

## Official Response

**Subject:** Proposed Ecocide (Prevention) (Scotland) Bill  
**Requested by:** Monica Lennon MSP  
**Date:** 9 February 2024  
**Prepared on behalf of:** The Public Life and Social Justice Programme Group

The Church of Scotland seeks to inspire the people of Scotland and beyond with the Good News of Jesus Christ through enthusiastic worshipping, witnessing, nurturing and serving communities. The Church of Scotland is one of the largest organisations in the country. We have around 280,000 members, with more regularly involved in local congregations and our work. We have around 650 ministers serving in parishes and chaplaincies, supported by both centrally and locally employed staff.

Most of our parishes are in Scotland, but we also have churches in England, Europe and afield. The Church of Scotland plays a pivotal role in Scottish society and works with communities worldwide. This response has been prepared and agreed by the Church's Public Life and Social Justice Programme Group.

Website: [www.churchofscotland.org.uk](http://www.churchofscotland.org.uk)  
Scottish Charity Number SC011353

### 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.**

The Church has a longstanding concern for human justice and care for creation: the concept of human responsibility for care for Creation is fundamental to our faith, and has clear implications for behaviour. Many hundreds of Church of Scotland churches are part of the Eco Congregation Scotland network, and many also observe Creation Time, a month-long time of prayer and action for the protection of the natural environment. At the most recent General Assembly in 2023, deliverance (resolution) was passed, encouraging the Church to explore partnerships and opportunities that will enable it to contribute to wildlife and biodiversity restoration.

The Theological Forum of the Church of Scotland presented a report on Eco theology to the General Assembly of the Church in 2022, entitled "*The Earth is the Lord's: A Theological Account of Creation Care*"<sup>1</sup>. This is a new and challenging subject for both theologians and congregations in which they can explore what it means to care for creation in an age of climate change and loss of biodiversity. One of the conclusions of the report was that justice must prevail not only in our treatment of each other but

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<sup>1</sup> [https://www.churchofscotland.org.uk/\\_data/assets/pdf\\_file/0008/93374/theological-forum.pdf](https://www.churchofscotland.org.uk/_data/assets/pdf_file/0008/93374/theological-forum.pdf)  
section 4, pages 16-17

also of the rest of creation – other species and the earth itself. To quote from the report ‘When we neglect justice for one another and for the earth we fail to live up the image of God in which we are created.’<sup>2</sup> In this context the Church welcomes the debate on ecocide as a means to explore what justice towards the rest of creation means and how it might be translated into law.

The Church of Scotland’s Society, Religion and Technology (SRT) Project was set up in 1970, initially in response to the development of the North Sea oil industry, and the impact that this would have on our communities and wider society. Since then the SRT has been active, advising the Church on issues in relation to the ways in which technology impacts society. This has included a number of subjects which are directly relevant to the proposed ecocide bill including climate change, agriculture and nuclear power.

Fossil fuel extraction (oil, gas and coal) has created wealth and benefits for Scotland, providing in past decades (indeed centuries) not only direct employment in many communities, but also cheap gas to heat homes in Scotland and readily available fuel for motor vehicles as well as for industry. However, these same industries have contributed enormously to environmental damage through the emission of greenhouse gases caused by the burning and other uses of its products (for example, in the production of plastics). Despite knowing this, oil and gas companies continue to invest in exploration in the certain knowledge that this will put at risk international efforts to limit climate change. Greenhouse gas emissions and plastics have an effect that is not merely local, but also causes long term and globally widespread damage.

We are concerned that this effect, as it may not necessarily be local, would appear to fall outside the scope of the proposed legislation. How would this legislation have any effect on the global nature crisis? If plastic and greenhouse gas pollution may not necessarily be local, would it fall outside the scope of the proposed bill?

We note with concern that, despite extensive existing legislation to protect the natural environment, safeguard biodiversity and tackle climate change, the scale of environmental problems continues to grow. As the consultation notes, the 2023 State of Nature report documented continuing decline in species abundance in Scotland with, for example, a 49% decline in average abundance of Scottish seabirds since 1986<sup>3</sup>

On the other hand, the consultation mentions the impact of agriculture and commercial fishing which have undoubtedly transformed eco systems in Scotland over many centuries. Biodiversity on land and in waters around Scotland continues to be (often adversely) affected by both activities. What impact would a new bill preventing ecocide mean for farmers and commercial fisheries? Would this mean that farmers and commercial fisheries would potentially be subject to the charge of ecocide?

The aim of this legislation in giving the natural environment added protection is desirable, the reality of making such a law workable is challenging. Ecocide is a new and challenging concept that will require wide discussion before it can be accepted into law. It will require discussion and public debate to ensure the concept more widely known if legislation is to be taken forward. We welcome the discussion paper as a helpful contribution to the debate.

In summary, we feel that, while the aim of this legislation in giving the natural environment added protection is desirable, the reality of making such a law workable is challenging.

**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?**

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<sup>2</sup> Report of the Theological Forum to the General Assembly, 2022, paragraph 2.5.5.

