

Proposed Ecocide (Prevention) (Scotland) Bill – Monica Lennon MSP

Summary of Consultation Responses

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament's Non-Government Bills Unit (NGBU). Section 4 has been prepared by Monica Lennon MSP and includes her commentary on the results of the consultation.

Where respondents have requested that certain information be treated as “not for publication”, or that the response remain anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses are available on the following website www.ecocidelaw.scot .

Section 1: Introduction and Background

Monica Lennon's draft proposal, lodged on 8 November 2023, is for a Bill to:

protect the environment in Scotland and deter environmental damage by introducing the crime of ecocide into Scots law.

The proposal was accompanied by a consultation document, prepared with the assistance of NGBU. This document was published on the Parliament's website, from where it remains accessible:

[Proposals for Bills – Scottish Parliament | Scottish Parliament Website](#)

The consultation period ran from 8 November 2023 to 9 February 2024.

The following organisations and individuals were sent copies of the consultation document or links to it:

- RSPB Scotland
- Scottish Environment LINK
- Stop Climate Chaos Scotland
- Environmental Rights Centre for Scotland
- Plantlife
- Scottish Wildlife Trust
- Bishops Conference Scotland
- The Law Society of Scotland
- SEPA
- Environmental Standards Scotland
- WWF
- Mighty Earth
- Stop Ecocide International
- Wildfish
- John Muir Trust
- Circular Communities Scotland
- APRS
- STUC
- Climate Cafés
- Commonweal
- Disability Equality Scotland
- Children's Parliament
- Children and Young People's Commissioner
- Flora and Fauna
- Animal Equality UK
- Coastal Communities Scotland
- Socialist Environmental Rights Association
- Faculty of Advocates
- Royal Scottish Geographical Society
- Trees for Life

Monica Lennon raised awareness about the consultation by holding public events with politicians, stakeholders and media to publicise the launch of the consultation process. She also held a parliamentary briefing for MSPs and engaged with stakeholders' in person and online events on ecocide. The consultation was also promoted on social media and through print and broadcast media to invite responses from individuals and organisations on all sides of the debate. The consultation received extensive coverage.

The consultation exercise was run by Monica Lennon's parliamentary office.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament's website:

- Standing orders (Chapter 9): [Standing Orders | Scottish Parliament Website](#)
- Guidance (Part 3): [Guidance on Public Bills | Scottish Parliament Website](#)

Section 2: Overview of Responses

In total, 3,379 responses were received.

There were 134 responses attributed to organisations. They can be categorized as follows:

- 6 (4%) from representative organisations
- 10 (7%) from public sector organisations
- 19 (13%) from private sector organisations [e.g. individual company or business]
- 75 (53%) from third sector organisations
- 24 (2%) were other types of organisations

3,245 responses were made by individuals. They identified as follows:

- 271 (8%) from professionals with experience in a relevant subject;
- 146 (5%) from academics with expertise in a relevant subject;
- 2,806 (86%) from members of the public;
- 22 (1%) from individual politicians [MSPs, MPs, MEPs, peers, councillors]

2,329 (69%) respondents were content for their submission to be published and attributed to them. 794 (23%) respondents requested that their response be published anonymously, and 256 (7.5%) respondents asked for their response to be considered, but not published.

A very high majority of respondents, just over 95%, were fully supportive of the proposal. A further 3% were partially supportive.

A very small minority, 34 respondents, just over 1%. were fully opposed to the proposal. nine respondents (< 0.5%) were partially opposed. 19 respondents were neutral, and 15 respondents did not wish to express a view.

Disclaimer

Note that the inclusion of a claim or argument made by a respondent in this summary should not be interpreted as verification of the claim or as endorsement of the argument by the Non-Government Bills Unit.

Section 3: Responses to Consultation Questions

This section sets out an overview of responses to each question in the consultation document.

General aim of proposed Bill

The consultation document outlined the aim of the proposed Bill and what it would involve. Respondents were asked:

Question 1: Which of the following best expresses your view of the proposed Bill (Fully supportive / Partially supportive / etc.)? Please explain the reasons for your response.

All 3,379 respondents answered this question.

- A very high majority of respondents, just over 95% - were fully supportive of the proposal
- A further 3% were partially supportive
- A very small minority, 34 respondents, just over 1% were fully opposed to the proposal
- 9 respondents (< 0.5%) were partially opposed
- 19 respondents were neutral
- 15 respondents did not wish to express a view

The main reasons given for supporting the proposed Bill were:

- it will strengthen protection of the environment and biodiversity
- It will set an example for other countries to follow and keep Scotland at the forefront of international and European developments in environment legislation
- it will help to preserve the planet for future generations
- it will have a deterrent effect on potential offenders

Reasons for supporting the proposed Bill

Strengthen protection of the environment and biodiversity

A common theme among respondents was the importance of a law on ecocide in practical terms as well as a signifier of a change in approach towards environmental protection. Many respondents viewed the proposed Bill as a positive development to protect the environment and biodiversity.

Mighty Earth (non-Smart Survey responses) stated:

The proposed Ecocide Prevention Bill would be a positive step forward in ensuring the protection of the environment and biodiversity in Scotland. The transformative change needed to protect the environment will not be possible without effective legal mechanisms to punish actors responsible for the most egregious environmental harm and to act as a deterrent to prevent such damage.

The Eden Project (SS 235637950) was also fully supportive of the proposal stating:

Living within the constraints of nature and working with its grain will, in our view create wealth and a philosophical and spiritual position that will encourage changes in lifestyles, governance and public policy that will support future generations.

The organisation Animal Equality (SS 237486570) also fully supported the need for the proposed Bill:

Without such a Bill in place, we risk corporations causing irreversible environmental harm with relative impunity. Instead, by enacting this proposed robust legislation and taking further measures, the Scottish Government can uphold its vision to safeguard its local ecosystems and play its role in curbing the ongoing climate crisis.

A number of respondents who were fully supportive of the Bill highlighted the disproportionate impact ecocide level events can have on certain groups. For example, Women for Independence (SS 237509390) stated:

The climate emergency is a public health issue - women and children are consistently the hardest hit by poverty, disaster, by environmental loss and lack of locally- produced nutritious food, with greater financial worries and caring responsibilities often limiting their ability to relocate. Climate change and pollution therefore widens inequalities and adversely affects women and children.

Among individual respondents, many shared the view that the proposed Bill would strengthen protection of the environment. Shaun Michael Sutton (SS 231027470), who was fully supportive of the proposal, highlighted the need for progress on protection of the environment as current systems are not sufficient:

How we have been caring for our environment, as a collective of environmental custodians, has clearly failed, from a decline in salmon in the rivers, to the extent our environment seems to have no rights of its own to self-determinate what is best for the ecosystems fostering this environment. Something much more needs to now be considered, while we continue to enjoy time to act.

Jessica Kerr (SS 23243652) agreed with the need for collective action in the form of a new offence of ecocide:

I believe that in order to make the necessary changes to the way we collectively live our lives in Scotland, we need the law enforcing our wish to protect nature, biodiversity, our environments and livelihoods that rely on them. It seems that big business is exempt from the same considerations as normal people who are doing their best to live their lives in an environmentally friendly way, yet it's the big businesses that make the most negative impact. I feel that this bill recognises that systems change is necessary, and sadly that change hasn't come about through the simple understanding that we need to make that change, so now a legal framework is required to enforce that change on businesses profiting at our environment's expense.

Dani Esposito (SS 233625191) thought that the proposed Bill was an important development in providing greater protection for the environment:

Making ecocide a crime will be a crucial tool to protect our environment which cannot defend itself with the progress of climate change, deforestation, pollution, construction etc. It will spread awareness of the interconnectedness of our human wellbeing and that of our natural environment. It will elevate the rights of our natural environment and place a true value on the importance of its safeguarding.

Leading by example

As was set out in the consultation document, the Bill proposal was inspired by the Stop Ecocide Movement. A co-founder of Stop Ecocide International was Scottish lawyer and activist, Polly Higgins. Many respondents highlighted an opportunity for Scotland, as a country with a rich and beautiful natural environment to be the first nation within the UK to introduce a crime of ecocide. They also reflected on the need for international cooperation on environmental issues and many highlighted the importance of Scotland keeping pace of international developments.

The Royal Geographical Society (SS235270067) highlighted the opportunity for Scotland to show leadership:

The fact that the principle of ecocide as a law was instigated by a Scot (Polly Higgins) makes it doubly worthy of Scotland showing leadership on this critical geographical issue.

The Care of Creation Group from St Ninian and St Cuthbert's Parish, Hamilton (SS 236647105) stated:

Scotland is one of the most beautiful countries on earth. We have a duty to protect, not only the population but also our wildlife whether in rivers, seas, land or air. As was seen during lockdown, nature can return to places where pollution made it nigh on impossible.

The opportunity to lead by example within the UK was a focus of Felton CAN - Climate and Nature (SS 237295042). It stated:

It is extremely heartening to learn that Scotland may be the first country of the UK to bring an ecocide act into legislation, in line with developments in an increasing number of nations around the world. Such an act is long overdue and would safeguard future generations.

Open Seas Trust (SS 237514890) highlighted the European and international context:

We also support the proposals due to other emphasis it places on Scotland keeping pace with the European Union and other progressive global environmental protections, as well as the recognition of ecocide as part of the Rome Statutes, in order to hold states accountable for their own acts, or failure to prevent and address acts, of ecocide.

Environmental Rights Centre for Scotland (ERCS) (non SS response), which was partially supportive of the proposal overall, highlighted the opportunity the proposal presented to keep Scotland up to date with European developments:

Legislating to criminalise ecocide would align with the Scottish Government's commitment that Scottish laws 'keep pace' with European Union ('EU') law under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

ERCS also acknowledges that by incorporating ecocide into Scots law, Scotland would join the growing number of jurisdictions – including the EU – in criminalising ecocide-level environmental damage.

Vanessa Morris (SS 232285417), an individual respondent, supported Scotland being at the forefront of ecocide legislation stating:

We need new laws to protect the Earth, urgent international cooperation, and decisive action locally. I would love to see Scotland, or indeed any country, taking the opportunity to pioneer this legislation. Recognising the Crime of Ecocide would enable us to unite and acknowledge these global issues better, to encourage international lawmakers and citizens everywhere to put our energies towards this cause.

Euan Cuthbertson McPhee (Dr) (SS 237243831) held a similar view on the potential to lead by example, stating:

For too long, people (individually, collectively and corporately) have been able to escape any legal redress for acts of negligence and destruction against the habitats and ecosystems which make up the living fabric of planet earth. Such wilful destruction needs to be curbed

by having robust, internationally recognised legal systems to deal with it. It would be excellent for Scotland to show leadership in this regard.

Impact on children and young people / Preserving the planet for future generations.

A strong theme among respondents was the impact of environmental damage on children and young people. A number of schools responded to the consultation reflecting the views of the children as well as organisations reflecting the views of children and young people.

St Aidan's Primary School in Wishaw (SS 232750051) was fully supportive of the proposal stating:

We believe legislation is required to stop vandalism, deforestation, damage to our ecosystems etc, if people are made accountable for their impact on our environments, we feel they may think twice before doing it again. As it stands right now, we see the impact of a weekend on our forest area every Monday. Litter is dropped, glass is smashed, fires have been set, trees have been cut down etc. We believe Ecocide should be considered a crime because of the impact on our environment.

The Children and Young People's Commissioner Scotland (SS 237478468), who was partially supportive of the proposal overall, stated:

Children and young people have been experiencing increased anxiety about the combined climate and nature emergencies. We have also heard from children and young people that they are frustrated by the lack of progress and that despite their efforts, those in power have not acted. They feel ignored and powerless.

The Young Women's Movement (SS 237395312) highlighted the impact on young women in particular:

As well as protecting the Scottish environment, we believe the creation of a Scottish crime of ecocide would show solidarity with young women and other marginalised groups most affected by climate change, biodiversity loss and extractive violence elsewhere around the world

A number of organisations and individual respondents focussed on the consequences for future generations of a failure to take action to tackle ecocide. Skye Communities for Natural Heritage (SS 236832004) stated:

We are witnessing the gradual but constant destruction and pollution of our natural environment. We are very concerned for future generations that this must be halted and reversed, otherwise they will live in a

compromised, depleted world which may, in due course, endanger humanity.

