



Proposed Ecocide (Prevention) (Scotland) Bill

A response to the consultation from Stop Climate Chaos Scotland
February 2024

Introduction

[Stop Climate Chaos Scotland](#) (“SCCS”) is a diverse coalition of over 60 civil society organisations in Scotland who campaign together on climate change. Our members include environment, faith and belief groups, international development organisations, trade and student unions and community groups. We believe that the Scottish Government should take bold action to tackle climate change, with Scotland delivering our fair share of action to keep global temperature increases below 1.5 degrees and supporting climate justice around the world.

SCCS welcomes the opportunity to respond to [this consultation](#) on a Proposed Ecocide (Prevention) (Scotland) Bill. After some preliminary observations below, this response offers some introductory, strategic observations and then seeks to answer the questions in the consultation paper.

SCCS is aware that a number of our members, and partner networks such as Scottish Environment LINK have submitted, or will submit, detailed responses, addressing both this issue and wider aspects of the Bill and its proposals. SCCS commends and supports these. We hope that, in taking forward this proposal, this submission (along with others) will be useful and taken into account.

Climate context

From devastating droughts to catastrophic floods, the impact of the spiralling climate crisis could not be clearer, and those with the least responsibility for causing rising global temperatures are facing the most severe - and deadly - consequences.

The UN Secretary General, António Guterres, recently said: *‘humanity is on thin ice — and that ice is melting fast.’* He called on the world’s nations to *‘massively fast-track climate efforts by every country and every sector and on every time frame.’* Similarly, Lord Deben, the outgoing chair of the Committee on Climate Change, has said: *“our children will not forgive us if we leave them a world of withering heat and devastating storms where sea level rises and extreme temperatures force millions to move because their countries are no longer habitable. None of us can avoid our responsibility. Delay is not an option.”*

A climate emergency was declared by governments in 2019 in response to years of campaigning and the massive upwelling of concern expressed through the school strikes. Although this declaration raised unprecedented concern throughout society and business, it resulted in very little tangible new or accelerated action or policy. For this emergency to be taken seriously, we require a step up in action across every sector and at an accelerated scale and speed.

Ecocide

This consultation comes at a time of unprecedented interest in the possibilities of criminalising ecocide. The European Union has [provisionally agreed](#) to the inclusion of ecocide-level crimes in the revised Directive on protection of the environment through criminal law (although the operative text does not use the specific term ‘ecocide’). Several other states are considering introducing ecocide into their domestic law, others have already done so. Legislating in Scotland would, therefore, be an example of alignment with EU law – and put Scotland among the ‘leading’ jurisdictions in this regard.

The Pope has also called for action in this area noting that “We need jurists to debate and propose new forms of legal protection of Nature, for the human right to a healthy environment cannot be safeguarded without first safeguarding the rights of Nature. More specifically, the human right to life is meaningless if the ecosystems that sustain humanity do not have the right to exist. It is therefore indispensable to create a normative system that includes insurmountable limits and ensures the



protection of ecosystems, before the new forms of power derived from the techno-economic paradigm sweep away freedom and justice".¹

To many, the scale, significance and existential nature of the climate crisis may be considered as *an* ecocide – given its potential to ‘kill’ (-cide) our ‘home’ (eco-). The climate change challenge is therefore an example of “severe and either widespread or long-term damage” to the environment. However, the cause of the climate crisis is not one “unlawful or wanton” act, but rather many individual acts which, while some of the most significant especially by corporates and/or governments may be described as “wanton”, are in general lawful – and, indeed, often supported or encouraged by governments.

Thus, a new crime of ‘ecocide’, in the form proposed, would be unable to address most of the acts that contribute to the climate crisis. Nevertheless, it still has potential to contribute, including by:

- Providing a deterrent against the occasional individual and wanton (or negligent?) acts that may lead to significant emissions of climate-changing gases; and
- Indicating that Scotland (and, in due course, the UK) is supportive of including ecocide in the [Rome statutes](#), leading to the potential for states to be held to account for acts or omissions resulting in ecocide (this might include failure to act to reduce emissions sufficiently).

In addition, consideration should be given to adding to the bill provisions that would require Scottish Ministers to ensure that their policies, taken together, do not permit activities that cumulatively would amount to ecocide. This would be a civil or administrative law provision – but may begin to address the issue that climate change is caused by activities that are in general lawful and often supported or encouraged by governments.

Responses to consultation questions

1. Which of the following best expresses your view of the proposed Ecocide Prevention (Scotland) Bill? (Please note that this question is compulsory.)

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

Please explain the reasons for your response.

SCCS agrees, in principle, with strong criminal sanctions for ecocide-level crimes. We therefore support this bill, in principle, and would support its development and introduction to Parliament. However, in drafting a bill and during its Parliamentary scrutiny, account must be taken of the limitations of ecocide as a concept – as well as the need to address environmental and climate-related issues that cannot be addressed by such a new offence.

