

Ecocide (Scotland) Bill - call for views

ERCS consultation response, September 2025

About ERCS

The Environmental Rights Centre for Scotland (ERCS) is an environmental law charity. We advocate for policy and law reform to improve environmental rights and compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

1. General Views

1.1. Do you support the overall aim of the Ecocide (Scotland) Bill to criminalise the most serious forms of environmental harm?

Yes.

1.2. How would the Bill interact with existing law, in particular section 40 of the Regulatory Reform (Scotland) Act?

[Section 40 of the Regulatory Reform \(Scotland\) Act 2014](#) ('RRA') establishes offences relating to 'significant environmental harm' but there is currently no legislation that addresses ecocide-level crimes.

Our response makes several proposals to strengthen the Bill. If these are implemented, the Bill would extend the existing legal framework on environmental crimes beyond section 40 of the RRA. It would fill a gap to create liability for the most severe environmental damage and provide higher sanctions proportionate to this crime at the top of the regulatory pyramid.

2. Definition and Scope of the Offence

2.1. 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". Do you agree with the definition of ecocide in the Bill?

No. Section 1 of the Bill should be extended to explicitly encompass both acts and omissions that lead to ecocide-level damage, as included in section 40(1) of the RRA.

Explanation

[Recital 7 of 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.'



ERCS considers that it is appropriate for the offence of ecocide to only address actual harm caused. In Scotland, s40 of the RRA already criminalises acts and omissions that are *likely* to cause significant environmental harm. [Section 294 of the Criminal Procedure \(Scotland\) Act 1995](#) would also automatically criminalise attempts to commit ecocide. Although [the Ecocide Bill \[HL\] in the UK Parliament](#) ('the Ecocide Bill in England and Wales') uses a definition that criminalises acts and omissions with 'a substantial likelihood' of causing ecocide-level damage, we consider that this is covered by existing legislation in Scotland.

2.2. Please comment on the definitions of the following and whether you consider they are defined clearly and appropriately:

Severe environmental harm

Yes, we consider that this is defined clearly and appropriately.

Explanation

"Environmental harm" in the Bill has the same meaning as in section 17(2) of the RRA. This is the same definition as used in section 40 of the RRA (s40(8)).

Widespread

This is defined clearly but damage caused to designated sites including National Parks, Marine Protected Areas and Sites of Special Scientific Interest should be included.

Explanation

'Widespread' is defined in the Bill as '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' (s1(2)(c)).

Designated sites protect species and habitats that are rare, endangered or locally, nationally or internationally significant. Environmental damage to them may therefore have widespread impacts even if it occurs within a limited geographic area.

The inclusion of designated sites would also align with [the EU Environmental Crime Directive](#) (Article 8(h)) and section 40 of the RRA which allows Scottish Ministers to designate areas for its purposes (s40(9)(b)).

Long-term

Yes. This definition could be simplified by removing 'irreversible'.

Explanation

'Long-term' is defined in the Bill as 'irreversible or is unlikely to be reversed through a process of natural recovery within 12 months of the environmental harm occurring' (s1(2)(d)).



Irreversibility is already encompassed by environmental harm that is ‘unlikely to be reversed through a process of natural recovery within 12 months of the environmental harm occurring’. Its inclusion may lead to confusion.

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

No. The Bill should be amended to only apply to relevant organisations, including public bodies, and responsible officials, which should be clearly outlined in section 1.

Only responsible officials who have actual, senior decision-making power in the organisation should be liable. We propose that in this Bill, relevant organisations and responsible officials should have the same meaning as in section 42(3) of the RRA. It creates provisions for corporate offending in relation to section 40 of the same Act, with the following definitions:

‘(3) In this section—

“a relevant organisation” means—

- (a) a company,*
- (b) a limited liability partnership,*
- (c) a partnership (other than a limited liability partnership), or*
- (d) another body or association,*

“a responsible official” means—

- (a) in the case of a company, a director, secretary, manager or similar officer of the company,*
- (b) in the case of a limited liability partnership, a member of the partnership,*
- (c) in the case of a partnership (other than a limited liability partnership), a partner of the partnership, or*
- (d) in the case of another body or association, a person who is concerned in the management or control of its affairs’*

This structure is used in [the Ecocide Bill for England and Wales](#), which applies the offence only to ‘persons of superior responsibility’ (s2(a)) and ‘a company, organisation, partnership or other legal entity’ (s2(b)), which also includes public bodies (s8).