Tyrone Probert (SS 231531925), an individual, respondent stated:

This law is for all of us to be able to have a sustainable future for generations

Neil Woodley (SS 234421706) also emphasised the potential of the proposed legislation to contribute to preserving the environment for future generations:

We must ensure there is a law to protect our natural environment and heritage so we can pass it to our children. For too long we have witnessed economic and business interests be put above those of the natural world. The destruction and harm of eco systems is a direct threat to our children's future and more so now in the era of climate emergency.

Deterrent effect on polluters

A strong theme among those responses that were fully supportive was that the proposed Bill would operate as a deterrent and prevent ecocide level crimes taking place. This theme is more fully explored in the summary of answers to question 3, below.

Respondents stated that to ensure maximum deterrent effect for the proposed Bill:

- the proposed penalties required to be sufficiently severe
- there must be full implementation and enforcement of the legislation
- the legislation required to be publicised to increase public awareness with the aim of changing practices and attitudes towards environmental protection.

The organisation, Trees for Life (SS 237460350), emphasised the importance of stricter penalties as a deterrent in its response:

Current legislative mechanisms are patchy and insufficient to respond to the scale of the challenge we face in addressing contributors to the nature and climate emergencies. Stronger legislation with stricter penalties for mass environmental damage are necessary to deter destructive practices and better incentivise industry transition to more sustainable environmental operations.

Unison Scotland (non SS response) highlighted how important it was that penalties were proportionate and affected offenders by impacting profits. In its view there would be a deterrent effect:

if this and other environmental legislation is properly enforced, with sufficient resourcing - and if there are strict enough penalties, including fines commensurate with the severity of the crime of ecocide. If the penalties are lower than the profits made, that will not support deterrence.

Armoury Vintage (SS 234083156) highlighted that a deterrent effect might arise from fear of reputational damage as well as the practical impact of the proposed penalties:

Punishing individuals and companies will not only have the consequences of financial loss through funding court cases, but it will damage the individuals or parties reputations and credibility, with individuals facing prison time. In short making ecocide an offence will have substantial effect on the perpetrator or perpetrators in question. This is I believe is very substantial deterrent.

The additional deterrent effect of introducing consequences for individuals working within companies was highlighted by a number of respondents who were fully supportive of the proposal. For example, individual respondent, Ewan McGhee (SS 231854343) stated:

Company directors and owners are in those positions because they want to be affluent. The offence of Ecocide would provide a very real deterrent to them increasing their wealth and status in environmentally irresponsible ways in the form of long prison sentences and heavy fines.

Individual respondent, Mandy Cairns (SS 231064641), concurred with the majority of other respondents regarding the importance of properly enforced proportionate sanctions and emphasised the importance of avoiding loopholes for companies to escape punishment – a theme raised by a number of respondents:

Knowing that there will be severe and lasting consequences to those who damage our planet should act as a deterrent to those intent on destroying our planet. Of course it is also essential that any legislation is written in a way that ensures there are no loopholes for companies, businesses and individuals to avoid taking responsibility for what they have done as is commonly seen in many other laws. Legal and Judicial systems must also be prepared to prosecute, convict and sentence those who break this law which again has not been the case with some other laws

An anonymous individual respondent (237494355), thought that the deterrent effect of ecocide legislation would be increased as different jurisdictions introduced similar legislation, which would leave polluters with limited options:

Having an ecocide law which relates to corporate or governmental environmental crime would have a significant impact as a deterrent against damage to the environment, but only if appropriate penalties were applied. The ecocide law, if adopted by most countries of the world, would prevent corporations from moving bad practices from one country to another, thereby sending a message to them that these practices are not tolerated anywhere. Therefore, if Scotland was one of the first adopters of this law they would also be sending a message to other countries to stop tolerating bad environmental practices.

Adrian Temple Brown (SS 237223008) summarised his support for the proposal as a deterrent:

If the law is strong, the words unarguable and loopholes absent, it will act as a deterrent.

Partial support for the proposal

Overall, the percentage of respondents that were partially supportive of the proposal was 3%. There was a divergence in the number of respondents who were partially supportive between individual and organisational respondents. The percentage of organisational respondents who were partially supportive was higher at 14%.

Support for the principle, but greater detail required

A theme among those organisations that were partially supportive of the proposal was support for the aims and principles behind the proposed Bill but a reluctance to provide full support until greater detail of the proposed legislation was provided.

Environmental Rights Centre for Scotland (ERCS) (non SS response) supported the principle of robust criminal sanctions for ecocide-level crimes, but believed that greater clarity is required on the purpose of the Bill before full support can be given. Stop Climate Change Scotland (SCCS) (non SS response), which was partially supportive, also agreed with the principle, but expressed some reservations, stating:

We therefore support this bill, in principle, and would support its development and introduction to Parliament. However, in drafting a bill and during its Parliamentary scrutiny, account must be taken of the limitations of ecocide as a concept – as well as the need to address environmental and climate-related issues that cannot be addressed by such a new offence.

The UK Environmental Lawyers Association (UKELA) (non SS response) was also of the view that greater detail was required on the purpose of the Bill, stating:

It has the potential to contribute to holding to account those responsible for significant environmental harm and damage and helping to deter such harm in the first place. Nevertheless, there must be clarity as to the purpose of the Bill.

The Church of Scotland (SS 237469616) was partially supportive, and also emphasised the need for scrutiny as the proposal progressed, stating:

The aim of this legislation in giving the natural environment added protection is desirable, the reality of making such a law workable is challenging. Ecocide is a new and challenging concept that will require wide discussion before it can be accepted into law. It will require discussion and public debate to ensure the concept more widely known if legislation is to be taken forward.

Issues with enforcement of current environmental legislation

A further theme among respondents who were partially supportive was a concern that creating a new crime of ecocide would not address many of the causes of environmental harm – which often resulted from the continuing impact of lower-level actions. Partially supportive respondents also raised questions about how a new ecocide law would relate to existing enforcement provisions and emphasised the importance of ensuring that existing legislation to protect the environment is properly enforced.

UKELA (non SS response) stated:

If the aim is to prevent environmental degradation, then it must be recognised that most harm is caused not by single major incidents but by the cumulative effect of actions that are either lawful or unlawful but in themselves minor, so that effort would arguably be better directed at those.

One concern is that if a crime of ecocide is introduced, should the potentially overlapping (in part at least) provisions of s.40 of the Regulatory Reform (Scotland) Act 2014 be repealed? If not, what is the purpose of having both provisions?

If the concern is the poor enforcement of existing legislation, then the causes of that need to be addressed and the added value of a new, higher-profile offence assessed.

Unison Scotland (non SS response) highlighted concerns regarding enforcement of current environmental standards, stating:

Ecocide punishes the most serious environmental crimes (which meet strict impact thresholds) but won't address all, nor can the criminal law address all, as noted above. And to improve the low enforcement rates described in the consultation document, we need better resourcing and direction for properly enforcing existing laws.

Scottish Wildlife Trust (SS 237458166) held a similar view on the need for full implementation and enforcement:

Scottish Wildlife Trust supports robust criminal penalties for ecocide-level offenses, but we believe that these should not be a substitute for addressing gaps in environmental governance and enforcement. It is crucial for Scotland's environmental governance to allocate resources and ensure regulators are committed to holding polluters accountable, which is essential for the success of this Bill.

Scottish Environment Link UK (SS 237475669) also highlighted the importance of enforcing existing law as well as introducing new legislation:

While Scottish Environment LINK agrees with robust criminal sanctions for ecocide-level crimes, these cannot be seen as a replacement for addressing the existing gaps in environmental governance and enforcement.

An anonymous individual respondent (SS 237170329) emphasised the importance of proper scrutiny and protection of the freedom of individuals:

It is a good idea in principle to protect the environment, however, this bill needs deep scrutiny to make sure that it changes the business culture of damaging the environment because it is a cheaper option and adds to a company's profits, and not impact on the freedoms of an ordinary member of the public negatively.

Questions re ecocide as an overarching piece of legislation

Several organisational respondents who were partially supportive questioned the aim of ecocide providing an overarching piece of legislation to tackle all aspects of environmental harm as stated in the consultation document.

Stop Climate Change Scotland (non SS response) summarised this view:

we are concerned about the consultation's view of the Bill as providing 'a singular, overarching piece of legislation that covers all aspects of harm against the environment in an integrated fashion. While ecocide is an 'offence to punish the most serious environmental crimes' as the consultation describes (page 14), it is not designed to address all environmental crimes, but strictly those which meet the particular impact threshold and cause severe and either widespread or long-term damage to the environment. The criminal law cannot address 'all aspects of harm against the environment' as the consultation claims.

ERCS (non SS response) thought that the proposed Bill would not provide a single piece of legislation to protect against all types of environmental harm and raised questions about the proposed scope and remit of ecocide:

The aims included in the Consultation Document address a broad scale of environmental damage as well as keeping pace with environmental law developments in other jurisdictions. Some of these aims exceed what we would consider the remit of an ecocide law, while others give rise to questions around the Bill's practical implementation.

Ecocide law is not designed to address all environmental crimes, but strictly those which meet the specific impact threshold of causing severe and either widespread or long-term damage to the environment.

We disagree with the Consultation's view of the Bill as providing 'a singular, overarching piece of legislation that covers all aspects of harm against the environment in an integrated fashion'. On the contrary, as also stated in the Consultation, ecocide is an 'offence to punish the most serious environmental crimes' and is therefore better understood as sitting at the top of a regulatory pyramid (Braithwaite, 2016).

In contrast, the Bat Conservation Trust (SS 237469598), which was also partially supportive, was of the view that the aim of a single overarching piece of legislation was beneficial. The Trust stated:

We support the rationale behind the proposed Bill. The legislative framework covering large scale environmental damage can be piecemeal and nebulous so an overarching statute could be very beneficial in reducing large-scale environmental damage events and appropriately reacting when damage has been done. However, ecocide law is not designed to address all environmental crimes, but strictly those which meet a particular threshold and cause severe and either widespread or long-term damage to the environment

NEUTRAL SUPPORT FOR THE BILL

Of the 3,379 respondents, only 19 (<1%) stated that they were neutral in their support for the proposed Bill. The percentage of organisational respondents that was neutral was slightly higher at 3%.

The Scottish Environment Protection Agency (SEPA) (SS 23740811) was one of the organisations that was neutral in their support of the proposal. SEPA focussed on the need for further detail in particular on how an ecocide law would complement existing regulation/enforcement and how effective the proposed Bill would be in practice. In its response, SEPA stated:

It is not clear, from the proposals, how the proposed Ecocide (Prevention) (Scotland) Bill would support, align with or otherwise

affect, the significant environmental harm offence under section 40 of the Regulatory Reform (Scotland) Act 2014 which is already part of SEPA's wider investigatory portfolio. Further clarification of this is necessary...

we are unsure that adding a new ecocide offence as defined in the proposal to the existing legislative framework is necessary nor the most effective approach to achieving the aims set out in the proposal. As the proposed definition of Ecocide covers acts which are an offence already under Section 40, having two offences covering the same acts could create uncertainty. At page 14 of the Consultation it states that the proposed ecocide offence 'would create an autonomous criminal offence to punish the most serious environmental crimes'. Section 40 already provides for this...

We consider that more detail is needed around the practicalities that are needed to ensure the success of the proposals, such as extending investigatory powers of different agencies such as SEPA to the proposed offence, measures to improve effectiveness of investigation of the offence and steps that would help with the prosecution of the offence, with particular reference to involvement of the Crown Office and Procurator Fiscal Service.

A joint response submitted by The Centre for Climate Crime and Climate Justice, Queen Mary University of London, We Own It, Scottish Hazards Campaign, UK Hazards Campaign, Institute of Employment Rights and Violation Tracker UK (non SS response) was also neutral in support. The joint response stated that the organisations could not commit to supporting the proposal until the final text of the Bill was published.

The response also stated that the proposed Bill should:

- 1. Not be restrictively narrow and should therefore be designed to capture the full range of pollution offences that threaten our environment and eco-system.*
- 2. Capture offending by both corporations and individuals.*
- 3. Not allow senior executives to pass criminal responsibility down the corporate chain of command to employees who have less control and authority over decision making.*

In particular, the authors of the joint response were of the view that it was important that the proposed Bill did not seek to copy the definitions/thresholds set out in the Stop Ecocide International proposal as those were intended for use at an international level and may be “unnecessarily restrictive”.

The response set out mechanisms that should be included in an ecocide offence and highlighted the central role of SEPA in enforcement and the need for adequate funding:

The Scottish Environmental Protection Agency is the critical agency in this field and currently does not have the capacity to viably implement existing law and any future law that address ecocide threats. Systemic underfunding will need to be reversed and pre-2010 levels of funding restored, with an additional resource added to deal with the new burden of investigation and prosecution.

