

Proposed Ecocide Prevention (Scotland) Bill



A proposal for a Bill to protect the environment in Scotland and deter environmental damage by introducing the crime of ecocide into Scots law.

Consultation by

Monica Lennon MSP for Central Scotland Region

Date: 8 November 2023

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Foreword

“Ecocide: unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.”¹ -from *Stop Ecocide Foundation*



The opportunity to secure a liveable and sustainable future for all is at risk. World-leading scientists warn that “climate change is a grave and mounting threat to our wellbeing and healthy planet.”² Many of the ecosystems we depend on are at the point of no return. Halting the continued decline of wildlife is vital, including in Scotland, where iconic species like the red squirrel³ and capercaillie⁴ face extinction.

While most people accept that governments must do more to stop the mass destruction of the environment, there is a growing recognition that additional laws may be needed to protect the planet and people. That is why I am inviting you to take part in this consultation on a proposal to prevent the most serious crimes against the environment. Examples of ecocide include oil spills such as the Braer oil spill in Shetland where 85,000 tonnes of crude oil devastated the local environment, radioactive contamination, unsustainable fishing practices and the proliferation of plastics in our seas which are endangering our marine ecosystems.

Secretary-General of the United Nations, António Guterres did not pull any punches when he said: “The facts are undeniable. This abdication of leadership is criminal. The world’s biggest polluters are guilty of arson of our only home.”⁵

Stop Ecocide International (SEI) is a driving force behind the growing global movement to make ecocide an international crime. The movement seeks to achieve this by

¹ <https://www.stopecocide.earth/legal-definition>

² <https://www.ipcc.ch/2022/02/28/pr-wgii-ar6/>

³ [https://www.wildlifetrusts.org/on-land/red-squirrels#:~:text=Evidence%20shows%20that%20without%20conservation,England%20and%20Scotland%20\(1\).](https://www.wildlifetrusts.org/on-land/red-squirrels#:~:text=Evidence%20shows%20that%20without%20conservation,England%20and%20Scotland%20(1).)

⁴ <https://www.gwct.org.uk/news/news/2023/sepember/capercaillie-faces-extinction-despite-conservation-efforts-to-reverse-decline/#:~:text=07%20September%202023-.Capercaillie%20faces%20extinction%20despite%20conservation%20efforts%20to%20reverse%20decline,compare%20to%20580%20in%202010.>

⁵ <https://apnews.com/article/climate-science-united-nations-pollution-47c471f73f4ef907b6f08ac213ae04b7#:~:text=The%20facts%20are%20undeniable.,Secretary%2DGeneral.>

amending the Rome Statute of the International Criminal Court to include ecocide within its jurisdiction. This would make ecocide the fifth international crime against peace alongside the crimes of genocide, aggression, war crimes and crimes against humanity.⁶

In the months leading up to COP26 hosted in Glasgow, I became increasingly inspired by the Stop Ecocide movement. Campaigning for ecocide law was the life's work of Scottish lawyer and environmental activist Polly Higgins who died in 2019. Polly, who was a co-founder of Stop Ecocide International, understood that to protect nature, we need to change the rules.⁷ A motion that I lodged in the Scottish Parliament in 2021, which paid tribute to Polly and coincided with the publication of the legal definition of ecocide by an independent expert panel gained cross party support.⁸

Alongside the growing movement to make ecocide an international crime, in my view domestic law can also make a huge difference. While Scotland cannot propose an amendment to international law, we can take action to codify ecocide in domestic law.⁹

My proposal draws inspiration from the legal definition of ecocide proposed by the independent expert panel of SEI and would introduce the crime of ecocide into Scots law for the first time. Those found guilty of ecocide would face sanctions including imprisonment. This would serve as a strong deterrent to prevent acts causing severe harm to the environment from happening in the first place.

In recent months ecocide bills have been proposed or progressed in the EU, Brazil, the Netherlands, Belgium, Spain (Catalonia) and Mexico. My proposal will help Scotland keep pace with the European and international trend toward domestic criminalisation of ecocide. The creation of a Scottish crime of ecocide would also show solidarity with nations most affected by climate change and biodiversity loss.¹⁰

Polly Higgins gifted us with her clear-sighted vision when she said:

“There are millions who care so much and feel so powerless about the future, and I would love to see them begin to understand the power of this one, simple law to protect the Earth – to realise it's possible, even straightforward. I wish I could live to see a million Earth protectors standing for it – because I believe they will.”¹¹

⁶ [RS-Eng.pdf \(icc-cpi.int\)](#)

⁷ <https://www.stopecocide.earth/polly-higgins>

⁸ <https://www.parliament.scot/chamber-and-committees/votes-and-motions/votes-and-motions-search/S6M-00483>

⁹ <https://www.legislation.gov.uk/ukpga/1998/46/schedule/5>

¹⁰ <https://labour.org.uk/press/david-lammy-speech-to-chatham-house/>

¹¹ [The destruction of the Earth is a crime. It should be prosecuted | George Monbiot | The Guardian](#)

We can choose to be bystanders, or we can choose to be Earth protectors. I believe that an ecocide law is a necessary guardrail for our fragile planet, and that the time has come for Scotland's environmental criminal law to be updated.

Getting to this stage has involved a lot of research and discussions with key stakeholders, for which I am grateful. Please get involved and encourage family, friends and colleagues to have their say too.

I look forward to hearing your views and ideas. You can learn more about my campaign for an ecocide law at <https://www.ecocidelaw.scot/>.

Monica Lennon

Member of the Scottish Parliament for Central Scotland (Region)

8 November 2023

How the Consultation Process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/standing-orders>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation. The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received. Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

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Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website (www.parliament.scot) under Parliamentary Business / Bills / Proposals for Members' Bills.

Aim of the Proposed Bill

The proposed Ecocide Prevention (Scotland) Bill seeks to deter mass environmental damage and destruction taking place in Scotland. It aims to protect the environment in Scotland covering all natural resources - air, water, soil, wild fauna and flora, including habitats by introducing the crime of ecocide into Scots Law.

The proposed definition of ecocide is: 'unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the Scottish environment being caused by those acts'.

The introduction of a crime of ecocide with strict penalties would ensure that Scotland keeps pace with developments in environmental law at an international and European Union level. It would also show solidarity with the broader global 'Stop Ecocide' movement.

The following sections set out in detail the background to my proposal including the meaning and definition of ecocide, the current laws on environmental protection,

international examples of ecocide laws, how the proposed Bill would be implemented and broader impacts on equalities, human rights and sustainability.

Background

What is Ecocide?

