



<b>UNISON Scotland Response: Ecocide (Scotland) Bill. Net Zero, Energy &amp; Transport Committee</b>
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## **Introduction**

UNISON is Scotland's largest trade union with members across the public, private and voluntary sectors. We have many members working to uphold environmental standards across local authorities and are the principal union representing staff in the Scottish Environmental Protection Agency. UNISON Scotland welcomes the opportunity to take part in the Committee's consideration of the Ecocide (Scotland) Bill.

### **Do you support the overall aim of the Ecocide (Scotland) Bill to criminalise the most serious forms of environmental harm?**

Yes. We believe the Bill has the potential to protect health and the environment by deterring serious deliberate or negligent destruction of the environment. We do though have a variety of concerns as to how the Bill, if passed, would be made meaningful. These are explored in later parts of this response.

### **The offence applies to harm caused either intentionally or recklessly. Do you consider this threshold to be appropriate?**

- "Severe environmental harm"
- "Widespread"
- "Long-term"

We think the thresholds are in general terms appropriate. Our concerns in this regard are less to do with the thresholds themselves than with the practicability of their enforcement.

It will be our members, in many cases working within stretched public bodies, that must gather and accumulate a huge level of evidence to satisfy the Procurator Fiscal. We realise that budgeting questions are separate from the Bill itself, but we would stress that creating new regulations, offences or penalties without regard to the feasibility of their enforcement is at best a very small step forward.

### **The Bill includes a defence of "necessity" where ecocide was committed to prevent greater harm (not including financial harm). Do you agree with this approach?**

We agree that there should be a defence of necessity contained within the Bill

### **Are the provisions on individual and organisational culpability sufficiently clear and appropriate, including the definitions of who is a "responsible**

individual”?

**Are the provisions on vicarious liability clear and appropriate?**

**Penalties and Deterrence (sections 5-8)**

**The Bill proposes a maximum custodial sentence of 20 years and unlimited fines (or an unlimited fine in the case of an organisation). Are these penalties appropriate and proportionate?**

Our concern here is less to do with precise definitions than with how regulatory bodies, SEPA for example, will be able to make the provisions enacted a reality. Even the current environmental regulations place a significant burden on the legal teams within enforcement bodies. The evidence gathering process to establish grounds for prosecution of offences with such serious penalties is likely to be massive.

The prospect of imprisonment for their Chief Executive is likely to fully engage all of the resources of a large corporate businesses. The prospect of an unlimited fine is likely to engender the deployment of a financially unlimited defence.

**Which enforcement bodies do you consider to be key to responding to potential ecocide events, and do you believe enforcement agencies such as SEPA, Police Scotland and COPFS are currently equipped to investigate and prosecute ecocide?**

Councils would, obviously be involved in the initial response to any ecocide event with involvements of SEPA, Police and COPFS being the other main agencies involved.

As already stated we do not think that the enforcement agencies are currently resourced properly to deal properly with the existing legal framework. For any Ecocide legislation to be effective there would need to be significant extra resourcing to increase the capacity of SEPA both to compile evidence and to prepare such evidence for legal proceedings.

**What additional resources, training or powers (if any) would be required to effectively enforce the provisions in the Bill and are these reflected in the Financial Memorandum?**

Public sector workers currently do not have sufficient protections from harm that may need to accompany any new powers they are granted. Criminal groups or individuals investigated may be minded to target workers building a case against them given the custodial sentences proposed.

In many cases, the teams within public bodies with the expertise to pick work like this up have seen their real terms budgets shrink consistently. Individuals with experience have retired and in many cases learning pathways and staff to replace them have not been funded.

Outwith the provisions of the bill – but certainly the context in which it would have to operate, the private sector has been able to maintain more favourable

pay than public sector which has led to retention issues.

Existing intelligence sharing and storage within public bodies and between Police Scotland would need to be reviewed to ensure they are robust enough to protect worker health and safety. Some current serious criminal polluters could be linked to serious organised crime, paramilitary organisations or companies with enormous financial clout.

Public Sector Organisations have also had formal training budgets slashed and, in many cases, they are completely gone. This will stand in contrast to the organisations being prosecuted who may have significant means to fund consultancies perhaps whilst profiting from ecocide

Are there any other issues or concerns you would like to raise regarding the Bill?

Many Environmental consultancies have organisationally critical funding streams connected to sectors such as oil and gas and the construction industry.

These sectors will heavily rely on environmental consultancies for Environmental impact assessments and use them in the event they themselves are subject to enforcement action. Due to the level of environmental interaction, Oil and Gas, and the construction sector could find themselves at risk of prosecution under any ecocide legislation. In an ecocide scenario a vast level of assessment and analysis would need to be carried out. Finding support from private sector environmental consultancies not subjected to a conflict of interest could be difficult. We believe this is a factor which should be taken into consideration of how the legislation would operate.

Our members in SEPA point out that report that they feel the Bill maintains limitations they perceive around existing section Section 108 powers. They point out that it may prove problematic should a responsible person or organisation charged/convicted under ecocide legislation be headquartered or located outside Scotland. This is an important consideration given EA/ NIEA may need to support with interviews under caution and that widescale events may be cross border.

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