Reasons for opposing the proposed Bill

Of the total 3,379 responses, nine were partially opposed to the proposed Bill and 34 were fully opposed. Combined, this represented less than 1.5% of all respondents.

Existing laws are sufficient

No organisational respondents stated that they were partially opposed to the proposal. Only one organisation, the Scottish Fishermen's Federation (SS 237485822) was fully opposed to the proposed Bill. It stated:

Scotland has a raft of relevant legislation that already exists which contains provisions to deal with failures to comply with environmental law.

Impact on industry

Among individual respondents who opposed the Bill a theme was concern as to how the proposal would impact farming and fishing. An anonymous individual respondent (SS 236396906) summarised this view:

While on the surface this seems like a good idea, I've seen proponents of this bill discussing home-growing and traditional farming methods as somehow "damaging" to our ecology, and am extremely concerned that this bill will be in fact used to clamp down on natural methods of farming and agriculture which have sustained the natives of the British Isles for centuries, rather than on large-scale industrial processes (which are referred to by proponents of the bill as "conventional" farming methods).

Question 2: Do you think legislation is required, or are there 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

3,369 respondents answered this question. An overwhelming majority of respondents, 3,266, (97%) of those who answered this question, thought legislation was required to achieve the proposed Bill's aims.

A very small minority, 52 respondents (1.5% of those who answered this question) thought that legislation was not required. A small minority, 51 respondents (1.5%), did not wish to express a view.

Legislation required

There were a number of common themes among those who thought that legislation was required.

Higher penalties for the most severe and widespread environmental damage

A number of organisations that responded shared the view that legislation was needed to introduce stricter penalties for the most serious environmental crimes.

Scottish Wildlife Trust (SS 237458166) stated:

We believe criminalising ecocide in Scots law would establish an additional tier of penalties for environmental harm. While specific environmental offences are already recognised, such as wildlife crime and water pollution, additional sanctions are necessary to address damage comparable to ecocide. However, careful consideration is needed regarding how these new measures align with existing legislation.

The Open Seas Trust (SS 237514890) shared the view that legislation was required to increase penalties:

Legislation would likely raise the severity of penalty issued for harms to the marine environment, ensuring sentencing more closely aligns with the gravity of the harm caused. This would particularly be useful in Scotland's marine environment where offences are given much smaller punishments than terrestrial harms or marine environmental crimes prosecuted in England.

ERCS, Mighty Earth, SCCS, Unison Scotland and UKELA all shared the view that legislation was required to create a dedicated law to address ecocide level crimes in terms of their scale and severity. SCCS (non SS response) summarised that view:

Criminalising ecocide in Scots law will add an additional threshold of penalties for environmental damage. Specific environmental offences are already recognised in Scots law, including the Wildlife and Countryside Act 1981 and various air and water pollution statutes. However, there are currently no dedicated legal provisions to address environmental crimes comparable to ecocide in terms of scale and severity; that is, causing widespread and substantial damage, which is either irreversible or long-lasting, to an ecosystem

A point raised by a number of respondents was the importance of ensuring that any new legislation works to complement existing legislation. Wild and Legal (SS 237508150) stated:

The bill's passage through parliament should not hinder ongoing work to address serious environmental harm currently occurring, but instead should act as a catalyst for greater enforcement of current protections and the cessation of current policy and practice decisions which enable ecosystem devastation.

Consistency with international developments

A number of respondents were of the view that legislation was required to keep apace of international developments.

ERCS (non SS response) highlighted developments at EU level, stating:

Legislating to criminalise ecocide would align with the Scottish Government's commitment that Scottish laws 'keep pace' with European Union ('EU') law under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. In November 2023, the European Council and European Parliament provisionally agreed to include 'an offence comparable to ecocide' in the proposed replacement of Directive 2008/99/EC on the protection of the environment through criminal law (the revised EU Environmental Crime Directive). Paragraph 2a in Article 3(2) of the final compromise text defines that any particularly destructive criminal conduct as listed in Article 3(2) should be considered a 'qualified offence'. These 'cases comparable to ecocide' should be 'punished with more severe penalties' than other environmental crimes (paragraph 9fa, preamble).

Mighty Earth (non SS response) agreed with that view, stating:

the proposed bill would align with the Scottish Government's commitment that Scottish laws 'keep pace' with European Union ('EU') law under the UK Withdrawal from the EU (Continuity) (Scotland) Act 2021. Under EU law, there is an agreement to create a new offence to punish the most serious crimes against the environment as part of the environmental crime directive, putting Scotland at the forefront of efforts globally to criminalise ecocide in both domestic and international law.

UKELA (non SS response) highlighted the Bill's potential to keep Scots Law aligned with developments in international criminal law:

In view of potential developments in relation to the international crime of ecocide, new national legislation both helps to prompt change and in due course can help ensure consistency, in line with the existing legislation on international crimes against humanity found in e.g. the

International Criminal Court (Scotland) Act 2001 which makes provision for offences under the law of Scotland corresponding to offences within the jurisdiction of the International Criminal Court.

A statement of intent to deter environmental crimes

A further theme among those who thought that legislation was required was the view that the proposed Bill would send a clear message that environmental crimes were taken seriously in Scotland. Some respondents thought that such a message would deter environmental damage.

The Children and Young People's Commissioner Scotland (SS 237478468) summarised this view:

The creation of a new criminal offence is a strong statement, this would not be achieved by continuing to rely on the legislation we have. While more could be done to raise conviction rates this law is not just about detection and punishment it sets a standard, sends a clear message as to what is expected and acts as a deterrent. The law would be preventative in its effect, we want to stop these acts of ecocide happening before the damage is caused.

Wild and Legal (SS 237508150) held a similar view of the importance of sending a clear message, stating:

a legislation on ecocide is also required to transcribe a fundamental value in law. The spirit of ecocide is to prevent the destruction of the environment endangering the habitability of Earth. It is therefore necessary to have dissuasive sanctions, and it's only possible through a criminal law.

Brenda Liston Tait (SS 235156642), an individual respondent, set out this view, which was shared by a large number of respondents:

Creating a law is a powerful way to send a message that destruction of the environment is not acceptable

Nicky Bobbert (SS 233641383), an individual who thought legislation is required, stated:

Legislation is the most effective way of stopping ecocide. Besides discouraging the act of it, it also creates more awareness and public debate on the issue of ecocide.

Questions as to whether legislation is required

A small minority of respondents either did not express a view or thought that legislation was not required.

SEPA (SS 23740811), which ticked “Do not wish to express a view” in response to question 2, referred to existing provisions. SEPA recognised that there was room for improvement of existing laws, and suggested the strengthening of these as an alternative to a new criminal offence:

As indicated in the consultation, section 40 of the Regulatory Reform (Scotland) Act 2014 already makes provision for the strict liability offence of causing significant environmental harm and this is defined more broadly than the proposed definition of ecocide in several respects; therefore, it is unclear how another criminal offence is necessary to achieve the proposed Bill's aims...

However, there are aspects of the section 40 offence which could be improved and legislation would be required to do so. For example, the sanctions available as a deterrent, could be increased - the proposal indicates between 10-20 years imprisonment for individuals and financial sanctions worth up to 10% of worldwide turnover for companies over three years – and the application of the offence to the Crown could be reviewed.

Furthermore, section 40(9) of the Regulatory Reform (Scotland) Act 2014 is an enabling power which allows the Scottish Ministers to provide for certain areas to be designated – any harm to those areas would be treated as significant for the purposes of the offence. Further public consultation on the use of these powers to identify areas in Scotland which merit stronger protection could be undertaken.

The joint response submitted by The Centre for Climate Crime and Climate Justice, Queen Mary University of London, We Own It, Scottish Hazards Campaign, UK Hazards Campaign, Institute of Employment Rights and Violation Tracker UK (non SS response) also highlighted the existing 2014 Act, and emphasised that, unless proper enforcement was carried out, the impact of the proposed Bill may be limited. The response pointed to low levels of enforcement of environmental crime in Scotland as a cause for concern:

In our view, the Regulatory Reform (Scotland) Act 2014 contains sufficient powers to precipitate prosecution for exactly the type of offence set out in the consultation document, although the maximum fine for offences under this Act (£40,000) is not appropriate for the most serious environmental offences...

The real problem with the use and application of existing law noted above is the lack of political will to enforce it, the related lack of enforcement capacity in regulatory agencies, and more generally a risk averse approach to regulatory enforcement. This is not a problem that is confined to Scotland, and neither is it a problem that is confined to environmental regulation. It is the result of the ongoing managed decline of Britain's regulatory capacity. We address these issues, as they apply to SEPA in the following section.

Overall, enforcement action by SEPA has been in steady decline since 2010. Between 2010 and 2022 there was a 70% decline in overall enforcement action by SEPA.

The experience of the Corporate Manslaughter and Corporate Homicide Act provides us with an example of a similar law that was introduced with the aim of precipitating a major cultural shift. The Act came about after many years of work by trade unions and victims' organisations in the wake of the Piper Alpha and Zeebrugge disasters, and a series of train disasters in the 1990s. In Scotland, Scottish Hazards and the Scottish Trades Union Congress (STUC) were instrumental in pressuring the (then) Scottish Executive to propose a new Bill on Corporate Homicide in Scotland which was eventually incorporated into the UK law.

As we note above there is yet to be a single prosecution under this Act, yet deaths at work in Scotland continue to plague workers.

The Scottish Fishermen's Federation (SS 237485822) was one of only four organisational respondents that thought that legislation was not required. It stated that there were sufficient existing laws to deal with environmental crime.

Some individual respondents also highlighted that existing laws were, in their view, sufficient. An anonymous respondent also questioned prosecuting individuals and thought that education may be more effective:

Instead of this Bill, damage to wildlife and environments could be better tackled using existing legislation or by introducing more focused bills aimed at specific issues. And I don't agree that individual citizens shouldn't be prosecuted or fined, or at least taxed, for everyday destructive activities - perhaps more effective at raising awareness than legislation aimed at big companies (Anonymous non SS response)

Another point made by those individual respondents who thought that legislation was not required was that the proposed law would negatively impact existing farming and fishing practices and businesses.

There are already laws in place to prevent industry from polluting our environment, and this bill seems tailor-made to oppress those who use traditional, non-destructive methods. (Anonymous SS 236396906)

Question 3 : Do you think that creating an offence of ecocide would have a deterrent effect against damage to the environment? (Yes/ No/ Do not wish to express a view). Please explain the reasons for your response

3,365 respondents answered this question. An overwhelming majority of respondents, 3,249, (97% of those who answered this question), thought that creating an offence of ecocide would have a deterrent effect.

A very small minority, 70 respondents, (2% of those who answered this question), thought that it would not have a deterrent effect. A small minority, 46 respondents (1%), did not wish to express a view.

Among respondents who thought that the creation of an offence of ecocide would have a deterrent effect, there were three clear themes that related to the level of successful deterrence: the need for proportionate penalties, which would have an impact on those who may cause ecocide, proper enforcement of the legislation and the possibility of a societal shift in attitudes to environmental damage, which may have a deterrent effect.

Parents for Future Scotland (SS 237509725) encapsulated these views:

There would be deterrent effect if the level of penalties was sufficiently high to reflect and repair whatever damage was being caused, and disincentivise the damage in the first place. Penalties must be enforced for deterrence to occur; the punishment needs to fit the crime. There also needs to be a societal transformation, and discussions around the notion of ecocide and environmental harms could play a role in that transformation - perhaps eventually meaning that deterrence was no longer needed.

The need for proportionate penalties that will act as a deterrent

Many respondents made a connection between the seriousness of ecocide crimes and the level of penalties required to act as a deterrent. A number of organisations, including Scamon Scotland, Open Seas Trust, Women for Independence, Wild and Legal and the Royal Scottish Geographical Society were of the view that given the resources of large scale polluters penalties needed to be set at a level where they would have impact. Scottish Environment LINK (SS 237475669) summarised the view:

the dissuasiveness of this law depends on whether its penalties are proportionate to the severity of the crime. For example, if the fines for ecocide are perceived by corporations to be less than the profits arising from it, it is unlikely that the law will be preventative. We also do not believe that fines only would be enough as discussed below. The

extent of the deterrent effect would depend on whether the law was enforceable in practice, which depends on multiple factors including willingness and resources to investigate and prosecute, as well as being able to prove that damage was caused by the actions of an individual or company.

