

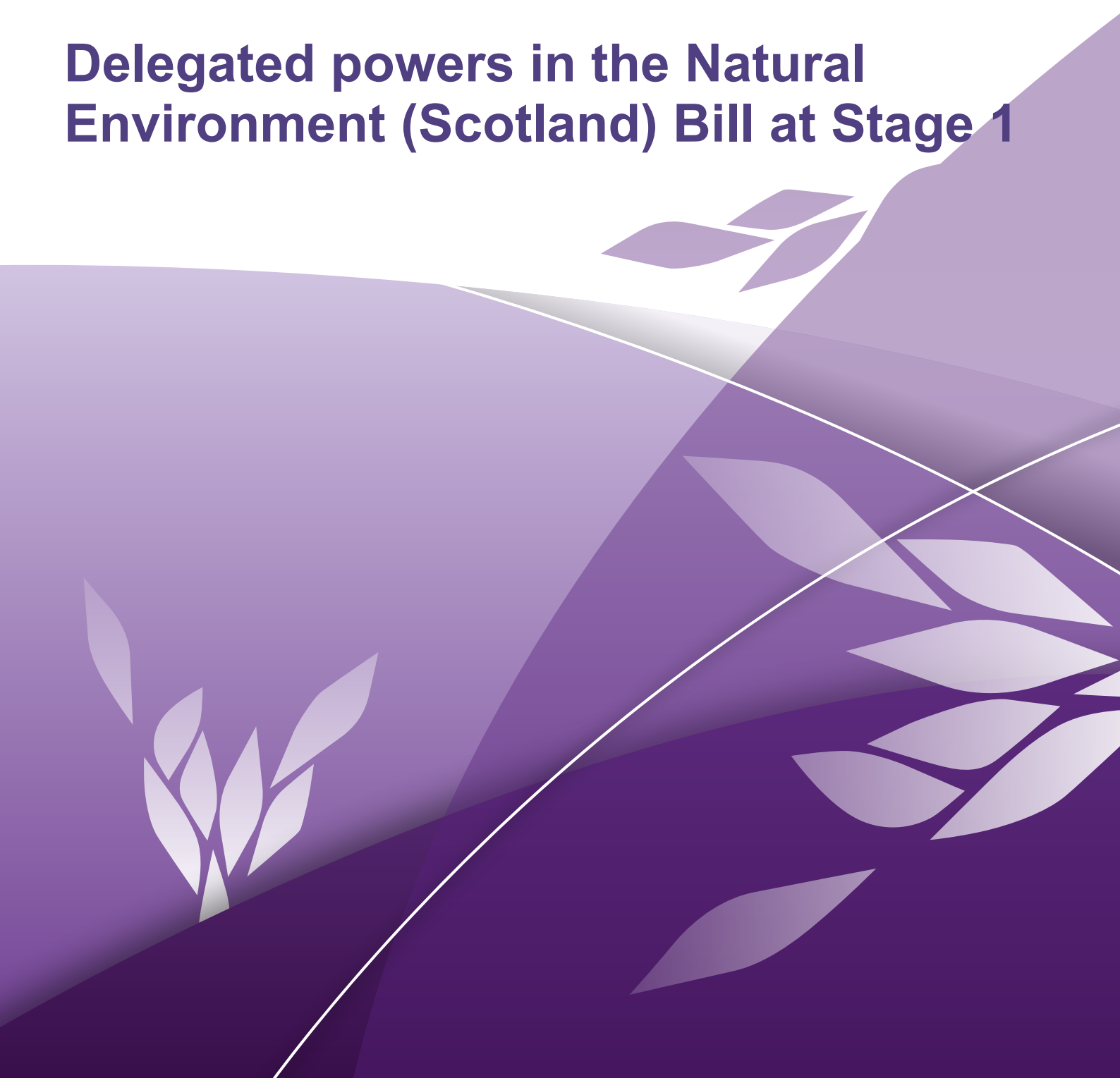


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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Natural Environment (Scotland) Bill at Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. At its meetings on 29 Aprilⁱ and 3 June 2025, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers contained in the Natural Environment (Scotland) Bill ("the Bill") at Stage 1.
2. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.
3. This Government Bill was introduced on 19 February 2025. The lead committee is the Rural Affairs and Islands Committee.

