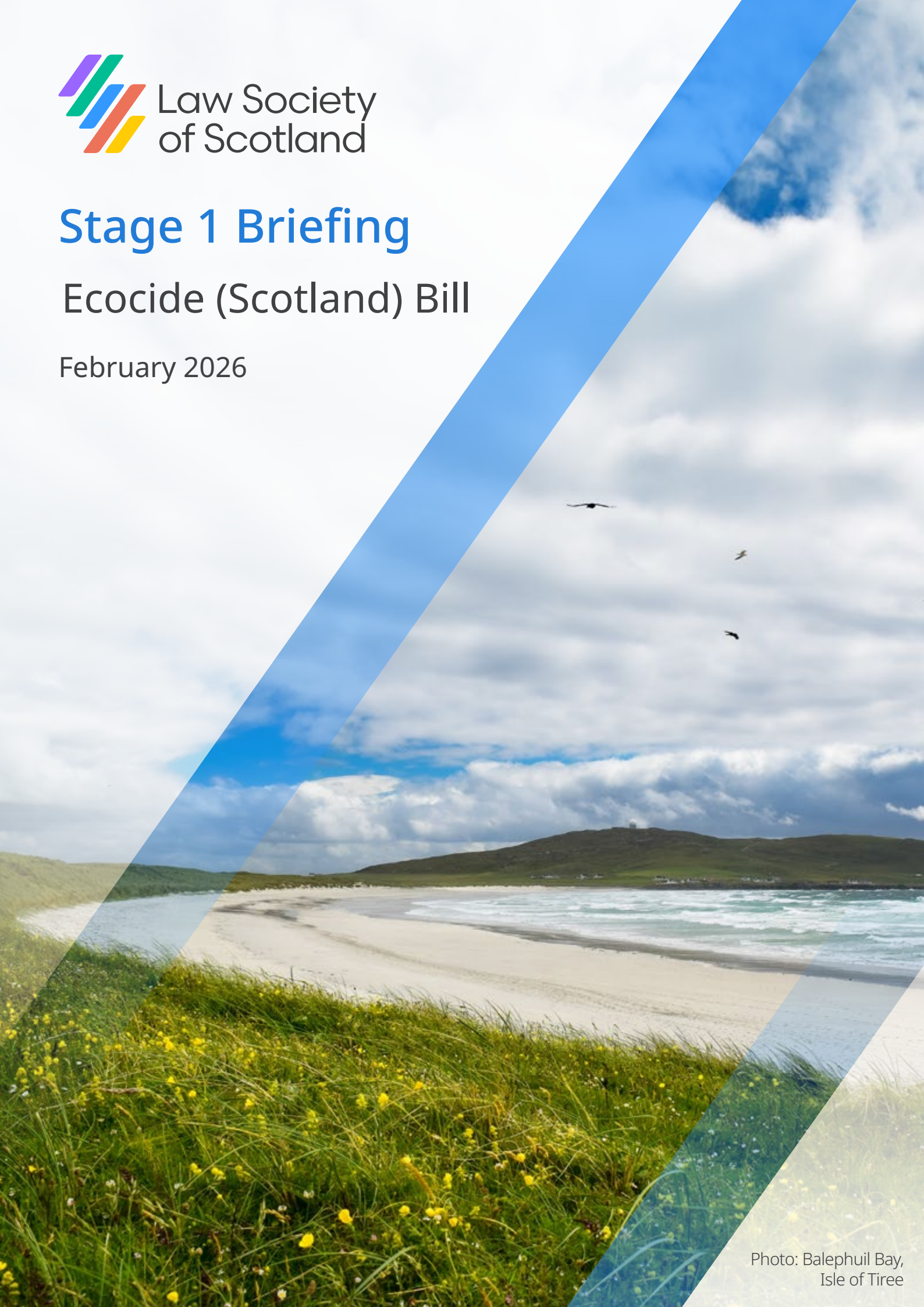


Stage 1 Briefing

Ecocide (Scotland) Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Ecocide (Scotland) Bill (“the Bill”)¹ is a Member’s Bill which was introduced by the Monica Lennon MSP on 29 March 2025, and comprises 2 parts and 13 sections.

We submitted written evidence² on the Bill to the Net Zero, Energy and Transport Committee (“the Lead Committee”) in September 2025 and provided oral evidence as part of the Lead Committee’s Stage 1 consideration of the Bill on 23 September 2025³. We also provided follow-up commentary, in writing⁴, to the Lead Committee on 18 December 2025 in relation to certain aspects that were raised during oral evidence.

