

# Ecocide (Scotland) Bill

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## Explanatory Notes

### Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Ecocide (Scotland) Bill, introduced in the Scottish Parliament on 29 May 2025.
2. The following other accompanying documents are published separately:
  - a Financial Memorandum (SP Bill 70–FM);
  - a Policy Memorandum (SP Bill 70–PM);
  - a Delegated Powers Memorandum (SP Bill 70–DPM);
  - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 70–LC).
3. These Explanatory Notes have been prepared by the Non-Government Bills Unit, on behalf of Monica Lennon MSP, the Member who introduced the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### The Bill – background

5. The Bill creates the criminal offence of ecocide, the intentional or reckless causing of severe environmental harm. Severe in this context means harm which has serious adverse effects and which is widespread or long-term. The Bill creates the offence and sets down various rules for how liability for it is to be determined and how convictions for it are to be dealt with. It also provides the Scottish Environment Protection Agency ("SEPA") with enforcement powers in respect of ecocide.

6. There exists a regulatory offence of causing significant environmental harm, under section 40 of the Regulatory Reform (Scotland) Act 2014 (“the 2014 Act”). That is a strict liability offence, which requires the harm to have had serious adverse effects whether locally, nationally or on a wider scale, or it is to a designated area. The harm can be actual or potential. There are defences of authorisation and necessity. The penalties applicable on summary conviction are a fine not exceeding £40,000, or imprisonment for up to 12 months, or both, and, on conviction on indictment, an unlimited fine, or imprisonment for up to five years, or both.

7. The Bill captures only the most serious end of the spectrum of behaviour which would be caught by the section 40 offence, in terms of the degree of harm caused, the mindset of the perpetrator, and the fact that the harm needs to be actual and not merely potential. It designates this behaviour an autonomous “real crime” (as opposed to a regulatory infringement), which is treated as one of the utmost seriousness in terms of criminal procedure and potential penalties.

## The Bill – overview

8. The Bill mostly consists of freestanding text but does amend some other legislation. It consists of 13 sections, spread over two Parts.

9. Part 1 of the Bill provides for the offence of ecocide. It also provides for a defence of necessity. Provision is made for individual culpability where an organisation commits the offence and for the vicarious liability of employees and agents. It provides for penalties and other consequences of conviction, and provides SEPA with enforcement powers in respect of ecocide.

10. Part 2 of the Bill provides for further and final matters, including a reporting requirement on the Scottish Ministers in respect of the operation of the Act, and standard final provision.

## The Bill – general interpretative matters

11. The Bill’s freestanding text is interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010. Text that the Bill inserts into other enactments is to be interpreted in accordance with the interpretation legislation that applies to that enactment. Accordingly, the text inserted into the Criminal Procedure (Scotland) Act 1995 and into the Environment Act 1995 must be interpreted in accordance with the Interpretation Act 1978.

12. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. This Bill applies to the Crown in the same way as it applies to everyone else.

## The Bill – section by section

### The offence of ecocide and defence of necessity

#### Section 1: Offence of ecocide

13. Subsection (1) of section 1 of the Bill provides that a person commits an offence if the person, with the necessary mindset, causes severe environmental harm. A “person” can be a legal or natural person, and the offence is one which can be committed by a company etc., so both individuals and bodies corporate are captured. The offence requires the harm to have actually occurred: it is not sufficient that it could have occurred or was likely to occur.

#### Criminal mindset

14. The offence requires a criminally guilty mind in that it can only be committed with one of two alternative mindsets: the person intends to cause environmental harm, or the person is reckless as to whether environmental harm is caused. Intention and recklessness are both well-established concepts in Scots criminal law and there are many cases which discuss how they apply as a practical matter. It is not necessary to prove that someone was aware of the precise nature of the harm that has resulted.