The offence should have strict liability, as is also used in the RRA (s40(3)):

‘A person who acts, fails to act or permits another person to act or not to act as mentioned (in each case) in subsection (1) commits an offence under that subsection whether or not the person—

- (a) intended the acts or failures to act to cause, or be likely to cause, significant environmental harm, or*



(b)knew that, or was reckless or careless as to whether, the acts or failures to act would cause or be likely to cause such harm.'

Explanation

The correct level of responsibility for a crime as serious as ecocide is with organisations and responsible officials. There should be 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.

Criminal offences in environmental law covering Scotland generally apply strict liability (e.g. the offence in section 40 of the RRA). All of the largest fines for environmental offences in Scotland (including [Oran Environmental Solutions, 2016](#); [Doonin Plant, 2010](#)) and in England and Wales (including [Thames Water's recent £104.5 million for wastewater failures](#), [Bellway Homes, 2020](#)) apply strict liability.

Another option is to create separate offences for organisations and responsible officials, with a different standard of *mens rea*. The offence for organisations should have strict liability and the *mens rea* for responsible officials should be 'intent or recklessness'.

2.4. Is it clear how the Bill would apply in cases such as where environmental harm is:

A result of cumulative damage caused by multiple acts e.g. consumption or disposal of a product

We understand that it would not apply in such cases unless the environmental damage caused by an individual act and the person(s) involved met the threshold specified in the offence of ecocide.

Explanation

Individual acts that have contributed to cumulative damage should be addressed by existing legislation, including the RRA.

A result of a form of land management which is otherwise legal e.g. use of chemicals

We understand it would apply if person(s) involved and the environmental harm caused met the thresholds specified in the offence of ecocide.

Explanation

The offence of ecocide in the Bill does not require for act to be unlawful.



A result of a project or development which has been consented or licenced by a public authority?

We welcome and understand it would apply if person(s) involved and the environmental harm caused met the thresholds specified in the offence of ecocide.

Explanation

The offence of ecocide in the Bill does not require for acts to be unlawful. Having a relevant permit or an authorisation from a public body is not a defence under the Bill, unlike section 40(6) of the RRA.

3. Defence of Necessity

3.1. 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?

No. We consider that the defence as currently defined in the Bill conflicts with its stated intent, and question whether it is appropriate for an ecocide-level crime.

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

Yes.

Apart from the exclusion of financial loss, 'greater harm' is not defined in the defence of necessity. How will the assessment of harm be made – is it objective or subjective? Is the assessment of whether the harm is 'greater harm' objective or subjective? It is also unclear whether the person must prove that the action they took was objectively necessary, or that they believed it was necessary.

Our view is that the defence should be removed from the Bill, but another option is to clarify these questions on the face of the Bill instead of relying on the Explanatory Notes. Greater definition of the defence and 'greater harm' is needed.

Explanation

The Policy Memorandum states that the Member's intention is that the Bill establishes in Scots law and sends 'a distinctive signal to individuals and companies' that causing ecocide-level environmental damage is criminally reprehensible (107).

The Policy Memorandum states that the Member included this defence 'to avoid potential injustice' in a situation in which, for example, ecocide-level damage is caused to avoid 'significant loss of human life' (72). However, the Explanatory Notes point out that unlike 'traditional formulations of necessity', the defence in the Bill has not been limited to 'risk of death or injury to a person' (21).

Allowing an unspecified range of 'greater harms' to be possibly used as a defence for ecocide-level damage contradicts the Bill's central purpose and could hinder prosecutions. It could also water down the deterrent effect of the Bill, if persons felt justified to cause ecocide-level environmental damage in preventing what they understood as 'greater harm'.