ⁱ Rona MacKay MSP substituted for Bill Kidd MSP at this meeting.

Overview of the Bill

4. The Bill makes provision for 4 key matters:

- Part 1 deals with setting targets for improving biodiversity. It amends the Nature Conservation (Scotland) Act 2004 to place a series of duties on the Scottish Ministers. The primary duty is to set targets in connection with nature restoration.
- Part 2 confers power on the Scottish Ministers to make changes to the Conservation (Natural Habitats, &c.) Regulations 1994 and the legislation that forms the Environmental Impact Assessment regime (“EIA regime”) through secondary legislation.
- Part 3 updates the four national park aims, which are set out in section 1 of the National Parks (Scotland) Act 2000. This Part of the Bill also provides an enabling power to allow national park authorities to introduce fixed penalty notice regimes for the enforcement of national park byelaws.
- Part 4 of the Bill amends the Deer (Scotland) Act 1996. Most of the amendments implement (in whole or in part) recommendations of the Deer Working Group, which was established by the Scottish Government in 2017.

Delegated Powers

5. The Bill contains eleven provisions which create new delegated powers or amend existing ones. The Scottish Government has prepared a [Delegated Powers Memorandum](#) (“DPM”) which sets out all the delegated powers in the Bill and explains the reasons for taking the powers and the choice of procedure.
6. At its meeting on Tuesday, 29 April 2025, the Committee agreed to write to the Scottish Government to raise several queries regarding the delegated powers in section 1 of the Bill. The Committee was content with the remaining delegated powers in the Bill.
7. The Committee [wrote](#) to the Scottish Government on 2 May 2025 and received a [response](#) on 12 May 2025.
8. The Committee's consideration of the Scottish Government's response, and the other delegated powers contained in the Bill, are set out in the next section of the report.

Review of relevant powers

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

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative (with additional preconditions amounting to 'super-affirmative')

Provision

9. Section 1 of the Bill inserts section 2C into the Nature Conservation (Scotland) Act 2004 which places a duty upon the Scottish Ministers to set targets for the purpose of conserving and improving biodiversity.
10. The power allows Scottish Ministers to make regulations for and in connection with targets in relation to (i) the condition or extent of any habitat (ii) the status of threatened species and (iii) the environmental conditions for nature regeneration.
11. New section 2C(1)(b) also provides that Scottish Ministers may make provision for and in connection with targets in relation to any other matter relating to the restoration or regeneration of biodiversity that they consider appropriate.
12. While the power to set targets in section 2C(1) is permissive, new section 2C(2) provides that Scottish Ministers must set at least one target in respect of each of the topics described above at paragraph 7, and specify the manner in which, or indicators against which, progress toward and achievement of the target being set is to be measured.
13. New section 2C(3) requires Scottish Ministers to lay draft regulations setting a target for each topic before the Scottish Parliament within 12 months of section 1 coming into force.
14. Section 1 of the Bill inserts a new section 2D into the 2004 Act, which imposes a duty on the Scottish Ministers to ensure that the targets set are met and sets out what is to happen if a target is not met, or it becomes apparent that it will not be possible to meet the target. If a target has not been met or is not likely to be met, Scottish Ministers must lay draft regulations revoking the target and setting a new one. They must also lay a statement before parliament explaining why the target has not, or will not, be met and the steps they intend to take in consequence.
15. Section 1 of the Bill also inserts section 2F into the 2004 Act which sets out the process for setting or amending targets or adjusting topics in respect of which targets must be set.
16. When setting or amending targets or topics, section 2F requires Scottish Ministers to have regard to scientific advice from such persons as the Scottish Ministers consider to be independent and have relevant expertise. It also requires Scottish Ministers to be satisfied that any targets set or amended can be met. The requirement to seek independent expertise does not apply if advice has already been sought in consequence of a review under section 2E(1) and Scottish Ministers

are satisfied that this advice is sufficient. Environmental Standards Scotland (“ESS”) must assess and provide a report on the manner in which Scottish Ministers seek independent advice when setting or amending targets or target topics.