<sup>3</sup> [https://stateofnature.org.uk/wp-content/uploads/2023/09/TP25999-State-of-Nature-main-report\\_2023\\_FULL-DOC-v12.pdf](https://stateofnature.org.uk/wp-content/uploads/2023/09/TP25999-State-of-Nature-main-report_2023_FULL-DOC-v12.pdf)

- Yes, legislation is required
- No, legislation is not required

**X Do not wish to express a view**

**Please explain the reasons for your response.**

It is our view that, laudable though these efforts are, legislation may be useful but it needs to be aligned to international developments. It may be more effective to seek action internationally.

The consultation notes there are discussions underway elsewhere with a view to have ecocide incorporated into EU law and to add it to the list of crimes that could be actioned in the International Criminal Court at the Hague. In 2021, Stop Ecocide Foundation convened an independent expert panel of lawyers with expertise in criminal, environmental and climate law to propose a definition of the crime of ‘ecocide’ within the Rome Statute of the International Criminal Court.

The World Council of Churches (of which the Church of Scotland is a founder member) has endorsed an international movement to achieve international recognition of ecocide through [Faith for Ecocide Law](#)<sup>4</sup>. This interreligious coalition seeks to gather religious and spiritual voices to express support for an international crime of Ecocide. A manifesto was drafted in 2022 for faith groups to consider.

<b>Faith for Ecocide Law Manifesto</b>
<p>We, as people of faith,</p> <ul style="list-style-type: none"> <li>• are deeply concerned about the ongoing destruction of our home, the Earth.</li> <li>• demand a global response to prevent mass damage and destruction of ecosystems: ecocide.</li> <li>• support creating legal protection for life on Earth by including ecocide as a crime against peace under the Rome Statute</li> </ul> <p><i>Faith Voices for Ecocide Law (2022)</i></p>

In November 2023 the EU agreed to enshrine in law a new offence that aims to punish the most serious crimes against the environment. The ‘directive on protection of the environment through criminal law’ includes provision to directly address specific severe cases of ecosystem destruction including habitat destruction and Illegal logging. It does not use the word “ecocide” but has taken note of the text proposed by the European Parliament earlier this year to tackle ecocide-level crimes.<sup>5</sup>

This directive will require member states to incorporate the provisions into national law and while the UK is no longer in membership of the EU any UK company doing business in the EU will have to take account of it. Given the commitment of the Scottish Government to uphold EU environmental protection it would be sensible to ensure that the wording of any ecocide prevention bill is aligned with the EU directive.

We appreciate that there are limitations on the extent to which MSPs are able to influence legislation in terms of international issues. Some may feel that efforts in relation to ecocide may be more productively directed towards supporting the development of international laws and regulations, as incorporation of ecocide into EU law for example could be binding on any company doing business in the EU, including companies based in the UK doing business in the EU, regardless of the views of the UK government. Similarly, an action in the International Criminal Court in the Hague can highlight the issue to a global audience and hold out the prospect of a genuinely global approach to ecocide.

<sup>4</sup> <https://www.faithforecodelaw.earth/>

<sup>5</sup> <https://ieep.eu/news/eu-lawmakers-agreed-on-a-new-directive-to-protect-the-environment-through-criminal-law/#:~:text=Although%20there%20is%20no%20explicit,air%2C%20soil%20or%20water%20quality.>

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

**X 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**

It is difficult to be certain, but concerns remain that it would be pointless to introduce such legislation if it did not have the proper effect of dissuading individuals or businesses from actions that were damaging to species or habitats. Deterrence is favourable to prosecution.

**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.**

It would be sensible to ensure the definition is consistent with the wording of EU legislation- mirroring and perhaps eventually exceeding it. The definition will need to be clarified. The ‘environment’ is a very broad concept, and it might be need to be refined to specify species or habitats. ‘Severe and either widespread or long-term damage’ may also be difficult to define. For example, the wreck of the Braer is mentioned in the consultation as the type of event that might be actionable. While this was a spectacular event, it might be difficult to prove that it caused long term damage when the official investigation into the event concluded that the effects were not necessarily long lasting.<sup>6</sup>

There is also the issue of the international effect of decisions taken in Scotland. As noted above the impact of emissions from the burning of oil or gas produced in Scotland is global rather than local. Similarly, the effect of investments made or managed in Scotland can have international implications. Local authority pension funds in Scotland hold investments in fossil fuels companies worth over £2 billion despite many years of campaigning to encourage them to divest, following the lead of universities and churches in Scotland.<sup>7</sup> Irrespective of the damage caused, investment in oil and gas companies remains perfectly legal and so would fall outside the remit of the proposed bill.

**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

**X 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.**

Others are in a better position to decide on any possible penalties, we would have concerns that the threat of imprisonment is a very blunt instrument.

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<sup>6</sup> Ritchie W & O’Sullivan M, *The Environmental Impact of the Wreck of the Braer*, Scottish Office, Edinburgh, 1994.

<sup>7</sup> <https://www.heraldscotland.com/news/23870187.scottish-council-pensions-2bn-invested-fossil-fuels/>

**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

**X 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.**

While others are in a better position to decide on any possible penalties, we would be concerned that any penalty on global income has the potential to just end up going round in legal arguments