public Administration Committee considered the Bill's financial memorandum. It held a call for views on the financial memorandum and received two responses. It agreed to take no further steps.

38. This Committee's considerations of financial aspects of particular elements of the Bill are set out at appropriate points below.

Member in Charge

39. The Member in Charge of the Bill has also been a full Member of the Net Zero, Energy and Transport Committee throughout the duration of the Committee's Stage 1 consideration of the Bill. There are rules in the Parliament's Standing Orders to address this situation, effectively requiring the Member in Charge not to be substantially involved in a committee's decision-taking about the Bill, and these were adhered to throughout the Committee's consideration. In the vast majority of cases, the Scottish Labour Party substitute, Sarah Boyack MSP, took part in those decisions in place of the Member in Charge.

Whether new Ecocide Offence needed and Interaction with Existing Law

Introduction

40. There is a large and complex body of environmental legislation in Scotland which seeks to protect the environment across a range of regulatory frameworks covering e.g. the water environment, pollution prevention and control, habitat and species protection, chemicals and waste management regulation. A central issue in the Committee's scrutiny has been whether Scotland requires a new, high-tier criminal offence to capture the worst cases of environmental damage or whether the aims of the Bill could be met by making more use of, or strengthening, this existing legal framework, notably the offence under section 40 of the Regulatory Reform (Scotland) Act 2014 (RRA) of causing "significant environmental harm" (referred to hereon as "the section 40 offence").

41. The section 40 offence is "to act, or permit another person to act, in a way that causes or is likely to cause significant environmental harm" (or to fail to act, or permit another person not to act, in a way such that the failure causes or is likely to cause significant environmental harm). The section 40 offence is strict liability: it does not require the prosecution to prove intention or recklessness. Penalties on summary conviction are a fine of up to £40,000 and/ or imprisonment for up to 12 months. On conviction on indictment, the penalty is an unlimited fine, and/or imprisonment for a term not exceeding 5 years. The court can also impose a 'remediation order', ordering the person to take specified steps to remedy or mitigate the harm, if it appears to the court that it is within the power of the person to do so.

42. "Environmental harm" under the section 40 offence means any of:

    1. harm to the health of human beings or other living organisms

    2. harm to the quality of the environment, including—(i) harm to the quality of the environment taken as a whole, (ii) harm to the quality of air, water or land, and (iii) other impairment of, or interference with, ecosystems

    3. offence to the senses of human beings

    4. damage to property, or

    5. impairment of, or interference with, amenities or other legitimate uses of the environment.

    And it is "significant" if: (a) it has or may have serious adverse effects, whether locally, nationally or on a wider scale, or (b) it is caused or may be caused to an area designated by the Scottish Ministers.

    In response to a question in May 2025 about how many section 40 prosecutions there had been, the Scottish Government said that, as of the period ending 2022-23, there have been none "where this was the main crime".

43. The definition of ecocide in the Bill is of causing "severe environmental harm". "Environmental harm" has the same meaning as for the section 40 offence. And it is "severe' if it (i) has serious adverse effects and (ii) is either (A) widespread or (B) long-term.

- 'Widespread' means the environmental harm "extends beyond a limited geographical area, to impact upon an ecosystem or species or a significant number of human beings, either directly or indirectly" (section 1(2)(c)
- 'Long-term' means if environmental harm "is irreversible or is unlikely to be reversed through a process of natural recovery within 12 months of the environmental harm occurring" (section 1(2)(d).

44. Unlike the section 40 offence, the Bill requires the prosecution to prove that the person either (i) intended to cause environmental harm, or (ii) was reckless as to whether environmental harm was caused.

45. Supporters of the Bill argued that a distinct ecocide offence would fill a symbolic and structural gap at the apex of Scotland's environmental governance framework, providing a greater deterrence against the most egregious forms of environmental harm and aligning Scotland with international standards. Others questioned the necessity of new legislation. Arguments against were that examples of ecocide provided by proponents appear to be very rare, the lack of clear examples of harm that the current law could not address, and the risk of confusion and legal uncertainty from having overlapping offences.

46. The Policy Memorandum for the Bill states that:

> "While legislating on international crime is outwith the competence of the Scottish Parliament, the Member believes that Scotland should "pave the way for the UK" by criminalising ecocide in domestic law" [2]

47. In oral evidence, the Member in Charge said that "Scotland's nature is extraordinary, but we are also one of the most nature-depleted countries in the world." [3] She stated:

> "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." [4]

48. Both the Policy Memorandum and the Financial Memorandum indicate that there have been very few incidents in Scotland in recent years that would be likely to meet the proposed definition of ecocide, and that occurrences of ecocide are therefore expected to be "very rare". For the purposes of costs, the Financial Memorandum assumes an ecocide event every 10 to 20 years. Nonetheless:

> "The Member considers that, as the natural environment and natural resources become increasingly depleted and as concerns grow about a lack of corporate responsibility, where financial gain is prioritised over maintaining our environment, in Scotland and beyond, it is reasonable to assume that the likelihood of an ecocide event taking place in Scotland is increasing". [5]

49. Despite the likely infrequency of ecocide-level events, the Policy Memorandum for the Bill sets out the Member's view that there is a need for a further tier of criminalisation for the most serious offences:

> "The Member feels that, too often, those who commit environmental crime do not face criminal penalties or, as the Member says, that "criminal sanctions are often seen as the last resort". She also believes that environmental crimes on the scale of ecocide should not be seen as "regulatory matters" and that establishing a specific offence that firmly places the most serious environmental offences as criminal matters will send out an important signal to companies and individuals." [6]

50. The Scottish Government's 5th September memorandum stated that:

> "The Scottish Government is supportive of the proposal to introduce an offence of ecocide, properly understood as being for the most extreme, wilful and reckless cases of harm." [7]

51. The memorandum acknowledges "the strong support for this Member's Bill in the public consultation and support for the introduction of the Bill across the Parliament" [8] but also expresses concerns about the relationship with existing law. The Scottish Government notes that it is "a matter of concern that there is such a degree of overlap" [9] between the proposed new offence and the existing section 40 offence. It states that "it is important that the Parliament is clear about the particular circumstances that would merit the use of the proposed new offence". [10]

Is something new needed?

52. In oral evidence, witnesses struggled to identify specific recent domestic cases that would have clearly fallen within the proposed definition. Professor Valerie Fogleman suggested that the MV Braer oil spill of 1993 "would be an example of an incident where the bill would fit very well" [11] depending on proof of culpability. Jamie Whittle of the Law Society of Scotland told the Committee, "I cannot think of a specific instance off the top of my head." [12] In subsequent correspondence to the Committee, the Law Society stated that they were unable to provide Scotland specific examples (from the past 10 to 20 years) but highlighted two cases in England and the Republic of Ireland as examples of situations which might have been prosecuted as alleged ecocide had the necessary legal framework existed.

53. The Crown Office and Procurator Fiscal Service (COPFS) stated that, in recent years, all serious environmental incidents reported to it could be addressed under existing legislative provisions and the Scottish Environment Protection Agency (SEPA) had not highlighted any case where it could not find an appropriate offence. SEPA said that it had never encountered an incident for which existing powers were clearly inadequate. Neither body considered there was a concrete "enforcement gap" that the new offence is required to fill, although regulators did tend to support the principles of the Bill more broadly and the aim of introducing a higher tier offence, set out further below.

54. However, several witnesses argued that Scotland's relatively well-developed environmental regulatory framework is not, in itself, a reason to reject the creation of an ecocide offence. Dr Rachel Killean said that "something is still needed at the

apex of the regulatory pyramid… Even a country with a strong environmental framework could still discuss a crime of ecocide" [13] . She said "to think that the fact that we have not had an ecocide means that none is likely in the future misunderstands the direction in which we are going in terms of environmental degradation". [14]

55. The Cabinet Secretary indicated broad agreement with these views:

> "We would hope that, if the bill was passed, we would never have to use its provisions, because it would have to be such a severe event. However, the fact that we would not want to ever have to use the legislation does not mean to say that we should not have it in place, because the deterrent effect is important. The case has to be made that there is a level of harm for which the existing legislation does not adequately provide. A new offence of ecocide needs to address the most extreme, wilful and reckless cases of harm." [15]

56. We sought views on whether there could be complementarity in having on the statute book both the offence under the Bill and the section 40 offence. Stop Ecocide International argued that the Bill would "complement and reinforce" [16] existing provisions, "elevating the seriousness with which environmental crime is taken in Scotland by bringing in higher-level criminal penalties." [17] ERCS similarly characterised ecocide as an "extension of, not a replacement " [18] of the section 40 offence, which "does not cover the most serious environmental harm as defined in the new bill" [19] nor provide comparable sanctions. Environmental Standards Scotland (ESS) told the Committee that the proposed offence would "sit at the top of the overall legislative and regulatory pyramid that already exists" [20] , while NatureScot described the Bill as providing "important scaffolding for the existing environmental governance architecture". [21]

57. Professor Campbell Gemmell supported the Bill, agreeing that it "would sit at the apex of the current arrangements" [22] , but also raised concerns about the adequacy of wider environmental governance and enforcement. He cautioned against inferring that a lack of section 40 prosecutions means a lack of serious environmental harm, noting that "the number of public complaints and concerns about environmental conditions raised with both bodies has virtually doubled, while the number of prosecutions has significantly declined". [23] He also cautioned against seeking to establish an ecocide offence through "tinkering" with the existing law, stating that "there is a need for a separate piece of legislation to sit at the top of the current arrangements, rather than our fiddling with what we have.". [24]

58. Several witnesses raised concerns about the extent to which the proposed offence is capable of addressing the types of environmental degradation most commonly seen in Scotland. For example, NatureScot said "a lot of the current state of climate and nature, globally and in individual countries, is more to do with death by a thousand cuts, if you like, rather than a series of catastrophic steps towards the current situation. As far as I can see, that kind of accumulative attrition would not obviously be addressed by the bill as it stands." [25]

59. Sectoral and industry bodies expressed a range of views on necessity and proportionality. NFU Scotland considered that the Bill is "unlikely to affect the day-

to-day operations of most agricultural businesses" [26] but was "broadly supportive of the overall aim… to criminalise the most serious forms of environmental harm" [27] and saw potential for "extra backstops" [28] if safeguards and guidance are clear.

60. The Scottish Fishermen's Federation (SFF) argued that "the Member has not set out why this Bill is needed" [29] , highlighting the absence of recent domestic examples. The Scottish White Fish Producers Association described Scotland's existing environmental framework as "rigorous" [30] and cautioned against "layering new, vaguely defined liabilities atop this existing framework." [31] Scottish Water said that the organisation had benefited from a "very strong and collaborative approach to regulation" [32] in Scotland, stating that "the regulations that we already have are successful, and they work in a way that encourages us to be better every year." [33] . Professor Simon Parsons from Scottish Water further stated that:

> We are also subject to regulations on significant environmental harm, so the key question is: does the bill represent the next level up from that sort of environmental harm? As for whether the bill will change how we manage our abstractions, our reservoirs or our discharges to the environment, I do not think that anything in it at the moment will lead to that sort of change. [34]

Deterrence and cultural change

61. The Committee considered arguments that the Bill would be a strong signal with a deterrent effect, even if prosecutions are rare. Dr Rachel Killean said deterrence was "the number 1 reason" [35] jurisdictions had adopted ecocide-type offences. She said existing civil, regulatory and criminal frameworks "do not effectively deter large-scale environmental harm" [36] and that a crime which "puts on notice those in positions of power is needed". [37]

62. Witnesses who had considered the matter generally said it was too early to tell whether bringing in an ecocide effect had had a deterrent fact, and that it was difficult anyway to "prove" this. Dr Killean said most evidence of deterrence was "anecdotal" but that:

> "You can always track progress in the aftermath of a state taking a further step along its pathway to criminalisation. On various law firms' websites, you will see explainers and advice to corporations about making sure that they stay ahead of the issue and get their house in order. That shows that a shift in thinking is happening. I do not know whether you could call that deterrence at this point, but you can certainly see a shift in the conversation that suggests that there is some fear around the potential implications of a new crime". [38]

63. Professor Sarah Hendry commented that:

> "It is difficult to have an evidence base for a deterrent effect but, instead of changing section 40, with its high penalties, the passage of a specific bill would probably attract some regulatory attention, press attention and corporate attention, which might strengthen the potential for a deterrent effect." [39]

64. Professor Campbell Gemmell referred to research by the EU Network for the

Implementation and Enforcement of Environmental Law and the OECD, which found "a dramatic drop in waste offences in certain categories after the application of either new law or significant increases in penalties." [40] While these examples concern "lesser" environmental crimes, he considered them evidence that well-designed criminal measures can drive "cultural change or a change in performance". [41]

65. Witnesses also highlighted the importance of prosecutorial behaviour and regulatory enforcement. SEPA and COPFS told the Committee that prosecutions for serious environmental offences are reserved for only the most significant incidents and that the evidential thresholds for bringing such cases are high. Several respondents, including ERCS, said that without adequate institutional capacity and supporting measures like guidance and training, there was a risk of the new offence being more a symbolic measure than a meaningful deterrent.

66. Dr Ricardo Pereira said that:

> "Deterrence has two aspects. One is the principle of criminalisation and the ultimate penalties, including imprisonment, fines, restoration orders and so on. The second is how likely the penalties are to be enforced. Corporations will then take account of the entire legal framework to decide due diligence policies to make sure that they do not commit environmental offences. Studies suggest that introducing new criminal offences, for example, has a deterrent effect. However, once criminal penalties are introduced, any manipulation of the types and levels of penalties does not necessarily have the same deterrent effect." [42]

67. The Member in Charge argued that "the severity of the penalty is an intentional and necessary deterrent". [43] Citing the Law Society of Scotland's evidence, she said that the offence is intended to drive a "change of behaviour towards environmental risk" [44] , sending a "clear, dissuasive message" [45] to those who might cause environmental harm. She framed this as an effort to "change corporate culture" and to send "an unmistakable signal that Scotland places the value of its nature above illegal profit". [46]

68. She acknowledged that deterrence is difficult to quantify, noting that "when something has not happened, it is hard to prove why it did not happen" [47] , but said that the legislation is "changing the conversation". [48] She described how, since first encountering the ecocide movement in 2021 in the build-up to COP26, the issue has rapidly gained prominence, with frequent announcements from countries and international forums, including discussions at the UN and the International Court of Justice.

