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Stuart McMillan MSP
Convenor
Delegated Powers and Law Reform Committee

12 May 2025

Dear Stuart

Thank you for your letter of 2 May to Mairi Gougeon, Cabinet Secretary for Rural Affairs, Land Reform and Islands regarding the delegated powers in part one: targets for improving biodiversity, of the Natural Environment (Scotland) Bill.

I am responding because, as Acting Cabinet Secretary for Net Zero, the provisions in part one of the Bill fall under my portfolio responsibilities. I have addressed each of your questions, which I have retained in *italics*, in turn below:

1.1.1 Section 1: Targets for improving biodiversity - new section 2C: duty to set targets

1: Policy Development and Framework Legislation: In light of the Committee's conclusion in its recent inquiry into framework legislation and Henry VIII powers that "as a general rule, a lack of policy development is not an appropriate justification for introducing framework legislation", the Committee requests an update from the Scottish Government on its progress developing its policy on target-setting.

The introduction of statutory nature restoration targets for improving biodiversity must address the fact that biodiversity is a complex set of inter-connected systems and that there is no globally agreed, single quantifiable apex target – like the equivalent to Net Zero emissions for climate targets.

Given the complexity of putting nature restoration targets on a statutory footing, careful consideration has been taken as to how to set targets within legislation (i.e. which elements are set out in primary and secondary legislation). In addition, for targets to be effective they must also be able to adapt as knowledge and technology develop. Given the complexity and inter-relatedness of nature, and the uncertainty that impacts such as climate change will have, the Bill establishes the structure for targets, including the high-level topics against which specific targets will be set, with the detail of the quantitative figures to be provided in secondary legislation.

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The approach to setting the detail of the targets in secondary legislation was consulted on in the [‘Tackling the Nature Emergency’](#) consultation of September 2023. 77% of respondents agreed to this approach, 8% were opposed and 15% were unsure. Organisations that agreed with this approach included NFU Scotland, who stated in their response “We do agree that an approach whereby the Bill provides a high-level framework, with the detail coming through secondary legislation, is the correct one. We do not believe this Bill should be the place for setting specific targets or prescriptive outcomes, but setting the vision and enabling powers for what intends to be achieved.”

In their 2023 report on [Nature Recovery Targets](#), SE Link assessed the benefits and disbenefits of setting the overall approach for statutory nature targets in primary legislation, with the detail of the targets in secondary legislation, and concluded that “exact numeric metrics for the features to be addressed are, it is suggested, a matter for subsequent secondary legislation.” Following the introduction of the Bill, SE Link and the environment charities have stated that:

“Biodiversity targets are necessarily complicated, and setting the specific targets in primary legislation would be difficult and potentially counter-productive. A framework approach was recommended in LINK’s [2023 report on nature recovery targets](#) and, while there are points of difference, the draft Bill broadly follows these recommendations.”

I therefore took the decision to include the target topics on the face of the Bill to provide greater clarity on the direction for the targets and to enable scrutiny of the topics that the targets should sit under. This approach was also based on recommendations developed by the independent external experts convened to advise on the target topics, known as the ‘Programme Advisory Group’ (PAG)¹, whose work on determining the target topics was then peer reviewed by a sub-committee of NatureScot’s Scientific Advisory Committee.

In summary, the overall approach taken by the Scottish Government has been to develop a Strategic Framework for Biodiversity that will drive a step change to accelerate the pace and scale of efforts. The Framework consists of the published Scottish Biodiversity Strategy, setting out the high-level vision and outcomes to 2045 and 6-yearly rolling Delivery Plans, which include a comprehensive set of cross sectoral actions. The statutory nature restoration targets are the final part of the Strategic Framework and are intended to help drive these actions through creating accountability. The Bill therefore establishes the overall structure for targets, which includes the high-level target topics against which specific targets will be set. The actual targets, such as the detail of quantifiable targets, will then be provided in the secondary legislation. There is a continuing programme of work, involving our PAG to develop step 3, assigning indicators to the targets, and step 4, setting quantifiable values. This work is of course dependant to a large extent on the progress of this Bill and how the provisions develop in its passage through Parliament.