The term “ecocide” was first coined in 1970 by Professor Arthur W. Galston¹². Since then, work has been ongoing to define ecocide and in particular to agree a legal definition. In November 2020, an Independent Expert Panel for the Legal Definition of Ecocide was convened by the Stop Ecocide Foundation. The Independent Expert Panel’s drafting work was completed in June 2021 with a definition which has become the starting point for legal, academic and diplomatic discussions worldwide. definition that has become the starting point for legal, academic and diplomatic discussions worldwide. In terms of their definition:

“Ecocide” means “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts”.¹³

Under this definition, ecocide encompasses some of the most serious incidents of environmental damage. Examples include the Chernobyl disaster, the destruction of the Amazon rainforest by deforestation, and the Amoco Cadiz oil spill of the coast of Brittany, which resulted in 223,000 tons of crude oil entering the water off the French Coast.¹⁴ Incidents of ecocide over the decades have contributed to the climate and nature emergency that Scotland and the world now face.

Scottish context

Risks to the Scottish environment

Scotland has an extraordinary natural heritage. However, due to environmental damage and destructive acts, many ecosystems and species are at risk. In the 2023 State of Nature report, it was noted that almost half of our species are in decline,¹⁵ including iconic species, such as the Atlantic salmon. 11% of species in Scotland have been classified as threatened with extinction. The report records an average 15% decline in

¹² <https://ecocidelaw.com/history/>

¹³ [SE+Foundation+Commentary+and+core+text+revised+\(1\).pdf \(squarespace.com\)](#)

¹⁴ [THE AMOCO CADIZ OIL SPILL CLEANUP OPERATIONS—AN OVERVIEW OF THE ORGANIZATION, CONTROL, AND EVALUATION OF THE CLEANUP TECHNIQUES EMPLOYED \(cedre.fr\)](#)

¹⁵ <https://stateofnature.org.uk/wp-content/uploads/2023/09/TP26056-SoN-Scotland-summary-report-v5-1.pdf.pagespeed.ce.EIp-TYaoGQ.pdf>

species abundance while an average decline in species abundance for Scottish seabirds was 49%. There was also a strong decrease in plant and lichen distribution.

The report confirms that Scotland is a highly nature-depleted country. Pressures which have a negative effect on biodiversity include:

- farming practices
- an increase in average temperatures by nearly 1 centigrade due to climate change
- non-native species
- pollution
- population growth
- increased urbanisation
- deforestation
- impact of fishing
- loss of wetlands

Non-renewable industries form a significant part of Scotland's economy. Oil refineries, the presence of oil tankers, nuclear power stations and a large plastics industry mean that there is a risk of leaks and spillage of environmentally damaging chemicals.

In common with other parts of the UK, Scotland's sewage network allows sewage to overflow directly into rivers. Pollution of rivers with sewage and other chemicals such as fertilisers and pesticides, can have a destructive impact on the ecology of our rivers. In March 2023, data published by the Scottish Environment Protection Agency (SEPA) showed that 45 miles of the country's riverways have become so polluted from sewage overflow that they are not expected to recover before 2028.¹⁶

Scotland's coastal waters are among the richest in the world in terms of marine biodiversity¹⁷. Concerns continue to be raised about the impact of human activities on the marine environment. For example, media reports in 2022 stated that the UK Offshore Petroleum Regulator for the Environment and Decommissioning granted permission to BP to dump thousands of tonnes of industrial equipment 120 miles west of Shetland in a Marine Protected Area, with potentially damaging effects on marine species.¹⁸

The practice of scallop dredging in marine protected areas has also placed key habitats at risk. Illegal dredging in these areas has had a devastating impact on the seabed marine ecosystems including maerl beds, a rare and important coral-like reef building

¹⁶ <https://inews.co.uk/news/scotland/water-pollution-rivers-scotland-sewage-discharge-2182796>

¹⁷ <https://www.gov.scot/policies/marine-environment/>

¹⁸ <https://www.theguardian.com/business/2022/jul/06/bp-accused-of-dumping-industrial-waste-marine-protected-area-shetland-regulator-clearance-oil-firm-pipe-cables-drilling>

species¹⁹. Prosecutions against those engaged in unlawful scallop dredging have been successful but in the member’s view the punishment has not reflected the seriousness of the environmental impact and biodiversity loss.²⁰ In a recent legal challenge, the Scottish Government’s approach to licensing scallop dredging was held to be unlawful. Scotland’s highest court ruled that the Scottish government had failed to act in accordance with Scotland’s National Marine Plan (NMP) when varying fishing licences after a judicial review by the conservation charity, Open Seas²¹.

Such examples illustrate the need for robust environmental protection laws. The following section will consider the existing framework of environmental protection laws in Scotland.

Existing Environmental Law in Scotland

There is a patchwork of legislation governing wildlife and environmental law in Scotland. Table 1 sets out some of the key environmental and wildlife protection legislation currently in force, offences contained within the legislation and applicable sanctions.

Table 1.

Legislation	Offence created	Maximum Sanction
Wildlife and Countryside Act 1981	Creates a large number of criminal offences relating to the protection of wild birds, animals, and plants. ²² Examples include provisions relating to the protection of wild birds and their nests and protection of animals including hares, red squirrels, bats, amphibians, reptiles, fish, and butterflies.	Up to 5 years imprisonment and unlimited fine. ²³
Environmental Protection Act 1990	Section 33 creates an offence of treating, keeping or disposing of controlled waste or extractive waste in a manner likely to cause pollution or harm to human health ²⁴	Up to 5 years imprisonment and unlimited fine

¹⁹ <https://www.nature.scot/landscapes-and-habitats/habitat-types/coast-and-seas/marine-habitats/maerl-beds>

²⁰ [Skipper fined for illegal fishing in protected area | COPFS](#) The fine handed down in this case is in contrast to the enforcement measures in England where the same company was fined £187,000 for a number of offence connected to scallop fishing.