69. She said that ecocide law is now being taken seriously by the private sector, referring to briefings from "high-profile law firms" [49] advising clients to prepare for its adoption domestically and internationally. She cited comments by Jojo Mehta of Stop Ecocide International about growing business engagement, noting that "big corporations are now putting ecocide law on their risk registers" [50] and are forecasting that it could become an international crime "in a matter of years". [51]

70. She stated that ecocide law "is no longer an abstract concept" [52] but "is becoming

mainstream" [53] , and highlighted that European member states will be required to "fully transpose and adopt the environmental crime directive by May next year". [54]

71. COPFS said, when asked whether there was a gap in the legal framework, that it has "struggled to identify a scenario where the existing legislative framework would not be sufficient" [55] , particularly given the availability of the section 40 offence. However, it also recognised that penalties under the RRA are capped at five years' imprisonment and stated, "If you are wanting to find a gap, I think that the gap relates to massive incidents where we would be limited in sentencing". [56]

72. Other stakeholders, while supportive of the overarching aim of criminalising the most serious forms of environmental harm, questioned whether introducing a separate offence is the most effective way to achieve this. SEPA suggested that an alternative approach would be to create an offence of (or equivalent to) ecocide by amending the RRA, thereby establishing a new offence that specifically complements the existing section 40 offence. In explaining this position, SEPA stated that, "if the environmental harm is caused by an issue that is within SEPA's regulatory powers, and if there were two separate offences, we could report both to the Crown Office and Procurator Fiscal Service; however, we think that it would be clearer if the existing legislation were amended rather than bringing in new legislation." This reflects SEPA's broader concern that "having two offences covering the same acts could create uncertainty" for regulators and prosecutors. SEPA also stated that, if the Bill is passed, there would be "need for clear guidance to ensure that the relationship between it and the wider regulatory landscape is clearly understood". [57]

73. Professor Sarah Hendry told the Committee that:

> "I agree that it would be possible to achieve most of the aims of the bill by amending section 40 of the 2014 Act, which might give more regulatory clarity with regard to the differences. However, if the Parliament wants there to be a headline bill that would attract publicity in the best possible sense, the way to do that might be through a free-standing bill." [58]

74. The Cabinet Secretary said that she had been initially concerned about the degree of overlap between the new offence of ecocide and the existing offence. She said, "I was keen to discuss with Ms Lennon whether we could amend the 2014 Act to include such an offence and to make the penalties more commensurate with the severity of the offence." [59] However, she further noted that "if the sentences under the 2014 act are indeed "lagging behind", the existing law may not give a judge the leeway to impose penalties that are commensurate with the gravity of the offence." [60] She concluded, therefore, "In providing the additional offence of ecocide, as defined, Ms Lennon's bill is offering additionality to what is already in the 2014 Act." [61]

75. A Scottish Government official added:

> "It is clearly more straightforward and visible to have a new bill if you are creating a whole new offence with a new name. If you are amending existing legislation, there is a limit to how far you can go. You could create an enhanced level of offence for the existing offence. Whether you could then call that offence a different name would be a technical question for the drafting process, but that would be less visible than a full stand-alone bill." [62]

76. The Member in Charge argued that strengthening the section 40 offence "would not be sufficient" [63] to address the most serious forms of environmental harm. She said that ecocide is intended to capture "events that cause the most severe environmental harm" [64] , which she suggested would likely occur "only once every 10 to 20 years". [65]

77. She said that "under the bill, it must be proven that the guilty party had a guilty mind when carrying out a guilty act" [66] , specifically that the person acted "with intent or recklessness" [67] . She argued that this higher mens rea threshold is appropriate given the seriousness of the penalties, noting that consultation showed public support for punishment "being up to 20 years in prison" [68] .

78. Although she acknowledged that penalties under the section 40 offence could be increased, this "would not fundamentally change the offence—it would still be a strict liability offence" [69] She stated: "the new offence will give the Crown Office and Procurator Fiscal Service an essential additional option for prosecution for the most serious environmental crimes" [70] .

Prosecutorial choice and alignment with existing environmental offences

79. Witnesses highlighted a possible risk that the higher evidential threshold for ecocide could affect how prosecutors choose between the new offence and the existing section 40 offence.

80. COPFS warned that, in practice, prosecutors might face a "double-or-quits" [71] choice in serious cases: whether to select the more readily provable section 40 offence, with lower maximum sentence, or to proceed under the ecocide offence, with a higher threshold of harm and mens rea to be proved, but the possibility of a substantially higher sentence.

81. The Cabinet Secretary highlighted the risk that, because the section 40 offence is a strict liability offence and therefore easier to prove, prosecutors might default to using it rather than pursuing the more demanding ecocide offence. As she explained, "Bringing a prosecution for an ecocide offence might be seen as a riskier option." [72] She said she would not want to see this inadvertently weakening enforcement against serious environmental harm. While acknowledging that ecocide was intended to be a high-bar offence, she stressed that those who had caused serious environmental harm should not be perceived as having "got away with an offence that is covered in the 2014 act" [73] She stated that she would not want "'significant' and 'severe' to be the enemy of prosecuting serious environmental harm" [74] , and argued that the Bill should be better aligned with the RRA to avoid gaps in accountability where the ecocide threshold cannot be met.

82. The Cabinet Secretary suggested that this risk could be remedied with an 'alternative conviction provision'. As Scottish Government officials explained, this would allow a jury to return a verdict on the lesser offence (section 40) without the need for it to have been separately libelled at the outset. The Cabinet Secretary said that this was "worthy of further consideration" [75] .

83. The Cabinet Secretary described this as a way of "dovetailing" the Bill with the existing regulatory framework, simply because the ecocide test had not been met. She noted that an alternative conviction provision is an established feature of criminal law and confirmed that such a mechanism could be introduced at Stage 2 if the Bill progressed.

84. In subsequent written evidence, the Cabinet Secretary reiterated that the intent of an alternative conviction provision would be to provide for a jury to be able to consider a conviction under the section 40 offence if it is not satisfied that the accused has committed an offence of ecocide as charged. The letter states that, "this could help to address concerns about reluctance to bring an ecocide offence to court, and could establish a relationship and hierarchy between the two offences." [76]

85. The letter outlines two existing legislative examples. The Domestic Abuse (Scotland) Act 2018 provides that a person being tried for the offence of domestic abuse can be convicted of one of two specified alternative offences, if the evidence does not support conviction for the offence of domestic abuse but does support conviction for the alternative offences. The Criminal Justice and Licensing (Scotland) Act 2010 provides that if a jury or court is not satisfied that the accused committed the offence of stalking then it may instead find them guilty of threatening or abusive behaviour.

86. The Member in Charge said she would welcome an amendment along such lines. She described this as a "tiered approach" [77] , noting that it has "precedent in other legislation" [78] and is "a sensible step that strengthens the bill" [79] . She explained that her intention is for the Bill to be "another tool in the toolbox" [80] , stressing: "I do not want to tie the hands of prosecutors and the courts" [81] . While she did not believe the Bill would have that effect, she added that, if a Stage 2 amendment would "help to provide clarity" [82] , she would be "absolutely happy to work with the Government on that" [83] .

Alignment with the EU Environmental Crime Directive ("the ECD")

87. The ECD, referred to earlier, requires Member States to transpose its provisions into domestic law by 21 May 2026. Its broader purpose is to strengthen the EU's capacity to prevent and sanction environmental crime by obliging Member States to ensure that certain unlawful and intentional conduct constitutes a criminal offence. The Scottish Government has committed to maintaining alignment with EU law where appropriate.

88. The ECD creates what it calls "qualified offences". These arise where conduct causes either the destruction of, or widespread and substantial damage (irreversible or long-lasting in nature) to large or environmentally valuable ecosystems, protected habitats, or to environmental media such as air, soil or water. Member States must

ensure that qualified offences carry a maximum custodial sentence of at least eight years. Although the ECD does not use the term “ecocide”, its preamble makes clear that the approach to defining qualified offences “can encompass conduct comparable to ecocide”.

89. The Policy Memorandum states that the Member in Charge met the Scottish Government to discuss amending the section 40 offence as an “alternative approach” to a new standalone offence and states:

> “The Scottish Government made clear during these meetings and in correspondence that it was considering the potential to modify the section 40 offence to give effect to changes similar to those in the ECD. The Scottish Government has not, at time of drafting this document, taken steps to progress this option”. [84]

90. In its memorandum to the Committee, the Scottish Government noted its general commitment on alignment. On the ECD, it stated:

> “The proposals can be seen as related to provisions in the revised EU Environmental Crime Directive, that we are considering under our alignment policy… The qualified offences would apply where the offence causes ‘widespread and substantial damage which is either irreversible or long-lasting’, which is a similar criteria as found for the offence in the Bill. However, the approach proposed in the Bill differs as it proposes to introduce a separate offence for the most serious cases, with a significantly higher level of maximum punishment than set out in the Directive.” [85]

91. In oral evidence, the Cabinet Secretary noted that:

> “The bill, if it were passed, would be a stronger response to the directive’s provisions for qualified offences. We must recognise that what Ms Lennon proposes would make us one of the first countries to have an ecocide offence in law, so we would be going further.” [86]

92. Several stakeholders viewed the Bill as a practical route to achieve alignment, or indeed to exceed it. The Law Society of Scotland considered that the Bill has “strong similarities” [87] with the ECD and observed that Scottish Ministers still retain “keeping pace” [88] powers which, in theory, could be used to implement an EU Directive through secondary legislation. (NB: these will "sunset" in the next Parliamentary session). Witnesses, including Stop Ecocide International, Scottish Environment LINK and Stop Climate Chaos Scotland (SCCS) all saw the Bill as a route to alignment, and to keep pace with Member States that have recently adopted ecocide-type offences domestically.

93. ESS noted that the Bill and the ECD share conceptual similarities, but that the Bill adopts a structurally different model by creating an entirely new offence and setting substantially higher maximum penalties. ESS stated the "penalties that are envisaged in the bill go further than what is in the environmental crime directive, and the bill creates a new separate criminal offence whereas the directive is more about strengthening penalties for existing qualified offences. It is not like-for-like but, in our view, there is a parallel to be drawn between the two." [89]

94. Professor Sarah Hendry similarly considered that the Bill "would allow Scotland to align with and, with regard to penalties, go beyond what the Directive requires" [90] . She questioned, however, whether the Bill's focus on acts rather than omissions (addressed later in the report) created a divergence from the ECD, which encompasses both. She suggested either addressing omissions within the Bill or, alternatively, that "a longer period of imprisonment could be built into section 40" [91] to achieve alignment through the existing offence structure.

95. SEPA highlighted a practical concern that "criminals do not recognise boundaries. If one jurisdiction becomes harder to operate in, people might move into other jurisdictions." [92] Thus, if one jurisdiction becomes harder to operate in, people might move into other jurisdictions and this should be considered when assessing the implications of not aligning with the EU approach.

Other international developments in ecocide law

96. The Policy Memorandum notes that several countries, including France and Belgium, have enacted ecocide or ecocide-like offences, while others, such as the Netherlands, are exploring similar legislation. The database maintained by 'Ecocide Law' lists fourteen countries as having adopted ecocide provisions as of August 2025, although many of these legal regimes are new and there is limited publicly reported case law. An ERCS-commissioned report submitted to the Committee observed that, following adoption of the revised ECD, more states are likely to introduce serious environmental crimes comparable to ecocide, whether or not they use that specific label.

97. Dr Ricardo Pereira highlighted that the Council of Europe recently adopted the Convention on the Protection of the Environment through Criminal Law (May 2025). This requires signatories to criminalise intentional conduct causing irreversible, widespread or long-lasting environmental damage, and to classify particularly serious harms in a manner broadly comparable to ecocide. He observed that the UK is part of the Council of Europe and suggested that the Bill aligns with emerging European norms. He further described the criminalisation of ecocide as "a next step" [93] in strengthening environmental criminal law, which could "be the basis for the wider international criminalisation of ecocide, starting with the domestic level and then eventually reaching the ICC". [94]

98. Dr Suwita Randhawa emphasised that a domestic ecocide offence could help address limitations in international environmental law and respond to "global disillusionment with climate talks and negotiations" [95] . She noted that "the other countries that have created domestic crimes of ecocide are, for the most part, countries that also believe strongly in multilateralism, the rule of law and co-operation, particularly in the context of the ICC". [96] She said that the Bill could serve as an expression of Scotland's commitment to its international environmental obligations and climate justice agenda, observing that "one of the functions of law is to express a community's existing norms and provide a bit of a vision of what we want society to look like for future generations." [97]

99. Several respondents also situated the Bill within wider human-rights and equality discourses. Environmental NGOs pointed to emerging recognition of a right to a healthy environment and highlighted that severe environmental harm

disproportionately affects marginalised communities, both in Scotland and globally. The Children and Young People's Commissioner Scotland emphasised the particular vulnerability of children and young people to environmental degradation and saw the Bill as one way to advance their rights and interests.

Conclusions and recommendations

100. **The Committee understands the case for ensuring the worst types of environmental harm are dealt with effectively, under the criminal law, including offences that could be labelled as ecocide. On this specific Bill, evidence is finely balanced. Environmental regulators and prosecutors did not see a clear enforcement gap, as they consider that existing legislation, including section 40 of the Regulatory Reform (Scotland) Act 2014, appears incapable in principle of addressing even in the case of very serious environmental harm. Witnesses also struggled to identify Scottish cases that would have met the proposed ecocide threshold, even going back several years.**

101. **At the same time, the Committee understands arguments that the current framework lacks a clear offence at its apex that explicitly recognises intentional or reckless severe environmental destruction as a crime of exceptional gravity, with penalties reflecting that seriousness. The Committee understands that some believe that this legislation has "signalling" power and that criminalisation can have a deterrent effect, even in cases when the legislation rarely has to be used.**

102. **The Committee recognises that the Ecocide Bill sits within a developing European and international legal context. The revised EU Environmental Crime Directive requires a stronger enforcement approach to the most serious environmental harm, including conduct comparable to ecocide, and while it does not mandate a standalone offence, it requires robust penalties for widespread, substantial and irreversible or long-lasting damage. The Committee notes views that the Bill would be one way of achieving alignment with the Directive and thus "keeping pace" with EU law in this area.**

103. **The Committee notes that two broad legislative routes could credibly respond to the concerns identified in evidence:**

    1. **Amending section 40 of the 2014 Act to incorporate an additional tier where "severe" harm is caused intentionally or recklessly, with higher maximum penalties for ecocide-level cases. This could be expressly labelled 'ecocide'. This would require primary legislative intervention (unless, possibly, the Scottish Government's EU "keeping pace" power were used)**

    2. **Proceeding with a standalone ecocide offence as in the Bill, subject to whatever amendment is considered necessary to tighten up the provisions in the light of evidence received.**

104. **Along this issue of principle, however, it is also necessary to consider next steps in relation to this Bill in the wider context of some of the important**

definitional and enforcement issues raised during Stage 1 consideration (as set out later in this report) and the remaining time in this session to ensure there is proper reflection on these and that they can be satisfactorily dealt with.