The Lead Committee Report on the Bill at Stage 1 (“the Stage 1 Report”) was published on 23 January 2026⁵.

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 1 debate scheduled for 5 February 2026⁶.

¹ [Ecocide \(Scotland\) Bill | Scottish Parliament Website](#)

² [Written Evidence](#)

³ [Official Report](#)

⁴ [Letter from Law Society of Scotland Follow up to Ecocide \(Scotland\) Bill evidence session on 23 September](#)

⁵ [Stage 1 report on the Ecocide \(Scotland\) Bill | Scottish Parliament](#)

⁶ [S6M-20606 | Scottish Parliament Website](#)

Stage 1 Report Summary

We note that whilst the Lead Committee supports strong criminal penalties for serious environmental harm, it raised concerns about the provisions being insufficiently clear and potentially difficult to implement⁷.

The Lead Committee raised concerns about the relationship between the proposed ecocide offence in the Bill and the existing offence under section 40 of the Regulatory Reform (Scotland) Act 2014⁸, which we highlighted in our written evidence⁹.

In particular, the Lead Committee questioned whether creating a new, standalone offence risks unnecessary duplication or overlap, and whether amending section 40 might provide a more effective and proportionate legislative approach¹⁰.

A central issue identified by the Lead Committee was the limited use of section 40 in practice¹¹. Despite being designed to address significant environmental harm, the offence has rarely, if ever, been prosecuted¹². The Lead Committee emphasised the need to better understand the reasons for this lack of enforcement, noting that introducing a new offence may not resolve underlying issues if existing powers are not being effectively utilised¹³.

The Lead Committee also highlighted differences in the legal tests applicable to section 40 and the proposed ecocide offence, including the mental element required for conviction¹⁴. It noted that these differences could influence prosecutorial decision-making, potentially leading to continued reliance on section 40 where it is easier to prove. As a result, the Lead Committee stressed the importance of carefully considering how the two offences would operate alongside one another, and whether alternative mechanisms - such as amendments to section 40 - would better achieve the Bill's objectives¹⁵.

In addition to its concerns about definitions, enforcement and the relationship with section 40 of the Regulatory Reform (Scotland) Act 2014, the Lead Committee noted a number of other key issues:

1. Legal clarity and workability of the offence

The Lead Committee expressed concern that key concepts underpinning the proposed offence, including the threshold for "severe environmental harm"¹⁶ and the treatment of harm occurring over time or by omission, lacked sufficient clarity.

⁷ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 262

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

⁹ [Written Evidence](#)

¹⁰ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 103

¹¹ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 106

¹² [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 100

¹³ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), 291

¹⁴ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 169

¹⁵ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 103

¹⁶ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 100

It heard evidence that this uncertainty could make the offence difficult to prosecute to the required criminal standard¹⁷.

2. Defences and burden of proof

The Lead Committee raised concerns about the statutory defence of necessity, particularly the requirement for the accused to establish the defence on the balance of probabilities¹⁸. It noted that this approach could raise human rights issues and may require further consideration or amendment¹⁹.

3. Enforcement capacity and resources

The Lead Committee also highlighted practical concerns about enforcement, including whether relevant regulators and law enforcement bodies have adequate resources, expertise and coordination arrangements to investigate and prosecute the offence effectively²⁰.

Given the limited time left in this Parliamentary session, a majority of the Lead Committee concluded that these issues cannot be adequately addressed before the end of the Parliamentary session, and therefore a majority of the Lead Committee do not support the Bill's general principles or recommend that it proceeds²¹.

However, the Lead Committee hopes that various recommendations in the Stage 1 report are taken up as soon as possible and taken forward into the next session²². The Lead Committee also note the current government's commitment to keep pace with EU law, and in our written evidence²³ we highlighted section 1 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021²⁴ where the Scottish Ministers may make provision to implement an EU Directive so that Scots Law corresponds with EU Law.

¹⁷ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 105

¹⁸ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 230

¹⁹ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 231

²⁰ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 291

²¹ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 306

²² [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 307

²³ [Written Evidence](#)

²⁴ [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#)

PART 1 Offence of ecocide and defence of necessity

Section 1 Offence of Ecocide

Section 1 of the Bill defines ecocide as intentional or reckless conduct that causes “severe environmental harm”, with “severe” meaning harm that has serious adverse effects and is either “widespread” or “long-term”²⁵.

