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Dear Edward

Ecocide

I am writing to provide an update to the NZET Committee on policy developments on possible legal measures on ecocide. As you may be aware, an Independent Expert Panel convened by the Stop Ecocide Foundation arrived at a consensus legal definition of ecocide in 2021 which is gaining significant political traction around the world. The definition (usually referred to as the “SEI definition”) is “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.”

As you know, in November last year Monica Lennon MSP lodged a proposal for an Ecocide (Prevention) (Scotland) Bill. This proposal reflected on international definitions and made proposals based on the SEI definition. Monica Lennon’s consultation paper set out that purpose of the proposed Bill would be to protect the environment in Scotland and to deter environmental damage by introducing the crime of ecocide into Scots law.

I would like to acknowledge the role Monica Lennon has played in raising the profile of the importance of preventing serious damage to the environment. She has prompted valuable discussion in Scotland of the developments in thinking about the treatment of ecocide in international and national law. Her proposal has received cross-party interest and there has been considerable engagement from stakeholders including the Environmental Rights Centre for Scotland.

As you know, the Scottish Government has a policy to align where appropriate with developments in EU law. The approach that the EU will take is now much clearer, with agreement on the revised environmental crime directive. The revised directive

provides additional clarity on the offences that must be subject to criminal sanction in Member State law, and introduces a new provision for qualified offences. Offences are defined as qualified offences “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.” These offences attract higher levels of punishment as a requirement of the directive.

The provision for qualified offences is explained in the preamble to the directive as covering cases comparable to ecocide. “Where such an environmental offence causes the 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, the causation of this catastrophic result should be considered as a qualified offence and, consequently, punished with more severe penalties. This qualified offence includes cases comparable to ecocide, which is already covered by the legal systems of certain Member States and which is being discussed in international fora.” International stakeholders have welcomed the directive as a step forward in the protection of nature.

There will be a full assessment of the revised directive carried out by the Scottish Government against the alignment policy. We will provide the Committee with further information on our proposals for alignment with the measures in the revised EU environmental crime directive when we have fully assessed the provisions of the directive.

The Scottish Government is also supportive of a revision to the Rome Statute of the International Criminal Court to include ecocide, but note international relations is a reserved matter and it would ultimately be for the UK Government as a State Party to officially support and/or ratify a new law.

Kind regards

LORNA SLATER