#### Environmental harm

15. Subsection (2) of section 1 of the Bill makes provision about environmental harm. It defines environmental harm in terms of the existing definition of environmental harm in section 17(2) of the 2014 Act, which defines environmental harm in terms of various sorts of harms that it can constitute. These are:

- harm to the health of human beings or other living organisms,
- harm to the quality of the environment, including—
  - harm to the quality of the environment taken as a whole,
  - harm to the quality of air, water or land, and
  - other impairment of, or interference with, ecosystems,
- offence to the senses of human beings,
- damage to property, or
- impairment of, or interference with, amenities or other legitimate uses of the environment.

16. Section 40 of the 2014 Act (which, as above, provides for the existing regulatory offence of significant environmental harm) provides that environmental harm is significant if it has or may have serious adverse effects, whether locally, nationally or on a wider scale. Section 1 of the Bill provides that “severe environmental harm” is environmental harm (as defined in section 17 of the 2014 Act) which has serious adverse effects and is either widespread or long-term. Accordingly, severe

environmental harm is a subset of significant environmental harm which is either widespread or long-term.

17. Environmental harm that is “widespread” is defined in paragraph (c) of section (1)(2) as environmental harm which extends beyond a limited geographic area, to impact upon an ecosystem or species or a significant number of human beings, either directly or indirectly. That definition is based on the definition of widespread proposed by the Panel for the purposes of amending ecocide into the Rome Statute of the International Criminal Court but without the reference to crossing state boundaries. The impact can be direct or indirect. Harm can be done to human beings which is not direct in the sense that it is to their property or to their way of life. For example, the killing of their livestock or the poisoning of their water supply in circumstances where it is detected before anyone ingests it so that no bodily harm is caused but they now need to transport in water from another source.

18. Environmental harm that is “long-term” is defined in paragraph (d) of section (1)(2) as environmental harm which is irreversible or is unlikely to be reversed through a process of natural recovery within 12 months of occurring. “Long-term” meaning 12 months or more is well established in primary legislation in respect of disability for the purposes of the Equality Act 2010.

## Section 2: Defence of necessity

19. Section 2 provides for a defence of necessity. This will be available to a person where they can show that the behaviour which caused the environmental harm was carried out to prevent a greater harm.

20. The defence is framed in general terms and the overall effect is to codify the common law defence of necessity, but with some adaptations that are appropriate in the particular circumstances of ecocide.

21. Subsection (1)(a) requires a balancing of harms. The greater harm need not be environmental harm and can, in fact can be any type of harm except that, by virtue of subsection (2), it does not include financial loss. It could be a risk of death or injury to a person but, in contrast to traditional formulations of necessity, it need not be. Given that the environmental harm will, for the offence of ecocide to be made out, need to be severe, the counterbalancing harm will need to be of a grave nature.

22. Subsection (1)(b) requires that the behaviour has two further characteristics, both of which reflect the common law defence of necessity. Firstly, the behaviour must be necessary to prevent the greater harm (subsection (1)(b)(i)). This requires it to be shown that there was no alternative course of action. Secondly, the behaviour must be reasonable (subsection (1)(b)(ii)). The requirement for reasonableness applies not only to the decision to act so as to try to avoid the harm, but also the precise behaviour engaged in – there must be a proportionality between the behaviour and the harm, as with self-defence for example. Given the lack of provision to the contrary, the

reasonableness test will be applied by the courts as the standards of a hypothetical ordinary reasonable person with the attributes of the accused.

23. The Bill does not incorporate the common law requirement that the harm needs to be immediate. There are no steps that could be taken by the accused in the intervening period that would make lawful the proposed behaviour so it is not necessary that the harm is immediate. If the behaviour is both necessary and reasonable then the defence will be available. Neither is it necessary that the behaviour is immediately necessary.

24. The fact that the behaviour must be carried out in order to prevent harm means that, in the highly unlikely scenario in which the accused acts for some other reason but their behaviour happens to avoid greater harm, the defence will not be available to them.