Choirs For Climate (SS 230898945) also focussed on the importance of sufficiently severe sanctions stating:

At the moment, companies can harm the environment with a reasonable knowledge of what size of fine they can expect. This doesn't create a deterrent, it creates a market. If the foreseen profits are greater than the fine they'll do it anyway. The threat of prison time for directors will have a more substantial deterrent effect.

Vanessa Morris (SS 232285417), an individual respondent, also highlighted the importance of the penalty being appropriate to the crime.

Yes. Introducing the crime of Ecocide into Scots law, with legally enforceable measures, would create important incentives for companies and individuals to act. There would be greater consequences for offenders. The current laws do not reflect the seriousness of environmental destruction.

The need for proper enforcement

Many respondents felt that the deterrent impact was dependent on the effective implementation and enforcement of any new legislation. Respondents in many cases raised concerns at the level of enforcement for existing legislation.

UKELA (non SS response) stated:

Any deterrent effect depends, however, on a belief that there will be effective detection and prosecution of offences; if the reason for introducing the offence is that the criminal law is not being effectively used at present, will just adding a further offence change that?

Scottish Environment LINK (SS 237475669) also highlighted the importance of enforcement:

The extent of the deterrent effect would depend on whether the law was enforceable in practice, which depends on multiple factors including willingness and resources to investigate and prosecute, as well as being able to prove that damage was caused by the actions of an individual or company.

An anonymous individual respondent (SS 230999701) thought there would be a deterrent effect but only if the “enforcement mechanism is strong and unwavering.” Another anonymous individual respondent also that, without meaningful enforcement, the proposed Bill would have limited impact:

The crucial element here is how enforceable the crime is; many countries such as Russia and Ukraine have a domestic crime of ecocide, however without the risk of enforcement the crime in a way becomes obsolete. If large corporations/individuals (depending on the scope of the proposed offence) see similar actors facing repercussions for their environmental damage, they are likely to be thwarted from acting in similar ways. Unfortunately, these types of actors are driven by the desire not to be caught/fined, rather than a desire to save the climate, and therefore soft law targets without enforcement mechanisms are largely useless.

Changing attitudes/heightened awareness

Some respondents thought that as well as having a deterrent effect due to fear of prosecution, the proposal may deter future environmental crimes through increased awareness of ecocide resulting in changing attitudes towards environmental damage at societal level.

The Bat Conservation Trust (SS 237469598) was one of the organisations who shared this view:

We also judge that the creation of the offence would lead to increased public awareness of environmental damage events and so increasing the social deterrent as well as the punitive one.

Stop Ecocida Italia (SS 234086692) also highlighted the importance of increased awareness as a factor in deterring crimes:

Emphasizing the adoption of a crime of ecocide among the most serious crimes against humankind is the best tool to signal the importance of creating a shift in consciousness in the way we humans see our relationship to nature, as a living being and not solely as an asset. An ecocide law would stimulate this moral shift, and, at the same time, grant a preventive approach to and a punitive deterrent against environmental degradation. I would stress once more the relevance of including public, private and civil actors in the global movement to achieve the vital target of protecting nature and humankind against the tangible threat of environmental collapse.

Common Weal (SS 237071002) emphasised the importance of publicising the legislation to maximise the deterrent effect:

We think creating an offence of ecocide may have a deterrent effect but would require a broader promotion and public knowledge of the issue in order to fully understand the implications of the offence.

Sam Bartlett (SS 23246889), was one of the individual respondents who also highlighted the need for attitudinal changes at a macro level

There would be deterrent effect if the level of penalties was sufficiently high to reflect and repair whatever damage was being caused, and disincentivise the damage in the first place. Penalties must be enforced for deterrence to occur; the punishment needs to fit the crime. There also needs to be a societal transformation, and discussions around the notion of ecocide and environmental harms could play a role in that transformation - perhaps eventually meaning that deterrence was no longer needed.

No deterrent effect

A very small minority of respondents thought that the proposed legislation would have no deterrent effect. A theme among this category of respondents was scepticism regarding the levels of enforcement of existing environmental crime which informed the view that there would be issues with enforcement of any new ecocide law.

Concerns about enforcement

An anonymous individual respondent (SS 234945252) stated:

Fly tipping legislation is widely ignored. Building on green belt is encouraged, the landscape and natural world is trashed with windmills. Protecting the environment should be policed properly before more time and money is wasted.

Prof Colin T Reid (SS 23621151) was unconvinced that the proposed law would deter those committing environmental harm by changing their conduct:

Those causing environmental harm of the scale envisaged by the new offence are likely not to paying attention to, or not to be caring about, the long-term consequences of their conduct. In neither case is the presence of what will inevitably be a little-used offence likely to add significantly to the factors influencing their behaviour. Certainty of detection and prosecution are likely to be the key elements in deterrence. It is possible, though, that for some potential offenders with a high public profile, the risk of being convicted of ecocide and the stigma that would attract may provide some additional deterrent when compared to the risk of being convicted of what can be presented as a technical infringement that is not a “real crime”.

There is already the potential for very substantial civil liability to arise under the Environmental Liability (Scotland) Regulations 2009 (SSI 2009/266), with a lower threshold of strict or fault liability than proposed here. Yet there is little evidence of this being an active consideration in shaping the conduct of individuals and enterprises, whilst the very

limited use made of those provisions reinforces the uncertainty of when a new crime of ecocide would be invoked.

The theme of international corporations with huge profits operating outwith the law, with little regard to domestic legislation was raised by a number of respondents who questioned the deterrent effect of the proposal.

Another anonymous respondent (SS 235814631) was of the view that deterrence would not arise only from criminalising environmental crimes but that communities would require to take action to protect their environments:

I think without increased resources put into enforcement creating an ecocide offense alone would not have an effect. It is important also again that communities are empowered to protect their land and the nature they are connected to. That is how we might build long term resilience and resistance against environmental harm.

Question 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

3,349 respondents answered this question. A large majority, 3,021 (90% of those who answered this question), supported the proposed definition..

A very small minority, 81 respondents (2% of those who answered this question), did not support the proposed definition whilst 247 respondents (7%) preferred another definition.

A definition with international consensus

Many individual respondents supported the proposed definition as part of their overall support for the proposal. Some stated that their support for the definition arose as it was in line with the consensus developed by international legal experts. For example, individual respondent, Pella Thiel (SS 230992139), stated that she supported the definition as:

This is the definition proposed for the international level - important to align with that.

Some organisational respondents also supported the definition as it arose from consensus among legal experts. Wild and Legal (SS 237508150) stated:

This definition, taken from that of the panel of experts commissioned by Stop Ecocide, seems to us to be entirely relevant. Indeed, it is the subject of a broad consensus and is widely used at national and international levels.

Richard Thomas and Co Hydro Ltd (SS 237324393) thought that the definition proposed was in the strongest terms available:

I believe that the proposed legal definition of ecocide represents the strongest and most comprehensive definition of ecocide currently being considered. I support the definition as I believe it will aid in the proposed Bill's overall goal of preventing acts of ecocide.

Jojo Mehta (SS 237000454) set out her views as to why the proposed definition was the correct one:

This is based on the Independent Expert Panel definition (2021) which has proved to be the most authoritative and robust definition yet formulated, credible in both national and international contexts. Importantly, it focuses on potential consequences rather than a list of acts, which is important for a number of reasons: ensuring the definition remains relevant over time; encouraging decision-makers to genuinely examine practices and their potential impacts rather than focusing on avoiding only certain categories; putting everyone equally on notice rather than pointing fingers at particular sectors. The "unlawful or wanton" threshold ensures that it both reinforces existing laws and also creates accountability for disproportionate very severe harm that would significantly outweigh the beneficial (and permitted) purpose of a given project. It is both grounded in established legal language and concepts, and intuitively understandable to the layperson.

The large number of responses that supported the definition included the following organisations: Greencity Wholefoods, Parents for Future South London, Women for Independence, Scamon Scotland, Animal Equality, Trees for Life, The Druid Network, Scottish Communities Climate Action Network and St. Teresa's Primary School.

Concern regarding loopholes

A specific concern raised by some individual respondents who supported the definition was that the requirement that the crime be "committed with knowledge" would afford a loophole or defence to offenders. For example, Dr Kate Rawles (SS 237225804), who supported the proposed definition, stated:

I support the definition but feel that care needs to be taken so that 'committed with knowledge' cannot be used as a loophole, and that companies are under an obligation to perform rigorous research into likely impacts of their activities in advance of undertaking them.

Individual respondent James Downey (SS 234150791) also raised this point:

Companies could argue they didn't know it was environmentally damaging. Leave out the "with knowledge" loophole. Polluters pay, full stop.

Notwithstanding the overwhelming support for the proposed definition among respondents as a whole, issues and concerns raised by some respondents are summarised here in some detail to reflect the detail in those responses, particularly from organisational respondents and individuals with professional experience in the area.

It is noted that, similar to the response to Question 1, there was a divergence in levels of support for the definition between individual and organisational respondents with a higher percentage of organisations opting for “Prefer another definition” than individual respondents.

Debate about the specific wording of the definition

Individual respondent, lawyer Mandy Stewart (non SS response); highlighted issues regarding the definition’s use of “wanton” and “reckless disregard” within the threshold. In her view the definition as proposed would lead to difficulties in prosecuting the crime. She suggested that the definition could be tailored to the Scottish legal system with an emphasis on how prosecutions might proceed in practice.

One significant difficulty with the definition from a prosecution point of view is the inclusion of the “wanton” element. This effectively introduces a proportionality test to legal acts, which are only rendered criminal if they can be shown to be unjustifiable on a cost-benefit analysis. An assessment is thus required of the social and economic benefits of the alleged act, weighed against the environmental damage. The criminality is derived from the excessiveness of the damage. Moreover, the perpetrator must be shown to have “recklessly disregarded” the excessiveness of the negative impact on the environment. This creates an extremely complex uphill battle for a prosecutor to prove their case beyond a reasonable doubt. Firstly, they must lead evidence to demonstrate that the environmental damage was “clearly excessive”, which is a very high threshold given that it will be based on competing expert scientific predictions. Then, they must prove that the accused made this assessment themselves and chose to recklessly disregard it. In these circumstances, it is difficult to imagine any case that would meet these tests.

Professor Colin T Reid also took issue with the wording of the proposed definition, specifically the phrases “unlawful or wanton” and “widespread or long term harm”. In his view further refinement of the definition is desirable. He also raised the issue of jurisdiction and how transboundary incidents may not fall within the definition.

I have concerns over the definition. The fundamental problem is in the phrase “unlawful or wanton acts”. Although this is said to be based on the Statute of the International Criminal Court, there is a vital difference. There the definition in article 8(2)(a)(iv) penalises conduct that is “unlawful AND wanton”; here the proposal is to penalise conduct that is “unlawful OR wanton”. In other words, conduct that that is

otherwise lawful will be criminalised if it is “wanton”. In the first place the novelty of this term as a mens rea requirement in Scots criminal law will inevitably add uncertainty as to the meaning of the offence. Secondly, in a society with a highly developed set of environmental laws, it is hard to see how any conduct that is not already unlawful will meet the alternative test of being “wanton”

The definition of the harm involved also causes problems. If the definition is to be “either widespread or long-term” harm, with the “or” taken at face value, then any breach of environmental law with more than short-term consequences will fall within the definition

Also in relation to the factual elements, restricting the offence to conduct in Scotland that has impacts in Scotland is straightforward in terms of jurisdiction and legislative competence, but means that much that fits the popular image of ecocide will not be covered, given the transboundary scale of both the activities causing and the consequences of severe environmental harm.

Some organisational respondents raised concerns with the specific wording and highlighted the need for a definition that fits within a Scottish legal framework. UKELA raised similar points to Professor Reid in relation to the proposed definition’s use of the phrase “unlawful or wanton” rather than “unlawful and wanton” and the need to give consideration to how transboundary ecocide incidents would be dealt with. UKELA (non SS response) also highlighted that further detail would be required on corporate responsibility stating:

It would be useful to clarify the application of the offence to corporate offenders and to individuals who bear responsibility (along the lines of s. 42 of the Regulatory Reform (Scotland) Act 2014 or reg. 45 of the Water Environment (Controlled Activities) (Scotland) Regulations 2011), noting that this is a departure from the scope of what the International Criminal Court can consider. The application to the Crown should also be clarified (some military activities undoubtedly create a risk of widespread or long-term harm).

