

# **NATURAL ENVIRONMENT (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Natural Environment (Scotland) Bill introduced in the Scottish Parliament on 19 February 2025.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 59–EN);
  - a Financial Memorandum (SP Bill 59–FM);
  - a Delegated Powers Memorandum (SP Bill 59–DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 59–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.
4. The Natural Environment (Scotland) Bill is being introduced with measures to:
  - establish statutory targets for improving biodiversity;
  - provide Scottish Ministers with a new delegated power to modify or restate Environmental Impact Assessment Legislation and Habitats Regulations;
  - modernise the aims and powers of National Parks and provide Scottish Ministers with a power to set up a fixed penalty notice regime by secondary legislation for contravention of national park byelaws;
  - reform deer management legislation.

### **OVERVIEW OF THE BILL**

5. The natural environment, or nature, includes all naturally occurring living things, which is also referred to as biodiversity. Biodiversity is the web of life. It is the variety of all living things and the ecosystems where they live (on land or in water). It comprises the living organisms in a particular space, whether in a window-box, garden, park, meadow, peatland, river, loch, estuary, ocean, beach or mountain top.

6. Biodiversity inspires people. It has enormous value in its own right but is also central to our survival as a species. Scotland's economy, jobs, health and wellbeing depend on it and it is an integral part of Scottish culture and way of life. More than half of the world's GDP (US\$44 trillion) is thought to be dependent on nature in some way. Yet humanity has caused the loss of 83% of all wild mammals and half of all plants.<sup>1</sup>

7. Biodiversity supports food production and security: through insect pollination in farming and horticulture; and Scotland's fishing industry, which depends on resilient and productive seas. It provides the blueprint for many modern medicines and contributes to our wellbeing, providing recreation, relaxation and a sense of place. Healthy biodiversity protects soil from eroding, purifies water and helps prevent and mitigate flooding.

8. However, humanity is now facing a Global Climate Emergency and Nature Emergency. These are twin reinforcing crises: the actions taken to address each are fundamental to our survival as a species. A decline in biodiversity will exacerbate the climate crisis and a changing climate will accelerate the rate of biodiversity loss.

9. In Scotland, biodiversity is highly degraded. The 2023 State of Nature Scotland report: Scotland - State of Nature<sup>2</sup> indicated that Scotland ranks amongst those countries where habitats and species have been most depleted by human impacts through history. The abundance of terrestrial and freshwater species has declined by 15% on average since 1994. The abundance of Scottish seabirds has fallen by 49% on average since 1986. 11% of species in Scotland are threatened with extinction. In the 2021 Biodiversity Intactness Index, Scotland ranks 28<sup>th</sup> from the bottom out of 240 countries.<sup>3</sup> The 2021 Dasgupta Review on the Economics of Biodiversity, commissioned by HM Treasury, highlighted how Scotland's economy is embedded in nature, not external to it.<sup>4</sup> This means that Scotland's economy is fundamentally dependent on nature to supply the natural capital it needs, and to absorb its wastes, including greenhouse gases. Historically nature has been overlooked in decision making.

10. In order to address this, the Scottish Government has recently published the final version of the Scottish Biodiversity Strategy to 2045 ("the Strategy")<sup>5</sup>, and the first in a series of rolling delivery plans.<sup>6</sup> Alongside statutory targets for nature restoration, these publications form the Scottish Government's Strategic Framework for Biodiversity.

11. The first element, the Strategy, sets the Scottish Government's high-level goal: to halt biodiversity loss and be Nature-positive<sup>7</sup> by 2030 and to have restored and regenerated biodiversity by 2045. A series of rolling Delivery Plans form the second part of the Strategic Framework and will ensure that our approach is agile and dynamic, responding to conditions on the ground and at sea.

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<sup>1</sup> [The biomass distribution on Earth | PNAS](#)

<sup>2</sup> [Scotland - State of Nature](#)

<sup>3</sup> [Biodiversity Intactness Index | Natural History Museum](#)

<sup>4</sup> [Final Report - The Economics of Biodiversity: The Dasgupta Review - GOV.UK](#)

<sup>5</sup> <https://www.gov.scot/publications/scottish-biodiversity-strategy-2045/>

<sup>6</sup> <https://www.gov.scot/publications/scottish-biodiversity-delivery-plan-20242030/>

<sup>7</sup> 'Nature-positive' means halting and reversing nature loss by 2030, measured from a baseline of 2020. (Locke et al. 2020. - [A Nature-Positive World](#))

12. The Natural Environment Bill is the legislative vehicle that will establish the third element of this framework: statutory targets for nature restoration. The aim of these targets is to provide accountability and to drive action across government to meet the high-level goal of the Strategy. As noted by environmental charities in their report on nature recovery targets, targets can enable a unified and effective response to the nature emergency.<sup>8</sup>

13. The Bill also brings together other measures that will enable us to restore and protect nature, and to support delivery of the Scottish Government's net zero and biodiversity goals. These measures include provisions to modernise the aims and powers of national parks by amending the National Parks (Scotland) Act 2000. The Bill reforms the way in which deer are managed by amending the Deer (Scotland) Act 1996 ("the 1996 Act"), through the implementation of many of the recommendations made by the Deer Working Group ("DWG")<sup>9</sup>, through repealing the licensing of venison dealing, and by amending NatureScot's powers of intervention under the 1996 Act to ensure they are fit for purpose in the context of twin climate and biodiversity challenges, the Bill also makes some technical and procedural changes throughout the 1996 Act.

14. In addition, the Bill creates a new delegated power to modify the Conservation (Natural Habitats, &c.) Regulations 1994 ("the 1994 Habitats Regulations") and the legislation that forms Scotland's Environmental Impact Assessment ("EIA") regime. This power fills a legislative gap that was created in this legislative area as a result of EU Exit when the power that had been used to make and amend this legislation was lost. It will enable the Scottish Government to potentially make amendments to these regimes which could streamline and improve the efficiency of environmental assessment processes.

15. Taken together, the provisions in this Bill aim to support the work already being undertaken by land managers, farmers, nature agencies,<sup>10</sup> charities and the stewards of Scotland's land, to restore and protect the natural environment on which everyone in Scotland depends. Further detail about these provisions is set out below.

16. Further information about the costs associated with the measure included in the Bill can be found in the Financial Memorandum for the Bill. Further information about the delegated powers contained within the Bill can be found in the Delegated Powers Memorandum for the Bill.

17. Three public consultations were undertaken, that sought views on the different policy proposals that resulted in provisions with the Bill, in addition to extensive stakeholder engagement. The statutory nature restoration targets and national parks proposals were consulted on in the 2023 Strategic Framework for Biodiversity consultation "Tackling the Nature Emergency."<sup>11</sup> The proposals relating to the EIA regime and 1994 Habitats Regulations were consulted on in 2024.<sup>12</sup> The deer management proposals were consulted on in the 2024 consultation "Managing deer for

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<sup>8</sup> [Nature-recovery-targets-a-report-for-Scottish-Environment-LINK.pdf](#)

<sup>9</sup> [The management of wild deer in Scotland: Deer Working Group report - gov.scot](#)

<sup>10</sup> NatureScot is Scotland's nature agency. It is a statutory body established by section 1 of the Natural Heritage (Scotland) Act 1991 and its statutory title is "Scottish Natural Heritage". The Bill therefore makes reference to Scottish Natural Heritage ("SNH"). Following a rebranding in 2020, Scottish Natural Heritage is now known as NatureScot, which is how it is referred to in this policy memorandum and other accompanying documents.

<sup>11</sup> [Tackling the Nature Emergency - strategic framework for biodiversity: consultation - gov.scot](#)

<sup>12</sup> [Environmental Impact Assessment regime and Habitats Regulations - enabling powers: consultation - gov.scot](#)

climate and nature.”<sup>13</sup> Further detail about each of these consultations is covered in the relevant Bill sections below, including detail relating to the responses and links to the consultations’ analysis.

## **POLICY OBJECTIVES OF THE BILL**

### **Statutory targets for improving biodiversity**

#### **Background**

18. Scotland published its first Biodiversity Strategy in 2004. Although there is evidence of localised positive outcomes for nature, as the most recent 2024 Strategy notes, the ongoing decline of biodiversity demonstrates that both the public sector and the private sector must do a great deal more and at scale to ‘bend the curve’ of biodiversity loss. Key lessons learned since the first Strategy include the need to:

- Work more strategically and at scale;
- Focus on ecosystem health and landscape scale regeneration as well as on management for individual species;
- Systematically mainstream biodiversity across sectors and the wider policy landscape;
- Ensure sufficient investment;
- Strengthen accountability for delivery.

19. The Scottish Government has therefore developed a Framework approach to ensure that it moves beyond ambitious words, to a point where we mobilise actions of sufficient scale and scope to deliver a nature positive future. The Framework consists of the Scottish Biodiversity Strategy to 2045 (“the Strategy”), 6-year rolling Delivery Plans, and statutory nature restoration targets. The Strategy sets out an ambitious long-term vision for Scotland to halt biodiversity loss by 2030 and to restore and regenerate biodiversity by 2045. It contains a number of Outcomes which articulate what ‘success looks like’. The 6-year rolling Delivery Plans then set out in detail the range of actions needed to deliver the Vision and Outcomes in the Strategy. The aim of the statutory targets is to secure accountability for driving this action across Government.

20. Tackling biodiversity loss requires a whole-of-government and a whole-of-society approach. Defined in the right way, statutory nature restoration targets (hereafter referred to as ‘targets’) should drive action across government and more widely. Successful targets will be ones which incentivise the necessary action and ensure that biodiversity is factored into policy development at all levels of government (often referred to as ‘mainstreaming’). Statutory targets will nest within a wider monitoring framework, to monitor progress against Scotland’s domestic and international obligations and commitments, including primarily the Kunming/Montreal Global Biodiversity Framework (GBF).

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<sup>13</sup> [Managing deer for climate and nature: consultation - gov.scot](https://www.gov.scot/publications/managing-deer-for-climate-and-nature/consultation/pages/13.aspx)

## **Concerns**

21. The introduction of targets 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. The complexity of nature also means that it is not feasible to construct a quantifiable pathway to meeting targets, as you can with emissions targets. The key aim of the nature restoration targets is to drive action by creating accountability for delivering the high-level vision of the strategy.

22. Given the complexity of putting nature restoration targets on a statutory footing, careful consideration is needed as to how to set targets within legislation (i.e. which elements are set out in primary and secondary legislation). Statutory targets set the long-term commitment of government and if they are going to drive the transformational change needed to tackle the biodiversity crisis, then it is essential they provide clear focus and are ambitious. 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, it is difficult to predict with confidence the overall effect of nature restoration actions into the future. Putting nature restoration targets on a statutory footing therefore requires a considered, robust and transparent approach.

## **Changes being made by the Bill**

23. The Scottish Government's proposal is that the Bill should establish the framework for targets, which will include the high-level topics against which specific targets will be set. The actual targets, such as the detail of the quantitative figures, will then be provided in secondary legislation. This approach allows for targets to be adapted in the light of circumstances and ensures that parliamentary scrutiny is maintained. This Bill will place the framework for targets within the Nature Conservation (Scotland) Act 2004 alongside the existing duties on Scottish Ministers to further the conservation of biodiversity in exercising their functions and to designate a Scottish Biodiversity Strategy.

24. In summary, the Bill will create:

- A duty for the Scottish Ministers to bring forward secondary legislation, subject to the affirmative parliamentary procedure, to make provision for and in connection with targets on specified target topics for nature restoration as a means of driving action towards achieving the ambition set out in the Scottish Biodiversity Strategy: for Scotland to be Nature Positive by 2030, and to have restored and regenerated biodiversity across the country by 2045.
- A requirement for Scottish Ministers to meet the targets.
- The target topics are defined as: the condition or extent of any habitat, the status of threatened species, and the environmental conditions for nature regeneration. Scottish Ministers will also be able to set targets in relation to any other matter relating to the restoration or regeneration of biodiversity as they consider appropriate, and will have the power to add target topics or amend existing topics.
- A requirement that Scottish Ministers must first seek expert scientific advice before making or amending any targets.

- A requirement for Scottish Ministers to review the suitability of the target topics, and the targets themselves, at least once every 10 years.
- A requirement on the Scottish Ministers to report on progress to meet the statutory targets at least once every 3 years.
- The designation of Environmental Standards Scotland (“ESS”) as an Independent Review Body (“IRB”) for the statutory targets, with an additional power for the Scottish Ministers to remove ESS and designate another body as the IRB.
- Provisions which set out the functions which the IRB must perform in fulfilling their oversight role.

### **Selection of targets**

25. The Scottish Government is following a **4-step process** for the selection of targets:
1. ***Define the Policy Framework*** – this step sets out how the targets will be selected and within what parameters. It considers and identifies the form of targets required i.e. the type, number and timescale, and the criteria for their selection.
  2. ***Describe the high-level topics that the targets will cover*** – or ‘*what to measure*’? This step defines the scope of targets by articulating the high-level topics, against which the quantifiable detail of the targets will be set in secondary legislation. These are referred to as ‘target topics’. The target topics are set out on the face of the Bill.
  3. ***Assign indicators to the proposed suite of targets*** – or ‘*how to measure*’? This step ensures that any targets set against the proposed target topics can be measured, and recommends the most appropriate indicators for measurement. This detail will be set out in secondary legislation.
  4. ***Set the quantifiable values to targets*** – or ‘*what are the right values to set against the identified indicators*’? This is not a straightforward process and requires careful consideration to ensure targets meet the Specific, Measurable, Achievable, Realistic, Time-bound (SMART) criteria. This detail will also be set out in secondary legislation.

### **Form of targets**

26. The Scottish Government has considered the merits of the following types of targets:
- *Outcome targets* which demonstrate whether activities have achieved the desired overall effect;
  - *Output targets*, which focus on whether actions have been delivered; or
  - *Input targets*, which focus on whether resources, such as money, equipment or people have been committed.

27. Targets that focus on achieving high-level outcomes, and that are less prescriptive about how to reach the desired goals, have been shown to produce the best results.<sup>14</sup> However, it can be difficult to demonstrate that an outcome has been achieved and to assess whether actions in train will deliver the desired outcome. This is particularly the case in complex systems such as the natural environment. An example of an outcome target would include: X% increase in the abundance of species by a specific date.

28. Outputs are the activities that are undertaken to arrive at an outcome. While both outputs and outcomes are firmly based in evidence (i.e. ‘if I do X, then Y will happen’), outputs are relatively more straightforward to measure than outcomes. However, they are less responsive to changing evidence about the best way to achieve an outcome and may result in an undue focus on specific aspects of a programme. Examples of output targets in nature restoration would include: X hectares of peatland restored by specific date; invasive species removed from Y hectares of ancient woodland by a specific date.

29. Input based targets can be useful in some circumstances but are generally a crude and imprecise measure in terms of delivering complex outcomes. They can severely constrain agility in adapting to dynamic elements such as environmental shifts. Examples of input targets would include: £X spent on nature restoration within a specific timeframe.

30. The Scottish Government therefore proposes that targets, when set in secondary legislation, should include a combination of ‘outcome’ targets and ‘output’ targets. The focus for targets is to create accountability for delivering the Vision and Outcomes of the Strategy with the aim to drive, rather than dictate, the actions that are required. The combination of outcome and output targets is viewed as the best option to provide focus and impetus but also to ensure there is space for discussion and cooperation on the most appropriate actions to be included in the Delivery Plans.

### **Number of targets**

31. As already noted, biodiversity is a complex set of inter-connected systems and it is not possible to identify a single quantifiable apex target.<sup>15</sup> A useful comparison is to consider that there is no one way a person might be described as ‘healthy’. Medical professions may consider a range of factors such as immune response, cardiovascular fitness, mental health, blood pressure, etc.

32. The challenge is to find a suite of targets that allows for assessment of whether the vision of the Strategy is being delivered. In doing so it is important to avoid the risk of setting targets for ‘everything’. While this might be comprehensive and reflect the complexity and inter-connectedness of biodiversity, it would also be disproportionately bureaucratic and burdensome, pulling resources away from delivery. Putting an excessive number of targets into legislation also risks diluting public and political focus and weakening accountability.

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<sup>14</sup> Jill Rutter and William Knighton, *Legislated Policy Targets*, Institute for Government, 2012

<sup>15</sup> An apex target in this case is a single, unifying and measurable target that is able to demonstrate whether an overall goal has been achieved.

33. For these reasons, the proposal is for the smallest feasible number of targets which reflects the complexity of nature restoration. This approach aims to mitigate targets creating poor or perverse outcomes due to oversimplification, and hampering delivery due to overly burdensome bureaucracy.

**Timescale for targets**

34. The Strategy sets out a high-level, long-term vision for reversing biodiversity loss by 2030 and substantially restoring and regenerating biodiversity in Scotland by 2045. This is, in part, because actions to address biodiversity loss can take a long time to have an impact. However, in reflecting this reality the urgency of action must not be diminished.

35. The purpose of targets is to drive actions now and sustain them through the duration of the Strategy timeframe. The proposal is therefore to align the target timescales with the Strategy of 2030 and 2045.

**Eliciting expert advice to inform selection of targets**

36. It is imperative that the Scottish Government elicits the best scientific advice while developing targets so that they are set in a way that maximises success to deliver the vision and outcomes in the Strategy. The Biodiversity Programme Advisory Group (PAG) consists of a group of external experts and is chaired by the Scottish Government's Chief Scientific Advisor for Environment, Natural Resources and Agriculture.<sup>16</sup> The PAG has been brought together to advise the Scottish Government on the development of the three aspects of the Strategic Framework for Biodiversity. They have already provided advice on the Strategy, the first Delivery Plan and are playing a key role in the 4-Step process to select targets. The target topics set out in the Bill, which Ministers will set detailed targets against, have been greatly informed by the expert scientific advice provided by the PAG.

37. To further the scientific rigour of the process to select targets, a sub-group of NatureScot's Scientific Advisory Committee is providing scrutiny on the process the Scottish Government has used to elicit expert advice from the PAG and is providing a peer review function of the advice provided by the PAG.

**Target topics**

38. As outlined above, key to the 4-step process is to decide on the high-level target topics that Scottish Ministers will be required to set specific targets against. Through detailed engagement with the PAG, and using the policy framework as a guide, they have provided their recommendations for target topics (Step 2). These recommendations provide the scientific basis for setting the scope of targets. To assist in the analysis of the suitability of the recommended target topics, further work was undertaken with the PAG to elicit their recommendations on indicators for each of these topics (Step 3). This advice fed into wider analysis of the recommended

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<sup>16</sup> The membership of the PAG as of the 14 January 2025 comprises: 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 Roaslind Bryce, University of the Highlands and Islands.

target topics to provide an assessment to Scottish Ministers of the topics' suitability to be included in legislation. This assessment included the robustness of potential indicators and whether a statutory target was the most appropriate mechanism to drive the desired action.

39. In summary, three target topics are included on the face of the Bill at introduction. These recommended target topics were viewed as being appropriate for statutory targets and having established methods of measurement available. The PAG recommendations also included two suggested target topics that they assessed as having merit for consideration of the development of statutory targets. However, the PAG has acknowledged that there is not currently an established approach to assessing how targets made under these topics could be measured. Therefore these topics have not been included in the Bill but the Scottish Government is working with the PAG and NatureScot to explore options for measurement for the two target topics.

40. Two target topics were also recommended by the PAG that, while highly significant to the success of achieving the vision of the Strategy, were assessed to be unsuitable to be taken forward as statutory targets. Further detail on the four topics not included in the Bill is set out in the 'Alternative approaches' section below.

41. The three target topics recommended by the PAG which are included in the Bill are:

- *Habitat condition and extent;*
- *Threatened species status;*
- *Enhancing environmental conditions for nature.*

#### Target topics included in the Bill

- *Habitat condition and extent*

42. Habitat condition and extent includes the quality and / or extent of habitat types of importance to Scotland, including protected habitats.

43. This target topic brings together consideration of both extent and condition of habitats in Scotland. The intended focus will be on habitats that are of importance to Scotland and internationally, and habitats that are important to society but historically under-represented in policy e.g. urban and peri-urban habitats. For some habitats (e.g. peatlands) the focus may need to be on habitat condition as the extent is unlikely to change. Whereas for others (e.g. native woodland) both the extent and condition may need to be improved. Within this target topic the condition of protected areas will also be included.

- *Threatened species status*

44. The term 'threatened species' comprises species that are under threat now, species that have populations that are declining and species that may potentially be under threat in the future. The target topic intended to incorporate species at threat of extinction, species abundance and distribution, population size of exploited species, as well as genetic diversity.

45. Focusing on threatened species allows for an assessment of progress on habitat restoration and ecosystem integrity.

- *Enhancing environmental conditions for nature*

46. This target topic is focused on relieving the pressures that inhibit thriving biodiversity so that nature has the best conditions to recover. In broad terms this addresses the drivers of biodiversity decline not covered elsewhere.

