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## Rural Affairs and Islands Committee

# Stage 1 report on the Natural Environment (Scotland) Bill



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# Rural Affairs and Islands Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands, with the exception of matters relating to land reform, natural resources and peatland, Scottish Land Commission, Crown Estate Scotland, and Royal Botanic Garden.



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# Introduction

1. The Natural Environment (Scotland) Bill was introduced on 19 February 2025 by Mairi Gougeon, the Cabinet Secretary for Rural Affairs, Land Reform and Islands. The Scottish Parliament agreed to refer the Bill to the Rural Affairs and Islands Committee for Stage 1 consideration. [An online version of the Bill as well as its accompanying documentation can be found on the Scottish Parliament's website.](#)
2. The Committee considered its approach to Stage 1 scrutiny of the Bill at its meetings on 5 and 12 March. It launched a call for written evidence on the Bill from 14 March to 9 May. [All 171 responses received by the Committee are published on its webpages.](#)
3. The Committee held 12 oral evidence sessions on the Bill from March to June. It heard from the bill team, academics, environmental non-governmental organisations, businesses, public bodies, deer management advocacy groups and regulators. Due to the cross-cutting nature of the Bill, the Committee took concluding evidence from the Scottish Government in three separate sessions: the then Cabinet Secretary for Net Zero and Energy on Parts 1 and 2, the Cabinet Secretary for Rural Affairs, Land Reform and Islands on Part 3, and the Minister for Agriculture and Connectivity on Part 4.
4. Further information about the Committee's oral evidence sessions on the Bill are available in **Annexe A**.
5. The following changes to the Committee's membership occurred during the Committee's Stage 1 scrutiny:
  - On 29 April, Mark Ruskell replaced Ariane Burgess as a member of the Committee.
  - On 19 June, Alasdair Allan replaced Elena Whitham as a member of the Committee.
  - On 2 September, Ariane Burgess replaced Mark Ruskell as member of the Committee. Mark Ruskell attended meetings on 10 and 17 September in his capacity as substitute member for consideration of a draft Stage 1 report
6. On 11 and 12 May, the Committee undertook a fact-finding visit to Cairngorms National Park as part of its engagement work on the Bill. This included holding a community engagement event with park stakeholders. It also visited three estates (Seafield, Dorback and Abernethy) to learn more about the practicalities of how the Bill might impact their approach to land management. [A report summarising the key themes discussed during the visit has been published on the Committee's website.](#)
7. On 21 May, the Committee held an online event with deer practitioners from across Scotland in order to discuss Part 4 of the Bill relating to deer management. [A report of the key points from the meeting is available on the Committee's website.](#)
8. [On 27 May, the Committee](#) wrote to the then Cabinet Secretary for Net Zero and Energy with questions about Parts 1 and 2 of the Bill. The Cabinet Secretary responded on 30 May. [She also wrote to the Committee](#) on 26 June to share

additional evidence on the Bill.

9. The Committee is grateful to all those who supported its scrutiny of the Bill.

## Consideration of the Bill by other parliamentary committees

10. The Delegated Powers and Law Reform (DPLR) Committee considered the Bill's delegated powers memorandum. The memorandum outlines the delegated powers provided for in the legislation, as well as the Scottish Government's rationale for taking the powers and the choice of procedure. On 2 May, the DPLR Committee wrote to the Scottish Government with a number of questions about the Bill and received a reply on 12 May. [The DPLR Committee published a report on the Bill's delegated powers memorandum on 3 June 2025.](#)
11. The Finance and Public Administration (FPA) Committee considered the Bill's financial memorandum which sets out the Bill's estimated costs and financial implications. The FPA Committee held a call for views on the financial memorandum and received 12 responses. [All written responses are published on that Committee's call for views webpage](#) .
12. The FPA Committee agreed not to report on the financial memorandum. It instead shared with the Committee a summary of the key themes received in written evidence, to allow for further consideration. These comments can be found at **Annexe B**.

## Overview of the Bill

13. The Bill aims to support the protection and restoration of Scotland's natural environment, and to assist the delivery of the Scottish Government's net zero and biodiversity objectives. The policy memorandum states:
- ”** Taken together, the provisions in this Bill aim to support the work already being undertaken by land managers, farmers, nature agencies, charities and the stewards of Scotland's land, to restore and protect the natural environment on which everyone in Scotland depends.
14. The Scottish Government carried out separate consultations on the different legislative proposals in the Bill. Provisions relating to statutory biodiversity targets (Part 1) and national parks (Part 3) were consulted on by the Scottish Government in 2023 as part of the [Strategic Framework for Biodiversity: Tackling the Nature Emergency](#) . In 2024, the Scottish Government [consulted on enabling powers for the Environmental Impact Assessment \(EIA\) regime and Habitats Regulations \(Part 2\)](#) . It also [consulted on proposals in Part 4 of the Bill relating to deer management](#) .
15. The Bill as introduced has five parts:
- **Part 1 (targets for improving biodiversity)** – makes provision regarding the creation of nature targets, as well as imposes duties on Scottish Ministers regarding the conditions, objectives and process through which targets must be

developed, and process by which progress towards targets should be monitored and reviewed.

- **Part 2 (powers to modify or restate EIA legislation and Habitats Regulations)** – confers regulation-making powers to Scottish Ministers to modify or restate certain Environmental Impact Assessment (EIA) legislation and Habitats Regulations for certain purposes, including the purpose of facilitating progress towards statutory targets around climate change and biodiversity, or to improve and simplify the operation of the law.
- **Part 3 (National Parks)** – introduces a number of amendments to current national parks legislation to amend the statutory aims of National Parks, creates a duty for public bodies to facilitate the implementation of National Park Plans, as well as confers new regulation-making powers on Scottish Ministers to develop a fixed-penalty notice regime for National Park byelaws.
- **Part 4 (Deer management)** – makes amendments to the aims and purposes of deer management in Scotland. There are provisions that make changes to the current regime of deer management plans, control agreements and control schemes. The Bill also makes amendments to NatureScot’s investigatory powers, authorisations for a number of activities regarding deer management, liability in relation to stray farmed deer and licensing of dealing in venison.
- **Part 5 (General)** – definition of public authorities, ancillary and commencement provisions.

16. Further information can be found in the [Bill briefing published by the Scottish Parliament Information Centre \(SPICe\)](#) .

# Part 1 - Targets for improving Biodiversity

17. Part 1 of the Bill would amend the [Nature Conservation \(Scotland\) Act 2004](#) (the 2004 Act) by inserting provisions relating to targets for improving biodiversity and, specifically, would place a new duty on Scottish Ministers to create statutory targets for improving biodiversity through secondary legislation. It would also establish a legislative framework for managing how statutory targets should be set and, once introduced, how they would be monitored, reviewed, and reported on.
18. Providing a legislative framework for statutory biodiversity targets forms part of the Scottish Government's overarching strategic framework for biodiversity policy. This framework also includes the [Scottish Biodiversity Strategy](#), which sets out the Scottish Government's ambition to halt biodiversity loss by 2030, and to restore and regenerate it by 2045. In the strategy, the Scottish Government commits to publish a series of six yearly rolling Delivery Plans with detailed actions for how the high-level outcomes in the strategy will be achieved in practice. [The first Delivery Plan](#) under the Strategy, for the period 2024-2030, was published in 2024.
19. The Scottish Government has also pledged to conserve 30% of Scotland's terrestrial and marine environments for the purpose of nature restoration by the year 2030, also known as '30 by 30'. This non-statutory commitment came as a result of the UK becoming a party to the Kunming-Montreal Global Biodiversity Framework agreed at the 15th United Nations Biodiversity Conference. Whilst not directly associated with the Bill, the '30 by 30' commitment was discussed in evidence throughout the Committee's Stage 1 deliberations. The Committee also heard support amongst environmental NGOs for placing the commitment on a statutory footing in order to ensure the ambition was given sufficient priority by the Scottish Government.
20. The Net Zero, Energy and Transport Committee scrutinised the draft Scottish Biodiversity Strategy and presented its findings in a letter to the [Scottish Government in 2022](#). It also took evidence on the draft Delivery Plan in 2024 and wrote to the then [Minister for Green Skills, Circular Economy and Biodiversity with its conclusions and recommendations](#).

## Duty to set statutory targets

21. The Bill would insert a new section 2C into the 2004 Act which would give enabling powers to the Scottish Ministers to set, in secondary legislation, statutory targets for improving biodiversity. The policy memorandum states:
  - ” Tackling biodiversity loss requires a whole-of-government and a whole-of-society approach. Defined in the right way, statutory nature restoration 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.
22. The Committee heard evidence highlighting the significant decline in biodiversity that has taken place over recent decades and which has led to the declaration of a 'nature emergency' in Scotland. Many stakeholders, for instance, pointed to the findings of the [2023 State of Nature Scotland Report](#), which described Scotland as

- "amongst those countries where habitats and species have been most depleted by human impacts through history", as a clear sign that significant action was required in order to address the problem.
23. A number of stakeholders also said that non-statutory obligations relating to nature restoration had proved ineffective in halting biodiversity loss. Professor Brooker told the Committee that "We have had non-statutory targets for many years, yet we continue to see a decline in biodiversity". Similarly, RSPB Scotland said "There have been some successes with conservation, but, on the whole, the voluntary approach to reversing biodiversity loss has not been working". The UK Environmental Law Association (UKELA) argued that "all previous voluntary objectives for biodiversity have been missed and the lessons from the climate change legislation is that even statutory targets do not guarantee adequate progress will be made".
  24. As a result, the Committee heard widespread support amongst stakeholders for the introduction of statutory targets. Many argued statutory targets would establish a sense of purpose and focus on tackling the nature emergency in Scotland. Professor Kirsty Park said "If statutory targets help to focus minds on action to do the work on the ground, we will be in a much better place to get to the targets than by any voluntary measures". Evidence also highlighted the ability of statutory targets to increase responsibility to, and accountability of, the Scottish Government to ensure targets were successfully implemented.
  25. Some stakeholders also acknowledged that statutory targets would only prove successful if they were underpinned by a suite of policy measures, funding mechanisms and an enforcement process to drive progress forward. Without this framework, the Joint Nature Conservation Committee (JNCC) told the Committee that "having statutory targets in isolation is pretty pointless".
  26. Some business and industry stakeholders, however, were more cautious about statutory biodiversity targets. NFUS had "serious concerns" about the proposal because "putting nature restoration targets on a statutory footing is extremely complex and could lead to adverse and unintended consequences". Confor said that within the forestry sector there remained "uncertainty about what the targets will be, when they will be developed and how they will relate to other things".
  27. Stakeholders across sectors highlighted the need for appropriate resourcing of implementation, to translate the targets into real action on the ground. The significant potential costs of implementing biodiversity targets in public and private sector contexts were also cited in evidence by Scottish Land & Estates (SLE) and Argyll & Bute Council.
  28. The then Cabinet Secretary for Net Zero and Energy recognised that statutory targets "are not a silver bullet". She said, however, that they were important "to keep successive Governments' eyes on the ball by requiring them to meet the targets and take the actions that underpin the targets".
  29. **The Committee agrees that the rate of nature loss in Scotland over recent decades, described in evidence to us and in publications such the 'State of Nature Scotland Report', is deeply concerning. The voluntary approach to**