²¹ https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2023csoh39.pdf?sfvrsn=16b4dade_1

²² <https://www.legislation.gov.uk/ukpga/1981/69/contents>

²³ <https://www.legislation.gov.uk/ukpga/1981/69/section/21>

²⁴ [Environmental Protection Act 1990 \(legislation.gov.uk\)](#)

<p>The Conservation (Natural Habitats &c.) Regulations 1994</p>	<p>The Habitats Regulations cover the requirements for:</p> <ul style="list-style-type: none"> ▪ protecting sites that are internationally important for threatened habitats and species – i.e. <u>European sites</u> ▪ a legal framework for species requiring strict protection – i.e. <u>European protected species</u> <p>They provide further offences for specific European protected species listed in Schedules 2 and 4.</p> <p>Regulation 18 also provides that it is an offence to intentionally or recklessly damage any natural feature of protected sites specified in the regulation (Special Protection Areas or Special Area of Conservation).²⁵</p>	<p>Up to 5 years imprisonment and unlimited fine</p>
<p>Nature Conservation (Scotland) Act 2004</p>	<p>Sets out a series of measures designed to conserve biodiversity and protect and enhance the biological and geological natural heritage of Scotland. Section 19 provides that it is an offence for any person to intentionally or recklessly damage any natural feature specific in an SSSI (Site of Special Scientific Interest) notification.²⁶</p>	<p>Unlimited fine</p>
<p>The Environmental Liability (Scotland) Regulations 2009</p>	<p>Regulations require operators to:</p> <ul style="list-style-type: none"> ▪ take preventive action where there is an imminent threat of environmental damage ▪ notify the relevant competent authority of the imminent threat of, or actual, environmental damage ▪ remedy any environmental damage that it has caused 	<p>Up to 2 years imprisonment and unlimited fine²⁷</p>

²⁵ <https://www.legislation.gov.uk/ukxi/1994/2716/regulation/18/made>

²⁶ <https://www.legislation.gov.uk/asp/2004/6/section/19>

²⁷ <https://www.legislation.gov.uk/ssi/2009/266/regulation/19/made>

<p>The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR)</p>	<p>Controlled activities are all activities likely to pollute the water environment and any other activity which, directly or indirectly, has or is likely to have a significant adverse effect on the water environment.²⁸ SEPA risk assess proposed controlled activities before granting, if appropriate, an authorisation. The type of authorisation required depends on the environmental risk of the proposed activity. Regulation 44(1) sets out various offences for failing to comply or contravening the authorisations granted by SEPA.²⁹</p> <p>Regulation 45(1) also provides that directors, managers, or partners of corporate bodies can be guilty where offences can be attributed to them.³⁰</p>	<p>Up to 5 years imprisonment and unlimited fine³¹</p>
<p>Pollution Prevention and Control (Scotland) Regulations 2012 (PPC)</p>	<p>Under regulation 11, operators of industrial installations that fall under the regulations must have a permit granted by SEPA.³² SEPA sets permit conditions with the aim of achieving a high level of protection for the environment. Regulation 67 sets out various offences related to failing to comply or contravening with the permit requirements or conditions. It also provides that directors, managers, or partners of corporate bodies can be guilty where offenses can be attributed to them.³³</p>	<p>Up to 5 years imprisonment and unlimited fine</p>
<p>Regulatory Reform (Scotland) Act 2014</p>	<p>Under section 40 it is an offence for a person to act, or permit another person to act, in a way that causes or is likely to cause significant environmental harm. Environmental harm is 'significant' if it has or may have serious adverse effects, whether locally, nationally or on a wider scale, or it is caused or may be caused to an area designated in an order by the</p>	<p>Up to 5 years imprisonment and unlimited fine</p>

²⁸ <https://www.legislation.gov.uk/ssi/2011/209/contents>

²⁹ <https://www.legislation.gov.uk/ssi/2011/209/regulation/44/made>

³⁰ <https://www.legislation.gov.uk/ssi/2011/209/regulation/45/made>

³¹ <https://www.legislation.gov.uk/ssi/2011/209/regulation/44>

³² <https://www.legislation.gov.uk/ssi/2012/360/regulation/11/made>

³³ <https://www.legislation.gov.uk/ssi/2012/360/regulation/67/made>

	<p>Scottish Ministers. An offence is committed whether or not the person intended the act to cause, or be likely to cause, significant environmental harm, or knew that, or was reckless or careless as to whether, the act would cause or be likely to cause such harm.</p>	
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Enforcement of Scotland’s environmental law

The two Scottish Government agencies with primary responsibility related to this area of law are SEPA and Environmental Standards Scotland (ESS). Environmental offence prosecutions in Scotland are taken by the Crown Office and Procurator Fiscal Service (COPFS) usually after a referral from SEPA. Wildlife offences in Scotland are prosecuted by COPFS usually after a referral from Police Scotland.

SEPA is a non-departmental public body of the Scottish Government and is Scotland’s principal environmental regulator. It works with business and industry to ensure that they understand and comply with their environmental responsibilities and legislation. SEPA also has responsibility for enforcing compliance if necessary.

A principal aim of the enforcement of environmental regulation is to prevent harm to the environment or human health. Advice and guidance are key tools used by SEPA to ensure compliance³⁴. In its review of the sentencing of wildlife and environmental crimes, the Scottish Sentencing Council stated:

“Supporting, educating and advising those regulated is a major part of the work of regulators, with detection, punishment and deterrence of those causing harm forming a relatively small proportion of regulators’ activities. The criminal law, in turn, is only a part of that detection, punishment and deterrence effort.”³⁵

In cases where there is a failure to comply with environmental legislation, SEPA will often have discretion as to the enforcement action it seeks to take. A referral to the COPFS may take place after less punitive enforcement action has been unsuccessful with referral for criminal prosecution generally reserved for the most serious offences³⁶.

Given the approach used by SEPA, the number of criminal prosecutions and resulting convictions for environmental crimes are correspondingly low. Recent SEPA statistics show that the number of prosecutions, statutory notices, warning letters and other penalties initiated or issued by the agency for pollution breaches has decreased by over

³⁴ [Microsoft Word - Enforcement Policy FINAL \(sepa.org.uk\)](https://sepa.org.uk/microsoft-word-enforcement-policy-final)

³⁵ [20201216-environmental-and-wildlife-crimes-lit-review \(3\).pdf](#)

³⁶ [20201216-environmental-and-wildlife-crimes-lit-review \(3\).pdf](#)

100 a year since 2019.³⁷ In 2016-17, 18 criminal convictions were secured following recommendations by it to prosecute³⁸. No custodial sentences were imposed in relation to those prosecutions.

There are concerns that the existing enforcement process does not reflect the seriousness of environmental crime. According to a Scottish Sentencing Council's report³⁹ there have been longstanding criticisms of the perception that environmental crimes in Scotland receive unduly lenient sentences which have not provided sufficient deterrent.

Under the current patchwork of legislation, criminal sanctions are often seen as the last resort. This proposal to introduce an ecocide law will provide a singular, overarching piece of legislation that covers all aspects of harm against the environment in an integrated fashion. In its guidelines in its Position Statement on Land Protection (Reference EP 054), SEPA recognised the benefits of such an approach:

“although there is legislation relating to specific elements of land protection, there is no single piece of legislation which offers overarching protection to land and soils. As the protection of land has the potential to also interact and protect both the water and air environment, an integrated and inter-disciplinary approach to environmental protection is required.”⁴⁰

The proposed Bill could address this gap by protecting land, soils, water and the air environment. The proposal would create an autonomous criminal offence to punish the most serious environmental crimes. This would help to address the issue of low enforcement rates due to environmental crime frequently being framed as a regulatory issue rather than an autonomous offence.

