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Dear Kenneth

Ecocide (Scotland) Bill

Please find attached a memorandum that has been prepared by the Scottish Government to assist the Net Zero, Energy and Transport Committee and the Finance and Public Administration Committee in their consideration of Ecocide (Scotland) Bill introduced by Monica Lennon MSP on 29 May 2025. This memorandum outlines both policy and financial considerations.

I would be pleased to discuss the memorandum with the Committee.

Yours sincerely

Gillian Martin

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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MEMORANDUM FROM THE SCOTTISH GOVERNMENT TO THE NET ZERO, ENERGY AND TRANSPORT COMMITTEE AND THE FINANCE AND PUBLIC ADMINISTRATION COMMITTEE

Introduction

1. This memorandum has been prepared by the Scottish Government to assist the Net Zero, Energy and Transport Committee and the Finance and Public Administration Committee in their consideration of Ecocide (Scotland) Bill (“the Bill”) introduced by Monica Lennon MSP on 29 May 2025.
2. This memorandum outlines both policy and financial considerations.

Background

3. The key elements of the Bill, as introduced, are that it:
 - ◆ defines an offence of ecocide as causing severe environmental harm in a way that is either reckless or intentional, where severe means environmental harm that has serious adverse effects, and is either widespread or long-term;
 - ◆ proposes penalties of up to twenty years in prison for individuals, and unlimited fines for companies or other organisations;
 - ◆ provides for a defence of necessity;
 - ◆ provides for individual culpability where an organisation commits the offence;
 - ◆ provides for vicarious liability, with defences if the employer could not have reasonably known of the offence and exercised due diligence;
 - ◆ provides that the Courts must take into account any financial benefit arising from the offence when deciding what level of fines to apply. The courts may also require compensation to be paid for any personal injury, loss or damage caused by the offence. The costs of repairing or mitigating the effects of any harm to the environment resulting from the offence may also need to be paid.
 - ◆ provides that the Courts may also make a publicity order where a person is convicted of ecocide.
 - ◆ proposes an obligation for the Scottish Ministers to report on the operation of the provisions after five years.
4. On 7 November 2023, Ms Lennon lodged a draft proposal for a Member’s Bill to introduce a crime of ecocide into Scots Law to protect the environment in Scotland and deter environmental damage. A consultation document accompanied the draft proposal. The consultation ran from 8 November 2023 to 9 February 2024.
5. There was strong support in responses to the consultation on the draft proposal, with 95% of respondents being fully supportive, and 3% partially supportive. We note that some

concerns were raised by legal experts in the responses to the consultation, and in in the research commissioned by the Environmental Rights Centre for Scotland¹, that the NZET Committee may wish to consider. Our understanding is that some of these concerns have been addressed in the provisions of the Bill as introduced.

The Scottish Government's Position

6. We acknowledge the strong support for this Member's Bill in the public consultation and support for the introduction of the Bill across the Parliament. The Scottish Government agrees that the protection of our natural environment from threats of all scales is of great importance. We welcome the Committees' call for evidence and will engage fully with consideration of the Bill.

7. The Scottish Government considers that it is important to recognise that there are already a wide range of criminal offences that cover activities that damage the natural environment. There are a broad range of regulatory regimes for activities that can damage the environment, that include sanctions for unapproved activities. There are statutory protections for habitats and wildlife that include a range of offences. In addition, there is the existing offence of causing significant environmental harm under section 40 of the Regulatory Reform (Scotland) Act 2014 (RRA) for more serious harmful activities where specific legislation is not considered adequate for the behaviour that has caused harm. It is a matter of concern that there is such a degree of overlap between the proposed new offence and the existing offence in RRA. We think that it is important that the Parliament is clear about the particular circumstances that would merit the use of the proposed new offence.

8. We think that it is important to separate consideration of potential new offences from consideration of whether existing environmental law is implemented or applied effectively. Our regulators have well developed enforcement policies that seek to protect the environment through incentivising compliance.