17. Scottish Ministers must, at the same time as laying regulations which amend a target or topic, lay a statement before parliament setting out why they consider it appropriate to amend the target or topic. This requirement does not apply if Scottish Ministers have already laid a statement under section 2D(4)(a) before parliament setting out why a target has not or will not be met and the steps they intend to take alongside draft regulations that revoke the target and set a new one.
18. Inserted section 2F(5) provides that existing targets in regulations can only be revoked or diminished if:
 - Scottish Ministers have laid a statement setting out their view as to why the target has not been met or is no longer possible to meet and the steps they intend to take in consequence.
 - the Scottish Ministers are satisfied that the existing target would have no significant benefit compared with not meeting the target or meeting a diminished target.
 - changes in circumstances or scientific knowledge mean that the target or the manner in which progress toward it is measured is no longer appropriate.

Committee consideration

Framework powers

19. As explained at paragraph 48 of the Policy Memorandum, “The Bill establishes the framework for targets, which will include the high-level topics (target topics) for which specific targets will be set. The actual targets, such as the quantitative figures, will then be provided in secondary legislation. This approach allows for targets to be adapted in the light of changing circumstances and ensure parliamentary scrutiny is maintained with any proposed changes.”
20. Part 1 of the Bill can therefore be properly categorised as “framework legislation”. Framework legislation sets out the principles for a policy but does not include substantial detail on how that policy will be given practical effect. Instead, it seeks to give broad powers to ministers or others to fill in the detail at a later stage.
21. In its DPM, the Scottish Government explains that putting nature restoration targets on a statutory footing is a complex exercise and that, in order for targets to be effective, they must be adaptable. Conferring a power to set statutory targets in subordinate legislation will allow the targets to be adapted in response to prevailing circumstances.
22. According to paragraph 24 of the Policy Memorandum, the Scottish Government is following a four-step process for the selection of targets. It has completed the first two steps: (i) defining the policy framework and (ii) describing the high-level topics that the targets will cover. However, step (iii) assigning indicators to the proposed suite of targets and step (iv) setting the quantifiable values as to targets, will be set out in secondary legislation.

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

Permissive and broad nature of the power in 2C(1)(b)

24. The Scottish Ministers are under a duty to set targets in respect of each of the three topics listed on the face of the Bill, namely: the condition or extent of any habitat, the status of threatened species, and the environmental conditions for nature regeneration. In addition, Scottish Ministers have discretion to bring forward regulations to make provision for and in connection with targets in relation to “Any other matter relating to the restoration or regeneration of biodiversity as they consider appropriate.” This is a very wide permissive power which affords the Scottish Ministers significant discretion to set targets on topics not listed on the face of the Bill.
25. Whilst it is Scottish Ministers who will be responsible for ensuring that the targets which they set are met, these targets cannot exist in the abstract. If Scottish Ministers are to meet those targets, ground level changes will be required to the way land is managed. It is therefore anticipated that the regulations setting the targets will require to be accompanied by provision for the regulation of land, which could have potentially significant impacts on landowners and land managers, who will require to adapt their working practices to ensure compliance with whichever standards might be laid down.
26. At paragraph 22 of the Policy Memorandum, the Scottish Government argues that this approach allows for targets to be adapted in light of the circumstances. The Committee considers that whilst taking this approach will allow for flexibility, the corollary is that it creates uncertainty for those who will require to bear the regulatory burden “on the ground”.
27. The Committee asked several questions about this power:
1. Policy development and framework legislation: mindful of its recent inquiry into framework legislation, and specifically its finding that, “as a general rule, a lack of policy development is not an appropriate justification for introducing framework legislation”, the Committee asked the Government for a progress update regarding target-setting.
 2. Regulation and compliance: the Committee asked what further regulation is planned to enable the targets to be met.
 3. Stakeholder consultation: the Committee asked whether there should be a statutory requirement to consult stakeholders before using this power.
 4. Legislative process: the Committee queried whether it was appropriate to set the targets in subordinate, rather than primary, legislation.
28. In response, the Scottish Government explains as follows:

