

Ecocide (Scotland) Bill

SPICe Summary of Call for Views

1. General views and support for overall aim

CfV: The Committee asked respondents if they “support the overall aim of the Ecocide (Scotland) Bill to criminalise the most serious forms of environmental harm”.

Most respondents (organisations and individuals) supported the overall aim of the Bill “to criminalise the most serious forms of environmental harm” (see Annex 1). 33 out of 37 organisations who responded supported this aim (2 did not support, 2 neutral).

Regarding the overall need for a new offence of ecocide, many responses discussed the interaction with existing legislation (covered in more detail below), and the complementary element provided by a ‘higher tier’ offence for the most serious incidents. For example:

- The **Law Society of Scotland** said “We recognise a need to provide a stronger legal mechanism to punish severe environmental harm given the twin climate and nature crises...”.
- **UKELA** said the Bill “will align Scotland with international efforts to address climate and ecological crises. However, there needs to be clarity as to what the proposed legislation adds to existing provisions relating to environmental crime, and also to clarify why the current provisions may not be effective”.
- The **Children and Young People’s Commissioner Scotland** said that while Scotland has “a great deal of legislation which seeks to protect the environment”, in its view “none of these reflect the seriousness of the behaviour” contained within the Bill. It said that children and young people in Scotland are clear that environmental matters are of great importance to them, and “A new law to prevent ecocide could act as a strong statement by those in power to children and young people that their voices were heard”.

SFF and **Scottish White Fish Producers Association** were the only organisations which said they did not agree with the aim of the Bill to criminalise the most serious forms of environmental harm. **SFF** said “it is our view that the Member has not set out why this Bill is needed. There are no examples of ecocide in Scotland put forward as justification for criminalising the most serious forms of environmental harm.” **Scottish White Fish Producers Association** said that Scotland is already

recognised for its rigorous environmental framework and that “Rather than layering new, vaguely defined liabilities atop this existing framework, the focus should remain on fully enforcing and refining these robust laws and policies”.

Two organisations (**Scotland Food and Drink** and **NFUS**) took a neutral position. **Scotland Food and Drink** said, while it recognises the importance of safeguarding our environment, and that the food and drink industry “depends on healthy land, seas and ecosystems”, and supports robust enforcement of environmental laws, it is “not certain that an additional measure” such as the proposed Bill is necessary.

Some respondents also set out views on the limitations of ‘ecocide’ as a tool to tackle the twin crises (whilst supporting the overall aim of the Bill). For example, **NatureScot** said while it agreed with the aim of the Bill, “the scope and definitions of the Bill address relatively small aspects of it” via its “focus on catastrophic pollution or events”. It said that “Whilst these can be significant, overwhelmingly the loss of biodiversity and degradation of ecosystems that contribute to climate change and vulnerability to associated risks arise from incremental non-polluting legal change over many decades or centuries, especially habitat loss and fragmentation, over-exploitation, climate change and invasive species”.

Scottish Water said regarding its overall position on the Bill: “The water industry in Scotland has benefited from a collaborative and well-structured approach to environmental governance. We believe that the Bill should complement existing legislation and reinforce this model - by encouraging proactive investment, risk management and partnership working to prevent harm and to deliver environmental improvement, aligned with practical and operational realities”.

2. Definition and scope of the offence

Definition of “severe environmental harm”

CfV: The Committee asked for views on how the Bill defines ecocide, as causing “severe environmental harm”, where “severe” means that the environmental harm has “serious adverse effects” and is either “widespread” or “long-term”.

NB/ Under the Bill, ‘serious adverse effects’ is not defined, and environmental harm is considered to be:

“widespread” if it extends beyond a limited geographic area, to impact upon an ecosystem or species or a significant number of human beings, either directly or indirectly

“long-term” if it is irreversible or is unlikely to be reversed through a process of natural recovery within 12 months of the environmental harm occurring.

There was a general degree of support for the definitions in the Bill, with many respondents noting how the Bill had sought to build on international work done on defining ecocide. However, a range of concerns were also expressed about how

definitions would be applied in practice to various circumstances and if they were sufficiently clear (and if they would lead to incidents being either 'under- or over-captured' by the Bill). A broad range of suggestions were also made for how definitions might be improved (or supplemented through guidance).

SEPA said that the definitions could lead to the capture of more than the "1 in 20 year events" envisaged by the Bill, and that whilst it is difficult to predict for example how "severe", "widespread" and "long term" would be interpreted, "it is possible that it could cover other acts than those envisaged to be covered by the ecocide offence in this Bill". It said that if the Bill is passed "we would strongly suggest the need for clear guidance to ensure that definitions and their relationship with other definitions in the wider regulatory landscape are clearly understood".

Scottish Water in general called for a balanced approach, ensuring the intended behaviours are deterred, with appropriate management of risks. It said: "The proposed offence should be limited to grossly irresponsible or deliberate behaviour, not the actions of well-intentioned parties who exercised due care but experienced an extreme set of circumstances. Climate change can lead to unprecedented incidents, making it difficult to determine what a "reasonable person" could foresee and seek to prevent, especially in managing very extensive infrastructure some of which cannot serve its purpose without being exposed to risks".

Regarding the definition of "**widespread**" in the Bill (see above), a number of respondents suggested ways this could be made more clear:

- **SEPA** noted that comparatively, the EU Environmental Crime Directive envisages "damage that extends beyond a limited geographic area, crosses state boundaries, is suffered by an entire ecosystem or species, affects a large number of human beings".
- **NatureScot** said that this definition "is vague and hard to interpret definitively in open complex ecological systems. It can be difficult to define what is meant by 'impacting' on an ecosystem or species and what the consequences of those impacts might be. It is likely that the definition and scope of 'environmental harm' to ecosystems will be disputed, including, for example whether the whole ecosystem or a part of it, and whether local harms for part of an ecosystem lead to wider effects, how severe they might be and recovery times".
- **UKELA** said that "Widespread" could be defined more clearly e.g. in spatial and/or population terms e.g. affecting multiple/large ecosystems, regions, or communities, but noted it is consistent with the international definition.
- **The Ocean Rights Coalition UK** recommended guidance with indicative examples e.g., an area exceeding X square kilometers and/or impacting local or regional communities, an entire river catchment, a significant portion of a coastal marine area.
- **NFUS** said (while it broadly agrees with the definition) further guidance on the definition of widespread is needed to prevent ambiguity.
- **ERCS, Scottish Environment LINK, SCCS, Open Seas** and **FoES** all said that the definition of "Widespread" could be strengthened by explicitly including

damage caused to designated sites including National Parks, Marine Protected Areas and Sites of Special Scientific Interest.

Regarding the definition of "**long-term**":

- **SEPA** said "This could include environmental harm that reversed within a reasonable time, albeit over a years' time. The 12-month period specified in the Bill appears- to be arbitrary and could lead to damage below the level of "1 in 20 year events" being covered.
- **NatureScot** said that ""nearly every incident of serious damage to habitats or species populations will require more than 12 months referred to in section 1(2)(d) to see recovery through natural processes".
- **SFF** questioned the basis for defining 12 months as long term and whether there was evidence to support it.
- **Jodie Bettis** said the 12-month timeframe "has no basis in ecology" and "Expert witnesses will be required in almost all cases to testify whether the affected area could recover naturally in the timeframe specified..."

NatureScot also said that the Bill appears to equate ecocide solely with pollution incidents and it considers this is "a limited view of the causes of significant environmental harm and does not for example cover incidents of ecosystem destruction caused by fire or other physical damage (e.g. destruction of woodland and species-rich grassland)".

Dr Suwita Hani Randhawa said that "these terms remain subject to interpretation, which raises additional concerns regarding how consistency will be ensured across different cases and the possibility of powerful actors exploiting vagueness to evade liability." They also raised concerns that "By requiring harm to be either widespread or long-term, the Bill risks excluding localized but catastrophic harms".

UKELA said that while the definition of ecocide is broadly appropriate, "it will be important that the inter-connectedness of environmental impacts and effects are acknowledged. Thus, severe environmental harm, must include an assessment of inter-related effects: direct effects, indirect effects, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary effects. For example, a recklessly caused fire that results in widespread damage and harm that was aggravated by uncommon weather conditions should fall within the scope of the crime".

A key theme of written evidence in this area from several NGOs was around the scope of the offence if severe environmental harm is **caused as a result of an omission or failure to act**, rather than being caused by an act.