**biodiversity targets taken to date has not managed to halt or reverse biodiversity declines. Members support the introduction of statutory targets as a mechanism to galvanise and increase action on the necessary societal-wide changes towards improving biodiversity and tackling the nature emergency.**

30. **At the same time, however, the Committee agrees with the Cabinet Secretary that targets in themselves are not a 'silver bullet' and – whether statutory or not – they must be accompanied by meaningful actions, and reinforced by sufficient public resources, in order to ensure they are achievable. We comment on this in more detail later in this section of the report.**
31. **The Committee notes some stakeholders' concerns about the workability of statutory targets but members expect the process by which targets will be agreed will be inclusive and rigorous.**

## Topics for statutory targets

32. The proposed section 2C(1) would establish three high-level target topics, each of which the Scottish Ministers would be required to set at least one specific target against – "the condition or extent of any habitat"; "the status of threatened species"; "the environmental conditions for nature regeneration". Scottish Ministers may also set targets in relation to "any other matter relating to the restoration or regeneration of biodiversity as they consider appropriate". Provisions made in section 2C(2) of the Bill specify that the Scottish Ministers must set at least one target pertaining to each of the three topic areas. The Scottish Ministers are also conferred regulation-making powers to add or amend the topics areas in section 2C(1) through provisions made in section 2E(5).
33. The three target topics in the Bill were recommended to the Scottish Government by its Biodiversity Programme Advisory Group (PAG) of external experts (alongside other recommendations, set out further below). A copy of the advice from the PAG on suggested target topics was included as an Annexe to the Cabinet Secretary's correspondence to the Committee on 26 June.
34. Evidence received by the Committee broadly agreed with the general parameters of the three topic areas in the Bill. A number of stakeholders said that, collectively, they encompassed the main drivers for, and outcomes of, biodiversity improvement and recovery. Scotland's Rural College (SRUC), for example, said the focus on a specific set of targets "should not only increase understanding as to whether or not the desired progress in biodiversity recovery is being made over time, but will also increase understanding as to where and how that recovery is happening".
35. The Committee heard support in principle for topics pertaining to 'the condition or extent of any habitat' and 'the environmental conditions for nature regeneration'. Most stakeholders also expressed support for the 'catch-all' provision set out in paragraph (b), but some concerns were cited by Scottish Renewables who argued that, "as a catch-all, this could change protection requirements or achievement

dates, which could impact the ability to develop renewable energy projects in specific locations or within certain conditions".

36. In relation to the topic area, "the status of threatened species", many stakeholders raised concerns that this topic area was too narrow (or could be interpreted narrowly in setting targets). The Scottish Wildlife Trust said "The term 'threatened species' would potentially omit species that are of conservation importance". Professor Rob Brooker said "It is important to stress how critical it is that we continue to monitor and report on common species, which often do not get the attention because they are not rare". NatureScot said the species topic could be better worded to include all native species, not just threatened ones, and to include diversity within species, stating "This would better reflect species for which Scotland holds globally important populations, but which may not currently be considered threatened". The Scottish Wildlife Trust suggested the definition of 'threatened species' described in the policy memorandum should be reflected on the face of the Bill.<sup>i</sup>
37. In response to this point, the Cabinet Secretary explained that "We wanted to ensure that we had—and PAG advised us to have—a broader definition, because we did not want to exclude certain species". In written correspondence, she noted that "I recognise the concerns expressed by some stakeholders with regards to the potential for a narrower interpretation and I will consider whether it would be possible to provide further clarity, either within the explanatory notes for the Bill or on the face of the Bill itself ahead of Stage 2".

## Target topics not included in the Bill

38. The PAG also suggested four other targets topics for inclusion in the Bill—
- Ecosystem health and integrity;
  - Citizens and society understanding, benefiting from and contribution to nature;
  - Investment in nature; and
  - Positive outcomes for biodiversity in public sector and government policy.
39. The first two target topics listed above were not included in the Bill because, according to the policy memorandum, "there is not currently an established approach to assessing how targets made under these topics could be measured". However, the Scottish Government has committed to continuing to work with the PAG and NatureScot to explore options for measurement for those topics and, if deemed appropriate for statutory targets, they will be considered for inclusion at a later date.
40. The importance of ensuring target topics relating to 'Ecosystem health and integrity' and 'Citizens and society understanding, benefiting from and contribution to nature'

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<sup>i</sup> "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".

was also highlighted by stakeholders. Professor Davy McCracken said the introduction of an ecosystem health topic would be particularly impactful because it "is not focused on a particular species or a particular habitat" but instead "relates to the conditions or characteristics of those ecosystems and the landscapes in which they sit that are beneficial for the wider range of other biodiversity".

41. Some public bodies and experts that gave evidence to the Committee accepted that developing robust assessment criteria for both proposed topic areas was complex, and agreed with the Scottish Government decision to work towards introducing these topic areas in the future. NatureScot said it was currently working on ecosystem health, particularly in relation to the red-listing of ecosystems, which could be trialled more widely, but highlighted it is "at the beginning of that development". In relation to the potential for targets relating to citizens' relationship with nature, NatureScot suggested consideration of targets relating to "people's access to and enjoyment of nature".
42. The Scottish Government disagreed with the two other target topics recommended by the PAG on the basis they were either deemed unsuitable as a topic area, or could be better pursued using other non-legislative methods.
43. The panel of biodiversity experts discussed the Scottish Government's decision not to bring forward the recommended topic of 'Positive outcomes for biodiversity in public sector and government policy'. Many questioned whether there should be some kind of mechanism in the Bill to drive the mainstreaming of biodiversity policy across Government and public sector bodies. The insufficient progress in mainstreaming biodiversity considerations over recent decades was highlighted by Professor Kirsty Park, who said the fundamental problem "is that most people agree in the abstract that biodiversity is important, but when it comes down to the specifics and the practicalities, there is always something more immediately important".
44. The Committee heard limited support amongst stakeholders for the proposed target topic 'Investment in nature'. Organisations such as Scottish Environment LINK asserted that ensuring scale of finance was essential in delivering the targets, but others asserted this may lead to unintended consequences such as green-washing or could be better achieved outwith the Bill.
45. Environmental Standards Scotland (ESS) suggested that there could be a process, provided for in the Bill, that would require or 'trigger' consideration of new topic areas such as ecosystem health, on the basis of enough evidence or approaches becoming developed enough to support new metrics.

**46. The Committee notes the consensus amongst stakeholders that the proposed three topic areas in section 2C, alongside the flexibility to set targets in other areas relating to the restoration or regeneration of biodiversity, provides a robust framework for setting effective statutory targets. The Committee welcomes the Cabinet Secretary's consideration of how further clarity could be provided regarding the topic area of 'threatened species' and how it is defined. The Committee asks for an update on her thinking in the response to the Stage 1 report.**

**47. The Committee also notes that the Scottish Government has delayed**

**legislating for the two recommended topics areas relating to ecosystem health and citizen engagement until accurate metrics for measuring progress become available. Whilst the Committee understands the Scottish Government's reason for this decision, members believe a clearer timetable for this work would help maintain the focus on supporting biodiversity. The Committee asks for an indicative timetable for how work towards developing indicators for these topic areas will be progressed, and who will be responsible for this work, in advance of Stage 2.**

## Process for setting targets

48. The proposed section 2C(2) of the Bill specifies that the Scottish Ministers must set at least one target pertaining to each of the three topic areas, and must also provide performance indicators (or another means) to benchmark progress made in achieving them.

49. **The Committee has not considered the possible individual targets, or specific associated performance indicators, as part of its Bill scrutiny as it expects this to be the scrutiny focus when the targets are introduced by regulations. The Committee expects the scrutiny of the regulations to be a significant piece of work and that the relevant committee will devote the appropriate amount of time to this.**

## Data and performance indicators

50. The policy memorandum states that the Scottish Ministers, when setting statutory targets in secondary legislation, must ensure that “any targets set against the proposed target topics can be measured, and recommends the most appropriate indicators for measurement”.

51. Given the complicated nature of assessing overall biodiversity trends, stakeholders emphasised the importance of indicators and data collection to ensure statutory targets were robust. Stakeholders asserted that biodiversity monitoring will need to be appropriately resourced, and that the actual delivery of this monitoring is likely to be spread across a large number of actors in the biodiversity community including research institutes, NGOs and citizen science groups. NatureScot told the Committee that at present “There are significant gaps in biodiversity data”. They said “We do not collect a lot of data; we largely support our partners to collect it and we use the data that they collect” and that “there will be costs from collecting more data”.

52. Whilst most experts also acknowledged the complexities of biodiversity data, they stressed that progress had been made over recent years to develop metrics and indicators. Professor Kirsty Park noted “The issue is not that there is a lack of data sets, but that we have many data sets”, which she said could be amalgamated “to produce an overall trend”. Professor Rob Brooker also explained that the three

target topics included in the Bill "are possibly the ones that are easiest to measure, as we already have the datasets and the reporting processes from previous national and international commitments around species and habitats". Technological advances for example around remote sensing monitoring approaches, were highlighted as offering a potential step change in the collection of biodiversity data.

53. In discussing this issue with business and environmental assessment experts, the importance of data coming from industry sectors was also highlighted. The Chartered Institute of Ecology and Environmental Management (CIEEM) highlighted the work of the Scottish Biodiversity Information Forum in making recommendations "around streamlining and centralising databases of biodiversity information" across public and private sources. CIEEM said, "The information is out there, but support is needed to improve access to it and to centralise it".
54. More broadly, some other stakeholders emphasised that there should be enough flexibility in the Bill for targets to be responsive to scientific evidence and gaps in delivery.
55. In written correspondence, the Cabinet Secretary said "part of the process we are currently undertaking is to identify appropriate indicators to use for the targets" which will entail "looking at what existing data is available, the scale at which it is collected and how scientifically robust it is". She outlined several data collection initiatives and citizen science projects that the Scottish Government were currently resourcing which would support improvements in data collection infrastructure, including projects such as the Better Biodiversity Data and the Scottish Land LiDAR Programme.
56. The Cabinet Secretary also said that following the Scottish Biodiversity Information Forum review, the Scottish Government is investing in a longer-term solution to biological data recording, initially through funding the Better Biodiversity Data project being delivered by the National Biodiversity Network Trust.