For instance, we are concerned about the consultation’s view of the Bill as providing ‘a singular, overarching piece of legislation that covers all aspects of harm against the environment in an integrated fashion’ (page 13). While ecocide is an ‘offence to punish the most serious environmental crimes’ as the consultation describes (page 14), it is not designed to address all environmental crimes, but strictly those which meet the particular impact threshold and cause severe and either widespread or long-term damage to the environment.

The criminal law cannot address ‘all aspects of harm against the environment’ as the consultation claims (not least because of the issues discussed above) and this Bill cannot improve the low enforcement rates of environmental crime (which requires action related to the proper enforcement of existing laws).

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<https://www.stopecocide.earth/breaking-news-22/pope-francis-repeats-call-for-the-inclusion-of-ecocide-as-a-fifth-crime-against-peace>



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

- a. No, legislation is not required
- a. Do not wish to express a view

Please explain the reasons for your response.

Criminalising ecocide in Scots law will add an additional threshold of penalties for environmental damage. Specific environmental offences are already recognised in Scots law, including the Wildlife and Countryside Act 1981 and various air and water pollution statutes. However, there are currently no dedicated legal provisions to address environmental crimes comparable to ecocide in terms of scale and severity; that is, causing widespread and substantial damage, which is either irreversible or long-lasting, to an ecosystem.

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

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

Please explain the reasons for your response.

SCCS considers that creating an offence of ecocide could contribute to a robust framework in preventing ecocide-level environmental damage. Criminalisation of ecocide would therefore encourage increased checks and balances in how Scotland's enforcement agencies are responsible for protecting the environment from harm, and the tools they have available to fulfil this purpose.

However, the dissuasiveness of this law depends on whether its sanctions are proportionate to the severity of the crime. For example, if the fines for ecocide are perceived by corporations to be less than the profits arising from it, it is unlikely that the law will be preventative.

Importantly, by criminalising ecocide Scotland would join EU and other jurisdictions (such as France) in building the momentum for recognising ecocide as the fifth crime against peace under the Rome Statute. Given the importance of the Statute in defining the most severe crimes, it would likely also contribute to public awareness of environmental harm and its consequences in Scotland, deterring environmental damage.

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

Please explain the reasons for your response.

In principle, SCCS supports the suggestion by Scottish Environment LINK that Scotland should adopt the existing EU work on defining ecocide, including the [ELI Report on Ecocide](#). In addition, for the legal definition of ecocide, LINK has also suggested the definition of qualified offences or 'cases comparable to ecocide' used by the European Council and European Parliament in the revised Environmental Crime Directive:

'offences referred to in Article 3(2), are considered a qualified offence if they cause destruction of, or widespread and substantial damage, which is either irreversible or long-lasting, to an ecosystem of considerable size or environmental value, or to a habitat within a protected site, or to the quality of air, the quality of soil, or the quality of water (3(2a))' ([Article 3\(2a\), p. 41](#)).

The Directive includes a detailed list of environmental crimes in Article 3(2) ([pp. 33-41](#)), which this definition of a 'qualified offence' applies to if they cross the impact threshold.

In comparison to the proposed definition translated from [the work convened by Stop Ecocide Foundation](#), the strengths of the EU definition are the following:



- Whilst an exhaustive list of acts of ecocide is difficult to create and the qualitative definition is therefore critical, establishing a list of serious illegal acts which may be added to is useful in identifying typical behaviours. This formulation is also in line with existing Scottish environmental law (e.g., Wildlife and Countryside Act 1981), as well as criminal law (e.g., Domestic Abuse (Scotland) Act 2018).
- Importantly, this definition recognises ‘death or serious injury to any person’ as an element of acts that may be considered ecocide ([Article 3\(2a\), p. 33](#)). It is critical for the law to recognise that ecocide often causes grave harm to the health of people as well as the environment.
- It avoids defining ‘widespread’ environmental damage solely in terms of geographical expansion, which could otherwise lead to discrimination based on the geographical size of communities and places affected ([ELI, 2023, p.24](#)).
- We agree with ELI that the requirement of ‘wanton’ could cause issues for establishing liability ([ELI, 2023, p. 25](#)). Proving both that the offender was aware of the likelihood of environmental damage and that they knew the benefits to be disproportionate in relation would be very difficult. We therefore prefer the EU’s requirement of intentionality or serious negligence ([Articles 3\(2-3\), pp. 33-42](#)).
- While the Directive requires the acts to be unlawful, it specifies that they will be considered unlawful ‘even if carried out under and authorisation by a competent authority’, if the permit was acquired criminally or the act is ‘in manifest breach of relevant substantive legal requirements’ ([Article 3\(1\), pp. 32-33](#)). We believe polluters should not be absolved from criminal responsibility even if acting under a permit or licence. This view also aligns with the proposal’s intention to create an ‘autonomous criminal offence’ ([p. 14](#)).