47. The habitat condition and extent and threatened species target topics will likely incentivise actions to address the drivers of biodiversity loss, and there are already statutory targets for some drivers such as climate change. However, this target topic will allow any gaps to be addressed and strengthen the ability to tackle the drivers of biodiversity decline.

### **Scottish Ministers' duties in relation to targets**

48. For nature restoration targets to be effective they must also be able to adapt as evidence bases change and overall knowledge and technology develop. Given the complexity and interrelatedness of nature, and the uncertainty that impacts such as climate change will have, it may be difficult to predict with confidence the overall effect of nature restoration actions in the future. 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.

49. Scottish Ministers therefore have a duty to ensure that each target set is met. A target is met if the measures or indicators specified in relation to the target in question are met, or as the case may be, achieved. Targets are to be set by regulations which will be subject to the affirmative procedure. Before making the regulations, Scottish Ministers must seek and have regard to advice from persons they consider to be independent and have relevant expertise. If a target is not met or the Scottish Ministers are of the view that a target can no longer be met, they must lay a statement before parliament setting out why the target was not met or is not possible to be met and the steps they intend to take as a consequence of the target not being met. Scottish Ministers must also lay draft regulations before parliament which revoke the target and set a new one.

### **Funding context for meeting the targets**

50. Costs and savings directly associated with the provisions to create targets for nature restoration have been estimated and costed out where possible in the Financial Memorandum, and largely fall on ESS as the Independent Review Body for the statutory targets (further detail on the Independent Review Body is set out below). As noted above, the statutory nature restoration targets are a key part of the Scottish Government's Strategic Framework for biodiversity, which comprises the Biodiversity Strategy<sup>17</sup>, Delivery Plans<sup>18</sup> and Targets. Therefore, in order meet each target, these provisions will also have indirect costs and savings associated with the implementation of the 6-yearly Biodiversity Delivery Plans and the future use of the secondary legislation.

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<sup>17</sup> [Scottish Biodiversity Strategy to 2045 - gov.scot](https://www.gov.scot/publications/biodiversity-strategy-2024-to-2045/pages/1-introduction-and-what-is-new-in-this-version.aspx)

<sup>18</sup> [Biodiversity: delivery plan 2024 to 2030 - gov.scot](https://www.gov.scot/publications/biodiversity-delivery-plan-2024-to-2030/pages/1-introduction.aspx)

51. In the case of targets for nature restoration, there will be costs relating to the assumption that targets will create an imperative to deliver the Actions set out in Delivery Plans. However, those Actions are not derived from the introduction or development of targets. Rather, the Actions are designed to deliver the Outcomes set out in the Biodiversity Strategy. Furthermore, the Actions set out in the first Delivery Plan will be refined, adjusted and supplemented during the course of its implementation and in future, Delivery Plans based on regular evaluation of the implementation of the Strategy, required under section 2 of the Nature Conservation (Scotland) Act 2004 (the “2004 Act”). Nor is it presently clear exactly how the nature restoration targets will be set out in regulations, and without that knowledge, it is impossible to offer reliable or accurate estimation of costs and savings associated with the establishment of the targets at present.

52. The first Delivery Plan includes a range of Actions, some of which are already in train, while others remain in development, in order to define the future direction necessary to achieve the high-level goals set out in the Strategy. This approach means, however, that it is not possible to cost the Delivery Plan as a whole, and subsequently estimating the costs and savings associated with the Delivery Plan is limited to those Actions currently in train.

#### Nature finance gap, current funding, future funding

53. The existence of a nature finance gap is well established, but a succession of attempts to quantify it have demonstrated that there are differences in methodology and approach to quantifying it.

54. The Scottish Government already invests a significant amount of public money to maintain and enhance Scotland’s natural capital. However, no government can meet the scale of the challenge alone. It is a public and private responsibility. The main sources of finance for nature restoration and biodiversity in Scotland are public grant funding programmes, the Nature Restoration Fund, PeatlandACTION, woodland grants, philanthropic investment, and private finance. Private finance comes from landowners and managers, including farmers, the sale of credits through the Woodland Carbon Code and Peatland Code, compliance with planning regulations and environmental social governance commitments from businesses and industries, for example energy companies as they carry out works to decarbonise Scotland’s energy infrastructure.

55. As discussed above, there is a variety of ways in which policies can be reshaped so that they contribute to the Outcomes in the Strategy, and there is already a very wide range of Scottish Government policies and interventions which have a positive impact on biodiversity Outcomes. For example, the NHS Scotland Climate emergency and sustainability strategy<sup>19</sup> notes that there is a wealth of good evidence that nature can have a positive impact on physical and mental health. Additionally, some improvements to biodiversity in Scotland can be delivered at low or no additional cost. NHS Scotland is the custodian of significant areas of greenspace and is committed to working with communities and other partners to develop and manage this public asset in a way which improves public health and reduces health inequalities while addressing biodiversity loss and the climate emergency. The full potential of the greenspace resource across the NHS estate can be realised through, for example, reviewing maintenance costs with no immediate benefit, implementing a natural capital accounting approach to valuing greenspace for climate,

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<sup>19</sup> [NHS Scotland climate emergency and sustainability strategy: 2022-2026 - gov.scot](https://www.gov.scot/publications/nhs-scotland-climate-emergency-and-sustainability-strategy-2022-2026/pages/11/index.aspx)

environmental, and health benefits, identifying opportunities for restoring natural habitats, and creating green networks that encourage walking, wheeling and cycling for relaxation, exercise, meetings and active travel.

56. Scotland's National Strategy for Economic Transformation<sup>20</sup> includes a commitment to establish a values-led, high-integrity market for responsible private investment in natural capital. This means that the Scottish Government wants to grow private investment in Scotland's nature where it is responsible, benefits communities and has environmental and financial integrity. The Principles for Responsible Investment in Natural Capital<sup>21</sup> and Natural Capital Market Framework<sup>22</sup> set out the Scottish Government's ambitions for, and expectations of, responsible private investment. These will deliver for economic transformation, climate change and biodiversity, provide community benefits, and support a Just Transition.

57. As noted, there are a range of public sector funds which deliver significant levels of funding towards nature restoration projects. For example, in recent years, these have included the Peatland Action Programme, Nature Restoration Fund, Agriculture Transformation Fund, Vacant and Derelict Land Investment Programme, Agri-environment Climate Scheme, Scottish Marine Environment Enhancement Fund, and the Water Environment Fund. The precise value of these funding streams to biodiversity is difficult to quantify on an annual basis as such funds are sometimes associated with specific policy initiatives which often do not run to the same timescale.

58. The Scottish Government acknowledges that investment in nature from a variety of sources must be scaled up, and public funding must adapt in response to the need to stimulate private investment. The Biodiversity Investment Plan, alongside the Scottish Government's Natural Capital Market Framework, will set out actions that will enable public, private and philanthropic investment to flow more effectively into nature restoration in a way that ensures it contributes to the delivery of Biodiversity Strategy and the Scottish National Adaptation Plan 3<sup>23</sup> priorities: through ecosystem restoration and species recovery programmes, nature networks and 30 by 30, as well as nature based solutions that contribute to climate adaptation, for example. It will identify practical mechanisms and approaches that will guide investment towards these priorities.

59. As discussed above, the Scottish Government is legally required, by section 2 of the 2004 Act, to designate and publish the Scottish Biodiversity Strategy setting out their proposals and policies for the conservation of biodiversity. Section 2(7) of that Act requires that every three years a report on the implementation of the strategy be laid before the Scottish Parliament. And to the extent that specific policies and proposals require legislation to be implemented, the costs associated with them will be more particularly described as usual in the accompanying financial memorandums, in the case of Bills, and in the accompanying policy notes and impact assessments in the case of subordinate legislation.

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<sup>20</sup> [Scotland's National Strategy for Economic Transformation - gov.scot](https://www.gov.scot/publications/national-strategy-for-economic-transformation/pages/2-introduction.aspx)

<sup>21</sup> [Principles for Responsible Investment in Natural Capital - gov.scot](https://www.gov.scot/publications/principles-for-responsible-investment-in-natural-capital/pages/2-introduction.aspx)

<sup>22</sup> [Natural Capital Market Framework - gov.scot](https://www.gov.scot/publications/natural-capital-market-framework/pages/2-introduction.aspx)

<sup>23</sup> [Climate change: Scottish National Adaptation Plan 2024-2029 - gov.scot](https://www.gov.scot/publications/climate-change-scottish-national-adaptation-plan-2024-2029/pages/2-introduction.aspx)

**Reporting on progress towards meeting targets**

60. For targets to create effective accountability, regular reporting is required. The Scottish Government has explored other reporting frameworks and identified a number of options, primarily around who would undertake the reporting and the timeframes for reporting.

61. In terms of who would report on progress, the options considered were having a report written by an Independent Review Body (IRB), with a response by Scottish Ministers to this report, or, to create a requirement for Scottish Ministers to report on progress, with the IRB scrutinising this report. It is not viewed as a good use of public resource to have two bodies collecting and analysing the same data to write two separate reports.

62. The costs of tasking the IRB to produce a full report would be unlikely to justify the benefits and would also bring excess bureaucracy. The proposal is therefore to create a requirement on Scottish Ministers to produce a report on progress to meet targets, with the IRB required to scrutinise this report. It is not intended to curtail the scope of IRB's scrutiny, meaning the IRB would be free to pursue areas that they felt were relevant.

63. Scottish Ministers will be required to report on progress towards meeting targets at least once every 3 years. The proposal is that reporting should align with the existing statutory requirement to report on implementation of the Scottish Biodiversity Strategy, which also takes place every 3 years<sup>24</sup>. Annual reporting was considered but, given the time it takes for the impacts of nature restoration actions to be seen on the ground, this was viewed as being too frequent. Annual reporting would also create additional bureaucratic burden, pulling resources away from delivery without any significant benefit. Reporting every 6 years, in line with the Delivery Plans, would potentially decrease the necessary urgency for action. The 3-yearly reporting, aligned with the report on implementation of the Strategy, should create the right balance between allowing time for effects to be seen on the ground, administrative efficiency and creating the impetus for early action.

**Reviewing and amending target topics and targets**

64. As already discussed, given the complexity of nature restoration, there is a requirement for targets to adopt an agile approach. The reasons for this are the high degree of uncertainty in how ecosystems will respond to future changes in climate; the difficulty in predicting the response of ecosystems to restoration efforts, and how emerging technology may result in new insights and ways to assess the natural environment. It is therefore necessary to incorporate a degree of adaptability to the approach to nature restoration targets while also ensuring a robust approach to accountability is maintained.

65. Therefore in addition to the manner in which targets are placed into legislation, provisions are included in the Bill that create a robust and transparent process to the reviewing and amending of any targets. Scottish Ministers are required to review the target topics and the targets set in secondary legislation under those topics and provide a report on that review at least once every ten years. Scottish Ministers can also carry out reviews in relation to targets as they consider appropriate. When carrying out reviews (whether ad-hoc or for the report required at least once

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<sup>24</sup> Section 2(7) of the Nature Conservation (Scotland) Act 2004

every 10 years), Scottish Ministers are required to seek and have regard to scientific advice from persons they consider to be independent and have relevant expertise. The IRB then has a role in (1) assessing the manner in which Scottish Ministers seek independent advice when carrying out each review and (2) reviewing and reporting on the report produced by Scottish Ministers at least once every 10 years.

66. Scottish Ministers may also, by regulations, add to or amend target topics or the targets themselves. Such regulations will be subject to the affirmative procedure and before making the regulations, Scottish Ministers must seek and have regard to advice from persons they consider to be independent and have relevant expertise. The IRB will assess the manner in which the Scottish Ministers seek and use this advice. If amending targets, they must also be satisfied that the amended target can be met and lay a statement before the Scottish Parliament setting out why they consider it appropriate to amend the target. If the regulations would revoke or diminish a target, then Scottish Ministers can only do so if the existing target has not or cannot be met, they are satisfied that meeting the existing target would have no significant benefit compared with not meeting it or with meeting a diminished target, or changes in circumstances or scientific knowledge since the existing target was set or last amended mean that the target (or the manner in which, or an indicator against which, progress is made toward it) is no longer appropriate.

#### **Independent Review Body – Environmental Standards Scotland**

67. For statutory nature restoration targets to function successfully, there is a necessity to create a framework that provides clear, robust and objective scrutiny of progress towards meeting the targets and reviewing of targets. Given the complexity of nature restoration, interpreting relevant data can be challenging and there is a possibility of multiple and competing narratives emerging, potentially creating a confused discourse, leading to diminished accountability. The designation of an Independent Review Body, able to provide independent and expert assessment, will provide mitigation for these identified risks.

68. The IRB will have 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.

69. For clarity, these functions create specific duties on the IRB, and do not seek to curtail any existing powers and functions the IRB may have.

70. The practice of having an independent body to comment on progress to meet nature targets has also already been adopted by the UK Government through the Environment Act 2021, which

establishes the Office of Environmental Protection, and is being proposed by the Welsh Government in their Securing a Sustainable Future consultation.

71. The Scottish Government considers Environmental Standards Scotland (ESS) as the most appropriate body to undertake the functions of the IRB. Consideration was given to the Climate Change Committee (CC) but ESS is the preferred option given its existing role and alignment with equivalent bodies in England and Wales.

72. ESS' functions are set out in Chapter 2 of Part 2 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 and include: monitoring and investigating public authorities' compliance with environmental law, the effectiveness of environmental law and how it is implemented and applied in Scotland. That Act also sets out the steps ESS can take to secure public authorities' compliance with environmental law, and improvements in the effectiveness of such law or in how it is implemented. As such, it is the view of the Scottish Government that ESS is already constituted to perform the functions of the IRB.

### **Alternative approaches**

73. The alternative approach to nature restoration targets that has been taken into consideration would be to make them non-statutory. As noted earlier, key factors have been identified which have limited the success of previous strategies. Putting targets on a statutory footing secures greater accountability to drive action across Government toward the most recent Strategy's overarching goal of halting biodiversity loss by 2030 and restoring Scotland's natural environment by 2045.

74. An alternative overall approach for nature restoration targets would be to follow similar processes that have been adopted by other administrations such as the UK Government and European Union (EU). The EU has adopted the Nature Restoration Law (NRL)<sup>25</sup> which sets binding targets to restore degraded ecosystems, in particular those with the most potential to capture and store carbon and to prevent and reduce the impact of natural disasters. In the international context, the EU policies and Scottish policy intentions are aligned to meet the same strategic vision of "by 2050, biodiversity is to be valued, conserved, restored and widely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people."<sup>26</sup> The UK Government has taken the approach to set "legally binding targets to protect our environment, clean up our air and rivers and boost nature" which will drive forward action to tackle climate change, restore natural capital and protect landscapes and greenspaces. The Environment Act 2021<sup>27</sup>, and publication of the Environmental Improvement Plan in January 2023,<sup>28</sup> set out the details of how the UK Government will achieve these targets. In accordance with powers under the 2021 Act, the UK Government, in 2023, legislated for a suite of targets covering subject matter such as biodiversity, water and residual waste. The current approach taken by the Scottish Government is to focus on developing and implementing statutory targets that are specific to Scotland, that will drive the action required in Scotland to achieve the vision of the Strategy. In addition, the policy intention is to work to a 2045 target for Scotland, whereas the EU

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<sup>25</sup> Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869. Were the UK a member of the EU this Regulation would have direct effect in Scots law, with principal effect from September 2026.

<sup>26</sup> [2050 Vision and 2030 Mission](#) [Accessed 17 January 2025] .

<sup>27</sup> [Environment Act 2021](#)

<sup>28</sup> [Environmental Improvement Plan 2023 - GOV.UK](#)

NRL is aimed to achieve a 2050 target. Given the international context, and the set of nature targets that the EU have developed, there is a good degree of confidence that the policies developed will have strategic alignment.

75. The Scottish Government intends to appoint Environment Standards Scotland (“ESS”) as an Independent Review Body (“IRB”) for the statutory targets, as it is currently the most suitable public body to perform this role. The alternative for this approach would be for no IRB to be appointed or another body instead of ESS to be appointment. As detailed above the ability to provide independent and expert assessment is key to assuring accountability and transparency to the process. The Bill includes provisions to appoint another body instead of ESS as a reasonable alternative i.e. to remove ESS and designate another body as the IRB.

### **Other target topics**

76. The PAG recommendations included two suggested target topics that they assessed as having merit for consideration of the development of statutory targets. These are:

- *Ecosystem health and integrity*
- *Citizens and society understanding, benefiting from and contribution to nature*

77. However, as noted above, the PAG acknowledged, there is not currently an established approach to assessing how targets made under these topics could be measured. Therefore, these topics have not been included in the Bill. However, the Scottish Government is working with the PAG and NatureScot to explore options for measurement for the two target topics and this is discussed further in paras 80 to 86 of this memorandum.

78. There were a further two target topics recommended by the PAG that while highly significant to the success of achieving the vision of the Strategy, were assessed to be unsuitable to be taken forward as statutory targets. These are:

- *Investment in nature*
- *Positive outcomes for biodiversity in public sector and government policy*

79. Further information about why it was not considered appropriate to include these topics in the Bill is set out in paras 87 to 92 of this memorandum.

### **Target topics with approaches to measurement in development with potential to be included in the scope of nature restoration targets**

80. The Scottish Government is working with the PAG and NatureScot to explore options for measurement for the two target topics below. If these are deemed appropriate for statutory targets, these topics will be considered for inclusion within the target topics set out in the Bill in due course.

- *Ecosystem health and integrity*

81. Ecosystem integrity is a measure of the completeness and functionality of an ecosystem and its ecological processes, and the resilience of the ecosystem in response to human pressures. The Convention on Biological Diversity (CBD) states that an ecosystem has integrity when: “...

dominant ecological characteristics (e.g. elements of composition, structure, function, and ecological processes) occur within their natural ranges of variation and can withstand and recover from most perturbations.”<sup>29</sup> The PAG proposed that this target topic is based on the CBD definition to align with the Global Biodiversity Framework (GBF) Targets.

82. Ecosystem health and integrity provides a high-level target topic that is scalable, able to cover a wide array of factors relating to the overall ‘health’ of biodiversity and can be applied to ‘modified’ or productive ecosystems. It allows for the assessment of whether the Scottish Government has met the Vision of the Strategy which states: “Our natural environment, our habitats, ecosystems and species, will be diverse, thriving, resilient and adapting to climate change”. Ecosystem health and integrity also makes a direct connection to provision of ecosystem services – and so highlights that healthy, high integrity ecosystems deliver healthy air, water and soils for society, and hence sustain us.

83. At present, the advice received from the PAG is that there is not a current agreed single indicator that can be used for this target topic. However, the PAG has identified options for how current indicators could be used to represent this target topic. Work is underway to explore these options.

- *Citizens and society understanding, benefitting from and contributing to nature*

84. The Vision in the Strategy includes citizens and society playing their part in the stewardship of nature, being central to delivering and benefiting from a nature positive future. Several international and Scottish reports have highlighted the importance of people’s relationship to nature in successfully addressing the biodiversity crisis. This target topic is intended to focus on assessing people’s understanding and connection to nature, the benefits they derive from regenerating nature and healthy biodiversity and how they value them, and how they contribute to delivering a nature positive future.

85. Advice received from the PAG was that this is a valuable target, however indicators are only partly ready and further work would be required to explore options for how to best fully cover this topic. A number of areas of further research were suggested by experts and work is being undertaken to fully examine the possible approaches to setting detailed targets to this target topic.

86. The Bill includes power for Scottish Ministers to make regulations for targets that are in connection to any other matter relating to the restoration or regeneration of biodiversity as they consider appropriate. This power could be used to include the targets on the above topics if they are able to be measured and this is considered appropriate.

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<sup>29</sup> <https://www.cbd.int/gbf/files/km%20gbf%20targets%201%20to%2023-%20consolidate%20guidance%20notes.pdf>

Target topics recommended by the PAG but not judged as suitable for statutory targets

- *Investment in nature*

87. There is a recognition of a deficit in resources available to meet the Vision and Outcomes of the Strategy. The PAG recommended including a topic that would set targets to increase both financial and community investment in nature from both the public and private sectors.

88. There is agreement on the vital need to attract public, private and philanthropic investment to nature restoration. However, a statutory target is not always the best solution for an issue. The Scottish Government's policy focus is on responsible investment in the right actions to achieve biodiversity restoration and carbon reduction outcomes. A statutory investment input target would not be an indicator of responsible high-integrity investment avoiding 'greenwashing'.<sup>30</sup> For more information on Scottish Government approach to securing investment in nature, please see the [Natural Capital Market Framework](#).