57. **The Committee welcomes evidence from experts suggesting that indicators for statutory targets can be developed in a robust and accurate manner if sufficient investment is made in adequate data collection methods and the wider community of organisations engaged in this work.**
58. **The Committee recognises the work the Scottish Government has done in this area, including in response to recommendations of the Scottish Biodiversity Information Forum. The Committee asks the Scottish Government for further details about how funding needs will be assessed from April 2026, and whether there are opportunities through the Bill to ensure the resourcing of biodiversity data infrastructure is sustainable.**

## Timeframe for introducing statutory targets

59. Section 2C(3) states that the Scottish Ministers must bring forward draft regulations setting out targets and other criteria within 12 months of the provision coming into force.

60. Many stakeholders raised concerns about the proposed timeline for the Scottish Government to develop and lay statutory target before the Parliament, with some noting the urgency of the 2030 strategic goal to halt biodiversity loss. Scottish Rewilding Alliance explained that under the current provision in the Bill "By the time the secondary legislation appears, a new session of the Scottish Parliament will have begun".

61. Similarly, Professor Davy McCracken told the Committee:

” what will be important specifically with regard to the Bill and the secondary legislation is that the secondary legislation comes forward as soon as possible once the Bill has passed—at least within the space of a year and no more than a year, or we will be hard up against it. We will know by 2030 what the direction of travel is, but, despite all the actions that are happening and have been happening over the past 20 years— they are not happening at scale—we will be very hard pushed to reach any semblance of the halting that we are trying to achieve, as far as possible, by 2030.

62. The Committee heard strong calls from environmental groups and some experts for a clear timeline for the introduction of secondary legislation to establish statutory targets, reflecting the urgency of the nature crisis and the need to avoid delays. To that end, it was recommended to the Committee that the Bill could be strengthened to require Scottish Ministers to introduce targets within 12 months of the Act receiving Royal Assent. Open Seas said this approach would mean it would "not be up to the Scottish Ministers when to start the stop-watch, that discretion should be the Scottish Parliament's especially under a climate and biodiversity emergency", and added that "we do not think a commencement amendment as explained would have any unintended consequences for newly inserted section 2E(7)(a)".

63. In response to this suggestion, the Cabinet Secretary said:

” While I understand the concerns expressed by stakeholders, as the Committee will be aware, it is standard practice that provisions in Bills are commenced by regulations made under the Act. This allows for any practical measures necessary for the implementation of the Act to be put in place in good time, and in advance of the provisions coming into effect. It also ensures that anyone who may be affected by the Act has a reasonable opportunity to acquaint themselves with the final version of the Act and prepare for the provisions coming into force.

**64. The Committee accepts it is important that the Scottish Government takes the time to ensure statutory targets can be introduced effectively, including developing a set of indicators and data collection mechanisms capable of assessing progress against. At the same time, the Committee recognises the need for urgency in tackling the nature emergency, especially as significant delays could impact the delivery of Scottish Government's ambitions to halt biodiversity loss by 2030. The Committee believes its concerns could be meaningfully addressed if the Scottish Government, when responding to this report, sets out a clear timetable for introducing statutory targets.**

## Procedure for setting targets

65. Regulations setting the targets would be subject to the affirmative procedure, with additional requirements on the Scottish Ministers in relation to seeking scientific advice, equating to a 'super-affirmative'. The DPLR Committee confirmed in its Stage 1 report that it was content in principle with the choice of parliamentary procedure described in this provision.

**66. The Committee agrees that target-setting regulations made under proposed section 2C should be considered under the affirmative parliamentary procedure.**

## Duties in relating to meeting targets

67. The proposed section 2D of the 2004 Act would impose a duty on Scottish Ministers "to ensure that each target set under section 2C is met". Section 2D(2) provides that a target is considered to be achieved based on the measures or indicators specified in relation to them. Conversely, if a target is missed, or the Scottish Government believes a target is no longer feasible, the Bill would require the Scottish Ministers to make a statement to the Parliament outlining the reasons for this and any actions they will take as a consequence. Under this provision, Scottish Ministers must also, as soon as reasonably practicable, lay regulations before the Parliament which would revoke and replace the target.

68. The Committee heard concerns from certain stakeholders that the Bill lacked clear repercussions should Scottish Ministers fail to meet the statutory targets. Professor McCracken said that, "if a target is not being met for whatever reason, I question whether a minister making a statement to the Parliament and then saying what might happen to either change that target or put that target back on track is a strong enough consequence of a failure to meet a target".

69. A number of practical suggestions were shared with the Committee as to how enforcement and oversight of targets could be strengthened in the Bill. ESS also noted that the Climate Change (Scotland) Act 2009 (the 2009 Act) puts a duty on Ministers, "if they decide that they are off track, to set out what they will do to catch up" and suggested that a similar requirement should be added to the duty to meet these statutory targets. [Section 35B\(2A\) of the 2009 Act](#) provides that, if "the Scottish Ministers' assessment of progress is such that they consider that it is more likely than not that an emissions reduction target will not be met", they must explain why they consider that to be the case and what they intend to do to ensure the target is met.

**70. The Committee believes it is vital that the Bill establishes an effective and meaningful mechanism to come into operation in any instances where the statutory targets are not achieved or considered to be significantly off-track. The Committee shares the concerns of some stakeholders that the Bill should go further in ensuring robust ministerial accountability for**

**targets across Government, and creating a method for early intervention, similar to the monitoring framework in place for climate change targets, when it appears that insufficient progress is being made. The Committee asks for further details to be provided in response to this report about how the Scottish Government would anticipate responding to a missed target, or where an assessment demonstrates a target is significantly off-track.**

## **Process of reviewing, reporting on and adjusting statutory targets**

71. Section 2E places a requirement on the Scottish Ministers to, at least every three years, prepare and lay before the Scottish Parliament a report setting out progress towards delivering statutory targets. It also makes provision for the Scottish Ministers to carry out a review of targets on an ad-hoc basis. At least every ten years, the Scottish Ministers must also review the statutory targets and the topic areas included in the Bill and prepare a report and make a statement to the Scottish Parliament setting out its findings.
72. The policy memorandum states that the proposed reporting period in the Bill was designed to "align with the existing statutory requirement to report on implementation of the Scottish Biodiversity Strategy, which also takes place every 3 years" and "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" when compared with other options considered by the Scottish Government, such as reporting annually, or every 6 years. It also states, in relation to the proposed review framework, that this would allow "a degree of adaptability to the approach to nature restoration targets while also ensuring a robust approach to accountability is maintained".
73. Section 2E(2) states that when carrying out a review of statutory targets, the Scottish Ministers must also seek scientific advice "from such persons as the Scottish Ministers consider to be independent and to have relevant expertise".
74. Section 2F also makes provision for the Scottish Ministers to seek and have regard to scientific advice when laying regulations that would introduce or amend statutory targets.
75. The explanatory note states that "while the form of such advice to be sought is not specified in the legislation, it is illustrative to note that to inform the development of the Bill, the Scottish Government convened a Biodiversity Programme Advisory Group of independent academics on a voluntary and non-statutory basis with quality assurance provided by the Scientific Advisory Committee of NatureScot".
76. The Committee heard mixed views regarding the proposed reporting mechanism for statutory targets. The National Trust for Scotland recommended that the Bill should introduce annual reporting for targets on the basis that more frequent monitoring would enable the Scottish Government to act earlier if progress was not being made to meet the targets. However, NatureScot said the current approach was "practical" as reporting would be "frequent enough to detect change whilst not being so

frequent as to run the risk that observed changes are considered significant but are in fact the result of normal ecological cycles". Professor Davy McCracken also stated that the proposed three-year reporting cycles were "sensible from an ecological point of view".

77. In respect of the requirements for reviewing targets, some stakeholders raised concerns about the proposed 10-yearly cycle. A shorter timeframe of six years was suggested by a number of experts and environmental organisations, who argued this would align with other reporting cycles, including the Scottish Government's biodiversity delivery plans, reports from public bodies relating to the biodiversity duty and other international biodiversity commitments. Professor Davy McCracken was an advocate for this approach, arguing that "You could wait for 10 years to know whether the data is telling you something, but you will find out much quicker than in 10 years whether you have enough data to tell you anything about that particular target". He suggested a period of six years.
78. The role of independent scientific advice in respect of statutory targets was strongly welcomed in evidence from stakeholders. For example, RSPB Scotland highlighted the important role of PAG and other advisory forums because "targets must be rooted firmly in science and constructed using the best available scientific expertise".
79. Many stakeholders emphasised that the Scottish Ministers must also seek specialist input on targets from outwith the scientific community. For instance, the Committee heard strong calls for requirements around consultation to be extended to include relevant business stakeholders. Scottish & Southern Electricity Networks (SEN) told the Committee that "enabling businesses to contribute to the setting of targets is key ... [because] ... if targets ignore what is already happening and what businesses are already doing, we will miss out on a huge driver of delivering those targets". Similarly, organisations such as SLE, NFUS, Confor and the Scottish Fishermen's Federation (SFF) all indicated they would welcome the opportunity to contribute to the drafting of targets to ensure they were workable within the respective sectors.
80. The Cabinet Secretary said "We view the requirement for at least a 10 year review, and the ability to have an ad-hoc review of the targets, as adequate", noting that "It is necessary to ensure that there is a robust series of monitoring and evaluation of the data and evidence available, without it being overly administratively burdensome".

**81. The Committee notes views from stakeholders that reporting and review requirements in the Bill must be regular enough to provide for accountability and an adaptive framework, but also must allow for sufficient time for ecological trends to become apparent. For this reason, the Committee agrees with the provision of three-year monitoring periods in respect of statutory targets.**

**82. The Committee notes concerns that a ten-year period for the first review of statutory targets may not allow for sufficient accountability in the initial implementation of the new legislation and framework, especially in the context of the 2030 goal to halt nature loss. The Committee suggests that a**

**six-year review period, to align with the Biodiversity Strategy cycle, might alleviate some of the concerns levelled by stakeholders and asks the Scottish Government to consider this point ahead of Stage 2. The Committee also asks the Scottish Government how it will ensure alignment of these review periods in the future, so they operate coherently as a whole.**

83. **The Committee believes that it is essential targets are evidence-based and underpinned by robust data. We are, therefore, supportive of provisions in the Bill to require the Scottish Government to seek and have regard to scientific advice when drawing-up and assessing statutory targets. However, if targets are to be achievable, realistic and formulated effectively, the Committee believes scientific advice must also be combined with knowledge from farmers, land managers and other businesses with a practical and detailed understanding of how targets can be properly implemented. The Committee believes, therefore, that the Bill could be improved at Stage 2 to better reflect the necessity for the Scottish Government to consult and have regard to expertise from specific sectors of the economy with a key role in delivering biodiversity targets.**

## **Independent review of statutory requirements**

84. The proposed section 2G of the 2004 Act would confer on ESS the role of independent review body for statutory biodiversity targets set by Scottish Ministers. ESS's new role would entail scrutinising all reviews undertaken and reports prepared by Scottish Ministers under the proposed section 2E and examining compliance with the obligation to seek independent advice when setting and assessing statutory targets. In exercising these functions, section 2G also requires ESS to submit a report to the Scottish Ministers regarding its duties as an independent review body, which the Scottish Ministers must lay before the Scottish Parliament. The explanatory note outlines that the Scottish Ministers intention is to lay ESS's report at the same time as they lay regulations.
85. The policy memorandum states the reason for providing for this role for the ESS is that, "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 policy memorandum further states that "the designation of an independent review body, able to provide independent and expert assessment, will provide mitigation for these identified risks".
86. ESS told the Committee it was satisfied with taking on this new quality assurance function, noting it was "probably the most appropriate body to fulfil the role, and our status as a non-ministerial office can provide the independent scrutiny and assurance that Parliament is looking for". Evidence from stakeholders also welcomed the designation of an independent review body for statutory targets, and agreed that ESS was the most preferable candidate to perform this role.
87. Some stakeholders were unclear whether ESS was appropriately equipped to

enforce robustly its new duties in relation to statutory targets. For example, Professor McCracken questioned whether ESS "has sufficient power to do something about it if targets are not being met". CIEEM said:

” There also needs to be a clear strategy for enforcement to be undertaken by ESS that goes beyond just reviewing progress. This should include a clear statement of the controls against, and sanctions in the event of, non-compliance or failure to meet targets. The penalties/redress for failing to meet targets should be a significant deterrent. In terms of the ESS review report it is important to ensure that the improvement report process within the Continuity Act is enacted so that Parliament has to take action if targets are not met.