(1) Policy development and framework legislation:

Due to the complexity and interconnectedness of biodiversity, there is no single, globally agreed target equivalent to Net Zero for climate change. As such, the Bill adopts a framework approach, setting out high-level target topics in primary legislation, with the detailed, quantifiable targets to follow in secondary legislation. This approach, it is argued, allows for flexibility and adaptability as scientific understanding evolves. The Scottish Government cites support for this approach from stakeholders, including NFU Scotland and Scottish Environment LINK, and references ongoing work by expert advisory groups to develop indicators and quantifiable values, which will form the basis of future secondary legislation. However, the response does not provide a clear timeline or specific update on the current stage of policy development.

29. While the Government references consultation outcomes and expert group involvement, it does not provide a clear update on the progress of its policy development, particularly in relation to the specific indicators and quantifiable targets that will underpin the statutory framework. The Committee recommends that the lead committee requests an update on policy development for these targets from the Minister when it comes to take evidence from the Government as part of its Stage 1 consideration of the Bill, and highlights its recommendation that “as a general rule, a lack of policy development is not an appropriate justification for introducing framework legislation”.

30. (2) Regulation and compliance:

The Scottish Government states that no additional regulations are currently planned beyond the secondary legislation that will set the quantitative detail of the targets. Instead, delivery will be driven through the existing Strategic Framework for Biodiversity, which includes 6-year rolling Delivery Plans (actions). The first Delivery Plan, published in November 2024, outlines actions already underway, developed with input from experts and stakeholders. Examples include nutrient management in agriculture, invasive species control, biodiversity-friendly green space management, and sustainable pesticide use. The Scottish Government also highlights a commitment to adaptive management, with regular review and refinement of actions, and a monitoring and evaluation framework to assess progress.

31. The Scottish Government’s response explains that while no further regulations are proposed, a structured and consultative approach is in place to drive delivery through existing mechanisms. The use of delivery plans, developed with stakeholder input, are intended to provide a practical route for translating the targets into action. The examples provided show how existing regulatory and policy tools are being aligned with biodiversity goals.

32. (3) Stakeholder consultation:

The Scottish Government confirmed its commitment to engaging with stakeholders—including landowners and land managers—prior to setting statutory nature restoration targets. It highlighted previous extensive engagement during the development of the Biodiversity Strategy and Delivery Plan and outlined plans for further consultation throughout 2025. This includes

scientific input from the Programme Advisory Group (PAG) and oversight by Environmental Standards Scotland (ESS). While the Government has chosen not to include a statutory requirement to consult in the Bill, it has committed to a structured and inclusive engagement process.

33. The Committee notes the Scottish Government’s assurance that it will undertake wide and meaningful stakeholder engagement before exercising the delegated power to set statutory targets. While the Bill does not include a formal statutory requirement to consult, the Committee considers that the Government’s planned programme of engagement, combined with its established practice of involving scientific and sectoral expertise, represents a reasonable and proportionate approach to stakeholder engagement.

34. (4) Legislative process

The Scottish Government’s response is set out at (1) above.

35. The Committee notes the Scottish Government’s detailed justification for using subordinate legislation to set statutory nature restoration targets, citing the complexity, evolving scientific understanding, and need for flexibility in responding to environmental change. The Government’s approach—embedding high-level target topics in primary legislation while reserving quantifiable detail for secondary legislation—has been supported by stakeholder consultation and expert advice. Given these factors, the Committee accepts the Scottish Government’s rationale for setting targets in subordinate, rather than primary, legislation.