- *Positive outcomes for biodiversity in public sector and government policy*

89. This target topic was recommended to seek positive outcomes for nature to be achieved across all areas of public sector and government policy. In other words, to set a target for 'mainstreaming' biodiversity.

90. Embedding positive outcomes for nature across all aspects of local government, public sector and national government policy is a necessity to drive action that is vital to achieving the Vision of the Strategy. In the same way that government policy must contribute to the Net Zero climate change targets, this target topic was recommended to place a similar emphasis on contributing positively to nature restoration targets.

91. The consideration required is how this mainstreaming is to be achieved. The Strategic Framework has mainstreaming biodiversity at its centre. The Framework will be supported by governance, monitoring and evaluation structures that will require demonstration and evaluation of delivery of actions. Targets and the wider Framework function should ensure positive outcomes for biodiversity, thus having a target specifically for positive outcomes for biodiversity in public sector and government policy would create an additional, unnecessary bureaucratic requirement to set and report on this target, likely resulting in resource being directed away from delivery.

92. The existing statutory duty on public bodies (including the Scottish Ministers)<sup>31</sup> to further the conservation of biodiversity so far as consistent with in the exercise of their functions, which includes having regard to the Scottish Biodiversity Strategy and the duty to prepare a report on compliance with this duty<sup>32</sup>, is already intended to support the mainstreaming of positive outcomes for biodiversity across public policy. It is anticipated that this will be reinforced by the introduction of statutory targets for nature restoration.

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<sup>30</sup> The practice of misleading the public about a policy or product's environmental impact or benefits. Oxford English Dictionary defines it as "the creation or propagation of an unfounded or misleading environmentalist image."

<sup>31</sup> Section 1 of the Nature Conservation (Scotland) Act 2004

<sup>32</sup> Section 2 of the Nature Conservation (Scotland) Act 2004

## **Consultation on statutory targets (summary)**

93. The consultation on Scotland’s Strategic Framework for Biodiversity asked for views on a draft version of Scottish Biodiversity Strategy, the first Delivery Plan that accompanies the Strategy; on the policy frameworks for Nature Networks and 30 by 30; and on elements that may be included in a proposed Natural Environment Bill – namely statutory nature restoration targets, and proposals to modernise National Parks legislation.<sup>33</sup>

94. There were over 600 responses from 474 individuals and 180 organisations. Overall, respondents agreed with the proposed approach to placing targets on a statutory footing. This included the criteria for selecting targets, the forms of targets, examples of potential target topics, the number of targets, and the timescale of delivering on targets. Concerns raised against the approach suggested (15 out of 200 respondents) were driven by several factors including concerns surrounding the potential of perverse incentives, references to examples of other statutory targets which were perceived to be not fit for purpose, and reservations regarding the cost associated with the potential legal challenge which might arise.

95. Respondents were broadly positive about the proposed approach to reviewing targets, highlighting that it was important that targets remain relevant and an adaptive management approach be adopted. Uncertainty surrounding the approach was predominantly due to a lack of detail or concern that the potential to review targets should not affect the governmental ambition to act. To alleviate this concern, the Bill has provisions for additional parliamentary scrutiny for when the targets are set or amended in secondary legislation (please see the Delegated Powers Memorandum for further detail).

96. There was agreement with the proposed approach of aligning reporting timescales for targets with existing reporting requirements, with some suggesting that more frequent reporting was needed to ensure public scrutiny. Overall, the sentiment relating to an independent review body was positive, with many respondents highlighting the need for both independent and impartial accountability.

97. Full analysis of the consultation is available on the Scottish Government website.<sup>34</sup>

## **Power to amend EIA legislation and the 1994 Habitats Regulations**

### **Background**

98. Scotland’s Environmental Impact Assessment (“EIA”) regime and the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”), are key aspects of the legal frameworks which underpin the environmental protection and assessment processes in Scotland, on land and at sea (out to 12 nautical miles (“nm”).

99. The EIA regime is an established legal approach for ensuring that environmental considerations are taken into account in government decision-making on certain public and private

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<sup>33</sup> [Tackling the Nature Emergency - strategic framework for biodiversity: consultation - gov.scot](https://www.gov.scot/publications/consultations/biodiversity-strategic-framework/consultation-analysis/pages/section-two.aspx)

<sup>34</sup> [Section Two: Scottish Biodiversity Delivery Plan - Biodiversity - strategic framework: consultation analysis - gov.scot](https://www.gov.scot/publications/consultations/biodiversity-strategic-framework/consultation-analysis/pages/section-two.aspx)

projects, such as certain forestry projects, or the construction of motorways or express roads. When an EIA is conducted, it should clearly set out the potential environmental impacts of a proposed project or development to allow the competent authority to make an informed decision on whether it should go ahead. The 1994 Habitats Regulations set out a legal framework for the protection of certain species of animals and plants (known as European protected species).

### **Environmental Impact Assessment**

100. EIA is a systematic means of assessing the significant effects of a proposed project or development on the environment, seeking mitigation where possible to avoid, reduce or offset adverse effects and to ensure that decision makers are aware of these effects before the decision around consent is considered.

101. EIA encompasses a number of stages:

1. Screening – to determine if an EIA is required for certain developments
2. Scoping – to agree what needs to be included in the assessment and outlined in the relevant EIA report
3. Preparing the EIA report – setting out the likely significant environmental effects of the development and any available mitigation
4. Submitting an application (or equivalent if related to the Roads (Scotland) Act 1984), and holding a consultation – the EIA report and development application must be publicised and interested parties and the public given an opportunity to give their views on it
5. Decision-making – the EIA report and any comments on it must be taken into account by the competent authority before they decide whether to give consent, and a decision notice must be published
6. Post-decision – the developer starts any monitoring required by the competent authority.

102. In Scotland, the EU EIA Directive<sup>35</sup> was implemented by multiple pieces of legislation covering a range of sectors or licensable purposes. There are also UK EIA regulations that apply in Scotland in some cases, for example in relation to matters which are reserved to the UK Government (such as oil and gas).

103. Scotland's EIA regime includes:

- Agriculture (including land drainage and irrigation projects)
- Forestry
- Marine licensing

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<sup>35</sup> [Directive - 2011/92 - EN - EIA - EUR-Lex](#)

- Planning
- Ports and harbours
- Transports and works projects
- Trunk roads
- Flood management
- Electricity works

104. The regulations relating to electricity works (the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017<sup>36</sup>) are not included in the scope of this Bill. This is because electricity generation is a reserved matter and the subject of a separate Scotland Act Order to transfer to the Scottish Ministers relevant regulation making functions, as Scottish Ministers do not have the legislative competence to take powers to amend these regulations.

105. In the majority of cases, Scottish Ministers are the competent authority for EIA decisions, meaning it is their role to determine whether a proposal can proceed. Local authorities are the competent authority in relation to flood management, and for town and country planning matters the competent authority is either the relevant planning authority or the Scottish Ministers as the case may be.

### **The 1994 Habitats Regulations**

106. The 1994 Habitats Regulations aim to conserve natural habitats and wild species of flora and fauna. They are the main piece of legislation which transpose the requirements of the EU Habitats Directive (92/43/EEC) and elements of the EU Birds Directive (2009/147/EC) in Scotland, on land and in territorial waters (out to 12 nm).

107. The 1994 Habitats Regulations establish a general duty on Scottish Ministers, competent authorities and statutory advisors to exercise their functions so as to secure compliance with the requirements of the EU Habitats and Wild Birds Directives.

108. The Regulations also set out provisions relating to the designation and management of protected areas which are important for certain natural habitat types and species other than birds (Special Areas of Conservation – SACs) and bird species (Special Protection Areas - SPAs). These sites are collectively referred to as “European sites” or “European marine sites”, and form part of a UK site network. This includes procedural requirements in relation to the assessment of implications of plans or projects for these sites, and for how adverse impacts should be managed and compensated for if there are imperative reasons of overriding public interest that a plan or project should go ahead, even if it will have an adverse impact on site integrity.

109. Finally, the 1994 Habitat Regulations set out protections and licensing rules for certain species of animals and plants.

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<sup>36</sup> [The Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#)

### **EU exit/Assimilated law (formerly retained EU law)**

110. Both the 1994 Habitats Regulations and EIA regime originated in European Union (EU) Directives, and were implemented in domestic law and later amended using the section 2(2) power in the European Communities Act 1972 (“the 1972 Act”).

111. The Section 2(2) power of the 1972 Act allowed, amongst other things for the modification of primary legislation. The 1994 Habitats Regulations and the legislation forming the EIA regime were originally made and then subsequently amended using that same power. Since the UK’s exit from the EU, the power in section 2(2) of the 1972 Act has been lost which significantly limits the Scottish Ministers’ ability to amend these key bits of legislation given that, in this legislative context, there are limited alternative powers available.

112. There are some existing powers available to Scottish Ministers to amend the relevant legislation. However, these powers can only be exercised for specific, or limited, purposes and do not provide Scottish Ministers with the flexibility that may be required in future to ensure that the legislation remains fit for purpose. Additionally, some of these available powers are expected to ‘sunset’ at a given date, meaning they will only be available for a limited time. Further detail on powers currently available is provided under Alternative approaches below.

### **Concerns**

113. As noted above, the UK’s exit from the European Union led to the loss of the power in section 2(2) of the 1972 Act in this legislative area. It is therefore timely to introduce a bespoke power relating to these key pieces of legislation. These will help fill the legislative gap left as a consequence of EU exit and will complement the other existing (but limited) powers which are already available, to ensure that the 1994 Habitats Regulations and the EIA regime remain fit for purpose over time.

114. Concerns were raised by respondents to the consultation on these provisions that insufficient detail was given of how the power would be used. While some potential examples were included at consultation, it is not possible to predict every future use of the power and the ability for Scottish Ministers to use these powers needs to be future-proof. All future uses of the power will, however, be subject to parliamentary scrutiny, including scrutiny under the affirmative procedure in certain cases, alongside the requirement for consultation and impact assessments to be conducted. Some examples of the potential use of the power are provided in more detail below.

### **Net Zero and Offshore Wind**

115. The Scottish Government has adopted a highly ambitious target of achieving net zero by 2045, and investment in offshore wind is intended to play a significant role in achieving this target. The Offshore Wind Policy Statement (2020)<sup>37</sup> includes an ambition to achieve up to 8-11GW of offshore wind in Scottish waters by 2030. The Energy Act 2023 (“the Energy Act”) allows Scottish Ministers to amend certain parts of the 1994 Habitats Regulations (the UK Government and other devolved authorities have equivalent powers), in recognition of the fact that the current environmental assessment regime under the Regulations will not allow offshore wind development

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<sup>37</sup> [Offshore Wind Policy Statement](#)

at the pace and scale required to meet Scottish and wider UK renewable energy targets, or the British Energy Security Strategy.

116. The Energy Act powers (in relation to offshore wind only) allow for reforms relating to environmental compensation, i.e. the ability to apply measures compensating for environmental damage caused by activities/development in a more flexible manner. It also provides the power (again in relation to offshore wind only) to amend current assessment processes under the 1994 Habitats Regulations, which might include reforms relating to the timing of delivery measures and the potential use of a wider range of compensatory measures. The UK Government is developing secondary legislation using these powers, and a parallel Scottish Statutory Instrument will be required to ensure we have a compatible regime in Scotland.

117. However, these powers fall short of what is required to realise the ambition set out in the Offshore Wind Statement, and to enable Net Zero targets to be met through future developments in renewable energy technology. They could not be applied to any marine activity except offshore wind, or to any activities on land. This means that if in future the Scottish Government wanted to apply amendments made in relation to offshore wind to other emerging sectors, such as wave energy, or in relation to the strategic infrastructure required to connect energy generated offshore to the national grid, the Scottish Government would not be able to do so using existing powers. This could be problematic if there are other sectors where development or activity may be required in order to achieve climate targets, but which would be restricted by the current regime (which was legislated for in 1994 in a very different environmental context), in the same way as offshore wind development is.

### **Forestry**

118. Currently, the Forestry EIA regime allows for enforcement notices to be served on a person who is carrying out, or has carried out work in connection with a forestry project, where it appears that an EIA consent is required but has not been granted, or where the work is being carried out in breach of a condition to which an EIA consent was granted.

119. This enabling power could, for example, allow Scottish Ministers to update the regulations to allow for enforcement notices to also be served on landowners or occupiers. This would bring forestry EIA enforcement more in line with the Forestry and Land Management (Scotland) Act 2018, where responsibilities largely lie with the owner of the land.

120. The reason for using a power in this way would be to ensure EIA regulations can be effectively enforced if breaches are discovered. In this case, this would be particularly where work has been carried out on land but the persons carrying out the work are no longer present, cannot be identified, or do not have authority to carry out work on the land. Providing the ability to serve an enforcement notice on the landowner would ensure any work required to rectify a breach of conditions would be carried out, regardless of who carried out the initial works.

### **Consistency across regimes**

121. As set out in ‘Alternative approaches’ below, a power to make regulations that would enable the replacement of the system of EIA, which originates in EU law, with a system of Environmental Outcome Reports (EOR), is contained in Part 6 of the Levelling-up and

Regeneration Act 2023 (“the LURA”). There is a power, in section 164 of the LURA, to amend the 1994 Regulations and the legislation making up Scotland’s EIA regime that can be exercised by Scottish Ministers.

122. However, the power can only be used to amend the 1994 Regulations and the EIA legislation in order to address its interaction with any EOR regulations made under Part 6. It follows that using this power would require the adoption of an EOR regime to replace EIA, which is not the Scottish Government’s current policy. While it is not yet clear if the current UK Government intends to replace the EIA system, if an EOR approach is adopted in future, this may introduce inconsistencies or incompatibilities between any new regime and the existing Scottish EIA regimes. In future, it may be necessary to ensure that EIA regimes in Scotland can interact operationally with EOR regimes, in particular in the marine context where the UK Government has reserved competence over the Scottish offshore region. Therefore the enabling power could be used to make amendments to facilitate this.

### **Electronic reports**

123. Additionally it was also felt that the lack of an enabling power would make it difficult to fix existing issues and inefficiencies. For example, to allow for a move from physical paper copies of EIA Reports from developers (for those sectors where the legislation requires this) to an electronic EIA Report format, so that paper copies do not have to be provided by applicants and stored by regulators. An enabling power would allow the Scottish Ministers to update the legislation to allow applicants to send in reports by other means, for example by email, PDF or through an online portal.

124. The reason for using a power in this way would be to enable greater flexibility for applicants and reduce the costs associated with printing and delivering documents. It would also make handling applications less onerous in terms of processing and storing applications.

125. This is currently provided for by some EIA regimes (e.g. in relation to planning) but not others, for example the Marine Works EIA regime.

### **Reflecting the current legislative framework**

126. The 1994 Habitat Regulations form part of a wider framework of nature conservation legislation in Scotland and they need to function effectively both in their own right and within this wider context.

127. For example, section 36 of the regulations makes further provision in relation to byelaw making powers for the protection of European marine sites under section 37 of the Wildlife and Countryside Act 1981<sup>38</sup>. However, this no longer makes sense because section 37 was repealed by the Marine and Coastal Access Act 2009<sup>39</sup> and the 2010 Act<sup>40</sup>.

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<sup>38</sup> [Wildlife and Countryside Act 1981](#)

<sup>39</sup> [Marine and Coastal Access Act 2009](#)

<sup>40</sup> [Marine \(Scotland\) Act 2010](#)

128. An enabling power would allow Scottish Ministers to update this provision to reflect the current legislative framework.

### **Creating flexibility for protected sites**

129. Additionally, the 1994 Habitat Regulations place a duty on Scottish Ministers to adapt the UK site network (and specifically European protected sites, i.e. Special Areas of Conservation, Special Protection Areas and Ramsar sites in Scotland) in order to meet the management objectives for the network. The management objectives relate to achieving or maintaining favourable conservation status for certain habitats or species listed in the EU Habitats Directive, and to ensuring the survival and reproduction of certain wild bird species listed in the EU Birds Directive.

130. At the moment, there is no mechanism to adapt European sites designated under the 1994 Habitat Regulations, other than to designate additional sites or to add additional protected species or habitats (“features”) to a site citation. For example, if evidence demonstrated that the natural range of a “feature” has shifted as a result of climate change, it would not be possible to amend an existing site boundary to reflect this, or to “remove” the feature from the site citation while ensuring that that habitat or species was suitably represented elsewhere within the network.

131. Should the Bill become law, Scottish Ministers could amend the 1994 Habitats Regulations in future to ensure that European protected sites can be adapted to meet changing circumstances. The reason for using a power in this way would be to ensure that Scottish Ministers can effectively meet their duties in relation to the UK site network, and to ensure that conservation efforts can be focused where they will achieve positive impacts.

132. The purpose of the enabling power would be to allow for future amendments to these pieces of legislation in light of evolving circumstances and it is not possible to predict every circumstance where it may be needed in future.

133. Therefore, it was considered important that the power in the Bill should be framed in such a way that it achieves an appropriate balance between providing flexibility to adapt to future requirements, while ensuring the relevant legislation can continue to effectively underpin environmental protection and assessment processes in Scotland.

### **Changes being made by the Bill**

134. The Bill sets out an enabling power which would better allow Scottish Ministers to make future amendments to the 1994 Habitats Regulations and the EIA legislation for which the Scottish Parliament has legislative competence.

135. Specifically, the Bill includes a power to modify, or restate, the 1994 Habitats Regulations and the relevant EIA legislation.

136. As noted above, it is vital that the Scottish Government has the ability to ensure that the 1994 Habitats Regulations and the EIA regime remain fit for purpose over time. The purpose of the enabling power is therefore to allow for future amendments to the relevant legislation in light of evolving circumstances, or to address existing issues or inefficiencies. This power will provide

the flexibility to adapt to future requirements, while ensuring that the legislative frameworks continue to effectively underpin environmental protection and assessment processes in Scotland. Before making use of the power, Ministers will be required to consult anyone who may have an interest in, or be otherwise affected by, the changes being proposed.

**Purposes for modification**

137. The enabling power is not intended to be used to move away from or weaken the 1994 Habitats Regulations or the EIA regimes, and the vital environmental protections they provide. The Bill therefore sets out a list of purposes for which the EIA legislation or 1994 Habitats Regulations may be amended. To put it another way, the power to amend the relevant EIA legislation or the 1994 Habitats Regulations may only be used by Scottish Ministers if the amendments being made meet one or more of the following purposes, as set out in section 3(a) to (f) of the Bill:

*(a) to maintain or advance standards in relation to—*

- (i) restoring, enhancing or managing the natural environment,*
- (ii) preserving, protecting or restoring biodiversity,*
- (iii) environmental assessments,*

138. The overarching policy intention is to ensure that the legislation remains fit for purpose and could be adapted, if required, to allow effective action in response to the twin climate and biodiversity crises.

139. This purpose intends to ensure that the powers can be used to advance environmental standards to ensure overall environmental outcomes are improved.

*(b) to facilitate progress toward any statutory target relating to the environment, climate or biodiversity that applies in Scotland (including, in particular, the net zero emissions target set by section A1 of the Climate Change (Scotland) Act 2009),*

140. Where necessary, provisions made under this purpose could be used to promote progress towards statutory targets, including those due to be set in accordance with Part 1 of the Bill. The specific noting of the net zero emissions target recognises the critical importance of addressing the climate crisis as a means of protecting the environment.

*(c) to ensure consistency or compatibility with other legal regimes,*

141. This anticipates that the Scottish Government will have the ability to ensure that these regimes remain coherent with any future legislative changes, including those made by UK Government, or to implement international obligations. It can also be used to ensure consistent legal processes within Scotland.

*(d) to take account of changes in technology or developments in scientific understanding,*

142. This is intended to allow modifications which would futureproof the regimes, to ensure that Scotland does not lag behind in taking advantage of technological developments or scientific understanding.

*(e) to resolve ambiguity, remove doubt or anomaly, facilitate improvement in the clarity or accessibility of the law (including by omitting or repealing anything which is legally unnecessary),*

143. The intention behind this purpose is to enable changes to be made to the legislation, where required, to ensure that it is clear and accessible, which will include removing redundant provisions to reflect the current legislative framework.

*(f) to improve or simplify the operation of the legislation.*

144. The intention here is to improve or streamline processes, for example, to reduce administrative burdens without impacting on environmental standards.

145. The enabling power will therefore provide the flexibility to adapt these pieces of legislation to future requirements if needed, while ensuring they continue to effectively underpin environmental protection and assessment processes in Scotland.

### **Legislative competence**

146. The proposed power would only cover the 1994 Habitats Regulations and those parts of the EIA regime for which the Scottish Parliament has legislative competence. These are UK-wide regimes and pursuing a bespoke power will allow the Scottish Government to tailor Scottish domestic legislation to Scottish requirements, and provide the flexibility to align with UK approaches where appropriate.