105. **Should the Parliament determine that the Bill should progress to Stage 2, there should be detailed consultation with the Crown Office and environmental regulators to ensure a drafting approach is taken that (a) clearly differentiates between an ecocide-level offence and the current section 40 offence and (b) in appropriate cases, enables a court or jury to convict of the section 40 offence on an ecocide prosecution, so as to avoid a situation where serious wrongdoing is not punished because of difficulties in proving the offence met the threshold for ecocide.**

106. **A further non-statutory alternative, or a complementary approach, to the two alternatives set out above is to reflect further on the importance of enforcement. It is surprising to the Committee that there as yet appear to have been no convictions under section 40 of the 2014 Act. The Committee recommends that the Scottish Government undertakes or commissions a short, targeted review of the operation of section 40 and the Environmental Liability (Scotland) Regulations 2009, examining why they have been rarely used and whether procedural, evidential or resource constraints are limiting their effectiveness.**

Definition of Ecocide

107. The Committee sought views on how the Bill defined the offence of ecocide, such as whether the definition is sufficiently clear, whether it targets the appropriate level of harm, and whether it will be workable for regulators and the courts. The Committee notes that the discussion, overall, reflected a perennial tension between ensuring any new law (especially any new criminal law) is sufficiently certain to be clear and understandable but that defining matters in detail on the face of a statute can create difficulties of its own.

108. The main parameters of the definition were set out earlier. According to the Policy Memorandum, the definition in the Bill was informed by the Independent Expert Panel for the Legal Definition of Ecocide (also referred to earlier): “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts." The Policy Memorandum states that whilst the terms used in the definition of the offence have been considered very carefully, the Member in Charge welcomes further consideration of key terms during Stage 1 scrutiny, for example the extent to which terms such as 'limited geographic area' require to be defined.

109. While many stakeholders supported the intent to recognise ecocide as a distinct criminal offence, they also identified several areas where the definition appears ambiguous, may operate inconsistently with existing environmental law, or may inadvertently capture incidents falling below the level intended by the Bill.

<u>Definitions of Environmental Harm</u>

110. Some witnesses questioned whether the Bill had taken the right approach in re-using the definition of "environmental harm" used in the 2014 Act and thus for the existing section 40 offence. Dr Clare Frances Moran said this definition includes concepts such as offence to the senses of human beings, which she noted are atypical of the kinds of ecological destruction that international ecocide initiatives are designed to address.

111. There were also questions over the precise shade of meaning to be given to the terms “significant”, “serious”, and “severe”, as used in the Bill or in relation to the section 40 offence. Although Murdo MacLeod KC described the Bill as “very well drafted” [98] , he drew attention to one area where he felt there was ambiguity. Both “significant” (under the 2014 Act) and “severe” (under the Bill) are defined by reference to “serious adverse effects”. He commented that "it is not clear to me what the distinction is. If we drill down into the issue, we see that section 40(9) of the 2014 act states: “environmental harm is ‘significant’ if ... it has ... serious adverse effects, whether locally, nationally or on a wider scale”. That could encompass the “widespread” definition in the bill [99] . Other witnesses saw risks in having legal uncertainty over the hierarchy of harm, which could undermine legal clarity and complicate determinations about the appropriate prosecutorial route.

112. The Aberdeen Centre for Constitutional and Public International Law observed that the Bill lacks a definition of “serious adverse effects” [100] , leaving interpretation to judicial discretion. The Ocean Rights Coalition UK suggested that the meaning of

"serious adverse effects" requires further elaboration, such as ecological criteria, toxicity thresholds or indicators of biodiversity loss. [101]

113. Glasgow City Council [102] said it was a principle of Scots criminal law that individuals and businesses should know with some clarity what conduct is criminalised. It called for stronger examples of the types of behaviour the Bill aims to capture, noting that this would help determine whether there are genuine gaps in the current legal framework.

114. COPFS explained to the Committee that for a criminal provision to be effective, prosecutors must have confidence that expert witnesses, principally SEPA scientists, have clarity on what they are being required to take a view on. COPFS stated that the key question in any prosecution would be whether scientific experts are "willing and able to stand up in court, under oath, and say that those standards had been met" [103] . They said that prosecutors need thresholds of seriousness, delineated reasonably clearly, otherwise they may face difficulties in demonstrating, to the criminal standard of proof, that the harm meets the statutory definition required for ecocide.

115. In oral evidence, the Cabinet Secretary said that the concept of ecocide had been developed primarily for international law purposes and had then been adapted for use within a domestic legal framework. On that basis, she expressed the view that the definition of ecocide in the Bill was "workable" as drafted. She also indicated a willingness to engage constructively with any amendments proposed at Stage 2, noting that "if members were to lodge amendments on the definition of the offence, I would consider them, and Ms Lennon, as the member in charge of the bill, would have a view, too." [104]

116. The Cabinet Secretary noted that it had been a drafting choice in the Bill to build on the existing definition of "environmental harm" rather than create something entirely new. She said, "we are not sure whether there is any benefit in seeking to add further conditions to the definition of "significant environmental harm" for a proposed ecocide offence, because, ultimately, it would be up to the prosecutors and the courts to determine whether an offence had been committed of a level of seriousness that justified the charge of ecocide ." [105]

<u>The Definition of "Widespread"</u>

117. Section 1(2)(b) of the Bill provides that environmental harm is 'severe' if it (i) has serious adverse effects and (ii) is either (A) widespread <u>or</u> (B) long-term.

118. The Bill defines harm as "widespread" when it extends "beyond a limited geographical area" and impacts an ecosystem, species or significant number of human beings. While witnesses acknowledged that this definition is broadly consistent with international approaches, NatureScot described the term as "hard to define in open and complex ecological systems" [106] , noting that ecological impacts often diffuse across gradients rather than clear boundaries. It emphasised that determining whether an ecosystem has been impacted could be contested due to differing ecological baselines, management goals and scientific interpretations. It further warned that disputes may arise about whether localised damage constitutes ecosystem-level effects or how such effects relate to wider-scale impacts.

119. SEPA drew parallels with the ECD, which defines widespread harm with reference to trans-boundary effects or impacts on entire ecosystems or species. SEPA suggested that the Bill's definition might be interpreted more broadly and could therefore capture a wider range of incidents than perhaps intended.

120. NGOs, including ERCS, Scottish Environment LINK, SCCS, Open Seas and Friends of the Earth Scotland (FoES), proposed strengthening the definition by explicitly recognising that damage to designated sites, such as National Parks, Marine Protected Areas (MPAs) or Sites of Special Scientific Interest (SSSIs), should be regarded as inherently "widespread" due to the ecological significance of those areas.

121. COPFS warned that a lack of scientific consensus on the meaning of "widespread" would make prosecutions "quite challenging" [107] , particularly if defence experts were able to undermine the certainty of SEPA's scientific conclusions.

122. The Member in Charge acknowledged that there are "rightly, questions about clarity" [108] , particularly around how terms such as "widespread" should be defined. She said that this "would depend on the exact circumstances" [109] and would need to be assessed "on a case-by-case basis". [110]

123. She stated that focus should be on the harm being caused and that low-level nuisance or littering would clearly fall outside the scope of the offence. By way of example, she referred to a suggestion about "silly string on the high street" [111] , saying that it would obviously not constitute ecocide because it does not cause "widespread, long-term environmental harm. She concluded that "it is easier to rule out what is not ecocide" [112] and that, in her drafting approach, she had "tried to stick to established definitions" [113] .

<u>The Definition of "Long-term"</u>

124. The Bill defines harm as "long-term" when it is irreversible or "unlikely to be reversed through natural recovery within 12 months". Evidence consistently suggested that this timeframe is not credible when dealing with complex ecological systems. SEPA described the 12-month threshold as "arbitrary" [114] , questioning whether harm reversible within a year meaningfully aligns with the intention to capture only exceptional, catastrophic incidents. It suggested that this threshold could lead to incidents "below the level of '1 in 20-year events" [115] being included.

125. NatureScot similarly observed that "nearly every incident of serious damage to habitats or species populations will require more than 12 months" [116] to recover, emphasising that ecological restoration, even after a single event, often occurs over years or decades. The Committee notes that international discussions on ecocide more commonly frame "long-term" harm by reference to decades or irreversible change.

126. The Cabinet Secretary highlighted the practical difficulties of defining "long-term" harm by reference to a fixed period, questioning "whether a figure is appropriate at all" [117] . She explained that, because "we do not know what the nature of the offence is" [118] , it is unclear "how long it would take to recover from a particular

event or how you could measure it" [119] . She said that, from the Government's perspective, the key consideration is "the impact and the severity of the harm, not the duration of the event" [120] .

127. The Member in Charge explained that the definition of "long-term" damage is based on the expert panel's international definition of ecocide, which she said she had "tweaked a little bit" [121] . She noted that the panel defines long-term damage as harm that is "irreversible or which cannot be redressed through natural recovery within a reasonable period of time" [122] . She said that a 12-month period was included because "it is recognisable and there is a body of case law around it" [123] . She acknowledged NatureScot's comments noting that evidence had suggested a need for "a derogation for 12 months… in certain circumstances" [124] . She stated that, if the Committee considered a specific timeframe unnecessary, she would be amenable to amending the Bill.

Ecocide as an 'Incident' Versus Cumulative Impacts of a Course of Conduct

128. A key issue raised throughout the Committee's scrutiny concerned whether the Bill is intended to apply only to discrete, incident-based harms or whether it could also capture serious environmental harm arising cumulatively from a course of conduct over an extended period. Evidence revealed a wide spectrum of interpretations and a degree of uncertainty regarding the Bill's application in this respect.

129. Several respondents highlighted a lack of clarity around whether cumulative impacts or ongoing activities could be captured by the Bill's definition of ecocide. ESS observed that it was "not yet clear how the cumulative impact of a number of events over an extended period would be captured" [125] , noting that this is an area in which further clarification would be beneficial. This reflected wider evidence from respondents to the Committee's call for views, many of whom considered it unclear whether cumulative impacts or ongoing activities could be captured by the Bill's definition of ecocide. Some argued that the Bill itself required greater clarity, while others believed that well-designed guidance could address this issue effectively.

130. Concerns about cumulative harm were particularly prominent among industry bodies. The SFF, for example, expressed concern that the offence might inadvertently capture cumulative impacts resulting from otherwise lawful and long-established activities. This might include incidents such as land management practices and the lawful use of chemicals, where scientific understanding of long-term ecological effects may evolve over time.

131. A different perspective was offered by COPFS, which considered that "the definitions in relation to course of conduct are pretty clear in the provisions" [126] . COPFS emphasised that courses of conduct are not novel in Scots law and are increasingly used in other contexts, such as domestic abuse prosecutions. It stated that the concept is therefore familiar to prosecutors and the courts.

132. Across the range of evidence, however, there was no consensus on whether ecocide should be conceived primarily as an incident-based crime or whether cumulative harm could, in appropriate circumstances, meet the threshold for an ecocide-level event. Several stakeholders argued that the Bill is clearly aimed at incident-based harms. Stop Ecocide International stated that, while cumulative

activity is not specifically addressed, it believed "it is clear that the Bill is unlikely to apply in such cases, and could only do so if the thresholds set out for ecocide were met by a specific action" [127] . Scottish Environment LINK similarly understood that the offence would not apply in cases of cumulative damage "unless the environmental damage caused by an individual act and the person(s) involved met the threshold specified". [128]

133. Other respondents emphasised, however, that some forms of the most serious environmental harm arise not from single catastrophic events but from incremental degradation over time. SEPA commented that "It is not clear from the Bill as introduced how it would apply in such cases," [129] and that if enacted, comprehensive guidance would be needed to support consistent interpretation and enforcement. The Law Society of Scotland highlighted that "the cumulative effect of lawful activities can cause greater harm to the environment than any one-off incidents that might fall under a definition of 'ecocide'", and argued that this issue "needs to be addressed". [130]

134. Academic witnesses also drew attention to the implications of an incident-based model. Dr Suwita Hani Randhawa argued that "the definition isolates ecocide as an event-based harm, whereas harms such as climate change, deforestation, or toxic waste accumulation unfold incrementally over decades" [131] . The SFF echoed this point in relation to the management of the marine environment, saying that it was concerned about the possibility of the cumulative impact of legitimate, regulated, legal activity being considered as ecocide. SFF said:

> Various academic articles talk about the fact that much of the significant environmental harm that our world faces is caused by the cumulative activities of all of us—all of the things that we do as we go about our day-to-day lives, whether that is getting on a plane to go on holiday or all sorts of other activities. If the bill is to progress, there needs to be greater clarity on the distinction between one-off emergency major incident-type events and the cumulative impact of lots of different people undertaking lots of different, perfectly legal, legitimate and, in many cases, regulated activities. That is a really important distinction that needs to be made, and I do not think that that comes through in the bill. [132]

135. The NFU Scotland similarly highlighted ambiguity about how the Bill would operate where no single act meets the statutory threshold, particularly in sectors subject to multiple layers of environmental regulation. It recommended that guidance include clear case studies to illustrate where cumulative harms may or may not fall within the definition of ecocide. NatureScot also emphasised the need for "clarity… over the connection between over exploitation of natural resources as an act of Ecocide, especially where this arises through multiple actions over many years". [133]

136. The Member in Charge said that, when considering issues such as cumulative or incremental impacts, "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". [134] She added that an "ecocide-level event could be something that happens over a period of time" but reiterated that the key issue for the Committee is "the harm that was caused" and whether it can be proven that "intentional or reckless conduct led to that harm". [135]

Acts and Omissions

137. The Committee heard evidence that limiting the offence to acts may exclude serious environmental harm arising from omissions, such as failures to maintain infrastructure, failures to monitor hazardous materials, or systemic negligence. ERCS, Stop Ecocide International, SCCS, FoES, Open Seas and Scottish Environment LINK all set out views that section 1 in the Bill should be expanded to include both acts and omissions, often making the comparison with the section 40 offence in the RRA of causing significant environmental harm, which explicitly covers harm caused as a result of a 'failure to act'. SEPA also suggested that "it might be beneficial to include omissions, because omissions as well as acts could result in environmental harm. That would broaden out the definition in the bill and probably bring it more into line with the section 40 definition." [136]

138. ERCS also highlighted that the ECD states: 'Failure to comply with a legal duty to act can have the same negative effect on the environment and human health as active conduct. Therefore, the definition of criminal offences in this Directive should cover both acts and omissions, where applicable.' [137]

139. The Cabinet Secretary stated that she did not consider there to be a case for extending the Bill to make separate provision for omissions. She explained that, in the Government's view, omissions are "already covered by the offence of ecocide as it is set out" [138] , given that the offence applies where a person causes severe environmental harm "intentionally or recklessly". She therefore concluded that harm "can be caused by omission already" and that there was no need to include "a further provision in relation to omissions." [139]

140. The Member in Charge indicated that she did not consider omissions to be covered by the Bill as drafted. She explained that recklessness requires a person to have "closed their mind to the consequences of their actions and to whether any environmental harm would come about as a result" [140] . She said this threshold was appropriate given "the serious nature of the proposed crime and the punishment for it" [141] . By contrast, she explained that omission "does not necessarily involve knowledge or a high degree of culpability" [142] , which informed her reasoning in the drafting of the Bill.