The joint response submitted by The Centre for Climate Crime and Climate Justice, Queen Mary University of London, We Own It, Scottish Hazards Campaign, UK Hazards Campaign, Institute of Employment Rights and Violation Tracker UK (non SS response) made a number of points regarding the proposed definition including the importance of a Scotland specific definition and concerns at the use of “wanton” within the definition. The response also refers to a proposed UK Ecocide Member’s Bill as providing an alternative definition and questions the exclusion of corporate persons from prosecution.:

We strongly warn against thresholds in the proposed Bill simply being copied across from the Stop Ecocide proposal. Those thresholds are

designed for use in international law and are un-necessarily restrictive for domestic law. It is difficult to see how a case of ecocide envisaged in the consultation document might be prosecuted if thresholds are set as per the Stop Ecocide proposals.

For example, the definition of ‘wanton’ may create difficulties for prosecution in Scottish law. It includes a ‘proportionality test’, the key wording of which is “damage which would be clearly excessive in relation to the social and economic benefits anticipated.” When the courts are asked to adjudicate using such a test, they will assess whether or not the anticipated benefits could be secured using other means. There is little doubt that an action to prevent over-use of chemicals in agriculture or to prevent toxic pollution in rivers, where those may be causing ecocide, but may not exceed published legal limits, would be defended on the basis that such damage would not be excessive in relation to the “social and economic benefits anticipated.” Removing this wording would make the offence much clearer, would avoid doubt in the courts, and would remove a threshold that is significantly higher than that generally required in Scottish environmental law (for example in the Regulatory Reform (Scotland) Act) 2014.

The proposals in Baroness Boycott’s Private Members Bill to make ecocide a criminal offence in England and Wales currently before the Westminster parliament set out more stringent and domestically appropriate thresholds that would enable prosecution for offences that are currently not captured by existing environmental laws.

A further reason to be cautious about adopting the Stop Ecocide proposals for environmental crime offences committed in Scotland is that they exclude any possibility of the prosecution of companies committing acts of mass destruction of the environment. It has been notoriously difficult in UK law to develop a mens rea test for corporations. The current Stop Ecocide proposal is based on a mode of liability that is more clearly in line with the Rome Statute of the International Criminal Court, in which only natural persons (ie not corporate persons) can be indicted.

A number of organisations had discussed the proposed definition and submitted responses which highlighted a joint approach. SCCS, Scottish Environment LINK, UNISON, Open Seas Trust were all of the view that another definition was preferred and set out joint reasons for their position. Scottish Environment LINK (SS 237475669) summarised the joint response which favours adopting the approach taken by the EU as opposed to the definition favoured by Stop Ecocide International:

LINK supports learning from the current EU work on defining ecocide, including the ELI Report on Ecocide (ELI, 2023) and drawing from the definition of qualified offences or ‘cases comparable to ecocide’ used

by the European Council and European Parliament in the revised Environmental Crime Directive:

'offences referred to in Article 3(2), are considered a qualified offence if they cause destruction of, or widespread and substantial damage, which is either irreversible or long-lasting, to an ecosystem of considerable size or environmental value, or to a habitat within a protected site, or to the quality of air, the quality of soil, or the quality of water (3(2a))' (Article 3(2a), p. 41).

The Directive includes a detailed list of environmental crimes in Article 3(2) (pp. 33-41), which this definition of a 'qualified offence' applies to if they cross the impact threshold.

The need for further research on a suitable definition

The above organisations also made reference to the need for further research and specifically the research carried out by ERCS: SCCS (non SS response) summarised the position:

SCCS notes, however, that LINK recognises that further investigation into how this definition could be applied in Scots law is required. The Environmental Rights Centre for Scotland ('ERCS') has commissioned research which will build on ELI's review, while also drawing on the extensive legal literature of ecocide's criminalisation at the international level. It will consider issues such as those surrounding defining ecocide (actus reus, gravity threshold, fault standard/mens rea, causation), the requirements of the principle of legality, and potential overlap or conflicts with existing Environmental and/or criminal laws in Scotland.

ERCS who preferred another definition provided detail on the work they are carrying out in this regard:

ERCS considers that more consideration on the legal definition of ecocide in the Scottish context is required before we can take a definitive view on any proposals. For this purpose, ERCS has commissioned research by Dr Rachel Killean and Professor Damien Short which will consider potential domestic definition of ecocide, its actus reus, appropriate gravity threshold, fault standard/mens rea, and causation, as well as the potential overlap or conflicts with existing environmental and/or criminal laws in Scotland.

Overlap with existing laws

In its response, SEPA (SS 237404811), preferred another definition as, in its opinion, the current definition overlaps with existing laws:

The definition includes acts which are an offence already under section 40 of the Regulatory Reform (Scotland) Act. Should the proposed Bill progress to legislation, there needs to be a clear understanding of how

it would sit within or complement the existing framework to avoid unintended consequences

Question 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/partially opposed/fully opposed.

3,370 respondents answered this question. A significant majority of respondents, 2,672 (79% of those who answered) were fully supportive of the proposed sanction, with a further 455 respondents (14%) partially supportive. A small minority of respondents, 44 (1%), were fully opposed to the proposed penalties, with a further 44 respondents (1%) partially opposed. 113 (3%) adopted a neutral position.

Supportive of the proposed penalty of imprisonment

A theme among respondents in favour of the proposed penalty was the view that the punishment for ecocide should reflect the seriousness of the crime. Respondents detailed the scale of impact that an ecocide level event has on the environment and thought that an extended prison sentence was a suitable penalty. The Eden Project (SS 235637950) stated:

If someone knowingly damages your home or creates conditions that could damage your health and wellbeing and those of generations yet to come you are committing a profound crime for which severe punishment is justified according to a tariff that will reinforce the social anathema to the crime. Similar to seat belt and drink drive offences

The Scottish Wildlife Trust (SS 237458166) thought that the proposed length of imprisonment was appropriate:

Scottish Wildlife Trust supports the proposed penalties in principle. We believe that severe environmental damage necessitates corresponding criminal sanctions. Given the existing maximum imprisonment term of five years in Scottish environmental law, a maximum term of 20 years for ecocide seems appropriate. This matches similar penalties elsewhere, where ecocide carries imprisonment terms ranging from 10 to 20 years. We advocate for holding both individuals and officials of legal entities accountable for ecocide, but further analysis is needed to determine liability.

SCCS (non SS response) was also fully supportive of the proposed penalty stating:

SCCS supports the proposed penalties in principle. Given that an ecocide-level offence would cover severe environmental damage, it should be met by corresponding criminal sanctions. In the context of the sanctions in existing environmental law in Scotland. With the maximum term of imprisonment currently five years (for example, Wildlife and Countryside Act 1981), imprisonment up to a maximum of 20 years for ecocide appears appropriate.

Many organisations, including ERCS, Unison Scotland and Scottish Environment LINK, also fully supported the proposed penalty in principle, stating that it was proportionate to the harm caused and was aligned with approaches in other jurisdictions. They also supported liability for responsible officials but highlighted that further research may be required on that aspect. ERCS (non SS response) summarised that view:

ERCS supports the proposed sanction in principle. Given that an ecocide-level offence would cover severe environmental damage, it should be met by corresponding criminal sanctions. In the context of the sanctions in existing environmental law in Scotland, where the maximum term of imprisonment is currently five years (for example, the Regulatory Reform (Scotland) Act 2014), imprisonment up to a maximum of 20 years for ecocide appears appropriate. This maximum term is also aligned with the evolving criminalisation of ecocide in other jurisdictions, where it carries imprisonment up to 10-20 years (for example, the proposed revision to Belgian Penal Code, or Article 231-3 of the French Climate and Resilience Law).

We agree that both individuals and the responsible officials of legal bodies such as company directors should be held liable and be equally subject to imprisonment penalties for ecocide. However, we consider that more analysis on how to identify liability for ecocide is required,

A number of respondents who were fully supportive of the proposed penalty were of the view that, as well as imprisonment, responsible officials should face additional sanctions, such as disqualification from certain positions. For example, Open Seas Trust (SS 237514890) stated:

As well as custodial sentencing and fines, we support the application of other penalties to prevent future deterrence. This would include the prohibition from holding director or trustee roles and the inability to receive public funding for a period of years. Penalties for ecocide harms could also serve to automatically disqualify a perpetrator from receiving other Government allocated benefits such as fishing quota or participation in decision making bodies.

An anonymous individual respondent (SS 237214159), who was fully supportive, made a similar point in relation to additional sanctions for company officials:

This crime is severe and can affect not only huge number of humans in

present and common generations but also other organisms and potentially whole ecosystems. I further believe that such individuals should not be allowed to pursue any leading position in companies or organisations. The company should also be forbidden to continue what they did, and perhaps be taken over by the government.

The Young Women's Movement (SS 237395312) was fully supportive of the proposed sanction of imprisonment but raised concerns that individual employees might be unfairly held responsible:

We believe that corporations, including their company directors, should be held legally responsible for committing severe, irreparable harms against the environment in Scotland, and that such deliberate behaviour deserves a prison sentence of up to 20 years if proved in a court of law. One young woman asked the Member to consider engaging with the legal community and wider justice sector in Scotland to ensure corporations are unable to scapegoat certain individuals to protect company directors or high-profile board members.

Partially supportive of the proposed sanction of imprisonment

455 respondents (14%) were partially supportive of the proposed sanction. Some respondents within this category thought that the proposed sanction could be more severe. Others raised technical issues around the practice of sentencing the proposed crime.

No need for a minimum sentence

Professor Colin T Reid (SS 236221151), who was partially supportive, questioned why there was a minimum sentence and highlighted that there may be input on the sentencing process as part of the Scottish Sentencing Council's planned review of sentencing for environment crimes:

If the offence is to be used for the most serious of incidents, then very severe sanctions should be available, but this issue should be considered in the light of the review of sentencing for environmental offences being undertaken by the Scottish Sentencing Council, as set out in its Business Plan 2021-24. The imposition of a minimum sentence would be unusual.

UKELA (non SS response) also questioned the inclusion of a minimum sentence requirement and stated that ultimately the level of sentence was for the courts to determine:

UKELA is broadly supportive of the proposed exceptional maximum sentence. However, it is less clear why there should be a minimum sentence period. Such a provision would be exceptional and there will

be a range of reasons why the sentence considered appropriate might be less than any minimum stated, especially when that is substantial. Further, having a minimum sentence may result in fewer sanctions being imposed. For example, if the court considers that the law has been breached but the breach was not severe enough to warrant a 10 year sentence, this may result in no sentence being imposed. Moreover, if the trigger for liability can be that the act is already unlawful, for a large number of environmental offences, that unlawfulness is based on strict liability and it would be remarkable to say that, notwithstanding significant harm has been caused, somebody who has broken the law but done so without intention, recklessness or even negligence should be subject to penalties as severe as are being proposed. To put this into context, the maximum penalty for causing death by careless or inconsiderate driving is 5 years imprisonment. The sentence should be for the courts to decide. The need for tough sentencing can be assured through guidance provided to the sentencing court and Scottish Sentencing Council (which is currently reviewing sentencing for environmental and wildlife crimes).

Imprisonment as a last resort

Rosa Stutenberg (SS 234062086). who was partially supportive. was among a number of respondents who thought that imprisonment should be used as a last resort:

Although useful as a last resort, prisons are for people who endanger their surroundings directly. Stripping CEOs of their power and imposing large fines should be a focus. Convictions of ecocide should allow states to withdraw from contracts as a balance to investment law procedures that often ruin or prevent countries trying to stop harmful corporate activities.

Neutral support/Opposition for the proposed sanction

SEPA (SS 237404811) stated that its position in relation to the proposed imprisonment sanction was neutral. SEPA highlighted the scope of penalties available under existing legislation which could be increased, and also referred to the upcoming review of sentencing by Scottish Sentencing Council:

The existing legislative framework for the section 40 offence already provides for, on conviction on indictment, a maximum of five years imprisonment, an unlimited fine, or both. However, on summary conviction, it provides for a maximum fine of £40,000, a maximum period of 12 months imprisonment, or both. Whether or not the proposed Bill progresses to legislation, a review of the existing maximum punishment available to the courts on summary conviction or on indictment under section 40 of the Regulatory Reform (Scotland)

Act would be an option to ensure it aligns with the aims set out in the proposal.

Increasing the maximum penalties on summary conviction or on indictment has the potential to provide a greater deterrent.