ERCS, Stop Ecocide International, SCCS, FoES, Open Seas and Scottish Environment LINK all set out views that section 1 in the Bill should be expanded to include both acts and omissions, often making the comparison to the section 40 offence in the Regulatory Reform (Scotland) Act of causing significant environmental harm, which explicitly covers harm caused as a result of a 'failure to act'.

ERCS said for example that the EU Environmental Crime Directive states: ‘Failure to comply with a legal duty to act can have the same negative effect on the environment and human health as active conduct. Therefore, the definition of criminal offences in this Directive should cover both acts and omissions, where applicable.’

Aberdeen Centre for Constitutional and Public International Law set out concerns that as the Bill does not define “serious adverse effects”, “the interpretation of such a term would be left to the discretion of the judges involved in any future case”. Similarly, **the Ocean Rights Coalition UK** said that “serious adverse effects” requires “further elucidation” and recommended guidance to provide non-exhaustive criteria e.g. around extent of destruction of biodiversity, toxicity, impact on health etc.

Glasgow City Council, whilst supporting the overall need for the Bill, called for more clarity on the type of actions the Bill seeks to criminalise:

“it is a well established principle in Scots law, that a person ought to know what is criminal behaviour, what type of activity they should not be doing because it will result in a criminal prosecution. Strong examples are required to show what type of behaviour will be criminalised if this Bill becomes law. That would bring into sharp focus – whether there are gaps in the current environmental law framework in Scotland that need to be filled by this Bill”.

Approach to intent

CfV: The offence applies to harm caused either intentionally or recklessly. Do you consider this threshold to be appropriate?

(NB/ This is the threshold to intent for individuals under section 1. A different threshold (‘consent or connivance’) applies to responsible individuals of organisations under section 3 – views on this are provided later in the summary.)

Most respondents who answered this question agreed that it was appropriate for the offence to apply in the case of both intentional and reckless harm, with many respondents emphasising the importance of the inclusion of ‘recklessly’ in relation to corporate behaviour (where it may be more likely that harm is caused through recklessness rather than active intent to harm).

On one hand, many organisations considered it important that there was a requirement for intent or recklessness, to distinguish ecocide from a ‘regulatory’ offence and elevate its seriousness. For example:

- The **Ocean Rights Coalition UK** said “The requirement for knowledge and recklessness (mens rea) is what rightly elevates ecocide from a regulatory offence to a serious crime of moral and legal gravity, akin to other core international crimes.” And “It focuses on the decision-making processes at the highest levels of organisations.”
- **NFUS** said that the threshold of intent or recklessness is appropriate as “It ensures that only those who knowingly or carelessly cause serious harm are held liable, protecting responsible land managers and businesses”.

- **Stop Ecocide International** also agreed with this approach to intent.

However, a number of respondents questioned whether the **threshold of ‘recklessness’** was appropriate and whether this would have negative implications, particularly impacting on the ability to hold organisations accountable. For example:

- **Aberdeen Centre for Constitutional and Public International Law** said “The standard set here is very high, which ought to be viewed in line with the existing lack of prosecutions under s40 of the Regulatory Reform (Scotland) Act 2014, possibly demonstrating the difficulty of applying existing, lower thresholds to criminal conduct.”
- **Dr Mingzhe Zhu and Ms Yijia Li** said that “this traditional framing is precisely the challenge when applied to modern corporate structures” and “sets a prohibitively high bar for prosecutions involving complex corporate decision-making, where harmful outcomes are often the result of diffuse responsibility, siloed information, and aggregated omissions rather than a single, identifiable ‘guilty mind’.” They proposed an amendment to the Bill to include an alternative basis for liability, where a person “acts with knowledge that there is a substantial likelihood of environmental harm”, and suggested this aligns with the definition by the Independent Expert Panel. The response also emphasises that this amendment would not, as a concern noted in the Policy Memorandum, create a strict liability offence, as it “maintains a clear fault element”.
- **FoES** said that the EU Environmental Crime Directive provides that for some offences the threshold should be ‘serious negligence’ and that “While this concept does not seem to exist in Scots criminal law it seems the concept of ‘recklessness’ should be reviewed against the definition of ‘serious negligence’ in other jurisdictions to ensure that ‘recklessness’ is not a disproportionately high threshold”. **SCCS** expressed similar views.

NB/ Some organisations did not consider that the offence should apply to individuals (other than to responsible individuals of organisations). These views are summarised later in this briefing (theme 5 on liability).

Potential application of the offence to consented or licensed activities or a form of land management that is otherwise lawful

CfV: The Committee asked if it is clear how the Bill would apply in cases such as where environmental harm is caused by e.g. a form of land management which is otherwise legal or a project or development which has been consented or licenced by a public authority.

A significant number of respondents felt that this was not clear and is something that should be better clarified in the Bill.

Some respondents approached this from the perspective that it was a gap in the Bill i.e. it should be clear that licensed activities are not being criminalised, however

many others saw this as a strength in the Bill i.e. the fact that an activity has the required licence or another form of consent should not provide a defence for the level of environmental harm being targeted by the Bill. For example:

- The **Law Society of Scotland** said that whilst a large development may well go through the Environmental Impact Assessment process so that its impacts are considered in advance and its design, construction and mitigation plans etc are planned accordingly, “that does not mean that the development won’t cause an ecocide offence at some point in the future”, therefore “The presence of an ecocide penalty may help focus the design of developments further so that there is increased awareness of the consequences of environmental harm”.
- **SEPA** said that potential impacts on public bodies with consenting or licencing roles must be considered and the scope of the offence must be very clear. It noted that comparatively, the Regulatory Reform (Scotland) Act provides that a section 40 offence is not committed by “a person who permits someone else to cause that environmental harm if the permission was given by or under an enactment conferring power to authorise the act that resulted in that harm”.
- **UKELA** said “A permission, consent or licensing regime should not immunise ecocide crime by default, especially if those permissions, consents or licenses are outdated or flawed. However, there may be projects that cause severe environmental harm and so fall within the definition of ecocide but that are necessary in the national interest. For instance, the development of a new town or constructing a reservoir that floods a valley. However, any such proposal is likely to require primary legislative consent and, if so, any potential breach of ecocide legislation can be fully debated and considered in that context. It may be possible to expressly state in the legislation that approves such a project or scheme that no liability will arise, or crime be committed if the consent or proposal is approved and developed in compliance with that approval”.
- **Aberdeen Centre for Constitutional and Public International Law:** “Under section 40 of the 2014 Act, there is an exclusion for activities which are already licensed or authorised, whereas the Ecocide Bill proposes no such exclusion. It seems that greater clarity could be useful, particularly in situations where consent has been granted.”
- **NFUS** considered that a form of land management which is otherwise legal would not be covered by the Bill: “Farmers adhere to a comprehensive set of environmental regulations designed to promote sustainable agriculture, protect the natural environment, and ensure compliance with regulatory standards. This Bill deals with criminalising the most serious forms of environmental harm and a person commits an offence if the person causes severe environmental harm, and intends to cause environmental harm, or is reckless as to whether environmental harm is caused”.

This issue was a key focus of evidence submitted by SFF and Scottish Renewables:

- **SFF** said it is concerned that legitimate and regulated activities may be considered by some who oppose them as ecocide and may be reported as such. The Bill needs to make clear that legitimate and regulated activities that comply with the legislation that regulates them cannot be ecocide, and the Bill if it is to be progressed must include safeguards to this effect.
- While **Scottish Renewables** broadly welcomed the aims of the Bill, it said “we believe the Bill would benefit from greater clarity regarding its application in cases where environmental harm is believed to have resulted from developments that received consent or a license from public authorities. Specifically, we seek assurance that where an organisation has followed due process and complied with all relevant conditions, such as through Scotland’s rigorous planning and consenting system with requirements for environmental impact assessments, that such actions would not expose them to liability under the proposed legislation.”

Dr Mingzhe Zhu and Ms Yijia Li’s response set out a recommendation for how these concerns could be addressed. It said that the absence of a defence beyond the defence of necessity (section 2) “has created legitimate concern among responsible operators in key sectors, such as farming and fishing, that standard, regulated practices could be subject to over-criminalisation in the event of an unforeseen incident”. They recommended that a new section be introduced creating a defence of due diligence, which would protect an organisation or individual who can demonstrate, on the balance of probabilities, that they took all reasonable steps and exercised due diligence to prevent ecocide from occurring. Proving this would involve demonstrating compliance with regulatory standards and industry best practice. The response sets out examples of this in UK and other domestic legal frameworks e.g. the ‘adequate procedures’ defence to the offence of failing to prevent bribery (Bribery Act 2010), and the defence for corporations that they had ‘reasonable prevention procedures’ in place against tax evasion (Criminal Finances Act 2017).