88. ESS told the Committee that "It is an essential part of effective scrutiny that ESS' delivery of its role and remit, including any new functions, is independent, resilient and properly funded so that it can provide effective scrutiny". Specifically, ESS opposed provisions that required its reports on nature targets to be submitted to the Scottish Ministers, who would in turn lay them before the Scottish Parliament. ESS recommended this provision be amended to instead "allow ESS to lay any statutory reports directly before the Scottish Parliament". In addition, it explained that the Bill, as drafted, would only allow Scottish Ministers to initiate a review of the targets, whereas ESS thought "there could also be a provision to ensure that, if we assess that things have gone off track, something will need to happen in response".
89. The Cabinet Secretary said "Officials will continue to engage with the ESS to clarify how the process and functions, as set out on the face of the Bill, will be undertaken in practice" and added that "We will consider with ESS any suggestions relating to additional functions and provisions for them being able to trigger a review of targets". She said that "the Bill does not seek to curtail any existing powers and functions ESS already has" with respect to those described in the Continuity Act.
90. **The Committee welcomes the provisions in the Bill establishing ESS as Independent Review Body for statutory nature targets, and agrees ESS is the appropriate body for this task. The Committee also agrees with ESS that it is important that this role is compatible with its wider functions in relation to environmental governance, and does not negatively impact on those functions or its independence.**
91. **The Committee notes that there were some questions from stakeholders about how ESS's existing enforcement functions would apply in relation to statutory nature targets, and whether those represented sufficient 'sanctions' in the case of failure to meet statutory nature targets. The Committee requests that the Scottish Government, in advance of Stage 2, consider these concerns and set out in detail what enforcement options, including existing powers conferred under the Continuity Act, would be available to ESS as part of its new monitoring responsibilities.**
92. **The Committee supports ESS's suggestions for how its functions can be clarified and strengthened, such as by establishing a mechanism whereby ESS can independently instigate a review of targets, and enabling it to lay its reports under section 2G directly in the Scottish Parliament, and notes the Cabinet Secretary's intention to discuss this further with ESS. The**

**Committee requests an update on the Scottish Government's engagements with ESS regarding its responsibilities ahead of Stage 2.**

## Financial implications for ESS

93. The financial memorandum states that "it is not possible to accurately estimate the ongoing costs to ESS associated with the provision in the Bill" as this will depend on a number of unknown factors. The financial memorandum does, however, provide an indicative total annual cost for ESS in carrying out its new responsibilities of between £664,406 and £1,079,071. Much of this additional cost is comprised from an increase in policy, analytical and scientific staff of between 5.5 and 10 full time equivalent employees, as well as other organisational and consultancy costs.<sup>ii</sup>
94. The potential resource implications for ESS in undertaking its new duties were consistently highlighted in evidence to the Committee and a number of stakeholders raised concerns about a lack of detail in the financial memorandum regarding the ongoing costs of its new role. Fisheries Management Scotland (FMS) said that, "ESS must also be properly and sustainably resourced to carry out regular, meaningful reviews of progress and hold government and public bodies to account". The Royal Society of Edinburgh (RSE) noted that ESS's equivalent body in England "has been able to produce powerful and well-evidenced assessments of government progress on environmental targets due to its resources".
95. When asked by the Committee about this matter, ESS said:
- ” if it is properly resourced and if we get the extra personnel and so on that we need, the new role can complement our existing work. However, we are clear—and our board has been clear in setting out the principle—that, if we are to take on new roles, they need to be properly resourced. If they are not, they will take away from the scrutiny of other areas of environmental law that we are able to undertake.

96. **The Committee notes the Scottish Government's statement in the financial memorandum that it is "not possible to accurately estimate the ongoing costs to ESS associated with the provision in the Bill", especially in the context of the decisions yet to be taken regarding the details of ESS's role as an independent review body. The Committee notes, however, the resource estimates provided and recognises the ongoing costs to ESS will become clearer when the targets are set. This uncertainty around costs has limited the Parliament's ability to consider fully the financial implications of Part 1. The Committee expects that updated information on the resource implications for ESS would be brought forward when the regulations are laid.**
97. **The Committee agrees that, for ESS to carry out its role as an independent**

ii The Committee notes that ESS also discussed the breadth of this estimate (and what might be included within the minimum and maximum levels) with the Net Zero, Energy and Transport Committee in an annual evidence session on 25 March 2025.

**review body, it must have the capacity and resources to do so effectively.**

## **Other issues considered by the Committee on Part 1**

98. This section highlights a number of additional issues raised in evidence with the Committee.
99. One issue raised in evidence was how statutory targets would function in the marine environment. The Scottish Government confirmed in written correspondence that the powers in the Bill could be used to set biodiversity targets in the inshore marine environment (up to 12 nautical miles from the coast), but not the offshore marine environment as that would fall outwith the competence of the Scottish Parliament. In oral evidence, the Cabinet Secretary confirmed that targets could not be set for the offshore marine environment under the UK Environment Act 2021, although the four UK administrations worked together on achieving good environmental status in the marine environment.

**100. The Committee notes a legislative gap relating to nature targets on the offshore marine environment and asks the Scottish Government for clarity about how this could be addressed.**

101. The Committee heard concerns about the broader issue of how public bodies are accountable and support delivery around biodiversity, particularly around the biodiversity duty set out in the 2004 Act. Although not directly linked to Part 1, several environmental organisations suggested public bodies' accountability should be strengthened to support delivery and mainstreaming. For example, Scottish Environment LINK suggested that the biodiversity duty could be strengthened in a similar way to changes in Part 3 of the Bill, which 'upgrade' duties on public bodies to "facilitate the implementation of" national park plans instead of "have regard to" them.
102. Public bodies also have a statutory requirement to report on how they are fulfilling their obligations with respect to the biodiversity duty every three years. The Committee discussed the effectiveness of this reporting duty with public bodies in oral evidence. Crown Estate Scotland said that whilst compiling the report was helpful internally to assess activity and for communications, there are not established mechanisms for receiving feedback on or scrutiny of the report, or a "joined-up conversation" about what additional work public bodies could be doing.

## Part 2 – power to modify or restate environmental impact assessment legislation and habitats regulations

103. Part 2 of the Bill would give the Scottish Ministers the power to modify or restate environmental impact assessment (EIA) legislation or the Conservation (Natural Habitats, &c.) Regulations 1994 (the Habitats Regulations). Together, these regimes are key aspects of the legal frameworks that underpin the environmental protection and assessment processes in Scotland for land and territorial waters out to 12 nautical miles.


### The EIA legislation and habitats regulations

104. The policy memorandum states the EIA regime “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”.
105. The EIA regime covers the following sectors: agriculture (including land drainage and irrigation projects); forestry; marine licensing; planning; ports and harbours; transports and works projects; trunk roads; flood management; and electricity works. The Bill's provisions would apply to all these sectors except electricity works, which is a reserved competence.
106. The Habitats Regulations aim to conserve natural habitats and wild flora and fauna. They establish a general duty on the Scottish Ministers, competent authorities and statutory advisers to comply with the EU habitats and wild birds directives; provide for the designation and management of protected areas (or ‘designated sites’ – including special areas of conservation and special protection areas) and set out protections and licensing rules for certain animal and plant species. Unlike the EIA regime, therefore, which seeks to inform the decision-making process, the Habitats Regulations require the decision maker to refuse permission for a proposal in certain circumstances.
107. [More detailed information on the how EIA and habitats regulations operate is provided in the SPICe Bill briefing.](#) In addition, the [Law Society of Scotland gave an overview of the two regimes when it gave evidence on 7 May 2025.](#)
108. The SPICe Bill briefing also sets out the process for strategic environmental assessments which generally mirrors the EIA process, but for plans and programmes rather than individual projects. Also deriving from EU law, strategic environmental assessments were implemented within a broader range of plans and programmes than specified in the EU directive and so were provided for under primary legislation. This legislation does not contain powers to make amendments by regulations so any changes to the strategic environmental assessments process must be made by primary legislation.

## Background on the Bill

109. Both the EIA regime and Habitats Regulations originated in EU directives and were implemented in domestic law, and later amended, using section 2(2) of the European Communities Act 1972 (the 1972 Act).
110. The 1972 Act was repealed when the UK left the EU. Whilst there are existing powers available to the Scottish Ministers to amend the EIA regime and Habitats Regulations, the policy memorandum states these “can only be exercised for specific, or limited, purposes and do not provide the Scottish Ministers with the flexibility which may be required in future to ensure the legislation remains fit for purpose”. The existing powers and their limitations are detailed in paragraphs 153 – 166 of the policy memorandum and further detail is also included in the SPICe Bill briefing.
111. One of these powers is the [section 1\(1\) ‘keeping pace power’ in the UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#). This power could be used to amend the relevant legislation for the purposes of alignment with EU law, but it will sunset, or expire, on 29 March 2027. The 2021 Continuity Act does provide provision, however, for this to be extended up to, but not later than, 29 March 2031.
112. The Scottish Government believes, therefore, that it is “timely to introduce a bespoke power” in order to fill the “legislative gap” left as a result of EU exit and the repeal of the 1972 Act.