36. **The Committee:**

- **notes the Scottish Government’s answers to the queries raised;**
- **notes that, whilst the Government’s answer to question (1) is detailed and contains information regarding consultation and expert group involvement, it does not provide a clear update on the progress of its policy development on setting the statutory targets. In light of this, the Committee recommends that the lead committee seeks a more detailed progress update in relation to policy development for these targets from the Minister as part of its Stage 1 consideration of the Bill, and highlights its recommendation that “as a general rule, a lack of policy development is not an appropriate justification for introducing framework legislation”;** and
- **is otherwise content with the power in principle and with the choice of parliamentary procedure.**

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

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

37. New section 2E(5) enables the Scottish Ministers to add to or amend the topics in respect of which Scottish Ministers must set targets.
38. New section 2F(1) states that before making regulations to amend the topics, Scottish Ministers must seek and have regard to independent and expert scientific advice. Environmental Standards Scotland (ESS) must assess and provide a report on the manner in which Scottish Ministers seek independent advice when amending target topics and their report must be laid before parliament. This requirement does not apply if the regulations are being made in consequence of a review under section 2E(1) and the Scottish Ministers are satisfied that this advice is sufficient.
39. New section 2F(3) places a duty on Scottish Ministers to lay a statement before the Scottish Parliament, at the same time regulations are made to amend the topics, setting out why it is appropriate to amend the topics. This requirement does not apply if a statement has already been laid under section 2D(4)(a) on Scottish Ministers views as to why a target was not met or is no longer possible to meet.

Committee consideration

40. Whilst the Bill places the duty to meet the targets on Scottish Ministers, if the targets are to be met ground level changes will be required to the way land is managed.
41. It is therefore anticipated that the regulations setting the targets will require to be accompanied by measures for the regulation of land. There may be significant impacts on landowners and land managers who will require to adapt their working practices to ensure compliance with whichever standards might be laid down.
42. As matters stand, there are three topics on the face of the Bill in respect of which landowners can be certain that regulation will be forthcoming (albeit the precise detail is yet unknown). The power in this section to add topics in respect of which targets may be set, or to adjust the topics on the face of the Bill, if exercised, has the potential to increase the regulatory burden on landowners and managers in new and as yet unknown ways. It could feasibly be used to significantly increase the regulation of (and restrict the use of) land in private ownership.
43. It is landowners and managers, and developers and other stakeholders “on the ground” who will have to bear the regulatory burden. They require to be able to plan ahead, sometimes several years. At present, it is not clear what form the regulatory burden will take. Conferring the power to add topics in respect of which further regulation will be brought forward will add to that uncertainty.
44. The Committee raised concerns about:
 1. Legislative process: the Committee queried whether it was appropriate to adjust the target topics in subordinate, rather than primary, legislation.
 2. Stakeholder involvement: the Committee asked whether the Scottish Government planned to involve landowners and land managers in shaping targets.

3. Consultation: the Committee asked whether there should be a statutory requirement to consult stakeholders before using this power
45. In its response, the Scottish Government:
1. argues that this power is necessary to allow flexibility in response to evolving environmental conditions and scientific understanding. It notes that some potential target topics were excluded from the Bill due to current limitations in how they can be measured but may become viable in future. The power is subject to the affirmative procedure and requires a statement to Parliament explaining any changes.
 2. on stakeholder engagement, the Scottish Government confirms its commitment to involving a wide range of stakeholders, including landowners and managers, but does not support a statutory consultation requirement. Instead, it outlines a process involving monitoring, engagement, independent advice, and parliamentary scrutiny.
46. The Committee considers the Scottish Government’s justification for this delegated power to be reasonable. The ability to amend target topics via secondary legislation allows the framework to remain responsive to new evidence and changing environmental priorities. The use of the affirmative procedure and the requirement to lay a statement before Parliament provide appropriate safeguards.
47. The Committee also considers that, while there is no statutory consultation requirement, the Government’s proposed process already includes meaningful engagement and oversight.
- 48. The Committee notes the Scottish Government’s explanation and is content with the power in principle and with the choice of parliamentary procedure.**

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

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Provision

49. Section 2G provides that Environmental Standards Scotland (“ESS”) is to act as an independent reviewing body with the following functions:
- review each report prepared by Scottish Ministers on monitoring progress towards meeting targets (3 yearly progress report);
 - review each report prepared by the Scottish Ministers reviewing all targets and target topics (10 yearly full targets review);
 - assess the manner in which Scottish Ministers seek and use independent

advice in compliance with carrying out reviews for targets and target topics (both ad hoc and 10 yearly reviews);

- prepare a report on the above matters and submit this to Scottish Ministers to then be laid in parliament.