Some organisations e.g. **Animal Equality** and the **Ocean Rights Coalition UK** suggested that it should be made clear e.g. through guidance or a statement that authorisations (permits, licences or leases) do not, in themselves, preclude criminal liability where the ecocide test is met. The **Ocean Rights Coalition UK** said:

“An activity like the systematic use of certain chemicals may be permitted under agricultural regulations, but could constitute ecocide if it renders large areas of land or water space, salt, loch or fresh, private or public, biologically dead for a long-term period, and this risk was known or recklessly ignored”.

A number of **individual respondents** questioned whether the fact that large wind farms or energy infrastructure had been consented would mean they could not be held liable for severe environmental damage.

Ecocide as an ‘incident’ versus cumulative impacts of a course of conduct

CfV: The Committee asked if it is clear how the Bill would apply where environmental harm is the result of cumulative damage caused by multiple acts.

There were a range of views in response to this question. A significant number of respondents considered that it was unclear whether or not cumulative impacts (or impacts of a 'course of conduct' or ongoing activity, for example) could be captured by the Bill's definition of ecocide. Some respondents thought more clarity was needed in the Bill, or alternatively some suggested this could be clarified in guidance.

Some respondents considered it was clear that the Bill was not targeting this kind of situation and saw ecocide as an 'incident' or 'event'. Others considered there may be circumstances where a course of conduct might meet the definition of ecocide. For example:

- **SEPA** said that "It is not clear from the Bill as introduced how it would apply in such cases. In the event the Bill is passed, we consider that its implementation will need to be supported with comprehensive guidance to help all involved to interpret when an ecocide offence may have been committed".
- The **Law Society of Scotland** said that "A fundamental problem in this area is that the cumulative effect of lawful activities can cause greater harm to the environment than any one-off incidents that might fall under a definition of "ecocide". This needs to be addressed".
- **Dr Suwita Hani Randhawa** said "the definition isolates ecocide as an event-based harm, whereas harms such as climate change, deforestation, or toxic waste accumulation unfold incrementally over decades".
- **SFF** referred to the significance of environmental degradation caused by the cumulative effect of small actions – which it considered a crime of ecocide could not address.
- **NFUS** said there is some ambiguity around how the Bill would be applied and how cumulative impacts are assessed, especially where no single act meets the threshold. It recommended clear guidance and case studies to indicate what the threshold might be in this area and noted that farmers are required to comply with a range of environmental regulations.
- **Stop Ecocide International** said, regarding cumulative activity, that "While this kind of circumstance is not specifically outlined in the Bill, we believe it is clear that the Bill is unlikely to apply in such cases, and could only do so if the thresholds set out for ecocide were met by a specific action".
- **Scottish Environment LINK** said that it understands that the offence would not apply in cases of cumulative damage, "unless the environmental damage caused by an individual act and the person(s) involved met the threshold specified...".
- **NatureScot** said that "Clarity would need to be provided over the connection between over exploitation of natural resources as an act of Ecocide, especially where this arises through multiple actions over many years. For example,

overfishing which leads to stock collapses and in turn the ability to prosecute given multiple different actors.”

- **UKELA** said “The Bill should make explicit that cumulative acts, including by multiple actors, may amount to ecocide where the threshold of severity is appropriately met. Consistent with, e.g. the law of nuisance, even though one act in isolation may not amount to ecocide, a person may be liable for ecocide if they contribute towards severe environmental harm that amounts to ecocide. The international definition proceeds on the basis that the words ‘acts’ includes single acts or omissions, or cumulative acts of omissions.”
- **Aberdeen Centre for Constitutional and Public International Law** said “The more appropriate question is at what point cumulative damage would meet the threshold of ‘severe, widespread or long-term’ as it may be difficult to identify when, for example, the disposal of small amounts of waste over a long period of time, perhaps resulting in severe damage, would meet this threshold”.
- **Open Seas** said the Bill is not clear about cumulative damage. It said that overfishing or the harm caused by discarding may be considered good examples of complicated harms caused cumulatively and / or caused by several actors, who may individually be having relatively small or insignificant harm.

Extra-territorial activities

A small number of respondents highlighted that biodiversity loss and climate change abroad are also linked to Scotland through supply chains and this is relevant to considering the approach to defining ecocide in domestic law. Also, conversely, acts outside Scotland e.g. GHG emissions could cause environmental harm in Scotland. For example, **Dr Mingzhe Zhu and Ms Yijia Li** said:

“This territorial limitation, while understandable from a traditional jurisdictional perspective, severely curtails the Bill’s transformative potential and its relevance to the most pressing global environmental crises, particularly climate change. A purely domestic law cannot address the climate impacts felt in Scotland (such as sea-level rise affecting island communities) that are caused by cumulative global emissions, nor can it hold Scottish-based multinational companies accountable for the environmental footprint of their operations abroad.”

The respondents suggested that the Committee should “explore options for carefully circumscribed extraterritorial jurisdiction.” It said that that by comparison, the Belgian ecocide law explicitly covers acts that cannot be located in Belgium, with the intent of capturing harm caused by Belgian nationals or entities abroad.

3. Interaction with existing law and enforcement

CfV: The Committee asked for views on how the Bill would “interact with existing law, in particular section 40 of the Regulatory Reform (Scotland) Act”.

Many respondents noted the similarities or ‘overlap’ of the proposed offence in the Bill with the offence of causing significant environmental harm set out in section 40 of the Regulatory Reform (Scotland) Act 2014, but also drew out key differences. Most commonly, that the proposed ecocide offence in the Bill targets the most serious forms of harm and provides for higher penalties.

SEPA suggested an alternative route for the Bill could be to create an offence of (or equivalent to) ecocide by amending the Regulatory Reform (Scotland) Act 2014, creating an offence that specifically complemented the section 40 offence. This related to concerns that “having two offences covering the same acts could create uncertainty” without more clarity about how the two offences would interact. If the Bill is passed, SEPA suggested “the need for clear guidance to ensure that the relationship between it and the wider regulatory landscape is clearly understood”.

Other respondents set out how they considered the offence in the Bill was distinct from section 40 of the RRA, or how this could be made more clear. For example:

- The **Law Society of Scotland** said the new offence “largely overlaps with” the section 40 RRA offence, but has “a narrower mens rea (mental element), a narrower provision on corporate liability (as it does not include neglect), an additional vicarious liability provision, more severe maximum penalties, and a reporting requirement”. It may be that amending the section 40 offence as “ecocide”, and other provisions as necessary to cover the elements proposed by the Bill, may be a more effective way of integrating these provisions into law.
- **Stop Ecocide International** said the Bill would complement and reinforce provisions in the RRA and the Environmental Protection Act 1990, “elevating the seriousness with which environmental crime is taken in Scotland by bringing in higher level criminal penalties that act as a more significant deterrent for the most severe environmental crimes”. A distinction from the RRA offence is that the Bill requires the harm to have actually occurred: it is not sufficient that it could have occurred or was likely to occur (as with the RRA).
- **UKELA** said “It is understood that the Bill would complement existing provisions” including section 40 of the RRA, noting (as also discussed above that section 40(2) of the RRA provides a defence if the offender was given permission or had a licence to cause the act giving rise to the harm, whereas the Ecocide Bill “targets intentional or reckless environmental harm regardless of whether or not it was licensed or permitted”. Also as drafted, the Bill “requires a higher level of culpability (mens rea) by not including neglect”. The response also expressed some more general concerns about whether the distinction was sufficiently clear between the two offences.
- **SFF** said that the Scottish Government has indicated that it plans to amend s 40 of the RRA, so it would be useful to seek information from the Scottish Government on their intentions in that regard. Also it said that there is no explicit clarification on how this new offence interacts with existing environmental offences and with sectoral regulations.