However, as mentioned above, the development and publication of the proposed Wildlife & Environmental Crime Sentencing Guideline by the Scottish Sentencing Council would help ensure the effectiveness of prescribed sanctioning levels.

Other concerns raised regarding the proposed imprisonment sanction

The joint response submitted by The Centre for Climate Crime and Climate Justice, Queen Mary University of London, We Own It, Scottish Hazards Campaign, UK Hazards Campaign, Institute of Employment Rights and Violation Tracker UK (non SS response) emphasised the importance of ensuring that the proposal did not have an unintended negative impact on employees:

Tougher penalties introduced by a new law of ecocide must avoid the unintended consequence of punishing employees rather than those who author or have sufficient authority to prevent the offence. Thus, any new Scottish ecocide offence should be linked to a system of 'equity fines' to ensure that workers and communities are not doubly punished for ecocide. (non SS response)

St Lucy's Primary School Eco Committee (SS 237000506) questioned the length of imprisonment proposed:

We think imprisonment is a good idea when necessary but we think 20 years is a long time.

An anonymous individual respondent (non SS response) questioned imprisonment as a solution:

I am appalled that imprisonment is being considered as punishment in the Bill. Scottish prisons are already overcrowded, and cases of self-harm and suicide are unacceptably high. It's easy for politicians to impose prison sentences, but anyone (including Monica Lennon MSP) who proposes to introduce or extend them should be obliged to spend time in jail (at their own expense) to experience the reality beforehand. Far more effective for anyone convicted under the Bill would be to offer - as an alternative to prison - a course of awareness

and re-education (paid for by the offender), of indeterminate duration until the offender learnt not to damage nature.

This sentiment was echoed by Common Weal 237071002, which stated:

Common Weal's views on rehabilitative and restorative justice would be at odds with expressing support for terms of imprisonment of any length. In cases of individual ecocide offenders, we would support sanctions which just stop short of imprisonment, such as a proportional increase of the reparative fines proposed in the Bill, in lieu of incarceration.

Question 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/partially opposed/fully opposed.

3,362 respondents answered this question. A significant majority of respondents (2,685, 80% of those who answered) were fully supportive of the proposed sanction, with a further 449 respondents (13%) partially supportive. A small minority of respondents (34, 1%) were fully opposed to the proposed penalty, with a further 53 respondents (2 %) partially opposed. 82 respondents (2%) stated that they were neutral in their response to question 6 whilst 59 respondents (2%) stated that they did not wish to express a view.

Supportive of the proposed financial sanction

As with the previous question many of those who supported the proposed financial sanction emphasised that the punishment should be severe in order to match the crime. Respondents agreed with the targeting of a firm's profit in order to impact those committing the proposed offence. Skye Communities for Natural Heritage (SS 236832004) summarised this view:

Again, as profit is the key driver of ecocide actions, it is this that has to be hit for this law to be effective.

Trees for Life (SS 237460350) also emphasised the importance of a proportionate penalty.

Similarly to the response to the previous question we are supportive of this proposed sanction and severity in principle. To act as a successful deterrent and incentivise behaviour change the punishment must reflect the severity of the crime.

Many respondents who were fully supportive of the proposed sanction also felt that an even stricter penalty could be appropriate. Finley Bruce (SS 230927370), an individual respondent stated:

Fully supportive, and would venture that I'd go higher even. A company knowingly committing an atrocity should not be able to make up for it through budget cuts and layoffs (likely not of anyone responsible) - it should cripple an organisation, forcing directors to think very hard about the consequences of their actions not only to themselves but to all those under employment.

Anna Laird (SS 230897477) shared the view that even stricter sanctions were justifiable:

I think it should be more and there should be significant burden on the CEO's of the companies individually as well. If they do not face a hefty personal financial consequences for committing such crimes then it's not an effective deterrent.

A theme among respondents who were fully supportive of the proposed sanction was a concern that large international companies should not be able to find loopholes in their financial liabilities:

Common Weal (SS 237071002) stated:

Financial sanctions may prove an effective deterrent. However, Common Weal expresses concerns particularly around multinational corporations using tax loopholes and other means of avoidance to manipulate figures for their benefit (or 'wriggle out' of paying any potential fines in full).

An anonymous individual respondent (SS23177678) agreed stating:

Sounds like a fair deterrent. Unfortunately, there will probably be loopholes to be exploited.

Issues/concerns regarding the proposed financial penalty

Higher penalty required

Whilst overall support for the proposed sanction was strong, a number of organisational respondents raised technical and practical issues in relation to the proposed sanction, which are summarised here.

A number of organisational respondents gave the proposed sanction partial support as, in their view, the sanction should be higher. Some also proposed that the level of financial sanction should be linked to the profit derived from environmental damage.

ERCS, SCCS, Mighty Earth, Scottish Wildlife Trust, the Young Women's Movement and Scottish Environment Link all gave partial support. stating that

they preferred a higher maximum fine. Mighty Earth (non SS response) summarised that view:

Mighty Earth is supportive of establishing financial sanctions that meet the severity of ecocide for both individuals and companies. To be effective, the maximum limit for these fines should be raised to ensure that the fine cannot be offset with profits from ecocide-level crimes. This could be partially achieved by confiscating proceeds from the criminal offence (in line with the EU Environmental Crime Directive Article 10). Mighty Earth would also support consideration of alternative measures beyond imprisonment and financial sanctions, including significant restoration and conservation measures to attempt to reverse environmental harms.

Parents For Future Scotland (SS 237509725), which was, partially supportive also thought the financial sanctions should be stronger stating:

We don't think the sanctions are strong enough, and will probably be avoidable by globalised firms using complex tax and ownership structures. Eg what happens if a firm with an opaque ownership structure and headquartered in a tax haven causes large-scale environmental harm? Or if a firm such as Amazon with its record of tax avoidance and complex financial arrangements causes large-scale environmental harm? (one could argue it does already). There can be no loopholes that enable avoidance.

Professor Nicholas King (SS 234712773), was also partially supportive, as he preferred a limitless financial sanction:

There should be no ceiling - the fine must be commensurate with the magnitude of the crime - many ecocidal crimes would cost much, much more to rectify, if indeed rectifications is even possible, If the responsible corporation is put out of business as a result, that is the fault of their decision-makers.

UKELA (non SS response), which was neutral in its view of the proposed sanction, raised a number of issues with the enforcement of the proposed penalty including potential complexities arising from crimes committed by multinational companies and the need to maintain flexibility for those determining appropriate sentences. They stated:

If the aim is to provide consistency across other jurisdictions, then guidance for sentencers can provide this; from the judiciary and/or the Scottish Sentencing Council. There should be consistency and flexibility for sentencers and providing a structure and maximum on environmental sentencing in this way may unnecessary complicate matters for sentencers.

It is further unclear why the financial sanctions are “over three years”. If there is a specific reason for this, it should be outlined. Our view is that this further may unnecessary complicate matters for sentencers.

Moreover, there are likely to be complexities in obtaining information in relation to worldwide turnover, whilst the fragmented corporate structures adopted by many multi-national enterprises add further challenges that may undermine the intention. That said, UKELA recognises that some international and domestic legislation provides for this.

UKELA and SEPA both highlighted that some existing environmental laws carry an unlimited fine, and therefore questioned why a maximum fine was desirable for the proposed offence. SEPA (SS 237404811) stated:

With particular reference to the section 40 offence, the existing legislative framework already supports an unlimited fine as a penalty on indictment. The proposed financial sanctions worth 10% of worldwide turnover for companies over three years would set a lower maximum level than those for the section 40 offence. This may not support the aims of the proposal, and would not align with the position under the section 40 offence.

Importance of protecting employees and communities

The joint response submitted by The Centre for Climate Crime and Climate Justice, Queen Mary University of London, We Own It, Scottish Hazards Campaign, UK Hazards Campaign, Institute of Employment Rights and Violation Tracker UK (non SS response) highlighted the importance of ensuring that any financial sanction did not risk punishing workers and communities. Their response stated that following imposition of a fine:

Decisions can then be made to cut staff, to cut wages, or to delay maintenance programmes with perverse consequences. Fines have been found to lead to a decline in service quality, pollution control and other associated public goods. Furthermore, fines have a negligible impact on shareholder value.

The response used the fine given to British Gas following the Transco disaster in Larkhall in 1999 to illustrate possible negative impacts on services from large scale fines as senior managers seek to protect shareholders.

Q7 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
- Broadly cost-neutral
- Significant reduction in costs
- Some reductions in cost
- Skip to next question

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

A total of 3,294 (98%) out of a total number of 3,379 respondents answered this question. Of those who selected a substantive option, the most selected response was that the proposed Bill would lead to some increase in costs 1,210 respondents (35%) whilst 235 respondents (7%) thought there would be a significant increase in costs.

522 (16%) of respondents felt that there would be no overall change in costs, with a further 208 (6%) of the view that there would be a significant reduction in costs whilst a further 199 (6%) respondents believed there would be some reduction in costs.

Some increase in costs

1,210 respondents (35%) felt that the proposed bill could result in some increase in costs for businesses but felt that any rise in costs would be worth it for long-term gain:

SEPA's response stated that whilst existing enforcement structures existed additional resources would be required due to the scale of ecocide level offences:

Implementation of the proposed Bill itself is likely to require additional resource, particularly navigating how it will complement the existing legislative framework. This would primarily fall to public sector bodies.

Although the structures and resources are in place for the investigation and prosecution of environmental crime across several public authorities, However, the scale of such events, albeit potentially rare, will require significant effort/resource, training and support. Scale, resource implications and training requirements should also reflect the breadth of reporting agencies that could be involved. We would also support wider consideration of the number of specialist non-police

reporting agencies involved in reporting environmental offences such as the section 40 offence or the proposed Ecocide offence.

A number of respondents stated that, whilst there was likely to be some increase in costs arising from investigations into ecocide offences, this cost would be offset by money received as a result of the financial penalties imposed on offenders. For example, Scottish Wildlife Trust (SS 237458166) stated:

We believe that the Bill could lead to some increase in cost as a result of the need for investigating ecocide allegations by the relevant public body and the need for court hearings. The cost of this could be covered in part by the fines enforced on those charged with ecocide.

Polluter pays

ERCS and the UKELA were among the respondents who highlighted that any costs should be borne by those found guilty of poor environmental practices - the polluter pays principle. Both were also of the view that investigations would not be high in number due to the threshold for an ecocide offence.

ERCS (non SS response) stated:

Given that the legislation will only apply to the most severe environmental crimes, it is hoped that there will only be some increase in costs, such as the investigation of ecocide by relevant public bodies and hearing of cases by courts. A proportion of the fines collected from those charged with ecocide could be used to underwrite any additional costs of enforcement in line with the polluter pays principle.

UKELA (non SS response) also cited the polluter pays principle:

It is hoped that the legislation will be used rarely. The key aim is to provide the mechanism and ability to prosecute instances of ecocide. UKELA recognises that it is not often the case that prosecution costs are fully recoverable in Scotland. However, application of the polluter pays principle (now legally recognised under s.13 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021) provides justification for the costs of prosecution to be fully recoverable on an indemnity basis as part of any legislative proposals.

Any profits from fines could be allocated to public bodies

UNISON Scotland (non SS response) expressed the view that some of the money raised from fines of companies guilty of poor environmental practices, might be allocated to public bodies that enforce the legislation.

There would be some increase in costs initially to the enforcement bodies and the justice system. However, as with the costs of adapting

to climate change, prevention (including deterrence re ecocide) and early investment will save expensive costs further down the line, particularly the costs of a clean up after any major incident of environmental harm. Some of the fines income could be allocated to public bodies investigating and prosecuting ecocide - but they should be sufficiently resourced to not be relying on that, particularly as the fines income would come some time after the investigation costs

Costs to consumers

A theme raised by a number of respondents was a concern that increased costs to companies arising from the proposed Bill could then be passed on to consumers, which could have a particularly negative impact on those on low incomes. Daniela Najdenowa (SS 234409582), an individual respondent stated:

First thought is the water and energy suppliers will try to force the costs on the consumers. That should be banned and the rulings should ensure the money comes from management & managing boards' bonuses and salaries instead. Passing the costs of ecocidal crimes to consumers should be made illegal.

Another respondent was of the view that any short-term increase in costs to consumers would lead to long-term benefits:

It will always be cheaper to be irresponsible and dump your pollution or environmental damage on others, so costs will rise. Can we afford to let environmental damage and pollution continue? Remediation is expensive and invariably borne by the public purse. We need to adapt our ways of working to avoid damaging practices. In the short term all consumers everywhere may face higher prices, but society will ultimately reap the benefits and save costs. (SS ID: 234386373, Godfrey Cantley)

Significant increase in costs

235 respondents (7%) were of the view that the proposed bill would result in a significant increase in costs. William Wescott Woodward Wood (SS 237225360) thought that the costs should be mitigated by full use of fines.