9. The Scottish Government believes that this new proposed offence of ecocide must be understood as being for the most extreme, wilful and reckless cases of harm. This is consistent with the Financial Memorandum for the Bill, that adopted the baseline assumption that an ecocide event will take place in Scotland once every 10 to 20 years. While we understand that the public has concerns about environmental harm at many levels and in many situations, it would be misleading to consider that this new proposed offence of ecocide will apply to any but the most extreme, wilful and reckless cases of harm. If passed, the new ecocide law will further deter these offences, that are already thankfully very rare.

10. The Scottish Government 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. We consider that this provision should be amended if the Bill proceeds beyond Stage 1.

¹ [Scoping a Domestic Legal Framework for Ecocide in Scotland](#)

11. The Scottish Government believes that the reporting requirement proposed at section 10 of the Bill after five years is inconsistent with the likely frequency of any ecocide offences. Although this is not a particularly onerous requirement, we think that it risks misleading the public as to the likely frequency of any prosecutions for the proposed new offence of ecocide. We consider that the reporting requirement should be removed from the Bill through amendment.

12. We acknowledge that Ms Lennon has played a valuable role in raising the profile of the importance of preventing serious damage to the environment. Her work on this Bill has highlighted that protecting our natural environment and preventing environmental crime are important to the public. 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. We will consider any amendments that could be needed at Stage 2 to make the Bill workable and consistent with other provisions, in addition to seeking to amend the provision on the burden of proof for the defence of necessity at section 2(3) and remove the reporting requirement at section 10. This consideration will be informed by the Committees' consideration during Stage 1.

13. The Scottish Government considers that there are specific issues which the committee may wish to consider during their Stage 1 consideration. These are outlined below:

Section 1 – Offence of ecocide

- Consideration of what circumstances would make it more appropriate to prosecute under the proposed ecocide offence rather than the existing RRA s.40 offence.
- Consideration of the need to prove intention or recklessness and whether this would make it more difficult to convict under the offence of ecocide than the offence in the RRA.

Section 2 – Defence of necessity

- Consideration of s.2(3) of the appropriateness of the requirement for the accused to establish their defence of necessity on the balance of probabilities, and whether it is compatible with the presumption of innocence under Article 6 of the European Convention on Human Rights.
- Consideration of the appropriateness of the absence of other defences provided for in the RRA s.40 offence, and of the application of the offence to the Crown.

Section 3 – Individual culpability where organisation commits offence

- Consideration of the potential impact of this section on the functioning of public authorities, including local authorities.

Section 10 – Report on operation of the Act

- Consideration of the purpose and appropriateness of such a reporting requirement being placed on the Scottish Ministers for a proposed criminal offence.
- Consideration of the rationale for a reporting obligation after 5 years when the proposed offence is for the most serious environmental harm, that the Financial Memorandum estimates will take place in Scotland only every 10 to 20 years and that any new offence should further deter.

Financial consideration

14. The Financial Memorandum for the Bill sets out the following estimates of costs for the implementation of the Bill, using the baseline assumption that an ecocide event will take place in Scotland once every 10 to 20 years:

- Start-up costs of around between £74,000 and £174,000
- One-off cost at five years of between £36,000 and £49,000 for the reporting requirements.
- Annual costs of around £12,510
- Costs of £134,000 for each prosecution and £200,000 per year (assuming four offenders received a custodial sentence).

15. As set out above, the Scottish Government does not believe that the reporting requirement is consistent or proportionate given the nature of the proposed new ecocide offence, properly understood as being for the most extreme, wilful and reckless cases of harm. If passed, the new ecocide law will further deter these offences, that are already thankfully very rare, so prosecutions can be expected to be very infrequent.

Purpose and extent of the Bill

16. The proposed Bill would introduce the new offence of ecocide, in order to further the protection of the natural environment, and would extend across Scotland.

17. 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 proposed offence in the Bill is somewhat different from the approach in the Directive. The Directive proposes the introduction of higher potential punishments for qualified offences covering a wide range of existing offences, with an enhanced level of punishment for more serious environmental damage. 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.

Conclusion

18. 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. We will consider any amendments that could be needed at Stage 2 to make the Bill workable and consistent with other provisions, in addition to seeking to amend the provision on the burden of proof for the defence of necessity at section 2(3) and remove the reporting requirement at section 10. This consideration will be informed by the Committees' consideration during Stage 1.

Scottish Government, September 2025