### **EU alignment**

147. The Scottish Government's policy on EU alignment aims to maintain and advance the high standards that Scotland shares with the EU. The purpose of this is to protect people's wellbeing, ease of access to EU markets and Scotland's ability to rejoin the EU at a future date. The policy specifically states that no action should be taken that could prevent Scotland's membership. However, the enabling powers being proposed would not be linked to maintaining alignment with the EU so there is the potential that they could in future be used in a manner that would diverge with EU policy. There is sufficient justification for this approach given the potential risks of not being able to amend these pieces of secondary legislation, for example where amendments may be needed to reduce or remove current barriers to achieving biodiversity and climate change/renewables targets.

### **Parliamentary procedure**

148. The EIA legislation that is within devolved legislative competence covers several different policy areas, as set out in paragraph 103, and the 1994 Habitats Regulations deals with both the

marine and terrestrial environments. The power will, therefore, be used by a wide range of different policy areas for a wide range of issues, from those of a minor/technical nature to more substantive policy changes.

149. Given that the power can be used to change policy approaches, a negative only procedure was not considered suitable to allow for sufficient scrutiny of all potential future uses of the power. At the same time, an affirmative only power was also not considered appropriate, or proportionate, given that the power will also be used to make relatively minor amendments, such as to move away from paper copies of EIA reports (where legislation requires this) to electronic submissions. Making every use of the power subject to the affirmative procedure would not represent efficient use of parliamentary time, however, certain types of provision have been identified as requiring the affirmative procedure. These matters were identified based on the significant impact that such provision may have on the public. In addition, it is normally the case that when subordinate legislation is used to amend primary legislation that this would also require use of the affirmative procedure. As such, the following provisions have been specified, on the face of the Bill, as requiring use of the affirmative procedure:

- Where provision creates, or widens the scope of, a criminal offence;
- Where provision confers a power to arrest a person, search a person, enter and search a vehicle/premises/land, inspect, seize or detain any thing, or widens the scope of an existing power of this sort;
- Where provision provides a Scottish public authority with the power to confer a fee or charge, or amend the amount of an existing fee or charge (excluding provision that alters the amount to reflect inflation);
- Where provision textually amends an Act.

150. If regulations contain provisions that fall entirely out with the affirmative only matters then the power is exercisable ‘either way’, i.e. ministers would make a decision on whether the regulations should be subject to the affirmative or negative procedure based on the content. The policy intention is that any regulations which make substantial changes to a regime would be subject to the affirmative procedure.

151. Before exercising this power, there is a requirement for ministers to consult with persons who may have an interest in, or be affected by, the regulations.

## **Alternative approaches**

### **‘Do nothing’ approach**

152. As noted above, a range of limited powers are available which do allow for some amendments to the 1994 Habitats Regulations and parts of the EIA regime. Therefore, an alternative approach would be to continue to rely on these powers. However, these powers can only be exercised for specific, or limited purposes and do not provide the flexibility that may be required in future to ensure that the legislation remains fit for purpose. Additionally, some of these available powers are expected to ‘sunset’ at a given date and would no longer be available. These existing powers and their limitations are explored in further detail below.

### Energy Act 2023

153. The Energy Act contains a power in section 293 to enable Scottish Ministers to make regulations in connection with the assessment of the environmental effects of offshore wind activities in relation to protected sites and the taking or securing of compensatory measures required due to offshore wind activities in the Scottish inshore region. This is a broad power which enables potentially significant changes to the 1994 Habitats Regulations for the purposes of offshore wind activities.

154. However, the power cannot be used to disapply or otherwise modify or make provision which could undermine or circumvent regulation 49 of the 1994 Habitats Regulations which contains the alternatives test and imperative reasons of overriding public interest (IROPI) test.<sup>41</sup>

155. Scottish Ministers therefore have a power to amend the 1994 Habitats Regulations, but only within the parameters set out in the Energy Act in respect to offshore wind activities. The power will not allow for any amendment to the 1994 Habitats Regulations related to any other marine activity, including other forms of marine renewable energy that are not offshore wind, as well as in relation to any activity done on land. The Energy Act contains no powers to amend the EIA regime.

### Levelling-Up and Regeneration Act 2023

156. There is a power in section 152 of the LURA for the Scottish Ministers to make Environmental Outcome Report (EOR) regulations. An EOR is a written report which assesses the likely impact of the proposed project/plan “*on the delivery of specified environmental outcomes*”, together with any proposals for mitigation and monitoring. It differs from an EIA Report by shifting the focus from likely significant effects on the environment, to reporting against pre-defined priority outcomes. Section 164 states that the EOR regulations “may make provision about, or in connection with, the interaction of [EOR regulations] with existing environmental assessment legislation or the Habitats Regulations”. When Scottish Ministers are acting alone, the relevant existing environmental assessment legislation that can be amended, repealed, or revoked in EOR regulations is listed in Part 2 of Schedule 14 and this includes all of the Scottish EIA legislation. Section 164(4) defines the Habitats Regulations, which includes the 1994 Habitats Regulations.

157. Scottish Ministers have the power in the LURA, therefore, to amend the 1994 Habitats Regulations Appraisal and the relevant/EIA legislation but only as part of making EOR regulations under section 164. Section 164 is limited to allowing ministers to make provision concerning the interaction of EOR regulations with existing legislation. It appears, therefore, that the power could not be used to make standalone amendments to the 1994 Habitats Regulations or the relevant EIA legislation, unrelated to their interaction with EOR regulations. It follows that using this power

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<sup>41</sup> Regulation 49 of the 1994 Habitats Regulations requires that in the event of a negative assessment on a protected site(s), the competent authority must be satisfied that there are no alternative solutions to the proposed plan or project, and that the plan or project must be carried out for ‘imperative reasons of overriding public interest’. Those reasons must relate to human health, public safety or beneficial consequences of primary importance to the environment, or any other imperative reasons of overriding public interest, providing that the competent authority has had regard to the opinion of the Scottish Ministers.

would require the adoption of an EOR regime to replace EIA, which is not the Scottish Government's current policy.

*The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021*

158. There are powers available to Scottish Ministers under section 1(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021<sup>42</sup> ("the Continuity Act") to amend domestic law to keep it aligned with developments in EU law. These could be used to amend the 1994 Habitats Regulations and the legislation forming the EIA regime, for the purposes of EU alignment. The section 1(1) power could also be used to amend this legislation without there being a change in the corresponding EU law, so long as the amendment was still aligned with EU law. For example, the Habitats Directive or the EIA Directive may give Member States discretion in how they implement relevant measures in domestic law. Due to a change in circumstance, or policy, ministers may want to exercise this discretion differently.

159. The power in section 1(1) will sunset on 29 March 2027. Scottish Ministers have the power to extend this period by regulations but not beyond 10 years from the date it came into force, which means the power will be lost on 29 March 2031 (although primary legislation could be used to extend this further).

*Retained EU Law (Revocation and Reform) Act 2023 ("REUL Act")*

160. Due to the 1994 Habitats Regulations and EIA legislation originating in EU law, much of the relevant EIA legislation has the status of assimilated law. (the new name for retained EU law) but none of its direct assimilated legislation (that is to say EU Regulations or Decisions forming part of Scots law) and so the powers cannot be used to modify or restate any direct assimilated legislation. Section 14 of the REUL Act contains powers for Scottish Ministers to revoke and replace secondary assimilated law. However, the Scottish Government opposes the REUL Act and there are various limitations on the use of the section 14 powers, which may mean they are of limited use in amending the 1994 Habitats Regulations and the EIA legislation. These limitations are:

- Most powers will sunset on 23 June 2026.
- The temporary powers can only be used to revoke or replace assimilated law one time. The powers, therefore, cannot be exercised a second time to amend or replace provisions made under the powers.
- The powers can only be used if the relevant national authority (which in context would be the Scottish Ministers) considers that the overall effect of the changes made in relation to that subject area does not increase the regulatory burden.

161. All things considered, the powers in the REUL Act do not provide a viable or long-term solution for amending the 1994 Habitats Regulations and the EIA regime in response to future policy change.

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<sup>42</sup> [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#)

162. Permanent provisions are therefore needed, given the number of policy areas affected and the wide range of potential uses of the powers in the short, medium and long term.

*The Conservation (Natural Habitats, &c.) (Scotland) Regulations 1994*

163. The 1994 Habitats Regulations themselves contain certain amending powers, which were added by the Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019<sup>43</sup>:

- section 113(1) allows Scottish Ministers to amend schedule 2 or 4 of the 1994 Habitats Regulations, for the purpose of adding any species listed in Annex IV(a) or (b) to the Habitats Directive, where they are satisfied that the natural range of that species includes any area in Scotland.
- section 113(2) allows Scottish Ministers to amend schedule 2 to 4 of the 1994 Habitats Regulations as they consider necessary for adapting them to technical and scientific progress.
- section 114 allows Scottish Ministers to amend Annexes I to IV of the Habitats Directive as they consider necessary for the purpose of adapting them to technical and scientific progress.

164. The existing amending powers in the 1994 Regulations themselves are extremely limited and essentially allow Scottish Ministers to amend the lists of protected species (schedule 2 and 4), the additional list of wild animals that cannot lawfully be taken or killed (schedule 3) and the prohibited methods of taking or killing animals (schedule 3A). Beyond that, they lack the flexibility required to ensure that the legislation can be adapted to meet future circumstances.

*Town and Country Planning (Scotland) Act 1997*

165. Powers are available to the Secretary of State to make regulations on the assessment of environmental effects before any grant of planning permission under section 40 of the Town and Country Planning (Scotland) Act 1997.

166. However, these powers do not extend to the assessment of environmental effects at the stage of granting subsequent approvals required by a condition imposed on the grant of planning permission.

***Inclusion of an environmental non-regression provision***

167. An environmental non-regression provision would in effect require that any regulations made using the power must maintain or improve overall levels of environmental protection. An environmental non-regression test would need to be met regardless of what other purpose(s) the power was being used for.

168. The inclusion of a non-regression provision was advocated by some Environment Non-Government Organisations (eNGOs) and public bodies that responded to the consultation. For example, an eNGO noted in their response that overall they do not support the rationale for the

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<sup>43</sup> [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019](#)

enabling power, but that if they are pursued, an environmental non-regression provision must be included. Conversely, some respondents did not think that limits on the enabling power were required.

169. Careful consideration was given to whether to include a non-regression provision for this power. However, this would significantly limit the flexibility of the power and therefore the Scottish Government's ability to adapt to changing circumstances. It will likely be very difficult to demonstrate a non-regression provision is met in some cases – for example if amendments were proposed for net zero purposes that required a change or reduction in certain aspects of current environmental protections, in order to meet the Scottish Government's overarching environmental goals, or if amendments were proposed that could be viewed subjectively as reducing environmental protections. This could lead to significant delays in making amendments or indeed Ministers could be entirely prevented from pursuing the amendments. A non-regression provision may also limit the ability to adapt the protected areas network to changing circumstances, including climate change adaptation, and would have implications for meeting biodiversity targets. Furthermore it may be seen to limit the ability to adapt the regimes to ensure developments which support offshore wind can go ahead, posing a risk to meeting net zero targets.

170. It was noted that Scottish Ministers would be able to make certain amendments to the 1994 Habitats Regulations to help deliver offshore wind using the Energy Act powers, but be prevented from making similar amendments in relation to, for example, ports/harbour development required to build those offshore wind projects. There is also a risk of different rules applying to offshore wind and wave/tidal projects, which are not covered by the Energy Act powers.

171. In addition, there is an existing statutory obligation under section 14 of the Continuity Act for Scottish Ministers to have due regard to the guiding environmental principles set out in that Act when making policy, which includes proposals for legislation. While this is not directly equivalent to a non-regression clause, it does ensure that there is a duty on ministers to have due regard to the range of environmental matters set out in the principles in section 13 of the Continuity Act whenever they use this power for example, in relation to environmental protection requirements. The guiding environmental principles are derived from the equivalent principles provided for in the Treaty on the Functioning of the European Union, and are set out as follows:

- the principle that protecting the environment should be integrated into the making of policies,
- the precautionary principle as it relates to the environment,
- the principle that preventative action should be taken to avert environmental damage,
- the principle that environmental damage should as a priority be rectified at source,
- the principle that the polluter should pay.

172. While Scottish Ministers have powers to amend the guiding principles through regulations, any amendments are subject to the affirmative procedure, and relevant consultation must be undertaken. This ensures that any amendments would be subject to a high level of scrutiny.

## **Consultation on the enabling powers for amendments to the 1994 Habitats Regulations and EIA Regulations (summary)**

173. The Scottish Government consultation ‘Enabling powers for Scotland's Environmental Impact Assessment Regimes & Habitats Regulations’ ran from 18 March 2024 to 13 May 2024 and received a total of 41 responses discounting duplicate and blank responses.<sup>44</sup>

174. In this consultation, the Scottish Government sought views on proposed enabling powers that would better allow for future amendments to Scotland’s EIA regime and Habitats Regulations. These are key legislative frameworks which underpin environmental protection and assessment processes. The proposed enabling powers would help fill a legislative gap in this area as a result of the UK’s exit from the EU and would help ensure the relevant legislation can remain fit for purpose in future in order to support delivery of the Scottish Government’s net zero and biodiversity goals.

175. Overall a majority of all respondents agreed with the Scottish Government’s rationale for seeking the enabling powers. Only 7% of all respondents did not agree with the rationale, however a significant number were either unsure, provided other views or did not answer the closed question. A common theme from the other views provided was that any new regulations made using the powers should be subject to consultation, and that appropriate checks and balances must be in place. Some respondents also highlighted the need to ensure consistency with UK-wide regimes.

176. Amongst the 30 organisational responses, a smaller majority of 53% agreed with the rationale and 10% did not. The remaining were either unsure, provided other views or chose not to answer the closed question. There were significantly more comments provided by organisational responses.

177. A majority of 56% of all respondents agreed that there should be limitations on how Scottish Ministers can use the enabling powers being sought to better allow amendments to the Environmental Impact Assessment (EIA) regimes. 17% disagreed that there should be limitations whilst, the remaining responses were unsure, provided other views or did not answer the closed question. Again, some of the other views provided highlighted the need for comprehensive impact assessment and consultation ahead of the powers being used, and also that existing environmental protections should not be diluted.

178. The overarching theme from respondents to the consultation was that any new regulations made using the power should be subject to consultation. Consequently, the requirement to consult with persons who have an interest in, or are affected by, the regulations, has been embedded in the legislation.

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<sup>44</sup> [Environmental Impact Assessment regime and Habitats Regulations - enabling powers: consultation - gov.scot](#). Responses analysed in - [Environmental impact assessment regimes and habitats regulations: consultation analysis - gov.scot](#)

179. The full consultation analysis has been published on the Scottish Government website.<sup>45</sup>

## **Modernising the aims and powers of National Parks**

### **Background**

180. The Scottish Government's 'A Fairer, Greener Scotland: Programme for Government (PfG) 2021-22' commits the Scottish Government to designating at least one new national park by the end of this parliamentary session, should legal conditions be met.<sup>46</sup> Scottish Ministers can only propose an area to be designated as a national park if the below conditions are met:

- That the area is of outstanding national importance because of its natural heritage or the combination of its natural and cultural heritage;
- That the area has a distinctive character and a coherent identity; and
- That designating the area as a National Park would meet the special needs of the area and would be the best means of ensuring that the National Park aims are collectively achieved in relation to the area in a coordinated way.

181. The aim of this commitment is to support progressive development, address the climate emergency and improve public and community wellbeing. A proposal to designate a new National Park in the south-west of Scotland is undergoing further investigation, including a 14 week public consultation between 7 November 2024 and 14 February 2025.<sup>47</sup> NatureScot – in its role as reporter – will provide advice to Scottish Ministers in Spring 2025, taking account of the findings of the public consultation.

182. As part of the process of considering the future of National Parks in Scotland, opportunities to amend the existing legislation governing national parks - the National Parks (Scotland) Act 2000 ("the 2000 Act") – have been identified, which would strengthen the leadership role of national parks in tackling the interlinked crises of climate and biodiversity whilst supporting visitor management, recreation, sustainable tourism, access to and within National Parks and the social, economic and cultural development of local communities. The Scottish Government's Programme for Government 2023-24 committed the Scottish Government to consulting on the modernisation of National Parks legislation and in September 2023 the Scottish Government launched a public consultation on Scotland's Strategic Framework for Biodiversity which included proposals to modernise National Parks legislation. The response to this consultation is set out further below.

183. The 2000 Act is the main piece of legislation governing national parks in Scotland. There are currently two national parks in Scotland - Loch Lomond and the Trossachs National Park (LL&TNP) and Cairngorms National Park (CNP).

184. Each park is governed by a park authority. The role of the authority is to agree long term objectives for the National Park and to govern the work of the park. Park authorities are made up

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<sup>45</sup> [Section A: Environmental Impact Assessments \(EIAs\) - Environmental impact assessment regimes and habitats regulations: consultation analysis - gov.scot](#)

<sup>46</sup> [A Fairer, Greener Scotland: Programme for Government 2021-22](#)

<sup>47</sup> [A Proposed New National Park in Scotland - Have Your Say | NatureScot](#)

of members that are appointed by Scottish Ministers, members that are elected locally and members that are nominated by the local authorities in the park area.

185. Park authorities are required to develop National Park Plans. These plans set out how the National Park will be managed and how all those with a responsibility in the Park area will co-ordinate their work with a view of accomplishing the National Park aims of conserving and enhancing the natural and cultural heritage of the area, promoting sustainable use of natural resources of the area, promoting public understanding and enjoyment (including recreation) of the special qualities of the area by the public and promoting sustainable economic and social development of the area's communities.

## **Concerns**

186. The Scottish Government believes that Scotland's National Parks are more important now than ever before. Scotland, in common with the rest of the UK, has experienced a continuing decline in biodiversity over the last 20 years and tackling the climate and nature crises is a national priority.

187. Working with public, private and third sector partners and their local communities, Scotland's National Parks can be exemplars in contributing towards Scotland's ambitious targets to halt biodiversity loss by 2030 and reverse declines by 2045, for example through their work to restore nature at a landscape scale. Examples of this include Cairngorms Connect<sup>48</sup>, the UK's largest nature restoration project in Cairngorms National Park and the Future Nature<sup>49</sup> project in Loch Lomond & the Trossachs National Park.

188. Equally, they have a vital role to play in the transition to a net zero economy. National Parks can help drive the adoption of nature-based solutions – such as restoring degraded peatland and expanding woodland – in order to reduce carbon emissions and adapt to the effects of climate change in a way that is fair and inclusive to those living and working in their areas.

189. National Parks can also encourage nature friendly farming, forestry and land-use. They can support sustainable tourism and visitor management. They can support their local communities, for example by creating new employment opportunities and supporting local projects that improve the health, wellbeing and prosperity of local people. And they can help to generate and channel inward investment into the precious natural resources in their areas.

190. In 2022 the Scottish Government<sup>50</sup> and NatureScot<sup>51</sup> consulted widely on the future of National Parks in Scotland. The analysis of these public consultations has indicated a broad range of support for new National Parks in Scotland and strong support for National Parks providing a greater leadership role in tackling the interlinked crises of climate change and biodiversity loss, whilst also welcoming visitors and supporting local communities and businesses. Recent public opinion surveys<sup>52</sup> indicate that 89% of people in Scotland support the creation of one or more new

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<sup>48</sup> [Cairngorms Connect | Home](#)

<sup>49</sup> [Future Nature - Here. Now. All of us. - Loch Lomond & The Trossachs National Park](#)

<sup>50</sup> [3. Analysis of Ideas and Comments - National parks - challenge exercise: summary analysis - gov.scot](#)

<sup>51</sup> [National Parks Advice to Ministers - February 2023 | NatureScot](#)

<sup>52</sup> [NatureScot Research Report 1335 - NatureScot Opinion Survey 2022 | NatureScot](#)

National Parks in Scotland and 82% agree that more National Parks and nature reserves should be established to protect and restore nature.<sup>53</sup>

191. In 2023 the Scottish Government undertook a public consultation on proposed changes to the 2000 Act. The analysis<sup>54</sup> of the consultation responses demonstrated general agreement with the need to review and modernise the legal framework for National Parks given their vital role in reducing carbon emissions, building climate resilience and halting biodiversity loss whilst continuing to support local communities and promote public access and enjoyment of these areas. A majority of respondents agreed with the proposals to modernise the aims and powers of National Parks, however, there were mixed responses relating to proposals to change the governance of National Park authorities.