Conclusions and recommendations

141. **The Committee accepts that creating a new offence in law requires a balance to be struck between having a clear intelligible offence, the parameters of which are broadly understood and avoiding an excessively "technical" and detailed drafting approach that may create difficulties of its own. In the case of the ecocide offence, there is evidence that it is insufficiently robust and may give rise to uncertainty in practice. For instance, there are questions over terms such "widespread", "long-term" and "serious adverse effects", which, some witnesses consider, are ambiguous in ways that risk creating uncertainty or may not accurately capture the gravity of ecocide. There are also differences of views as to whether the Bill takes the right approach in re-using a definition of "environmental harm" used for slightly different purposes in another**

statute. The Committee also takes seriously concerns from prosecutors as to whether the Bill sets sufficiently clear terms to give confidence to people called to be an expert witness. The Committee would be very concerned by the Bill becoming law without proper consideration of all these matters.

142. **In the Committee's view, if the Bill proceeds past Stage 1, there must be continued discussion of these matters by the Member in Charge with the Scottish Government and expert stakeholders, including courts, police and regulators and ecological experts, in order to reach agreement on any necessary changes.**

143. **The Committee does recognise that not all matters can be expressed on the face of legislation, and that it is not possible to 'predict' exactly what types of environmental harm could amount to an ecocide event in future. The Committee further recommends that guidance for prosecutors, police and regulators be developed on the different elements of the definition, including ecological criteria, scientific indicators, and practical examples.**

Thresholds for Liability and Mens Rea

144. The Committee considered the thresholds for criminal liability established in the Bill; the mental element ("mens rea") and provisions on responsibility within bodies corporate, like companies. These issues in turn may intersect with discussions on penalties and available defences, as set out in the Bill.

145. There are different 'routes' to liability for an offence of ecocide in the Bill:

- The person (an individual or organisation) must intend to cause environmental harm or be reckless as to whether environmental harm is caused (section 1).
- Where an organisation has committed the offence of ecocide (passing the threshold of showing intent or recklessness), 'responsible individuals' within organisations may also be liable under section 3 – where the act in question involved their "consent or connivance".
- Employers or those engaging agents may be vicariously liable under section 4 – it is a defence for that person to show that a) they did not know that their employee/agent was committing ecocide, b) no reasonable person could have suspected that person was committing ecocide, and c) they took all reasonable precautions and exercised all due diligence to prevent ecocide being committed.

Intent, Recklessness and Strict Liability

146. The requirement of intent or recklessness in section 1 of the Bill was a key area of discussion in written and oral evidence. The Policy Memorandum states that a key consideration in drafting the Bill was whether the offence should be strict liability, but the Member in Charge felt it was essential that individuals should have some degree of intent or recklessness. In evidence the Committee heard, several witnesses emphasised that such a threshold is appropriate for an offence with significant penalties and intended to capture grave wrongdoing.

147. ESS took the view that the seriousness of the offence justifies a high mental threshold, stating that "For very serious penalties, the bar needs to be very high" [143] and that the definitions of intent and recklessness in the Bill are therefore appropriate. Similarly, Professor Sarah Hendry described intent and recklessness as "high bars to meet" [144] , which she considers is "probably the right level of culpability in relation to such high penalties" [145] . She, however, noted that it would be "difficult to reach", particularly in the case of corporations.

148. Respondents to the Committee's call for views generally supported the inclusion of recklessness, rather than only intention, particularly in relation to corporate behaviour where direct evidence of intent may be rare. At the same time, some organisations questioned whether recklessness alone would be sufficient to secure accountability in practice. FoES and Stop Climate Chaos Scotland, for example, highlighted that the EU Environmental Crime Directive provides for a threshold of "serious negligence" in certain cases. FoES argued that "While this concept does not seem to exist in Scots criminal law, it seems the concept of 'recklessness' should be reviewed against the definition of 'serious negligence' in other

jurisdictions." [146]

Individual Liability Within Organisations: "Consent or Connivance" and the Case for Including "Neglect"

149. The Committee also examined the standards for individual culpability where an organisation has committed ecocide. Section 3 of the Bill allows for prosecution of "responsible individuals" if the act in question involved their "consent or connivance". Several respondents expressed concern that this test is too narrow and may allow individuals whose failures contributed to ecocidal harm to escape liability. ERCS argued that "Many breaches of environmental law happen because organisations and responsible officials fail to ensure compliance with the law. For example, they might neglect to maintain plant equipment to control pollution or obtain a permit for the storage of substances that cause a major pollution incident." [147] In ERCS's view, such conduct "would not be captured by the standard of 'consent, connivance'" thereby "creat[ing] a significant loophole for offenders in the Bill." [148] It suggested either adopting strict liability for responsible individuals within organisations or incorporating "neglect", pointing out that the formulation "consent, connivance or neglect" is well-established in Scots law, for example in the RRA, and the Health and Safety at Work etc. Act 1974. The Law Society made a similar argument, stating "there is a narrower provision on corporate liability in the ecocide bill because neglect is not included in the way that it is under the 2014 act." [149]

150. In oral evidence, Professor Sarah Hendry agreed that adding "neglect" would "probably be appropriate" [150] , noting that it aligns with standard formulations in corporate and environmental law. She also emphasised that responsible individuals can only be prosecuted once the organisation itself has been found culpable to the higher standard of intent or recklessness, which she viewed as a significant structural challenge.

151. Dr Clare Frances Moran questioned whether including neglect would meaningfully expand the scope of individual liability once the threshold of recklessness for the main offence had been met. Conversely, Murdo MacLeod KC argued that including neglect "would add something" [151] , identifying conduct below recklessness, including "wilful blindness or negligence… drifting towards carelessness" [152] , as both common in practice and morally blameworthy, although he considered simple carelessness too low a threshold for such a serious offence. He added that not including negligence as a basis for liability "makes things a little tougher for the prosecution." [153]

152. On the threshold of liability, the Cabinet Secretary emphasised that the seriousness of the offence places it above negligence, stating that "if it is ecocide, it is not negligent; it is wilful" [154] . In the context of organisations, she explained that a wilful act would involve an organisation instructing an employee to do something that would cause severe environmental harm, but stressed that the critical requirement in all cases is proof that the conduct was "wilful or reckless".

153. Officials stated that the offence is deliberately framed to capture only the most serious harm, committed with intent or "reckless disregard for the consequences" [155] of a person's actions. Officials emphasised that individual liability must therefore be assessed by reference to intent and recklessness, and that "negligence does not

quite cut it" [156] . In their view, to commit the section 1 offence, a person must be "more than negligent", and excluding negligence from individual liability is consistent with the purpose and seriousness of the offence.

154. The Member in Charge acknowledged that the RRA provides for individual liability based on "consent, connivance or neglect", but explained that neglect is not included in all circumstances. She said this is because consent and connivance "both require a high degree of knowledge and fault" [157] , whereas neglect "does not involve knowledge or a high degree of culpability" [158] . She therefore argued that, in some situations, it could be "unfair to allow individual criminal liability to be founded on the basis of neglect alone" [159] .

155. The Committee also explored concerns about whether section 3 of the Bill might create a "two-tier justice system", in which senior managers might be held liable while junior employees, including those whose reckless behaviour caused harm, might not. Professor Sarah Hendry did not accept that the Bill created such a hierarchy, arguing instead that the severity of the offence and the structure of the Bill warranted imposing liability on individuals where evidence supports it. She noted that employees who act intentionally or recklessly should themselves be prosecutable under section 1.

156. Murdo MacLeod KC raised concerns about the Bill's definition of "responsible individuals", particularly in the public sector, where organisational structures may be relatively flat and include large numbers of middle managers. He suggested that liability should be framed in terms of "senior management", as in the Corporate Manslaughter and Corporate Homicide Act 2007, rather than the Bill's reference to people "concerned in the management or control" of certain types of organisation.

157. The Member in Charge said that her clear intention is that section 3 should apply only to individuals "at a senior level in organisations" [160] , focusing on the "controlling minds in an organisation, where the power lies in an organisation and those who have overall oversight. She stated that prosecutions should be aimed at those people and that "individuals at a lower level in an organisation (i.e. those in middle management and below), should not be subject to prosecution under section 3". [161]

158. She explained that this approach reflected strong views from the expert advisory group, including trade union representatives, and concerns raised in consultation by Unison Scotland and others about "the punishment of workers" [162] . Although recommendations were made to include additional whistleblower protections, she said she "did not feel that I could put such provisions in the bill". [163]

159. On whether non-senior staff could ever be prosecuted, she emphasised that employees are "not immune from potential conviction if it is proven that they have committed a criminal offence—in this case, ecocide" [164] . She reiterated that an ecocide offence requires that the person "must have caused severe environmental harm and have intended to cause that harm or been reckless" [165] , and that it would be for the COPFS to decide, based on the evidence, "whether an ecocide offence has been committed and, if so, who should be charged" [166] . She reiterated that she expected the law would rarely be used and expressed the hope that the

existence of the offence would encourage good practice to "protect workers and middle managers from the threat of prosecution". [167]

160. Scottish Parliament officials added that the drafting deliberately avoids including "manager" in the definition of responsible officials, in response to concerns about low-grade staff being caught, and noted that if a senior person was aware of wrongdoing, they could be prosecuted through vicarious liability. They also confirmed that, while a non-senior member of staff could be prosecuted if "the elements of the offence were made out" [168] , decisions would rest with the COPFS, and that section 4 (vicarious liability) allows proceedings against an employer "irrespective of whether they were taken against the employee". [169]

Establishing Corporate Mens Rea in Large and Complex Organisations

161. The Committee considered how mens rea could be established within large and complex corporate structures. COPFS observed that although companies are not natural persons, they remain "legal persons", and prosecutors can identify the company's "controlling mind" and examine "what the company was aware of and knew." [170] COPFS also suggested that "the evidence on recklessness usually comes from internal company employees or internal company documents, such as minutes of meetings. That is the kind of thing that we would practically be relying on to establish recklessness on the part of the company." [171]

162. COPFS, however, cautioned that establishing recklessness within a company with multiple tiers of management and overlapping responsibilities can be challenging. COPFS noted that identifying "whose duty or responsibility it was to carry out the necessary due diligence" [172] is frequently contentious, and that much of the relevant evidence is held by those under investigation.

163. When asked about situations in which an employee acted outside company procedures, COPFS said its expectation was that prosecutors would "focus on prosecuting the employee as an individual for causing the environmental harm" [173] , while emphasising the difficulty of generalising in the abstract. COPFS also stressed that the Bill's causation requirement provides an important safeguard for companies, stating that if a company "did not instruct the individual member of staff to do that thing and it was an entire folly of their own" [174] , prosecutors may struggle to prove that the company "caused" the harm. Only once causation is established does the question of consent and connivance of directors become relevant.

Vicarious Liability and Contractor Relationships

164. The Committee also assessed the Bill's approach to vicarious liability in relation to contractors. Section 4 largely mirrors the structure of similar clauses in existing environmental legislation by providing that employers or principals may be liable for the acts of employees or agents, subject to a due diligence defence. SEPA considered these provisions "clear and consistent" with section 38 (Vicarious liability for certain offences by employees and agents) of the RRA but noted that the RRA also includes section 39 (Liability where activity carried out by arrangement with another), which expressly addresses liability where a contractor commits the offence. SEPA suggested that such a provision "could be a constructive addition to the Bill" [175] to ensure that all actors who play a substantive role in causing

environmental harm are within the scope of the offence.

165. COPFS explained how liability might apply in subcontracting arrangements. It stated that if Company A subcontracted Company B and clearly delegated responsibility for due diligence and ecological surveys to Company B, and Company B failed to perform these tasks, "there is an argument that company A has discharged its duties, done everything that it should have done and would not be liable." [176] However, if neither party explicitly allocated responsibility and harm resulted, "there is an argument that both are liable." [177] COPFS emphasised that such cases are often factually complex, particularly where responsibilities are unclear or shared.

166. The Cabinet Secretary stated that vicarious liability has an established precedent in Scots law and is an important feature of the Bill. She explained that, without such provision, there is a risk that "a tremendous penalty could be put on an individual, while the organisation was left to continue without any penalty at all" [178] . She argued that it is therefore "entirely appropriate that there are provisions in the bill for vicarious liability" [179] . She further stressed that vicarious liability is necessary to prevent situations where a junior employee becomes a "fall guy" for decisions that were in fact taken at organisational level, stating that "it cannot be the case that a junior member of an organisation would be prosecuted for something that was actually the intent of the organisation". [180]

167. On the matter of contractor liability, the Cabinet Secretary explained that contractors would generally be treated in the same way as employees where they are "working under the direction of the organisation" [181] , noting that the Bill already covers individuals "acting as the employee or agent of another". She indicated that liability would depend on what could be proved, explaining that if a contractor caused harm while acting on instructions, responsibility would rest with the organisation. By contrast, where a contractor "went rogue", liability would arise only if it could be shown that the contractor acted "off its own bat, without the instruction of the contracting company" [182] . In such circumstances, she said, responsibility would rest with the contractor.

Conclusions and recommendations

168. **The Committee recognises that the Bill is intended to criminalise grave misconduct and that requiring intention or recklessness reflects the seriousness of the offence and the penalties proposed. It would not be appropriate to make ecocide a strict liabilty offence.**

169. **The Committee does note views that combining what appears to be a high harm threshold with the requirement to prove a mental element may create a high bar for regulators, police and prosecutors. Prosecutors and legal commentators highlighted challenges in establishing intention or recklessness through diffuse corporate decision-making structures. On top of this, the Committee notes views that the Bill's approach to individual liability within organisations may be unduly narrow. Limiting culpability to cases of "consent or connivance" risks leaving gaps where serious failures of oversight or governance cause severe ecological harm but cannot be**

characterised as deliberate approval or knowing participation.

