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Convener
Net Zero, Energy and Transport Committee
Scottish Parliament
Edinburgh
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By email:
netzero.committee@parliament.scot

Date: 18 December 2025

Dear Convener

I refer to the Ecocide (Scotland) Bill ("the Bill") and the evidence session held on 11 November 2025. Thank you for giving the Crown Office and Procurator Fiscal Service (COPFS) the opportunity to contribute to the session and for your subsequent email dated 21 November 2025.

You have asked for some additional information in relation to two matters: whether the Bill provides sufficient clarity on harm that is caused by a course of conduct or incidents that occur over a period of time, and; whether serious harm caused by a permitted or consented activity should be an offence under the Bill.

Course of Conduct

The Ecocide (Scotland) Bill seeks to create a criminal offence of ecocide, which is defined in the Bill as "the intentional or reckless causing of severe environmental harm". In this context, "severe environmental harm" means harm which has serious adverse effects and which is widespread or long-term. The Bill provides, at sections 1(2)(c) and 1(2)(d), definitions for widespread and long-term.

In the ecocide offence, the harm has to be actually realised (i.e. it is not sufficient that it might have been caused), and requires a higher evidential burden for prosecutors in that there must be evidence of recklessness or intention (as opposed to the strict liability offence provided for by section 40 of the Regulatory Reform (Scotland) Act 2014).

As the Committee heard in evidence during the session on 11 November 2025, the terms of the Bill do not require there to be evidence of a course of conduct in relation



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to the environmental harm caused and it does not matter whether the harm that has occurred was the result of a one-off event or occurred over a period of time.

We consider that the terms of the Bill do not create any barrier to prosecuting a course of conduct, as opposed to a single event of causing severe environmental harm, and both types of incident would be considered by prosecutors in the same way. What is important is that there is evidence of harm which has serious adverse effects and that is widespread or long-term. As described by Mr Batho of our Wildlife and Environmental Crime Unit during the evidence session, prosecutors would be reliant upon the evidence of expert witnesses – for example, SEPA scientists – that the harm caused meets that evidential standard.

In other words, it is the extent of the harm caused that is the focus for prosecutors and not the length of time the harm was being caused. Where harm has been caused over a longer period of time, however, this may provide evidence for the prosecutor to reach the higher evidential burden required of showing an intention or recklessness on behalf of the accused.

Permitted Activities

The terms of the proposed ecocide offence do not contain specific defences relating to authorised or permitted activities. This defence is provided for in the offence under section 40 of the 2014 Act and is available to both individuals and companies who are carrying out a permitted activity but, in doing so, cause environmental harm.

As the Committee heard in evidence, and as detailed above, the terms of the proposed Bill create a higher evidential burden than the evidential burden contained under section 40 of the 2014 Act; requiring evidence of intention or recklessness.

Therefore, where licensed or consented activities are being undertaken under the express terms of a permit, this higher evidential burden may be more difficult to achieve; as it may be more difficult to prove that the person - if they were acting within the terms of that authorisation – intended to cause environmental harm, or was reckless as to whether environmental harm was caused.

In all cases, prosecutors would consider all the available evidence and whether there is a sufficiency of evidence to prove, beyond reasonable doubt, intention or recklessness when considering whether it is appropriate to libel a charge of ecocide, rather than an alternative offence which targets the same offending but has different evidential parameters.

I hope that the above information is of assistance to the Committee.



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Yours sincerely

Rachael Weir
Director of Policy



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