## The Bill provisions

113. Section 2 of the Bill would provide the Scottish Ministers with the power to make regulations to modify or restate the EIA legislation or the Habitats Regulations (section 2(1)). The relevant EIA legislation is detailed in section 4(a) of the Bill. The policy memorandum states that the purpose of the proposed section 2(1) power is:
  -  To allow for future amendments to the relevant legislation in light of evolving circumstances, or to address existing issues or efficiencies. 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.
114. Section 4(c) states that “‘modify’ includes to amend, revoke and repeal”. The explanatory notes states that the power to restate enables the Scottish Ministers to rewrite a provision without changing its legal effect.
115. The policy memorandum, whilst recognising the Scottish Government cannot anticipate every future use of the power, sets out possible examples for the use of section 2(1) regulations. These relate to net zero and offshore wind, forestry, consistency with other UK regimes, electronic reports and creating flexibility for protected sites.
116. Section 2(2) of the Bill would provide that the Scottish Ministers could only exercise the section 2(1) power if it accords with one or more of the six purposes set out at

section 3.

117. Section 2(5) would require the Scottish Ministers to consult those “who may have an interest in, or otherwise be affected by, the regulations”. Section 2(6) provides for the procedure under which section 2(1) regulations must be laid.
118. The financial memorandum states the Scottish Government “has not committed to using this power in the short term” which makes it challenging to estimate accurately the costs and savings associated with the use of the power. Based on recent consultations and current costs, however, it suggests that the total maximum costs associated each time the power is exercised would be £92,573.

## Issues raised during the Committee's consideration

### The need for additional powers to modify or restate EIA legislation and habitats regulations

119. Much of the debate on Part 2 was focused around the different views about the need for additional powers to make changes to the Habitats Regulations. The first stakeholders who gave evidence to the Committee, representatives from the two national parks and Argyll and Bute Council on 2 April 2025, strongly argued that existing powers were not available to make changes to designated sites. They supported the Bill's provisions to provide flexibility to make changes and believed this would allow the national park authorities (NPAs) and local authorities to respond more effectively to the challenges of climate change. Cairngorms NPA explained:
- ” Some designations [in the Cairngorms National Park] are relatively old. Some of them are for a single species or a single feature in certain places. If we are looking at big-scale changes around ecosystem health and the change that we need to make because of climate change, or at what we want in terms of changing land use, the designations will need a bit of flexibility in them so that we can make sure that things happen. An example would be a river system that is a special area of conservation and that needs riparian woodland planted on it to reduce water temperatures, so that salmon can survive. In an SAC [special area of conservation] open habitats that has no woodland features you can get into some strange conversations about how to make that happen. We need to think about flexibility within the system to make sure that we can look at an area and not just say, “Well, it was designated in 1975 and that's how it will stay forever”. We need to think about the future. It is a changing landscape out there and a changing climate, and we need a bit of flexibility in the system, with the right checks and balances, to make sure that change happens. If we are to achieve our 2030 and 2045 targets for biodiversity, the designation system needs to have flexibility built into it.
120. Representatives from the public bodies who gave evidence on 28 May 2025 agreed that the existing powers are insufficient. NatureScot supported a mechanism providing more flexibility and greater clarity on how the existing powers can be exercised. Scottish Forestry gave the example of amending the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 to enable

enforcement action to be taken against landowners where it is difficult to identify the person committing the act on the land.

121. All other stakeholders who gave oral evidence to the Committee, however, challenged the Scottish Government's view that it does not have sufficient powers to modify or restate EIA legislation and the Habitats Regulations.
122. Many stakeholders sought to emphasise the overall importance of both the EIA regime and the Habitats Regulations in Scotland in protecting biodiversity and the wider environment, often linking this to the need to take a cautious (or 'precautionary') approach to reform. For example, Professor McCracken said that "both the EIA legislation and the Habitats Regulations are fundamental, not just to Scottish legislation but to legislation across the UK and in the EU".
123. Picking up on the issue of greater flexibility for designated sites, the panel of academics and experts who gave evidence on 7 May 2025 did not recognise the concerns expressed by the NPAs and other public bodies. Professor Kirsty Park said she had not come across the problem of designations having negative consequences for the non-designated species at those sites and Professor Davy McCracken told the Committee he was "perplexed" by the suggestion. That panel agreed that, whilst the accompanying guidance could be improved, the Habitats Regulations already have processes in place, including the ability to change a designation if a species has moved on.
124. Similarly, environmental NGOs, when they gave evidence on 14 May 2025, agreed that there is sufficient flexibility within the Habitats Regulations and highlighted the duty on Scottish Ministers to adapt the site network in [regulation 9D of the Habitats Regulations, as amended by the Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019](#). Regulation 9D provides for '*Management objectives of the UK site network*' and regulation 9D(1) states that "Scottish Ministers must, in co-operation with any other authority having a corresponding responsibility, manage, and where necessary adapt, the UK site network, so far as it consists of European sites in Scotland, with a view to contributing to the achievement of the management objectives of the UK site network". RSPB Scotland said that it "cannot find any justification in existing regulations or other pieces of legislation that point to the need for the powers in the Bill".
125. In relation to the role of the Habitats Regulations in assessing and consenting to proposed developments, the environmental NGOs also highlighted the backstop, or "last line of defence", provided by the public interest test included in the Habitats Regulations. These allow for adverse environmental impacts on the integrity of a designated site where there are imperative reasons of overriding public interest (IROPI). RSPB Scotland argued these provide sufficient flexibility within the Habitats Regulations and are "exceptions baked into the regulations".
126. The planning and industry stakeholders who gave evidence on 21 May 2025 also agreed that sufficient flexibility already exists in the Habitats Regulations. CIEEM stated that the Habitats Regulations are "far more flexible than is indicated in the policy memorandum" and that the existing flexibility in the Habitats Regulations is "underutilised". CIEEM gave an example of the upgrading of the A30 between Mallaig and Fort William, where the loss of nearly eight hectares of oak woodland in a special area of conservation was permitted because of the overriding public

interest and compensatory measures. Stakeholders suggested that instead, in many cases, sufficient improvements could be made through guidance; for example, the Scottish Property Federation said that “none of the clarifications that industry and house builders, in particular, would welcome need to be in legislation” and that “they can all be provided through policy and guidance, which are much more agile in keeping pace with economic requirements”. Many of the environmental NGOs also supported improved guidance on the Habitats Regulations.

127. Some witnesses highlighted the powers in the Energy Act 2023 and the current Planning and Infrastructure Bill, both UK legislation which would apply to Scotland in certain areas (broadly, in relation to offshore wind and electricity infrastructure). RSPB Scotland believed these would provide sufficient powers to make changes where the objective related to the expansion of renewable energy and net zero targets.
128. CIEEM also thought that “none of the proposed changes addresses the fundamental issues around the implementation in practice of EIAs and the habitats regulations ... the real issues are around capacity”. The issue of public bodies’ capacity was also raised by Professor Beth Scott, who highlighted the “depletion of the marine directorate” where the loss of capacity is “unimaginable”.
129. Most NGO and industry representatives, when asked, expressed their preference for Part 2 to be removed from the Bill.
130. Some stakeholders also suggested that, rather than making these changes via regulations, any changes – especially significant changes – to the EIA regime and Habitats Regulations should instead be made by primary legislation. It was also suggested that the ‘keeping pace power’ in the 2021 Continuity Act could be amended to remove the sunset clause.
131. Professor Davy McCracken also called for a review on the operation of the EIA legislation and Habitats Regulations before any changes are made. He said “let us check that they are fit for purpose and are being used effectively, before we start thinking about changing them, certainly in as broad and as marked a way as seems to be suggested in the Bill”. CIEEM, as well as the environmental NGO stakeholders, referred to the EU regulatory fitness and performance programme review of the Habitats Regulations 10 years ago which “deemed [the Habitats Regulations] fit for purpose and they have been rigorously tested in case law”.
132. When she appeared before the Committee on 4 June 2025, the Cabinet Secretary spoke to the Part 2 provisions. She explained they would “allow the Scottish Government to respond to evolving circumstances; to be dynamic and agile in response to particular changes, needs, trends and impacts; and to maintain and advance environmental standards, responding to decisions that have been made in the past that are no longer relevant”.
133. Specifically discussing the issue of the flexibility of designations under the Habitats Regulations, she and her officials set out the limitations of the current powers available to the Scottish Ministers. For example, there are no provisions in the current Habitats Regulations to de-designate sites, amend the boundaries of sites or remove features from sites. The Cabinet Secretary said it was the Scottish Government's legal assessment that these changes could not be achieved through

guidance, and that the Scottish Government took a different view to guidance that had been produced by DEFRA interpreting equivalent amendments made to the Habitats Regulations in England.

134. The Cabinet Secretary rebutted suggestions that the Scottish Government already has the powers to make these changes through regulation 9D. She stated that the Scottish Government has “done an analysis of regulation 9D and we do not believe that it gives us the flexibility to respond in an agile way to situations on the ground and in the sea”. The Cabinet Secretary continued, saying that:

” our assessment is that the provisions in regulation 9D do not permit individual sites in the site network to be adapted in the ways that might be required to mitigate the effects of climate change. They do not allow us to modify the boundaries of sites or to remove features from site citations.

135. A Scottish Government official highlighted, by comparison, the detail set out in the Nature Conservation (Scotland) Act 2004 regarding how special sites of scientific interest could be amended. He stated that the same level of detailed provision was necessary to provide for the flexibility for designated sites under the Habitats Regulations. He gave the Scottish Government's view that, “rather than us hooking all that process on to the words “where necessary adapt”, there needs to be clarity in legislation about how we can amend the network in the ways that we might need to”.

136. The Committee also asked the Scottish Government in written correspondence why more specific proposals had not been brought forward to address the issue of inflexibility of designated sites, given the perceived issues around this were referenced and consulted on in a Government consultation in 2024 on meeting the ‘30 by 30’ biodiversity target. The Cabinet Secretary replied that the proposed measures, whilst they could have addressed some immediately known issues, would not address “some of the deeper-rooted concerns”. The Scottish Government had, therefore, taken the decision not to progress protected areas reform as part of this Bill, “but to look to a future Parliament, depending on their priorities, to undertake a more fundamental review and reform of the legislative framework covering nature conservation, including protected areas”.

137. Regarding the issue of the need for the power in the context of offshore wind (as suggested in the policy memorandum), the Cabinet Secretary said that those issues had now been addressed through the powers in the Energy Act 2023 and Planning and Infrastructure Bill. However, she argued that the power in Part 2 was still needed to ‘future-proof’ the legislation, in relation to nascent technologies such as wave power.

138. The Committee asked the Cabinet Secretary about the Scottish Government's approach of enabling changes to be made to the relevant legislation via regulations, rather than in primary legislation, as and when required. The Cabinet Secretary responded by stating that introducing primary legislation for all changes “would be disproportionate and unworkable, and it is not an agile or responsive way to respond to critical and dynamically changing situations”.

