

T: 0300 244 4000
E: scottish.ministers@gov.scot

Edward Mountain MSP
Convener, NZET Committee
The Scottish Parliament

December 2025

Email: netzero@parliament.scot

18/12/2025

Dear Edward,

ECOCIDE (SCOTLAND) BILL

Thank you for your letter of 11 December. It was good to engage constructively with the NZET Committee about the Ecocide (Scotland) Bill when I gave evidence on 2 December.

Your letter said that it would be useful for the Committee to have more information about the potential for an alternative conviction provision in the Bill. As discussed in the meeting, and in the Scottish Government's memorandum, there are concerns about the overlap between the proposed new offence of ecocide and the existing section 40 offence in the Regulatory Reform (Scotland) Act 2014 ("the section 40 offence").

As I said in my evidence, I am giving consideration to an amendment that would introduce an alternative conviction provision. However, as I also said, the Scottish Government has not yet settled on its approach to such an amendment, should the Bill reach Stage 2. More generally, our approach to amendments that we would propose at Stage 2 will be informed by the evidence given to the Committee, including by the Member in charge of the Bill, and by the Committee's Stage 1 report.

The intent of an alternative conviction provision would be to provide for a jury to be able to consider a conviction under the section 40 offence if it is not satisfied that the accused has committed an offence of ecocide as charged. There is a case that this could help to address concerns about reluctance to bring an ecocide offence to court, and could establish a relationship and hierarchy between the two offences.

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I can discuss some examples of existing alternative conviction provisions, that we are considering as we develop our thinking on a potential amendment of this nature for the Ecocide (Scotland) Bill. We are still considering if these examples are an appropriate model for an amendment to this Bill.

An example of an alternative conviction provision can be found in the Domestic Abuse (Scotland) Act 2018. Section 8 of that Act provides that an accused person who is being tried for the offence of domestic abuse, can be convicted of one of two specified alternative offences, if the evidence does not support conviction for the offence of domestic abuse but does support conviction for the alternative offences. The two alternative offences specified are found at section 38 and 39 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour and stalking, respectively). This is an example of a new offence with a higher maximum punishment having alternative conviction provision for existing offences with lower maximum punishment, which can be seen as more straightforward to prove as these do not require that the parties were in a relationship at any point.

Another example of an alternative conviction provision can be found in the Criminal Justice and Licensing (Scotland) Act 2010. Section 39(8) and (9) of that Act provides that if a jury or court is not satisfied that the accused committed the offence of stalking, with which they have been charged, and is satisfied that the accused committed the offence of threatening or abusive behaviour, then the jury or court may acquit the accused of stalking and find them guilty of threatening or abusive behaviour. In this case, the two offences have the same maximum punishment, however the offence of threatening or abusive behaviour may be seen as more straightforward to prove as it can be committed in a single incident and does not require a course of conduct to be established. In this and the above example, the conduct which constitutes the primary offence charged is of a similar nature as the alternative offences, i.e. abusive behaviour.

I hope that this information is useful to the Committee as you complete your work at Stage 1 of this Bill.

Yours sincerely,

GILLIAN MARTIN

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