192. The consultation analysis has directly informed the development of provisions in the Bill. In line with their duties to further the conservation of biodiversity under the Nature Conservation (Scotland) Act 2004 and duties in relation to climate change under the Climate Change (Scotland) Act 2009, the two National Parks and relevant public sector partners have already ensured that environmental and societal challenges - including tackling the biodiversity and climate crises – are at the heart of their National Park Plans. Given that it is over 20 years since the commencement of the 2000 Act, it is essential that the legal framework for National Parks is modernised in order to reflect these environmental and societal challenges and to ensure that the aims and powers of National Park authorities are fit for purpose.

## **Changes being made by the Bill**

### **Aims of national parks**

193. The current aims of a National Park authority are set out in section 1 of the 2000 Act. The table below shows the current aims, alongside the aims in the Bill.

<b>Existing National Park aims:</b>	<b>National Park aims in the Bill:</b>
1. To conserve and enhance the natural and cultural heritage of the area.	To conserve and enhance the area's natural and cultural heritage.
2. To promote the sustainable use of the natural resources of the area.	To promote sustainable management and use of the area's natural resources
3. To promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public.	To promote public understanding and enjoyment of the area's natural and cultural heritage.
4. To promote sustainable economic and social development of the area's communities.	To promote sustainable economic, social and cultural development of the area's communities.

<sup>53</sup> <https://www.nature.scot/doc/naturescot-research-report-1357-naturescot-opinion-survey-2023#General+attitudes-01>

<sup>54</sup> [Tackling the Nature Emergency: Consultation on Scotland's Strategic Framework for Biodiversity - Scottish Government consultations - Citizen Space](#)

Existing National Park aims:	National Park aims in the Bill:
	<p>Without limit to the generality of the above, these aims include:</p> <ul style="list-style-type: none"> <li>(a) restoring and regenerating biodiversity in the area,</li> <li>(b) mitigating and adapting to climate change,</li> <li>(c) supporting access to and within the area,</li> <li>(d) encouraging recreation in the area,</li> <li>(e) promoting sustainable tourism and visitor management, and</li> <li>(f) promoting sustainable development activity which improves the health, wellbeing and prosperity of individuals and communities within the area.</li> </ul>

194. Some of the changes to the four existing aims are mainly linguistic, such as adjusting the language of the first aim to ensure that it is consistent with the wording of the other aims. The effect of the amended wording remains the same as the original wording. The term ‘management’ has been added to the second aim to promote sustainable management as well as sustainable use of the area’s natural resources. The language in the third aim has been simplified and the reference to recreation has been moved to the additional section (see below), so that recreation is explicitly set out in the aims.

195. ‘Cultural’ has been added to the list of areas for development in the fourth aim. Adding cultural development means that the aim goes beyond the focus on cultural heritage captured by the first aim, by encouraging arts, literature and culture within their areas. For example, this could include supporting community projects and creative sector networks.

196. In addition, the new subsection elaborates on what is considered to be part of these aims, in particular the role of National Parks in restoring and regenerating biodiversity; mitigating and adapting to climate change; supporting access to and within their areas; encouraging recreation and promoting sustainable tourism and visitor management; and promoting development activity which improves the health, wellbeing and prosperity of individuals and communities.

197. The purpose of this new subsection is to ensure that the legislation accurately underpins the work being undertaken by the National Parks, in line with the priorities set out in their National Park Plans, and in accordance with the nature conservation and climate change duties that already apply to Park authorities. For example, adding “restoring and regenerating biodiversity in the area” to this new section elaborates on what is considered to be part of these aims and so ensures that the legislation underpinning National Parks reflects the current duties and work of national parks.

### **New duty to have regard to the national park aims**

198. National Park authorities work in partnership with a wide range of public bodies and other organisations operating within the area to achieve the National Park aims. The new duty requires Scottish Ministers, a National Park authority, a local authority and any other public body or office-holder to have regard to the aims of the National Park before carrying out any work within the Park area. However, this duty does not displace responsibilities that are the primary remit of a public body. The aims must be considered but it is recognised that they would need to be balanced against other duties and considerations. For example, local road authorities and Transport Scotland as the trunk road authority operating in an area of a National Park will need to balance other considerations (such as road safety, traffic flow, congestion and accessibility) against the National Park aims.

### **Duty to have regard to National Park Plans**

199. Scottish Ministers, National Park authorities, local authorities and any other public bodies or office-holders operating within a National Park area already have a duty to have regard to National Park plans when exercising their functions within a National Park. The changes to the duty would mean that public bodies are required to facilitate implementation of National Park Plans, whether by taking active steps or removing barriers to implementation. How each public body facilitates the implementation of the National Park Plan will be specific to the body and the circumstances. It may involve the way in which the public body uses its capacity, resources and strategic approach to help implement the National Park Plan.

200. An example of this is the action within the current Cairngorms National Park Plan<sup>55</sup> to restore 6500 hectares of peatland by 2027. A number of public bodies are involved in delivering this action including the National Park authority and NatureScot. Each public body will determine how best to organise their own resources and strategic approach to help execute this action.

### **National Park authorities as access authorities**

201. Under section 32 of the Land Reform (Scotland) Act 2003 (“the 2003 Act”), the existing National Park authorities in Loch Lomond & the Trossachs and Cairngorms are regarded as local authorities for the purposes of access rights within their national park area. Part 1 of the 2003 Act sets out the duties and powers which enable existing National Park authorities to uphold access rights and manage access in their areas. The 2003 Act does not, however, provide for any future National Park to become an access authority for its area. Given that the Scottish Government is proposing to establish a new National Park in Scotland (subject to legal conditions being met and taking into consideration the outcome of the reporter investigation and public consultation), the Bill amends the 2003 Act and the National Parks (Scotland) Act 2000 to enable any future National Park to become the access authority for its area, should it be considered appropriate.

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<sup>55</sup> [Cairngorms National Park Partnership Plan 2022-27](#)

**Fixed penalty notices (“FPNs”)**

202. Under the 2000 Act, National Park authorities have the power to create byelaws in order to protect the natural and cultural heritage of the national park, to prevent damage to the land and to ensure public safety and enjoyment in the National Park.

203. Examples of existing byelaws in Loch Lomond & the Trossachs National Park (LL&TNP) include measures to tackle anti-social behaviour within the Park and to improve public safety on Loch Lomond with respect to recreational uses and minimising irresponsible navigation. Byelaws are in place on Loch Lomond specifically, and not on other lochs within that National Park, because of the extent to which it is used by many different people for a variety of recreation activities and the need to manage the careful balance between these multiple uses.

204. In 2022 LL&TNP authority conducted a review<sup>56</sup> and 12-week public consultation on a set of recommended changes to byelaws<sup>57</sup> in the National Park which was approved by the Scottish Government and came into force on 1 November 2024.

205. Cairngorms National Park Authority does not yet have any byelaws in place within the National Park, however in November 2023 the park authority agreed to carry out a consultation<sup>58</sup> on whether to introduce a fire management byelaw on a Park-wide basis as a means of limiting or excluding barbecues and open fires in order to help tackle wildfire risk within the Park.

206. Based on the outcome of this public consultation, the Park authority agreed to the introduction of a seasonal fire management byelaw and a further consultation on the proposed wording of the fire management byelaw ran from 23 September 2024 to 16 December 2024<sup>59</sup>.

207. The Park authority will consider the outcome of this consultation before any final proposals are submitted to Scottish Ministers for consideration in Spring 2025.

208. With the exception of littering and fly-tipping offences in Loch Lomond & the Trossachs National Park (where authorised officers can issue FPNs through powers under the Environmental Protection Act 1990), the only way to enforce byelaws in National Parks presently is through the criminal justice system via reports to the Crown Office and Procurator Fiscal Service (COPFS).

209. Prosecutors in Scotland have a range of options for dealing with reported offending, including taking no action, warning letters, financial penalties, diversion from prosecution, as well as commencing court proceedings. The offence of byelaws in Loch Lomond & the Trossachs National Park can result in a fine not exceeding Level 2 (£500) on the standard scale.

210. The Scottish Government is of the opinion that an alternative, more proportionate and streamlined approach to byelaw enforcement in National Parks could be provided by empowering National Park authorities to be able to issue fixed penalty notices for byelaw breaches as one of

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<sup>56</sup> [Loch Lomond & The Trossachs National Park Authority - Loch Lomond Byelaws Review](#)

<sup>57</sup> [Loch Lomond Byelaws Review - Here. Now. All of us. - Loch Lomond & The Trossachs National Park](#)

<sup>58</sup> [Cairngorms National Park: Fire management consultation - February to April 2024](#)

<sup>59</sup> [Fire management consultation - Cairngorms National Park Authority](#)

the tools at their disposal to help deter and deal with offences (in addition to current tools including verbal warnings, warning letters and reports to COPFS).

211. FPN powers could help to ensure improved compliance and behaviour change while also providing a more proportionate means of enforcement, when appropriate, than reports to COPFS where the time and expense of taking individual court cases could be seen as disproportionate considering the maximum penalties available.

212. Staff in Loch Lomond & the Trossachs National Park already have the powers and several years of experience in issuing fixed penalty notices for littering and fly-tipping offences under the Environmental Protection Act 1990.

213. The Bill therefore introduces new powers for Scottish Ministers to be able to set out, in regulations, how fixed penalty notices may be used to enforce National Park byelaws.

214. Before making the regulations, Scottish Ministers would be obliged to consult parties they consider to be interested in or affected by the issuing of fixed penalty notices for national park byelaw offences. The enabling powers would allow Scottish Ministers to set out the detailed fixed penalty notice regime in regulations, including:

- the byelaws to which fixed penalty notices could be issued;
- the persons authorised to issue the fixed penalty notices;
- the amount of fixed penalty, the payment period and the method of payment;
- the effect of paying a fixed penalty and the consequences of not paying it within the payment period;
- details of any procedure for challenging or appealing the fixed penalty notice.

215. The amount of the fixed penalty would be set out in the regulations but the amount would not exceed level 2 (currently £500) on the standard scale. The option to refer a case to COPFS for consideration of prosecution instead of offering a fixed penalty would continue to be available for use as appropriate.

216. It is expected that providing park authorities with the power to issue fixed penalty notices would achieve the following key benefits:

- allow minor and technical offences to be dealt with quickly and effectively;
- reduce the likelihood of re-offending;
- improve standards and encourage compliance;
- deal with rule breaches more efficiently (persons issued with a fixed penalty notice need not attend court);
- reduce the number of cases being dealt with by the COPFS and the court system;
- give more flexibility to park authorities by providing them with an enforcement option as an alternative to seeking prosecution in the criminal courts.

## **Alternative approaches**

217. In the course of developing the provisions for the modernisation of national parks legislation the following alternative approaches were considered:

### **Amending the purpose of National Parks**

218. The current purpose of a National Park authority in Scotland, as set out in section 9(1) of the 2000 Act, is “to ensure that the National Park aims are collectively achieved in relation to the National Park in a co-ordinated way”.

219. One of the proposals included in the 2023 consultation was that, given the urgency of the biodiversity and climate crises and the leadership role that National Parks can play in response to these crises, the statutory purpose of National Park authorities should specifically refer to nature restoration and tackling climate change in addition to the collective achievement of the National Park aims.

220. The changes to the National Park aims within the Bill would mean that regenerating and restoring biodiversity and mitigating and adapting to climate change are specifically recognised as part of these statutory aims. Since the general purpose of National Park authorities is the collective achievement of the National Park aims, this purpose would include restoring and regenerating nature and tackling and adapting to climate change. Furthermore, the duties on public bodies within the Nature Conservation (Scotland) Act 2004 and the Climate Change (Scotland) Act 2009 apply to National Park authorities. Taking all of this into account, it is not considered necessary to change the statutory purpose of National Park authorities.

### **Fixed penalty notices**

221. Consideration has been given to whether fixed penalty notices or alternative schemes (such as other forms of civil penalties (e.g. fiscal fines) are the most appropriate option for byelaw enforcement.

222. Fiscal fines were not considered to be an appropriate alternative given that a major aim of this proposal is to streamline the current system and reduce the burden on the COPFS. Other civil penalties were not considered appropriate because in certain circumstances it may still be necessary for the offences to be dealt with through the criminal justice system. For example, where a person has committed numerous byelaw offences or their conduct which amounted to the offence has been serious.

### **Governance of National Parks**

223. The 2023 consultation proposed a number of changes to the governance of National Parks including a reduction in the number of board members, changes to the composition of boards and Ministers having a greater say over the appointment of the Convenor and Deputy Convenor. The rationale for these proposals was to ensure that National Park authority boards are large enough to ensure diversity, local representation and a broad range of relevant skills and expertise but not so large that decision making is difficult and costs to the taxpayer are disproportionate for the size of the public body. The response to these proposals was very mixed. A number of respondents agreed

with the proposal to reduce the overall size of Park authority boards. However, there was strong opposition from a number of stakeholder organisations and individuals to the proposed changes to board composition and the appointment process. A number of respondents raised concerns about the proposal for approximately half the board's membership to be directly appointed by Ministers and nearly a quarter of responses disagreed with the proposed approach to the appointment of the Convenor and Deputy Convenor.

224. The Scottish Government has given careful consideration to the consultation responses. Given (i) the continued importance of local representation on Park authority boards (which is provided for through both directly elected board members and Local Authority nominated board members) and (ii) the fact that the size of Park authority boards can be reduced through changes to the Designation Orders for each park, as long as each board's composition remains in line with the provisions of the 2000 Act, the Scottish Government has decided not to make changes to the governance of National Park authorities in the Bill.

### **Non-legislative options**

225. Given that the aims and powers of National Parks are set out in primary legislation, (as well as the purpose, functions and governance of National Parks that were consulted on), and that changes to these elements would generally require primary legislation, non-legislative options were not considered.

### **Consultation on modernising the aims and powers of National Parks (summary)**

226. The consultation on Scotland's strategic Framework for Biodiversity asked for views on a draft version of the first Delivery Plan that accompanies the Scottish Biodiversity Strategy; on the policy frameworks for Nature Networks and 30 by 30; and on elements that may be included in a proposed Natural Environment Bill – namely statutory nature restoration targets, and proposals to modernise National Parks legislation.<sup>60</sup>

227. There were over 600 responses from 474 individuals and 180 organisations. Overall, there was general agreement with the need to review the legal framework for National Parks. Whilst the majority of respondents agreed with the proposed amendments to the purpose, aims and principles of National Parks, there were several organisational respondents who had specific points of disagreement.

228. There was a positive sentiment regarding the suggested changes to the role of public bodies operating within National Parks. Clarity was sought as to how these duties would be enforced in practice. As set out above, how each public body facilitates the implementation of a National Park Plan will be specific to the body and the circumstances. It may involve the way in which the public body uses its capacity, resources and strategic approach to help execute relevant aspects of the Park Plan. National Park authorities remain accountable to the Scottish Ministers and to the Scottish Parliament and they will continue to report annually on overall progress against the actions within their Park Plan and any barriers to implementation.

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<sup>60</sup> [Tackling the Nature Emergency - strategic framework for biodiversity: consultation - gov.scot](https://www.gov.scot/publications/consultations/biodiversity/consultation/2025-02-19/tackling-the-nature-emergency-strategic-framework-for-biodiversity-consultation-2025-02-19/)

229. Respondents broadly agreed with the suggested changes to the general powers of National Park authorities, with challenges noted with regard to implementation (with some respondents expressing concern that these enforcement powers may require additional resources for Park authorities) and consistency in enforcement (with certain respondents noting that not all rangers are employed and trained by National Park authorities). As set out in the Financial Memorandum, the administrative costs to National Park authorities associated with the future creation of a Fixed Penalty Notice (FPN) regime applicable for national park byelaws are anticipated to be cost neutral, as even though FPNs may be appropriate to issue in some instances, all cases will still require the same preparation and administration regardless of the route of disposal. The enabling powers in the Bill would allow the Scottish Ministers to establish a regime for fixed penalty notices in regulations, including the persons authorised to issue the fixed penalty notices. There were mixed responses relating to the governance of National Parks. There was some agreement with the streamlining of processes and the strengthening of biodiversity expertise on boards, as well as some strong opposition amongst some organisational respondents to proposals on board size, composition, and the appointment process.

230. Full analysis of the consultation is available on the Scottish Government website.<sup>61</sup>

## **Reform of deer management legislation**

### **Background**

231. The effective management of wild deer has been seen as a vital component of land management in Scotland for more than 80 years. More recently, it has also been recognised that achieving sustainable deer populations is fundamental to Scotland's ability to meet its climate and biodiversity goals.

### **What is deer management**

232. There are four species of deer in Scotland; red, roe, fallow and sika deer. While red and roe deer are native to the UK, fallow were introduced in the 11th century, and sika introduced around 150 years ago.

233. A further two species of non-native deer; muntjac and Chinese water deer are present in England but are not established in Scotland. The combined deer population across all 4 species in Scotland is estimated to be between 750,000 and 1 million animals<sup>62</sup>.

234. Deer management has long been recognised as a vital contributor to land management. Adult deer have no natural predators in Scotland, and their numbers need to be controlled to safeguard the welfare of wild deer populations and to limit the physical damage that wild deer can cause to public and private interests.

235. The vast majority, around 80%, of deer management in Scotland is carried out by the private sector. Deer are also managed on public land by public bodies and agencies. Forestry and Land

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<sup>61</sup> [Section Two: Scottish Biodiversity Delivery Plan - Biodiversity - strategic framework: consultation analysis - gov.scot](#)

<sup>62</sup> [The Management of Wild Deer in Scotland - Report of the Deer Working Group](#)

Scotland manage deer on the national forest estate, while local authorities manage some land within their council areas. Crown Estate Scotland, Scottish Water and NatureScot also all have an interest in deer management on land that they are responsible for. How deer are managed can also vary geographically, for example deer management groups (“DMGs”) operate across upland red deer range, and provide a collaborative forum for deer managers to come together, consider and agree deer management across different landholdings to achieve the same deer management goal.

236. However, these voluntary DMGs can vary in effectiveness. In other parts of Scotland, including much of the central belt and south of Scotland where roe deer are more predominant, this framework has been tried, but land ownership is quite different to the highlands and involves a much higher number of smaller landholdings, which has made collaborative deer management more challenging.

237. Historically deer management has been carried out for a range of interests including: protecting agriculture or forestry; environmental protection; recreational stalking; stalking lets and tourism. The level of that deer management has varied greatly across the country and different time periods. However, the twin biodiversity and climate crises mean that actions to mitigate and prevent damage by deer to Scotland’s environment are now more important than ever. Deer have an impact on our natural environment through trampling young habitats, overgrazing and preventing new trees from growing but it is important to understand that the impact is not simply through new damage to habitats, but that decades of herbivore impact is preventing nature recovery across some of the most nature depleted areas of Scotland.

238. It is vital that the environment is protected from further damage, and space is provided for nature restoration, regeneration and enhancement if Scotland is to meet its climate change and biodiversity commitments and protect the environment.

239. The twin climate and biodiversity crises require a much greater urgency to the efforts to ensure sustainable deer management. The Scottish Government recognises that more can and must be done to better realise the Scottish Government’s ambitious targets on vital issues such as forestry regeneration, woodland creation, peatland restoration and habitat improvement and reducing deer numbers to a sustainable level is a key component to delivering these ambitions. While deer need to be managed it is also an important aspect of the Scottish Government’s policies to ensure that effective deer management maintains and improves standards of welfare for wild deer.

240. The scale of the task in delivering the reduction in the deer population is significant and will require utilising all the levers and drivers of change to their full extent. In addition to utilising primary legislation there are several significant opportunities presented through future rural support and the emerging drivers of land management change around green finance opportunities. Blending the tools and approaches to enable and support effective deer management will be key.

### **Need for legislative reform**

241. Legislation is central to the context in which deer management operates. The Deer (Scotland) Act 1996 (“the 1996 Act”) sets out the framework for deer management. Through that Act land managers are made responsible for deer on the land they manage, and NatureScot are

able to agree deer management plans and control agreements and can monitor and enforce these through escalation to a control scheme if the required deer management is not undertaken. Going forward, the policy intention is that the legislative framework should be amended to remove unnecessary barriers to effective control and put in place measures to ensure that public interests are protected, particularly in relation to the natural heritage and the environment, as well as deer welfare and public safety.

242. The application of existing regulatory provisions (for example, in the 1996 Act, the Forestry and Land Management (Scotland) Act 2018, and compliance with deer management requirements placed upon land managers through incentive schemes, such as the Forestry Grant Scheme or Nature Restoration Fund) is an important means of demonstrating the intent to deliver the changes required. Work in applying these tools to best effect and consistently including consideration of other herbivores impacts from sheep, cattle and wild goats is ongoing. (i.e. to monitor and manage total herbivore grazing, selective browsing and trampling pressures).

243. Strengthening the regulatory framework to allow for a broader and more efficient use of intervention powers in the public interest is critical.