4. Individual and Organisational Liability

4.1. 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?

No. Only organisations and responsible officials should be held liable for ecocide (see answer 2.3). Workers acting on the instructions of their superiors should be excluded from liability.

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

No. Individual culpability should be limited to responsible officials (see answer 2.3), which should be reflected throughout section 3 and 4 of the Bill.

The term ‘responsible individual’ should be replaced with ‘responsible official or responsible officials’ throughout, which also reflects that more than one person may be liable.

The *mens rea* in 3(1)(b) should be deleted to reflect strict liability, which should be established in section 1 (see answer 2.3). It may be appropriate, following [the Ecocide Bill in England and Wales](#), to 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’ (s4(1)).

Sections 3(3) and 3(4), which explain how relevant organisations and responsible individuals are defined, should be deleted. These definitions should be established in section 1 of the Bill (see answer 2.3).

Explanation

The standard of ‘consent, connivance’ for individual culpability when an organisation commits ecocide is unusually high for environmental offences. Criminal offences in environmental law covering Scotland generally apply strict liability (e.g. the offence in section 40 of the RRA).

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’, which is also used in relation to the liability of responsible officials/superiors in:



- [Section 42\(1\)\(b\) of the Regulatory Reform \(Scotland\) Act 2014](#): ‘the commission of the offence involves the connivance or consent, or is attributable to the neglect, of a responsible official of the relevant organisation.’
- [Section 1255 of the Companies Act 2006](#): ‘committed with the consent or connivance of, or to be attributable to any neglect on the part of...’
- [Section 37\(1\) of the Health and Safety at Work etc. Act 1974](#): ‘committed with the consent or connivance of, or to have been attributable to any neglect on the part of...’

4.3. Are the provisions on vicarious liability clear and appropriate?

No.

Section 4 should be amended to limit liability to organisations and responsible officials as in the Ecocide Bill in England and Wales (s4), which also includes procurement:

‘4 Superior responsibility

(1) Any director, senior manager, partner, leader and or any other person in a position of superior responsibility is responsible for offences committed by members of staff under their authority, and is responsible as a result of their authority over such staff where they fail to take all reasonable measures within their power to prevent or to stop all steps that lead to the commission of the crime of ecocide.

(2) A superior is responsible for offences committed by staff under their effective authority as a result of their failure to exercise authority properly over such staff where they failed to take all reasonable measures within their power to prevent or stop the commission of a crime or to submit the matter to the competent authorities for investigation.

(3) A person responsible for aiding, abetting, counselling or procuring the commission of an offence is regarded as responsible for an offence under this section.’

We agree with the England and Wales Bill that responsible officials should not be held liable where they took ‘all reasonable measures within their power to prevent or to stop all steps that lead to the commission of the crime of ecocide’. However, it should be the responsibility of the defence to prove and it should be incorporated separately as a defence.

Specific provision must also be made to protect whistleblowers.

Explanation

We note that the current formulation of vicarious liability has also been used in section 38 in the RRA. However, the current provision on vicarious liability does not protect workers. It merely provides that, if an employee/agent has committed ecocide, then the employer/principal can also be charged with ecocide, unless by reason of the three criteria set out in subsection (3), the employer/principal can demonstrate that they are not culpable.



The Policy Memorandum on the Bill state that one of its intentions is ‘to ensure that the Bill does not unintentionally cause individuals who are not sufficiently senior in an organisation to be personally culpable’ (74). Although there may be cases where the employee bears some responsibility, we consider that it is a higher priority for this Bill to prevent scapegoating and ensure the liability of superiors.

5. Penalties and Deterrence

5.1. 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?

Yes.

We consider that the custodial sentence of up to 20 years is appropriate and proportionate.

We also agree with the provision for unlimited fines. However, the amount of the fine imposed on an organisation should be considered alongside any unintended consequences, and alternative penalties considered (see answer 5.2).

Explanation

These penalties are higher than the ones included in section 40 of the RRA and are proportionate to the severity of the crime.