SCCS notes, however, that LINK recognises that further investigation into how this definition could be applied in Scots law is required. The [Environmental Rights Centre for Scotland](#) (‘ERCS’) has commissioned research which will build on [ELI’s review](#), while also drawing on the extensive legal literature of ecocide’s criminalisation at the international level. It will consider issues such as those surrounding defining ecocide (*actus reus*, gravity threshold, fault standard/*mens rea*, causation), the requirements of the principle of legality, and potential overlap or conflicts with existing environmental and/or criminal laws in Scotland.

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**
- a. Partially supportive
 - a. Neutral (neither support nor oppose)
 - a. Partially opposed
 - a. Fully opposed
 - a. 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.

SCCS supports the proposed penalties in principle. Given that an ecocide-level offence would cover severe environmental damage, it should be met by corresponding criminal sanctions. In the context of the sanctions in existing environmental law in Scotland. With the maximum term of imprisonment currently five years (for example, Wildlife and Countryside Act 1981), imprisonment up to a maximum of 20 years for ecocide appears appropriate.

This maximum term is also aligned with the evolving criminalisation of ecocide in other jurisdictions, where it carries imprisonment up to 10-20 years (for example, the proposed revision to [Belgian Penal Code](#), or Article 231-3 of the [French Climate and Resilience Law](#)). We agree that both individuals and the responsible officials of legal bodies such as company directors should be held liable and be equally subject to imprisonment penalties for ecocide. However, we consider that more analysis on how to identify liability for ecocide is required, particularly on the unlawfulness requirement and timescales for taking action.

In addition to, or alongside custodial or financial penalties, there should be additional non-custodial penalties available to the courts for those found to be guilty of the prohibited conduct, such as barring from holding director or trustee roles, or restorative justice practices. Indeed, when/if convictions



occur, the Court should be required to assess the “environmental harm” and what, if anything, can be undertaken to restore the environment. Based on such an assessment, sanctions should include measures (e.g. appropriate community service, financial contributions) to contribute to the restoration.

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
- a. Partially supportive**
- a. Neutral (neither support nor oppose)
- a. Partially opposed
- a. Fully opposed
- a. 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.

SCCS is partially supportive of the proposed penalties but recommends more severe financial sanctions in line with the [revised EU Environmental Crime Directive](#).

For environmental crimes, Article 7(3) of the Directive sets that the minimum fine for legal persons should be 3-5% of the total worldwide turnover for the legal person over one year, or €24-40 million, depending on the crime. Article 7(5a) states that for qualified offences (‘cases comparable to ecocide’), legal persons should be ‘punishable by more severe criminal or non-criminal sanctions or measures’. The proposed 10% of worldwide turnover for companies over three years may therefore not be a severe enough penalty in comparison to these minimum fines for environmental crime.

In determining the maximum fine, we also recommend adopting [the view of ELI](#) in considering the financial benefits resulting from the crime of ecocide: ‘Where offenders have made financial gains, such gains should be confiscated, along with the proceeds resulting from the crime’. Article 10 of the revised EU Environmental Crime Directive also incorporates this sanction. Therefore, where the financial gains exceed the 10% of worldwide turnover for companies over three years, we advocate for financial sanctions that cover confiscation of all relevant profits.

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
- a. some increase in costs**
- a. no overall change in costs
- a. some reduction in costs
- a. 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.

SCCS considers that the Bill will likely lead to some increase in costs, such as the investigation of ecocide by relevant public bodies and hearing of cases by courts. A proportion of the fines collected from those charged with ecocide could be used to underwrite any additional costs of enforcement.

In addition, should the suggestion above, in relation to a new duty on Scottish Ministers be adopted, this will generate a cost to the Scottish Government. However, that cost will, in part, be offset by savings on reducing spending on climate damaging policies – as well as increasing the likelihood that Scotland will meet its (unanimously agreed) climate targets.

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?

Legislating for ecocide in Scots law is compatible with [the UN resolution on the human right to a healthy environment](#), as it will provide punishment and/or deterrent in upholding the substantive right



to a healthy environment. The Scottish Government has committed to incorporating the right to a healthy environment in the Human Rights (Scotland) Bill in 2024.

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? If you do not have a view skip to next question.

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

SCCS recognises that the impact of environmental issues, including climate change, is disproportionately felt by the most marginalised people and places both globally and in Scotland. Legislating for ecocide would advance environmental justice by building the law's capacity to hold polluters to account.

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? (If you do not have a view then skip to next question)

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?

By criminalising severe environmental destruction, the proposal would contribute to addressing the triple planetary crisis of climate breakdown, biodiversity loss, and increasing pollution of air, land and water. The [State of Nature report 2023](#) demonstrates that pollution and changing sea and land use are some of the most important drivers of accelerating biodiversity loss in Scotland. By criminalising financial gain from severe destruction of nature, the law would contribute to ensuring that the economic decisions of individuals and corporations are in line with sustainable development of Scotland.

Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

None beyond those observations made in response to the questions, and in our introductory paragraphs.

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