170. **At the same time, the Committee notes the concerns expressed by the Member in Charge and others about the need to protect workers and lower-level staff from inappropriate criminal exposure, and about the importance of targeting liability at those who genuinely exercise power and control within organisations**

171. **The Committee therefore considers that further work would be required to clarify the definition of "responsible individuals", including whether this should be more explicitly aligned with concepts of senior management used elsewhere in criminal law, in order to strike an appropriate balance between accountability and fairness**

172. **The Committee also agrees with the evidence that the Bill would benefit from clearer provision on liability in contractor and subcontractor relationships.**

Defences

173. Section 2 of the Bill provides for a statutory defence of necessity. Section 2(1) sets out that it is a defence for a person charged with ecocide to show that the behaviour which caused the harm:

- "was carried out in order to prevent greater harm", and
- that, in order to prevent that harm, the behaviour was: "(i) necessary and (ii) reasonable."

174. Section 2(2) provides that "harm" under section 2(1) does not include financial loss.

175. Section 2(3) provides that it is for the person charged with ecocide to establish, on the balance of probabilities, that they have the defence.

176. The Policy Memorandum explains that this defence was included because there may be "very rare" circumstances in which a person could act in a way that may risk ecocide in order to prevent a greater harm, such as "avoiding significant loss of human life".

Is a necessity defence justified?

177. The Committee's call for views revealed a broad divergence of opinion on whether the defence of necessity is needed and how it should operate. A substantial number of respondents supported its inclusion, describing it as an important fail-safe for truly exceptional situations and a safeguard against unintended criminalisation. Many regarded a narrowly framed necessity defence as an important safeguard where an accused person's actions were directed at preventing a greater harm, particularly in situations involving risks to life or other grave harms.

178. Others, however, considered the defence unnecessary or potentially harmful to the integrity of the offence. NatureScot opposed the defence, stating that, "we cannot think of a situation where committing serious environmental harm is necessary to avoid even more serious environmental harm" [183] from an ecological perspective, and warning that the defence "could be used speculatively" [184] , with arguments of the form "yes, I caused serious harm, but it could have been much worse". [185]

179. Professor Campbell Gemmell suggested that "care needs to be taken about any attempted lessening of the seriousness of the offence on the basis of argumentation that could be seriously flawed" [186] . He said "the argument, "It was bad but it could have been worse," has been heard so many times in the sheriff court and elsewhere that it is a wee bit tired". [187] He further stated that "there have been examples of such cases that the Health and Safety Executive has looked at in significant detail, especially when the instruction may have been modified as it went towards the worker, and an argument along the lines of, "I thought I was doing the right thing, but I turned the wrong valve," has been made. Establishing who was responsible can become very messy in such circumstances. I think that a bit more help needs to be provided to ensure that we understand what is meant by "necessity" and "controlling mind", because that can be particularly difficult when

those two terms are working together." [188]

180. A recurring theme was uncertainty about how "greater harm" would be interpreted in practice. Some respondents questioned whether "greater harm" could be invoked too broadly, for example, to justify actions taken in pursuit of energy, food or housing needs, even where these might give rise to serious environmental harm. The SFF suggested that necessity arguments might be invoked for a wide range of major developments, including offshore wind or major infrastructure projects. They asked whether the Scottish Government would claim a defence of necessity in the context of its renewables programme and questioned whether road-building or airport expansions could be justified on the basis that they serve the "greater good". [189]

181. SEPA stressed that, because the threshold for ecocide is "severe harm", any necessity argument must be equally weighty. Professor Sarah Hendry pointed out that existing formulations of necessity in environmental legislation refer specifically to avoiding "significant harm to human health", which might provide more certainty than the Bill's broader formulation. SEPA highlighted that the defence available under section 40(5) of the RRA, which requires an accused to show they took "all such steps as were reasonably practicable" to minimise environmental harm and considered that this might also be appropriate in the context of ecocide.

182. Several organisations supported the principle of a necessity defence but stressed that its scope required clearer statutory definition. ESS emphasised the need for "greater clarification" [190] and practical examples and SEPA stated that guidance would be helpful. In particular, respondents emphasised the need for clarity on whether the test is subjective or objective, whether the defence could apply to systemic decisions taken over time, and how courts should balance competing harms when environmental, social and economic impacts all arise.

Human rights issues and the burden of proof

183. In its memorandum, the Scottish Government stated that it "is concerned that section 2(3) of the Bill, that places a requirement for the accused to establish their defence of necessity on the balance of probabilities, is very likely to be incompatible with the Article 6(2) of the European Convention of Human Rights" [191] . This is considered to reverse the burden of proof, which is a component of the Article 6 right to a fair trial. The Government therefore suggested that this provision should be amended if the Bill proceeds.

184. In oral evidence, Scottish Government officials elaborated that it is unusual to reverse the burden and require an accused person to establish a defence, particularly in relation to such a serious offence. Officials suggested that the reverse burden could potentially be replaced with some form of "evidential burden" on the defence, requiring an accused person to provide some evidence that they meet the defence, but without attaching a legal "balance of probabilities" test.

185. A central concern related to the structure of the defence itself. Officials explained that the accused would be required to prove multiple elements on the balance of probabilities, including that they were seeking to prevent a greater harm and that their actions were "necessary, and … reasonable". They argued that this cumulative structure risks unfairness, as it could lead to a conviction even where a jury had

residual doubt about guilt. In particular, the witness warned that the defence "would allow a jury to convict someone even if it had some reasonable doubt about the guilt of the person in the light of that defence". [192]

186. By way of illustration, officials explained that an accused might succeed in proving that there was "more likely than not, a greater harm that they needed to avoid" [193] , but fail to establish that their actions were necessary and reasonable to the same standard. In such circumstances, the jury might have "some reasonable doubt about a person's guilt" [194] , but would nevertheless be required to convict if the prosecution had proved the main elements of the offence. Officials said, "the jury would not be able to take that into account, and it would have to convict" [195] , leading them to conclude that "the structure of the defence poses a risk of unfairness to the accused". [196]

187. Officials also questioned whether a reverse burden was justified on practical grounds. They noted that reverse burdens are sometimes used where it would be unduly difficult or unworkable for the prosecution to disprove a defence. However, in this case, they stated that "we do not think that the prosecution would have too difficult a task in disproving this defence". [197]

188. Officials also emphasised that the seriousness of the offence and the severity of the penalties weighed strongly against the use of a reverse legal burden. Referring to relevant case law, they noted a general theme that "the more serious the offence and the greater the social stigma that is attached to it, the more severe the punishment. That goes against a reverse burden" [198] . While reverse burdens may be more common in regulatory contexts, the witness stressed that ecocide is "a very serious offence with a very serious punishment" [199] . They warned that the proposed approach could result in a person being convicted "when there is doubt about their guilt" [200] and then sentenced to 20 years in prison, which they did not consider to be "appropriate or a proportionate measure in relation to this offence". [201]

189. The Cabinet Secretary said:

> "Given that the usual burden of proof for all offences is on the prosecution to prove guilt, I think that that needs to be looked at. I will propose an amendment to the bill in that regard, because we do not think that it is currently in line with the European Convention on Human Rights and article 40 of the United Nations Convention on the Rights of the Child. We intend to amend that part of the bill at stage 2 to ensure that it is compliant, as everyone has a right to a fair trial, and the burden of proof must be on the prosecution to prove guilt." [202]

190. The Member in Charge stated that she and the Presiding Officer had considered the reverse onus and concluded that it was "within the reasonable limits permitted by the convention" [203] and therefore within legislative competence. However, she accepted that the Scottish Government's arguments were "persuasive", particularly its concern that a reverse burden "could be problematic during a trial in practical terms" [204] , and that an evidential burden "might be more suitable". [205]

191. A Scottish Parliament official added that the issue was carefully considered during

drafting and was ultimately about proportionality, noting that the convention does not prohibit reverse onus provisions, which exist in other legislation. It was considered appropriate because the accused would be "best placed to know their mental state at the time of the offence" [206] .

192. On 12 January, the Member in Charge wrote to the Committee to provide further information on the defence of necessity and its compatibility with the ECHR. She said she agreed with the Scottish Government that reverse burdens are not incompatible with ECHR in principle, and they occur in various areas of the criminal law. In each case, the specific facts and circumstances have to be considered and that the ultimate arbiter on ECHR compatibility would be the courts. She said that what is necessary is that reverse burdens of proof:

> "… are considered to be a proportionate means of achieving the legitimate policy aim in the particular case. Proportionality may be achieved in different ways depending on the circumstances and views may differ on which solution within a range of options is preferred. It is for the Parliament to assess and consider where to strike that balance in this case as in any other case. The Scottish Government takes the view that the proportionality balance may not have been struck appropriately in this case." [207]

193. The Member in Charge confirmed she would be happy to work with the Scottish Government's "helpful and constructive" proposal for an amendment to replace the reverse legal burden with an express evidential burden. This would require the accused to lead at least some evidence to raise the defence as an issue but would not require them to prove the defence to a particular standard.

Consented and licensed activities

194. A major focus of the evidence the Committee heard on defences concerned the Bill's application to activities that have been consented to or licensed by a public authority. The Bill does not explicitly provide a defence to the offence of ecocide where harm arises from activities carried out under planning permission or licences issued by bodies such as SEPA, NatureScot or the Marine Directorate, either for operators acting in accordance with such consents or for the regulators or public authorities responsible for granting them.

195. By way of comparison, under the existing section 4 offence, regulators and operators benefit from specified protections in respect of authorised activities. Section 40(2) provides that no offence is committed by a person who in the exercise of their statutory powers permits to act (or not to act) if the permission was given by or under an enactment conferring power on the person to authorise the act. For operators, section 40(6) provides that it is a defence for a person charged with an offence under section 40(1) to show that the acts or failures alleged to constitute the offence were authorised by, or otherwise carried out in accordance with, authorisations issued by SEPA under the Environmental Authorisation Framework or authorisation under other specified regimes.

196. A further comparison can be drawn with the ECD, which provides a similar defence for authorised activities by a competent authority, but limits its scope. The ECD specifies that the defence is not available if the authorisation was, "obtained fraudulently or by corruption, extortion or coercion, or if such authorisation is in manifest breach of relevant substantive legal requirements".

197. Witnesses such as Dr Ricardo Pereira drew attention to this model, explaining that:

> "there is a licence shield for most of the offences involving a breach of European law or national law. An exception to that shield applies if the licensee or the operator is found to be in 'manifest breach of substantive legal requirements' under a licence, or if the licence has been obtained fraudulently..." [208]

198. Dr Rachel Killean commented on the unusual nature of an autonomous ecocide crime without any form of permitting defence. She noted that the Belgian definition of ecocide relies on the incident already being "unlawful" and referred to the EU ECD framework as a useful example.

199. The call for views revealed a clear split between those who saw the absence of a permitting defence as a gap creating legal uncertainty and those who welcomed it as a way of ensuring that authorisation does not shield ecocidal harm. Many respondents expressed concern that it was not clear how the Bill would apply to licensed activities and suggested that the Bill should make clear that lawful activities undertaken with regulatory approval are not criminalised. Others took the opposite view, arguing that the lack of a permit defence was a strength, because the fact that an activity has the required licence should not provide a defence where the resulting harm reaches the ecocide threshold. Dr Clare Frances Moran argued that the lack of a permit defence "is a positive step" [209] , reflecting that ecocide is intended to address only "very, very serious harms" [210] and that intent or recklessness would still need to be proven.

200. Industry stakeholders, including NFUS, Scottish Water, Scottish Renewables and the SFF, raised significant operational concerns about legal certainty, potential retrospectivity and the treatment of cumulative harm, in the context of a permitted defence. NFUS noted that agricultural practices undertaken "within the regulations and in good faith" [211] might subsequently be assessed differently if scientific understanding evolves. They warned that "There is a distinct difference between the two things—a one-off event today versus something that might happen over time. Therefore, we need to tread carefully in differentiating between the two." [212]

201. Scottish Water provided an example of how evolving scientific understanding could affect liability, observing that, "PFAS (Perfluoroalkyl and Polyfluoroalkyl Substances (forever chemicals)) were viewed as good ten years ago… They are now widespread across the environment." [213] They questioned the fairness of liability where operators act within the law and in accordance with the best available knowledge at the time. In relation to abstraction and discharge practices carried out under licence, Scottish Water highlighted that, "if we are compliant with those licences and, in X years' time, we think they are no longer the right activities, it would be very difficult to understand why we should be prosecuted for that." [214]

202. Scottish Renewables told the Committee that developers need assurance that compliance with Scotland's "rigorous planning and consenting system" [215] will not expose them to criminal prosecution. The SFF also expressed concern that the Bill as drafted could capture legitimate, regulated activities that may nonetheless cause widespread and long-term environmental harm. It stated:

> "I would be concerned about the definition—as it stands, to my reading—capturing a number of legitimate, regulated activities that might, nonetheless, cause widespread and long-term environmental harm. Those could be a wide range of things, such as building new roads and offshore wind farms. We need much greater clarity around the definition of what is and is not ecocide."

203. Regulators expressed significant concern that the Bill does not replicate the protections afforded to permitted activities covered under the section 40 offence. SEPA said

> At present, we issue permits based on environmental regulations and legislation. It would very much be our preference for the bill to contain the same provisions as section 40 of the 2014 act. We should not be in a situation in which we are permitting activities that we reasonably believe could cause severe environmental harm. [216]

Both SEPA and NatureScot stated that it would be their preference for the Bill to contain similar provisions to the section 40 offence in relation to permitted activities. SEPA warned that if the Bill does not include protections, it "would need to assess any new legislation that comes in, provide guidance and training to our staff, and ensure that we had appropriate safeguards in place." [217] ESS also considered that "there is a risk that it could change regulatory behaviour and make regulators more risk averse" [218] , although it considered the overall risk "quite low", noting that the offence requires proof of intention or recklessness.

204. The Committee questioned whether regulators should be protected from liability for environmental harm when issuing consents. COPFS noted that this was "a question of policy rather than practice" [219] but suggested that it was "something that would probably be worth clarifying" [220] . Murdo McLeod KC stated that:

> "…the person must cause severe environmental harm, and intend to do that or be reckless about it. It is difficult to imagine a situation where SEPA would act recklessly in this context or would intend to cause environmental harm". [221]

205. COPFS explained that where an operator acts under a lawful permit, "we would struggle to argue that they were reckless or intended to cause harm" [222] , and noted that, although there was no explicit defence for licensed or permitted activities, the existence of a permit would interact with the mental element of the offence. They doubted that intention or recklessness could be proven when the person is acting in accordance with a permit. The Law Society of Scotland described the offence as "a layer over and above what may or may not have been permitted. It is to cover situations such as a massive oil spill, an example being the Deepwater Horizon incident in the Gulf of Mexico, which was of such an enormous scale that it went far beyond any permitted activity. Ecocide is to deal with severe incidents that go beyond the more regulatory level." [223]

206. The Cabinet Secretary acknowledged concerns about the Bill's lack of a permitted-activity defence and indicated support for addressing this. She stated that she "favoured an amendment to introduce a defence of acting under permit or other

authorisation, as exists in relation to the offence that is set out in section 40 of the 2014 act" [224] , explaining that this would "make the bill and the 2014 act compatible". However, she stressed that such a defence "is not a licence to commit ecocide" [225] , noting that acting "outwith the terms of the authority could expose someone to prosecution" [226] , including where a person was "wilfully committing severe environmental damage". [227]

207. The Member in Charge emphasised that the Bill "will not criminalise legitimate licensed activities" [228] and "will not go after businesses that are operating responsibly under current regulations" [229] . She stated that she would "happily support the Scottish Government's proposed amendments on permits" [230] , which she said would make this "abundantly clear". [231]

208. She reiterated that the Bill creates a criminal offence of ecocide that can be prosecuted only where there is evidence of "intent or reckless conduct". She distinguished this from the position of organisations operating under permits, noting that such bodies are already subject to the RRA, which is a strict liability offence. In this context, she added that she could not 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" [232] .

