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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 (as amended at Stage 2)



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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. This report considers the delegated powers in the [Natural Environment \(Scotland\) Bill](#) ("the Bill") as amended at Stage 2.
2. This Government Bill was introduced on 19 February 2025 and completed Stage 2 on 10 December 2025. The lead committee was the Rural Affairs and Islands Committee. As this report is after Stage 2, it is addressed to the Parliament.

Background

3. The delegated powers in the Bill at Stage 1 were considered by the Committee at its meetings on 29 April and 3 June 2025. The Committee's [report](#) was published on 3 June 2025. The Committee was content with all of the powers in the Bill.
4. Following Stage 2, five new delegated powers have been added to the Bill and three have been revised. The Scottish Government has therefore produced a [Supplementary Delegated Powers Memorandum](#) ("Supplementary DPM") which explains the new and revised delegated powers.
5. The Committee is required by Rule 9.7.9(b) of the Standing Orders to consider and report to the Parliament on new or substantially altered delegated powers after Stage 2.

Review of relevant powers

Section 1: Targets for improving biodiversity – Inserted section 2C: duty to set targets

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision

6. Section 1 of the Bill inserts section 2C into the Nature Conservation (Scotland) Act 2004 (“the 2004 Act”) which places a duty upon the Scottish Ministers to set targets for the purpose of conserving and improving biodiversity.
7. 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.
8. An amendment at Stage 2 revised the description of the second target topic, widening it from “the status of threatened species” to “the status of any species (including in particular those which are or may become threatened)”. A new section 2CA was also added at Stage 2, which requires the Scottish Ministers, when setting targets, to publish a statement explaining their approach to achieving those targets, including the costs, timeline, key partners, links to other policies, monitoring and evaluation measures, potential consequences of failure, and intended remedial actions if targets are not met.

Committee consideration

9. The amendment widens the scope of the power by extending the range of species in respect of which targets may be set. However, it does not alter the essential nature of the power. The framework character of the power, and the appropriateness of setting targets by regulations, was examined by the Committee at Stage 1. Following correspondence with the Scottish Government, the Committee was content with the justification for taking this approach. Within this context, the widening of one of the target topics does not raise new concerns.

10. **The Committee is content with the power, as revised.**

Section 1: Targets for improving biodiversity – Inserted section 2F: process for setting or amending targets or adjusting topics

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative**Revised or new power: Revised****Provision**

11. Section 1 of the Bill 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.
12. At Stage 2 this power was amended so that the Scottish Ministers must consult such persons as they consider likely to be interested or affected before making regulations to set or amend biodiversity targets or to adjust the target topics.

Committee consideration

13. This amendment adds a procedural safeguard to the exercise of this delegated power. The absence of a statutory consultation requirement was an issue raised by the Committee at Stage 1. The introduction of a consultation duty therefore addresses a point previously identified by the Committee.

Committee consideration

14. **The Committee welcomes the revision to the power, and is content with the power, as revised.**

Section 1: Targets for improving biodiversity – Inserted section 2G: Independent review**Power conferred on: Scottish Ministers****Power exercisable by: Regulations made by Scottish statutory instrument****Parliamentary procedure: Affirmative****Revised or new power: Revised****Provision**

15. Section 1 inserts section 2G into the 2004 Act. 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); and

- prepare a report on the above matters and submit this to Scottish Ministers to then be laid in parliament.
16. New section 2G(4) provides that the Scottish Ministers may, by regulations, change who is to act as the independent reviewing body.
17. Section 2G(1) was amended at Stage 2 to place a duty on the Scottish Ministers to respond to reports laid by ESS as soon as reasonably practicable and for Ministers to set out any actions which they intend to take as a result of such a report. Section 2G(2) was amended at Stage 2 to require ESS to submit reports made under section 2G directly to Parliament rather than the Scottish Ministers.

Committee consideration

18. The amendments clarify the process that should be followed once a report by ESS has been made and enhance transparency and accountability to Parliament. The Committee considers that the changes are minor, administrative and do not give rise to any concerns.

19. **The Committee is content with the power, as revised.**

Section 1A: Reports on compliance with biodiversity duty

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: New

Provision

20. Under section 2A of the 2004 Act every public body in Scotland must prepare and publish a biodiversity report triennially. At Stage 2, the Bill was amended to replace the existing section 2A with a new provision. The new section 2A provides that:
- Each specified public body or office holder must prepare and publish a biodiversity report in relation to each specified period; and
 - A biodiversity report is a report on the actions taken by the specified public body or office holder in pursuance of its duty under section 1 during the period to which the report relates.
21. In addition, it confers upon the Scottish Ministers a new power which enables the Scottish Ministers by regulations to make provision about biodiversity reports including, in particular, specifying:
- the public bodies and office holders which are required to prepare and publish a biodiversity report;
 - the periods in relation to which reports are to relate; and

- particular information that must be included in a biodiversity report.
22. New section 2A(5)(b) requires that a report is published by a specified public body or office holder at least once every 3 years.

Committee consideration

23. The Scottish Government explains that the current reporting duty applies so widely it includes a number of smaller public bodies with functions which are entirely unrelated to environmental matters, and some who have no land or buildings (often just using Scottish Government offices and secretariat). It is not necessarily proportionate, or a good use of public resources, to ask these bodies to produce a biodiversity duty report every three years. Taking a power to establish and amend the list of public bodies going forward will ensure that the duty is focused on those bodies which can meaningfully contribute to the process. The Committee is therefore content.