In our written response²⁶, we deemed these definitions as “reasonable”. We noted that they will have differential effects depending on the circumstances; for example, a pollution spill close to a river can cause “widespread” effects downstream, whereas the same spill in a location away from watercourses would not. Similarly, weather conditions may dictate if a recklessly caused fire has “widespread” consequences.

We also noted that all harm to biodiversity may be considered to be long-term given the period of time required for full habitat regeneration. We highlighted that intentional or reckless tests emulate the provisions in already place in Scotland for wildlife crime, citing section 1 of the Wildlife & Countryside Act 1981²⁷ as it applies to Scotland.

The Lead Committee accept that creating a new offence requires balancing clarity with avoiding overly technical drafting²⁸. The Lead Committee also questions the re-use of an existing definition of “environmental harm”²⁹, and notes concerns from prosecutors about whether the definition is clear enough to support expert evidence and successful prosecutions.

The Committee warns that the Bill should not proceed without further work to refine the definition, calling for continued engagement with the Scottish Government and expert stakeholders and the development of detailed guidance to support consistent interpretation and application.

We consider that there is merit in using the same, established definition of “environmental harm” contained in section 17(2) of the Regulatory Reform (Scotland) 2014 Act³⁰, being:

- ““environmental harm” means—*
- (a) harm to the health of human beings or other living organisms,*
 - (b) harm to the quality of the environment, including—*
 - (i) harm to the quality of the environment taken as a whole,*
 - (ii) harm to the quality of air, water or land, and*
 - (iii) other impairment of, or interference with, ecosystems,*
 - (c) offence to the senses of human beings,*

²⁵ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 43

²⁶ [Written Evidence](#)

²⁷ <https://www.legislation.gov.uk/ukpga/1981/69/section/1>

²⁸ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 141

²⁹ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 141

³⁰ [Regulatory Reform \(Scotland\) Act 2014](#), section 17(2)

*(d) damage to property, or
(e) impairment of, or interference with, amenities or other legitimate uses of the environment.”*

What distinguishes the environmental harm in the Regulatory Reform (Scotland) 2014 Act to the proposed Ecocide (Scotland) Bill is the fact that the 2014 Act deals with “significant”, environmental harm whereas the Ecocide (Scotland) Bill is dealing with “severe” environmental harm. In the 2014 Act, environmental harm is “significant” if -

“(a) it has or may have serious adverse effects, whether locally, nationally or on a wider scale, or

(b) it is caused or may be caused to an area designated in an order by the Scottish Ministers for the purposes of this section.”

In our written evidence³¹, we noted the need for stronger legal mechanisms to prevent and punish severe environmental harm amid the climate and nature crises, and therefore welcome the Ecocide (Scotland) Bill as a means to deter harmful behaviour through the threat of robust sanctions.

There is clearly a question of the scale of the harm involved when considering if an ecocide crime has taken place. There then follows the question of whether the penalties for causing severe harm are fair and proportionate, and whether the presence of such potential penalties will have the dissuasive effect on behaviours that pose severe environmental risk.

We consider that there is a place and a need to have a higher level of penalty for severe environmental harm – or ecocide – so that the penalties that can be awarded fit the crime, and so that there is a sharper awareness of the imperative need to operate in a manner that does not cause severe environmental harm.

However, we also noted that the proposed offence overlaps with section 40 of the Regulatory Reform (Scotland) Act 2014³², albeit has a narrower *mens rea* (mental element) and provision on corporate liability (as it does not include neglect), an additional vicarious liability provision, more severe maximum penalties, and a reporting requirement.

We consider there to be scope to adapt section 40 of the 2014 Act so that the provisions of the Bill sit within the framework of section 40, and so that section 40 deals with both scales of significant and severe environmental harm. Whilst we appreciate that this is not the way in which the Bill has been drafted i.e. to expand section 40 of the 2014 Act to accommodate the ecocide provisions for severe harm, we see no obvious barrier to this being taken forward.

³¹ [Written Evidence](#)

³² [Regulatory Reform \(Scotland\) Act 2014](#), section 40

Whilst we are of course mindful of the Parliamentary timetable and the pressures incumbent on moving the Ecocide (Scotland) Bill forward to its next stage, because the content of the Bill is relatively short and focussed, and does not have extensive cross-referencing to other legislation (as can often be the case), we would hope that an adaptation of section 40 to accommodate the ecocide provisions could be achieved without it being unduly complex or onerous.