209. At the same time, the Member in Charge acknowledged the concern that accepting a permitting defence could amount to creating a protection for regulators, consenting bodies and those who have permits, raising the question of whether potential ecocide events could occur under the current permitted regime. She reiterated that her overriding policy aim is to prevent severe environmental destruction, and that this is "what creating an offence of ecocide under criminal law is about" [233] .

210. She stressed that the Bill is not intended to target lawful, permitted activity, stating that "ecocide will not arise if people are sticking to the parameters of a permit." [234] Rather, the Bill is concerned with "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." [235]

211. She reiterated that decision-making would turn on the evidence: "What does the evidence say? Was there intent? Was there reckless conduct?" [236] Where mens rea cannot be proved, she explained that regulators or police could instead consider whether there had been a breach of permit conditions, which could be addressed under the existing law as a strict liability offence.

212. She contrasted the Bill with the section 40 offence, noting that this contains explicit protections for permit-granting bodies because it is a "strict liability offence". Whereas, under the Bill, an ecocide offence requires proof that a person caused "severe environmental harm" and "either intend[ed] to cause it or be reckless as to whether it is caused" [237] . She said she found 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". [238]

<u>Planning authorities and local government</u>

213. The Committee examined the potential implications of the Bill for planning authorities and other consenting bodies and sought further targeted evidence from local authorities.

214. All respondents agreed that the Bill would benefit from explicit clarification of whether, and in what circumstances, acts carried out under statutory consents or licences could still give rise to criminal liability for ecocide, including for public bodies exercising planning or licensing functions. A lack of clarity was said to risk a chilling effect on public infrastructure and major development, slower planning processes, increased reliance on specialist environmental and legal advice, and uncertainty about how the offence would interact with existing frameworks such as Environmental Impact Assessment (EIA) and planning policy, including NPF4.

215. Respondents stressed that the planning system already includes safeguards, such as EIA, consultation with statutory consultees and application of planning policies, particularly for major developments, which aim to balance and manage environmental impacts and risks. The Heads of Planning Scotland (HoPS) warned that, even with a high bar for intention or recklessness, the offence "still presents a risk to the decision-making process" [239] and that uncertainty could encourage a "far more cautious approach" [240] , with a "potentially chilling effect on development and economic growth if planning becomes overly precautionary". [241]

216. Several authorities questioned how decisions taken following robust assessment and expert advice could reasonably be characterised as reckless. Highland Council queried whether a consent granted "in line with advice and recommendations of consultees" [242] could meet the recklessness threshold, while Orkney Council argued that where permission is granted following a competent EIA or HRA (Habitats Regulations Assessment), based on the best available information at the time, "there must be no latent liability upon the consenting authority or officers" [243] should an ecocide allegation later arise.

217. Respondents also highlighted that development inevitably involves some environmental impact, which planning authorities must balance against wider public interests. East Ayrshire Council noted that "it is often inevitable that some environmental harm will come from large scale development" [244] and warned that uncertainty over legal risk "could affect the decision making balance" [245] . South Ayrshire Council similarly cautioned that the definition of environmental harm was "sufficiently broad to potentially include a number of planning permissions under the crime of ecocide" [246] .

218. Orkney Council said it was "essential that it is clearly provided in the legislation that there can be no liability attached to consenting authorities or their officers post decision" [247] . Clackmannanshire Council recommended confirmation that acts carried out under lawful statutory consents or duties are not subject to prosecution where they are undertaken responsibly, and that "reasonable professional judgement exercised within statutory frameworks will not attract liability" [248] . East Ayrshire Council suggested that criminal liability should arise only where a consent is issued "recklessly and without regard to securing the reasonable mitigations" [249] . West Lothian Council sought clarity on whether reliance on consents could provide a defence, how cumulative impacts would be treated, how responsibility would be

allocated where multiple bodies issue consents, and when indirect harm might give rise to liability.

219. Respondents warned that the prospect of ecocide prosecutions could lead to longer decision-making times, more precautionary approaches, more frequent and detailed EIAs, and increased demand for specialist and legal advice, with associated resource pressures. Renfrewshire Council suggested officers might be less willing to use delegated powers and elected members more inclined to refuse applications, increasing committee workloads and appeals. Moray Council raised the issue of resourcing in relation to the capacity of local authorities to ensure developments comply with agreed mitigation measures. They said, “local authorities do not have the resources to monitor and enforce ecological mitigation. The planning system largely relies upon good will and accountability of developers. This could cause significant financial impact on local authorities if they were to be held liable. Also, we have seen both NatureScot and SEPA being less well resourced and having to direct local authorities to standing advice”. [250] West Lothian Council emphasised the need for “explicit guidance on the point at which ecological harm reaches the ecocide threshold”. [251]

220. Respondents also sought clarity on cumulative or incremental harm. North Lanarkshire Council noted that developments are approved individually but could collectively meet the ecocide threshold, raising questions about responsibility. Fife Council said that “tracking and evidencing incremental harm across multiple consents and operators is beyond the capacity of planning authorities” [252] . Clackmannanshire Council sought reassurance that cumulative harm would engage liability only where there is a demonstrable pattern of intentional or reckless disregard, and that individual decisions taken through due process “cannot be retrospectively criminalised” [253] . Others highlighted particular difficulties in applying cumulative thresholds to climate change and biodiversity impacts, such as carbon emissions.

221. Finally, respondents raised concerns about extending investigatory powers for ecocide to local authorities. Many said that any additional role would require training, clear protocols and close coordination with SEPA and Police Scotland. Given the seriousness and expected rarity of ecocide incidents, most considered that investigation should primarily rest with SEPA and Police Scotland. COSLA observed that while it is “highly likely that a local authority would be involved in dealing with an extreme case of environmental damage” [254] , the implications cannot be specified in advance, as ecocide cases are expected to be rare and highly variable.

222. Witnesses did, however, emphasise that planning consents are typically underpinned by environmental assessments, which provide opportunities to identify and mitigate risks. Professor Sarah Hendry suggested that the high bar of intention or recklessness would make it difficult to prosecute planning authorities unless they had acted with clear disregard for environmental impacts. However, she also warned that “a lot of guidance would be required to reassure a planning authority” [255] . Professor Campbell Gemmell argued, however, that “there is no need to, as it were, catastrophise about the bill’s potential impact, because simple assessment and proper science should clarify what is and is not relevant." [256]

223. In oral evidence, the Cabinet Secretary reiterated that the Scottish Government considers there should be a permitting defence, which would apply to local authorities, and that it intends to seek to amend the Bill accordingly. The Cabinet Secretary also confirmed that the Government would be considering further the submissions made by local authorities in response to the Committee's targeted call for views.

224. The Member in Charge told the Committee that the Bill "will not clog up the planning system" [257] , stressing that planning already routinely assesses environmental impacts and mitigation. She explained that the Bill is intended to sit "far above that, at the top of the regulatory pyramid" [258] , with the purpose of deterring and punishing "acts of severe environmental destruction", not ordinary planning decisions. She returned to the Bill's core policy aim, stating: "I seek to prevent environmental destruction… We are trying to prevent ecocide-level crimes." [259] She emphasised that planners already assess harm and mitigation daily and are "pretty skilled in dealing with that every day". [260]

225. She highlighted the existing safeguards within planning, including the precautionary principle, environmental impact assessment, and the requirement for authorities to set out clear reasoning. Using a hypothetical example involving protected species, she said she could not imagine circumstances in which planning officers, councils or ministers, acting on the best available evidence, could be found to have intended to cause ecocide or acted recklessly.

226. The Member in Charge said she had been a chartered town planner for more than 12 years and that she respected "the important work that our planning authorities and others involved in the consenting regime do". [261] She stressed that "the bill is not aimed at them" [262] , and that the mens rea test is crucial given the seriousness of penalties, including up to 20 years in prison. She said she could not 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". [263]

227. Responding to local authority examples, including an example highlighted by Moray Council concerning peat excavation under the National Planning Framework 4, she said planning authorities must apply current legislation and policy, informed by environmental impact assessment, within a "very robust regime". Where legitimate activity causes environmental harm, it would be considered under the RRA, initially. For conduct to amount to ecocide, it would have to be "very reckless and intentional", and "very far away" from routine planning decisions.

228. Addressing concerns that the Bill could make planning decisions too risky, she did not think this would be the case. She stated that the Bill "does not change the assessment of environmental, economic and social impacts [264] ", and Scotland has "very well-established processes" [265] for land-use planning. She rejected the idea that unsubstantiated claims of ecocide would derail decisions, saying that if objections were made, they would need to be evidenced, and that statutory consultees such as SEPA, NatureScot and Transport Scotland remain the trusted expert voices. She concluded that the scenarios raised related to "fairly routine—albeit major—planning applications" [266] , which authorities already assess every single day based on the best available evidence.

229. The Member in Charge further stated that, “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." [267]

Conclusions and recommendations

230. **The Committee recognises the rationale for including a defence of necessity in an offence intended to capture conduct of exceptional gravity, and accepts that there may be very rare circumstances in which conduct risking severe environmental harm is undertaken to prevent a clearly greater harm, particularly where human life or similarly grave interests are at stake. However, the Committee notes a difference of views between the Member in Charge, and her legal advisors, and the Scottish Government as to whether section 2(3), which places a legal burden on the accused to establish the defence on the balance of probabilities, is likely to be incompatible with Article 6(2) ECHR.**

231. **The Committee recommends that, if the Bill proceeds, section 2(3) be amended to remove any doubt as to ECHR compatibility on this ground.**

232. **The Committee also considers that the scope and operation of the necessity defence requires clearer definition. Evidence highlighted uncertainty around the meaning of “greater harm”, the risk of speculative reliance on the defence, and ambiguity as to whether the test is objective or subjective or capable of applying to systemic decisions over time. If the defence is retained, the Member in Charge should consider how the definition could be tightened to provide more clarity on how “greater harm”, necessity and reasonableness are to be interpreted in real-life situations.**

233. **The Committee accepts that some stakeholders supported the absence of a defence of carrying out permitted activities. However, many operators, regulators and local authorities warned that this creates significant legal uncertainty, with potential chilling effects on regulatory decision-making and major developments. The Committee therefore recommends that the Bill be amended to provide for a defence based on carrying out licensed activities, including the position of operators acting competently within authorisations and of regulators and consenting authorities exercising statutory functions in an appropriate manner.**

234. **In the event of the Bill becoming law, the Committee notes that guidance on the operation of the defences under the Bill could fulfil a useful role. This could be developed collaboratively with bodies including SEPA, NatureScot and COPFS.**

Penalties

235. Section 5 of the Bill provides that an individual who commits ecocide is liable on conviction on indictment to a) imprisonment for a term not exceeding 20 years, or b) such imprisonment and an unlimited fine. In any other case (i.e. where an organisation commits the offence), the penalty on indictment is an unlimited fine.

236. Section 6 of the Bill requires the court, when determining the amount of any fine imposed, to have regard to any financial benefit which has accrued or is likely to accrue in consequence of the offence.

237. The Policy Memorandum stated that the maximum penalties are intended to distinguish ecocide from existing environmental offences, which, in her view, have historically not carried deterrent or proportionate sanctions for the most serious forms of environmental harm.

238. Stakeholders generally agreed with the overarching intention to provide for robust penalties. The Law Society of Scotland stated that "the severity of the penalties is intended to match the severity of harm and send a strong, clear, dissuasive message to those who might cause environmental harm so that there is a culture change in attitudes towards protecting the environment" [268] . It also suggested that the inclusion of scope for an order for compensation to include costs for personal injury, loss or damage as well as for remediation has an important practical effect for communities impacted by severe environmental harm and in terms of environmental justice. Stop Ecocide International similarly said that the penalties "are required to reflect the seriousness of the crime, to ensure there is a significant deterrent." [269] SCCS said that the maximum term proposed is aligned with the evolving criminalisation of ecocide in other jurisdictions, where it carries imprisonment of up to 10 to 20 years.

239. However, not all respondents agreed that the high penalties set out in the Bill were justified. SFF stated that the "Member has not made a cogent case for why this Bill is needed or why such serious penalties are needed" [270] . It also suggested that, as the Scottish Sentencing Council is reviewing environmental and wildlife sentencing, it may be more appropriate to await the outcome of that review before creating new offences.

240. By comparison, the maximum penalties available under section 40 of the RRA are significantly lower. On summary conviction, the maximum penalty is 12 months' imprisonment and/or a £40,000 fine; on indictment, the maximum is 5 years' imprisonment and/or an unlimited fine. Some respondents considered these existing penalties insufficient for offending of the scale and gravity envisaged in the Bill. The UK Environmental Law Association (UKELA) argued that the current maximum penalties under section 40 of the RRA are inadequate for conduct that would amount to ecocide. However, UKELA cautioned that the Bill's proposal of a maximum sentence of 20 years' imprisonment could be seen as disproportionate.

241. In considering proportionality, UKELA referred to the Scottish Sentencing Council's Literature Review of Sentencing of Environmental and Wildlife Crimes, which cited the European Commission's view that, to be "effective, proportionate and dissuasive", maximum custodial penalties should be "at least between 5 and 10

years of imprisonment" where an offence is committed intentionally and results in death or serious injury. UKELA also noted that, by way of international comparison, the Netherlands is considering ecocide legislation with a maximum sentence of up to 15 years' imprisonment.

242. At the same time, UKELA recognised that a central purpose of the Bill is to signal the seriousness of causing "significant and widespread environmental harm", and that such conduct "should be punished severely" [271] . It emphasised that, provided there is a clear rationale and explanation for the proposed maximum sentences, setting a high maximum would be appropriate, noting that a maximum sentence is "what it says, a maximum" [272] and that courts can sentence below but not beyond it.