## The scope of the section 2(1) power

139. Strong concerns were raised with the Committee relating to the broad scope of the proposed power and whether the safeguards included in the Bill – namely the section 3 purposes and provisions for parliamentary scrutiny – were appropriate.
140. Professor Rob Brooker told the Committee that “it is alarming to have what appears to be quite an open-ended piece of legislation that relates to something so important and precious”. He went on to say that the examples given in the policy memorandum about how the power could be used:
- ” range from being able to submit an EIA in PDF form, to enabling large-scale renewables in the North Sea, and everything in between. Those examples illustrate the potential breadth of the impact of the changes.
141. Other stakeholders agreed. Scottish Environment LINK argued that, “fundamentally, the Bill will hand an extremely broad enabling power to ministers”. The SFF described the Bill “a very broad suite of powers, but there is very little detail, aside from some broad but by no means comprehensive examples”. The witness from the JNCC – the UK-wide statutory nature adviser – told members she was “very much in two minds about the changes”, noting that some changes were practical but that “the Habitats Regulations, in particular, are vitally important. ... so we alter them at our peril—at least, we should do so with very great caution”. ESS also raised concerns about the scope of the proposed power.
142. Stakeholders, including ESS, sought greater clarity on the reasons for the wide scope of the power. The Law Society told the Committee that:
- ” The principle of updating, realigning and adjusting to a degree, particularly post-Brexit, and ensuring that the modifications allow everything to work, is understood. The issue arises where the Bill goes further than that. If there is seen to be a need to do something far more transformative than that, the purpose needs to be understood. The EIA system has been going for 40-plus years ... It is a radical thing to start to pull it apart.
143. It was widely recognised that the current Scottish Government did not intend to use the proposed powers to dilute or remove environmental protections, however, the powers would be available to future governments who may have different priorities. Open Seas suggested “we would be held hostage to fortune in relation to a future government”.
144. The Committee heard specific concerns relating to the use of the power under the proposed purpose set out at section 3(b) to facilitate progress towards any statutory target relating to the environment, climate or biodiversity (which references “in particular” the net zero target). Many stakeholders felt that this wording suggested that nature protections may be weakened in future in pursuit of climate ambitions; this specific concern was raised by each panel that gave evidence to the Committee. Professor Kirsty Park suggested that “the fact that net zero is raised in the policy memorandum exactly speaks to” this concern.
145. Argyll and Bute Council referred to concerns that “the rush to net zero overrides environmental protections”; it said it was a “question of balance” and called for “some safeguards to stop complete regression to no protection for designated

sites”. Scottish Environment LINK asked that “we do not unintentionally play off nature against climate”. Professor Beth Scott highlighted that:

” 30 or 40 per cent of the North Sea is covered by wind farms. The sheer scale of that causes tension. The developments have run out of mitigation and are running out of compensation and they are up against a wall because of those laws. They cannot expand without something changing. There is a tension around the fact that, if we do not do things to deal with climate change, the biodiversity crisis will only get worse. We know that climate change is the worst enemy at the moment, but we do not have the scientific evidence to give us complete clarity about the cumulative effects of that level of offshore wind development and that amount of energy being taken out of the oceans. That creates a massive tension.

146. The [SFF said in its written evidence](#) that:

” it is hard to conclude anything other than this part of the Bill, combined with the powers granted to the Scottish Ministers through the UK Energy Act 2023, is also a Trojan horse to the fast-tracking of offshore energy development in Scottish waters, which is currently constrained in the eyes of both developers and government as being bogged down by environmental legislation and bureaucracy.

147. The Committee also heard concerns relating the use of the power under the proposed purpose set out at section 3(c) to ensure consistency or compatibility with other legal regimes. The policy memorandum sets out the context of the UK Levelling-up and Regeneration Act 2023 which provides UK Ministers with the power to replace the EIA regime with a system of environmental outcome reports. The Act also gives Scottish Ministers (and the Secretary of State, with the Scottish Ministers' consent) powers to make regulations for environmental outcome reports in Scotland, including powers to amend, repeal or revoke all Scottish EIA legislation or the Habitats Regulations (but, importantly, only in relation to the interaction of those regimes with environmental outcome reports regulations). The policy memorandum states that:

” 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.<sup>iii</sup>

148. The benefits of a consistent and compatible approach were recognised, for example by the JNCC, as the environment does not “respect boundaries” and that it would be practical for compensation measures to be shared across these boundaries. SSEN told the Committee that, as EORs are developed by the UK Government “it is really important that any divergence in those requirements does not create additional complexity, duplication or situations that could really affect the timing and delivery of critically important, nationally significant infrastructure”. SSEN suggested that “any divergence could have really big knock-on impacts”.

149. Concerns were raised, however, in each evidence session around providing specific

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iii The UK Energy Act 2023 already provides the Scottish Ministers with these powers.

delegated powers to change Scottish law to ensure compatibility with UK law, especially in the context of possible dilutions to environmental protection passed in the UK Parliament. For example, the Law Society said that, while “it is important to link what Scotland does with what England is doing ... there is a difference between the minor mechanical tweaks and the more wholesale changes”. Referring to “changes to habitats regulations for planning down south”, RSPB Scotland said that “we do not want the Scottish Government to put something in the Bill that would allow our most important protections to be dragged down by progress stalling in other places”. The Scottish Wildlife Trust asked “if the Government changed down south, would we race to the bottom with it?”

150. Many stakeholders also emphasised the importance of continuing consistency with EU environmental law and standards and highlighted the 2021 Continuity Act and ‘keeping pace power’ in that regard. The Law Society thought that “tinkering is potentially dangerous here and [any change] needs to be thought through thoroughly”.
151. Stakeholders also highlighted the significant breadth of the other section 3 purposes such as “to improve or simplify the operation of the law” (section 3(f)). For example, Scottish Environment LINK said that:
- ” Whether something improves or simplifies the operation of the law is a very subjective judgement. However, if a future government thought that radically weakening the effect of the Habitats Regulations would improve the operation of the law, it would be able to do so under the bill as it is currently drafted.

## **Calls for strengthened safeguards on the use of the section 2(1) power**

152. All stakeholders agreed safeguards or checks and balances should be included in the Bill relating to use of the section 2(1) power. Some stakeholders noted that the power in the 1972 Act, which the Bill seeks to replace, was itself limited as changes could only be made within the framework of the relevant EU Directives which thus inherently included a ‘backstop’ in relation to environmental standards. Open Seas suggested the section 2(1) power, as drafted without such a backstop, should be seen as a “policy choice”, not a technical change.
153. Notwithstanding the views of many stakeholders that the section 2(1) power is unnecessary and should either be removed from the Bill or that a full review should be undertaken before the power is used, there was significant support for a non-regression clause or similar alternative environmental safeguard from the panel of academics and experts, environmental NGOs, industry representatives and public bodies, including NatureScot and SEPA. A non-regression clause is described in the policy memorandum as a requirement that any regulations made using the power must maintain or improve overall levels of environmental protection. The policy memorandum states the Scottish Government did not include a non-regression clause in the Bill because it “would significantly limit the flexibility of the power” and “likely be very difficult to demonstrate a non-regression provision is met in some cases”.
154. Non-regression clauses are included in key UK legislation. The [Environment Act](#)

2021 requires the Secretary of State, when making any changes to the Habitats Regulations in England, to make a statement explaining why the UK Government is satisfied the proposed regulations do not reduce the level of environmental protection provided by the Habitats Regulations. The [Levelling-up and Regeneration Act 2023](#) requires that the Scottish Ministers or Secretary of State, when making environmental outcome reports regulations, must be satisfied that the regulations will not diminish overall environmental protection.

155. Cairngorms NPA thought it was important that any safeguard would not mean “keeping the stasis” and preventing change because, if a non-regression clause “is trying to say that we will keep every feature exactly as it is, we are on a hiding to nothing and we will not deliver on the targets”. The Law Society highlighted the requirement in the 2021 Continuity Act for the Scottish Government to accord with five core environmental principles.
156. A number of suggestions for safeguards other than a non-regression clause were put forward. A large number of stakeholders suggested the Bill should be amended to give the purpose at section 3(a) – to maintain or advance standards – priority over the remaining purposes, so that “the provisions in section 3(b) to (f) can be used only in pursuit of the section 3(a) purpose which would be primary”. Environmental NGOs highlighted the information included in the SPICe Bill briefing which compared the Bill's provisions with the safeguards set out in other legislation. RSPB Scotland suggested a requirement on the Scottish Government to make a statement to accompany any regulations explaining its reasons for changing the EIA regime or the Habitats Regulations.
157. A large number of stakeholders suggested the Scottish Ministers should be required to seek independent expert advice before making regulations; some suggested public consultation should also be required. The Law Society told the Committee that “it is terribly important that changes are consulted on”. RSPB Scotland also suggested the proposed power should be changed to ‘amend’ rather than ‘modify’ or ‘restate’. Changes to the parliamentary scrutiny of the regulations were also suggested; these are considered in more detail later in this part of the report.
158. ESS called for “an overarching principle of environmental protection and environmental enhancement” in order to “give a bit of assurance about how the power would be used in the longer term”. ESS also confirmed its remit would allow it to look at the operation and effectiveness of the EIA regime and Habitats Regulations.
159. A number of witnesses indicated these perceived tensions and concerns over insufficient safeguards could partly be resolved by a clearer and more strategic approach to managing competing demands on land and the marine space. SEPA told members that:

” It is incredibly hard to step through the trade-offs, tensions and choices on that. There is no clear policy direction or steer. Guidance exists, but it would be incredibly helpful for Scotland to carry out spatial planning to decide on the areas where we will go strongly for improving nature and biodiversity and the areas where we will enable economic development.
160. The Marine Conservation Society similarly commented:

- ” That highlights what is sorely lacking in the marine space, which is a proper spatial management framework to enable assessment of the cumulative impacts and prioritisation of effective and appropriate use of different parts of the marine environment, different seabed types and so on.
161. When the Cabinet Secretary appeared before the Committee, she stressed the Scottish Government's commitment to the environmental protections provided by the EIA regime and Habitats Regulations. She confirmed that the “intention behind the power is in no way to dilute environmental protections” and that the Scottish Government has “perhaps not communicated the importance of that [the case for taking the power] well enough to the environmental NGOs, and I want to have those conversations with them and give them assurances”.
162. The Cabinet Secretary stressed that the section 2(1) power could only be used for one or more of the purposes set out in section 3. She argued these purposes provided “robust” safeguards, which would prevent the power being used “willy-nilly” or “in a nefarious way”.
163. The Cabinet Secretary also set out her reasons for not including an environmental non-regression provision:
- ” We do not believe that non-regression is completely and utterly objective. There are no easy answers when it comes to environmental protection. We believe that decisions should be taken on a case-by-case basis. There can be very complex and competing issues within particular areas, so, in order to make the right decision about what to do, you must look at things case by case, and a non-regression clause would limit the ability to do that.
164. The Cabinet Secretary accepted that “there might be other avenues that we can consider in respect of safeguarding” and confirmed she was willing to explore alternative approaches, such as provided for in the UK Environment Act 2021 powers to amend the registration, evaluation, authorisation and restriction of chemicals (REACH) regulations, which includes setting out “protected provisions” within the REACH regulation that cannot be amended in secondary legislation, effectively bringing some of the core aims and principles of those regulations into primary legislation.
165. In relation to concerns around possible tensions between climate change targets and biodiversity protections under the section 3(b) purpose, the Cabinet Secretary said that “there is no fundamental incompatibility ... because the two go absolutely hand in hand”.
166. In relation to concerns around the section 3(c) purpose to ensure consistency or compatibility with other regimes, the Cabinet Secretary confirmed that “the most likely circumstance in which the Scottish Government would need to consider secondary legislation would be to align with a UK environmental outcome report regime and that would probably happen in relation to the marine environment”. She spoke about the need to ensure “a degree of interoperability” with the UK environmental outcome reports regime and the need for alignment.
167. As set out above, the Cabinet Secretary also said that compatibility issues in relation to offshore wind had been largely “bottomed out” through the UK Energy Act 2023 and the UK Planning and Infrastructure Bill.