Section 2 Defence of Necessity

We have no specific comments to make for the purpose of this briefing.

Section 3 Individual culpability where organisation commits offence and Section 4 Vicarious liability

The Bill's provisions allow for individuals, organisations and specified senior individuals of organisations (e.g. directors or partners) to be held liable for ecocide.

In our written evidence, we highlighted that this approach differs from other offences, for example section 40 of the Regulatory Reform (Scotland) Act 2014³³, in which the basis of individual liability is consent or connivance, not "attributable to the neglect" of the listed people, as outlined in section 42 of the Regulatory Reform (Scotland) Act 2014³⁴.

We also noted that whilst the provisions on individual and organisational culpability were sufficiently clear and appropriate - including the definitions of who is a "responsible individual" - we highlighted the cross-over with the existing wording at section 42 of the Regulatory Reform (Scotland) Act 2014.

As mentioned above, we suggested that amending the section 40 offence as "ecocide", and other provisions as necessary to cover the new elements proposed by the Ecocide (Scotland) Bill, may be a more effective and efficient way of integrating these provisions into law.

5 Penalty

The Bill proposes a maximum custodial sentence of 20 years and unlimited fines (or an unlimited fine in the case of an organisation).

In our written submission, we stated that it is essential that penalties are proportionate and dissuasive. The Bill's proposed penalties significantly exceed

³³ www.legislation.gov.uk/asp/2014/3/section/40

³⁴ www.legislation.gov.uk/asp/2014/3/section/42

those contained in section 40(7) of the Regulatory Reform (Scotland) Act 2014³⁵. However, they are focussed on “severe” environmental harm, dealing with a more extensive class of environmental harm than might otherwise presently be captured under the provisions of the Regulatory Reform (Scotland) Act 2014 which focusses on “significant” environmental harm.

The Lead Committee recognises the proposed penalty regime’s escalation from the current sanctions applicable to environmental offences in Scotland, particularly given the maximum custodial sentence of up to 20 years’ imprisonment. The Lead Committee accepts that the offence is deliberately confined to the most serious and exceptional cases of environmental harm, and that conviction would require the prosecution to establish the requisite *mens rea*.

In these circumstances, the Lead Committee is satisfied that the proposed penalties are, in principle, proportionate subject to the satisfactory resolution of outstanding concerns relating to definition, liability and defences.

The Lead Committee considers that, regardless of whether the Bill proceeds to Stage 2, there is a case for reviewing and potentially increasing the maximum penalties under section 40 of the 2014 Act, as part of a broader review of that legislation³⁶.

The Committee is satisfied that the existing confiscation powers under the Proceeds of Crime Act 2002³⁷ are sufficient and do not need to be replicated in the Bill. The Committee also notes proposals to link fines more explicitly to corporate turnover, consistent with the EU Environmental Crime Directive³⁸, and considers that this merits further consideration.

It is important to note that the EU Environmental Crime Directive includes prison sentences of at least eight years for serious offences Article 5(20(b))³⁹, as opposed to a cap of five years following conviction on indictment in the Regulatory Reform (Scotland) Act 2014 (section 40(7)).

Also, in our written evidence⁴⁰ we highlighted that Article 7(4) of the EU Environmental Crime Directive⁴¹ extends the level of penalties further for certain criminal environmental offences. Member States are required to apply more severe penalties for offences under Article 3(3) than the offences listed under Article 3(2). Article 3(3) refers to:

³⁵ [Regulatory Reform \(Scotland\) Act 2014](#)

³⁶ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), 263

³⁷ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 264

³⁸ [Environmental Crime Directive - Environment - European Commission](#)

³⁹ [Directive \(EU\) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC](#), article 5(20(b))

⁴⁰ [Written Evidence](#)

⁴¹ [Directive \(EU\) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC](#), article 7(4)

“(a) the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or

(b) widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water.”

Section 6 Regard to be had to financial benefit in determining amount of fine

We have no specific comments to make for the purpose of this briefing.

Section 7 Order for Compensation may include costs of Remediation or Mitigation

Under Section 7 of the Bill, when a person is convicted of ecocide, the court may, either as an alternative to or alongside other penalties, issue a “compensation order.” This order can require the convicted individual to pay compensation to another party for matters such as personal injury, losses, damages or expenses incurred in addressing or repairing the harm caused—whether to the environment or otherwise.

