

Consultation response

Introduction to Scottish Environment LINK

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organisations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment. Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits. This consultation response was written by ERCS with input from LINK's Governance Group. This consultation response has been endorsed by:

Badenoch & Strathspey Conservation Group

Bat Conservation Trust

Cairngorms Campaign

Chartered Institute of Ecology and Environmental Management

Environmental Rights Centre for Scotland

Friends of the Earth Scotland

Keep Scotland Beautiful

RSPB Scotland

Scottish Wild Land Group

- 1. Which of the following best expresses your view of the proposed Ecocide Prevention (Scotland) Bill? (Please note, that this question is compulsory.) ***
- a. Fully supportive
 - b. Partially supportive**
 - c. Neutral (neither support nor oppose)
 - d. Partially opposed
 - e. Fully opposed



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- f. Do not wish to express a view

Please explain the reasons for your response.

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. For greater detail on these issues, please see our [consultation response to the Review of the Effectiveness of Environmental Governance](#).

We agree with the general principles of criminalising ecocide-level environmental damage, which align with [the guiding principles on the environment](#) that the Scottish Government is required to take into account when considering proposals for legislation:

- by strengthening the integration of environmental protection into criminal law, it aligns with the integration principle;
- by deterring wrongdoers damaging the environment, it aligns with the prevention principle;
- by establishing additional sanctions for environmental destruction, it aligns with the polluter pays principle;
- because the risk of severe or irreversible environmental damage is higher without the ecocide law, it aligns with the precautionary principle.

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' ([p. 13](#)). On the contrary, ecocide is an 'offence to punish the most serious environmental crimes' as the consultation describes ([p. 14](#)). Ecocide law 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.

We do not believe that criminal law can address 'all aspects of harm against the environment' as the consultation claims ([p. 13](#)), or that this Bill, in itself, will sufficiently improve the low enforcement rates of environmental crime ([p.14](#)). There are gaps in both public and criminal law, and both need to be improved in tandem to protect Scotland's environment 'in an integrated fashion' ([p.13](#)). Importantly, there are failures of enforcement in both areas. A key concern for eNGOs is the lack of regulatory enforcement by relevant agencies on existing environmental law. We believe that the environmental governance regime in Scotland must address this failure with both resources and assertive commitment by regulators to hold polluters to account. Willingness to prosecute polluters, and the means to do so, are also necessary for the aims of this Bill.



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

- a. Yes, legislation is required**
- b. No, legislation is not required
- c. Do not wish to express a view

Please explain the reasons for your response.

Criminalising ecocide in Scots law would add an additional threshold of penalties for environmental damage. Specific environmental offences already exist in Scots law, including wildlife crime under the Wildlife and Countryside Act 1981, or water pollution under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. The Regulatory Reform (Scotland) Act 2014 also addresses acts of significant environmental harm. The proposed Bill would provide additional sanctions to address environmental damage comparable to ecocide in terms of scale and severity, however consideration is needed on how this would relate to s.40 and wider existing legislation.

Legislation would aid Scotland to 'keep pace' with EU law, in keeping with the commitments set out in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. Specifically, it would support alignment, as provisionally agreed in November 2023, with the revised Environmental Crime Directive to include 'an offence comparable to ecocide'. 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' (p.41). These 'cases comparable to ecocide' should be 'punished with more severe penalties' than other environmental crimes ([paragraph 9fa, preamble, p.10](#)).

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

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

Please explain the reasons for your response.

LINK considers that creating an offence of ecocide could contribute to a robust framework in preventing ecocide-level environmental damage. Adding to the existing body of criminal law, it would strengthen the law's capacity to sanction this kind of damage to Scotland's nature and society with the requisite seriousness. Criminalisation of ecocide should result in increased checks and balances in how Scotland's enforcement agencies are responsible for protecting the environment from harm, and the tools they have available to fulfil this purpose.



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However, 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.

Importantly, by criminalising ecocide, Scotland would join the EU and other jurisdictions (we note Baroness Boycott's Private Members Ecocide Bill introduced in the House of Lords in November) in building the momentum for recognising ecocide as the fifth crime under the Rome Statute of the International Criminal Court.

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?**
 - a. Yes, I support the proposed definition
 - b. No, I do not support the proposed definition
 - c. Prefer another definition**

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.

