



Response to Proposed Ecocide (Prevention) (Scotland) Bill
Consultation.

February 2024

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights. The Commissioner is fully independent of the Scottish Government.

1. Which of the following best expresses your view of the proposed Ecocide Prevention (Scotland) Bill?

- Partially supportive

Please explain the reasons for your response.

We are supportive of the proposed Ecocide Prevention (Scotland) Bill and feel that it could offer additional protection for the rights of children and young people in Scotland.

Children and young people in Scotland are clear that environmental matters are of great importance to them. They have voiced repeated concern for the combined climate and nature emergencies.

We recently consulted with our Young Advisors about the proposed Biodiversity Strategy.¹ They spoke about protecting nature and the importance of preventing biodiversity loss.

Our Young Advisors were highly concerned about the evidence presented in the State of Nature report - Scottish wildlife has declined by 15% since 1994 and 1 in 9 native species are threatened with extinction.² They were clear that they wanted more done to tackle this.

¹ [Response to Scottish Government Consultation on 'Tackling the Nature Emergency - Strategic Framework for Biodiversity'. - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](#)

² [Scotland - State of Nature](#)

Children and young people have been experiencing increased anxiety about the combined climate and nature emergencies.³ We have also heard from children and young people that they are frustrated by the lack of progress and that despite their efforts, those in power have not acted. They feel ignored and powerless.

A new law to prevent ecocide could act as a strong statement by those in power to children and young people that their voices were heard. It could also sit alongside existing policy and legislation, including the proposed Biodiversity Strategy, as a complementary and appropriate action to hold to account those who do not respect and actively destroy our natural environment either carelessly or intentionally.

More needs to be done to stop the degradation of the planet whether this is ending unsustainable fishing practices, oil spills or the growing levels of plastic in our oceans. This new law for Scotland would fit alongside the growing global movement to make ecocide an international crime as well as the recent decision by the EU to criminalise ecocide.⁴ There is currently a proposal to make ecocide an international crime, but domestic law can also make a difference, Scotland could be one of the first to set this clear example. Countries who have proposed or have similar laws include Brazil, the Netherlands, Belgium, Spain and Mexico.

Scotland could send a clear message that those who profit from environmental damage cannot gain. Children and young people want Governments to take leadership and implement control, they want them to treat this as a global issue as, on this matter we are interconnected with the rest of the world.

This law has the potential to be preventative. A law of this nature would put those it applies to on notice that environmental risks cannot be taken and that they must protect against them. We note that many businesses today are taking active steps to ensure that they are compliant with environmental law, and it is good business for them to act responsibly – as stated in the consultation document the ecocide law could help to raise business standards to prevent them suffering reputational damage.

Many of Scotland's unique ecosystems are at risk. A recent study found that only 56% of Scotland's biodiversity remains intact. On the Biodiversity Intactness Index we rank in the bottom 25% (240 countries are contained on the index)⁵. This should put us on notice that more urgently needs to be done on a domestic level to prevent further loss. There are very real threats to nature and climate caused by practices taking place in Scotland this includes the pollution of rivers by unstable farming practice or the release of sewage.⁶

Scotland has to be conscious not only of the damage that is done to our own environment here in Scotland but the impact we have on a wider scale. We cannot simply 'outsource' our emissions, or waste to other countries or rely on taking resources from them. We cannot as a society benefit from acts of ecocide in other countries.

³ Hickman et al (2021) – 'Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey.' - [Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey \(thelancet.com\)](https://www.thelancet.com)

⁴ [AGREEMENT REACHED! EU to criminalise severe environmental harms "comparable to ecocide" — Stop Ecocide International](#)

⁵ [2. The Evidence - Tackling the Nature Emergency - Scottish biodiversity strategy to 2045 - gov.scot \(www.gov.scot\)](https://www.gov.scot)

⁶ SEPA – 'The River Basin Management Plan – 2021-2027' (2021) [RBMP3 \(sepa.org.uk\)](https://www.sepa.org.uk)

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

- Yes, legislation is required

Please explain the reasons for your response.

We consider that legislation is required for the intentions of this Bill to be properly realised. In Scotland we have a great deal of legislation which seeks to protect the environment, some of these include criminal sanctions, however in our view none of these reflect the seriousness of the behaviour contained within the Ecocide Bill. While some of these seek to prevent the unlawful killing or harm of wild animals or the unlawful disposal of controlled waste, none of the legislation does exactly what the Ecocide Bill proposes to do. The wording of the Regulatory Reform (Scotland) Act 2014 appears to offer that level of protection but on further inspection it requires an administrative level of proof and is not applicable in the range of circumstances the proposed legislation would be. It is also arguable that the penalties available for these offences do not reflect the seriousness that a crime of ecocide would merit. We have also noted that there are low levels of prosecution and conviction for these offences.

The creation of a new criminal offence is a strong statement, this would not be achieved by continuing to rely on the legislation we have. While more could be done to raise conviction rates this law is not just about detection and punishment it sets a standard, sends a clear message as to what is expected and acts as a deterrent. The law would be preventative in its effect, we want to stop these acts of ecocide happening before the damage is caused.

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

Please explain the reasons for your response.

As outlined above we feel that the creation of a criminal offence would work to create a deterrent effect against damage to the environment aiming to prevent damage from happening in the first place.

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'?

- Prefer another definition

Please explain the reasons for your response.

The proposed definition is largely fine however we recommend that the wording be changed to reflect terms more commonly familiar to Scots law – for example the word ‘wanton’ is not typically a word found in criminal offences. This speaks to the ‘intention’ or ‘mens rea’ of the proposed offence and something more in line with ‘culpable recklessness’ may be more appropriate.

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?

- Neutral (neither support nor oppose)

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.