## **Concerns**

244. Over the last eighty years, the implementation of effective deer management to improve Scotland's natural environment has proven to be a considerable challenge.

### **The Deer Working Group**

245. The Deer Working Group ("DWG") was established by the Scottish Government in 2017, following reports by NatureScot in 2016<sup>63</sup> and the Scottish Parliament's Environment, Climate Change and Land Reform (ECCLR) Committee in 2017<sup>64</sup>. The 2017 report by the ECCLR Committee considered the 2016 report by NatureScot which concluded that there had "been substantial progress shown by DMGs over the last two years in improving their overall performance and commitment to the planning process" but it also found that "50 per cent of deer management groups have failed to identify actions in deer management plans to deal with deer impacts in designated sites".

246. The ECCLR report went on to say that "Habitats take a long time to recover and the Committee considers we do not have time to wait in delivering the Scottish Biodiversity Strategy. The scale of action needed to address deer impacts on the natural environment across Scotland is a significant factor" and "The Committee is not convinced the currently available suite of powers are adequate. Section 7 agreements are not fulfilling their purpose and the failure to use Section 8 powers is seen by many as being due to them possibly being open to challenge." This formed the basis for the ECCLR Committee's recommendation that an independent short-term working group be established to consider deer management in Scotland.

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<sup>63</sup> [Deer Management in Scotland: Report to the Scottish Government from Scottish Natural Heritage 2016](#)

<sup>64</sup> [Report on Deer Management in Scotland: Report to the Scottish Government from Scottish Natural Heritage 2016 | Scottish Parliament](#)

247. The DWG updated its report with information from NatureScot’s 2019 deer report for Scottish Government ‘Assessing Progress in Deer Management’<sup>65</sup> and from two NatureScot commissioned research reports on deer, Report No 1149<sup>66</sup> 2019 and Report No 1158 2019<sup>67</sup>, where appropriate.

248. The DWG was appointed as an independent working group to review the existing statutory and non-statutory arrangements for the management of wild deer in Scotland, taking account of the position with each of the four species of wild deer and the varying circumstances across Scotland.

249. The DWG’s remit was to “make recommendations for changes to ensure effective deer management that safeguards public interests and promotes the sustainable management of wild deer.”

250. The Terms of Reference reinforced that the DWG should “consider the position with all species of wild deer in Scotland and the varying circumstances across Scotland in both the uplands and lowlands.”

251. The Government’s Operating Framework for the DWG clarified that the group had “been established as a working group so that it can focus at a detailed level on the current statutory and non-statutory arrangement for deer management in Scotland, to make recommendations to fulfil the Group’s remit.”

252. Following publication of the DWG report, the Scottish Government asked the Scottish Animal Welfare Commission (SAWC) to consider and provide advice on any welfare impacts of the DWG’s recommendations. The SAWC report was published in February 2021<sup>68</sup>.

253. The Scottish Government published its response to the DWG’s report in March 2021, accepting (in whole or in part) many of the recommendations. A commitment to implement these was included in the Programme for Government 2021–22. Detail on recommendations that were not accepted are set out in this report.<sup>69</sup> Further detail on recommendations that were accepted but are now being taken forward by alternative means, are set out below.

254. Following the introduction of the Deer (Scotland) Act 1959 (“the 1959 Act”), between 1959 and 1990 estimates show that red deer numbers doubled to 300,000. Since 1990 estimates show that red deer numbers have likely doubled again. In 2013 NatureScot (Scottish Natural Heritage) suggested that there were between 593,000 and 783,000 wild deer in Scotland. Eight years on, and the DWG found that figure could be well on its way towards 1 million wild deer. Deer management is the single largest terrestrial wildlife management operation carried out in the UK.

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<sup>65</sup> [Assessing Progress in Deer Management - NatureScot report to Scottish Government 2019 | NatureScot](#)

<sup>66</sup> [NatureScot Research Report 1149 - Updating the estimates of national trends and regional differences in red deer densities on open-hill ground in Scotland | NatureScot](#)

<sup>67</sup> [NatureScot Research Report 1158 - Deer-Vehicle Collision \(DVC\) data collection and analysis 2016 - 2018 | NatureScot](#)

<sup>68</sup> [Scottish Animal Welfare Commission: response to deer working group report - gov.scot](#)

<sup>69</sup> [Deer Working Group recommendations: Scottish Government response - gov.scot](#)

255. Although a large proportion of red deer have adapted to life on the open hill, the majority of Scotland's deer live in and around woodlands.<sup>70</sup> Their populations can range in densities to very high levels of >40 deer per square km. Deer can influence carbon sequestration in woodlands through their consumption of vegetation. In their 2020 paper on Deer in a changing climate, ClimateXChange found that in order to mitigate these effects, deer need to be reduced to levels where natural regeneration can occur. "This is typically around <5 deer/km<sup>2</sup> but can depend on the current state of a woodland, or the deer species present. For Scotland's natural landscape and woodlands to recover, deer densities need to be reduced and maintained around this <5 deer/km<sup>2</sup> threshold."<sup>71</sup> The DWG highlighted in figures from 2015/16 that over half of the national deer cull (58%) took place within woodlands.

256. Deer can also have a significant impact on water courses through wallowing and churning soil which can impact water quality. In many places, too high deer populations have had an effect on natural flood defences by damaging riparian woodlands (woodland adjacent to rivers and streams) and preventing their regeneration. Through the trampling and compacting of soil, deer can expose the soil which can result in increases in soil temperature, salinity, water, and oxygen content – this can then affect carbon cycling.

257. The delivery of Scottish Biodiversity Strategy<sup>72</sup> (SBS) and Net Zero outcomes will require a significant reduction in deer populations through increasing annual culls. NatureScot estimates that a reduction in population will require a minimum increase of 25-30% (50,000 deer) on current cull levels to over 200,000 deer culled per annum, sustained over 5-10 years.<sup>73</sup>

258. Referencing the Scottish Government's response to the report by the Deer Working Group in 2020, Roseanna Cunningham, the then Cabinet Secretary for Environment, Climate Change and Land Reform noted that "as the scale of the climate change and biodiversity crises, and the measures needed to tackle them, have come clearly into focus, it has also become apparent that a significant stepping-up of deer management efforts are required"<sup>74</sup>.

259. In developing its proposals for implementation, the Scottish Government also considered whether there was a need for additional powers for NatureScot (above and beyond those recommended by the DWG) to address issues of biodiversity and habitat loss caused by wild deer. Further detail is provided below on the amendments made to the Deer (Scotland) Act 1996 which go beyond the recommendations made by the DWG. These additional powers are also relevant in the context of the Scottish Government's climate change plan which has prioritised, among other things, targets for tree planting and peatland restoration.

260. On 5 January 2024, the Scottish Government published "Managing deer for climate and nature: consultation"<sup>75</sup> which closed on 29 March 2024. The consultation generated around 1600

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<sup>70</sup> <https://www.climateexchange.org.uk/wp-content/uploads/2023/09/cxc-wild-deer-and-climate-change-in-scottish-woodlands-final-march-2021.pdf>

<sup>71</sup> [Deer in a changing climate – how do wild deer affect carbon sequestration in Scottish woodlands?](#) Page 13

<sup>72</sup> [Biodiversity strategy to 2045: tackling the nature emergency - draft - gov.scot](#)

<sup>73</sup> For example, [Deer cull incentive schemes launch to help tackle nature and climate crises | NatureScot](#)

<sup>74</sup> [Written question and answer: S5W-36014 | Scottish Parliament Website](#)

<sup>75</sup> [Managing deer for climate and nature: consultation - gov.scot](#)

responses and the full analysis<sup>76</sup> was published on 9 September 2024. A summary of the consultation responses is set out further below.

261. A key issue that has been raised by eNGOs as well as both NatureScot and Forestry and Land Scotland, in response to the recommendations made by the DWG, is the limited consideration of the role of deer management in meeting the Scottish Government’s climate and biodiversity aims. Alongside this, NatureScot has encountered some barriers in their ability to use their existing regulation and intervention powers as these are at present limited and relate to damage intervention. While this was appropriate when the 1996 Act was introduced, the context of the biodiversity and climate crises means that regulatory intervention may also be required to restore and enhance the natural environment to achieve a more biodiverse and climate resilient state.

## **Changes being made by the Bill**

### **Recommendations made by the Deer Working Group**

262. The Bill takes forward a number of recommendations made by the DWG. The table below provides a summary of the recommendations which are being implemented by provisions in the Bill or where an alternative approach to a recommendation has been taken through provisions in the Bill, with more detail provided in the discussion below. Not all of the recommendations made by the DWG require primary legislation to implement, and therefore not all recommendations are covered in this section.

263. DWG recommendations relating to provisions in the Bill:

<b>DWG Recommendation Number</b>	<b>DWG Recommendation<sup>77</sup></b>	<b>Relevant section of the Bill (as published)</b>
	All section references below are to the Deer (Scotland) Act 1996 or other legislation mentioned in the table	
3	Section 1 of the Deer (Scotland) Act 1996 should be amended to make explicit that Scottish Natural Heritage (now known as NatureScot) ‘has distinct functions under the Act, to modernise the stated purpose of the Act to reflect contemporary public policy objectives, and to convert the list of interests to be taken into account into an inclusive rather than exclusive list	Section 10 (aims and purposes of deer management)

<sup>76</sup> [Managing deer for climate and nature: consultation analysis - gov.scot](#)

<sup>77</sup> [The management of wild deer in Scotland: Deer Working Group report - gov.scot](#)

5	The use of a shotgun to kill wild deer should be made subject to authorisation by Scottish Natural Heritage through a new provision in the Deer (Scotland) Act 1996, that the owner or occupier of any land should be able to apply for such authorisation	Section 27 (offence of shooting deer with a shotgun)
9	Section 5(6) [ <i>relating to the situations in which authorisations can be given for deer to be shot during the close season</i> ] of the Deer (Scotland) Act 1996 should be amended to apply to any land and to cover public interests of a social, economic and environmental nature; and, secondly, that section 5(8) should be repealed	Section 24 (authorisation for taking or killing deer during close seasons)
10	Section 18(2) [ <i>relating to authorisations for shooting deer at night</i> ] of the Deer (Scotland) Act 1996 should be amended to refer to both owners and occupiers, to be applicable to any land and to cover public interests of a social, economic and environmental nature	Section 25 (authorisation for taking or killing deer at night)
13	Section 37(1A) should be repealed so that all out of season shooting authorised by Scottish Natural Heritage requires to be carried out by a person judged fit and competent for that purpose by Scottish Natural Heritage, and secondly, that section 10(4) should be amended so that an authorised person requires to be judged both fit and competent	Section 30 (requirement to be fit and competent for certain authorisations) and section 19 (measures to prevent damage by deer)
15	Section 17A of the Deer (Scotland) Act 1996 should be amended at an early stage as set out in this Report, to enable appropriate secondary legislation to bring the recommended register into effect.	Section 28 (register of authorised persons)
16	A provision in the Deer (Scotland) Act 1996 which provides exemptions to protect human safety where a deer poses an immediate threat, with those exemptions being similar to the exemptions in section 25 of the Act to end the suffering of a deer	Section 20 (action to prevent or stop harm to persons)
21	The Scottish Government should review sections 33-36 of the Deer (Scotland) Act 1996 that cover the licensing of dealing in venison, with a view to making changes in addition to the related recommendations in this Report, so that the arrangements are fit for purpose in contemporary circumstances	Section 33 (removal of requirements related to licensing to deal in venison)

25	The Animals (Scotland) Act 1987 should be amended to establish clearly that an owner or occupier of land can shoot a stray farmed deer on that land to prevent damage by the deer, where that is the only reasonable practical means in the circumstances to detain the stray deer under the Act	Section 32 (liability for taking or killing stray farmed deer)
61	The Deer (Scotland) Act 1996 should be amended to remove the reference to the Code of Practice on Deer Management in section 6A(1) of the Act	Section 14 (deer management plans)
62	Section 6A(5) of the Deer (Scotland) Act 1996 should be amended to change the period within which a Deer Management Plan is to be submitted to Scottish Natural Heritage, so that the period is not less than three months and not more than 12 months as Scottish Natural Heritage may determine, according to circumstances	Section 14 (deer management plans)
64	The period of notice required to enter land under section 15(2) of the Deer (Scotland) Act 1996, should be reviewed with the intention of making the period of notice shorter	Section 21 (power to enter on land)
65	Section 15(3) of the Deer (Scotland) Act 1996 should be amended to include as a purpose for entering on land, carrying out an assessment of the impacts of deer in any area in pursuance of Scottish Natural Heritage's functions under section 1(1) of the Act	Section 21 (power to enter on land)
66	Section 10(1) of the Deer (Scotland) Act 1996 Act should be amended to include damage, directly or indirectly, to the natural heritage and that section 11 of the Act should be repealed	Section 19 (measures to prevent damage by deer)
67	Section 10(1)(b) of the Deer (Scotland) Act 1996 should be repealed	Section 19 (measures to prevent damage by deer)
68	The Scottish Government should amend Section 10 of the Deer (Scotland) Act 1996, so that the owners of land where Scottish Natural Heritage implements measures under section 10(4) have a liability for any net cost involved in carrying out the measures, subject to scope for Scottish Natural Heritage to waive any net cost in appropriate circumstances	Section 17 (recovery of costs and expenses)

69	The title of section 10 of the Deer (Scotland) Act 1996 should be replaced with ‘Control Actions’ or a title similar to that and that the section should be amended to cover public interests of a social, economic or environmental nature	Section 19 (measures to prevent damage by deer)
70	The Deer (Scotland) Act 1996 should be amended to remove references to the Code of Practice on deer management from section 7(1) and (3) and from section 8(1)	Section 15 (control agreements)
71	The Deer (Scotland) Act 1996 should be amended to repeal section 8(2) and that, as a consequence, s.7(2) should also be repealed	Sections 15 (control agreements) and 16 (control schemes)
78	Section 5B of the Deer (Scotland) Act 1996 should be amended to remove the requirement for compliance with the Code of Practice on Deer Management to be reviewed every three years	Section 12 (code of practice on deer management)
95	Section 4 of the Deer (Scotland) Act 1996 should be amended to allow a member of Scottish Natural Heritage staff to be a member of a Panel established under section 4, in order to represent Scottish Natural Heritage’s natural heritage functions under the Natural Heritage (Scotland) Act 1991	Section 11 (Scottish Natural Heritage representation on advisory panels)

264. By taking forward the recommendations of the DWG changes to the Deer (Scotland) Act 1996 are intended to improve the systems of deer management in Scotland. The following changes are intended to improve deer welfare while making it easier to carry out deer management actions and provide more detail on the changes relating to the recommendations in the table above.

*Fit and competent register (recommendations 13 & 15), specified activities (recommendations 5, 9 & 10) and changes to when, why and where these activities can take place (recommendations 69)*

265. The Bill will amend the existing delegated power in section 17A of the Deer (Scotland) Act 1996 (“the 1996 Act”) which currently allows the creation of a register of persons fit and competent to shoot deer in Scotland. Through this register, baseline competence for everyone shooting deer in Scotland will be required. The amendments made by the Bill will also enable individuals to apply to be registered as authorised to undertake specified activities for which they would currently need a general or specific authorisation. These activities include night shooting, where individuals will be required to display a higher level of competence than the baseline, evidenced via a certificate or qualification relevant to shooting deer at night, in order to be considered fit and competent.

266. Once registered as fit and competent and authorised to shoot deer at night an individual will be able to do so anywhere they have the right to shoot deer so long as they are satisfied that a ground, as set out in the legislation at section 6ZA and 6ZB, is met and they comply with the Code of Practice on deer management. The purpose of this change is to provide more land managers with another tool for deer management for those who need or want it, the additional competence requirements that will be required for registration recognise the additional skill that this activity requires.

267. Anyone wishing to undertake another specified activity (shooting female deer during the close season, using a vehicle to drive deer or use of a shotgun to shoot deer) will also need to apply to NatureScot to be registered as authorised to do so, however, these activities will require NatureScot to consider if the activity should be authorised. NatureScot will need to be satisfied that the relevant grounds, which are set out in the legislation, are met for each respective activity. In addition, for an authorisation for shooting during the close season and for the use of a shotgun to shoot deer NatureScot must be satisfied that there are no other adequate means of control which might reasonably be adopted in the circumstances.

268. The Bill will restrict the use of shotguns by creating a new offence of shooting a deer with a shotgun, along with a corresponding ability for NatureScot to authorise the activity in appropriate circumstances. There are significant welfare concerns about the use of shotguns to shoot deer, as outlined by the DWG, and the Bill aims to limit circumstances in which shotguns can be used. At the same time, the Bill also makes amendments to section 18 (taking or killing at night) of the 1996 Act, reducing the regulation around taking or killing deer at night, thereby making this activity more widely available.

#### Farmed deer (recommendation 25)

269. Furthermore, the Bill makes it an offence for a person to fail to report the taking or killing of a stray farmed deer to Police Scotland where the person has taken or wilfully killed a deer, the deer is a stray farmed deer and section 25A of the 1996 Act does not apply. The report must be made to Police Scotland within five working days beginning with the day on which the deer was taken or killed. It is a defence for the person to show that the person did not know, and could not reasonably have known, that the deer was a stray farmed deer. In any civil proceedings against a person for killing or causing injury to a stray farmed deer, it is a defence for the person to prove that the person was exercising a legal right to take or kill deer, and the person complied with the duty to report the taking or killing of the deer.

#### Venison (recommendation 21)

270. The Bill also contains provisions to remove the need for Venison Dealers Licences which will support venison entering the food chain. Venison is governed by the same food standards legislation as other meat and wild game, and the Scottish Government sees no reason why there should be an additional monitoring scheme for venison which is acting as an unnecessary barrier in some places. As the role of deer management is recognised in supporting climate and nature aims so too does the Scottish Government want to empower local communities and maximise the benefits that can come from deer management. Venison is a healthy, local food source and the Scottish Government wants to increase its availability while maintaining those high food standards.

**Amendments beyond the recommendations made by the DWG**

**New ground of intervention**

271. The Bill introduces a new ground of intervention for the purpose of nature restoration which aims to ensure that where deer are preventing or reducing, or are likely to prevent or reduce, the effectiveness of work, a project or natural process that preserves, protects, restores, enhances or otherwise improves the natural heritage or environment, and is for, or contributes to, a relevant target, strategy or plan relating to the environment, climate change or biodiversity that applies in Scotland, NatureScot is able to take action in relation to those deer. For the purpose of this ground of intervention a target is relevant if it is set by, under, or in pursuance of an enactment. A strategy or plan is relevant if it is required by an enactment, or it is published by the Scottish Ministers or a public body with functions relating to natural heritage or the environment.

272. The type of action that NatureScot can take under this ground of intervention is similar to the action that they can take, and will continue to be able take, via the ground for intervention for the purpose of damage prevention (i.e. via deer management plans, control agreements and control schemes). This new ground for intervention will be used in the same way as the current process which begins with a voluntary deer management plan or control agreement and can escalate to a compulsory deer management control scheme. At present, voluntary deer management plans or control agreements are agreed with NatureScot. In some circumstances, NatureScot may find that progress against those plans or agreements is not satisfactory, or it might not be possible for NatureScot to reach an appropriate deer management plan or control agreement. If that is the case, control schemes enable NatureScot to compel land owners or occupiers to carry out deer management actions.

273. The Bill also makes amendments so that these same grounds will not only be the trigger for which a deer management plan (under section 6A of the 1996 Act), control agreement (voluntary deer management agreement under section 7 of the 1996 Act) or control scheme (compulsory deer management under section 8 of the 1996 Act) can be entered into, but also the grounds for which specific activities (including shooting deer at night, shooting deer during the close season and shooting deer with a shotgun) can be authorised and undertaken. The intention is to create a consistent approach across the 1996 Act which supports the management of deer in a range of circumstances, and allows NatureScot and land managers to determine how deer are best managed in local circumstances.

**Control schemes**

274. NatureScot can make a control scheme, which sets out the compulsory deer management actions a land owner or occupier must take, if it is content that it has not been possible to secure a voluntary control agreement or that an agreed voluntary control agreement is not being carried out, or six months have elapsed since NatureScot gave notice of a voluntary control agreement without agreement being reached; and NatureScot continues to have the view that required it to enter into consultation on the control agreement.

275. Alongside this new ground of intervention for nature restoration, the Bill makes changes to the procedure for making, varying and revoking control schemes made under section 8. The Bill

enables Scottish Ministers to seek advice on any substantive objection made in relation to a proposed control scheme, and they may seek advice from a person or persons that they consider to have relevant expertise. This recognises that objections to control schemes may be made on substantive grounds, and may relate to the scientific or evidential basis of that control scheme. Alongside this, however, the Bill also limits who can make an objection to a control scheme to a “relevant person” which means an owner or occupier for the time being of land upon whom a control scheme proposes to impose a requirement.