243. International comparisons were also highlighted in evidence. In Belgium, ecocide-type offences carry a maximum sentence of up to 20 years' imprisonment for individuals and fines up to €1.6 million for legal persons. In France, comparable conduct carries up to 10 years' imprisonment and fines up to €4.5 million for individuals and €22.5 million for legal persons (or up to ten times the advantage drawn from the offence). Witnesses also drew attention to the ECD, which requires Member States to provide for maximum sentences of at least eight years for "qualified offences" and notes that "'qualified criminal offences' can encompass conduct comparable to 'ecocide', which is already covered by the law of certain Member States and which is being discussed in international fora". Dr Clare Frances Moran told the Committee that "the penalties are not out of step with international law or European law" [273] , but noted that EU instruments typically include "more detail about the gravity of the offence" [274] and sentencing factors, which can support proportionality while preserving the deterrent effect.

244. In relation to fines, Dr Mingzhe Zhu and Ms Yijia Li [275] proposed that sections 5 and 6 be amended to clarify that unlimited fines should be determined by reference to an organisation's global annual turnover. They noted that turnover-based fines are well established in EU law, including in competition law and the General Data Protection Regulation, which provides for fines of up to 4% of global turnover. They also highlighted that the 2024 ECD formally adopts turnover-based fines for the most serious "qualified offences".

245. In oral evidence, COPFS emphasised that the Bill's 20-year maximum custodial sentence applies only to individuals and that the maximum penalty for corporate bodies of an unlimited fine is "on a par with that in various other pieces of legislation." [276] COPFS added that imprisonment, particularly beyond five years, may in practice be rare, although the step-change from existing legislation was acknowledged. Murdo MacLeod KC agreed that the legislation is "geared for individuals" [277] , but emphasised that section 3 applies only to individuals in "very senior management" [278] . He characterised this as "a sort of warning shot" [279] , intended to signal to senior decision-makers the seriousness of the potential consequences. He noted that it is "not uncommon to see directors charged" [280] under health and safety legislation, but contrasted this with the maximum two-year custodial penalty available in that context, which he suggested is "arguably inadequate" [281] .

246. The Committee also heard that sentencing practice would, in any event, be shaped by guidelines. Murdo MacLeod KC noted that the Scottish Sentencing Council is preparing guidelines for environmental offences, which would "temper the effect of the 20-year maximum" [282] . COPFS also highlighted the English Sentencing Council's guidelines, which are frequently used in Scottish courts as a non-binding reference point. These recommend a sentencing range of one to three years' imprisonment for the most serious environmental cases in England, illustrating the gap between theoretical maxima and practical sentencing norms.

247. The Member in Charge said that the principal aim of the Bill's penalties is deterrence, stressing that "up to 20 years in prison is a very serious punishment" [283] . She argued that, for the Bill to have "the maximum deterrent effect" [284] , it had to go beyond the current penalty under the RRA, which is up to five years, and said that the intention was "to set the bar really high". [285]

248. She explained that this approach was informed by stakeholder evidence and international examples. She noted evidence from the ERCS that the proposed maximum term is aligned with the evolving criminalisation of ecocide in other jurisdictions, where penalties can range from 10 to 20 years, citing examples such as the Belgian penal code and the French climate and resilience law.

249. She also referred to consultation responses, explaining that around 2,600 people supported imprisonment, with "79 per cent of respondents … fully supportive" and "14 per cent … partially supportive" [286] . She said the penalty is intended "to reflect the seriousness of the crime" [287] , adding that Unison Scotland and Scottish Environment LINK "also fully supported the proposed penalty in principle" [288] , describing it as proportionate and aligned with other jurisdictions. She concluded that she did not want Scotland "to look like a soft touch" [289] and that, "if we are going to have ecocide law, I want us to do it properly." [290]

Other Penalties

250. Section 7 of the Bill allows a court where a person is convicted of ecocide, instead of or in addition to other penalties or measures, to make a 'compensation order' requiring that person to pay compensation to another person for e.g. personal injury, loss or damage caused or costs incurred in remediating the effects of any harm (to the environment or otherwise).

251. Section 8 of the Bill also allows a court (in addition to dealing with the person in any other way) to make a 'publicity order' requiring the person convicted to publicise that they have been convicted of ecocide, specifying the particulars.

252. Stakeholders also provided extensive evidence on publicity orders. Many, including the Law Society of Scotland, Scottish Environment LINK, SCCS, FoES and Stop Ecocide International, considered that publicity orders would add a deterrent effect and should be mandatory. Stop Ecocide International said, "transparency is key because public and societal perception has an important role in shaping acceptable business and institutional practice. In the case of a company, maintaining good reputation and compliance with law, is critical to continued investment and public and shareholder support." [291] Animal Equality suggested there should be a presumption in favour of publicity orders.

253. Other respondents expressed concerns. NFUS cautioned that publicity orders could expose personal or commercially sensitive information and urged due diligence before publication. SFF said it did not consider publicity orders a meaningful deterrent, arguing that "court cases and convictions are routinely reported in the press and media," [292] and also highlighted the absence of safeguards in the Bill regarding reputational harm. The Aberdeen Centre for Constitutional and Public International Law similarly questioned whether publicity orders would deter large corporations with the resources to counter reputational impacts.

254. Several respondents proposed alternative or additional penalties to strengthen the Bill's deterrent and restorative objectives. Suggestions included remediation orders requiring offenders to undertake remediation directly (as in the RRA); approaches to ensure restorative justice, such as contributions to a restoration fund; director or trustee disqualification, and operational restrictions such as suspension or withdrawal of permits or exclusion from public procurement or funding. A number of respondents referred to the EU ECD's view that non-financial sanctions may be particularly effective for legal persons. SEPA said it "would also support powers being given to the courts to order a person convicted of the ecocide offence to take steps to remedy or mitigate the harm caused, where the court considers that it's within the power of that person to do so." [293] Jodie Bettis argued that the Bill should include "restorative justice mechanisms such as compulsory restoration notices and associated compensation governance structures" [294] . Stop Ecocide International also supported restoration orders.

255. The Law Society of Scotland added that the Bill's approach, requiring offenders to pay for remediation rather than carry it out directly, "is perhaps justified in terms of trust that appropriate steps are taken properly and avoiding any spin into a 'good news' story" [295] . UKELA similarly said that offenders should pay for remediation rather than conduct it, to ensure effective restoration. FoES said that courts should be required to assess environmental harm and determine what, if anything, can be undertaken to restore the environment, with sanctions including community service or financial contributions.

256. The Member in Charge said that remediation was considered carefully during the drafting process, but was not made an explicit requirement in the Bill. One reason for this was that the nature of an ecocide event may be such that "the damage cannot be entirely undone, so it would not necessarily be possible to have full remediation." [296] She explained that the drafting focused on "the collective impact of all the different measures in the bill combined with existing legislation" [297] , noting that there are already powers under other legislation, including the ability to seize assets from organisations.

257. She also highlighted that there are "already civil remedies available to SEPA to drive restoration" [298] and that existing environmental legislation already addresses restoration. Given the gravity of ecocide, she decided not to include explicit remediation duties in the Bill, instead focusing on compensation, stating that "we believe that that can include the cost of remediation". [299]

258. Scottish Parliament officials clarified that section 7 of the Bill makes clear that compensation orders can include the costs of remediation. They explained that this approach allows those who have carried out the clean-up or suffered harm, which

could include SEPA, a local authority or individuals, to recover their costs, with remediation being undertaken by those bodies rather than the perpetrator or the accused, given the severe nature of ecocide.

259. A number of respondents commented on other penalty options, including in relation to confiscating the proceeds of crime. Scottish Environment LINK, FoES and SCCS all suggested that, in line with the ECD, it should be mandatory to confiscate the instrumentalities and proceeds of ecocide (Article 10), extending the scope of the Proceeds of Crime Act 2002 (POCA).

260. COPFS made clear, however, that confiscation powers already exist and the powers would be available automatically. It stated that "although the issue of proceeds of crime is not mentioned in the bill, it is a separate provision that runs in tandem with any criminal proceedings… we would anticipate using those provisions in appropriate cases" [300] , noting that these powers are already used in environmental prosecutions where appropriate.

261. In response to questions about the interaction with the Proceeds of Crime Act 2002, the Member in Charge said that its application would depend on individual cases and would be a matter for the discretion of the courts on application by COPFS. She explained that existing powers already allow the police and other agencies to investigate, search and seize assets that were obtained by criminal activity, and that this was why such powers were not replicated in the Bill. Officials confirmed that there is "no need to legislate further on the proceeds of crime" [301] , noting that existing powers would apply where relevant, including in line with options set out in the EU environmental Crime Directive.

Recommendations and conclusions

262. **The Committee recognises that the Bill's penalty framework represents a significant departure from existing Scottish environmental offences, particularly through the proposed maximum custodial sentence of up to 20 years' imprisonment, but accepts that that new offence is intended to be for only the most grave and egregious environmental breaches and also requires the prosecutor to prove a mental element. Given this, penalties under the Bill seem broadly appropriate. However, as stated earlier, this is provided questions over definition, liability and defences are resolved satisfactorily.**

263. **The Committee agrees that, whether or not this Bill progresses to Stage 2, there is a case to consider strengthening maximum penalties under section 40 of the 2014 Act, and that this should be considered as part of a review of that legislation (as recommended in paragraph 106)**

264. **The Committee is persuaded by evidence that existing confiscation powers under the Proceeds of Crime Act 2002 are sufficient and need not be duplicated in the Bill. The Committee also notes proposals to link fines more explicitly to corporate turnover, in line with the EU Environmental Crime Directive. This warrants further consideration.**

265. **The Committee recommends that, if the Bill progresses, the Member in**

Charge consider strengthening the sentencing framework through clearer or additional provision for restorative and preventative sanctions, including measures addressing corporate governance and decision-making, in line with the EU Environmental Crime Directive.

Enforcement

266. Section 9 of the Bill would extend investigatory powers by amending section 108 of the Environment Act 1995 to allow the powers of a relevant "enforcing authority", including the Scottish Ministers, SEPA and certain local authorities, to be used for the purposes of investigating a potential offence of ecocide. In examining these provisions, the Committee explored issues of operational readiness, clarity of investigatory responsibilities, and the adequacy of financial assumptions underpinning the Bill.

267. In its memorandum, the Scottish Government emphasised that the establishment of a new offence should be considered separately from questions about the effectiveness of the existing regulatory regime. It stated that "it is important to separate consideration of potential new offences from consideration of whether existing environmental law is implemented or applied effectively", and that regulators already have "well developed enforcement policies that seek to protect the environment through incentivising compliance." [302]

268. Many respondents expressed concerns that effective implementation of the Bill will require significant investment in the bodies responsible for environmental enforcement, often framed within wider concerns about already stretched regulatory capacity. NFU Scotland raised "concerns about the capacity of SEPA to investigate and prosecute ecocide, considering current resources are already stretched." [303] The Law Society of Scotland also commented that "the effectiveness of the Bill will hinge on there being adequate, long-term resources in place for enforcement." [304]

269. Several organisations questioned whether the Financial Memorandum fully captures the scale of adaptation required. The Ocean Rights Coalition UK pointed to recent financial and staffing pressures on SEPA, the limited number of specialist environmental prosecutors within COPFS, and the lack of a dedicated environmental crime unit in Police Scotland comparable to those in other jurisdictions. It argued that the Financial Memorandum "underestimates the scale of institutional adaptation required" [305] and warned that "without this, there is a real risk that ecocide will remain a powerful law in principle but rarely enforced in practice." [306] The response suggested learning from comparative models in France, the Netherlands, Norway, Canada, and the United States.

270. The Children and Young People's Commissioner Scotland emphasised that ecocide cases are likely to be complex and require scientific expertise to gather and interpret evidence, stating, "we believe that further investment will be necessary to properly enforce this legislation." [307] Foodrise said it is imperative that sufficient resources are available to the bodies responsible for enforcing ecocide legislation, citing concerns about enforcement in aquaculture, with reports (by the Ferret) suggesting that "fish farms in Scotland have broken environmental rules more than 100 times in the last 2 years".

Clarity of investigatory roles and power

271. Both SEPA and NatureScot highlighted uncertainties about the allocation of investigatory powers. SEPA welcomed the extension of its powers but raised

concerns about how these would operate where an ecocide incident involves harm outside its regulatory remit. It questioned whether other agencies with comparable powers, such as the authorities designated under the Environmental Liability (Scotland) Regulations 2009, would receive similar extensions, and who would lead investigations where harm does not fall squarely within SEPA's remit. SEPA warned that "if SEPA were asked to lead in such cases this could result in significant resource impact in developing the capability to act and investigate." [308]

272. UKELA similarly emphasised that effective response to potential ecocide incidents requires the coordinated involvement of SEPA, Police Scotland, COPFS and ESS.

273. NatureScot explained that serious harm to protected sites or species may fall within its expertise, yet it is not an enforcing body under section 108 of the Environment Act 1995 and therefore not covered by the provision adding ecocide to the remit of enforcement bodies. NatureScot would, therefore, require SEPA's authorisation to conduct investigations relating to ecocide, a process it suggested "may lead to difficulties or complications in practice." [309]

274. Industry representatives also raised questions relating to enforcement powers. The SFF expressed concern about how "erroneous" [310] complaints alleging ecocide by the fishing industry would be handled. It argued that the Bill lacks guidance on safeguards against abuse of enforcement powers and does not specify what kind of evidence or suspicion is required before SEPA can act.

275. When giving oral evidence, NatureScot additionally emphasised that the higher evidential threshold associated with custodial penalties presents challenges for an organisation that would rarely use such powers. It said:

> Given our experience with the Environmental Liability (Scotland) Regulations 2009, we envisage potential cases of ecocide being complicated and relatively infrequent, so they will be testing for those authorities who, like us, will not be using the provisions regularly—perhaps once in a career, for example. As the bill stands, we would need to act with SEPA to direct us to those investigatory powers. Normally, we rely on the police to do that sort of work for us, because they are much better at it. If we get it wrong because we are rusty or whatever, that threatens the case in court. [311]

Operational readiness and inter-agency working

276. The Financial Memorandum estimates annual training and familiarisation costs of £7,582 for SEPA, £3,791 for Police Scotland and £1,137 for ESS. The Financial Memorandum also states that, "while the crime of ecocide is a new one, it is not anticipated that its introduction will generate significant additional resource requirements for the Scottish Administration in respect of investigation costs. This is because where an offence that met the criteria of ecocide as set out in the Bill were to be committed, such as incident would have been investigated under existing powers if the Bill were not in force."

277. While ESS stated these costs were appropriate for its expected role, SEPA and NatureScot suggested the overall financial implications may be understated. SEPA explained that if it were required to investigate incidents outside its regulatory responsibilities, this could create an additional, unfunded burden that may require

deprioritising other statutory functions. NatureScot questioned whether it could maintain the required expertise for an offence that may be used only "once in a blue moon" [312] , warning that sustaining such proficiency may prove significantly more expensive than suggested by the Financial Memorandum.