However, because the apportioning of the cost of the fine is decided by the company’s responsible officials, a large fine can lead to a decision to cut staff, cut wages, or delay maintenance programmes. Fines have, counter-productively, been found to lead to a decline in service quality, pollution control and other associated public goods (see Whyte, D (2020) *Ecocide*). It is therefore important to make alternatives available to ensure that the penalty is appropriate, proportionate and effective.

5.2. Should the Bill consider alternative or additional penalties?

Yes. In line with the EU Environmental Crime Directive, it should be mandatory to confiscate the instrumentalities and proceeds made from the crime of ecocide (Article 10), extending the Proceeds of Crime Act 2002 which provides for some confiscation of proceeds. In addition to orders for compensation that may include costs of remediation or mitigation, the Bill should include the option of orders to restore the environment.

Drawing from the EU Environmental Crime Directive, the Bill should also make the following penalties available:

- For natural persons (Article 5):
 - o exclusion from access to public funding, including tender procedures, grants, concessions and licences;



- disqualification from holding, within a legal person, a leading position of the same type used for committing the offence;
 - withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence;
 - temporary bans on running for public office.
- For legal persons (Article 7):
- exclusion from entitlement to public benefits or aid;
 - exclusion from access to public funding, including tender procedures, grants, concessions and licences;
 - temporary or permanent disqualification from the practice of business activities;
 - withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence;
 - placing under judicial supervision;
 - judicial winding-up;
 - closure of establishments used for committing the offence;
 - an obligation to establish due diligence schemes for enhancing compliance with environmental standards.

More restorative and reparative sanction approaches should also be considered, such as restorative justice conferences pre-sentencing and environmental enforceable undertakings. Environmental enforceable undertakings are voluntary offers to rectify the damage caused and are legally binding.

Explanation

The EU Environmental Crime Directive notes that sanctions beyond financial penalties are ‘often seen as being more effective ... especially for legal persons’ (Preamble, 31). It is therefore important to make a range of accessory penalties available, emphasising restoration and providing greater guarantees of non-recurrence.

5.3. Does the potential for publicity orders (mandatory publication of conviction details) add meaningful deterrence?

No, publicity orders must be mandatory to add meaningful deterrence.



6. Enforcement and Institutional Readiness

6.1. 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?

Consultation needs to take place with the key bodies to ensure that they have the necessary institutional readiness.

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

No comment.

7. Sectoral, Economic and Community Impacts

No comment.

8. Alignment with International and EU Law and developments in other countries

8.1. How well does the Bill align with international developments (e.g. EU Environmental Crime Directive, Stop Ecocide campaign, individual country approaches)?

We welcome the introduction of an Ecocide Bill which does align with ambitions of international developments. However, it is important to ensure that the provisions of the Bill create a workable domestic crime which is enforceable.

Our proposals are supported by the findings of ERCS's report '[Scoping a domestic legal framework for ecocide in Scotland](#)'.

9. Reporting and Oversight

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

As the most severe form of environmental harm, ecocide is expected to be very rare. The Financial Memorandum outlines a baseline assumption that it would occur in Scotland once every 10-20 years, at a maximum (12).

Instead of regular reporting, it would be more effective and cost-effective to require a report by Scottish Ministers within 12 months after each conviction for ecocide. The report should cover assessment of the damage and outcomes of the conviction, and also assess why the crime was able to take place and make recommendations to prevent a similar crime in the future.



9.2. What other forms of parliamentary or independent oversight might be appropriate?

No comment.

10. Final Comments

10.1. Are there any other issues or concerns you would like to raise regarding the Bill?

This Bill raises significant questions about liability for ecocide that require further scrutiny to deliver the intention stated in the Policy Memorandum.

In this response to the Call for Views, we have outlined our principled position about the exclusion of workers from liability, implementing strict liability, and omitting or further defining the defence of necessity. We will work with colleagues to offer amendments that strengthen and provide clarity in these areas.

10.2. Do you have suggestions to improve the Bill or make it more effective?

It should be made clear that having a permit or an authorisation from a public body is irrelevant to the offence and does not provide a defence.

For more information contact

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