In its report for the Scottish Government, Stop Ecocide International examined the low level of prosecutions brought under section 40 of the Regulatory Reform (Scotland) Act 2014.⁴¹ Section 40 is similar in terms to the proposed definition of ecocide. As of 29 November 2022, no prosecutions had been brought under the provision.⁴² The report states that an autonomous criminal offence of ecocide which does not hinge on administrative unlawfulness might address the low levels of enforcement.

ESS is an independent body set up to ensure compliance with, and to improve the effectiveness of, environmental law, and to prevent enforcement gaps arising in Scotland following the UK's departure from the European Union⁴³. ESS monitors and

³⁷ <https://theferret.scot/sepa-polluters-legal-action/>

³⁸ [file:///C:/Users/s910105/Downloads/20201216-environmental-and-wildlife-crimes-lit-review%20\(3\).pdf](file:///C:/Users/s910105/Downloads/20201216-environmental-and-wildlife-crimes-lit-review%20(3).pdf)

³⁹ <20201216-environmental-and-wildlife-crimes-lit-review.pdf> (scottishsentencingcouncil.org.uk)

⁴⁰ https://www.sepa.org.uk/media/159201/ep-054_position_statement_on_land_protection.pdf

⁴¹ [SEI Report 2 \(4\).pdf](#)

⁴² <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-12255>

⁴³ <https://www.environmentalstandards.scot/about-us/>

investigates public authorities' compliance with environmental law, the effectiveness of the law and how it is implemented in Scotland. When issues are identified, ESS will try to resolve them informally. If the issue continues there are several steps that may be taken including issuing an information notice, a compliance notice, an improvement report and if necessary, in order to prevent or mitigate serious environmental harm, making an application for judicial review against a public authority.

The member believes that this proposed Bill would provide the strongest possible tool to protect Scotland's environment.

Scottish Government Policy

The Scottish Government's Environment Strategy published in 2020 sets out its vision and strategy to create a net zero, circular economy which is inclusive and sustainable.⁴⁴ It creates an overarching framework for Scotland's existing environmental strategies and plans, including the Climate Change Plan.

The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 ("the Continuity Act") introduced new duties on ministers and other public authorities to have due regard to five guiding principles on the environment. The principles are set out at section 13(1) of the Act:

- the principle that protecting the environment should be integrated into the making of policies,
- the precautionary principle as it relates to the environment,
- the principle that preventative action should be taken to avert environmental damage,
- the principle that environmental damage should as a priority be rectified at source,
- the principle that the polluter should pay.

The Scottish Government has also committed to a 'just transition' to net zero and a circular economy. An ecocide law would have implications for this. By acting as a deterrent from engaging in potentially environmentally damaging projects, it aligns with the guiding principles on the environment. By encouraging investment in environmentally sustainable projects and renewable energy, and by discouraging investment in projects that pose a greater risk to the environment it could support the move to net zero and a circular economy.

While dealing with much more large-scale incidents of environmental harm, an ecocide law would also complement the aims of the Scottish Government's Circular Economy

⁴⁴ <https://www.gov.scot/publications/environment-strategy-scotland-vision-outcomes/pages/2/>

Bill by encouraging people and organisations to act in a more environmentally conscious way in order to avoid falling foul of a Scottish ecocide law and would by proxy, support Scotland’s transition to a circular economy.

On 16 March 2023, the member asked the then First Minister Nicola Sturgeon MSP whether the Scottish Government would support exploring an ecocide law in Scotland in the context of growing momentum in Europe to ensure that Scotland played a leading role in tackling the climate and nature emergencies. The First Minister responded positively, stating that she supported the movement to criminalise ecocide in principle. The full question and response are as follows:

Monica Lennon

We all want Scotland to play a leading role in tackling the global climate and nature emergencies. Does the First Minister agree with me that the global campaign to establish a law of ecocide—a mission started by the late Polly Higgins, who was a respected barrister and environmental campaigner—is an important campaign and is rightly building momentum across Europe and around the world? Will she join me in encouraging people to support that campaign, and will she encourage her Government to continue to engage with me and the campaigners to explore how we can bring this into criminal law in Scotland?

The First Minister

Yes—in principle, I will, and I pay tribute to the campaigners across many issues in the fight against climate change for the work that they do. Given the scale of the challenge that we face, it is important that we continue to increase our efforts. I will encourage the Government that comes after mine to continue to do all those things, to do them bravely, and to do them despite the opposition that will come from the Scottish Conservatives. I hope that other parties across the chamber will work with the Government to make sure that we are meeting those important obligations.⁴⁵

Global Context

As global attitudes towards the environment shift, many countries have already introduced ecocide laws⁴⁶.

Table 2 illustrates countries that have recently taken action on ecocide by introducing proposed Bills and others where ecocide laws are already in force.

Table 2

Jurisdiction	Legislation	Stage
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⁴⁵<https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-16-03-2023?meeting=15205&iob=129673#5580>

⁴⁶ [Existing Ecocide Laws – Ecocide Law](#)

Belgium	<p>The Belgian Government proposed the inclusion of a crime of ecocide into domestic law. The core operative text of the proposed crime is as follows:</p> <p>“Deliberately committing an unlawful act causing serious, widespread and long-term damage to the environment knowing that such acts cause such damage.”⁴⁷</p>	In July 2023, Ecocide was included in new draft penal code, pending Parliamentary approval
Brazil	<p>The Brazilian political party Partido Socialismo e Liberdade (PSOL), submitted a draft Ecocide Bill seeking to criminalize ecocide “performing illegal or wanton acts with the knowledge that they generate a substantial probability of serious and widespread or long-term damage to the environment”. The proposed penalty for acts of ecocide would be imprisonment from 5 to 15 years and a fine.</p>	Bill submitted to the Brazilian congress for consideration on 5 th June 2023.
Mexico	<p>Proposed ecocide Bill seeking to criminalise “any unlawful or wanton act committed with the knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment”. If passed, anyone found guilty of ecocide could be jailed for up to 15 years and fined as much as 1,500 pesos (£70) a day.</p>	Bill introduced in Mexican Congress on 30 th July 2023.
Netherlands	<p>Member of Parliament, Lammert van Raan of https://www.partijvoordedieren.nl/Partij voor de Dieren, (Party for the Animals), officially launched a law proposal to criminalise ecocide in the Netherlands.</p>	Bill proposed July 2023, public consultation will take place and requires parliamentary approval to become law.
Italy	<p>Bill to criminalise ecocide based on the definition formulated by the Independent Expert Panel convened by Stop Ecocide International in 2021 introduced by Alleanza Verdi e Sinistra (Greens and</p>	Bill submitted to Parliament in September 2023 and requires parliamentary

