The Highland Council
Comhairle na Gàidhealtachd

Edward Mountain MSP
Convener
Net Zero, Energy and Transport
Committee

Please ask for: Dafydd Jones
Direct Dial:
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Our Ref:
Your Ref:
Date: 28 November 2025

Dear Mr Mountain

POTENTIAL IMPACTS ARISING FROM THE PROPOSED ECOCIDE (SCOTLAND) BILL

Thank you for your letter regarding the Ecocide (Scotland) Bill on the 11th of November 2025 requesting views on how the Bill may affect the fulfilment of statutory functions of local authorities.

Introduction:-

The proposed bill, if passed into law, will interact with existing legislation aimed at punishing environmental harm; namely, the Regulatory Reform (Scotland) Act 2014 which creates a strict liability regulatory offence of causing “significant environmental harm” either intentionally or recklessly or carelessly (S40). The penalty under this act is limited to fines. The Environmental Liability (Scotland) Regulations 2009 applies to damage caused to protected species and natural habitats which has significant adverse effects, caused by specified activity, fault or negligence of the operator. A fine and imprisonment are possible penalties. There is also a plethora of legislation which protects SSIS, SACS, SPAs and species. The Law Society's response to the initial consultation stated that the provisions of this Bill could have been amalgamated with existing legislation.

The Ecocide bill aims to introduce a new criminal offence of Ecocide which has been enshrined in some international jurisdictions but not within international law yet. The offence of Ecocide is subject to higher penalties in terms of imprisonment (up to 20 years) and fines. It provides for an additional penalty of publicity order, where a person convicted of Ecocide may be required make a publicity order specifying details of the offence and any sentence passed. Failure to comply with this is also an offence.

The environmental harm must be severe and intentional or reckless. Severe means widespread or long-term serious adverse effects. Widespread means the harm “extends beyond a limited geographical area, to impact upon an ecosystem or species or a significant number of human beings, either directly or indirectly" (section 1(2)(c)) and long-term means the harm is irreversible or is unlikely to be reversed through a process of natural recovery within 12 months of the environmental harm occurring" (section 1(2)(d)).

The bill is stated to be aimed at more serious incidents of environmental harm, such as oil spills and prosecutions should, in theory, be rare. It is noted in the briefing note that there have been no prosecutions under the existing regulatory offence.

The Net Zero, Energy and Transport Committee have asked the following questions:-
Consented or licensed activities: *The Bill does not provide an explicit defence for harm caused by activities that have been consented or licensed by a public authority (e.g. through planning permission, a SEPA permit, or a NatureScot licence). There is no explicit defence provided either for the operator (who holds a licence, planning consent, etc) or for a regulatory body or planning authority who issues the consent or licence. The Committee has heard evidence comparing this to the Regulatory Reform (Scotland) Act 2014, where defences along these lines are provided for (section 40(2) and 40(6) of that Act). 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?*

There would appear to be nothing in the draft Bill which prevents liability for smaller or more localised developments consented by planning authorities. There is no explicit defence provided for harm caused by consented or licensed activities unlike the Regulatory Reform (Scotland) Act 2014. A development's environmental impacts may be assessed in advance under EIA for larger developments or against the development plan for smaller developments which subsequently cause an ecocide. Andy raised the issue of what would happen if a development was consented against advice of internal/external consultees. The answer to such questions may lie in the definition of recklessness. If a development was consented that had been adequately assessed in terms of potential environmental impacts and in line with advice and recommendations of consultees, could the decision be said to be "reckless"? The term is not defined and would likely require judicial interpretation. The issue of culpability should lie with those responsible for undertaking the works or those instructing them not with the consenting authority. If an application was granted against such advice, it may lend itself more easily to reckless or intentional culpability. The lack of any defence adds to uncertainty for planning authorities. The Environment Team Leader has expressed the view that planning authorities may end up giving more weight to planning determinations. However, there is already a requirement to give environmental issues "Significant weight" (NPF4 Policy 1). Any issues raised should be taken seriously by all parties with efforts to minimise, remove or mitigate the impacts being prioritised to make the development acceptable. However, inability to assess where liability may arise in future could lead to planning authorities becoming risk averse and defensive in their determination of applications, slowing down the planning system and resulting in more appeals.

Therefore, it would be useful if the Bill could "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?". However, this is never going to too specific with interpretation likely to be on individual merits of the case and judicial interpretation where necessary.

Decision-making and liability*: 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?*

Major developments with long term cumulative impacts should be assessed as such but how workable that is in practice is not clear given lack of information on potential defences and lack of clarity on liability during the consenting process. There is a need for further information in terms of who carries the liability/responsibility and in what circumstances

The Law Society response notes that presence of a penalty "may help focus the design of developments further so that there is increased awareness of the consequences of environmental harm." Conversely, this could lead to a planning authorities taking a risk adverse, defensive view to consenting developments, causing delay in the planning system.
In Highland there are potentially a large number of high profile projects and developments which could be impacted by this Bill:-

- The ICF Greenport – this is potentially "reckless" given there is potential, for known long-term damage. It is not clear from the Bill if the developer only or the consenting authority also could be liable
- The Flow Country World Heritage Site – Not clear if the consenting body is liable;
- The underground cable from Dundonnel to Beauly – In theory, SSEN could be committing Ecocide
- Coul links golf course – The outcome of the public inquiry is still awaited. However, this could be viewed at reckless if the development was granted against advice relating to environmental harm.

It is conceivable that a planning application for a BESS, close to a river designated as an SAC (either for salmonoid or fresh water pearl mussels) could leave a decision maker open to litigation or at least significant challenge during assessment. Under the bill, it could be argued in the event that either during construction where significant damage could be caused by a contractor to the designated area through a pollution event or alternatively spent fire water from a fire event entering the water course could cause significant environmental damage. This could leave the determining Planning Authority or the Fire Authority culpable under the measures proposed if the mitigation to address a fire event has not been constructed in accordance with the approved development. The focus of such legislation should be to penalise those who are responsible for the damage caused through negligence either during construction or for deviating from the agreed mitigation measures.

Threshold of harm: *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). Do you consider these thresholds sufficiently clear and workable in the context of planning assessments?*

The thresholds of harm are not clearly defined. Each time harm is caused its severity will be particular to the facts of the case. The Bill would appear to have been drafted with larger scale environmental incidents in mind e.g. oil spills. It would be helpful to understand what may constitute "a limited geographical area" for clarity on the Bill's application.

Cumulative impacts and course of conduct: *The Committee has heard differing views on how the definition of ecocide in the Bill might be considered to apply to cumulative harm arising over time from a course of conduct, as well as to single catastrophic-type incidents. 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?*

It is not clear how the definition of Ecocide applies to cumulative harm arising over time and how this might affect consenting functions. Further definition is required.

Enforcement and investigation: *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. What implications might this 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?*

Resources may be an issue and staff training would likely be required. We note that Nature Scot or SEPA are not responding to the follow up questions and cross agency working would likely prove difficult in terms of enforcement.

Summary

As outlined above the intent behind the Ecocide Bill is understood however for the reasons outlined it is considered revisions are required.

Whilst the aim of the bill is welcomed a more effective and welcomed measure would be to improve and increase the powers, resourcing and fines available to existing regulatory bodies such as SEPA may prove more effective and help act as a deterrent to secure the stated aims of the bill.

Yours sincerely

Dafydd Jones

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