



UNISON Scotland response:
Proposed Ecocide (Prevention) (Scotland) Bill

February 2024

Introduction

UNISON is Scotland's largest trade union with more than 150,000 members across the public, private and voluntary sectors. We welcome the opportunity to respond to the consultation on Monica Lennon MSP's Proposed Ecocide (Prevention) (Scotland) Bill.¹

Overview

UNISON Scotland has a longstanding commitment to action to tackle the climate crisis and deliver a Just Transition. Our members argue for the importance of public services leading the way on cutting emissions and adapting to/preparing for the impacts of extreme weather.

A new report this month shows the crucial 1.5C Paris Agreement threshold has now been breached for an entire year.² Yet politicians are not stepping up to invest fast enough in the policies that will deliver a cleaner, greener, healthier, fairer future. Public services need increased investment for the quality services people rely on, services that matter particularly to the most vulnerable. We will continue to press for investment as part of a green industrial strategy, recognising climate change also impacts most on those with least.

The intertwined crises of climate, cost of living and the pandemic, and seeking to 'build back better' after the pandemic, require major strategic investment by governments and a strong legislative and regulatory framework that makes polluters pay and stops exploitative profiteering (such as with COVID-19 PPE and excessive profits by energy companies while bills for families rose dramatically). The prevention of large scale and long-term environmental harms has a key role.

The proposed Ecocide Bill would be a very important part of how Scotland deals with and responds to risks and damage to the environment. It would bring Scotland into line with EU proposals to include what are effectively ecocide crimes in the revised Environmental Crime Directive.³ Stop Ecocide International is campaigning for ecocide to be added to the crimes dealt with by the International Criminal Court: genocide, crimes against humanity, war crimes and crimes of aggression.⁴

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

² <https://www.bbc.co.uk/news/science-environment-68110310>

³ <https://www.theguardian.com/environment/2023/nov/17/eu-criminalises-environmental-damage-comparable-to-ecocide>

⁴ <https://www.stopecocide.earth/making-ecocide-a-crime>

The consultation document⁵ gives examples of ecocide including oil spills, like the Braer spill in Shetland in January 1993 “where 85,000 tonnes of crude oil devastated the local environment”, radioactive contamination, unsustainable fishing practices and the proliferation of plastics in our seas which endanger marine ecosystems.

Other examples include industrial disasters such as the devastating and deadly December 1984 Bhopal gas leak; land and water contamination and pollution; and deforestation, such as in the Amazon rainforest.

Monica Lennon discusses Scottish Government policy and enforcement of Scotland’s environmental law in the consultation document. She points out that an ecocide law “by encouraging investment in environmentally sustainable projects and renewable energy and by discouraging investment in projects that pose a greater risk to the environment” could support the move to net zero and a circular economy.

UNISON is a member of the Stop Climate Chaos Scotland coalition, whose manifesto⁶ launched in September 2023 called for such a law to be introduced in Scotland. We support the SCCS response.⁷ We strongly support the proposed Bill, with some caveats similar to those raised by SCCS.

The main one of these is on the overall issue of climate change and ecocide (although we also are minded to agree that there should perhaps be a slightly different legal definition of ecocide than this, proposed in the Bill: ‘unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the Scottish environment being caused by those acts’. See answer 4. below for potential alternative.)

As the SCCS response notes, using the terms in the definition in the proposed Bill: “To many, the scale, significance and existential nature of the climate crisis may be considered as *an* ecocide – given its potential to ‘kill’ (-cide) our ‘home’ (eco-). The climate change challenge is therefore an example of “severe and either widespread or long-term damage” to the environment. However, the cause of the climate crisis is not one “unlawful or wanton” act, but rather many individual acts which, while some of the most significant especially by corporates and/or governments may be described as “wanton”, are in general lawful – and, indeed, often supported or encouraged by governments.