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

Committee consideration

51. Paragraphs 49 and 50 of the DPM explain why this power is being taken:

” The power to specify a different body as the independent review body is considered necessary if, for example, changes were to be made to the remit of ESS at a future date which meant it was no longer appropriate for it to undertake this role. The power is therefore taken for the purpose of futureproofing, ensure accountability and transparency of the process to meeting statutory targets through independent and expert assessment.

In addition, it gives the Scottish Ministers the flexibility to respond to any change in circumstances which may lead to ESS being unable to carry out this function or where another body is deemed to be better placed to undertake this role.

52. ESS was established in law by the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. It is a non-ministerial office of the Scottish Government whose purpose is to scrutinise, investigate and secure improvements in the effectiveness of, and compliance with, environmental law. Its remit effectively replaces the scrutiny and enforcement role over Scotland's environmental law that was previously undertaken by the European Union prior to Brexit.

53. In its report on its Inquiry into Framework Legislation and Henry VIII powers, at paragraph 158, the Committee concluded that “powers allowing flexibility “just in case” are unlikely meet the test for the necessity of the power, and as such be considered inappropriate.” The Committee questioned whether the power to change the independent reviewer falls into this category.

54. The Committee also questioned whether this power was necessary in light of the fact that ESS has a statutory remit and has only recently been established.

55. In its response, the Scottish Government argues that:

- ESS is currently the most appropriate body, but alternatives (e.g., the Climate Change Committee) were considered.
- The power is intended to “future-proof” the legislation, allowing flexibility if ESS’s remit changes or another body becomes more suitable.
- Without this power, any change would require primary legislation, which may not be timely or efficient.
- The power is framed to maintain a balance between flexibility and parliamentary scrutiny.

56. On balance, the Committee considers that the power in section 2G(4) is appropriate because it provides a limited and pragmatic mechanism for future-proofing the legislation, allowing Scottish Ministers to designate a different independent reviewing body if circumstances change, such as a shift in ESS's remit or the emergence of a more suitable body, without requiring primary legislation. This ensures the law remains responsive and effective while maintaining parliamentary oversight through the regulation-making process and does not undermine the core requirement for independent review.

- 57. The Committee notes the Scottish Government's explanation and is content with the power in principle and with the choice of parliamentary procedure.**

Section 2: Power to modify or restate EIA legislation and habitats regulations

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative or Affirmative

Provision

58. Section 2 confers power on the Scottish Ministers to make changes to the Conservation (Natural Habitats, &c.) Regulations 1994 ("habitats regulations") and the legislation that forms the Environmental Impact Assessment regime ("EIA regime") through secondary legislation. To do so, it identifies the legislation that comprises the habitats regulations and EIA regime and allows it to be modified or restated for a limited set of purposes.

Committee consideration

59. The habitats regulations and the EIA regime originate from European Union ("EU") directives, which were implemented in domestic law and later amended, using the section 2(2) power in the European Communities Act 1972, which gave Ministers the power to make regulations to implement EU law. Since the UK's exit from the EU, the power in section 2(2) has been lost, which limits the Scottish Ministers' ability to amend these pieces of legislation through secondary legislation.
60. Section 2 of the Bill confers power on the Scottish Ministers to make changes to the habitats regulations and the EIA regime (so far as within devolved competence) through secondary legislation. To do so, it identifies the legislation that comprises the habitats regulations and EIA regime (the "EIA legislation") and allows for it to be modified (or restated) for a limited set of purposes.
61. Most of the legislation listed was made under the power in section 2(2) of the European Communities Act 1972, which gave Ministers the power to implement EU obligations. The power in section 2(2) ceased to be available upon "IP completion day" on 31 December 2020. Now that the power in section 2(2) is no longer available, a new enabling power is required to allow that body of legislation to be amended going forward. Whilst there are some domestic powers which could be used to amend the habitats regulations and EIA regime, they can only be exercised for specific, or limited purposes and do not provide the flexibility that may be

required to keep the legislation up-to-date and fit for purpose. Furthermore, some of those powers are due to sunset.

