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Planning Services

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Your Ref:
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Dear Edward Mountain,

Response to Ecocide (Scotland) Bill Consultation

Thank you for the opportunity to comment on the Ecocide (Scotland) Bill. While we support the principle of strengthening environmental protection, we have significant concerns about the Bill's clarity, practicality, and implications for local authority statutory functions.

1. Liability for Consented Operations

The Bill is silent on whether activities carried out under planning permission or other statutory consents could expose planning authorities or operators to criminal liability. This lack of clarity creates legal uncertainty and risk for public bodies exercising statutory duties. We strongly recommend the Bill include explicit provisions similar to those in the Regulatory Reform (Scotland) Act 2014, confirming that actions undertaken in accordance with valid consents or licences do not constitute ecocide.

2. Impact on Planning Decision-Making

The potential for criminal prosecution will inevitably influence planning decisions, particularly for major developments. Officers from Environmental Health provide planning application consultation responses, in relation to noise, contaminated land, air quality and similar. If the Ecocide legislation is introduced, it could lead to a more risk adverse approach being taken and more objections being raised. Planning authorities do not have the remit, expertise, or resources to determine thresholds for "severe environmental harm" or to undertake punitive enforcement. Planning enforcement exists to remedy breaches of control, not to prosecute criminal offences. Introducing criminal liability into the planning process risks creating unrealistic public expectations and undermining the statutory planning framework.

Additional Concern – Historic Decisions and Retrospective Liability

Planning decisions are made based on the best available information, guidance, and practice at the time of determination. It is unclear how the Bill would apply if, years later, new evidence suggests that a consented development caused “severe environmental harm” as defined under the Bill.

- Would liability extend retrospectively to the authority or decision-makers who acted lawfully and reasonably at the time?
- This uncertainty creates significant legal risk and could lead to defensive decision-making, stifling development, and innovation.

The Bill must explicitly clarify that decisions made in good faith, in compliance with prevailing law and guidance, cannot retrospectively expose authorities or individuals to criminal liability.

3. Definition and Thresholds of Harm

Terms such as “serious,” “widespread,” and “long-term” are open to interpretation. Clear, legally robust definitions and practical examples are essential. Without these, authorities cannot reasonably assess risk or advise applicants. For instance, it could be argued that anything resulting in greenhouse gas emissions is “harm that has serious adverse effects” in the “long-term” and “not naturally recoverable within 12 months”. This would open up to legal challenge many activities the legislation does not intend. The Bill should clarify whether cumulative impacts over decades could constitute ecocide and how this interacts with existing planning tools such as Environmental Impact Assessment.

4. Cumulative Impacts and Course of Conduct

Tracking and evidencing incremental harm across multiple consents and operators is beyond the capacity of planning authorities. The Bill must specify how cumulative harm will be assessed and by whom.

5. Enforcement and Investigatory Burden

Section 9 extends investigatory powers to local authorities. This is wholly unrealistic given current resource constraints. Environmental Health and Planning teams already face severe recruitment challenges and lack the forensic and legal expertise required for criminal-level investigations. Diverting resources to ecocide investigations would compromise delivery of statutory duties such as food safety, air quality, and contaminated land.

If enforcement is to be criminal in nature, responsibility should sit with specialist agencies such as SEPA and Police Scotland, supported by multi-agency protocols. Local authorities cannot absorb this function without significant new funding, specialist staff, and legal training.

6. Integration with Existing Law

The Bill introduces a new criminal layer that risks overlapping and conflicting with existing regimes (Town and Country Planning Act, EIA Regulations, Pollution Prevention and Control, statutory nuisance). Harmonisation is essential to avoid duplication and confusion for operators, regulators, and the public.

7. Practical Implementation

- Clear guidance and examples of what constitutes ecocide under different regimes (planning, air quality, contaminated land, waste) are needed.
- Joint scenario-based exercises with SEPA, Police Scotland, and Crown Office should be mandated if local authorities are expected to play any role.
- Significant funding and training would be required for specialist staff, legal advice, and data-sharing protocols.

Conclusion

We support the intent of the Bill but strongly urge that:

- Explicit defences for consented/licensed activities are included.
- Enforcement responsibility remains with specialist agencies, not local authorities.
- Definitions and thresholds are clarified and aligned with existing legislation.
- Adequate resources and guidance are provided before implementation.

Without these changes, the Bill risks creating legal uncertainty, unrealistic expectations, and significant operational and financial burdens on local authorities. As drafted, it would also impose additional unfunded and inappropriate duties on planning authorities, pushing the planning function beyond its core purpose of managing land use into areas requiring criminal enforcement and environmental forensics—roles for which planning authorities are neither resourced nor designed.

Yours sincerely

Pam Ewen,
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