## Parliamentary scrutiny of regulations made under section 2(1)

168. Section 2(6) provides that regulations which relate to offences; powers to arrest/search/detain a possession; fees; or textual amendments to an Act would be laid under the affirmative procedure. Section 2(7) states that “any other regulations under subsection (1) are (if they have not been subject to the affirmative procedure) subject to the negative procedure”.<sup>iv</sup> The provision in brackets indicates ministerial discretion to lay regulations under the affirmative procedure where that is considered appropriate; this is known as ‘either way’ procedure.
169. The explanatory notes states that this “procedure enables minor and technical changes to be subject to the negative procedure and more significant policy change to be considered subject to the affirmative procedure”. The delegated powers memorandum further states that “allowing for a choice of procedure represents a sensible, pragmatic and efficient approach”.
170. The Committee wrote to the Cabinet Secretary seeking further clarification on section 2(7). The wording in the Bill does not accord with the wording used in recent legislation considered by the Committee<sup>v</sup> and the Committee sought more information about the criteria that Scottish Ministers would use when choosing a procedure. [The Cabinet Secretary provided further information about section 2\(6\) and \(7\) on 30 May 2025](#). She confirmed that the affirmative procedure would be used for “any regulations which make substantial changes to the legislation”. She also set out her expectation that any consultation under section 2(5) would include consideration of the most appropriate parliamentary procedure and that if the lead committee has any concerns about the choice of procedure, it could write to the Scottish Ministers for further information or to give oral evidence.
171. The DPLR Committee scrutinised the legal and technical accuracy of the proposed section 2(1) power. The [DPLR Committee, in its report on the delegated powers memorandum published on 3 June 2025](#), set out its view that “there appears to be an error in the delegated powers memorandum” in terms of providing for an ‘either way’ procedure. The Committee concluded that “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”. Thus, the DPLR Committee takes the view that the Bill provides for any use of the power outwith the criteria set out in section 2(6) would be considered under the negative procedure and concludes that this it would be appropriate. The DPLR Committee went on to recommend that the procedures, and the circumstances in which they apply, are appropriate.
172. Stakeholders across the different panels raised concerns about the policy changes which could be introduced via regulations which would be laid, and subject to a lower level of parliamentary scrutiny, under the negative procedure. Open Seas suggested that “you need to allow flexibility in secondary legislation, but that can

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iv Further information about the affirmative and negative procedures can be found on the Scottish Parliament's website.

v For example, [Section 15 of the Agriculture and Rural Communities \(Scotland\) Act 2024](#) provides the Scottish Ministers with the power, by regulations laid under the either way procedure, to make provision for agricultural support. Section 15(4) sets out that the affirmative procedure should be used for regulations which make would make ‘significant provision’; section 15(5) sets out the criteria to be used to inform that decision.

increasingly become an act of faith and a significant blow to scrutiny". RSPB Scotland suggested that any regulations should be subject to either the affirmative or super-affirmative procedures.

173. During the Cabinet Secretary's evidence to the Committee, officials confirmed there is no criteria set out in the Bill to inform the Scottish Ministers' decision on what would constitute a "more significant policy change". They referred to the "established approach" whereby "more substantial policy changes would be made through the affirmative procedure and more technical or procedural changes would be made through the negative procedure". The Cabinet Secretary did, however, undertake to consider whether more clarity is needed.

174. **The evidence taken on Part 2 of the Bill has illustrated how important stakeholders feel the EIA regime and Habitats Regulations are in protecting Scotland's natural environment and biodiversity. Those who gave evidence to the Committee described the two regimes as "fundamental", "vitaly important" and that they should be amended "with very great caution".**

175. **The debate around Part 2 has largely focused on the view expressed at most of the Committee's evidence sessions that the Scottish Government already has sufficient powers to make changes to the EIA regime and Habitats Regulations. These sessions have questioned whether there is an evidenced-need for the section 2(1) power. Regulation 9D of the Habitats Regulations, as amended, was cited by many witnesses as providing the flexibility the Scottish Government said it needs around the designation of protected sites. In the specific context of offshore wind and electricity infrastructure needs in pursuit of the net zero target, UK legislation was referred to as largely dealing with these issues.**

176. **Strong concerns were also raised about the broad scope of the proposed power and that the safeguards in the Bill are insufficient. The Committee agrees with stakeholders that the Bill would allow for a very wide scope for these regimes to be amended using secondary legislation.**

177. **Whilst the policy memorandum does set out some examples of how the proposed power might be used, underlying the evidence sessions has been stakeholders' concern that these powers could be used – if not by this government, than by a future government – to dilute or weaken environmental standards and protections. Many stakeholder organisations called for part 2 to be removed.**

178. **The Cabinet Secretary sought to provide reassurances that the Scottish Government has no intention to dilute or weaken environmental standards and protections and that any changes to the legislation would be consulted on and scrutinised by Parliament. She also insisted that changes are necessary to provide greater flexibility to amend EIA legislation or the Habitats Regulations in order to tackle the nature and climate crises.**

179. **The Scottish Government has reiterated its view that its existing powers, including Regulation 9D, are insufficient to enable it to make changes to the Habitats Regulations. At the same time, however, the Committee**

understands, and shares, stakeholders' – such as ESS, JNCC and the Law Society – concerns that the proposed power is broad and open ended. The Committee agrees that more clarity must be provided by the Scottish Government to explain the reasons for this, especially in the context of the Scottish Government's intention to undertake “a more fundamental review and reform of the legislative framework covering nature conservation, including protected areas”.

180. Alternatively, the scope of the power should be narrowed to make the specific changes required now (for example, clarifying a process for amending the features or boundary of a designated site) and address the wider issue at a later date. That could be achieved through a narrow, targeted delegated power for specific areas or through specific changes in the Bill. Another option would be for the Scottish Government to amend the 2021 Continuity Act to remove the sunset clause from the keeping pace power to enable it to continue to use this power and maintain alignment with EU policy and law. Given the statement in the financial memorandum that the Scottish Government has “not committed to using this power in the short term”, the Committee does not expect these suggestions to have significant policy implications. They would also give the Scottish Government the opportunity to undertake a thorough review of the operation of the EIA legislation and Habitats Regulations, as suggested by some stakeholders, and explore what could be achieved through existing powers and guidance (in line with the precautionary principle), before taking a decision about seeking such broad regulation-making powers in the future. The Committee believes this would address many of the concerns raised about Part 2, particularly around the purpose and scope of powers.
181. In terms of safeguards in the Bill, the Committee notes the Cabinet Secretary's reasons for not including a non-regression provision. Given the breadth of scope of the powers, however, the Committee believes that some additional safeguards are necessary. The Committee notes the non-regression provisions contained in equivalent UK legislation. The Committee recommends that section 3 is amended to give the first purpose – to maintain or advance standards – primacy; no changes should be made to the EIA legislation or Habitats Regulations in secondary legislation which does not maintain or advance standards and protections in Scotland's natural environment.
182. In relation to parliamentary scrutiny of any section 2(1) regulations, the Committee shares the concerns about the lack of clarity around the use of the 'either way' procedure. The Committee believes this is illustrated by the DPLR Committee's reading of the Bill and conclusion that the procedure set out in sections 2(6) and (7) is not an 'either way' procedure. Given any changes to the strategic environmental assessments regime have to be made via primary legislation, it would be incongruous for significant changes to the EIA regime and Habitats Regulations to potentially be made via regulations laid under the negative procedure.

183. **Noting the potential breadth and significance of some regulations which could be made under this power, the Committee believes that, should Part 2 be retained, the Bill needs to be amended to provide greater clarity about when the affirmative procedure would be used. The Committee believes that having the option to question the Scottish Government on its use of procedure, or invite a Minister to give evidence, is not a sufficient safeguard in terms of the choice of procedure. The Committee also believes that, for regulations providing for very significant policy changes, the super-affirmative procedure – thus allowing greater parliamentary scrutiny – should be used.**
184. **Finally, and noting the significant concerns raised by most stakeholders, there were mixed views within the Committee regarding whether Part 2 in its current form is required or whether it should be revised.**

# Part 3 - National Parks

## Introduction

185. Part 3 of the Bill makes various amendments to the [National Parks \(Scotland\) Act 2000](#). This follows on from a commitment to modernise national parks legislation in the 2023-24 Programme for Government. There had been consultations on aspects of the law around national parks in 2022 (by the Scottish Government and NatureScot) and then in 2023, when the Scottish Government's consultation on Scotland's Strategic Framework for Biodiversity included a few proposals on national parks and biodiversity.
186. As discussed further below, Part 3:
- amends the language used to describe the aims of national parks;
  - imposes a stronger duty on certain public bodies to take account of national park plans and aims;
  - gives the Scottish Ministers a power to set up a fixed-penalty notices regime that national parks could use to enforce park byelaws.
187. Another change made in Part 3 is to provide that any future national parks will automatically become “access authorities” on designation, rather than this having to be done separately. The duties of access authorities are to uphold and manage the public's right of reasonable access to land. Although Scotland's two existing national parks – Cairngorms National Park and Loch Lomond and the Trossachs National Park – were both made access authorities alongside Scotland's 32 local authorities when the relevant legislation came into effect in 2003, it would currently require a specific legislative intervention outwith the designation process to make any new national park an access authority. What little Stage 1 evidence there was on this technical change welcomed it and there is no further discussion of this provision in this report.
188. The policy memorandum says the changes in Part 3 would build on some of the key findings of the 2022 and 2023 consultations, which highlighted the need to:
- ” 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.
189. When asked what the Bill's provisions were ‘seeking to fix’, a Scottish Government official said there was “nothing dramatically wrong” with the current law but there were areas where the legislation could better reflect how the national parks are operating. The Cabinet Secretary for Rural Affairs, Land Reform and Islands expressed similar views. In evidence, the National Park Authorities (NPAs) described the changes as small but potentially useful “tweaks” to the current legislation.

