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Edward Mountain MSP
Convener, Net Zero, Energy & Transport Committee
The Scottish Parliament
Edinburgh, EH99 1SP

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Dear Convener,

Ecocide (Scotland) Bill

Thank you for inviting me to give evidence on the Ecocide (Scotland) Bill. I am writing to provide further detail to my evidence which I hope can assist the Committee's scrutiny at Stage 1. This letter summarises ERCS's proposals which have developed since our submission to the Call for Views.

As emphasised at the session, ERCS welcomes Monica Lennon's Member's Bill and supports its general principles to criminalise the most serious environmental harms and act as a deterrent.

However, to ensure that the Bill creates a workable domestic crime which is targeted appropriately to the biggest polluters and is enforceable as a corporate offence, we identify three areas to strengthen:

1. The definition should include omissions as well as acts.
2. Liability should only apply to relevant organisations and officials and exclude workers.
3. The defence of necessity should be further defined.

Currently, some provisions of the Bill are too weak to capture corporate liability and protect workers. Our proposals align the Bill more closely with the intentions in the Policy Memorandum and EU legislation.

1. The definition of ecocide should include omissions as well as acts

The offence of ecocide would fill a gap in Scots law by criminalising a new threshold of severe environmental damage, which is either 'widespread' or 'long-term'.¹ This definition builds on



the offence of significant environmental harm in section 40 of the Regulatory Reform (Scotland) Act 2014 (the RRA).²

Creating an autonomous criminal offence is a critical improvement of the Bill. A relevant permit from a public body is not a defence under the Bill, unlike in section 40 of the RRA.³ This aligns with the goals of the revised EU Environmental Crime Directive, which was informed by reports that identified how over-reliance on permitting was limiting environmental protection.⁴ Example cases include severe PFAS pollution in the Netherlands by Chemours and lead pollution in Belgium by Umicore, in which the companies argued that they had complied with permits.⁵

In addition, the definition of ecocide should be amended to explicitly include both acts and omissions, as both can cause ecocide-level damage.

The revised 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.’⁶ This structure is also used in aligned domestic laws such as Belgium’s ecocide offence,⁷ as well as the RRA.⁸ A summary of different domestic ecocide laws and their provisions is included in ERCS’s report ‘Scoping a domestic legal framework for ecocide in Scotland’.⁹

2. Liability should only apply to relevant organisations and officials and exclude workers

The current liability thresholds in the Bill are in part too high to convict corporations and responsible officials and in part too low to protect workers from being scapegoated.

An important aim for the revised EU Environmental Crime Directive was to strengthen accountability of legal persons,¹⁰ which in 2020 were estimated to be responsible for 75% of environmental crime in the EU with an upward trend.¹¹ The most severe incidents have largely occurred in the corporate sector, and our proposed amendments rebalance liability to reflect this reality and the intention of the Bill.

We propose that the liability provisions need to be differentiated between relevant organisations and relevant officials:

- ***Strict liability ought to apply to relevant organisations.***
- ***Where a relevant organisation has committed an offence, relevant officials should also be held liable if they consented, connived or were reckless as to the acts or omissions of the organisation.***
- ***Relevant officials should also be liable independently if they commit ecocide either intentionally or recklessly.***



We propose revisiting the structure of the Bill to reach this balance as follows.

Section 1 should be amended to apply to responsible officials only, and a separate section should be inserted to cover offences by relevant organisations. The section for relevant organisations should provide for the following:

- Strict liability for relevant organisations which cause severe environmental harm within the meaning of section 1(2).
- A defence to be made available where the organisation can prove, on the balance of probabilities, that:
 - the harm was caused by a foreign cause not within its control (e.g. natural disasters, sabotage, unforeseeable external events etc), or
 - by the conduct of employees or agents acting wholly outside the scope of their authority and contrary to effective compliance systems maintained by the organisation. This element of the defence will not be available if the relevant organisation is unable to prove that their compliance systems are effective.
- Where a relevant organisation is convicted of an offence, the penalties in sections 5, 7 and 8 will apply.

Section 3 should be amended so that the heading reads as ‘culpability of responsible official where organisation commits an offence’.