Certainly we will see an increase in costs, great or lesser across the board - this is why all offenders should be penalised with (at a minimum) fines that cover the expenses incurred from everything from the cost of legal prosecution of their cases and the undoing of the damage they have done in whatever forms it has been done. There should be fund created to help defray the cost of the legal prosecution of the cases and a formula to calculate the sum each offender should contribute to it.

Peter Nagel (SS 237169361) highlighted that the cost impact would mostly be felt by businesses and companies that cause environmental damage as they required to adapt their processes but also noted that there would be costs to those public bodies charged with investigating and prosecuting ecocide crimes:

I think the main impact would fall on industrial organisations which cause the most environmental damage. There will also need to be investment in the public bodies which will be responsible for investigating violations of the law and bringing prosecutions to court.

Helen Armet noted that certain types of business would be particularly impacted by costs. She stated:

Yes it will undoubtedly mean an increase in cost, less earnings for companies and higher cost of produce and I am especially thinking of fishing and agriculture when transitioning to organic farming and phasing out farmed fish. (SS ID: 237298700, Helen Armet)

Any short-term increase in costs should be measured against the longer-term benefits of the proposed Bill

A theme among responses was that whilst there would be a short term cost in terms of impact on businesses and the public sector bodies tasked with implementing the proposed Bill this would be outweighed by longer term benefits, financial and otherwise. Michele Therese Grubnic (SS 235087028) summarised this view:

Businesses will have higher costs, as will public sector bodies. But these should be measured against the long term gains in retaining the ability of the natural world to sustain us and future generations. The resource implications of the proposed Bill should also weigh the environmental consequences of NOT deterring the mass destruction of the natural living world on which we depend.

Trees for Life (SS ID: 237460350) had a similar view, stating:

In the short to medium term we expect that public sector bodies could incur a significant increase in operational costs and therefore environmental enforcement agencies need to be sufficiently funded. However, we agree that the long term consequences of deterring harmful environmental practices and reducing irreversible environmental damage and pollution is likely to result in an overall reduction of costs.

Broadly cost-neutral

522 (16%) respondents felt that there would be no real overall change in costs as a result of the proposed Bill.

A theme among respondents who thought the proposal would be broadly cost-neutral was that there were already existing public bodies who could investigate and prosecute alleged offences.

Dr. Marian Bruce (SS 236156354) stated:

I don't see why there would be any more costs. Our police, SEPA and NatureScot are well equipped to record and report on ecocide”.

Owen Vaughan Prosser (SS 237188009) made a similar point:

I don't think the impact on these to be any greater. The laws need strengthening, but there are plenty of protective environmental bodies already keeping watch over susceptible areas/species. I feel there would be minimal financial impact.

Similar to the views outlined above that those who caused the pollution would have to cover the costs associated with the implementation of the proposal, a theme was that the costs would be balanced by money recouped from polluters in the form of fines, and also due to the longer-term financial benefits of a healthy environment. Mighty Earth (non SS response) summarised this view:

It is likely that there would be an increase in costs involved in identifying and prosecuting ecocide level crimes that will fall on the relevant enforcement agencies responsible for monitoring, transparency and enforcement of the bill. However, due to the severe nature of ecocide, it is expected that this will not be prohibitively high and could be offset by fines collected from those charged. Furthermore, the ecosystem services value and benefits of preventing such crimes will fall on the whole of Scottish society, as well as globally, albeit in a diffuse manner!

An anonymous individual respondent (SS 237300643) focussed on the long-term impact of the proposed Bill on costs:

In the end, I suspect that this will equalize itself, or even lead to a new balance of costs. Right now, the public ends up footing the bill and the impact of ecocide. While researching and auditing and prosecuting potential lawbreakers may cost a little more upfront, the level of deterrent will probably reduce expense of trying to repair issues after they've already happened. It will cause business costs for unsustainable and exploitative companies to go up considerably, because they will no longer be able to exploit resources haphazardly for their profitability. If we currently have businesses that are profitable only because they're able to exploit the earth, hopefully they will go out of business. This will cause a restructuring to happen. That restructuring is not only necessary, but inevitable if we are to survive into the next century.

Some reductions in cost

199 respondents (6%) were of the view that the proposed bill might lead to some reductions in cost to the public and public bodies as the burden would fall on companies to adapt their practices.

Lucy Reed (SS 232933862) was among those respondents who considered that the overall benefit to society was a relevant consideration in assessing the financial impact of the proposed Bill. She stated:

A small number of companies may need to adjust their practices to ensure they can be compliant and this may have some additional costs however in terms of the cost burden to public sector bodies, to deal with the lasting impacts of ecocide scale harm then it is likely that there will be a reduction in costs to society overall”.

Jojo Mehta (SS 237000454) highlighted the financial benefits of an improved environment and thought that the administrative costs of the proposed Bill would not be high. She stated:

Putting in place a criminal law is not in itself a costly procedure - in particular a law like this which will only lead to prosecutions in rare instances of very severe harm, but which will have a salutary cautionary effect on planning, safety and environmental impact considerations at the highest level. In the light of the latter the law will very likely create cost savings for public bodies on the basis of damage/pollution situations avoided, including impacts e.g. on public health as a result.

William John Bamford (SS 236856521) thought that the proposed Bill may lead to a shift to greener industries, which may itself have a positive financial impact. He stated:

After the initial period of understanding what the law means, to include a nationwide education campaign (that would cost) the opportunity could be there for organisations and individuals to use the threat of the bill to encourage positive change that could reduce costs in the long run. For example, the failure of a fossil fuel company to protect the environment (in the extraction phase) may increase the viability of energy conservation measure and renewable production, creating a more stable and economical energy sector for Scotland going forwards (saving money).

Significant reduction in costs

208 (6%) respondents felt that the proposed bill might lead to significant reductions in costs. Themes among the responses were similar to those who thought there would be a slight reduction in costs. Respondents stated that the onus would be on those companies fined for poor environmental practices

to pay not the public. Respondents also thought that the introduction of safer practices would also save money in the long-term by avoiding expensive environmental disasters which would have financial as well as broader societal benefits.

Nikky Bobbert (SS 233641383) summarised this view:

Damage to the environment and livelihoods is way more expensive than protecting the environment, on the long-term! Also, financially punishing the offenders would generate income. So overall, a reduction of costs, certainly for the public sector and individuals”.

An anonymous individual respondent (SS 234828499) highlighted the savings that would arise if large-scale environmental incidents were prevented:

By preventing environmental destruction, and charging responsible bodies if they do commit damaging acts, we will not need to perform clean ups or they will be covered at least in part financially by the fine, so we will save money significantly. Consider the decades or more costs of healthcare after noxious chemicals are dumped into a river, the long term costs of preventable oil spills, the loss in crops from fires or climate change induced drought or floods, etc.

Joseph Gelfer (SS 234531664) highlighted the vast savings that could arise from preventing ecocide level crimes:

In the long-term, the proposed Bill should result in a significant reduction of costs because the costs of enforcing the legislation will result in massive downstream savings due to avoided environmental mitigation and adaptation requirements (which could easily run into trillions of pounds).

Craig Neil Linn (SS 237260405) thought that, for Scotland, the longer-term gains of the proposed Bill would significantly reduce costs. He stated:

When the total environmental cost of ecocide is fully calculated it will certainly be to the benefit of Scotland as whole (i.e. a reduction in costs) if Ecocide Law is in operation. This is the case because stopping ecocide will support the continuing function of nature's eco-services on which our society depends.

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

A total of 2,006 respondents answered this question.

The overwhelming majority of respondents were of the opinion that the proposals set out in the consultation would not be incompatible with the rights out on the ECHR.

A theme among respondents was that the right to a healthy environment is a recognised human right which is directly supported by the proposal.

ERCS (non SS response) pointed to the United Nations resolution on the right to a healthy environment. The Childrens and Young People's Commissioner Scotland and Jojo Mehta were among other respondents who highlighted the work of the UN in recognising the right to a healthy environment. Jojo Mehta stating:

Severe environmental harms are almost always the cause of severe effects on local communities, and can in particular affect the right to private and family life and even the right to life itself in instances where public health is drastically affected. The UN has also recently recognised the right to a clean, healthy and sustainable environment as a universal right. The present proposals on ecocide prevention may therefore be seen as highly compatible with the upholding of human rights as set out in the ECHR as well as by the UN

The proposed Bill was also seen as supporting other connected human rights, such as the right to private and family law in the above quote. The Children and Young People's Commissioner Scotland thought that the proposed Bill supported Article 2 of the European Convention on Human Rights (ECHR). Lee Bidauville (SS 231169127) stated:

Article 2 of The Human Rights Act 1998 states I have the right to life, this should encompass the environment that affects my ability to live and live safely and healthily.

Nature's Right (SS 231677973) held a similar view, stating:

A law of ecocide enhances human rights because without nature humans cannot exist. The rights of nature underpin all human and economic rights but are not yet recognised in our legal system. Any perceived incompatibility between human rights and a law of ecocide is due to this fundamental omission in our system of rights itself."

Patricia Watson (SS 232159552)thought that the proposed Bill would support all existing recognised human rights as, without a clean environment, they were limited in application:

It will support the rights of humans to basic essentials like clean air, enough food to go round and a liveable planet. Not having this law puts all other human rights at risk as the planet becomes increasingly unable to support our massive population and society instability increases due to shortages and climate related migration.

Some respondents, including Professor Sarah Hendry (SS 237213983), highlighted the proposed Human Rights Bill in Scotland¹, which supported a standalone right to a clean environment. In her view the proposed Bill would complement that development:

There has just been an extensive consultation on a proposed Human Rights Bill for Scotland, including a right to a clean environment. An Ecocide Bill could be seen as supporting that right. In a broad sense a clean and healthy environment supports communities and individuals to achieve many other human rights, but I am not sure this proposed offence would add much to this. Again the scope and thresholds of the proposed offence would be relevant. If it is only applicable to infrequent and very severe impacts (as the proposed sentences would indicate) then it may have little direct or rapid effect, but if it was a deterrent it might contribute overall and might also help to raise awareness, with businesses and the public.

Q9. 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?

1,058 respondents answered this question. There were no tick box options for this question. Comments made by respondents are summarised below.

As was set out in the consultation document climate change has been described as a risk amplifier.² 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.

Unison Scotland (non SS response) agreed with this view stating:

It is well understood that climate change impacts on the most vulnerable, here in Scotland and internationally. Actions to address climate change should always consider equalities impacts, but we believe this proposed Bill strongly helps redress some inequalities.

¹ On 4 September 2024, the Scottish Government stated that it would not take forward the Human Rights Bill in this parliamentary session. The letter from the Cabinet Secretary for Social Justice to the Convener of the Equalities, Human Rights and Civil Justice Committee, confirming this approach, is available at: [Letter from the Cabinet Secretary for Social Justice, 4 September 2024 \(parliament.scot\)](https://www.parliament.scot/Document/2024-09-04/Letter%20from%20the%20Cabinet%20Secretary%20for%20Social%20Justice%204%20September%202024)

² see <https://rb.gy/ohimdp>

Diana Firth (SS 237368814) was one of a number of respondents who thought that the proposed Bill would have a positive effect on a number of distinct groups:

I believe that this proposed bill would have a positive impact on different individuals and groups in society. We know from mountains of evidence that the climate crisis is disproportionately experienced by people in the Global South and in Scotland by people already experiencing social inequalities including disability, race, age, mental health, ethnicity, sexuality, gender, age and socio-economic status. By preventing incidents of ecocide through the proposed bill, the impact of climate change on these groups would be minimised.

Kieran Hingston stated that groups who already experience social inequalities will benefit from the proposal:

I believe that the proposed bill would have a positive impact on individuals in society. Research has found that the climate crisis acts as a risk amplifier to those individuals who already experience social inequalities due to factors such as age, race, mental health and socio-economic status. The proposed bill will help to reduce the effects of climate change on those individuals most affected by it. (SS ID: 234925786)

Carolyn Mojonier Buckner (SS 237250629) had a similar view:

I believe this bill would have a positive impact on different individuals and groups within society, especially those that have been historically marginalized. Research shows the climate crisis disproportionately impacts those already experiencing social inequalities due to their race, age, mental health, or socio-economic status. Preventing incidents of ecocide through this bill would help mitigate climate change impacts on these groups (and us all).