276. The Bill also clarifies that control schemes under section 8 of the 1996 Act will be tied to the land for the duration of the scheme. This means that any conditions set out in a control scheme will apply to the land regardless of land owner or occupier, and will continue to apply if the management of that land changes hands. This is in recognition of the seriousness of the issues that result in a control scheme being entered into and the need to ensure the required deer management action is carried out. As soon as practicable after the control scheme has been confirmed by Scottish Ministers, NatureScot has to give notice to all relevant persons that the proposal has been confirmed and indicating the date by which a relevant person must appeal. NatureScot must also publish the control scheme, the scheme as varied or a notice that the scheme has been revoked. They must also register the control scheme (or variation of the control scheme, or as the case may be the revocation of the control scheme) in the Land Register or, as the case may be, record it in the General Register of Sasines.

#### Power of entry and to require information

277. Alongside these changes in relation to grounds for intervention, the Bill also provides a new power to require information or documents in relation to NatureScot’s functions under section 7 and section 8 of the 1996 Act and a new power of entry to support this power. The effect of these new powers is that NatureScot may request information or documentation from a person who is, or whom NatureScot reasonably believes to be, an owner or an occupier of land within an area that is, or may become, a control area and if that information or documentation is not received within the agreed timescales, then NatureScot may enter onto the land, after giving the required notice, for the purpose of the exercise of their functions under sections 7 and 8 of the 1996 Act (including being satisfied as to the grounds for intervention). The minimum period of notice that is required prior to NatureScot entering onto land is also shortened from 14 days to 5 working days. This is to recognise that NatureScot will have already attempted to get the information from the owner or occupier and that, having not received a response, it is appropriate for them to be able to act in a timely manner should they consider this appropriate.

278. The Bill also creates an offence in connection with the new power to request information or documentation. An offence will be committed if the person to whom such a request for information is made knowingly or recklessly provides information or produces a document which is false. The Bill also makes amendments to:

- the process for deer management plans whereby NatureScot must set out why a deer management plan is required and any aim or outcome a deer management plan is intended to achieve from the outset
- the process for section 7 control agreements to simplify how NatureScot prepare a draft control agreement, notify the owners and occupiers and consult with them to reach agreement.

### Cost recovery power

279. The Bill introduces new cost recovery powers for NatureScot where they are required to undertake short-term deer management under section 10(4) of the 1996 Act in situations where a landowner is unable or unwilling to undertake deer management. The powers to intervene in this way already exist, and are used with some regularity by NatureScot, but the cost of doing so has been borne by the public purse. In addition, the Bill introduces new cost recovery powers for NatureScot in relation to any expenses incurred by it in connection with the registration of a control scheme, the registration of a variation of a control scheme, or a registration of a revocation of a scheme.

### **Alternative approaches**

#### NatureScot intervention powers

280. At present, NatureScot are able to take action to require deer management in some circumstances. Through the 1996 Act, NatureScot can intervene through a series of powers which begin with voluntary deer management. Under current legislation NatureScot can, if they are satisfied that certain conditions are met, give notice to relevant owners and occupiers of land requiring them to prepare a deer management plan (section 6A). Under section 7, NatureScot can enter into control agreements with relevant owners and occupiers of land. If a landowner is unwilling to agree a control agreement, or fails to deliver the terms of an agreement, NatureScot has the power to make those deer management measures compulsory through a control scheme (section 8). Until 2024, the power to compel a land manager to manage deer via a control scheme had never been used.

281. One alternative option considered was to focus solely on the implementation of the DWG recommendations and not go any further with regard to intervention powers. Many of the legislative recommendations made by the DWG are minor technical amendments, and given the context and timing of the report, the DWG were not directed to consider what is required to meet the challenges of biodiversity loss now being expressed; specifically, the 2035 and 2045 Scottish Biodiversity Strategy aspirations.

282. Whilst the changes proposed by the DWG largely relate to removing barriers to more effective control, they do not fundamentally change the nature of intervention beyond prevention of damage. Biodiversity and climate change outcomes would not be met with the application of these changes alone. If the Scottish Government were to progress with this option, its ability to meet those outcomes would continue to rely predominately on voluntary arrangements within the broad approach of the current legislation.

283. The Scottish Government considered not making any changes to intervention powers, neither to improve the existing powers or introduce any new powers, and instead to focus on supporting NatureScot to use their existing powers more widely. Through the Scottish Government's Strategic Deer Board priority deer areas are identified and agreed and this option may have seen NatureScot, and other relevant agencies, begin by focusing their resources in these areas to identify where deer management needed to be improved and what existing powers could be used to enable this.

284. However, the 2016 Environment, Climate Change and Land Reform (ECCLR) Committee report highlighted some significant issues with the current process including a lack of deer management plans and problems with these existing intervention powers.

285. The Scottish Government therefore recognised the issues raised by NatureScot and the concerns of the ECCLR Committee with regard to the existing powers. The Scottish Government also considered the increasing priority being given to mitigating climate change and biodiversity loss and the role of deer management in achieving that, as well as the increasing public interest in deer management. As a result of that, it was not a viable option to simply continue with the existing intervention powers and make no changes.

286. When considering changes required to deer management legislation, the Scottish Government gave careful consideration to the lack of intervention powers currently available to NatureScot in cases where land is already in a negative state and it is not possible to enhance the land or nature without deer management but it is also not possible to evidence new or potential damage by deer as the land is already in such a negative state.

### **Deer Management Nature Restoration Orders**

287. The Scottish Government also gave consideration to, and consulted on, introducing a new suite of regulatory intervention powers for NatureScot through Deer Management Nature Restoration Orders (“DMNROs”). The proposed purpose of a DMNRO was to enable all necessary deer management actions to restore nature across a specified area of land, covering one or more landholdings. A DMNRO would be made by NatureScot and would be a legally enforceable direction. Nature restoration in this context was intended to encompass objectives including tree planting, encouraging natural regeneration, peatland restoration, water management, and natural capital enhancement. The actions that could be required under a DMNRO could include, for example, deer culling, deer fencing, detailed habitat assessment, deer counting and cull planning. DMNROs would not require deer damage to be assessed against a baseline. The primary criterion for a DMNRO instead was intended to be based on NatureScot assessing that there are social, economic or environmental benefits to be achieved through nature restoration over a specified area and that deer management actions were a key factor or one of the key factors in securing those benefits.

288. Under this option, DMNROs would have been separate and in addition to the existing intervention powers under sections 6 (control areas), 6A (deer management plans), 7 (control agreements), 8 (control schemes) and 10 (emergency measures to prevent damage by deer) of the 1996 Act. The aim of these new powers was to enable landscape scale deer management for the purposes of nature enhancement.

289. Responses to the consultation varied across different sectors and interests. Analysis showed that support for these proposals came from respondents from the eNGO and conservation sector, animal welfare organisations and two-thirds of individuals. Respondents said that “deer overpopulation was the main obstacle to ecosystem recovery in certain areas of Scotland. They highlighted the benefits of improved deer management, including the regeneration of natural woodlands, reduced flooding, and greater carbon sequestration... A recurring view among this group was that deer numbers need to be controlled as a matter of urgency.”

290. Those opposed to these proposals raised concerns about penalising landowners, and the potential for these new powers to “add another layer of ‘bureaucracy’” to deer management.

291. In developing the provisions to be set out in the Bill, the Scottish Government considered all of the views on DMNROs, and alternative options which could still achieve the aim of supporting deer management for biodiversity and nature purposes. There was significant concern from those who would be most directly impacted by the new powers which highlighted a lack of understanding of the proposed process. This would pose a significant barrier to achieving increased deer management. Therefore, consideration was given instead as to how the same aims could be achieved through a process that could rely on the existing framework for intervention within the 1996 Act. Given the desire from those same groups of people to see improvements to the existing processes provided under sections 7 and 8 of the 1996 Act, the provisions in this Bill offer an alternative which alleviates their primary concerns while achieving the same aim.

### **Venison Dealers Licences**

292. The Scottish Government considered implementing DWG recommendations to modify the information required by certified venison dealers, and to require additional information from them.

293. Over 117,000 wild deer are reported culled in Scotland annually producing around 3,500 tonnes of venison. Venison provides an income from the overall management of wild deer in Scotland. At present, it is an offence to sell venison (or offer or expose it for sale), or to possess venison, transport it, or cause it to be transported for the purposes of sale, at any premises, unless the person is a licensed venison dealer, is selling to a licensed venison dealer, or has purchased the venison from a licensed venison dealer. A Venison Dealers Licence (VDL) can be obtained through a Local Authority. The licence requires records of venison be kept for three years and these records can be requested by the police or anyone authorised by the local authority at any time.

294. However, as outlined by the DWG in their report, data on the total number of deer which go to venison dealers is not collated and the reporting aspect of these licences is not monitored. The Scottish Government also considered that venison is regulated by Food Standards Scotland in the same way as other wild meat and game products, which means it must meet acceptable standards of food safety.

295. As a result of those considerations the changes proposed by the DWG were deemed to be inappropriate and it was concluded that the need for VDLs should be repealed altogether.

### **Deer Working Group recommendations**

296. There are a small number of recommendations made by the Deer Working Group with regard to legislation which the Scottish Government accepted but have not taken forward, or that have been taken forward in a different way than the DWG set out. Consideration was given to each of these with the alternative option of proceeding with those in the way the DWG recommended.

297. Recommendation 1 – The 1996 Act should be amended to replace references to the Deer Commission for Scotland, Secretary of State and the Houses of Parliament with Scottish Natural Heritage (known as NatureScot), Scottish Ministers and the Scottish Parliament respectively.

298. The DWG considered that these references may be confusing to ordinary people reading the legislation, and that in some cases they may cause confusion over devolved and reserved matters. The intention behind the recommendation was to increase the accessibility of the 1996 Act.

299. The Scottish Government gave consideration to this recommendation. However, the decision was taken not to take this forward. This is primarily because other legislation has already changed the meaning of expressions such as “the Secretary of State” and “Houses of Parliament”, and it is possible to rely on that legislation when reading these terms. Therefore, it is not necessary or desirable to make changes to specific pieces of legislation across the statute book.

300. Recommendation 12 – The 1996 Act should be amended so that the statutory rights of occupiers to prevent damage by wild deer should apply to the occupiers of any type of land and cover public interests of a social, economic and environmental nature.

301. The Scottish Government gave careful consideration to this recommendation and how best to balance the needs of occupiers with the rights of landowners. The Scottish Government has taken forward recommendations made by the DWG to improve the rights of occupiers in specific circumstances under the 1996 Act. However, amending the statutory right of occupiers in this way would be a significant change to how land is managed at the moment. At present the 1996 Act gives occupiers without shooting rights the right to manage deer that they would not ordinarily have, these rights (section 26) apply on agricultural land and enclosed woodland for the purpose of damage prevention.

302. The Scottish Government considered the recommendation itself, as well as changes to the purposes for which occupiers can shoot deer. The DWG commented that “the types of land occupied and purposes of occupation where occupiers might reasonably also expect to be able to protect appropriate interests from damage by deer, are now significantly more diverse than before (for example, golf courses, parks and nature reserves)”. In considering implementing this recommendation the Scottish Government did not consider there to be a wider range of purposes for which occupiers without a right to take or kill deer should be entitled to do so. The purposes given by the DWG were not considered to be justifiable, for example it was not possible to find evidence of a nature reserve which would be run and managed by an occupier without shooting rights.

303. Furthermore, the DWG itself noted that “agricultural and forestry occupiers are still by far the most extensive types of occupiers”. On balance, it was found that occupiers being able to shoot deer for the purpose of preventing damage to agricultural land and enclosed woodland where they would not ordinarily be entitled to shoot deer, was an appropriate and reasonable position.

304. Recommendations 57 and 60 –

- Section 40 of the Deer (Scotland) Act 1996 should be amended to enable secondary legislation to be used to add to the types of information that can be required from owners and occupiers of any land on a statutory basis under the section.
- Section 40A of the Deer (Scotland) Act 1996 should be amended to refer to ‘taken or killed’ and to enable the information required to cover a period not exceeding five years.

305. The Scottish Government considered amending section 40 and 40A of the 1996 Act to address these recommendations, however, these recommendations can be taken forward under existing powers in the 1996 Act. The intention is that everyone who shoots deer in Scotland will be registered on a register of authorised persons (section 17A of the Act is being amended by the Bill) and that providing information on cull returns will be a requirement of their ability to retain their registration. NatureScot will be able to set out the details of cull data that must form part of a return. It is therefore unnecessary to amend section 40 and 40A of the 1996 Act, as this can be taken forward in a different way using existing powers in the 1996 Act.

306. Recommendation 24 – Section 43 of the 1996 Act should be amended at the end of the definition of farmed deer in s.43(4) to include 'and be clearly marked to show they are kept as such'.

307. While the Scottish Government agrees that farmed deer should be marked to show they are farmed, section 8(1)(a) of the Animal Health Act 1981 contains an existing power that can be used to make provision prescribing and regulating the marking of farmed deer. The power may be used to prescribe and regulate the marking of animals. “Animals” in this context already includes deer as the definition of “animals” in section 87(1) includes all ruminating animals.

308. There is, therefore, no need to make an amendment in this Bill to enable the marking of farmed deer.

309. Recommendations 26 to 28 –

- There should be a legal requirement for all deer that are owned as private property and not farmed deer or deer in zoos, to be tagged to identify them as private property.
- The Scottish Government should give serious consideration to the introduction through the Animal Health and Welfare (Scotland) Act 2006, of a scheme to require an owner of deer to have a licence for the keeping of deer as private property that are not farmed deer, deer in zoos nor muntjac deer.
- Either the 1996 Act or the Wildlife and Countryside Act 1981 should be amended so that any release of captive red deer and captive roe deer into the wild requires to be authorised by SNH (now known as NatureScot).

310. The Scottish Government has given serious consideration to introducing a licensing scheme to keep deer and requiring those deer to be tagged, either native deer, non-native deer or a combination of both. The Scottish Government sought public views on a potential licensing

scheme as part of the consultation, *Managing deer for climate and nature*<sup>78</sup> and while there was support from both the land management and eNGO sector for such a scheme, there were also comments about the adequacy of existing welfare legislation.

311. In terms of existing legislation, kept deer fall within the scope of the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”) which sets out that any animal which is of a kind commonly domesticated in the British Isles, under the control of man on either a temporary or permanent basis, or is not living in a wild state constitutes a protected animal. Kept deer would therefore be subject to the same animal welfare protections as any other species falling within the definition of “protected animal” for the purposes of the 2006 Act, including protection relating to the prevention of suffering. Abandoning such animals would also be an offence under the 2006 Act. Furthermore, it is an offence under the Wildlife and Countryside Act 1981 to release, or allow to escape from captivity, any non-native deer, for example sika.

312. The DWG recommendation was to introduce a licensing scheme predominately for the purpose of developing a better understanding of where and when deer are being kept, mainly to mitigate any concerns over animal welfare, though the DWG also mentioned concerns around disease management, protection of the human food chain and protection of wild populations, via increased monitoring.

313. Having considered this existing legislation, and the extent to which the Scottish Government would look to monitor any other species of kept animal, as well as the limited information on the circumstances in which deer might be being kept, it was concluded that a licensing scheme for this purpose would be overly bureaucratic. Licensing kept deer would require a public body, most likely local authorities, to take on responsibility for the licensing process. In order for the scheme to be effective and achieve the purpose set out by the DWG, there would need to be proactive monitoring of the licensees, and the Scottish Government considers that this would constitute an unnecessary burden at this stage, given the lack of evidence of welfare concerns over kept deer.

314. Furthermore, while there may be some benefits to wild populations, licensing of kept deer is not a wild deer issue, which the 1996 Act deals with. It is predominately an animal welfare issue. If, at a future date, there is evidence of animal welfare issues in relation to kept deer then it could be possible to revisit this matter through animal welfare legislation. At this point, however, on balance there is not a need to licence or tag all deer which are being kept.

315. Recommendation 32 – The phrase “or steps taken or not taken for the purposes of deer management” should be repealed from sections 6A(2) and 7(1) of the 1996 Act, and that consideration might be given to whether an appropriately termed and practical power for Scottish Natural Heritage to reduce deer control on a property might be introduced through a new section in that Act.

316. The DWG set out in their report that they believed the inclusion of this phrase was largely related to the potential negative impacts of carrying out deer management on the interests of others. For example, a landowner carrying out deer culls which reduce the local deer population may have

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<sup>78</sup> [Managing deer for climate and nature: consultation - gov.scot](https://www.gov.scot/publications/managing-deer-for-climate-and-nature/consultation/pages/consultation)

a negative impact on a neighbour who wishes to keep higher deer populations for the purpose of sports shooting. The DWG went on to say that this may have a negative impact on their business, and on the local economy in terms of jobs, and that NatureScot may need to limit the number of deer being culled in some situations to protect economic or social interests. The DWG considered that NatureScot should have a power to influence deer control in these circumstances.

317. The Scottish Government considered the recommendation made by the DWG and to making the suggested amendment, however, instead of removing the phrase suggested and providing a new discrete power a requirement for NatureScot to consider the public interest as part of their functions relating to deer, has been introduced. NatureScot already has the power to influence deer management through the existing arrangements for deer management plans, control agreements and control schemes. The inclusion of the public interest consideration provides the right level of balance.

318. Recommendation 54 – Amendments to the ratings legislation in the 1975 and 1994 Local Government (Scotland) Acts should remove references to 'deer forests' in the phrase 'shootings and deer forests', and that section 6(8za) of the Valuation and Rating (Scotland) Act 1956 should be repealed.

319. The DWG made this recommendation on the basis that doing so would improve the accessibility of the legislation in which this term is used. They commented that references to 'deer forests' should be removed, "because both the meaning of the term is unclear and its use is unnecessary. In the legislation, shooting red deer and other deer species in woodlands and everywhere else other than 'deer forests' is covered in 'shootings'. The Group considers that all deer shooting could be covered straightforwardly by 'shootings'".<sup>79</sup>

320. While the Scottish Government accepted this recommendation in principle, we do not think that there is a strong enough rationale to make this change. Given the assessment of the DWG, which found that ratings legislation means that assessors make decisions on deer forests for the purpose of valuation rolls, there is a risk that removing these references could have unintended negative consequences. The Scottish Government is, however, taking forward work to consider how we might improve this process and definition of deer forests outwith this Bill.

321. Recommendation 63 – Section 15(3)(b) of the 1996 Act should be amended to include sections 10 and 11 of the Act, rather than just sections 7 and 8.

322. The DWG made this recommendation on the basis that they believed "the current position with s.15(3)(b) is an anomaly". The DWG's intention with this recommendation was to provide NatureScot with the ability to enter onto land, as provided under section 15(3), to exercise their functions in relation to emergency deer management in addition to the existing ability to enter land under section 15(3) in relation to control agreements and control schemes.

323. While the Scottish Government accepted this recommendation in principle, and agree with the principle behind it, further consideration has been given to this recommendation and the Scottish Government does not believe the change is necessary. Section 15(1) of the 1996 Act

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<sup>79</sup> [The Management of Wild Deer in Scotland - Report of the Deer Working Group](#), page 233.

enables NatureScot to enter land for the purpose of their functions at section 10 of the 1996 Act with fewer requirements than they do to exercise their functions in relation to section 7 control agreements and section 8 control schemes, this is in recognition of section 10's intended purpose as an emergency power. There is therefore no need to amend the reference at section 15(3)(b).

324. Recommendation 69 – Replace the title of section 10 of the 1996 Act with 'Control Actions' or a title similar to that and that the section should be amended to cover public interests of a social, economic or environmental nature.

325. Consideration was given to the first part of this recommendation. However, as the Bill does not fundamentally alter the substance of when NatureScot can act under section 10(1), and the matters that have to be met before NatureScot can act under section 10(1) remain fairly onerous, the Scottish Government did not think that this amendment was appropriate. However, provisions in the Bill do address, in part the second part of this recommendation through the addition of reference to “the environment” in section 10(1)(a)(i).

326. Recommendation 72 – The 1996 Act should be amended to reinstate section 8(5), which was repealed in 2011.

327. This recommendation sought to reinstate a restriction on NatureScot's ability to require an owner or occupier to erect deer fencing as part of a control scheme, as the DWG was of the view that decisions over deer fencing should be made by the land owner or occupier. While the Scottish Government accepted this recommendation in principle, more consideration has been given to the function of deer fencing while deer management control is being undertaken and it is acknowledged that there is value in NatureScot being able to require deer fencing. The Scottish Government recognises that deer fencing is not a long-term solution, but if NatureScot has entered into a control scheme to require an owner or occupier to carry out increased deer management it is only right that they are able to require deer fencing while that deer management is undertaken if necessary. Control schemes may last a number of years, and it may take time for deer management action to take effect and in these circumstances deer fencing may be an important tool in protecting public investment in nature.