⁴⁷<https://sustainablefutures.linklaters.com/post/102hgf6/belgian-parliament-votes-in-favour-of-recognition-of-crime-of-ecocide-at-national>

	Left Alliance) submitted to the Italian Parliament.	approval to become law.
Catalonia/ Spain	The Catalan Parliament has initiated a procedure for ecocide to be criminalised within the Spanish Penal Code	Introduced 2023. Bill requires approval by the Catalan and Spanish Parliament to become law.
France	The French Parliament passed the Climate & Resilience Act, in which Article 231-3 of the Act makes it a criminal offence to “cause serious and lasting damage to health, flora, fauna or the quality of the air, soil or water.” and providing for up to 10 years imprisonment. ⁴⁸	Ecocide law passed 2021
Armenia	Article 394 of the Armenian Penal Code: Mass destruction of flora or fauna, poisoning the environment, the soils or water resources, as well as implementation of other actions causing an ecological catastrophe, is punished with imprisonment for the term of 10 to 15 years. ⁴⁹	Ecocide law passed 2003
Ukraine	Article 441 of the Penal Code “Mass destruction of flora and fauna, poisoning of air or water resources, and also any other actions that may cause an environmental disaster, –shall be punishable by imprisonment for a term of eight to fifteen years.” ⁵⁰	Ecocide law passed 2001
Georgia	Article 409 of the Penal Code 1. Ecocide i.e. contamination of the atmosphere, soil, water resources, mass destruction of fauna or flora, or	Ecocide law passed 1999

⁴⁸ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043956924>

⁴⁹ <https://ecocidelaw.com/existing-ecocide-laws/>

⁵⁰ <https://ecocidelaw.com/existing-ecocide-laws/>

	<p>any other act that could have led to an ecological disaster, –</p> <p>shall be punished by imprisonment for a term of twelve to twenty years.</p> <p>2. The same act committed during armed conflicts, – shall be punished by imprisonment for a term of fourteen to twenty years or with life imprisonment⁵¹</p>	
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In addition to the countries listed in Table 2, domestic ecocide laws have been introduced in Armenia, Moldova, Uzbekistan, Russia, Belarus, Tajikistan, Kyrgyz Republic, Kazakhstan, Vietnam, and Ecuador⁵².

INTERNATIONAL CRIMINAL COURT/ TREATY OF ROME

The Rome Statute of the International Criminal Court (ICC) lists four crimes that fall within its jurisdiction:

- Genocide
- Crimes Against Humanity
- War Crimes
- Crimes of Aggression (recently added)

As the UK has ratified the Treaty, these crimes have been incorporated into UK domestic law⁵³. Stop Ecocide International is campaigning for the amendment of the Rome Statute of the ICC to add ecocide as a fifth international crime. The Rome Statute is the only global mechanism that directly accesses the existing criminal justice systems of its 123 member states. If successful, member states that ratify the crime can enforce it in their own countries, creating a uniform rule across jurisdictions. Several governments have supported this international call, particularly in the context of Russia’s invasion of Ukraine and the damage caused to the Ukrainian environment. Supporters include Belgium, Finland, Aotearoa-New Zealand, Vanuatu, Samoa and the Holy See.⁵⁴

⁵¹ <https://ecocidelaw.com/existing-ecocide-laws/>

⁵² [Existing Ecocide Laws – Ecocide Law](#)

⁵³ In Scotland: Criminal Court (Scotland) Act 2001

⁵⁴ <https://www.stopecocide.earth/leading-states>

There is also support for criminalisation of ecocide via the Rome Statute in the UK. For example, David Lammy MP, Labour Shadow Foreign Secretary, announced the Labour Party's support for amending the Rome Statute to include ecocide in 2021 and reiterated support in 2022 and 2023.⁵⁵

As international relations are not devolved to the Scottish Parliament, formal support for the amendment of the Rome Statute to include a crime of ecocide requires to come from the UK government.

Business awareness of Ecocide

With environmental damage and biodiversity loss increasingly on the global agenda, business leaders are starting to consider how the economy interacts with the environment. It is intended that an ecocide law would raise business standards, reduce reputational risk and lead to positive change in corporate practice.

In January 2023, the International Corporate Governance Network considered the duty of investment practices to take into account material risks related to damage to ecosystems and biodiversity loss in its paper *Biodiversity as Systemic Risk 10 Game-Changers for Board Directors and Stewardship Teams*. In relation to ecocide the paper stated:

“Adding the crime of ecocide to the Rome Statute will build on the existing international crime of severe damage to the environment during armed conflict and is expected to both raise awareness and serve as a deterrent to those contemplating projects that could fall under the established definition... Directors and stewardship teams may wish to enhance their understanding of the potential legal and reputational risks that may ensue, not just for ecocide, but also for other liabilities associated with biodiversity loss.”⁵⁶

This demonstrates an increased appetite from the business community to engage with and recognise the concept of ecocide, which could support compliance with an ecocide prevention law.

Developments at European Union Level

In March 2023, the European Parliament's Committee on Legal Affairs unanimously voted for “ecocide” to be condemned under EU law. The Parliament officially declared its support of the inclusion of ecocide level crimes into the EU's Directive on the Protection of the Environment through the criminal law.

⁵⁵ <https://labour.org.uk/press/david-lammy-speech-to-chatham-house/>

⁵⁶ <https://www.icgn.org/biodiversity-systemic-risk-10-game-changers-board-directors-and-stewardship-teams>

The Draft Directive is subject to negotiation between the Parliament, the EU Council, and the Commission. The text that is finally adopted will be binding on all Member States of the European Union, with each State at liberty to criminalise the acts in the Directive as they see fit.

The proposed text uses language close to the international definition of ecocide (June 2021) proposed by the Independent Expert Panel (IEP) convened by the Stop Ecocide Foundation. Criminalising of ecocide at an EU level would be an important move and set an example for jurisdictions around the world.

Scotland's alignment with the EU

The momentum in the EU towards an ecocide law is significant. Scotland has existing legislative measures that enable it to remain in step with EU law. The UK Withdrawal from the European Union (Continuity) (2021) Act 2021 gives Scottish Ministers the right to modify devolved laws where appropriate to ensure that Scotland remains aligned with the EU on matters of devolved competency.⁵⁷ However, the Continuity Act cannot be used to create a criminal offence. The member considers that the creation of a criminal offence using primary legislation would also mean that the proposed Bill is subject to rigorous parliamentary scrutiny and democratic debate.