- **The Ocean Rights Coalition UK** said: the Bill and section 40 of the RRA “are not in conflict but are complementary, operating at distinct levels of the regulatory and criminal hierarchy. Section 40 functions as a critical strict liability regulatory offence, while the Bill creates a new mens rea-based crime of the utmost seriousness. Their coexistence creates a coherent, tiered legal framework for environmental protection”.
- **NFUS** said its “understanding is that the Bill would complement the RRA and provide a criminal framework to address severe environmental harm where regulatory approaches have proven insufficient”. It however considers that safeguards must be put in place, “so farmers and crofters are not negatively affected by this Bill or hindered in their ability to produce high-quality food”. It also wished to emphasise that farmers and crofters are committed to high-quality food production, helping to tackle climate change and enhance biodiversity and currently adhere to a comprehensive set of environmental regulations.

Aberdeen Centre for Constitutional and Public International Law set out that the section 40 RRA offence “bears a great resemblance to the proposed definition of ecocide”, however they also “diverge in several ways” including:

- The existence of a **positive obligation to avoid harm** in the RRA - In section 40 of the RRA, a failure to act (omission) would constitute an offence, which is not the case in the Bill. The response said that “Arguably, positive obligations to act are difficult to prove and undermine the application of provisions in criminal law”.
- The **definition of ‘serious adverse effects,’** - in the Bill, ‘serious adverse effects’ has no further definition. In contrast, the RRA specifies that serious adverse effects would meet the requirement of ‘significant’ harm where there has been, among other things, damage to the quality of land, water, or air, impairment of relevant amenities, or harm which caused offence to the senses. “There is thus greater need to understand how the distinction between ‘significant’ and ‘severe’ will be made in practice”.
- The **threshold for liability**- there is a focus on reckless conduct in the Bill, rather than the strict liability approach in the RRA.
- The **extent of the harm** which may be prosecuted under the existing law and the proposed law - the Bill focuses on harm which is widespread or long term, whereas the RRA covers harm which is local, national or in designated areas. Consequently, the Bill has greater potential for use in universal jurisdiction cases, because it is not limited to local or national areas.
- There is a slight difference between the necessity defences - the Bill requires that evidence is led to show that the acts were necessary and reasonable. The existing limitation is on that of acts which were undertaken to preserve human health, which is much narrower in scope.
- This should also be viewed from the perspective that the existing legislation has not resulted in any successful prosecutions yet, meaning that a broad definition of necessity may not be required for this type of offence.

NatureScot’s response discussed the relationship between the Bill and existing legislation for protecting protected areas and species (e.g. the Nature Conservation

(Scotland) Act 2004 (for SSSIs) and the Habitats Regulations) which it relies on to tackle incidents of environmental damage to protected areas and species. It said it is likely to continue to rely on this legislation even if the Ecocide Bill is passed, as “existing legislation does not include any caveats that the damage or harm must be severe”, but that “The main advantage to this Bill over the legislation noted above is that it can be used to tackle environmental damage outside the protected areas network, or to species that are not otherwise protected”.

NatureScot also noted that the Environmental Liability (Scotland) Regulations 2009 already cover some of the elements in this Bill. They apply where damage is caused to protected habitats and species listed in Annex I of the Birds Directive or Annexes I or II of the Habitats Directive and aim to secure restoration of damage by the operator rather than criminalising them. It said that the threshold for when the Regulations apply “is very high and so the Regulations have been rarely used”.

Scottish Water said that there are two elements of existing legislation which it considers have significant relevance to the consideration of this Bill from Scottish Water’s perspective: firstly, section 40 of the RRA, and secondly, the Controlled Activities Regulations (CAR) [key regulations regarding how activities impacting on the water environment are regulated] which enable criminal sanctions, with penalties of up to £40,000 or up to five years imprisonment. It said that “The Bill seeks to set a high standard for Ecocide offences, which is central to its potential to complement existing legislation. Ensuring clarity about the circumstances in which the new offence would take precedence over existing legislation is important”.

The **Law Society of Scotland** also noted the very limited use of the Environmental Liability (Scotland) Regulations 2009 to date, as “the closest comparator from an enforcement and sanctions perspective” and said “It would be useful to review the extent of these Regulations’ use and impact as part of considering how best to integrate the provisions of the Bill” to ensure that there is coherence.

4. Defence of necessity

CfV: The Bill includes a defence of “necessity” where ecocide was committed to prevent ‘greater harm’ (not including financial harm).

Do you agree with this approach?

Do you have any concerns about how this defence could be interpreted or applied?

There were mixed views on this provision. Whilst many respondents agreed it was appropriate to include a defence of necessity to provide safeguards for exceptional circumstances, a significant number of respondents disagreed with including this defence and suggested it be removed from the Bill.

A significant number also expressed concerns or reservations about how it might be applied including how ‘greater harm’ might be interpreted e.g. how ‘socio-economic’ goals might be balanced against environmental harm such as energy generation needs (in general or to meet net zero targets), food security or provision of housing.

A number of respondents suggested more clarity was needed, via the Bill or guidance, on what kinds of circumstances the defence could apply to.

- Whilst **SEPA** agreed with including the defence, it said that if the Bill is passed, guidance would be helpful. SEPA questioned whether the defence set out in Section 40(5) of the Regulatory Reform (Scotland) Act 2014 had been considered, which may also be appropriate for this Bill. That defence requires the person relying on it to show that they “took all such steps as were reasonably practicable in the circumstances to minimise any environmental harm”. **Aberdeen Centre for Constitutional and Public International Law** also cited the defence in section 40(2) which also includes an obligation to inform SEPA as soon as is reasonably practicable regarding the incident, to access the defence.
- **NatureScot** however disagreed with including the defence. It said that “this defence has been used for decades or centuries” in relation to natural systems, “leading to the current climate-nature crisis” and it “cannot think of a situation where committing serious environmental harm is necessary to avoid even more serious environmental harm”. **NatureScot** also said that “the defence could be used speculatively along the lines of: “yes, I caused serious harm, but it could have been much worse so therefore I’m innocent””.
- Several NGOs considered that this defence should be removed from the Bill (**ERCS**, **Stop Ecocide International**, **SCCS**, **Open Seas**, **LINK**, the **Ocean Rights Coalition UK**, **FoES**). **Stop Ecocide International** stated: “Ecocide already refers to the most egregious ecological harms. Absent some overriding circumstance such as the ecocide in question preventing massive harm to human life (difficult to imagine but if intended this should be clearly specified) then this provision only serves to dilute the intention of the Bill.” **ERCS** asked, given ‘greater harm’ is not defined, “How will the assessment of harm be made – is it objective or subjective?” It said that the defence should be removed, but another option is to clarify this on the face of the Bill.
- **UKELA** agreed with including the defence but said there “must be a high burden of proof to ensure the act(s) were necessary”, and “it may be that the defence should require that the ‘greater harm’ be foreseeable”.
- **SFF** said the defence was “Subjective and open to interpretation”. It said for example, “It may concern the Scottish Government that the expansion of offshore wind could meet the definition of ecocide, as this will cause serious environmental harm that will be widespread and long term. Similarly, road building projects are likely to have serious adverse effects that are both widespread and long term.” It raised concerns that the “onus is on the accused person to demonstrate the defence” and questioned how this fits with the presumption of innocence.
- **NFUS** supported the defence but said clear criteria would help ensure it is not misused whilst protecting legitimate emergency actions.

- **Jodie Bettis** said this section “should be either removed or significantly rewritten” and the defence “appears to have been included to pre-empt questions around licenced destruction and as a workaround for the otherwise normal practice of creating environmental law under the principle of strict liability”. They said:

“Although section 2.2 notes that harm does not include financial loss, a public authority or corporation might pose a defence of human safety, progress or employment or an equally valued socio-economic necessity. There are innumerable cases of destruction being sanctioned by the state and the courts for the sake of human progress. The text should clearly state that the only comparable harms are those that have been committed on the alleged victims of the ecocide, not between different types of harm across the three pillars of sustainable development – economic, social and environmental”.

- **Animal Equality** suggested a more objective standard be defined for necessity e.g., a requirement for immediacy/proximity to the greater harm, and an expectation that no reasonable alternative existed. Similarly, **Olio** said that to avoid abuse, the criteria for the defence should be more narrow. It said:

“there are concerns, since any person accused of ecocide is likely to invoke necessity as a defence, and without very clear limits it risks being stretched to justify almost any harmful conduct. The danger is that defendants may attempt to frame commercial interests, regulatory compliance, or operational convenience as “greater harms,”.