25. This balance of harms test will engage the courts in a proportionality test but only in cases where the accused is able to adduce evidence to raise the issue. The effect of subsection (3) is that it will also be for the accused to prove, on the balance of probabilities, that the defence is made out. It will of course be the responsibility of the prosecution to prove all of the elements of the offence, including recklessness, beyond a reasonable doubt.

## Attribution of liability to other persons

26. The provision under this crossheading is concerned with cases where the liability of one person for an offence of ecocide is attributed to another, either up the chain of command (in the case of vicarious liability) or down (in the case of individual culpability where an organisation commits an offence).

27. These provisions supplement but do not displace the general position in relation to cases involving organisations. Legal persons are capable of being prosecuted as primary offenders of ecocide, even in the absence of vicarious liability for offending by their employees/agents. And where the managers of a corporation commit ecocide on its behalf, they are criminally responsible as individuals, whether or not the company is also charged. So, there is already the prospect of concurrent corporate liability and individual liability for ecocide as a matter of general principle. The provision under this cross-heading of the Bill adds further routes to either individual or organisational liability even where the liability in question, if founded only on general principle, would not be made out on the particular facts.

## Section 3: Individual culpability where organisation commits offence

28. Section 3 provides that, where an offence of ecocide has been committed by a legal person (referred to in the section as a relevant organisation), a listed responsible individual who meets the test set out in the section also commits the offence. This type of provision is not unusual in primary legislation that creates criminal offences. The effect is that the responsible individual is liable to be prosecuted and punished, in

addition to the relevant organisation. Liability for a responsible individual requires the test in subsection (1)(b) to be satisfied. That test requires the offence committed by the relevant organisation to involve the consent or connivance of the responsible individual. It will be for the prosecution to prove the consent or connivance of the individual beyond a reasonable doubt. Both consent and connivance require a high degree of knowledge and of culpability. It is notable that the test in subsection (1)(b) differs from some of the cases which discuss this sort of liability, which formulate it in terms of “consent, connivance or neglect”, in that it refers only to the first two limbs. The effect is to make the test a stricter one, that does not fix an individual for liability for mere neglect (reflecting the fact that to commit the offence of ecocide as primary offender, the individual would have had to have been at least reckless).

29. The relevant organisations to which this section applies are listed in the first column in the table in subsection (3). Relevant organisations include companies mentioned in section 1 of the Companies Act 2006 (this includes registered companies, unregistered companies and overseas companies), partnerships, limited liability partnerships and other forms of bodies or associations. Under subsection (3)(b), a responsible individual is a person listed in the corresponding entry in the second column in the table in subsection (3), or a person purporting to act in the capacity of such an individual. It is notable that the list of responsible individuals in respect of companies does not include managers, so only directors, company officers or members involved in the management of the company and not people who are simply “workers” as traditionally conceived, will be capable of being prosecuted under this provision.

## Section 4: Vicarious liability

30. This section provides for vicarious liability for employers/principals for ecocide committed by employees/agents in certain circumstances. It provides that, where ecocide is committed by an employee or agent, the employer or principal (which will include bodies corporate, limited liability partnerships, Scottish partnerships and trusts) is also guilty of the offence. The offence of ecocide requires recklessness on the part of the primary offender, so the employee/agent’s mental state (*mens rea*) will be imputed to their employer/principal.

31. It is a defence for the employer/principal to show that they did not know that their employee/agent was committing ecocide, that no reasonable person could have suspected that ecocide was being committed, and that the employer/principal took all reasonable precautions and exercised all due diligence to prevent ecocide from being committed. It will be for the employer/principal to show that the defence is made out. Proceedings may be taken against the employer/principal, even if they are not taken against the employee/agent.

## Penalty, compensation and publicity

### Section 5: Penalty

32. Section 5 makes provision in respect of the penalty that can be imposed for ecocide. Subsection (1) make provision in respect of individuals (i.e. natural persons) who have committed ecocide. Such a person could be an individual acting entirely on their own account in their private capacity or such a person could, for example, be a company executive etc. who is fixed with individual liability because of their role in respect of a corporate offender.