¹ The membership of the PAG as of the introduction of the Bill comprised: Prof. Matthew Williams (chair), Scottish Government Chief Scientific Adviser – Environment, Natural Resources and Agriculture; Prof. Des Thompson FRSE, Leverhulme Fellow; Dr Helen McKay OBE FICF, Scotland’s Chief Forester; Prof. Jerry Wilson FRSE, RSPB; Dr Janet Fisher, University of Edinburgh; Prof. Rob Brooker, James Hutton Institute; Prof. Beth Scott, University of Aberdeen; Prof. Kirsty Park, University of Stirling; Prof. Pete Hollingsworth FRSE, RBGE; Clive Mitchell, NatureScot; Ben James, NatureScot; Prof. Davy McCracken, SRUC; Dr Phillip Boulcott, Marine Scotland; Prof. Anne Magurran, University of St Andrews; Dr Roasind Bryce, University of the Highlands and Island

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2: Regulation and compliance: Although it is the Scottish Ministers who are obliged to meet the statutory targets compliance will require ground-level changes to the way land is owned and managed. The Committee would like to know what regulation is planned in connection with the targets in order that they can be met. Can the Scottish Government give examples of how these targets will be translated into action “on the ground” and what this will mean for stakeholders?

The secondary legislation setting out the quantitative detail of the targets is the only secondary legislation currently anticipated. It is not anticipated that regulations will be laid in relation to the actions required to meet the targets.

In order to mobilise actions of sufficient scale and scope to deliver a nature positive future, as noted above, the Strategic Framework for Biodiversity in Scotland consists of the Scottish Biodiversity Strategy to 2045 (“the Strategy”), 6-year rolling Delivery Plans, and the statutory nature restoration targets. The key aim of the nature restoration targets is to drive action by creating accountability for delivering the high-level vision of the Scottish Biodiversity Strategy - to halt biodiversity loss by 2030 and to restore and regenerate biodiversity by 2045. The actions required to meet this vision are then set out in the 6-year rolling Delivery Plans.

The [first Delivery Plan](#) was published in November 2024 and sets out actions required up to 2030. Work and ‘action on the ground’ is therefore already underway. The first Delivery Plan was developed working with the input of experts, scientists and key stakeholders. Using a logic modelling process we identified the key actions needed to halt biodiversity loss by 2030. These actions have been refined through discussion with policy experts, delivery partners and stakeholders and are now included in the first Delivery Plan, brigaded under 6 high-level objectives. The Strategy and Delivery Plan went through public consultation, and consultation with stakeholders prior to being published. The Net Zero, Energy and Transport Committee has been conducting scrutiny of the Biodiversity Strategy and has conducted two evidence sessions on the draft Delivery Plan.

Examples of Delivery Plan actions include:

- Reduce inputs of nutrients to freshwaters that cause enrichment impacts on biodiversity, by controlling both diffuse and point source pollution through effective nutrient management through agricultural reform and SEPA’s Priority Catchment programme, ensuring compliance with the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) under River Basin Management Planning.
- Develop and implement a Scottish Plan for Invasive Non-Native Species Surveillance, Prevention and Control.
- Revise the Scottish Biodiversity List of species and habitats that Ministers consider to be of principal importance for biodiversity conservation in Scotland.
- Ensure that by 2030 every park, reserve or publicly owned green space has a management and maintenance plan that reflects the Open Space Strategy and Local Biodiversity Action Plan outcomes.
- Increase the uptake of integrated pest management across Scottish agriculture to minimise risks and impacts of pesticides to the environment in line with the UK National Action Plan on the Sustainable Use of Pesticides.
- Progress delivery of the outdoor learning elements of the Learning for Sustainability Action Plan, including nature connectedness and learning, to meet Target 2030 so that every 3-16 place of education becomes a Sustainable Learning Setting.

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In order to assess progress towards meeting the targets, it is necessary to ensure there is a monitoring and evaluation framework that provides clear, robust and objective scrutiny of the progress of both the statutory nature restoration targets and the Delivery Plan actions. It is important to note the first Delivery Plan as published is not a static document- actions will continue to be reviewed and refined on a rolling basis. Adaptive management processes will be implemented to develop and implement actions during the lifetime of the first Delivery Plan, and to prepare for a second Delivery Plan. The first review and report on implementation will be in 2027. The interlinked arrangements for Governance, Monitoring and Evaluation of the Strategy and Delivery Plan will form a cycle of review to inform the development of subsequent delivery plans. Work is underway to develop the indicators that will enable assessment of progress to delivery of the overall vision of the Strategy and this will align with the assessment of progress in meeting the statutory nature restoration targets.