62. Since Brexit, the Committee has seen similar enabling powers in Bills in policy areas which have been heavily influenced by EU law. For example, section 2 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 gave the Scottish Ministers the power, by regulations, to modify Common Agricultural Policy legislation, which would previously have been amended under the power in section 2(2). That power can only be used for the purposes of simplifying or improving the (now domestic) CAP regime.
63. There appears to be an error in the DPM, which states that this power is subject to an “either way” procedure. An “either way” power is one where the Scottish Ministers have some discretion regarding whether an instrument made under the power is subject to the negative or the affirmative procedure. “Either way” powers are designed to reflect that the same power may be used to both minor and more substantive matters; from minor adjustments to the creation of significant new schemes. Opting for an either way power aims to strike a balance to ensure that appropriate scrutiny is given to the different types of regulations.
64. In this instance, the power is not an “either way” power because Scottish Ministers do not have any choice – the power is automatically subject to the affirmative in certain circumstances and is otherwise subject to the negative. However, beyond that, the Committee considers that the procedures, and the circumstances in which they apply, are appropriate.

65. The Committee finds the power acceptable in principle and is content with the choice of procedure.

Section 8: Meaning of local authority for the purpose of access rights

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

66. Section 6 of the National Parks (Scotland) Act 2000 (“2000 Act”) provides for the creation of new national parks by means of designation orders, and section 7 of that Act sets out what a designation order must contain.
67. Section 8(4) of the Bill amends section 7 of the 2000 Act to require that, in addition to the matters currently set out in section 7, a designation order must specify whether the National Park Authority is a local authority for the purposes of Part 1 of the Land Reform (Scotland) Act 2003.

Committee consideration

68. Section 8(4) adjusts an existing power in section 7 of the 2000 Act to reflect the fact that the Bill provides that new National Park Authorities can be local authorities for the purposes of land access rights. Section 34(5) of the 2000 Act already provides

that designation orders are subject to the affirmative procedure, and this is not being changed.

69. The Committee is content with the adjustment to the existing power in section 7 of the National Parks (Scotland) Act 2000.

Section 9: Power to make regulations for the issuing of fixed penalty notices

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative unless subject to negative procedure

Provision

70. Section 9(2) inserts section 26A into the 2000 Act. Section 26A gives the Scottish Ministers power to make regulations for the issuing of fixed penalty notices by national park authorities in relation to breaches of certain national park byelaws.

Committee consideration

71. The Scottish Government addresses this power at paragraphs 81 to 103 of the DPM. The Committee agrees that it is appropriate to provide for the issue of fixed penalty notices in regulations. The power is tightly circumscribed in that it may only be used to make provision for fixed penalty notices in relation to offences relating to national park byelaws which are created under schedule 2 of the 2000 Act.
72. Section 26A(5)(r) provides that the regulations may create offences relating to obstruction of persons exercising functions in relation to fixed penalty notices, and failure to provide information requested. For these reasons, the Committee agrees that the higher level of parliamentary scrutiny provided by the affirmative procedure is appropriate, unless the regulations are only removing a reference to a byelaw which has been revoked or specifying a replacement byelaw which is substantially the same as the one it is replacing. The Committee therefore also accepts the reasons set out in the DPM as regards the taking of this power in principle and the choice of procedure applicable to its exercise.