33. In respect of individuals, a term of imprisonment of up to 20 years can be imposed (paragraph (a)) or a fine may be imposed in addition to such imprisonment (paragraph (b)). The overall effect of subsection (1) is that a fine cannot be imposed against an individual instead of imprisonment, but only in addition to imprisonment. Alternative sentences to imprisonment remain available. This provision requires that ecocide is treated with the utmost seriousness (which, because of its novelty, may not otherwise be guaranteed). It ousts the effect of section 199 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"), which provides that, where an enactment provides only for imprisonment, the court may exercise its power to mitigate the penalty and impose a fine of any amount, with or without caution. There is precedent for such an approach in respect of rape in section 48 of the Sexual Offences (Scotland) Act 2009, subsection (2) of which provides that a fine cannot be imposed as a sole penalty.

34. Subsection (2) makes provision in respect of other cases, i.e. those who are not individuals. Because they cannot be imprisoned or subjected to many of the alternatives to imprisonment (although of course the individuals associated with them can be), there is no provision preventing them from being fined without also being imprisoned.

35. The vast majority of offences are triable either summarily or on indictment. The exceptions are serious crimes in respect of which statute has made different provision, for example murder, treason, rape, international crimes, corporate homicide and, under the Bill, ecocide would be triable only on indictment. The default rule, which applies here, is that offences that are indictable only can be tried in either the High Court or in the Sheriff Court. Either court may impose an unlimited fine. While the Sheriff Court can only impose a maximum sentence of imprisonment of five years, it has a power to remit the case to the High Court for sentencing, if of the view that a higher sentence is warranted.

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

36. This section requires the court, when it proposes to impose a fine (whether alone or in addition to another type of penalty) in respect of a conviction for ecocide, to have regard to any financial benefit which has accrued or is likely to accrue to the convicted person in consequence of their ecocide.

37. There is a general requirement in section 211(7) of the Criminal Procedure (Scotland) Act 1995 on courts, in determining the amount of any fine to be imposed on an offender, to take into consideration, amongst other things, the means of the offender so far as known to the court. This means that an organisation's financial means will be used to determine the level of fine and, in respect of companies, accountancy information such as turnover will be the primary evidence. Cases in respect of environmental harm show that the courts are alive to the risk of companies choosing to engage in offending behaviour because they expect the financial gain which flows from that to outweigh any financial sanction and are willing to take that into account when setting fines. Section 6 secures that outcome. There is similar provision in section 35 of the 2014 Act.

## Section 7: Order for compensation may include costs of remediation or mitigation

38. This section adapts, for the particular circumstances of ecocide, the courts' general power to make compensation orders. That power is set out in section 249 of the Criminal Procedure (Scotland) Act 1995.

39. Section 7(1) of the Bill applies a gloss to section 249 of the 1995 Act in cases of ecocide so that it is to be read differently in such cases. Section (7) (2) (a) and (b) sets out the words which are to be swapped into section 249(1). Taken together, the effect is to make section 249(1) read:

“the court, instead of or in addition to dealing with [the person convicted] in any other way, may make an order requiring the person to pay compensation to another person for any personal injury, loss or damage caused to the person or the person's property, whether directly or indirectly, by the acts which constituted the offence (paragraph (a)), and for costs incurred or to be incurred by the person in preventing, reducing, remediating or mitigating the effects of any harm to the environment resulting directly or indirectly from the offence, and any other harm, loss, damage or adverse impacts so resulting from the offence (paragraph (b)).”

40. Section 249 of the Criminal Procedure (Scotland) Act 1995 as glossed:

- Refers to “another person”, without any requirement that the acts constituting ecocide have been directed toward the person or their property. Acts constituting ecocide may not have been directed at anyone or any particular place and, even if they are, they may cause harm well beyond those targets.
- Includes damage caused to a person's property so that if a person's livestock or land or house is damaged, that will be capable of being compensated.
- Does not limit the qualifying payer of such remediation costs to any particular person or category of person. It could be SEPA, or a local authority or any ordinary natural person who has incurred or will incur such costs. Given that proceedings for ecocide are very serious and likely to be extremely rare, the court will have the power to make a compensation order in favour of anyone who has been able to prove that they have incurred or will incur the relevant



sort of costs, to ensure that compensation can be awarded to the fullest range of those affected by serious environmental harm.