The member considers that passing an ecocide law would place Scotland at the forefront of ecocide law developments, rather than waiting to react when other jurisdictions have introduced their own laws. In the member's view it would ensure that Scotland keeps pace with proposed EU law as well as strengthening our domestic environmental laws.

Detail of the Proposed Bill

The proposed Bill will create a criminal offence of Ecocide.

As detailed above, an Independent Expert Panel for the Legal Definition of Ecocide was convened by the Stop Ecocide Foundation. The Panel's drafting work was completed in June 2021 with the following definition:

For the purpose of this Statute, "ecocide" means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.

⁵⁷ <https://www.legislation.gov.uk/asp/2021/4/contents/enacted>

For the purpose of the definition:

“Wanton” means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;

“Severe” means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;

“Widespread” means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;

“Long-term” means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;

“Environment” means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.”⁵⁸

In March 2023, the Legal Affairs committee of the European Parliament proposed a definition of ecocide as part of the Directive on the Protection of the Environment through the Criminal Law. Ecocide is defined in the Recital to the proposed Directive as follows:

“When an environmental criminal offence causes severe and either widespread or long-term or irreversible damage to the quality of air, the quality of soil or the quality of water, or to biodiversity, ecosystems services and functions, animals or plants, this should be considered a crime of particular gravity, and sanctioned as such in accordance with the legal systems of the Member States, covering ecocide, for which the United Nations are currently working on an official international definition.”

Article 3(1a) of the Draft Directive establishes a category of behaviour that must be criminalised by Member States of the EU as follows:

Member States shall ensure that any conduct which causes or is likely to cause death or serious harm to any person’s health or substantial damage to the quality of air, the quality of soil or the quality of water, biodiversity, ecosystem services and functions, or to animals or plants constitutes a criminal offence when it is unlawful and committed intentionally. Member States shall ensure that any conduct causing severe and widespread, or severe and long-term, or severe and irreversible damage is treated as an offence of particular gravity and sanctioned as such in accordance with the legal systems of the Member States

⁵⁸ <https://www.stopecocide.earth/legal-definition>

Article 2 of the Draft Directive defines the following terms in similar terms to the SEI definition

“Severe” for the purpose of Article 3 paragraph 1a, means damage which involves very serious adverse changes, disruption or harm to any element of the environment. Including grave impacts on human life or natural resources;

“Widespread”, for the purposes of article 3 paragraph 1a, means damage which extends beyond a geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings

“Long-term”, for the purpose of Article 3 paragraph 1a, means damage which cannot be redressed through natural recovery within a reasonable period of time.⁵⁹

The definition devised by SEI represents the opinion of an independent and expert legal panel. The definition proposed by the Legal Affairs Committee of the European Parliament adheres to this standard closely. The proposed Ecocide Prevention (Scotland) Bill draws inspiration from these definitions, and I propose to define ecocide as follows:

“Ecocide” means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment of Scotland being caused by those acts.

For the purposes of the definition:

“Scotland” has the same meaning as that in section 126 of the Scotland Act 1998 and includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland;

“Wanton” means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;

“Severe” means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;

“Widespread” means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;

⁵⁹ <https://www.stopecocide.earth/breaking-news-2023/eu-unanimous-vote-in-legal-committee-to-recognize-ecocide-level-crimes>

“Long-term” means damage which is irreversible, or which cannot be redressed through natural recovery within a reasonable period of time.

The proposed Bill would not be retrospective but would send a clear message and provide a strong guardrail to deter ecocide. The proposed definition would seek to punish wanton destructive acts (for example oil spills caused by corporate negligence, and pollution of the natural environment), but would not seek to punish individual Scottish citizens for everyday activities (for example, driving to work or using heating or fishing.) The proposed Bill would recognise that although it is important to encourage individuals to make more eco-conscious decisions, the positive actions taken by individual Scottish citizens may be obstructed by those who choose to destroy the environment at a large scale often in the pursuit of profit.

Proposed Sanctions

The proposed Bill would act as a deterrent against destructive environmental crimes taking place in Scotland. To that end the sanctions I propose are significantly stronger than those in existing environmental laws in Scotland.

The member is proposing that punishment would be imprisonment for individuals with financial penalties to be imposed on companies, proportionate to their financial turnover. These measures would encourage both compliance with the law if effectively applied and more responsible investment by corporations.

The proposed Bill would seek to impose the following sanctions:

- Minimum 10 years to maximum 20 years imprisonment
- Financial sanctions worth up to 10% of worldwide turnover for companies over three years

It is envisaged that liability for imprisonment will be attributed to responsible officials such as directors of a company, limited liability partnership or other entity which is not an individual where there is evidence that they directly contributed to a crime.

At present, the proposed EU Directive contains the same financial penalty with a maximum 10-year prison sentence. The proposed length of imprisonment is in line with penalties under the Belgian ecocide law.

These proposed sanctions reflect the member’s ambition to protect the environment and the seriousness with which the courts should treat environmental crime. With these sanctions Scotland’s enforcement agencies would be given a strong deterrent to use to protect its natural environment.

The member would welcome views in response to the consultation exercise as to the proposed severity of these sanctions.

In contrast to existing piecemeal legislation on environmental protection, the proposed Bill will provide an overarching piece of legislation, available to enforcement agencies, with the strictest penalties for those who damage the environment. The existing environmental regulatory framework would complement the introduction of my proposed Bill since SEPA, as primary regulator and enforcing body, already considers issues relevant to ecocide including intent, foreseeability, impact, financial implications, deterrent effect and previous history. The proposed Bill would seek to build on the frameworks already in place, using the expertise of SEPA, ESS and the COPFS to ensure effective implementation.

Implications of the proposed Bill

Human Rights

Climate change and ecocide threaten the effective enjoyment of a range of human rights, including those to life, water and sanitation, food, health, housing, self-determination, culture and development. Using a human rights lens helps deepen our understanding of ecocide's vastly disproportionate impacts by revealing the ways in which environmental destruction exacerbates existing poverty and inequalities, and compounds intersecting forms of discrimination.⁶⁰

As will be explored in this section, adopting a human rights-based approach to the policy may positively impact on specific groups and their human rights.

Equalities

Social inequality, intersectional inequalities⁶¹ and the impact of environmental degradation and climate change

Climate change has been described as a risk amplifier.⁶² Where individuals experience inequalities arising due to race, a disability or mental health issues, this will often result in socio-economic disadvantage and compounding inequalities as this in turn leads them to be disproportionately impacted by climate change and environmental destruction.