73. The Committee accepts the proposed power in principle and is content with the choice of procedure.

Section 12: Code of practice on deer management

Power conferred on: Scottish Natural Heritage

Power exercisable by: Scottish Natural Heritage

Parliamentary procedure: None

Provision

74. Section 5A of the Deer (Scotland) Act 1996 requires SNH to draw up a code of practice for the purpose of providing practical guidance in respect of deer management. The Bill proposes to amend section 5A to add a new purpose for the code, namely “the circumstances in which it will intervene in the management or control of deer”.

Committee consideration

75. The substantive power in section 5A of the 1996 Act (to draw up a code of practice) is not being changed and nor is the procedure. The amendment simply provides that, in addition to providing practical guidance in respect of deer management, the code will also set out the circumstances in which SNH will intervene in deer management or control.

- 76. The Committee is content with the adjustment to the existing power in section 5A of the Deer (Scotland) Act 1996.**

Section 16: Control schemes

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

77. Section 16(3) replaces Schedule 2 of the Deer (Scotland) Act 1996 (“the 1996 Act”). Part 2 of the new schedule 2 deals with the process to be followed for making, varying or revoking a control scheme (“the proposal”). Although Scottish Natural Heritage (known as NatureScot) lead the process, the Scottish Ministers have a role in considering objections and deciding whether to give approval to a scheme being made, varied or revoked. As part of this process, they may appoint an expert or experts to provide advice on objections (paragraph 9). Paragraph 9(3) provides for regulations to be made about the terms and conditions of appointees.

Committee consideration

78. The Committee agrees that appointees' terms and conditions are matters of administrative detail, which are appropriate to leave to subordinate legislation. The Committee also agrees that the negative procedure provides an appropriate degree of scrutiny.

- 79. The Committee is content with the power in principle and with the choice of procedure.**

Section 28: Register of authorised persons

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

80. Section 17A of the 1996 Act contains a regulation-making power to establish a register of persons competent to shoot deer. Section 28 of the Bill amends section 17A of the 1996 Act to enable regulations to also provide for the registration of authorisations for specified activities. A specified activity is an activity which requires authorisation from SNH (shooting female deer during the close seasons, night shooting, using a vehicle to drive deer and use of a shotgun to shoot deer).
81. The amendments made to section 17A of the 1996 Act do not alter the parliamentary procedure to which regulations made under section 17A are currently subject. Section 47(1) of the 1996 Act provides that subject to section 21(4), any orders or regulations made under the 1996 Act are subject to the negative procedure. Section 17A already sets out, in detail, examples of what the regulations may include and requires consultation of organisations and people with an interest. Section 17A was inserted by the Wildlife and Natural Environment (Scotland) Act 2011, but the register has not yet been established. The Scottish Government is making these amendments with the aim of bringing this register into effect. The Committee considers that the changes to the enabling power do not warrant any change in the procedure which currently applies.

82. The Committee is content with the amendment to the existing power in section 17A of the 1996 Act.

Section 35: Ancillary provisions

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative procedure if amending primary legislation, otherwise negative procedure

Provision

83. This provision enables the Scottish Ministers to make any incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of or in connection with the Bill, or for giving full effect to it. The regulations may make different provision for different purposes and modify any enactment.

Committee consideration

84. This power is drafted in similar terms to the ancillary powers which are taken in most Bills. Its extent is restricted, as it can only be used to give full effect to the Bill as enacted and any provision made under it. The power allows the Scottish Ministers to address any ancillary issues that may arise. Without such a power, any changes would require primary legislation, which would be an inefficient use of the Parliament's time and the Scottish Government's resources.

85. The affirmative procedure applies where the power is exercised to make regulations that amend primary legislation, otherwise the negative procedure applies.

86. The Committee finds the power acceptable in principle and is content with the applicable parliamentary procedure, which will vary depending on whether the power is used to amend primary legislation.

Section 36: Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

87. Some sections of the Bill come into force on the day after Royal Assent. The other provisions of the Bill will come into force on such day as the Scottish Ministers may by regulations appoint. Regulations under this section may make different provision for different purposes and may include transitional, transitory, or saving provision.

Committee consideration

88. This is a standard commencement power.

89. The Committee finds the power acceptable in principle and is content that it will not be subject to any parliamentary procedure.