Fergus Archibald: “The severe environmental harm I am seeing is caused by renewable energy developers to Scotland’s landscapes whether forested and upland areas or reducing agricultural land” and “I would be concerned if a defence of necessity where for example a renewables project had caused damage to the local environment but a defence of necessity of “fighting climate change” was given. Until it is proven that man-made CO2 emissions is the most significant input to global temperature then I don’t believe that should be any defence at all.”

The Dunbeath and Berriedale Community Say NO to PYLONS Action

Group said the This new offence must apply regardless of motive or sector – whether the harm is caused recklessly or deliberately, whether for private profit or public infrastructure, or whether development is labelled “renewable” or “green.” Nature does not distinguish between types of damage, and neither should the law.

5. Individual and corporate liability (including vicarious liability)

CfV: The Bill allows for individuals, organisations and specified senior individuals (e.g. directors or partners) of organisations to be held liable for ecocide. Do you support this approach?

Are the provisions on individual and organisational culpability sufficiently clear and appropriate, including the definitions of who is a “responsible individual”?

Most respondents agreed that individuals and organisations should be able to be held liable for an offence of ecocide, and agreed with how “responsible individuals” were defined. For example:

- **SEPA** agreed with this approach stating it was consistent with the RRA.
- **The Ocean Rights Coalition UK** said this approach “is consistent with international legal principles”, such as those underpinning the prosecution of corporate actors for human rights violations under instruments like the UN Guiding Principles on Business and Human Rights.
- The **Law Society of Scotland** said that the provisions lifting the “corporate veil” so that those managing an organisation can be held liable as well as the organisation, in addition to provisions for vicarious liability, are a strength of the Bill.
- **Olio** said that “By making directors, officers, and partners personally liable where they consent to or connive in ecocide, the Bill ensures that responsibility cannot be evaded, deters reckless or negligent corporate practices, and aligns liability with the reality that severe environmental harm often results from choices made at the highest levels of management.”

ERCS and **LINK** considered that the offence should only apply to organisations and appropriate senior officials of those organisations, and not separately to individuals. For example, **ERCS** said:

“The correct level of responsibility for a crime as serious as ecocide is with organisations and responsible officials. There should strict liability for organisations and responsible officials. It is well established that determining mens rea for corporations is difficult and could undermine prosecutions to hold them accountable on ecocide. This structure would also eliminate the criminalisation of workers who act according to the instructions of their superiors and should not be held responsible for ecocide”.

ERCS suggested that another option would be to create separate offences for organisations and responsible officials, with a different standard of mens rea i.e. strict liability for organisations.

Some respondents also set out views that the standard of ‘consent, connivance’ for individual culpability when an organisation commits ecocide is too high. **ERCS** said:

“Many breaches of environmental law happen because organisations and responsible officials fail to ensure compliance with the law. For example, they might neglect to maintain plant equipment to control pollution or obtain a permit for the storage of substances that cause a major pollution incident. These instances would not be captured by the standard of ‘consent, connivance’, which would create a significant loophole for offenders in the Bill. Applying strict liability would ensure better accountability, recognising that it is not possible to separate the ecocide committed by an organisation from the

decisions or lack of due diligence of responsible officials. Another option would be to use ‘consent, connivance or neglect’...”

ERCS cited that the ‘consent, connivance or neglect’ approach to intent is used in relation to the liability of responsible officials/superiors in:

- Section 42(1)(b) of the Regulatory Reform (Scotland) Act 2014 (which provides for corporate offending under section 40)
- Section 1255 of the Companies Act 2006
- Section 37(1) of the Health and Safety at Work etc. Act 1974

The Law Society of Scotland also noted that unlike many other offences, for example section 40 of the RRA, the basis of individual liability in the Bill for ‘responsible individuals’ is consent or connivance, not “attributable to the neglect” of the listed people (as provided for in section 42 of the RRA, for corporate offending under section 40).

Animal Equality said “Clarity could be enhanced” by aligning senior-officer liability “with the well-understood formulation “consent, connivance or neglect”, which addresses wilful blindness at senior level.”

ERCS suggested that it may be appropriate instead, following the approach of the (fallen) UK Ecocide Bill, to (in combination with increasing the threshold from ‘consent and connivance’ to a higher threshold) allow for a defence of demonstrating that the individual took ‘all reasonable measures within their power to prevent or to stop all steps that lead to the commission of the crime of ecocide’.

- **UKELA** said it supports the overall approach taken as it “will help ensure that organisations and senior individuals act with precaution and due diligence as to not commit ecocide”. It is noted that individual culpability arising from an organisation’s offence arises through the consent or connivance alone but not the neglect of the senior individual. This appears to reflect the absence of negligence in the mens rea of the primary offence, but it is unclear that this ‘consistency’ is justified for avoiding the attribution of liability under s. 3. Contrast this with other legislation such as s.157 of the Environmental Protection Act 1990.
- **SFF** raised concerns about the approach in the Bill stating “It does not seem reasonable that a legal person could be prosecuted as a primary offender of ecocide in the absence of vicarious liability, particularly when there is no clarity on whether legitimate activities may lead to accusations of ecocide”.
- **NFUS** said whilst it supports the overall approach of “holding both individuals and organisations accountable, especially at senior levels where strategic decisions are made”, further clarity may be helpful on how liability is determined in complex organisations.

Protection of workers and targeting senior decision-makers

A number of responses (**Stop Ecocide International, ERCS, LINK, FoES, SCCS, Open Seas**) said it was important that the Bill ensure that only very senior individuals in organisations or those with ‘genuine authority’ could be held liable, with appropriate safeguards for workers and against ‘scapegoating’.

- **Stop Ecocide International** said that it: “supports an approach that holds liable the most senior possible decision-maker(s) in any given instance of ecocide, e.g. directors, senior executives or those in similar positions of superior responsibility”. The response raises concerns that not all of the positions defined as ‘responsible individuals’ in the Bill may be in “positions of superior responsibility” e.g members of companies or partners in partnerships.
- **Jodie Bettis** suggested that the Committee should consider the simpler wording of the (fallen) UK Ecocide Bill, which sought to apply the offence to individual natural ‘persons of superior responsibility’.
- **FoES** said “Workers acting on the instructions of their superiors should not be held liable. Consideration must be given to the level of authority held by an individual within an organisation when deciding on the appropriateness of prosecution and/or penalty. More analysis on how to identify liability for ecocide is required”.

A small number of respondents (**Stop Ecocide International, Open Seas, Jodie Bettis**) also recommended that the Bill should seek to protect the right to whistleblow or consider how to empower whistleblowers.

Scottish Water said that enforcement mechanisms should be “designed to reflect the realities of organisational decision-making and to ensure that accountability is fair and proportionate”.

Vicarious liability

CfV: The Committee asked for views on whether the provisions on vicarious liability are clear and appropriate.

Mixed views were expressed about this provision. Whilst many respondents supported the inclusion of vicarious liability and felt this was consistent with other areas of law, some felt it should be removed, with the liability focusing on organisations and individuals.

- **SEPA** said these provisions are clear and consistent with section 38 of the RRA. It also highlighted that there is also provision in section 39 of that Act to cover the situation where a contractor (rather than an employee or agent) committed the offence, and suggested this could be a constructive addition to the Bill.
- The **Law Society of Scotland** said these provisions were a strength of the Bill and gave an example of where vicarious liability provisions have caused a

change of culture is in wildlife crime legislation stating this “has had a noticeable effect on changing attitudes towards wildlife crime in Scotland”.

- **Stop Ecocide International** said it considers the provisions on vicarious liability to be clear and appropriate.
- **ERCS** however said that the vicarious liability provisions should be removed, to limit liability to organisations and responsible officials. It said that the vicarious liability provisions do not protect workers. **Jodie Bettis** concurred with this.
- However, **NFUS** said it has “particular concerns around the concept of vicarious liability in the Bill and would be strongly against farmers and crofters being held liable for ecocide that may occur on their land through no fault of their own” e.g. raising damage such as through flytipping or wildfires which could be caused by others on a farmer’s land. It said that “there is a serious fear that the farmers and crofters themselves could be held liable for these incidents, or that they would have to undertake unreasonable and expensive preventative measures as a precaution (e.g. CCTV, security patrolling, etc)”. It said that the Bill should ensure that responsible landowners are not penalised for actions beyond their control.
- **Scottish White Fish Producers Association** also raised concerns: “The fear is that, under the bill’s broad language, those who have acted in good faith, following all rules and regulations, might still be held accountable for unforeseen or accidental incidents beyond their immediate control.”
- **FoES** set out concerns that the defence open to companies that they did not know that their employee(s) were committing ecocide “may allow too wide a gap in the protection of the law for businesses”. **SCCS** expressed very similar views.