However, LINK recognises that further consideration is needed on a suitable definition for Scotland. The [Environmental Rights Centre for Scotland](#) has commissioned research on the feasibility and options of incorporation which will consider a potential definition, its *actus reus*, appropriate gravity threshold, fault standard/*mens rea* and causation, as well potential overlap or conflicts with existing environmental and/or criminal laws in Scotland. The report will be published by the end of March.

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?**
 - a. Fully supportive**



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- b. Partially supportive
- c. Neutral (neither support nor oppose)
- d. Partially opposed
- e. Fully opposed
- f. Do not wish to express a view

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

LINK 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, where the maximum term of imprisonment is currently five years (for example, [Wildlife and Countryside Act 1981](#)), 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, particularly on the unlawfulness requirement and timescales for taking action.

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

- a. Fully supportive
- b. Partially supportive**
- c. Neutral (neither support nor oppose)
- d. Partially opposed
- e. Fully opposed
- f. Do not wish to express a view

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

LINK is partially supportive of the proposed penalties but would support more severe financial sanctions in line with the [revised EU Environmental Crime Directive](#).

For environmental crimes, Article 7(3) of the Directive sets that the minimum fine for legal persons should be 3-5% of the total worldwide turnover for the legal person over one year, or EUR 24-40 million, depending on the crime ([p. 48](#)). Article 7(5a) states that for qualified offences ('cases comparable to ecocide'), legal persons should be 'punishable by more severe criminal or non-criminal



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sanctions or measures' ([p. 49](#)). The proposed 10% of worldwide turnover for companies over three years may therefore not be severe enough penalty in comparison to these minimum fines for environmental crime.

In determining the maximum fine, we would also support adopting the view of ELI in considering the financial benefits resulting from the crime of ecocide: 'Where offenders have made financial gains, such gains should be confiscated, along with the proceeds resulting from the crime' ([ELI, 2023, p. 31](#)). Article 10 of the revised EU Environmental Crime Directive also incorporates this sanction ([p. 51](#)). Therefore, where the financial gains exceed the 10% of worldwide turnover for companies over three years, we would support financial sanctions that cover confiscation of all relevant profits.

Further, we would support adopting additional punitive measures. Articles 5(6) and 7(2) of the Directive provide non-exhaustive lists of additional measures for natural and legal persons respectively that may be appropriate for establishing proportionate and effective sanctions ([pp. 44-45 & 47-49](#)). Given the gravity of ecocide-level crimes, it is critical to the efficiency and dissuasiveness of the law that regulatory and judicial bodies should have access to commensurate criminal penalties.

7. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

- a. a significant increase in costs
- b. some increase in costs**
- c. no overall change in costs
- d. some reduction in costs
- e. a significant reduction in costs

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

LINK considers that the Bill will likely lead to 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.

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

Legislating for ecocide in Scots law is compatible with the UN resolution on the human right to a healthy environment, as it will provide punishment and/or deterrent in upholding the substantive right to a healthy environment. The Scottish Government has committed to incorporating the right to a healthy environment in the Human Rights (Scotland) Bill in this parliamentary session.

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9. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

What impact could this proposal have on particular people if it became law? If you do not have a view skip to next question.

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

LINK recognises that the impact of environmental harm is disproportionately felt by the most marginalised people and places both globally and in Scotland. Legislating for ecocide would advance environmental justice by building the law's capacity to hold polluters to account. While we agree with ELI's view that restorative justice in cases of ecocide is likely difficult to achieve given the severity and sometimes irreversibility of the damage ([ELI, 2023, p. 27](#)), improving environmental law and enforcement is necessary for a more equal and just society in Scotland.

10. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations.

Do you think the proposal could impact in any of these areas? (If you do not have a view then skip to next question)

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

By criminalising the most severe environmental destruction, the proposal would contribute to addressing the triple planetary crisis of climate breakdown, biodiversity loss, and increasing pollution of air, land and water. The [State of Nature report 2023](#) demonstrates that pollution and changing sea and land use are some of the most important drivers of accelerating biodiversity loss in Scotland (p. 24-25).

By criminalising financial gain from severe destruction of nature, the law would 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.

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

No.



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This response was compiled on behalf of LINK Governance Group and is supported by:
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