“Thus, a new crime of ‘ecocide’, in the form proposed, would be unable to address most of the acts that contribute to the climate crisis. Nevertheless, it still has potential to contribute, including by:

⁵ [https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/consultation-document-final-version--\(1\).pdf](https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/consultation-document-final-version--(1).pdf)

⁶ <https://www.stopclimatechaos.scot/manifesto/policy/introduce-a-stop-ecocide-law/>

⁷ [Policies Archive - Stop Climate Chaos Scotland
https://www.dailyrecord.co.uk/news/politics/bid-establish-new-ecocide-crime-32070280](https://www.dailyrecord.co.uk/news/politics/bid-establish-new-ecocide-crime-32070280)

- Providing a deterrent against the occasional individual and wanton (or negligent?) acts that may lead to significant emissions of climate-changing gases; and
- Indicating that Scotland (and, in due course, the UK) is supportive of including ecocide in the [Rome statutes](#), leading to the potential for states to be held to account for acts or omissions resulting in ecocide (this might include failure to act to reduce emissions sufficiently).

Below we give our brief responses to the specific questions in the consultation document:

Aim and approach

1. Which of the following best expresses your view of the proposed Ecocide (Prevention) (Scotland) Bill? Please note that this question is compulsory.

- Fully supportive
- Partially supportive**
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response.

UNISON believes that this Bill is needed but that it is not, as claimed, one overarching piece of legislation that covers all aspects of harm against the environment in an integrated fashion. Ecocide punishes the most serious environmental crimes (which meet strict impact thresholds) but won't address all, nor can the criminal law address all, as noted above. And to improve the low enforcement rates described in the consultation document, we need better resourcing and direction for properly enforcing existing laws. (See also answer 4.)

2. Do you think legislation is required, or are there are other ways in which the proposed Bill's aims could be achieved more effectively?

- Yes, legislation is required**
- No, legislation is not required
- Do not wish to express a view

Please explain the reasons for your response.

The existing legal framework in Scotland does not address major environmental crimes comparable to ecocide.

3. Do you think that creating an offence of ecocide would have a deterrent effect against damage to the environment?

- Yes, there would be a deterrent effect**
- No, there would not be a deterrent effect
- Do not wish to express a view

Please explain the reasons for your response

Yes, if this and other environmental legislation is properly enforced, with sufficient resourcing - and if there are strict enough penalties, including fines commensurate with the severity of the crime of ecocide. If the penalties are lower than the profits made, that will not support deterrence.

4. Do you have any views on the proposed legal definition of ecocide as unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the Scottish environment being caused by those acts?

- Yes, I support the proposed definition
- No, I do not support the proposed definition
- Prefer another definition**

Please explain the reasons for your response.

As noted above, we are minded to agree, for a number of reasons, with the Stop Climate Chaos Scotland response on this⁸ (which is supporting a suggestion by Scottish Environment Link) that there should perhaps be a different legal definition of ecocide.

SCCS suggests Scotland should adopt existing EU work on defining ecocide, including the European Law Institute report on ecocide.⁹ It adds that there are considerable strengths in the definition of qualified offences or 'cases comparable to ecocide' used by the European Council and European Parliament in the revised Environmental Crime Directive.¹⁰ We agree that these sound to potentially be an improvement.

SCCS notes that LINK recognises there should be further investigation into how the recommended definition could be applied.

We will be happy to contribute to discussion of this in more detail as proposals are firmed up.

⁸ [Policies Archive - Stop Climate Chaos Scotland](#)

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https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Ecocide.pdf

¹⁰ <https://data.consilium.europa.eu/doc/document/ST-16069-2023-INIT/en/pdf>

5. Which of the following best expresses your view of the proposed sanction of imprisonment up to a maximum of 20 years for individuals, including responsible officials such as company directors?

- Fully supportive**
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response, including if possible your view on the severity of the proposed sanction and those to be held liable.

The maximum 20 years reflects the seriousness with which such a major crime should be treated, in comparison with current maximum sentences such as e.g. five years, in the Wildlife and Countryside Act 1981.

It is right that individuals and responsible officials of legal bodies, such as company directors should be held liable. We agree with SCCS that there should be more analysis on identifying liability for ecocide.

6. Which of the following best expresses your view of the proposed financial sanctions worth 10% of worldwide turnover for companies over three years?

- Fully supportive
- Partially supportive**
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response, including if possible your view on the severity of the proposed sanction and those to be held liable.

We support polluters pay principles and ensuring that companies exploiting the environment for profit pay for harms and damage. We support a strong deterrent effect and, as noted above, would be concerned if the fine for an offence was less than the profits made as this would clearly limit deterrence for unscrupulous operators – indeed potentially for companies who would not define themselves as unscrupulous but might consider such a fine a business risk worth absorbing.

