



Response to Monica Lennon MSP's proposed
**Ecocide (Prevention) (Scotland)
Bill**
Scottish Wildlife Trust

09/02/2024

The Scottish Wildlife Trust supports the Bill aiming to protect the environment in Scotland and deter environmental damage by introducing the crime of ecocide into Scots law. The Trust believes it is an important way forward for safeguarding our environment.

The Scottish Wildlife Trust welcomes this opportunity to respond to the proposed Ecocide (Prevention) (Scotland) Bill

Question 1: Which of the following best expresses your view of the proposed Ecocide Prevention (Scotland) Bill?

- a. Fully supportive
- b. **Partially supportive**
- c. Neutral (neither support nor oppose)
- d. Partially opposed
- e. Fully opposed
- f. Do not wish to express a view

Please explain the reasons for your response.

Scottish Wildlife Trust supports robust criminal penalties for ecocide-level offenses, but we believe that these should not be a substitute for addressing gaps in environmental governance and enforcement. We are reluctant to support the assumption that the Bill will be a comprehensive solution to all environmental harm. Ecocide law targets the most serious offenses, not all environmental crimes. Both civil and criminal law require improvement to protect Scotland's environment effectively. There are enforcement shortcomings in both areas, particularly regarding regulatory enforcement by relevant agencies. It is crucial for Scotland's environmental governance to allocate resources and ensure regulators are committed to holding polluters accountable, which is essential for the success of this Bill.

We would like to highlight the significant biodiversity data and information shortfall that exists in Scotland, in many cases we lack the biodiversity data and ecosystem health indicators to establish the level of crime committed with rigor, despite visual evidence. This needs urgently addressed to combat environmental crime but also to allow us to develop sustainably.

Question 2: Do you think legislation is required, or are there other ways in which the proposed Bill's aims could be achieved more effectively?

- a. **Yes, legislation is required**
- b. No, legislation is not required
- c. Do not wish to express a view

Please explain the reasons for your response.

We believe criminalising ecocide in Scots law would establish an additional tier of penalties for environmental harm. While specific environmental offenses are already recognised, such as wildlife crime and water pollution, additional sanctions are necessary to address damage comparable to ecocide. However, careful consideration is needed regarding how these new measures align with existing legislation.

Legislation would also help Scotland stay in line with EU law, particularly the revised Environmental Crime Directive, which mandates penalties for particularly destructive criminal conduct, including offenses comparable to ecocide. This aligns with Scotland's commitments outlined in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

Question 3: Do you think that creating an offence of ecocide would have a deterrent effect against damage to the environment?

- a. **Yes, there would be a deterrent effect**
- b. No, there would not be a deterrent effect
- c. Do not wish to express a view

Please explain the reasons for your response

We believe that establishing an ecocide offense could enhance efforts to prevent severe environmental damage. By supplementing existing criminal law, it would strengthen the legal framework to address such harm with appropriate severity. Criminalising ecocide should prompt greater scrutiny of Scotland's enforcement agencies' role in environmental protection and the tools at their disposal. However, the effectiveness of this law depends on whether its penalties align with the gravity of the offense.

If fines for ecocide are perceived as lower than potential profits, the law may not act as a deterrent. Enforcement of the law depends on factors like willingness, resources for investigation and prosecution, and proving culpability. By criminalising ecocide Scotland would join the EU in advocating for its recognition as a crime under the Rome Statute of the International Criminal Court.

Question 4: Do you have any views on the proposed legal definition of ecocide as unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the Scottish environment being caused by those acts?

- a. Yes, I support the proposed definition
- b. No, I do not support the proposed definition
- c. **Prefer another definition**

Please explain the reasons for your response

We would urge that current EU initiatives on defining ecocide are considered, such as the European Law Institute (ELI) Report on Ecocide and adopting aspects of the European Council and European Parliament's definition of qualified offenses or "cases comparable to ecocide" outlined in the revised Environmental Crime Directive. This definition identifies offenses causing irreversible or long-lasting destruction or substantial damage to ecosystems, habitats, or environmental quality. While the Directive lists specific environmental crimes to which this definition applies, further consideration is necessary to tailor a suitable definition for Scotland.