328. Recommendation 82 – Section 2 of the 1996 Act should be amended to include provisions requiring, firstly, SNH (now known as NatureScot), to report annually to Scottish Ministers on the exercising of SNH's functions under the Act and secondly, Scottish Ministers to present a copy of SNH's report to the Scottish Parliament.

329. Consideration was given to creating a requirement for NatureScot to report annually to Scottish Ministers on the exercising of their deer functions, however this is quite a significant ask in addition to their corporate reporting requirements on an annual basis. NatureScot could be directed, by Scottish Ministers, to report on the exercising of its deer functions under the 1996 Act as part of their corporate reporting. NatureScot's annual report already includes details of performance against the National Performance Framework, which includes indicators in relation to the condition of protected nature sites and biodiversity. The 1996 Act already contains a requirement to report on compliance with the Code of Practice on deer management, and NatureScot also publish data on deer management activities and cull data.

330. The Scottish Government also gave consideration to government priorities in relation to deer management, namely the impact of deer on meeting the Scottish Government’s climate and nature aims, as well as the concerns raised by the Environment, Climate Change and Land Reform Committee in 2016 around NatureScot’s use of regulatory powers. The ECCLR Committee commented on the section 8 powers being untested, noting:

“The Committee is of the view that SNH has not provided the level of leadership in deer management that might have been expected and there has been a failure to adequately set expectations for deer management in Scotland. SNH appears to have been unable, or unwilling, to enforce the legislation to secure the natural heritage interests...The Committee shares the frustration of many that Section 8 remains unused where use of the power might be justified. The Committee questions the ‘risk appetite’ of SNH in this respect....However, the Committee is not convinced that the currently available suite of powers (with the attached tests) are adequate to manage any eventuality considers what is needed is a simple, effective back-stop power alongside a predominantly voluntary system to ensure the public interest is delivered.”<sup>80</sup>

331. Therefore, instead of a power requiring NatureScot to report annually on exercising of their deer functions, a requirement has been created in relation to progress with section 7 control agreements. NatureScot must review all control agreements annually, and if in any circumstance NatureScot finds progress on the agreement to be insufficient then they must either proceed with a section 8 control scheme or provide advice to Ministers on why it is not appropriate to do so at that time. This effectively balances the need for monitoring of progress with the importance of ensuring delivery.

332. Recommendation 98 – the 1996 Act should, after amendments to implement recommendations in this Report, be replaced with a new Deer (Scotland) Act. The Scottish Government gave consideration to consolidating and replacing the 1996 Act with a new piece of legislation. However, the changes to the 1996 Act proposed by the DWG and with the addition of new intervention powers did not constitute a significant enough change to the legislation to require a new act. Decisions such as this are not a matter of policy, but about legislative comprehension and accessibility. The Scottish Government considered that its policy aims could be achieved by amending the existing legislation without requiring a whole new Act.

### **Consultation on the reform of deer management legislation (summary)**

333. The Scottish Government’s “Managing deer for climate and nature: consultation” ran from 5 January 2024 until 29 March 2024.<sup>81</sup> A high-level analysis of the key findings is provided below. The Consultation received 1,605 responses, 107 from organisations and 1,498 from individuals.

334. The consultation questions mainly invited respondents to state whether they agreed or disagreed with a specific proposal. The responses indicated broad support with over 60% of respondents agreeing with the Scottish Government’s proposals in each case. Careful consideration was given to the responses as part of the Bill’s development. For example, the

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<sup>80</sup> [Report on Deer Management in Scotland: Report to the Scottish Government from Scottish Natural Heritage 2016 | Scottish Parliament](#)

<sup>81</sup> [Managing deer for climate and nature: consultation - gov.scot](#)

decision to repeal Venison Dealers Licences was a result of consultation. The consultation was key in shaping the provisions in the Bill, for example the responses to the proposals on DMNROs directly shaped the provisions in the Bill in relation to the purposes in which NatureScot can intervene in deer management or control activities on an area of land by way of a deer management plan, control agreement or control scheme.

335. There was particularly strong support for proposals relating to deer welfare and kept and farmed deer where among organisations, a large majority of conservation and animal welfare organisations supported nearly all the proposals. By contrast, a large majority of land management, deer and sporting organisations disagreed with the proposals on DMNROs, on close seasons, and on the use of emergency powers.

336. Full analysis of the consultation is available on the Scottish Government website<sup>82</sup>.

## OTHER POLICIES CONSIDERED BUT NOT BEING TAKEN FORWARD IN THE BILL

## Commitment to protect 30% of Scotland land and seas by 2030

- Ensuring that the areas within the 30 by 30 networks are effectively managed.

341. Target 3 then goes on to specify how the 30 by 30 network can be achieved through:

- Protected<sup>85</sup> and/or Designated Areas – these are what most people understand as protected areas i.e. areas containing or comprising features which are considered to be of particular significance due to their rarity, vulnerability or where Scotland hosts the majority and/or important populations of the global habitat, species population or earth science interest. For example, special protection areas and special areas of conservation; and
- Other Effective [area based] Conservation Measures (OECMs) – International Union for Conservation of Nature (IUCN) have established criteria to clarify what constitutes an OECM. These criteria cover governance, purpose, longevity and security of management.

342. The Scottish Government has achieved the Area Target for protected areas in the marine environment through the Marine Protected Area, marine special area of conservation (SAC) and marine special protection area (SPA) network.

343. On land, the Scottish Government is currently pursuing non-legislative options, such as OECMs, to increase the area of sites protected and management for nature from 18.2% covered by existing protected areas, in order to meet the commitment of 30 by 30 in the first instance. Scottish Government and NatureScot have been working with stakeholders to define the criteria which will be used to recognise sites as OECMs in Scotland. Work is also gathering pace to develop pilot OECM sites where stakeholders from different land management sectors will be supported in applying the OECM criteria to their own sites with a view to being recognised as OECMs once all criteria are met. It is then anticipated that these pilot areas will be used as case studies to support a formal launch requesting nominations for sites to be considered for OECM status.

### **Consultation on the Scottish Government's commitment to protect 30% of Scotland land and seas by 2030**

344. The Scottish Government's consultation 'Meeting our '30 by 30' biodiversity commitment on terrestrial and freshwater sites: consultation on legislative proposals', ran from 02 April 2024 to 24 May 2024. In the consultation, the Scottish Government sought to explore views on the potential legislative proposals which will support the implementation of 30 by 30.<sup>86</sup>

345. A majority of 84% of respondents supported the proposal that the Scottish Government should allow protected areas to also be designated on the basis of important ecosystems in addition to individual natural features.

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<sup>85</sup> Sites of Special Scientific Interest (SSSI), Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites

<sup>86</sup> [Meeting our '30 by 30' biodiversity commitment on terrestrial and freshwater sites: consultation on legislative proposals - Scottish Government consultations - Citizen Space](#)

346. There was also a majority of 86% of respondents who expressed support to the Scottish Government clarifying the existing powers that require management and restoration of protected areas, making it clear that this requirement also covers protected areas that are experiencing slow deterioration over a long period of time.

347. A majority of 72% of respondents also supported the Scottish Government expanding the existing powers to enforce and incentivise management and restoration of protected areas, to cover other land in situations where it has been identified to have significant benefits to be achieved through nature restoration.

348. The full consultation analysis will be published on the Scottish Government's website shortly.

### **Response to the consultation**

349. Despite the generally positive responses to the consultation proposals to make minor amendments to the framework for protected areas, following further policy development it was determined not to take forward the proposed amendments to the protected areas legislation in this Bill.

350. The principal reason for this is that the current legislative framework for nature conservation generally, and protected areas in particular is complex, spread as it is across several pieces of primary legislation (e.g. the Nature Conservation (Scotland) Act 2004 and Wildlife and Countryside Act 1981) and secondary legislation (e.g. The Conservation (Natural Habitats & c. Regulations 1994). Reviews by NatureScot have also highlighted significant weaknesses in the current protected areas legislative framework which are hampering the ability of these sites to make a further contribution to biodiversity restoration and protection, particularly in a rapidly changing environment driven by climate change. It was decided that the benefits to the proposed changes to the administration of protected areas which were put forward in the consultation, would be undermined by increasing the complexity of the legislative framework and would not address the underlying weaknesses which have been identified.

### **Alternative approaches**

351. Rather than seeking legislative change through the Natural Environment Bill, NatureScot is reviewing their current policies and procedures for interaction with land managers on protected areas to seek to achieve the benefits put forward in the consultation without the need for legislative change.

352. This review will need to have regard to the work planned by the Scottish Law Commission, which has a project in its Eleventh Programme of work to consider *Consolidation of nature conservation legislation*.<sup>87</sup>

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<sup>87</sup> [Scottish Law Commission :: Eleventh Programme of Law Reform](#)

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

353. An Equality Impact Assessment (EQIA) has been carried out and a summary of its findings is provided below. The full EQIA will be available to view on the publication area of the Scottish Government website.

354. The EQIA did not demonstrate any particular positive or negative impact with regards to any of the protected characteristics and did not highlight any equality issues that needed to be mitigated against.

355. The provisions in the Bill relating to powers for national parks to enforce byelaws have relevance to all protected characteristics as the penalties for those offences will apply equally across all protected groups. The provisions in the Bill that create new offences under the Deer (Scotland) Act 1996 in relation to the use of a shotgun to shoot deer, the failure to report the taking or killing of a stray farmed deer and knowingly or recklessly providing information or producing a document that is false in a material particular have relevance to all protected characteristics as the penalties for those offences will apply equally across all protected groups.

356. However, they will only affect those convicted of one or more of the offences set out in the Bill. Therefore, the impact of these provisions is limited and does not impose any additional impacts on any individuals falling within any of the current protected characteristics when compared to the existing legislation.

### **Human rights**

357. The Bill is compliant with the European Convention on Human Rights (“the Convention”).

358. It is considered that the provisions of the Bill engage, or potentially engage, several rights under the Convention, principally under Article 1 of Protocol 1 (“A1P1”), Article 6 and Article 8.

359. A1P1 (right to peaceful enjoyment of property and possessions) is thought to be engaged for deer management provisions in relation to: the grounds for intervention and the widening of the circumstances in which deer management plans, control agreements and control schemes can be triggered; the potential widening of the circumstances in which emergency measures to prevent damage by deer can be used; the offences of close season shooting, night shooting, using a vehicle to drive deer, and using a shotgun to kill deer and the circumstances in which these activities may be authorised; the register of authorised persons; and the recovery of expenses by NatureScot for carrying out duties in relation to deer management.

360. These provisions may fall within the ambit of A1P1 as regards:

- property rights of landowners in relation to taking or killing deer on land,
- the right of landowners or lessors to take and kill deer on land and to exclude others from coming onto land for that purpose,

- the use of shotguns to shoot deer, and
- the marketable goodwill of business owners involved in the shooting of deer.

361. The amendments to National Park aims and the duties to consider the aims and facilitate implementation of the national park plans which help to implement the aims are also considered to engage A1P1. The amendments to the Land Reform (Scotland) Act 2003 (“the 2003 Act”) to enable new national parks authorities to be designated as a local authority to uphold access rights and designate core path plans could also engage A1P1.

362. This could arise when a new National Park makes use of the compulsory powers in section 22 of the 2003 Act, to delineate paths in land in respect of which access rights are exercisable by a path order in accordance with schedule 1 of that Act, it may result in the authority entering upon, and performing works on land in order to create and maintain the path. The national park provisions may therefore fall within the ambit of A1P1 rights as regards property rights of landowners in relation to access to and use of that land.

363. The protection of property rights under A1P1 is not absolute, and restrictions on these rights may be permitted provided they have a legitimate aim and are proportionate to that aim. The provisions of the Bill respect these principles in view of the aims of the protection of the environment by restoration and enhancement of biodiversity, and prevention of cruelty to animals. A fair balance is struck between those whose possessions are affected by the provisions of the Bill and the wider general interest of the protection of the natural environment and prevention of cruelty to animals.

364. Article 8 (right to respect for private and family life) is thought to be engaged by Part 1 of the Bill, which introduces statutory targets for nature restoration, as the right extends to the State’s obligations introducing measures alleviating risks of harm caused by intergenerational impacts of environmental damage. Article 8 is also engaged due to powers exercisable by NatureScot to require information or documents and powers of entry in relation to deer management. The powers are subject to a number of safeguards. NatureScot must believe that any information or document required is, or may be, relevant to the exercise of its functions under sections 7 and 8 of the 1996 Act. A person is not required to provide any document, record or other information which they could not be compelled to give or to produce in civil proceedings. NatureScot must serve a notice on the person specifying or describing the information or document that is to be provided and informing them that the consequences of failing to do so is that NatureScot may exercise a power of entry on their land. The power of entry supports the power to require the production of information and can only be exercised where a person who has been served a notice requiring the production of information or documentation fails to do so within 10 working days (or any other such time as agreed by NatureScot) of receiving the notice.

365. In relation to the Part 3 of the Bill, which deals with National Parks, Article 6 (right to a fair trial) is thought to be engaged in relation to the enabling power to establish a fixed penalty notice regime as this introduces an alternative to prosecution for contravention of a national park byelaw. However, the framework to be established by virtue of the Bill ensures that there are safeguards in place including consultation before adding any new byelaw contraventions to the fixed penalty notice regime and the ability to still follow the prosecution route. In relation to deer management, it is considered that Article 6 is engaged by the provisions in relation to the procedure

that NatureScot takes to decide on the introduction of deer management plans, control agreements and control schemes, which may decide the scope of landowners' civil rights and obligations. It is thought that the details of these processes provided for in the Bill are compliant with Article 6. The Bill also introduces and modifies several offences, subject to the usual safeguards under the Scottish criminal justice system.

366. While the provisions of the Bill engage, or potentially engage, the ECHR Articles set out in the preceding paragraphs, the Scottish Government considers the provisions of the Bill are compatible with Convention rights and, insofar as they interfere with these rights, they are a proportionate means of achieving the legitimate aims of the protection of the environment by restoration and enhancement of biodiversity and prevention of cruelty to animals.

### **Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024**

367. The Acting Cabinet Secretary for Net Zero and Energy, Gillian Martin MSP, has made the following statement regarding children's rights:

“In accordance with [section 23\(1\) of the United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#), in my view the provisions of the Natural Environment (Scotland) Bill are compatible with the UNCRC requirements as defined by [section 1\(2\) of that Act](#).”

### **Island communities**

368. No policy issues as a result of the provisions in the Bill itself were identified during the course of the development of the Bill, or from the stakeholder discussion or the public consultations, that would have an effect on an island community which was significantly different from the effect on other communities. It was therefore not considered necessary to conduct an Island Communities Impact Assessment at this stage.

369. However, the Impact Assessment process did identify that there could be potential impacts on island communities that require further consideration during the development of subsequent secondary legislation when further detail is set out in relation to EIA legislation/Habitats Regulations and the statutory targets for nature restoration. Depending on the use of the EIA legislation/Habitats Regulations enabling power, an Island Communities Impact Assessment may be required to assess any differences in the impacts on island communities on a case by case basis. In relation to statutory targets for nature restoration, the actions taken to deliver targets will be carried out under the Scottish Biodiversity Delivery Plans and any projects deemed to have an impact on island communities will be fully considered at that stage, as well as during the development of secondary legislation made under the Bill.

370. In relation to the modernisation of the aims and powers of National Parks, the provisions in the Bill are not expected to have any differential impacts to island communities to those on the mainland. There is no clear measure for any impact an existing National Park has towards island communities or how the proposed measures in the Bill would in any way impact upon island communities if at all. Although there are islands in Loch Lomond and the Trossachs National Park they do not fall under the Island Act for the purposes of the Island Communities Impact

Assessment as these islands are surrounded by freshwater. Islands, and therefore the communities inhabiting those islands, for the purposes of assessment are those surrounded on all sides by the sea. However, should the provisions in the National Parks (Scotland) Act 2000 be utilised to establish a new National Park, then consideration of the impact of doing so on island communities would be required as part of the development of that proposal. Such consideration may include taking forward an Island Communities Impact Assessment.

371. In relation to deer management provisions, during the development of the Island Communities Impact Assessment, it was noted that densities of Red Deer on the Hebridean Islands are typically lower than on the mainland but these trends are variable.

372. Wild deer do not occur at all on some islands most notably in Orkney and Shetland. On some islands such as Arran, Islay, Jura and Rum and in the Outer Hebrides it is an offence to release or allow any deer to escape from captivity without a licence. The amendments made to the Deer (Scotland) Act 1996 by the Bill will provide land managers with greater flexibility in how or when they manage wild deer as well as widening NatureScot's regulatory powers to manage wild deer.

373. The Strategic Deer Management Board and NatureScot will determine priority areas to undertake deer management. If any of the priority areas set are islands we would expect full islands Community Impact Assessments to be undertaken at that stage. The provisions in the Bill itself do not have any differential impacts to islands and island communities to those on the mainland. Further consideration will be given to the impacts of islands communities as the policy is further developed and implemented following the introduction of the Bill.

## **Local government**

374. The Bill provisions included at introduction will not introduce any new responsibilities for local authorities and as such will not result in any direct impact to local authorities. The National Parks provisions propose a change to the existing duty on public bodies (including local authorities) from having regard to the National Park Plans to facilitating implementation of these Plans. Whilst this revised duty is likely to involve the way in which relevant public bodies use their capacity, resources and strategic approach to help implement the National Park Plans, it does not introduce any new responsibilities for local authorities. This is because National Park plans are developed and agreed with input from relevant delivery partners including local authorities. Local authority members are also represented on park boards which are responsible for agreeing the National Park Plans and the commitments within them. The provisions proposing to enable any future National Park authority to become the access authority for its area, should it be considered appropriate to do so, would allow the relevant local authority/authorities to transfer the relevant duties and powers under the 2003 Act to a National Park authority.

## **Sustainable development**

375. Pre-screenings were undertaken for the provisions relating to targets, deer management, and the enabling powers to amend the EIA legislation and 1994 Habitats Regulations. Following these pre-screenings, full strategic environmental assessments were not considered necessary at this stage of policy development for these proposals.

376. A strategic environmental assessment (SEA), was undertaken in relation to the proposals to change the aims and powers of national parks, as part of wider proposals relating to national parks: “The Future of National Parks.” The SEA was consulted on between September and November 2023, and the Environmental Report is available on the Scottish Government website.<sup>88</sup>

377. The work of the Scottish Government directly links to the UN Sustainable Development Goals 13: Climate Action, 14: Life below water, and 15: Life on land. In particular it contributes positively to these goals which include: take urgent action on climate change; conserve and sustainably use the oceans, seas and marine resources for sustainable development; protect, restore and promote sustainable use of terrestrial ecosystems; and halt biodiversity loss.

378. As set out above, the topics included in Natural Environment (Scotland) Bill all contribute to the Scottish Governments commitment to tackle the twin crisis of climate change and biodiversity loss.

379. Providing a framework for statutory targets will drive action across Government to halt biodiversity loss, placing a duty on Scottish Ministers to set and meet targets which will be set out in secondary legislation and actioned through the Scottish Biodiversity Delivery Plans. The enabling power for future amendments to the Environmental Impact Assessment regime and 1994 Habitats Regulations will ensure the legislation is adaptable and fit for purpose in the context of climate change, and future amendments could contribute to the Scottish Governments Net Zero by 2045 ambitions.

380. The reform of legislation relating to deer management aims to address the issues of biodiversity and habitat loss caused by wild deer. The amendments to the aims and powers of National Parks will strengthen the leadership role of National Parks in Scotland in tackling climate change and halting biodiversity loss. Together these provisions progress the Scottish Government National Performance Framework outcome of “We value, enjoy, protect and enhance our environment”<sup>89</sup> and demonstrates the importance and value the Scottish Government places on protecting our Natural Environment and taking action to mitigate climate change.

## **CROWN CONSENT**

381. It is the Scottish Government’s view that the Bill as introduced does require Crown consent. Crown consent is required, and must be signified during a Bill’s passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall.

382. The Scottish Government’s view is Part 4 of the Bill, in particular, will impact on the personal property interests of the monarch in the management of Balmoral Estate. The measures around the control and management of deer may have a direct impact on the King’s private interests so far as they relate to the management of, and sporting activities on, the Estate.

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<sup>88</sup> [Future of National Parks: strategic environmental assessment - environmental report - gov.scot](https://www.gov.scot/publications/future-national-parks-strategic-environmental-assessment-environmental-report/pages/2/)

<sup>89</sup> [National Performance Framework | National Performance Framework](#)

383. For the source of the requirement for Crown consent, see [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.



*This document relates to the Natural Environment (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 19 February 2025*

# **NATURAL ENVIRONMENT (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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