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

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

Revised or new power: Revised

Provision

25. 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. A Stage 2 amendment extends the regulation-making power to allow regulations to confer powers to enter land, other than dwellinghouses, for or in connection with the issuing of fixed penalty notices under national park byelaws.

Committee consideration

26. The power of entry expressly excludes dwellinghouses, ensuring compatibility with Article 1 of Protocol 1 of the ECHR. Given that national park authority staff already have powers of entry in relation to access rights and that fixed penalty notices may apply to byelaws that do not concern access rights, the Committee considers it appears reasonable to provide for proportionate powers of entry to support enforcement in those circumstances.

27. **The Committee is content with the power, as revised.**

Section 27: Offence of shooting a deer with a shotgun

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: New

Provision

28. Section 27 of the Bill creates a new offence of shooting a deer with a shotgun, along with a corresponding ability for Scottish Natural Heritage (“SNH”) to authorise the activity in appropriate circumstances. At introduction, the Bill defined “shotgun” consistent with the definition contained in the Firearms 1968 Act (“the 1968 Act”). During Stage 2, the Bill was amended to remove the statutory definition of “shotgun” from the face of the Bill and instead confer a power on the Scottish Ministers to define the term by regulations. This was done in response to concerns that the definition of shotgun which was to be adopted in the Bill was too narrow and may inadvertently permit the use of certain firearms to shoot deer without an authorisation from SNH because they do not fall within the statutory definition used in the 1968 Act.

Committee consideration

29. The regulation-making power is limited in scope, applying only in the context of deer management under the Deer Scotland Act 1996. It does not have wider impact on firearms legislation generally. In light of this limitation, the Committee is content with the approach taken

30. **The Committee is content with the power in principle and that it will be subject to the affirmative procedure.**

Section 28: Register of authorised persons

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: Revised

Provision

31. Section 17A of the Deer (Scotland) 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).

32. The Stage 2 amendment makes minor changes to the existing regulation-making power, clarifying that regulations may make provision about information to be provided in relation to planned and/or actual cull returns, and the period those returns may cover.

Committee consideration

33. The Committee considers that the amendments are minor in nature and do not materially affect the scope or character of the delegated power. They do not raise delegated-powers concerns.

- 34. The Committee is content with the power, as revised.**

Part 4A: Building regulations: integral swift nest boxes – Section 33B

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: Revised (existing power in other Act)

Provision

35. Section 33B requires the Scottish Ministers to make building regulations under section 1 of the Building (Scotland) Act 2003 to provide for the installation of integral swift nest boxes within 12 months of the Bill receiving Royal Assent.

Committee consideration

36. While no new delegated power is created, the provision compels the Scottish Ministers to exercise an existing regulation-making power in a new way. The Committee considers that it is for the Government to assess and manage any legal or policy risk associated with exercising its existing powers under section 1 in this way.

- 37. The Committee is content with the power and with the choice of parliamentary procedure.**

Part 4D: Scallop shells – Section 33E: Clean scallop shells: exclusion from waste and animal by-product controls

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

38. The provision requires the Scottish Ministers to make regulations providing that clean, tissue-free scallop shells are not treated as waste or animal by-products for specified legislative purposes, and confers further powers to regulate standards, conditions and use.

Committee consideration

39. Section 33E requires the Scottish Ministers to make regulations providing that clean, tissue-free scallop shells are not treated as waste for the purposes of the Environmental Protection Act 1990 (“EPA”). Section 75(2) of the EPA, as read with Article 3(1) of the Waste Framework Directive (which is assimilated EU law), defines waste as “any substance or object which the holder discards, intends to discard, or is required to discard.”
40. Whether a material is “waste” therefore depends on whether the holder discards it, intends to discard it, or is required to discard it. It follows that clean scallop shells can be waste under the EPA definition if they are discarded or intended to be discarded but they are not automatically waste: whether they are waste depends on the holder’s intention and the existence of a reuse pathway.
41. While it would be theoretically possible to carve out an exception to provide that scallop shells were not to be treated as waste in any circumstances, it is not clear to the Committee that such a provision would resolve the practical issues the member who lodged the amendment containing this power seeks to address.
42. Section 33E(1)(a)(ii) and (iii) would also require Ministers to make regulations altering the application of the Waste (Scotland) Regulations 2011 and the Waste (Scotland) Regulations 2012. Both instruments have been revoked. Scottish Ministers cannot be required to make regulations that modify the effect of legislation that no longer exists. Any such obligation would therefore be of no legal effect.
43. Section 33E(1)(b) concerns the Animal By-Products (Enforcement) (Scotland) Regulations 2013. SSI 2013/307 is an enforcement instrument. It does not define animal by-products itself. Instead, it enforces Regulation (EC) No 1069/2009 laying down health rules for animal by-products. Article 2(2)(f) of Regulation 1069/2009 provides: “This Regulation shall not apply to... shells from shellfish with soft tissue and flesh removed.” It follows that clean, tissue-free scallop shells are already excluded from the animal by-products regime under assimilated EU law. A duty requiring Ministers to make regulations to exempt such shells from that regime is therefore unnecessary and would be of no legal effect.
44. The Scottish Government’s Supplementary DPM similarly identifies concerns about the legal effect of the amendment.
45. In light of these matters, the Committee considers the proposed power appears unnecessary in many respects and legally unworkable in others. The Committee therefore recommends that an alternative solution to the issue the amendment seeks to address be found.

- 46. The Committee recommends that an alternative solution to the issue the amendment seeks to address be found.**