The standard of ‘consent or connivance’ for mens rea in section 3(1)(b) is unusually high for environmental offences and should be amended to ‘consent, connivance or recklessness on the part of a responsible individual’. This aligns with the mens rea for ecocide when committed by individuals.

Section 4 should be amended to reflect that ecocide can only be committed by responsible officials or relevant organisations and should provide for the following:

- Where an employee, worker or agent of a relevant organisation causes severe environmental harm and intends to cause environmental harm or is reckless as to whether environmental harm is caused, then any responsible official of the relevant organisation who has authority over the employee, worker or agent has committed ecocide.
- Similarly, where an employee, worker or agent of a relevant organisation intentionally or recklessly causes severe environmental and intends to cause environmental harm or is reckless as to whether environmental harm is caused, the relevant organisation commits ecocide.
- A defence can be made available where if the responsible official or relevant organisation can show, on the balance of probabilities, that they took all reasonable measures within their power and exercised all due diligence to prevent or to stop all steps that led to the commission of the crime of ecocide. This will protect responsible



officials and relevant organisations where a ‘rogue worker’ has acted beyond the scope of their duties and caused ecocide as a result. This protection is most appropriately formulated as a defence, rather than an element of the offence, as the steps taken by the responsible official/relevant organisation will not be known to the prosecution.

- Specific provision should also be inserted to protect whistleblowers.

3. The defence of necessity should be further defined

We accept that a necessity defence is needed in principle. The defence can be relied upon by both responsible officials and relevant organisations, and we support the burden of proof for the defence being placed on the accused on the balance of probabilities.

For clarity, the defence of necessity needs to be further defined in the Bill to avoid an unspecified range of ‘greater harms’ to be used as defence for ecocide-level damage and to provide greater certainty as to how the defence may be applied by the courts. It is our position that the test for the necessity defence should be entirely objective.

Section 2 should be amended to explain:

- The definition of ‘greater harm’.
- That the test of whether there was a risk of greater harm is an objective test.
- That the test of whether the action taken was necessary to prevent the greater harm is an objective test.
- The definition of ‘necessary’, with clarification that it is an objective test (by providing this definition it is felt that the specific inclusion of the requirement that the action was ‘reasonable’ will not be required).

Establishing an offence of ecocide would ensure that any environmental harm which meets the definition of ecocide is treated as criminal, filling the gap at the top of the environmental governance pyramid of regulation¹² and maintaining alignment with the aims of the EU Environmental Crime Directive.

I hope this letter is helpful in outlining ERCS’s analysis of the Bill which has been informed by our commissioned report ‘Scoping a Domestic Legal Framework for Ecocide in Scotland’¹³ and discussions with legal experts, STUC, UNISON Scotland and the Expert Advisory Group convened by Monica Lennon MSP.

Yours sincerely,

Dr Shivali Fifield

Chief Officer, Environmental Rights Centre for Scotland



¹ [Ecocide \(Scotland\) Bill as introduced](#), s1(2)

² [Regulatory Reform \(Scotland\) Act 2014](#), s40

³ [Regulatory Reform \(Scotland\) Act 2014](#), s40(6)

⁴ Faure (2024) The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law?, *Journal of Environmental Law*, 36: 323–342, pp331-332

⁵ Faure (2024) The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law?, *Journal of Environmental Law*, 36: 323–342, p328

⁶ European Union (2024) [Directive \(EU\) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law](#), Recital 7

⁷ Service public fédéral Justice (29 February 2024) [Loi introduisant le livre II du Code pénal \(1\)](#), Art. 94(1)

⁸ [Regulatory Reform \(Scotland\) Act 2014](#), s40(1)

⁹ ERCS/Killeen & Short (Mar 2024) [Scoping a Domestic Legal Framework for Ecocide in Scotland](#), p34

¹⁰ Council of the European Union (December 2021) [Impact assessment report accompanying the document Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC](#), pp15 & 24

¹¹ Council of the European Union (October 2020) [Evaluation of the DIRECTIVE 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law \(ENVIRONMENTAL CRIME DIRECTIVE\)](#), p36 & 49

¹² John Braithwaite (accessed 8 October 2025) [Responsive regulation](#)

¹³ ERCS/Killeen & Short (Mar 2024) [Scoping a Domestic Legal Framework for Ecocide in Scotland](#)