41. Subsection (3) amends section 249 directly so as to signpost the fact that provision under section 7 of the Bill affects section 249.

## Section 8: Publicity order

42. This section makes provision for the court to make a publicity order where a person is convicted of ecocide. This is an additional sentencing option for the court to use, alongside other sentences that may be imposed. The publicity order would require a convicted person to publicise, in a manner specified in the order, the fact that the person has been convicted of ecocide, the details of the offence and any other sentence passed by the court, including a fine or compensation order. A publicity order must set out the period within which the publicity requirements must be complied with, and may require the convicted person to supply SEPA with evidence that those requirements have been met. This section also makes it an offence, punishable on summary conviction to a fine not exceeding £40,000 and on conviction on indictment to an unlimited fine, to fail to comply with a publicity order.

## Enforcement powers of Scottish Environment Protection Agency in relation to ecocide

### Section 9: Enforcement powers in relation to ecocide

43. Section 9 amends section 108 of the Environment Act 1995 (powers of enforcing authorities and persons authorised by them). By subsection (1) of section 108 as it applies in Scotland, an enforcing authority is entitled, via a person authorised in writing, to exercise any of the various powers in subsection (4) for the various purposes listed in paragraphs (a) to (e). Of those, paragraph (d) is concerned with the purpose of determining whether any of the listed offences are being or have been committed. Subsection (4) then sets out the powers that can be exercised under subsection (1).

44. Section 9(2) of the Bill inserts reference to ecocide at section 108(1)(d), such that powers including power of entry, power to take samples, retrieve documents, obtain information etc. are available in respect of it.

45. Section 9(3) of the Bill amends subsection (4) of section 108 so as to add ecocide to paragraph (h)(iv), such that the power to preserve articles or substances as evidence extends to proceedings for ecocide, and to paragraph (ka)(i), such that the power to seize and remove documents extends to those which are believed may be required as evidence in proceedings for ecocide.

46. Section 9(4) adds ecocide to subsection (5) of section 108, such that the power to carry out borings etc. and to keep equipment etc. extends to the purpose of enabling the authority to determine whether ecocide is being committed.

## Reporting

### Section 10: Report on operation of Act

47. Section 10 of the Bill provides for a reporting duty on the Scottish Ministers. It requires them to report on the various matters set out in subsection (2), which are all to do with the offence of ecocide and the impact of its introduction. The report must be made as soon as possible (and not later than 6 months) after the end of a period of five years from the coming into force of the offence of ecocide. That period of five years is referred to in the provision as the “review period”.

48. By subsection (2), the Scottish Ministers must, when preparing the report, consult and share a draft with those listed and consider any representations made. The list is designed to capture those with expertise either in the environment or criminal offending and can be amended by regulations subject to the affirmative procedure<sup>1</sup>.

## Final provisions

### Section 11: Ancillary provision

49. Section 11 empowers the Scottish Ministers to, by regulations, make ancillary provision for the purposes of, or in connection with or for giving full effect to the Act.

50. Regulations made under this section are subject to the negative procedure, unless they add to, replace or omit any part of the text of an Act in which case they are subject to the affirmative procedure<sup>2</sup>.

### Section 12 Commencement

51. Section 12 provides that the final provisions in sections 11, 12 and 13 of the Bill come into force on the day after Royal Assent, and that other provisions of the Bill come into force such as the Scottish Ministers may by regulations appoint.

### Section 13: Short title

52. Section 13 of the Bill specifies the short title of the Act for the Bill.

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<sup>1</sup> See [section 29 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#)

<sup>2</sup> See [section 29 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#)



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