The Stage 1 Report notes that the Bill makes clear that offenders can pay for remediation rather than carry it out directly⁴².

In our written evidence⁴³, we noted that this “is perhaps justified in terms of trust that appropriate steps are taken properly and avoiding any spin into a ‘good news’ story”. It is also essential that any remediation is carried out effectively and timeously.

8 Publicity order

Section 8 of the Bill allows courts to issue a publicity order. This order requires a person convicted of ecocide to publicly disclose information about the ecocide offence.

In our written response⁴⁴, we commented that such orders may add to the dissuasive effect on environmental harm that the Bill is ultimately trying to bring attention to. Adverse publicity can change the way in which businesses operate in a world of increasing corporate and social responsibility.

⁴² [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 258

⁴³ [Written Evidence](#)

⁴⁴ [Written Evidence](#)

The Lead Committee notes that many stakeholders considered publicity orders would provide an additional deterrent effect, but no recommendations were made in the report in Stage 1 report. However, the Lead Committee recommends that, if the Bill progresses, the Member in Charge should consider strengthening sentencing through clearer restorative and preventative sanctions, including those addressing corporate governance, in line with the EU Environmental Crime Directive⁴⁵.

We would highlight that Articles 5(3) and 7(2) of the Directive (cited under 'Section 5: Penalty' of this briefing) provide direction on the EU approaches to additional measures and may assist when considering this recommendation.

9 Enforcement powers in relation to ecocide

The Bill proposes extending investigatory powers under section 108 of the Environment Act 1995⁴⁶ to allow enforcing authorities - Scottish Ministers, SEPA, and certain local authorities - to investigate potential ecocide offences.

In our written evidence, we noted that all enforcement bodies would be required to contribute to enforcement, but it would be essential that there is sufficient long-term resourcing so that enforcement can be achieved⁴⁷.

The Lead Committee notes whilst that the Bill will operate mainly through existing enforcement structures, ecocide investigations are likely to be rare, complex and resource-intensive⁴⁸.

The Committee comments that this may require more investment than indicated in the Financial Memorandum.

The Committee highlights that NatureScot is not automatically an enforcing body and would need authorisation to investigate ecocide or related offences, and invites the Scottish Government to clarify the implications of formally designating it as such⁴⁹. This is particularly important given NatureScot's key role in the protection of wildlife and habitats.

If the Bill progresses, the Committee recommends discussions among the Member in Charge, government, prosecutors, police and regulators to produce revised resourcing estimates, complementing a review of the underuse of the section 40 offence⁵⁰.

⁴⁵ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 265

⁴⁶ [Environment Act 1995](#)

⁴⁷ [Written Evidence](#)

⁴⁸ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 289

⁴⁹ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 290

⁵⁰ [Stage 1 report on the Ecocide \(Scotland\) Bill](#), para 291

10 Report on operation of Act

Section 10 requires Scottish Ministers to publish a report on how the Bill is working every five years once it is enacted, and to lay this report before the Parliament.

In our written submission, we noted that the Bill, as drafted, requires a single report at the end of the first five years, which is quite common in other legislative proposals. However, we noted two standout issues with the provisions:

Firstly, police statistics are not always gathered or presented in a way that allows easy interpretation and interrogation.

Secondly, and aligned with the overlap with section 40 of the Regulatory Reform (Scotland) Act 2014, we have concerns around continued ‘visibility’ of a newly created offence being forgotten about amidst existing crimes.

The Lead Committee acknowledges concerns that a fixed five-year reporting requirement may be misleading and administratively burdensome, but also notes strong stakeholder support for reporting. It concludes that reporting is valuable for showing how the offence works in practice and for learning from ecocide cases. The Committee therefore recommends replacing the five-year requirement with a duty on Scottish Ministers to publish a report within 12 months of any ecocide conviction, covering the harm caused, the case outcome, and lessons to help prevent future incidents. This recommendation aligns with the expectation that ecocide offences, as defined in the Bill, will not occur regularly.

We consider the need for a reporting mechanism to be important, whether on the initially proposed five year basis, or within 12 months after any ecocide conviction. In many ways the proposal to report within 12 months of an offence could be more effective from an educational point of view, whether it be lessons learned in policing and prosecution, or from the perspective of governance and greater awareness of the environmental risks and criminal penalties of ecocide.



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