

## **Ecocide (Scotland) Bill Responses**

**1. Should the Bill clarify whether, and under what circumstances, acts carried out under consents or licences might still expose individuals or organisations, including public bodies with planning or licensing functions, to criminal liability for ecocide?**

Yes – specific clarification is required. The Bill should explicitly state whether activities carried out under existing statutory consents or licences (including those issued by planning authorities, environmental regulators, or other public bodies) could still give rise to criminal liability. This is essential to provide certainty for both regulators and regulated entities.

Clarification is particularly necessary regarding:

- Scope of liability: Whether individuals or organisations remain liable for environmental harm even when acting in accordance with valid consents, and in what circumstances reliance on such consents may provide a defence.
- Nature of the harmful acts: Whether ecocide can arise from a single event or from cumulative impacts over time, as this affects the level of monitoring, record-keeping, and scrutiny required by local authorities when granting or enforcing consents.
- Regulatory overlap: How responsibility will be allocated when multiple agencies issue licences or permissions, to avoid gaps or duplication in accountability.
- Public body exposure: The circumstances under which a planning authority or other regulator could be held liable for indirect harm resulting from inadequate conditions, oversight, or decision-making.

Providing these clarifications will ensure that both public bodies and regulated parties understand their responsibilities and potential liabilities under the Bill.

**2. How would the possibility of criminal prosecution for ecocide influence or change the approach taken by planning authorities in assessing and approving applications, particularly for major developments that could have long-term or cumulative environmental impacts?**

Generally, as with all planning decisions, it is for the decision maker to balance the negative impacts of the development with its positive impacts, with all decisions being taken in the longer-term public interest. It is unclear how this bill would interact with the decision-making process, but it would likely result in decision makers, both delegated and by members, taking a far more cautious approach. This could have a potentially chilling effect on development and economic growth if planning becomes overly precautionary. This may be at odds with other government agendas and growth aspirations

The possibility of criminal prosecution for ecocide would likely lead to a more precautionary, risk-averse, and resource-intensive planning approach, particularly for major developments with the potential for long-term or cumulative environmental harm. Planning Authorities are likely to:

- Scrutinise more deeply proposals from the outset
- Introduce tighter validation requirements and more rigorous screening of Environmental Impact Assessment (EIA) needs.
- Request EIAs more frequently, especially for developments with potential long-term or cumulative effects.
- Stipulate more comprehensive impact and risk assessments from applicants to ensure decisions are defensible.
- Impose more robust and enforceable conditions
- Draft planning conditions and obligations that are legally stronger and more measurable.
- Secure long-term mitigation, monitoring, and management measures to minimise environmental risk over the lifetime of a development.
- Place increased emphasis on cumulative impacts, particularly where multiple developments or landownerships interact.
- Increase monitoring, compliance checks, and enforcement
- There would be a need to maintain higher levels of ongoing monitoring to ensure conditions are met and that harm does not accumulate over time.
- Enforcement activity would also need to be strengthened where non-compliance presents a potential ecological risk, given the heightened liability.
- Require clearer national guidance and thresholds
- Planning authorities would need explicit guidance on the point at which ecological harm reaches the ecocide threshold, especially in the context of cumulative or cross-boundary impacts.
- Commit more resources and cross-agency coordination
- More sustained partnership working and data sharing with other regulators would be required to manage overlapping functions and shared environmental responsibilities.

**3. Do you consider the thresholds of harm sufficiently clear and workable in the context of planning assessments? The Bill defines “severe environmental harm” as harm that has serious adverse effects and is either widespread or long-term (i.e. irreversible or not naturally recoverable within 12 months).**

No – the thresholds of harm are not sufficiently clear or workable in their current form.

Planning authorities require thresholds that are precise, measurable, and capable of being applied consistently across different types of development. Several aspects of the Bill’s definitions require further clarification:

**1. Cumulative impacts are not addressed clearly enough**

While “severe environmental harm” may be straightforward to identify in the case of a single large, acute event, cumulative impacts that build gradually over time are far harder to attribute to a specific development or actor.

Many key drivers of biodiversity loss (habitat fragmentation, pollution loading, disturbance, climate stressors) accumulate across multiple sites and decisions, making it difficult for planning authorities to determine when the threshold for ecocide has been reached.

**2. “Widespread” environmental harm is not defined with sufficient precision**

In connected ecosystems—where impacts can propagate beyond site boundaries—terms like “widespread” are difficult to interpret without quantitative thresholds. Planning bodies require clear indicators such as geographic scale, affected population or ecosystem extent, species-level thresholds, or measurable ecological condition markers.

Unclear definitions increase uncertainty and risk for both authorities and applicants.

### 3. Long-term harm is clearer, but practical guidance is still required

The definition of long-term harm (irreversible or not naturally recoverable within 12 months) is more explicit. However, assessing 12-month natural recovery trajectories for complex ecosystems is challenging without robust ecological baselines, monitoring frameworks, and agreed methodologies.

### 4. From a planning perspective, is it clear how the Bill might apply to incremental harm, and how might this impact your consenting functions? If not, how could this be clarified?

No, as stated above, it's not clear how the Bill may apply to incremental harm. We would need to know at what point ecocide is deemed to have occurred.

### 5. What implications might Section 9 of the Bill have for your existing enforcement capacity, training, or coordination with SEPA and other agencies? In what circumstances do you envisage your organisation would be involved in responding to an 'ecocide-type' incident? Section 9 of the Bill would extend investigatory powers under the Environment Act 1995 to cover the offence of ecocide, which may include local authorities as enforcing authorities.

Although additional powers will primarily be with SEPA, it is understood that local authorities could be asked to assist with an array of tasks to aid investigations. Therefore, it is expected that additional pressures on local authorities could include:

#### 1. Increased enforcement responsibilities and resource pressures

Extending investigatory powers to cover ecocide will increase the volume and complexity of enforcement work expected of local authorities. Most authorities are already operating beyond capacity, so additional resourcing, both staff and specialist expertise, would be essential

Responding to an ecocide-type incident would likely require diverting officers from routine regulatory work, creating delays or gaps in day-to-day enforcement activity.

#### 2. Need for specialist training and upskilling

Ecocide investigations would require enhanced understanding of ecological harm assessment, evidence gathering in complex environmental cases, working with scientific data, and applying the statutory thresholds for “severe environmental harm.”

Training would also be needed to ensure officers can use any new investigatory powers appropriately and consistently, particularly where these overlap with existing environmental legislation.

#### 3. Stronger coordination with SEPA and other agencies

Local authorities already encounter capacity and response challenges when seeking support from SEPA and other regulators. These pressures are likely to increase if those agencies also take on responsibilities for ecocide enforcement.

Clear protocols will be needed for who leads investigations, information-sharing processes, joint inspections, monitoring of long-term or cumulative impacts, and

escalation procedures for serious harm incidents. Without such coordination, there is a risk of duplication, gaps, or delays in enforcement.

#### 4. Circumstances where the local authority would be involved

- Where harm arises from activities authorised, conditioned, or monitored by the planning system, including breaches of planning conditions or unauthorised development.
- Where there is localised environmental damage within the authority's regulatory remit, such as land contamination, waste management issues, or pollution arising from construction or development.
- Where authorities are the first responders due to local presence, even if SEPA later leads the investigation.
- Where local monitoring or enforcement records are needed to support wider investigations into cumulative or long-term harm.

Aside from enforcement, local authorities may need to mobilise emergency works, remediation or supervise long-term recovery. The local authority would then need to seek compensation and handle the administrative burden and potential resourcing issues that could come with this.