Importantly, the SCCS response suggests that more hefty fines, in line with those in the revised EU Environmental Crime Directive could cover, for example, confiscation of all relevant profits.

We would add that, for such major crimes, worthy of hefty punitive financial penalties, the investigations and enforcement require proper resourcing or very few cases will ever be brought and timescales will not be as effective as required.

The consultation document describes the approach for existing legislation of the Scottish Environment Protection Agency (SEPA), the Crown Office and Procurator Fiscal Service (COPFS), with advice and guidance and less punitive enforcement action often used (rightly) before, if unsuccessful, referral for criminal prosecution - which is usually reserved for the most serious offences. It notes that statistics show falling levels of prosecutions and few criminal convictions or custodial sentences.

Of course, enforcement requires bodies like SEPA, COPFS, the Courts service, Environmental Standards Scotland (ESS) and others need to be sufficiently resourced, yet most, if not all, are under financial pressures. We note that The Ferret reported in October 2023 that SEPA's budget had been cut by more than a quarter in real terms since 2010.¹¹

Resource implications

7. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

- a significant increase in costs
- some increase in costs**
- no overall change in costs
- some reduction in costs
- a significant reduction in costs
- skip to next question

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.

There would be some increase in costs initially to the enforcement bodies and the justice system. However, as with the costs of adapting to climate change, prevention (including deterrence re ecocide) and early investment will save expensive costs further down the line, particularly the costs of a clean up after any major incident of environmental harm.

Some of the fines income could be allocated to public bodies investigating and prosecuting ecocide - but they should be sufficiently resourced to not be relying on that, particularly as the fines income would come some time after the investigation costs.

¹¹ <https://theferret.scot/scottish-government-funding-sepa-slashed/>

Human Rights

8. The Human Rights Act 1998 incorporated the European Convention on Human Rights (ECHR) into UK law. It means that public authorities, must not act in a way that is incompatible with the rights set out on the ECHR. Do you have any views on potential impacts of the proposals in this consultation on human rights?

The proposals will help protect and enhance human rights by helping to improve environmental protections and standards which underpin a range of human rights, as detailed in the consultation.

Equalities

9. Any new law can have an impact on different individuals and groups in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law? If you do not have a view skip to next question.

Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

It is well understood that climate change impacts on the most vulnerable, here in Scotland and internationally. Actions to address climate change should always consider equalities impacts, but we believe this proposed Bill strongly helps redress some inequalities.

As noted in the consultation document, the UN report on Climate Change and Social Inequality¹² describes the vicious cycle whereby “initial inequality makes disadvantaged groups suffer disproportionately from the adverse effects of climate change, resulting in greater subsequent inequality.”

We agree with the consultation document points raised that there are specific issues around poor housing, pollution issues, flood and other weather impacts, health issues and more (e.g. disabled people may have greater difficulties in evacuation during a severe environmental incident with devastating impact), which must be considered by policy makers. Just as during the pandemic, where there were disproportionate impacts on Black and Minority Ethnic people – including a higher health risk from COVID, race and age and childcare/other caring responsibilities and more need to be taken into account.

The overall impact of this Bill should, in hoping to prevent and limit ecocide crimes and impacts, be helpful to those most at risk from them. But it may be that the Bill could be explicit on specific measures agreed to be helpful in avoiding any negative

¹² https://www.un.org/esa/desa/papers/2017/wp152_2017.pdf

impacts for such groups. On mental health, mentioned in the consultation document, we believe the Bill can only help in addressing some of the genuine mental health impacts of concerns about the climate crisis. Again, it may be that specific measures could be of use.

Sustainability

10. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?

If you do not have a view then skip to next question.

Please explain the reasons for your response, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

Yes, in positive ways as part of Scotland's overall policies and legislation – in particular on creating a fairer, healthier, greener Scotland. In showing that polluters will have to pay and could go to jail for long periods for actions that constitute ecocide. And polluting incidents at scale can obviously cause deaths and injuries and cause severe economic damage, so prevention and deterrence will be lifesaving and support the economy.

General

11. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

No.

UNISON Scotland

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