3: Stakeholder consultation: Given the potentially significant regulatory burden on landowners and their stakeholders, who will require to adjust their approach to land use and management in order that Scottish Ministers are able to meet the statutory targets, has the Scottish Government considered including a requirement to consult with stakeholders before exercising the power to set targets?

The Scottish Government is committed to making policy in a way that involves engagement with stakeholders and in this case that will mean consulting with a wide range of stakeholders, including landowners and land managers, ahead of any regulations being laid under these powers. As noted above, in developing the Biodiversity Strategy and Delivery Plan there was an extensive programme of both formal and informal engagement with a wide range of stakeholders, which was incredibly valuable.

I carefully considered the extent to which there should be a statutory requirement to formally consult on the regulations, on the face of the Bill. I would like to take this opportunity to briefly set out how the Scottish Government will engage with stakeholders throughout the process to develop the quantifiable detail of the targets, and the regulations.

Given the quite technical nature of setting statutory nature restoration targets, we will continue to seek appropriate scientific advice and expertise. There are a wide range of stakeholders with extensive knowledge and expertise, including the PAG, which we will engage with as part of our policy development. Environmental Standards Scotland (ESS) has been named as the Independent Review Body (IRB) for the targets, and therefore responsible for scrutinising the reporting on progress to meet targets and to ensure that Ministerial decisions regarding targets are based on robust scientific advice.

Over the rest of 2025, I can confirm there will be a programme of wide stakeholder engagement, focused on shaping the detail of the targets, and informing the proposed quantifiable targets. This will involve both internal cross-policy collaboration and external stakeholder engagement including with landowners and land managers.

Externally, the aim is to build understanding of the Scottish Government's process for developing these targets and engage on the proposed set of indicators and values for targets. Cross-government input is also essential to embed biodiversity across policy areas and ensure targets are delivered and reported on through to 2045. As the committee notes it will be important to ensure there is wide visibility of the introduction of targets and an understanding across stakeholders and delivery partners of the important role they have to play in meeting our biodiversity ambitions.

I will update the committee once engagement plans and dates are confirmed.

Section 1: Targets for improving biodiversity - new section 2E: Reviewing progress and power to adjust topics

4: Legislative process: Given the significance of this power, why does the Scottish Government consider it appropriate to adjust the topics through subordinate legislation and not by primary legislation, which would allow for thorough parliamentary debate and scrutiny?

As set out in the Delegated Powers Memorandum, it is considered appropriate for the Scottish Government to adjust the target topics through secondary legislation due to the uncertainty that impacts such as climate change will have. It may be difficult to predict with confidence the overall effect of nature restoration in the future.

Therefore, being able to allow for targets topics to be adapted in light of changing circumstances may be necessary. As set out in paras 65 to 81 of the policy memorandum for the Bill, when determining the target topics for inclusion in the Bill, consideration was given to the inclusion of further target topics. While the decision was made not to include these additional topics at introduction, the policy memorandum for the Bill notes that two of these topics have merit but that "the PAG acknowledged there is not currently an established approach to assessing how targets made under these topics could be measured."

Having a power to be able to add to or amend target topics would mean that if a way of measuring such topics became available and the targets were considered suitable, such targets could be added without the need for primary legislation. It is therefore considered that a power to amend the target topics should be included to enable new target topic(s) to be added (with corresponding targets and indicators set under them). It is also reasonable to assume that as our scientific understanding grows and new methodologies for measuring the impacts of biodiversity loss and nature restoration measures are developed some refinement of target topics may be necessary.

A power to amend the target topics will also ensure that the Scottish Government can respond quickly and with flexibility to the recommendations of any future statutory review of the target topics without the need for recourse to primary legislation. This power is subject to the affirmative procedure and, under the Bill, Scottish Ministers must lay a statement before parliament on why it is considered appropriate to amend the target topics.

As noted within the Policy Memorandum two additional target topics of 'Ecosystem Health and Integrity' and 'Citizens and society understanding, benefiting from and contribution to nature' were also recommended by the PAG for consideration. We consider these target topics as having merit and value, however indicators are only partially ready and further work would be required to explore options for how best to measure these target topics. Therefore they are not ready to be put on the face of the Natural Environment (Scotland) Bill due to the associated timelines for completion, but we continue to consider the options for progressing this work further.

