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Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee
Scottish Parliament

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Email: netzero.committee@parliament.scot

Dear Edward,

ECOCIDE (SCOTLAND) BILL

I would like to provide the Committee with a further update on the Scottish Government's plans for Stage 2 amendments for the Ecocide (Scotland) Bill ("the Bill").

You will recall that, in the Stage 1 debate and in your letter of 9 February, you made a request that amendments be lodged as early as possible, to give the Committee more time to consider them ahead of Stage 2. In response, I lodged amendments on 10 February and wrote to the Committee with information on these amendments. In my letter of 10 February, I also said that we were continuing to consider the possibility of an alternative conviction provision that I had discussed with the Committee during Stage 1.

Consideration of this Bill has included discussion of the existing offence of causing significant environmental harm under section 40 of the Regulatory Reform (Scotland) Act 2014 (RRA). As the Scottish Government set out in our Memorandum, it is a matter of concern that there is such a degree of overlap between the proposed new offence and the existing offence in RRA. We went on to say that we think that it is important that the Parliament is clear about the particular circumstances that would merit the use of the proposed new offence.

I think it was sensible to consider the possibility of an alternative conviction provision as a means of dealing with some of the problems caused by this overlap between the two offences. Upon further consideration, we have reached the conclusion that such a provision would not be appropriate in this instance. The complex nature of large environmental cases would mean that a default alternative conviction provision could lead to more difficulty in presenting a case to a jury, making successful prosecutions less likely. We should remember that there are existing procedures in place that procurators fiscal can use, at their own discretion, to bring cases where there is more than one offence with which a person could be charged.

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As set out in our Memorandum, the Scottish Government believes that this new proposed offence of ecocide must be understood as being for the most extreme, wilful and reckless cases of harm. Thankfully, such cases can only be expected to happen once in a generation. It is therefore to be expected that there are limited and rare circumstances – such as the most serious offences where there is clear evidence of intent on the behalf of individuals – where a case could expected to be brought for a charge of ecocide.

Yours sincerely,



GILLIAN MARTIN

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