If a criminal offence is being proposed, then it is right that an appropriate sanction be included, and that sanction should be sufficient to act as a deterrent. It has been said that the current offences do not carry sentences of sufficient weight to reflect the seriousness of this offence.

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

- Neutral (neither support nor oppose)

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.

If a criminal offence is being proposed, then it is right that an appropriate sanction be included, and that sanction should be sufficient to act as a deterrent. It has been said that the current offences do not carry sentences of sufficient weight to reflect the seriousness of this offence.

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:

- some increase in costs

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.

We do see that there would be an inevitable rise in costs as a result of this offence. These are likely to fall to bodies like SEPA, Police Scotland and COPFS. If this legislation is to be effective and used to hold those who have committed offences to account then there will have to be proper detection, investigation, and prosecution. These types of crime are complex in nature and would likely require the investigation of a lot of data and samples. Scientific expertise involved in gathering and interpreting the evidence to build a case may be required; costs of forensics; training staff and ensuring people are informed of the requirements and processes.

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 new Ecocide law has the potential to act as a protection of (Article 2) Right to Life of the ECHR.

We note that the impact of climate change and biodiversity loss is disproportionately felt by groups experiencing socio-economic disadvantage. It can exacerbate existing health conditions and reduce access to health care. Children in particular are more vulnerable to the impact of air pollution.⁷ As such the new law can provide additional protection from discrimination (protected under Article 14).

The right to a healthy environment forms part of the UN International Covenant on Economic, Social and Cultural Rights to which the UK is a signatory. This provides in Article 12 for the right to the highest attainable standard of health and calls on states to take steps to improve all aspects of the environment.

9. Any new law can have an impact on different individuals 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 response and if there are any ways you think the proposal could avoid negative impacts on particular people.

⁷ [Opportunity/Challenge 8: Ensure that policies, action and spend necessary to mitigate and adapt to the global impacts of climate change deliver a just transition for people in Scotland - Resource Spending Review: Equality and Fairer Scotland Statement - gov.scot \(www.gov.scot\)](#)

Children and young people are disproportionately affected by the combined climate and nature crisis. The proposed Ecocide Bill has the potential to mitigate some of the effects of this.

These issues directly engage UNCRC rights, now incorporated into Scots law, including;

Article 6 - the right to life and development.

Article 24 - the right to good quality health care and a clean environment.

Article 27 - the right to a decent standard of living, including food, housing, water.

Article 29 – the right to education that supports children to learn to respect the natural environment.

Scotland (along with the rest of the world) faces an unprecedented nature-climate crisis. Biodiversity is a children's rights issue and as such a rights-based approach should be taken. The climate crisis and the decline in biodiversity go hand in hand – we need to preserve nature to combat the climate crisis and provide clean air, water and food sources.

The UN Committee on Rights of the Child highlighted the importance of these issues in its most recent General Comment No. 26 (2023)⁸ which focused on children's rights and the environment;

'The extent and magnitude of the triple planetary crisis, comprising the climate emergency, the collapse of biodiversity and pervasive pollution, is an urgent and systemic threat to children's rights globally.'

The most recent Concluding Observations made by the UN Committee on the Rights of the Child with regard to the UK highlighted the need to;

'Ensure that national policies and programmes on addressing environmental protection, climate change and disaster risk management... are developed and implemented in accordance with the principles of the Convention and take into account children's needs and views⁹.'

The UN's Special Rapporteur on the environment commented that children are more at risk from environmental problems than adults but their views and interests are often left out of decisions.¹⁰ Children and young people should be properly involved in decision making processes surrounding these issues. This should be meaningful, effective and not tokenistic. They must be actively involved in identifying solutions and policy and legislative changes to address the environmental emergency.

Children and young people must also be properly protected from any negative reprisals from acting as human rights defenders, when taking part in demonstrations.

⁸ [CRC/C/GC/26: General comment No. 26 \(2023\) on children's rights and the environment with a special focus on climate change | OHCHR](#)

⁹ [Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland :](#)

¹⁰ [Children's rights and the environment | OHCHR](#)

A child's right to a healthy environment goes beyond what is needed just for basic survival, their right to health and wellbeing should be to the highest attainable standard. There is an onus to go above and beyond. Children and young people's wellbeing improves when they can live, work and play in nature-rich environments.

Everyone depends on healthy ecosystems, children and young people require this for their development at key stages. It has been shown that interaction with microbial diversity is necessary for the development of healthy immune systems, the loss of this is linked to an increase in autoimmune diseases, allergic disorders and other inflammatory diseases.¹¹

Exposure to nature also has beneficial effects on mental health, but many children, especially in urban settings, have little or no contact with the natural environment.¹²

It is also relevant that many children and young people are experiencing higher levels of anxiety relating to environmental matters, they report to us that they feel disempowered and burnt out. They feel they have made their voices heard but those in power have not listened.

The Scouts have highlighted the benefits of children and young people being in an outdoor environment and being encouraged to take part in nature-based activities. Many children and young people feel a lot of anxiety around their concerns for the environment and involving them in outdoor activities and practical work, including conservation work, can show steps they can take which can reduce their anxiety.¹³

Our Young Advisors told us that the options for involvement in such activities are not sufficient. Unless you live in a rural area, look for information yourself or have parents who encourage you into this you were unlikely to get the information you needed or opportunities to connect with nature.

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?

¹¹ 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (2017) [A_HRC_34_49_EN.docx \(live.com\)](#)

¹² [Every one can benefit from using nature to support mental health - Inspiring Scotland](#)

¹³ [Positive futures: outdoor youth work and mental health in young people \(scouts.scot\)](#)

The proposals are for a preventative approach, part of sustainable development, preventing further damage before it happens. This could contribute towards protecting the environment for future generations.

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)?