



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Mairi Gougeon MSP,
Cabinet Secretary for Rural Affairs, Land
Reform and Islands

Email only

2 May 2025

Dear Mairi,

Natural Environment (Scotland) Bill

The Delegated Powers and Law Reform (DPLR) Committee considered the above Bill at its meeting on Tuesday, 29 April, and agreed to ask the following questions in relation to three of the delegated powers in the Bill.

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

Section 1 of the Bill inserts section 2C into the Nature Conservation (Scotland) Act 2004 (“the 2004 Act”) which places a duty upon the Scottish Ministers to set targets for the purpose of conserving and improving biodiversity. The Committee considered the framework nature of these powers and the potential impact upon stakeholders.

Framework nature of power

As explained at paragraph 48 of the Policy Memorandum, “The Bill establishes the framework for targets, which will include the high-level topics (target topics) for which specific targets will be set. The actual targets, such as the quantitative figures, will then be provided in secondary legislation. This approach allows for targets to be adapted in the light of changing circumstances and ensure parliamentary scrutiny is maintained with any proposed changes.” Part 1 of the Bill can therefore be properly categorised as “framework legislation”.

In its Delegated Powers Memorandum, the Scottish Government explains that putting nature restoration targets on a statutory footing is a complex exercise and that, in order for targets to be effective, they must be adaptable. Conferring a power to set statutory

Contact: Delegated Powers and Law Reform Committee, The Scottish Parliament, Edinburgh, EH99 1SP.

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targets in subordinate legislation will allow the targets to be adapted in response to prevailing circumstances.

According to paragraph 24 of the Policy Memorandum, the Scottish Government is following a four-step process for the selection of targets. It has completed the first two steps: (i) defining the policy framework and (ii) describing the high-level topics that the targets will cover. However, step (iii) assigning indicators to the proposed suite of targets and step (iv) setting the quantifiable values as to targets, will be set out in secondary legislation.

The Committee published its report on its Inquiry into Framework Legislation and Henry VIII powers on 24 March 2025. During the course of the inquiry, the Committee heard evidence regarding the challenges which framework legislation creates for Parliamentary scrutiny. Whilst the Committee accepted that framework legislation may be appropriate in certain circumstances, it stressed (para 160) that “as a general rule, a lack of policy development is not an appropriate justification for introducing framework legislation.”

Stakeholder impact

Whilst it is Scottish Ministers who will be responsible for ensuring that the targets which they set are met, these targets cannot exist in the abstract. If Scottish Ministers are to meet those targets, ground level changes will be required to the way land is managed. It is therefore anticipated that the regulations setting the targets will require to be accompanied by provision for the regulation of land, which could have potentially significant impacts on landowners and land managers, who will require to adapt their working practices to ensure compliance with whichever standards might be laid down.

However, as matters stand, neither the Bill itself, nor the accompanying documents gives any clear indication as to what may be required from those who own or manage land which might be subject to further regulation.

At paragraph 22 of the Policy Memorandum, the Scottish Government argues that this approach allows for targets to be adapted in light of the circumstances. The Committee observed that whilst taking this approach will allow for flexibility, the corollary is that it creates uncertainty for those who will require to bear the regulatory burden “on the ground”.

In light of the above, the Committee’s questions are as follows:

- **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.**

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- **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?
- **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?
- **Legislative process:** Given the significance of this power, why does the Scottish Government consider it appropriate to set the targets by way of subordinate legislation and not by primary legislation, which would allow for thorough parliamentary debate and scrutiny?

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

Section 1 also inserts a new section 2E(5) into the 2004 Act, which enables the Scottish Ministers to add to or amend the topics in respect of which Scottish Ministers must set targets.

As with the previous power, whilst the Bill places the duty to meet the targets on Scottish Ministers, if the targets are to be met, ground level changes will be required to the way land is managed. It is therefore anticipated that the regulations setting the targets will require to be accompanied by, or followed by, measures for the regulation of land which may significantly impact on landowners and land managers in new and as yet unknown ways.

The Committee’s questions are as follows:

- **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?
- **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?

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- **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?**

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

New section 2G of the 2004 Act provides that Environmental Standards Scotland (“ESS”) is to act as an independent reviewing body with the following functions:

- review each report prepared by Scottish Ministers on monitoring progress towards meeting targets (3 yearly progress report);
- review each report prepared by the Scottish Ministers reviewing all targets and target topics (10 yearly full targets review);
- assess the manner in which Scottish Ministers seek and use independent advice in compliance with carrying out reviews for targets and target topics (both ad hoc and 10 yearly reviews);
- prepare a report on the above matters and submit this to Scottish Ministers to then be laid in parliament.

New section 2G(4) provides that the Scottish Ministers may, by regulations, change who is to act as the independent reviewing body.

The Committee notes that ESS was established in law by the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. It is a non-ministerial office of the Scottish Government whose purpose is to scrutinise, investigate and secure improvements in the effectiveness of, and compliance with, environmental law.

In its report on its Inquiry into Framework Legislation and Henry VIII powers, at paragraph 158, the Committee concluded that “powers allowing flexibility “just in case” are unlikely meet the test for the necessity of the power, and as such be considered inappropriate.”

The Committee questions how likely it is that ESS’ remit would change to such a significant extent that it would no longer be appropriate for it to act as the independent reviewer under the Bill.

As such, the Committee seek further justification as to whether it is necessary to take this power.

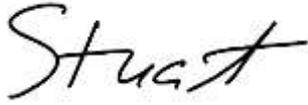
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The Committee requests a response to this letter by **Tuesday 13 May**.

Yours sincerely

A handwritten signature in black ink that reads "Stuart". The letters are cursive and fluid, with the 'S' being particularly large and the 't' having a long tail.

Stuart McMillan MSP
Convener

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Edinburgh, EH99 1SP.

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