⁶⁰ [Microsoft Word - The Crime of Ecocide Through Human Rights A New Tool For Climate Justice \(Lisa and Kate\) revised May 26 mve.docx \(internationalcrimesdatabase.org\)](#)

⁶¹ <https://www.gov.scot/publications/using-intersectionality-understand-structural-inequality-scotland-evidence-synthesis/pages/1/>

⁶² See: https://www.rcpsych.ac.uk/docs/default-source/improving-care/sustainability/ecocamhs/ecocamhs---lawrance---the-impact-of-climate-change-on-mental-health-and-emotional-wellbeing-a-narrative-review-of-current-evidence-and-its-implications.pdf?sfvrsn=888ce428_2

The UN report on Climate Change and Social Inequality⁶³ shows the relationship between climate change and social inequality as characterised by a vicious cycle, whereby initial inequality makes disadvantaged groups suffer disproportionately from the adverse effects of climate change, resulting in greater subsequent inequality.

In Scotland, the impact of environmental damage, climate change and associated extreme weather disproportionately impacts protected characteristic groups and those experiencing socio-economic disadvantage.⁶⁴ Such disadvantage can often lead to poor housing, health issues, exposure to pollution events and a reduced resilience in responding to the impact of environmental damage. Those with multiple inequalities are more likely to be negatively impacted by ecocide events.

Disability

Individuals with a disability may be disproportionately impacted by environmental degradation and consequent climate change for the following reasons:

- i. In the event of a severe environmental incident with devastating impact on the environment persons with a disability may experience disproportionate difficulties in evacuation.
- ii. Persons with a disability are more likely to be socio-economically disadvantaged than those without a disability. Those living in areas of high deprivation may be more impacted by pollution and poor air quality whereas groups living in areas with low deprivation are better placed to advocate for a clean environment in their community.
- iii. They may be more likely to be accommodated in insecure or low-quality housing and less likely to have insurance that protects their assets. This can increase the likelihood of being negatively impacted by environmental factors.⁶⁵

Inclusion Scotland has identified that despite international recognition of the greater vulnerability of disabled people to climate impacts, disability issues have received little attention from practitioners and policymakers internationally and in the context of climate governance in Scotland.⁶⁶

Negative impacts on persons with a disability may be especially severe where there are intersecting inequalities e.g. women, children, the poor and minority ethnic groups.⁵

⁶³ https://www.un.org/esa/desa/papers/2017/wp152_2017.pdf

⁶⁴ [Opportunity/Challenge 8: Ensure that policies, action and spend necessary to mitigate and adapt to the global impacts of climate change deliver a just transition for people in Scotland - Resource Spending Review: Equality and Fairer Scotland Statement - gov.scot \(www.gov.scot\)](#)

⁶⁵ A/HRC/44/30 (un.org)

⁶⁶ [Inclusion-Scotland-Its-Our-Planet-Too-Climate-Change-Disabled-People-and-Climate-Action-Report.pdf \(inclusionScotland.org\)](#)

Mental Health

There is increasing evidence of the consequences of climate change and environmental damage on our mental health. A report by the Intergovernmental Panel on Climate Change highlighted the impact of rapidly changing climate on mental health and well-being, from emotional distress to anxiety, depression and suicidal behaviour.⁶⁷

Dr Maria Neira, Director of the Department of Environment, Climate Change and Health at World Health Organization, stated in response to the report:

“The impacts of climate change are increasingly part of our daily lives, and there is very little dedicated mental health support available for people and communities dealing with climate-related hazards and long-term risk.”⁶⁸

The Mental Health Foundation Scotland co-hosted a citizen’s forum on Climate Change and Mental Health at COP 26. The discussion highlighted the direct, indirect and social consequences of climate change on mental health.⁶⁹

By disrupting the conditions known to support good mental health including socioeconomic, cultural and environmental conditions, the impact of climate change and damage to the environment is often particularly acute for those groups who are already disadvantaged such as those with poor mental health.⁷⁰

Race

Minority ethnic groups in Scotland are more likely to be socio-economically disadvantaged.⁷¹ People in this group living in high areas of deprivation may be more impacted by high levels of pollution and poor air quality whereas groups living in areas with low deprivation are better placed to advocate for a clean environment in their community.

People from ethnic minority communities in low-income households and those already experiencing health inequalities are the most vulnerable to the impacts of the climate and nature crises – particularly through poorly adapted housing, air pollution and lack of access to green spaces. As Jabeer Butt, Chief Executive of the Race Equality Foundation observed:

⁶⁷ <https://www.ipcc.ch/report/sixth-assessment-report-working-group-ii/>

⁶⁸ <https://www.who.int/news/item/03-06-2022-why-mental-health-is-a-priority-for-action-on-climate-change>

⁶⁹ <https://www.mentalhealth.org.uk/sites/default/files/2022-06/MHF-COP26-Climate-Change-and-Mental-Health-Forum-SUMMARY.pdf>

⁷⁰ See: https://www.rcpsych.ac.uk/docs/default-source/improving-care/sustainability/ecocamhs/ecocamhs---lawrance---the-impact-of-climate-change-on-mental-health-and-emotional-wellbeing-a-narrative-review-of-current-evidence-and-its-implications.pdf?sfvrsn=888ce428_2

⁷¹ [Scotland’s Ethnic Minorities face overcrowding, poverty and unemployment, says equality and human rights body | Equality and Human Rights Commission \(equalityhumanrights.com\)](#)

“Black, Asian, and minority ethnic people in the UK are more likely to live in urban areas and have bad air quality. Tall buildings, narrow roads, and a lack of green spaces all contribute to air pollution. Areas without enough green spaces have worse air quality. The death of nine-year-old Ella Kissi-Debrah, caused by air pollution, highlights the risks faced by minority groups due to increased carbon emissions. The connection between air pollution and health issues is clear”⁷²

Age

As the impact of degradation of the environment and consequent climate change increases over time it may be argued that young people and children are indirectly disproportionately affected by significant environmental crime. Concern about climate change has led many young people to be affected by climate anxiety.⁷³ In addition, children and older people may be more vulnerable to the health impacts of certain environmental damage, such as air pollution⁷⁴.

Sustainability

Sustainable development requires every generation to use the earth’s resources in a manner that, while providing for its own needs, does not harm the resources needed for future generations. Ecocide is a crime against sustainability as it degrades the environment and natural resources.

The proposed Bill should improve quality of life by deterring ecocide and safeguarding our natural environment for future generations.