Impact on the young and old

A number of respondents highlighted the disproportionate impact climate change has on the young and the old and felt that the proposed Bill would have a positive impact. For example, an anonymous individual respondent (SS 234384189) stated:

Since children, elderly people and people with a disability are especially vulnerable to health problems caused by any serious damage to the environment, the law would increase their protection.

The response from the Children and Young People's Commissioner Scotland (SS 237478468) highlighted the view that climate change has a disproportionate impact on children and young people and the link with the United Nations Convention on the Rights of the Child:

Children and young people are disproportionately affected by the combined climate and nature crisis. The proposed Ecocide Bill has the potential to mitigate some of the effects of this.

These issues directly engage UNCRC rights, now incorporated into Scots law, including;

Article 6 - the right to life and development.

Article 24 - the right to good quality health care and a clean environment.

Article 27 - the right to a decent standard of living, including food, housing, water.

Article 29 – the right to education that supports children to learn to respect the natural environment.

Scotland (along with the rest of the world) faces an unprecedented nature-climate crisis. Biodiversity is a children’s rights issue and as such a rights-based approach should be taken. The climate crisis and the decline in biodiversity go hand in hand – we need to preserve nature to combat the climate crisis and provide clean air, water and food sources. ...

The UN’s Special Rapporteur on the environment commented that children are more at risk from environmental problems than adults but their views and interests are often left out of decisions. Children and young people should be properly involved in decision making processes surrounding these issues. This should be meaningful, effective and not tokenistic. They must be actively involved in identifying solutions and policy and legislative changes to address the environmental emergency.

The response from the Commissioner also focussed on the importance of action to prevent environmental damage on children’s wellbeing both physical and mental – as anxiety levels among children and young people relating to the environment increases.

The mental and physical health impacts on some groups was also highlighted by Deborah Foulkes (SS 231193956):

Pollution and lack of access to nature, which result in lower physical and mental wellbeing, are disproportionately experienced by the poor and ethnic minorities. The ecocide legislation would act to reduce these discriminatory effects.

A theme among some respondents who raised concerns regarding the impact of the proposal on certain groups was that if costs were passed on to consumers as a result of the proposal this may disproportionately impact certain groups.

Ja Nickells (SS 234724206) stated:

Without mandating compliance be paid for by the involved companies, the costs of compliance will be foisted on the most vulnerable in society with a shrug and an encouragement to blame governing bodies for the increase. This will damage all public support for future environmental legislation, and result in the proposed legislation doing more harm than good.

While Wash-Ability CIC (SS 232296533) raised a concern that the law might have a direct financial impact on certain groups:

The law could severely impact negatively on the poorest people because of the short term increase in costs. Authorities and companies must be compelled to apply the changes necessary by using a means tested system of charges. For example the Emissions zones, people on low wages should have to pay a lower charge than those on higher incomes.

Q10. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy and create a strong, just and healthy society for future generations. Do you think the proposed Bill could impact on any of these areas? Please explain the reasons for your response, including what you think of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts.

1,769 respondents answered this question. As there was no tick box for this question the responses are summarised below.

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. The vast majority of respondents thought that the proposed Bill would have a positive impact on sustainability. Mighty Earth (non SS response) set a view shared by many respondents:

By criminalising financial gain from severe destruction of nature, the law could contribute to ensuring that the economic decisions of individuals and corporations are in line with sustainable development of Scotland, including the UN Sustainable Development Goals and with the Scottish Government's ambition to develop a wellbeing economy, which aims to deliver 'a just transition to a net zero, nature-positive economy based on the principles of equality, prosperity and resilience.

Susan Miller (SS 231315316) also thought there would be a positive impact:

This law will not only help to protect the environment and encourage transition to a more just and sustainable economy; it will also support intergenerational justice, helping us to leave the environment in a better condition for future generations.

Tiger Sophie (SS 232162240) was one of the respondents who highlighted the impact of the proposed Bill on future generations:

New legislation that strictly and strongly condemns ecocides will have an extremely positive impact on environmental protection and this will generate sustainable savings, as well as a restoration of it-for a better future for future generations and those of today, even if climate change will not stop tomorrow or in some time. Anything that can contribute to it will have an impact on our lives, and this impact will necessarily be positive, if we stop polluting, the world can only get better, and there are still natural miles that can recover if we act now.

A very small minority of respondents thought that the proposal might have a negative impact on sustainability. One concern raised was that the proposed Bill could pose a risk to the economic welfare of employees of companies engaged in environmental damage if they were subject to financial penalties. An anonymous respondent (SS 231631929) stated:

Some may argue that this law would thwart large businesses from thriving, especially in areas like the Northeast of Scotland where the fossil fuels industry is so prevalent. Whilst this is potentially true in some regard, the world is at a pivotal crossroads in which reliance on unsustainable industries must be gradually severed, and this proposed law does just that.

Q11. 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 previous questions)?

1,136 respondents answered this question. Many of the responses reiterated points made in response to previous questions.

Existential threat

A theme among respondents was the importance of immediate action in relation to the climate emergency. Respondents also detailed the unprecedented and existential threat facing the planet which led them to support the proposal.

Jojo Mehta (SS 237000454) stated:

Every so often, society is confronted with issues that demand a new legislative response. This is the case today with environmental destruction. There is a growing awareness that severe harm to the natural living world - upon which we entirely depend - poses an existential threat to the ecological balance required for us to thrive as a civilisation. Recognition of ecocide is a clear and logical response commensurate to that realisation, and will likely prove to be one of the key legal developments of the 21st century. Scotland will be rightly proud to be among those at the forefront.

Importance of education

A number of respondents emphasised the importance of education and increasing public awareness generally about climate change and the proposed Bill. Nicola Jane Clark (SS 233550463) summarised this view:

It would be good to have more public information about this as still many people know very little about the climate and biodiversity crises, and the harms continually being committed against the environment. The better informed the public is, the more support there would be for this Bill. A wide public information campaign would be welcomed.

Christopher Ives (SS 234376919) made a similar point:

There is likely to be push back from individuals and groups who a. don't accept the established facts on environmental damage, or b. think it infringes their personal freedoms. Education and influencing will be just as important as the law.

The transboundary aspect of ecocide

The issue of how ecocide crimes which impacted Scotland from sources outside of the country or conversely how Scottish polluters impacting other nations would be affected by the proposed Bill was raised by a number of respondents.

Respondents also highlighted that to have maximum impact it would be necessary for ecocide laws to be implemented in other countries so that different jurisdictions might cooperate with each other to ensure polluters cannot avoid enforcement.

UKELA (non SS response) highlighted the transboundary nature of environmental damage:

As ecocide could well involve transboundary harm and pollution, it will be important that there is consistency across nations and internationally. Where possible, the alignment of Scottish legislation with measures elsewhere will enable a much clearer and stronger message to be sent about what the law requires and ease cross-border jurisdictional issues.

Maisie Anne McDavid (SS 232842168) raised concerns about the challenges of enforcement with an international dimension which may limit the impact of the proposal.

As far as I can see, there is a lack of clarity in the bill in discussing the responsibility of Scotland-based companies, organisations, and individuals with regard to overseas activities. For instance, what is the potential of the bill to be used in prosecution against oil and gas companies for their contribution to climate change (where impacts are seen most severely internationally)? I believe the bill has potential to be

used for this purpose and I invite the steering group for the Bill to reflect and investigate how the Bill could or could not be used for this purpose.

Dr Suwita Hani Randhawa (SS 237398624) also thought that the proposed Bill should recognise the international and interconnected aspect of environmental damage:

As the criminalization of ecocide is being explored within domestic jurisdictions as well as under international law, the proposed bill should contain several provisions on the international crime of ecocide. The movement to criminalize ecocide under domestic and international laws are interrelated and it would thus be important for this interconnection to feature in the proposed bill.

Other issues raised in response to this question included:

- The importance of continuing funding for research into the causes of environmental damage as this would inform enforcement.
- The need to focus on particularly damaging industries such as factory farming, salmon farming, and other marine industries.

Section 4: Member's Commentary

Monica Lennon MSP has provided the following commentary on the results of the consultation, as summarised in sections 1-3 above:

I would like to thank everyone who took the time to respond to the consultation. Knowing that there is overwhelming support from individuals and organisations for the protection of Scotland's environment through the introduction of ecocide law is something we can all feel positive about.

In total 3,379 responses were submitted during the consultation period, including submissions from 134 organisations. I appreciate the thoughtfulness expressed and the desire to protect nature. It should give all parliamentarians hope that people and groups across society want to ensure our ecosystems are protected from ecocide.

Over 95% of responses were fully supportive of the proposal, and a further 3% were partially supportive. This is encouraging and gives me a strong platform to build on. However, I also appreciate the questions and critical analysis that have tested some of the more detailed legal and technical matters that would need to be considered before the drafting stage. This has been constructive and helpful, as have the extensive discussions I have had with stakeholders and the Scottish Government throughout this process.

Hundreds of professionals and academics with expertise in a relevant subject took part, providing invaluable insight and perspectives. I learned a lot from

them, and this inspired me to form an Expert Advisory Group. This panel of experts has agreed to provide ongoing advice and feedback.

An extremely small minority of those responding to the consultation are not supportive of the changes being proposed. For example, one organisation felt that there are already laws that can be used if environmental law is breached.

With 86% of responses coming from members of the public, campaigns to stop ecocide are clearly capturing the public imagination. I am also aware of the growing level of interest in ecocide law across Europe and many other countries.

There has been significant interest from children and young people, with several schools supporting the proposal. I was pleased to work closely with the Children's Parliament and appreciate the response from the Children and Young People's Commissioner.

I was interested to read respondents' views on how ecocide law can protect the environment from severe harm. Many expressed concern that existing sanctions for environmental crimes are not severe enough and do not act as a strong enough deterrent.

This has further reinforced my view that criminalising ecocide in Scotland is necessary. Benefits include deterring severe environmental harm, maintaining alignment with environmental law in the European Union, a marker for how seriously we value the environment, securing a better future for children and young people.

Following my consultation closing in February 2024, in March the European Union subsequently included crimes comparable to ecocide in a Revised Directive on the protection of the environment through criminal law.

The Scottish Government has confirmed its position on EU alignment, and I am grateful to Scottish Ministers and officials for working with me to consider the best way to achieve our common aims in relation to ecocide and environmental protection law.

I also acknowledge the mixed views on the exact legal definition that would best suit Scotland's legal system. My Expert Advisory Panel will provide further advice, and I am open to working with MSPs and the Scottish Government on next steps. I am grateful to MSPs and Ministers for their advice and support so far.

It is not possible to provide an update on everything that is happening globally on ecocide law. However, it is important to recognise that in September 2024, Vanuatu, Fiji, and Samoa introduced a formal proposal to the International Criminal Court to include ecocide as a crime in the Rome Statute. The current offences in the Rome Statute are incorporated in Scots Law through the International Criminal Court (Scotland) Act 2001. I acknowledge these

international developments and will review them as I develop the final draft of the Bill.

Some respondents raised concerns over the effectiveness of financial sanctions in deterring ecocide crimes. I will consider my approach to these in the final Bill, including considering a specific provision for the recovery of proceeds from ecocide crimes.

There are concerns about the efficacy of existing environmental legislation, including resourcing and enforcement. Both the Scottish Wildlife Trust and Scottish Environment LINK expressed support for the criminal sanctions outlined but highlighted the need for proper enforcement and governance arrangements to address the existing gap in enforcement. I understand these concerns and do not offer ecocide law as a solution to these wider concerns. However, I am reassured that a strong majority see the potential for ecocide law to prevent environmental harm. This benefits nature and public finances.

Others highlighted the international aspect of ecocide crimes and transboundary issues. I will consider these issues carefully and have asked the Expert Advisory Group to provide further advice.

In summary, I am encouraged by the very high level of support for the proposal to make ecocide a crime in Scotland. In doing so, I acknowledge that there is further work to be done to improve clarity and certainty. The constructive approach taken by the Scottish Government, MSPs and a wide range of stakeholders has been incredibly helpful. I assure colleagues and constituents that I will continue to take this forward in a positive manner. The public clearly wish to see ecocide criminalised and it is vital that competent legislation is brought forward to meet their aspirations.

Under the Members' Bill procedure, I will now seek support from members across the Scottish Parliament to earn the right to introduce a Bill.