6. Penalties

CfV: The Bill proposes a maximum custodial sentence of 20 years and unlimited fines (or an unlimited fine in the case of an organisation).

Are these penalties appropriate and proportionate?

Most respondents agreed with the maximum penalties, given the aim was to provide for robust penalties in line with the severity of the offence. For example:

- The **Law Society of Scotland** said that “The severity of the penalties is intended to match the severity of harm and send a strong, clear, dissuasive message to those who might cause environmental harm so that there is a culture change in attitudes towards protecting the environment”. Additionally, it felt that the inclusion of scope for an **order for compensation** has an important practical effect for communities impacted and in terms of environmental justice.
- **Stop Ecocide International** said these penalties “are required to reflect the seriousness of the crime, to ensure there is a significant deterrent.”

- **UKELA** said it agrees that the maximum penalties under s.40 of the RRA “are insufficient” for an offence that meets the definition of ecocide. However, a maximum 20 years’ imprisonment “may regarded as disproportionate”, referring to a Literature Review of Sentencing of Environmental and Wildlife Crimes for the Scottish Sentencing Council, which referred to the European Commission’s view on penalties that “to be effective, proportionate and dissuasive maximum penalties of at least between 5 and 10 years of imprisonment should be available where the offence is committed intentionally and causes the death of or serious injury to a person”. However, the response also noted that as maximum penalties, it would be for courts to decide any sentences, and “Providing there is good reason and explanation as to why the maximum sentence(s) within the Bill are set as they are, then this will be appropriate”.
- **SCCS** said that 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).

SFF however questioned the proportionately of the maximum penalties and said that the “Member has not made a cogent case for why this Bill is needed or why such serious penalties are needed”. SFF also said that as the Scottish Sentencing Council is currently reviewing environmental and wildlife sentencing, it makes more sense to await the outcome of this review before creating new offences.

Turnover based fines and confiscating proceeds of crime

A number of respondents made comments in relation to financial penalties, including around confiscating proceeds of crime, and linking the determination of the amount of a fine to a company’s global turnover. For example:

- **Scottish Environment LINK** said it considers the penalties in the Bill to be appropriate but, in line with the EU Environmental Crime Directive, it should also be mandatory to confiscate the instrumentalities and proceeds made from the crime of ecocide (Article 10), extending the Proceeds of Crime Act 2002. **FoES** and **SCCS** also expressed similar views about seeking alignment with the EU Environmental Crime Directive in relation to financial penalties.
- **Dr Mingzhe Zhu and Ms Yijia Li** proposed that sections 5 and 6 of the Bill should be amended to clarify that the court’s power to impose an unlimited fine should be exercised by reference to the organisation’s total global annual turnover from the preceding financial year. The response said that the principle of basing fines on a percentage of global turnover is well-established in EU law e.g. in EU competition law enforcement and the General Data Protection Regulation (which provides for fines of up to 4% of global annual turnover for the most serious data breaches). They said that this model has also been formally adopted in the EU Environmental Crime Directive which mandates that Member States provide for turnover-based fines for legal persons for the most serious ‘qualified offences’.

Publicity Orders

The Committee asked in the CfV if the potential for publicity orders (mandatory publication of conviction details) adds a meaningful deterrence.

Most respondents agreed that providing for publicity orders as part of any penalty would add a deterrent effect. Several respondents considered that publicity orders should be a mandatory part of any sentence.

- The **Law Society of Scotland** said “It could add to the dissuasive effect on environmental harm that the Bill is ultimately trying to bring attention to, and certainly adverse publicity can change the way in which businesses operate in a world of increasing corporate and social responsibility”.
- **Scottish Environment LINK, SCCS, FoES** and **Stop Ecocide International** all expressed a view that publicity orders should be mandatory in the case of an offence. **Stop Ecocide International** said for example: “Transparency is key because public and societal perception has an important role in shaping acceptable business and institutional practice. In the case of a company, maintaining good reputation and compliance with law, is critical to continued investment and public and shareholder support.” **Animal Equality** suggested a “presumption in favour of” publicity orders.
- **NFUS** said whilst publicity orders could be a strong deterrent, particularly for corporate actors concerned about reputational damage, it has “general concerns about making information public and urge due diligence to be undertaken before any personal or commercially sensitive information is published”.

SFF said it does not consider publicity orders add a meaningful deterrence “as court cases and convictions are routinely reported in the press and media” and also no “safeguards” are mentioned for reputational harm in the Bill, such as criteria for when publicity is necessary and justified.

A number of respondents also expressed that (while they did not necessarily object to the provisions on publicity orders), they may not provide an especially strong deterrent. For example:

- **Aberdeen Centre for Constitutional and Public International Law** said publicity orders may not be a meaningful deterrent, particularly for large corporations that have means to counter reputational damage. **Jodie Bettis** said that if an event meets the threshold for ecocide, it is unlikely to escape media attention.

Views on alternative or additional penalties

CfV: The Committee asked in the CfV if alternative or additional penalties should be considered (to those in the Bill).

Many respondents provided views on additional penalties that may be appropriate.

A number of respondents (including **SCCS, FoES, Animal Equality, the Ocean Rights Coalition UK** and **Open Seas**) expressed views along the lines that additional sanctions were needed to target organisations and corporate behaviours and provide the judiciary with a more rounded ‘toolkit’ of sanctions.

An **individual respondent (Claire Dufour)** said, regarding the need for penalties to target corporate behaviour and governance:

“Placing too much weight on prosecuting individuals risks treating the issue as one of personal misconduct, when in fact many environmental harms are the result of entrenched business models, corporate strategies, and board-level decisions. Incriminating individuals may remove certain people from positions of power, but those roles can quickly be filled by others who continue the same practices. The law therefore needs to make clear that liability applies not only to named individuals but also to the organisational structures, incentives, and governance systems that enable ecocide. Without this, the root causes remain untouched, and accountability becomes superficial”.

Common recommendations included:

- Remediation orders (i.e. requiring the offender to undertake remediation of environmental harm, as provided for in the RRA, in addition to the provisions for compensation in the Bill) or other approaches to ensure ‘restorative justice’, such as channelling funds into a restoration fund;
- Director or trustee disqualification;
- Operational restrictions e.g. suspension or withdrawal of permits, exclusion from public contracts or funding.

A number of respondents suggested the Bill should seek to align more closely with or draw examples from the EU Environmental Crime Directive regarding penalties, which states that sanctions beyond financial penalties are ‘often seen as being more effective ... especially for legal persons’ (Preamble, 31).

Regarding the topic of remediation orders:

- **SEPA** said it “would also support powers being given to the courts to order a person convicted of the ecocide offence to take steps to remedy or mitigate the harm caused” where the court considers that is within the power of that person.
- **Jodie Bettis** said “While custodial sentences and financial penalties are the standard criminal sanctions considered for this proposed crime, I would strongly advocate for the Bill to include restorative justice mechanisms such as compulsory restoration notices and associated compensation governance structures to ensure meaningful ecological justice and accountability”.
- **Stop Ecocide International** said additional penalties could include restoration orders where feasible along with compensation orders in section 7 of the bill.

- The **Law Society of Scotland** however said that the approach in the Bill, of providing for compensation orders (where the offender has to pay others to undertake remediation), rather than remediation orders “is perhaps justified in terms of trust that appropriate steps are taken properly and avoiding any spin into “good news” story based on the tidy up”. It also said that if there is severe environmental harm, such as an oil spill, then “steps need to be actioned swiftly and effectively to remediate the harm which an offender may not be best placed to do”. Similarly, **UKELA** said that “in contrast to some environmental offences, any alternative or additional sanction for the court should not provide for the offender to undertake remediation directly. Instead, the offender should be required to pay for remediation, to ensure that effective remediation is carried on”.
- **FoES** said that “when convictions occur, the Court should be required to assess the “environmental harm” and what, if anything, can be undertaken to restore the environment. On the back of these assessments, sanctions should include measures (e.g. appropriate community service, financial contributions) to contribute to the restoration”.