278. A further set of concerns related to the operational readiness of enforcement bodies. The Financial Memorandum acknowledges that public bodies will require training and familiarisation, noting that SEPA will need to amend its protocols for working with COPFS, and Police Scotland officers involved in environmental crime will require information about the new offence. Staff across these organisations will need to incorporate the new offence into internal guidance, with ongoing training required to account for staff turnover. However, the Financial Memorandum does not provide estimates for other authorities, including NatureScot or the Marine Directorate, whose involvement may be necessary depending on the type of harm.

279. UNISON Scotland underlined the practical burden that ecocide investigations may impose on stretched public bodies. It stated that "it will be our members, in many cases working within stretched public bodies, that must gather and accumulate a huge level of evidence to satisfy the Procurator Fiscal," [313] adding that creating new offences "without regard to the feasibility of their enforcement is at best a very small step forward." UNISON also raised concerns about the safety of public sector workers, noting that "public sector workers currently do not have sufficient protections from harm that may need to accompany any new powers they are granted. Criminal groups or individuals investigated may be minded to target workers building a case against them given the custodial sentences proposed." [314]

280. Animal Equality stated that while core capability exists within enforcement agencies, the scale and complexity of ecocide cases means they would benefit from strengthened joint case-building, joint operational protocols, early ecological expertise, and clear triage triggers for escalation. ERCS emphasised the need for proactive consultation with all relevant authorities to ensure institutional readiness, arguing that readiness cannot be assumed without clear planning and engagement.

281. On costs, the Cabinet Secretary emphasised that any legislation which places additional responsibilities on public bodies must take account of the resources required to deliver them, noting that this is "a normal part of government" [315] and is addressed through the budget process. She explained that decisions on funding are taken during budget negotiations, with portfolios making representations to the Finance Secretary, and stated that she would not comment on "a budget that has not happened yet". [316]

282. She also highlighted the practical uncertainty involved, explaining that an ecocide investigation could involve a range of bodies—such as Police Scotland, SEPA, NatureScot or the coastguard—depending on "the location and nature of the crime" [317] , and that incidents could be marine or land-based, potentially involving UK bodies or non-government spill response organisations. She said, "it is impossible for me to say what additional resource would be needed for an event that that has not happened." [318] However, she added that if public bodies raised concerns about lacking the resources to meet the Bill's requirements, these would need to be considered.

283. The Member in Charge said that careful consideration has been given to enforcement arrangements and resourcing implications. She explained that the Bill is designed to allow SEPA to rely on its existing investigatory powers and anticipates that it would use "existing processes and procedures to investigate any reported cases of ecocide" [319] , including liaising with COPFS. She stated that this approach formed the basis for the methodology in the financial memorandum.

284. She acknowledged that, if enacted, the investigation of a reported ecocide offence could require SEPA to dedicate "significant resource" [320] . However, she emphasised that conduct amounting to ecocide "would previously have been looked into as an offence under existing environmental legislation, including section 40 of the RRA" [321] . On that basis, she said that 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". [322]

285. Nevertheless, she accepted the concerns raised by SEPA in its evidence, quoting its view that "the scale of such events … will require significant effort/resource, training and support", and that "scale, resource implications and training requirements should also reflect the breadth of reporting agencies that could be involved" [323] . She said that SEPA had "again emphasised the point about the scale of ecocide" [324] and, in light of that, she acknowledged that SEPA's costs "could be higher than those that are set out in the financial memorandum" [325] , adding, "I take that point." [326]

286. Turning to local authorities, the Member in Charge said that she had read the comments from COSLA and individual planning authorities about resourcing. She explained that, 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". [327] She noted that councils are often the first bodies to hear about environmental incidents, as members of the public may contact them directly, but stressed that "they have to report serious cases to SEPA" [328] , which would be "the primary enforcement or investigatory body for this matter". [329]

287. She said that she was "always sympathetic to local authorities regarding their financial settlement and their capacity to do the jobs that they want to do" [330] , but emphasised that a severe environmental incident "must, under existing regulations, be dealt with by our public sector regulatory bodies". [331] She also acknowledged that, at the point when a serious incident is addressed and is likely to be at the level of ecocide, additional costs could arise.

288. A Scottish Parliament official explained that, alongside SEPA, consideration had also been given to the role of the police. She noted that there is an "existing unit at Gartcosh where SEPA and the police work closely together" [332] , and said that these existing practices were taken into account in developing the Bill, while also recognising the potential scale of an ecocide event.

Conclusions and recommendations

289. **The Committee notes that the Bill is intended to operate largely through existing enforcement structures and investigatory powers. It is difficult to predict resourcing needs for an offence intended to address rare and exceptional events. However, ecocide investigations are likely to be infrequent, complex and resource-intensive, requiring specialist legal, scientific and operational expertise. The Financial Memorandum may underestimate the investment required to build and sustain such investigations.**

290. **NatureScot is not formally an enforcing body under section 108 of the Environment Act 1995. This means that it would not be automatically covered by the provisions extending the enforcement bodies' remits to ecocide. Instead, it would require authorisation from SEPA to undertake ecocide-related investigations. As the Committee understands it, this also applies in the case of investigations potentially leading to a prosecution under section 40 of the 2014 Act. The Committee invites the Scottish Government to clarify whether investigations of possible environmental offences would benefit from NatureScot being designated an enforcing body and to comment on any significant resourcing or other implications of doing so.**

291. **If the Bill proceeds past Stage 1, the Committee recommends that there be discussions between the Member in Charge, the Scottish Government, prosecutors, police and environmental regulators with a view to producing revised and agreed estimates to complement further Parliamentary consideration of the Bill. This is complementary to the Committee's earlier recommendation on reviewing the operation of the section 40 offence, including why it has been so little used by prosecutors, which may itself suggest an existing resourcing, capability development, and inter-agency coordination issue.**

Reporting

292. Section 10 of the Bill requires Scottish Ministers to publish a report on the operation of 'this Act' and lay a copy before the Scottish Parliament, not later than 6 months after the end of the "review period" (5 years after section 1 comes into force). The reporting requirement is therefore framed as a single review after five years of operation, rather than as a recurring duty.

293. Most respondents to the Committee's call for views supported the inclusion of a reporting requirement in principle. Many considered that, even if cases of ecocide are expected to be rare, an obligation to report would serve an important transparency and accountability function. Some respondents emphasised that the creation of a new offence of this gravity should be accompanied by a mechanism to evaluate whether the legislative intention has been realised in practice.

294. However, respondents also proposed ways in which the reporting duty could be strengthened or made more proportionate. A number of submissions suggested ways the reporting mechanism could be made more effective. For example, ERCS argued that as ecocide is expected to be rare, it would be more effective to require Scottish Ministers to prepare a report "within 12 months after each conviction for ecocide," [333] rather than after a generic review period. ERCS suggested that such a report "should cover assessment of the damage and outcomes of the conviction, and also assess why the crime was able to take place and make recommendations to prevent a similar crime in the future." [334]

295. The Scottish Government set out in its memorandum to the Bill that it believes that the reporting requirement "is inconsistent with the likely frequency of any ecocide offences" [335] and although it is "not a particularly onerous requirement" [336] , it "risks misleading the public as to the likely frequency of any prosecutions" [337] . The Scottish Government suggests that the reporting requirement should be removed

296. The Cabinet Secretary in oral evidence questioned what the reporting requirement added, saying it was disproportionate. She highlighted concerns about capacity and resources within the Government and the civil service, she warned that the provision would place additional burdens on officials to produce reports that "might not do anything or have much in them" [338] , diverting capacity away from work "that does have a purpose". [339]

297. The Member in Charge said that she "pretty much" [340] agrees with the Scottish Government's position. She acknowledged that, in the absence of an ecocide event, a reporting requirement "would be burdensome" [341] relative to the potential savings. She said that she is amenable to removing that provision at stage 2.

298. She added that, if the Committee were to conclude that there would be merit in a report following an ecocide event, she would be happy to look at that. She said that the Government might be amenable to that and that she does not have a strong position on it either way, stating that she would be guided by recommendations and would work with the Government on it.

<u>Conclusions and recommendations</u>

299. **The Committee notes the Scottish Government's concern that a fixed reporting requirement, detached from the occurrence of any ecocide cases, risks creating misleading expectations about the frequency of prosecutions and may impose disproportionate administrative burdens. At the same time, the Committee notes the strong support among stakeholders for some form of reporting mechanism.**

300. **On balance, the Committee considers that some form of reporting can play an important role in demonstrating how the offence operates in practice and what lessons could be learned following an ecocidal event.**

301. **The Committee therefore recommends that the Member in Charge consider lodging amendments to replace the current five-year reporting requirement with a duty on Scottish Ministers to publish a report within 12 months of any conviction for ecocide. The Committee considers that such a report should include, at a minimum, information on the environmental harm involved, the outcome of the case, and any lessons learned that could help prevent similar incidents in the future.**

Conclusion

302. The Committee acknowledges the huge amount of work undertaken by the Member in Charge in developing the Bill, and the constructive engagement of stakeholders. The discussion the Committee has had during Stage 1 has been interesting and important in raising awareness and understanding of how serious ecological destruction should be dealt with by the law, including the wider international context.

303. While the Committee does support the overall aim of creating an offence that appropriately captures the most serious cases of environmental harm, there are differences of views as to whether the Bill, as drafted, is the best way of approaching this. Stage 1 scrutiny has raised a number of key questions about definitional matters which a majority[iii] of the Committee are not satisfied will be easily resolved - further discussion will be needed to ensure key terms are right and, given the gravity of the new offence, the Committee would be concerned if these felt rushed. The Committee is mindful that time is running short in this Parliamentary session to ensure there is proper discussion on all these matters.

304. **The Committee's duty is to report on the general principles of the Bill. "General principles" is not a defined term- it is for each committee considering a Bill at Stage 1 to contextualise it to the specific circumstances of its scrutiny, including practical considerations, such as the remaining time the Committee and the Parliament has.**

305. **The Committee supports the principle of ensuring that the most egregious forms of environmental harm, carried out with intent or recklessness, are treated with the seriousness they warrant under the criminal law. This includes having robust penalties that reflect the severity of the damage caused and serve as a warning to others. There is a strong case for changing the law to more clearly embody this principle.**

306. **As outlined in prior conclusions and recommendations, there are a large number of question marks over definitional issues to do with the offence set out in the Bill and whether the alternative approach of amending section 40 of the Regulatory Reform (Scotland) Act 2014 would work better. There is also the issue of enforcement of environmental law and the Committee's concerns that some existing legal sanctions, such as the section 40 offence, are barely being used. We all need to understand better why that is. A majority of the Committee[iv] do not see a realistic prospect of these questions about definitions and enforcement being addressed comprehensively in the few remaining weeks before this session of the Parliament ends and, given this, do not consider that it would be responsible to recommend to the Parliament that the Bill should proceed any further. In that context, a majority [v] of the Committee do not support the general principles of the Bill.**

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iii Sarah Boyack and Mark Ruskell dissent from this recommendation

iv **Sarah Boyack and Mark Ruskell dissent from this recommendation**

307. **Several recommendations, in particular the recommendation that there be a thorough review of the section 40 offence, exist independently of whether this Bill proceeds. While the Committee recognises that a parliament or government cannot bind its successor, the Committee hopes that these recommendations are commenced as soon as possible and taken forward into the next session with a view to possible legislation to create a robust penalty for serious environmental crime at the apex of Scotland's environmental regulation. In this context, the Committee also note the current government's commitment to keep pace with EU law which may require amendment to existing laws in this area.**

[v] Sarah Boyack and Mark Ruskell dissent from this recommendation

1 Policy Memorandum, paragraph 14

2 Policy Memorandum, paragraph 13

3 Net Zero, Energy and Transport Committee, Official Report, 9 December 2025, col: 26

4 Net Zero, Energy and Transport Committee, Official Report, 9 December 2025, col: 24

5 Financial Memorandum, paragraph 11

6 Policy Memorandum, paragraph 16

7 Scottish Government Memorandum, paragraph 12

8 Scottish Government Memorandum, paragraph 6

9 Scottish Government Memorandum, paragraph 7

10 Scottish Government Memorandum, paragraph 7

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17 Stop Ecocide International, written submission

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26 NFU Scotland, written submission

27 NFU Scotland, written submission

28 Net Zero, Energy and Transport Committee, Official Report, 23 September 2025, col: 56

29 Scottish Fishermen's Federation, written submission

30 Scottish White Fish Producers Association, written submission

31 Scottish White Fish Producers Association, written submission

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39 Net Zero, Energy and Transport Committee, Official Report, 4 November 2025, col: 8

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44 Law Society of Scotland, written submission

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56 Net Zero, Energy and Transport Committee, Official Report, 11 November 2025, col: 7

57 Scottish Environment Protection Agency (SEPA),written submission

58 Net Zero, Energy and Transport Committee, Official Report, 4 November 2025, col: 12

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76 Letter from the Cabinet Secretary for Climate Action and Energy, 18 December 2025

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88 Law Society of Scotland, written submission

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100 Aberdeen Centre for Constitutional and Public International Law, written submission

101 The Ocean Rights Coalition UK, written submission

102 Glasgow City Council, written submission

103 Net Zero, Energy and Transport Committee, Official Report, 11 November 2025, col: 4

104 Net Zero, Energy and Transport Committee, Official Report, 2 December 2025, col: 11

105 Net Zero, Energy and Transport Committee, Official Report, 2 December 2025, col: 11 and 12

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115 Scottish Environment Protection Agency (SEPA),written submission

116 NatureScot, written submission

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127 Stop Ecocide International, written submission

128 Scottish Environment LINK, written submission

129 Scottish Environment Protection Agency (SEPA), written submission

130 Law Society of Scotland, written submission

131 Dr Suwita Hani Randhawa, written submission

132 Net Zero, Energy and Transport Committee, Official Report, 23 September 2025, col: 35

133 NatureScot, written submission

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137 Environmental Rights Centre for Scotland (ERCS), written submission

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146 Friends of the Earth Scotland, written submission

147 Environmental Rights Centre for Scotland (ERCS), written submission

148 Environmental Rights Centre for Scotland (ERCS), written submission

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184 NatureScot, written submission

185 NatureScot, written submission

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191 Scottish Government Memorandum, paragraph 10

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243 Orkney Island Council, written submission

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246 South Ayrshire Council, written submission

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248 Clackmannanshire Council, written submission

249 East Ayrshire Council, written submission

250 Moray Council - find link

251 West Lothian Council, written submission

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294 Jodie Bettis, The Open University, written submission

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