The achievement of the proposed Bill’s aims would lead to a positive impact on local environments. An ecocide law may also increase public awareness of the importance of protecting Scotland’s environment. This may lead to broader change with an increase in the use of sustainable alternatives. The introduction of an ecocide law would highlight that Scotland is taking Ecocide and environmental protections as seriously as it can which may have an impact on public attitudes and awareness and use of sustainable materials and energy.

The proposed Bill seeks to build on existing environmental protection legislation and provide an overarching protective law to sit alongside existing measures. In the event that the proposal’s aims are achieved, Scotland’s environment will be protected from the most serious environmental crimes. This will result in environmental stability and

⁷²⁷² <https://raceequalityfoundation.org.uk/press-release/environmental-changes-hit-people-from-ethnic-minority-communities-in-britain-harder/>

⁷³ [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(21\)00278-3/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(21)00278-3/fulltext)

⁷⁴ [Opportunity/Challenge 8: Ensure that policies, action and spend necessary to mitigate and adapt to the global impacts of climate change deliver a just transition for people in Scotland - Resource Spending Review: Equality and Fairer Scotland Statement - gov.scot \(www.gov.scot\)](#)

protection of ecosystems with corresponding enhancement of benefits to the human population.

While implementation of the crime of ecocide and consequent enforcement are confined to Scotland and its territorial waters, deterrence of environmental crimes in Scotland may benefit bordering areas as they may result in a reduction of pollution and/or environmental damage that could spread beyond borders. In setting an example alongside other countries that have introduced ecocide into domestic law the proposed Bill may contribute to the decision of other countries, including the rest of the UK, or international organisations to take the same step.

The preservation of the natural environment and consequent impact on climate change is necessary to preserve the planet and allow future generations to enjoy the environment and avoid the worse consequence of climate change and environmental destruction.

Ecocide and consequent climate change may have severe effects on the economic security of society in the future. They may lead to increased inequality and social crises, including poverty, illness, unemployment, homelessness, conflict, displacement and asylum seeking if ecocide is not prevented. Reduction in environmental damage may improve livelihoods and security for future generations and for those who may have been directly affected by damage which has been prevented by the deterrent impact of the proposed Bill.

Resource Implications

The proposed Bill would introduce a new criminal offence. Scotland already has a large number of existing environmental offences. This means that structures are in place for the investigation and prosecution of environmental crime.

Depending on the approach taken to investigating ecocide there may be resource implications for SEPA and the COPFS particularly if the proposed Bill leads to an increase in prosecutions being brought. There may also be costs associated with the hearing of cases by Scottish Courts and Tribunals Service and the costs of implementing custodial sentences. However, the prospect of a deterrent effect and changing attitudes and behaviours may lead to reduced costs over the long-term.

Should the Scottish Government and related services provide resources and public information to raise awareness of the legislation, as would be expected, there would be cost implications.

Additional training and support to environmental officers, lawyers and others may also require additional resources to help support the implementation of the proposed Bill and transition to any new arrangements.

In the event that the proposed Bill has the intended deterrent effect on future incidents of ecocide then there may be a significant cost saving. Ecocide events can cost large sums in terms of clean up, impact on local economies, emigration and health impact as well as the environmental impact. The cost of the proposed Bill will potentially be off set against the saving arising from the intended deterrent effect.

Questions

About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
- an individual – in which case go to Q2A
 - on behalf of an organisation? – in which case go to Q2B
- 2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)
- Politician (MSP/MP/peer/MEP/Councillor)
 - Professional with experience in a relevant subject
 - Academic with expertise in a relevant subject
 - Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

- 2B. Please select the category which best describes your organisation:
- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
 - Commercial organisation (company, business)
 - Representative organisation (trade union, professional association)
 - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
 - Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:
- I am content for this response to be published and attributed to me or my organisation
 - I would like this response to be published anonymously
 - I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. Data protection declaration

I confirm that I have read and understood the privacy notice [Privacy Notice](#) to this consultation which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

Please tick this box if you are under 12 years of age.

Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

Contributions and views regarding the best approach in relation to this Bill are welcome. We are particularly interested in

- Should individual decision makers be held accountable for committing ecocide or should it be organisations that are sanctioned? Or both?
- What would be an appropriate sentence for those found guilty of ecocide?
- What is the appropriate financial and legal sanctions for organisations that commit ecocide?

Aim and approach

1. Which of the following best expresses your view of the proposed Ecocide Prevention (Scotland) Bill? **Please note that this question is compulsory.**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response.

2. Do you think legislation is required, or are there are other ways in which the proposed Bill's aims could be achieved more effectively?

- Yes, legislation is required
- No, legislation is not required
- Do not wish to express a view

Please explain the reasons for your response.

3. Do you think that creating an offence of ecocide would have a deterrent effect against damage to the environment?

- Yes, there would be a deterrent effect
- No, there would not be a deterrent effect
- Do not wish to express a view

Please explain the reasons for your response

4. Do you have any views on the proposed legal definition of ecocide as unlawful or wanton acts committed with knowledge that there is a substantial likelihood of

severe and either widespread or long-term damage to the Scottish environment being caused by those acts?

- Yes, I support the proposed definition
- No, I do not support the proposed definition
- Prefer another definition

Please explain the reasons for your response.

5. Which of the following best expresses your view of the proposed sanction of imprisonment up to a maximum of 20 years for individuals, including responsible officials such as company directors?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response, including if possible your view on the severity of the proposed sanction and those to be held liable.

6. Which of the following best expresses your view of the proposed financial sanctions worth 10% of worldwide turnover for companies over three years?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response, including if possible your view on the severity of the proposed sanction and those to be held liable.

Resource implications

7. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:
- a significant increase in costs
 - some increase in costs
 - no overall change in costs
 - some reduction in costs
 - a significant reduction in costs
 - skip to next question

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.

Human Rights

8. The [Human Rights Act 1998](#) incorporated the [European Convention on Human Rights \(ECHR\)](#) into UK law. It means that public authorities, must not act in a way that is incompatible with the rights set out on the ECHR. Do you have any views on potential impacts of the proposals in this consultation on human rights?

Equalities

9. Any new law can have an impact on different individuals and groups in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law? If you do not have a view skip to next question.

Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

Sustainability

10. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?

If you do not have a view then skip to next question.

Please explain the reasons for your response, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

General

11. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/EcocidePrevention/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above or here [Privacy Notice](#).

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

Monica.Lennon.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Monica Lennon MSP
Room M1.19
Scottish Parliament
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on (0131) 348 6484

Deadline for responses

All responses should be received no later than 9th February 2024. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website <https://www.ecocidelaw.scot/>

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The [Privacy Notice](#) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The [Privacy Notice](#) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The [Privacy Notice](#) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person’s consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspublicknowledge.info.