7. EU alignment and international developments

CfV: The Committee asked respondents how well the Bill aligns with international developments (including e.g. the EU Environmental Crime Directive, the Stop Ecocide campaign, and individual country approaches).

Many respondents said that the Bill is an opportunity for Scotland to demonstrate global leadership in relation to recognising ecocide, and more generally in relation to tackling environmental degradation. Many responses also said that the Bill would help Scotland to align or keep pace with:

- The EU Environmental Crime Directive which requires Member States to alter their laws by May 2026, which may require the criminalisation of acts which amount to ecocide.
- Wider developments in international law such as developments around recognising a right to a healthy environment.
- Developments in other domestic regimes – countries mentioned included Belgium (2024 adoption of ecocide into its penal code), France (2021 *écocide* law), the Netherlands and Belarus, and proposed legislation was said to be under discussion in several Latin American countries (e.g. Chile, Brazil, Mexico, Peru).
- It was noted that the Rome Statute of the International Criminal Court has received a proposed amendment (in September 2024) from Vanuatu Fiji and Samoa, to include ecocide as a crime.

For example:

- The **Law Society of Scotland** said the Bill has “strong similarities” with the EU Environmental Crime Directive and “countries such as France, Belgium and Chile

currently have existing ecocide laws”. (The response also noted that Scottish Ministers still have the keeping pace power in the continuity Act which could be used to make provision to implement an EU Directive).

- **Stop Ecocide International** said the Bill is in line with, and complementary to, the evolution of international, regional and national environmental law to address serious environmental crimes. Adopting the Bill would signal that Scotland is moving firmly in the same direction as international law e.g. in line with recent opinions issued by the International Court of Justice on the duties of States with respect to climate change (July 2025), and a means to ensure the UN Right to a Clean and Healthy Environment. Adopting the Bill “would underscore the legislative direction of travel evident in the formal proposal for inclusion of a crime of ecocide into the Rome Statute”, and it would also align with recent European developments including the EU Environmental Crime Directive.
- **Dr Suwita Hani Randhawa** said that “By criminalizing ecocide domestically, Scotland strengthens growing international calls for recognition of ecocide as a crime under the Rome Statute of the ICC. This contributes to norm cascades, whereby pioneering national measures encourage wider international normative change. In turn, Scotland’s move reinforces its international identity as a norm entrepreneur in environmental governance”. And “The Bill is a significant opportunity for Scotland to participate in the social construction of international criminal norms around ecological protection”.
- **FoES and SCCS** both said that 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. Both responses also said 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 therefore advance environmental justice.

SFF expressed different views: “We are not familiar with the detail of international approaches but make the comment that legislating simply to follow others is not sufficient justification for the creation of severe penalties set out in the Bill. Legislation should be based on evidence and need, not following others or virtue signalling”.

An **individual respondent (Zoe Betts)** said that as Scotland was no longer part of the EU, “it needs its own protective legislation”.

8. Enforcement and institutional readiness

CfV: Which enforcement bodies do you consider to be key to responding to potential ecocide events, and do you believe enforcement agencies such as SEPA, Police Scotland and COPFS are currently equipped to investigate and prosecute ecocide?

What additional resources, training or powers (if any) would be required to effectively enforce the Bill and are these reflected in the Financial Memorandum?

Resourcing: Many respondents considered that investment in public bodies would be required to effectively implement and enforce the Bill (often expressed as part of wider views that enforcement bodies are under-resourced in general). For example:

- **NFUS** said it has “concerns about the capacity of SEPA to investigate and prosecute ecocide, considering current resources are already stretched”.
- The **Law Society of Scotland** said “The effectiveness of the Bill will hinge on there being adequate, long-term resources in place for enforcement”.
- The **Ocean Rights Coalition UK** said SEPA has faced recent financial and staffing pressures; COPFS has limited specialist environmental prosecutors; and Police Scotland lacks a dedicated environmental crime unit comparable to those found in other jurisdictions. It said that the Financial Memorandum “underestimates the scale of institutional adaptation required” and “Without this, there is a real risk that ecocide will remain a powerful law in principle but rarely enforced in practice”. The response suggested learning from comparative models in France, the Netherlands, Norway, Canada, and the United States.
- **The Children and Young People’s Commissioner Scotland** said that these types of crime are complex in nature and would likely require scientific expertise to gather and interpret evidence to build a case. It said “We believe that further investment will be necessary to properly enforce this legislation”.
- **Foodrise** said it is imperative that sufficient resources are available to the bodies responsible for enforcing ecocide legislation, citing concerns about enforcement in aquaculture, with reports (by the Ferret) suggesting that “fish farms in Scotland have broken environmental rules more than 100 times in the last 2 years”.

Clarity around enforcement roles and powers: **SEPA** and **NatureScot** raised some questions in their written evidence around how the Bill will ensure the appropriate bodies are empowered to investigate a potential offence:

- **SEPA** said that while it welcomes the proposal to extend its investigatory powers to cover the ecocide offence (section 9), it is concerned about how this will work in practice. As drafted, the Bill only extends SEPA’s powers. This raises a number of questions as SEPA has a fixed regulatory remit. “What happens if the severe harm was the result of an act that is outwith SEPA’s regulatory remit?”
- **SEPA** questioned whether other agencies with similar investigative and enforcement powers will have a similar extension, noting as an example the list of competent authorities under the Environmental Liability (Scotland) Regulations 2009. It also questioned who would lead investigations, in particular if the harm was the result of an act outwith SEPA’s regulatory remit. It said “If SEPA were

asked to lead in such cases this could result in significant resource impact in developing the capability to act and investigate”.

- **NatureScot** said it could be involved in enforcement of the Bill where there has been serious harm to ecosystems or species. However, it set out that “we are not an enforcing body under section 108 of the Environment Act 1995, and so as the Bill is currently written we would need to be authorised by SEPA to carry out any investigations related to incidents of ecocide. This may lead to difficulties in practice.”
- **UKELA** agrees that SEPA, Police Scotland and COPFS are all key to responding to potential ecocide events, along with Environmental Standards Scotland (ESS) (mentioned in the financial memorandum). Ensuring Scottish Fire and Rescue are equipped to respond to significant impacts to the environment and human health such as chemical pollutant impacts on air, water and/or land (albeit noting that this resource should already be in place to an extent) should be accounted for.

Institutional readiness for an ecocide event: Some responses also set out views or questioned what systems would be in place relating to operational readiness for an offence of ecocide e.g. what training would be required, how a response would work and how key authorities would coordinate their response etc. For example:

- **UNISON Scotland** set out concerns about the practicalities of enforcement: “It will be our members, in many cases working within stretched public bodies, that must gather and accumulate a huge level of evidence to satisfy the Procurator Fiscal. We realise that budgeting questions are separate from the Bill itself, but we would stress that creating new regulations, offences or penalties without regard to the feasibility of their enforcement is at best a very small step forward.”
- It also set out concerns about safeguards for public sector workers investigating a potential offence: “Public sector workers currently do not have sufficient protections from harm that may need to accompany any new powers they are granted. Criminal groups or individuals investigated may be minded to target workers building a case against them given the custodial sentences proposed.”
- **Animal Equality:** Said that core capability exists in enforcement agencies, but the scale and complexity of ecocide cases will benefit from strengthened joint case-building, joint operational protocols early ecological expertise, and clear triage triggers for escalation.
- **ERCS** said that consultation needs to take place with the key bodies to ensure that they have the necessary institutional readiness.

SFF set out concerns about how ‘erroneous’ complaints alleging ecocide by the fishing industry would be handled by enforcement bodies. It said the Bill lacks guidance on safeguards against abuse of enforcement powers or specify what kind of evidence or suspicion is needed before SEPA can act.

9. Business/sectoral and investment impacts

CfV: What impact could the offence of ecocide have on Scottish businesses and what sectors could be most impacted?

The Committee is interested in your views on the potential implications of the Bill on innovation or investment.

Many respondents said that whilst the Bill does not target specific sectors, it should positively impact on business behaviour and corporate governance in managing environmental risk, and also help to steer investment towards sustainable practice.

Highlighted sectors: Sectors mentioned by respondents as potentially being impacted e.g. because activities may carry a risk of severe environmental damage, included: fossil fuel or minerals extraction (e.g. risk of oil spills), energy infrastructure including renewables, 'heavy industry', fisheries and aquaculture (e.g. practices capable of causing severe damage to seabeds), intensive agriculture (e.g. risk of soil degradation), plastics and chemicals, water and waste management (e.g. risk of land contamination, sewage pollution) and major construction and development.