Question 5: Which of the following best expresses your view of the proposed sanction of imprisonment up to a maximum of 20 years for individuals, including responsible officials such as company directors?

- a. **Fully supportive**
- b. Partially supportive
- c. Neutral (neither support nor oppose)
- d. Partially opposed
- e. Fully opposed
- f. Do not wish to express a view

Please explain the reasons for your response, including if possible your view on the severity of the proposed sanction and those to be held liable.

Scottish Wildlife Trust supports the proposed penalties in principle. We believe that severe environmental damage necessitates corresponding criminal sanctions. Given the existing maximum imprisonment term of five years in Scottish environmental law, a maximum term of 20 years for ecocide seems appropriate. This matches similar penalties elsewhere, where ecocide carries imprisonment terms ranging from 10 to 20 years. We advocate for holding both individuals and officials of legal entities accountable for ecocide, but further analysis is needed to determine liability.

Question 6: Which of the following best expresses your view of the proposed financial sanctions worth 10% of worldwide turnover for companies over three years?

- a. Fully supportive
- b. Partially supportive**
- c. Neutral (neither support nor oppose)
- d. Partially opposed
- e. Fully opposed
- f. Do not wish to express a view

Please explain the reasons for your response, including if possible your view on the severity of the proposed sanction and those to be held liable.

We support the proposed penalties but believe more severe financial sanctions are needed, consistent with the revised EU Environmental Crime Directive. The Directive outlines minimum fines for legal entities based on a percentage of their global turnover, ranging from 3-5%, or EUR 24-40 million, depending on the offence. For those comparable to ecocide, the Directive recommends even harsher penalties. Thus, the proposed 10% of worldwide turnover for companies over three years may not suffice.

We endorse ELI's suggestion to confiscate financial gains from ecocide crimes, as incorporated in Article 10 of the Directive. If the profits exceed the proposed penalty, we support confiscating all relevant gains. Additionally, we would like to see additional punitive measures outlined in the Directive for both natural and legal persons to ensure proportional and effective sanctions. Given the severity of ecocide-level crimes, it is crucial for regulatory and judicial bodies to have access to appropriate criminal penalties to ensure the law's efficiency and deterrence.

Question 7: Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

- a. a significant increase in costs
- b. some increase in costs**
- c. no overall change in costs
- d. some reduction in costs
- e. a significant reduction in costs

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.

We believe that the Bill could lead to some increase in cost as a result of the need for investigating ecocide allegations by the relevant public body and the need for court hearings. The cost of this could be covered in part by the fines enforced on those charged with ecocide.

Question 8: The Human Rights Act 1998 incorporated the European Convention on Human Rights (ECHR) into UK law. It means that public authorities, must not act in a way that is incompatible with the rights set out on the ECHR. Do you have any views on potential impacts of the proposals in this consultation on human rights?

Bringing ecocide into Scots Law is compatible with the UN resolution recognising the human right to a safe, clean and sustainable environment. The legislation would provide deterrent and punishment if needed to uphold this right. The Scottish Government has committed to incorporating the right to a healthy environment in the Human Rights (Scotland) Bill.

Question 9: Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

What impact could this proposal have on particular people if it became law?

Please explain the reasons for your response and if there are any ways you think the proposal could avoid negative impacts on particular people.

Environmental harm disproportionately affects marginalised communities. Ecocide legislation would enhance environmental justice by enabling the legal system to hold polluters accountable. Particular effort should be made to have a meaningful dialogue with the public about the proposals, and as part of this, ensuring participation from marginalised communities in the Bill process. We believe that enhancing environmental law and enforcement is crucial to foster a more equitable and just society in Scotland.

Question 10: Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?

Please explain the reasons for your response, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

The latest State of Nature report illustrated that pollution and land and sea use change have caused catastrophic biodiversity decline in Scotland. The proposed Bill would allow the most severe

environmental destruction to be criminalised, helping to prevent some of these causes of biodiversity decline.

Criminalising the financial gain from environmental destruction would promote environmentally sustainable economic decision-making and development, moving Scotland towards a wellbeing economy and aligning with Scotland's sustainable development goals.