5: Involvement of stakeholders: Does the Scottish Government plan to involve landowners and managers, who possess local knowledge and expertise, in shaping and delivering habitat and threatened species targets to ensure they are realistic and achievable?

As noted in response to question 3, I encourage all interested stakeholders—not just landowners and managers—to engage with the Scottish Government on developing statutory nature restoration targets. Broad input brings valuable knowledge, expertise, and perspectives to policy development.

A key challenge in setting biodiversity targets is assessing their feasibility, given uncertainties around the effectiveness and timing of actions. Unlike climate targets, we lack robust models for biodiversity outcomes. Careful consideration is therefore needed when determining and setting targets. The Programme Advisory Group (PAG), chaired by the Chief Scientific Adviser for Environment, brings together external experts to provide independent advice and recommendations which are SMART—Specific, Measurable, Achievable, Realistic, and Time-bound.

6: Given the potentially significant regulatory burden on landowners and other stakeholders, who will have to modify their approach to land use/management in order to facilitate the meeting of the statutory targets by Scottish Ministers, has the Scottish Government considered including a requirement to consult with stakeholders before exercising the power to set targets?

As I set out in my response to question 3, the Scottish Ministers are committed to making policy in a way that involves engagement with stakeholders.

As such, I do not consider that it is necessary to include a specific requirement for statutory consultation on the face of the Bill in relation to the powers contained in these provisions.

Any amendment to the target topics set out on the face of the Bill using these powers is anticipated to be the result of monitoring of their real-world application, and would be subject to the following basic stages:

- Ongoing monitoring of policy or impact evaluation identifies and reports on potential issue
- Stakeholder engagement on appropriate response
- Seeking and consideration of independent advice
- Assessment and report from Environmental Standards Scotland on the manner in which the Scottish Government sought independent advice
- Impact assessments
- Laying of statement before parliament on why the Scottish Government is seeking to amend the target topics
- Laying of an SSI/s

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Section 1: Targets for improving biodiversity – new section 2G – Independent Review

7: As such, the Committee seek further justification as to whether it is necessary to take this power. [The power to change who is to act as the independent review body.]

I note the Committee's comments at para 158 of its report on its Inquiry into Framework Legislation and Henry VIII powers that:

"powers allowing flexibility "just in case" are unlikely to meet the test for the necessity of the power, and as such be considered inappropriate."

I am also aware that, in his response to that report, the Minister for Parliamentary Business set out that:

"The Scottish Government accepts this general point but notes, given the wide range of circumstances which legislation might be required to deal with on a more or less urgent basis, there could be situations in which the Scottish Government considers this approach to be appropriate"

The Bill appoints Environmental Standards Scotland as the independent review body, however, as set out in policy memorandum accompanying the Bill consideration was given as to whether to appoint another body, such as the Climate Change Committee (CCC) to undertake this role.

I took the view that, given ESS existing functions (as set out in Chapter 2 of Part 2 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021) is already constituted to perform the functions of the IRB. And that, as things currently stand, it is the most suitable public body to perform this role.

However, I think it important when developing legislation, to consider future proofing, and that there should be the ability for a future parliament to appoint a different review body should they consider it appropriate to do so.

This power gives the Scottish Ministers the ability to respond, not only to any change in circumstances which may result in ESS being unable to carry out this function but to designate another body to undertake this role should the Scottish Ministers be of the view that such a body would be better placed to undertake this role.

Without such a power, such a change could only be made through primary legislation.

I want to ensure that the Bill provides the correct balance between implementing the policy provisions with suitable engagement and appropriate parliamentary scrutiny. I will of course reflect on any comments made during committee evidence sessions on the delegated powers set out in the Bill, and I will give careful consider to any recommendations the committees make on these matters, to ensure the Bill strikes the best balance.

I hope you will find this response to be helpful and I would be happy to answer any further questions which the Committee may have

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I am copying this letter to the Cabinet Secretary for Rural Affairs, Land Reform and Islands, the Minister for Agriculture and Connectivity, and the Minister for Parliamentary Business.



GILLIAN MARTIN

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