- **Animal Equality** said "The greatest compliance uplift is likely in high-risk sectors – such as aquaculture, chemicals, waste and water, energy and large infrastructure – where operations intersect with sensitive habitats".
- **Olio** said "The offence of ecocide is likely to have a significant compliance impact on Scottish businesses, particularly in sectors where environmental risk is inherent. Heavy industry, energy (including oil, gas, and renewables), chemicals, agriculture, aquaculture, waste management, and large-scale construction or infrastructure projects are most exposed, as their activities carry higher potential for severe, widespread, or long-term harm. Businesses in these sectors will need to adopt stricter environmental safeguards, monitoring, and governance to avoid liability, especially at the senior management level".
- **Scotland Against Spin** said (in response to the CfV question about the definitions in the Bill) "We note with approval that these definitions cover many activities of renewable energy companies, which should be criminalised".
- **UKELA** said it is possible that ecocide offences may affect or be associated with the agricultural and tourism sectors with e.g. highlighting the example of wildfires which could be caused by recklessness. It also said it is possible that water companies and other public works operating near watercourses are at much greater risk of falling foul of the "widespread" threshold in the Bill.
- The **Scottish Co-operative Party** said that while the Bill places firm responsibilities on businesses—particularly high-risk sectors—it includes necessary defences for legitimate activity, ensuring innovation and development are not unfairly stifled.
- **Pensions for Purpose** said that introducing clear accountability for ecological harm is aligned with building a financial system and corporate landscape fit for

the current day. It said that “Our pensions system, is heavily exposed to sectors that drive ecological breakdown, from fossil fuels to extractive industries.”

In relation to potential impacts on the **farming and fishing sectors** specifically:

- **NFUS** said “The Bill will be unlikely to affect day-to-day operations of most agricultural businesses. We would need to see the safeguards set out within our response implemented before we could be reassured that this would not hinder our farmer and crofters’ ability to produce high-quality food”.
- **SFF** said there could be significant costs for businesses if time is spent defending reports of ecocide when the activity being carried out is legitimate, which might particularly be the case for sectors some object to in principle e.g. some forms of food production. It also said that “Investors may be put off investing in Scotland due to this Bill being so open to interpretation about what ecocide is”. It said the Bill may interfere with Article 1, Protocol 1 of ECHR – the right to peaceful enjoyment of possessions.
- The **Scottish White Fish Producers Association** said “The Scottish fishing industry faces numerous challenges, from navigating Brexit’s complexities to adapting to evolving environmental regulations”. It said that the Bill “presents a new wave of uncertainty, potentially empowering activist groups and creating an environment ripe for disproportionate targeting of our livelihoods.”
- **Open Seas** said there would “likely be long term savings through deterring harmful practice by businesses, giving the example that damaging fishing activities in sensitive marine areas threaten invaluable marine habitats which in turn places the sustainability of the fishing industry at risk. However it also said that marine operators who act legally should not be negatively impacted, and preventing ecocide should support secure local fishing jobs in future.

An **individual respondent (Zoe Betts)** said that whilst the Bill might impact on business, it was ‘bigger than money’, stating “We cannot breathe or drink money”.

10. Community/local and equalities impacts

CfV: The Committee is interested in your views on the potential implications of the Bill on: - Local communities: - Rural economies: - Equalities and human rights:

Many respondents said that the Bill should provide long-term benefits to local and rural communities, and support the advancement of human rights, through its aim to prevent severe environmental harm. For example:

- **Stop Ecocide International** said ecocide legislation would be of benefit to local communities via protection of fundamental human needs, including clean air, clean water, ability to grow food, continuation of economic opportunity, and will be of particular benefit to rural communities relying on land and sea as a source of income and living space. It said that recognising a crime of ecocide would prevent

the aggravation of injustice caused by severe environmental degradation which often disproportionately impacts groups experiencing existing inequities.

- **Scottish Co-operative Party** said that local communities stand to benefit the most from the Bill as holding ecocide perpetrators to account protects rural economies, biodiversity, and public health and strengthens community resilience.
- The **Children and Young People's Commissioner Scotland** set out various ways in which it considered the Bill supports human rights and particularly children and young people's rights e.g. alignment with protection of (Article 2) Right to Life of the ECHR and the UN International Covenant on Economic, Social and Cultural Rights. It said that children and young people are disproportionately affected by the climate and nature crisis and more vulnerable to air pollution, and also that biodiversity is a children's rights issue.
- **Foodrise** Local communities that have suffered local environmental harms at the hands of polluting industries, such as the salmon farming industry, would benefit from stronger protections for local wildlife from the Bill.

11. Reporting and oversight

CfV: The Bill requires regular reporting by Scottish Ministers on enforcement and outcomes. What are your views on these provisions and if they are appropriate?

NB/ This question was drafted on the basis of the Policy Memorandum stating that the Bill provided for regular reporting. It has been clarified that this is an error, and the Bill only requires a single report after the Act has been in operation for five years.

Most respondents supported including reporting provisions in principle. However, several respondents suggested how they considered that the provisions on reporting might be strengthened or improved. For example:

- **UKELA** suggested that instead of only requiring a single review period after (no more than) five years, there should be regular review (at least quinquennial) to reflect the long-term nature and need of the provisions.
- **ERCS** suggested that, as ecocide is expected to be rare, instead of regular reporting, it would be more effective to require a report by Scottish Ministers within 12 months after each conviction for ecocide, covering assessment of the damage, outcomes of the conviction, and an assessment of why the crime was able to take place with recommendations to prevent a similar crime in the future.
- **Dr Mingzhe Zhu and Ms Yijia Li** said that the required information is "purely quantitative" focusing on the number of convictions, sentences, and costs etc, and this "reduces the profound human and ecological impact of ecocide to a sterile set of statistics". They recommend a requirement that the report includes a narrative component e.g. featuring testimony from affected communities, and analysis from experts on the precise nature of the environmental damage.

Alexa Morrison, Senior Researcher, SPICe Research
18 September 2025

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Annex 1: Respondents information

Organisations

1. Aberdeen Centre for Constitutional and Public International Law
2. Angus Pylon Action Group
3. Animal Equality
4. Beauty Kitchen UK Ltd
5. Born Free Foundation
6. The Changineer Ltd
7. The Children and Young People's Commissioner Scotland
8. Dunbeath and Berriedale Community Say NO to PYLONS Action Group
9. Environmental Rights Centre for Scotland (ERCS)
10. Foodrise
11. Friends of the Earth Scotland
12. Glasgow City Council
13. Help Save Mochrum Fell Group
14. John Muir Trust
15. Law Society of Scotland (Environmental Law Sub-Committee)
16. Mey BESS Action Group
17. The National Farmers Union of Scotland (NFUS)
18. NatureScot
19. The Ocean Rights Coalition (UK) Ltd
20. Olio
21. OneKind
22. Open Seas
23. Pensions for Purpose
24. Quakers in Scotland
25. Scotland Against Spin
26. Scotland Food and Drink
27. The Scottish Co-operative Party
28. Scottish Environment LINK
29. Scottish Environment Protection Agency (SEPA)
30. Scottish Fishermen's Federation (SFF)
31. Scottish Renewables
32. Scottish Water
33. Scottish White Fish Producers Association
34. Stop Climate Chaos Scotland (SCCS)
35. Stop Ecocide International
36. UNISON Scotland
37. UKELA (UK Environmental Law Association)

All of the above organisations said they agree with the overall aim of the Bill apart from 2 organisations saying no (SFF and Scottish White Fish Producers Association) and 2 remaining neutral (NFUS and Scotland Food and Drink)

Responses from academics as individuals:

- **Dr Suwita Hani Randhawa*** - Senior Lecturer in Politics and International Relations at the University of the West of England,
- **Jodie Bettis***, The Open University
- **Dr Mingzhe Zhu**, Lecturer in Just Transition, Glasgow University School of Law

(*Both members of Monica Lennon MSP's Expert Advisory Group on ecocide.)

48 out of 50 individuals who responded to the CfV either said they supported the overall aim of the Bill, or did not answer that question explicitly but set out clearly that they supported the Bill in principle in the broader response. 2 individuals said they did not support the overall aim of the Bill.