## Support for wider or other legislative reforms to national park legislation

190. There was some support for wider legislative reforms to the 2000 Act. SRUC expressly called for a review, suggesting national parks need to be more strongly focused on the nature emergencies and the Scottish Crofting Federation called for “a comprehensive evaluation of the positive and negative effects the designation of the existing national parks has so far entailed”. SE LINK thought the proposed changes to the national park aims were adequate in the short-term but that the next Parliament should consider next steps for national park policy in a more comprehensive way.
191. On the whole, however, those stakeholders who commented on wider reform did not express strong views or were undecided. The sense that the Bill would not be a vehicle for major legislative reform of the national park system appears to have been accepted by most stakeholders giving evidence at Stage 1.
192. The Cabinet Secretary did not support wider reform and told the Committee that national parks have been “delivering” against their plans and legislative requirements.

**193. Although the Committee's inquiry focused on the provisions of the Bill, the Committee notes calls for an independent or parliamentary review of the overall operation and effectiveness of national parks.**

194. Some responses to the Committee's consultation on the Bill made specific suggestions for other legislative reforms to the 2000 Act. Those suggestions which were discussed by the Committee are detailed later in this part of the report.
195. The assessment of a proposed new national park in Galloway and Ayrshire was under consideration during the Committee's Stage 1 inquiry. During her evidence on the Bill, the Cabinet Secretary stated that the new national park proposal was completely separate to the Bill and that nothing in the Bill would fundamentally alter the proposal. The [Committee took evidence on the Scottish Government's decision not to progress with a third national park from the Cabinet Secretary outwith the Committee's Stage 1 inquiry on 11 June 2025](#).

**196. The Committee recognises that the proposals brought forward in the Bill on national parks are distinct from the process of considering further designations and has sought to approach its scrutiny of the proposals in that context. The Committee suggests that any independent or parliamentary review of national parks includes a review of the designation process for new national parks.**

## Aims of national parks

197. Section 1 of the 2000 Act sets out the aims of national parks. The legislative intention is for these aims to be foundational, filtering down into the everyday work national parks do and the decisions NPAs take. Section 9(1) of the 2000 Act states:

” The general purpose of a national park authority is to ensure that the national park aims are collectively achieved in relation to the national park in a co-ordinated way.

198. Section 5 of the Bill would remove and replace the current section 1 of the 2000 Act. The following table from the policy memorandum illustrates the changes by setting out current and new drafting side-by-side:

**Existing National Park National Park aims in the Bill:  
aims:**

1. To conserve and enhance the natural and cultural heritage of the area.	1. To conserve and enhance the area’s natural and cultural heritage ( <b>proposed revised section 1(1)(a), 2004 Act</b> )
2. To promote the sustainable use of the natural resources of the area.	2. To promote sustainable management and use of the area’s natural resources ( <b>proposed revised section 1(1)(b), 2004 Act</b> )
3. To promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public.	3. To promote public understanding and enjoyment of the area’s natural and cultural heritage ( <b>proposed revised section 1(1)(c), 2004 Act</b> )
4. To promote sustainable economic and social development of the area’s communities.	4. To promote sustainable economic, social and cultural development of the area’s communities ( <b>proposed revised section 1(1)(d), 2004 Act</b> ).
	Without limit to the generality of the above, these aims include:(a) restoring and regenerating biodiversity <sup>[1]</sup> in the area,(b) mitigating and adapting to climate change,(c) supporting access to and within the area,(d) encouraging recreation in the area,(e) promoting sustainable tourism and visitor management, and(f) promoting sustainable development activity which improves the health, wellbeing and prosperity of individuals and communities within the area ( <b>proposed new section 1(2), 2004 Act</b> )

199. The Scottish Government views the changes to section 1 of the 2004 Act as minor overall and not intended to make NPAs work in a significantly different way. Instead, they amount to a tidying-up or modernisation of the drafting language, to express better what parks are already doing. This includes, in the proposed new section 1(2) of the 2004 Act, language to reflect that the Scottish Government has declared climate and biodiversity emergencies and that statutory net zero targets have been introduced. Another difference is referring to “cultural development” as well as “cultural heritage”, to better reflect that culture is not static.

200. From its drafting, it is clear that section 1(2) is meant to aid the interpretation of the four aims in section 1(1), helping to flesh out their meaning, rather than set a parallel set of new aims. The use of “include” indicates an illustrative list. Referring to the matters in section 1(2) as “sub-aims”, the Cabinet Secretary said their purpose was “to show, and to put beyond doubt,” that those matters were things that contributed to the four core aims in section 1(1) but not otherwise to affect how those aims are interpreted.

201. The proposed replacement section 1(3) of the Bill would introduce a requirement on public bodies (including the Scottish Ministers) to “have regard” to national parks’ aims when exercising any functions that would affect a national park. The Committee notes views from some stakeholders that, while welcoming the new requirement, it would have been better to impose a stronger duty on bodies than to “have regard”.

## Stakeholder views

202. Most stakeholders, including both NPAs, agreed with the Scottish Government that the proposed new section 1 appears to make no significant change to the statutory aims other than slightly clarifying or modernising the language and that, to the limited extent that anything would change, the changes mainly seemed helpful. Section 1(2) was welcomed for more clearly underlining that national parks have a role in addressing the climate and biodiversity crises.
203. Participants at the Committee's community engagement event in Grantown-on-Spey were split on the Scottish Government's intention to amend the national park aims. Some national park users asserted that current national park aims have been too vague and supported the proposed changes. Others questioned whether the modernisation agenda was truly necessary.
204. Some of the revised wording was queried, however, with some of the main issues set out in Annexe C to this report. The Cabinet Secretary and Scottish Government made clear they would be happy to reflect on proposals for drafting changes or additions, as they were keen to ensure the revised section 1 got the 'balance right'. The Cabinet Secretary added, however, that, while she was happy to consider additions, “we could never have a definitive list of every single action”. The Committee also heard stakeholder views about the merits of keeping the illustrative list in section 1(2) concise to avoid confusion.

## Balancing or re-balancing the aims

205. As NPAs noted in evidence, the 2000 Act set four quite wide policy aims, rather than, for instance, aims focussed on nature conservation. In practice, this means national parks are expected to perform a balancing exercise when setting their strategic direction or taking major decisions, with some trade-offs involved (for instance between enabling increased public access and protecting a fragile ecosystem).
206. Reflecting this concept of balance, the language of the proposed section 1 does not place the four aims in any order of importance: they are, on the face of it, equally weighted considerations. However, this is importantly qualified by section 9(6) of the 2000 Act, which the Bill does not amend:

” In exercising its functions a national park authority must act with a view to accomplishing the purpose set out in subsection (1) [i.e. to meet the four aims]; but if, in relation to any matter, it appears to the authority that there is a conflict between the national park aim set out in section 1(a) [To conserve and enhance the natural and cultural heritage of the area] and other national park aims, the authority must give greater weight to the aim set out in section 1(a).

207. This gives effect to the long-standing ‘Sandford principle’ applying to national park aims and priorities across the UK.
208. The Cabinet Secretary confirmed that nothing in the Bill was intended to change the current position on how NPAs are to weigh up competing aims: that the new section 1(1) slightly reworded the existing aims but would not rebalance them.
209. Most witnesses to express a view appeared to agree with the Cabinet Secretary's interpretation. The Committee raised with some witnesses from the environmental sector whether the Bill should have taken the opportunity to place addressing the nature and climate emergencies at the top of a revised hierarchy of aims. They agreed this was something the Bill could have done but most seemed to agree that the current balance worked reasonably well and that any change along those lines might risk national parks becoming less people-centred in their decision-taking. Keeping the Sandford principle enshrined in the law was also felt likely to provide a sufficient safeguard.
210. Crown Estate Scotland agreed that the current balance was broadly right and should be kept. SLE said national parks must be places where people can live and work and should be both “ecologically rich and socially vibrant”.
211. Not everyone agreed. For instance, the Scottish Rewilding Alliance criticised what it saw as a lack of ambition, and a missed opportunity, to make national parks “trailblazers” in restoring Scotland’s badly degraded ecosystems by (amongst other things) making an aim based on biodiversity recovery pre-eminent.
212. The Cabinet Secretary accepted that the Bill could have made the twin nature crises top of the hierarchy of national parks aims. She told the Committee that the Scottish Government had considered this approach but concluded this would not get the balance right between those matters and “the other vital work that national parks do, recognising that the parks are a place where people live and work”. She felt that national parks were already delivering, with increased success, on biodiversity and climate change.
213. The Committee questioned whether anything in the revised wording would affect how NPAs took account of, and weighed up, the aim of “sustainable economic development”. The Scottish Government's position is that nothing in the Bill fundamentally changes how NPAs should consider this and that nothing in the proposed new section 1(2) would dilute this. This provision does list some environmental matters but the new proposed section 1(2)(f) expressly references improving prosperity as a matter for NPAs to take account of.
214. Some evidence, noting the wording of this provision, queried whether the reference in it specifically to improving the prosperity of individuals, as well as communities, was an appropriate aim for a national park. The Cabinet Secretary said it seemed appropriate to for NPAs to consider the prosperity of both people within communities and people as individuals but indicated she was open to other views on this.
215. For Confor, a trade association for the forestry industry, the problem was that, whatever the original legislative intention might have been, NPAs do not take decisions in a balanced way. Confor gave its view that NPAs consistently place environmental outcomes above all other considerations and that there is “a

complete lack of focus on economic sustainability". NFUS said national parks tended to neglect the importance of the rural economy, of agriculture as a deliverer of positive change and of food production in their current decision-taking. NFUS told the Committee that "many of our members do not feel that the two existing parks have made a positive contribution to farming and there is a fear that amending the purpose and aims in this way will not alleviate these concerns".

216. The Nature Friendly Farming Network called for the express mention within the revised section 1 of the role of sustainable agriculture in addressing the nature crises and the role of farmers and crofters as participants in the delivery of national park aims.
217. SLE said it was content with the revised aims but highlighted a lack of any express reference in the proposed section 1(2) to housing and jobs for people living and working in a national park or to supporting rural businesses. Pressed on whether she had considered making express reference to the housing need in rural areas, the Cabinet Secretary agreed it was a matter NPAs should be considering but felt it was already covered in references to promoting sustainable economic and social development and improving health, wellbeing and prosperity. She considered that this language also covered jobs.
218. The Cairngorms NPA queried the omission of "landscape" in the revised national park aims, especially as new section (1) would remove the reference to "special qualities" of the national park. The Cairngorms NPA acknowledged care would be required to get this wording right. NatureScot's suggestion was for "supporting vibrant and resilient landscapes that are rich in natural and cultural heritage" to be added to the list.
219. NatureScot also proposed that the revised aims, and the illustrative list in section 1(2), should be complemented by a requirement for the Scottish Government to produce "a national policy statement on national parks". In response to this, the Cabinet Secretary said she considered that the "driving force" behind national parks was adequately set out in revised aims and did not see the need for a policy statement on top of this.

**220. The Committee notes both national park authorities' (NPAs'), and other stakeholders', broad agreement with the Bill's proposals to modernise the legislation relating to national parks' aims. The Committee also notes that most evidence suggested the proposed reforms to national park aims would likely result in minimal changes to how NPAs function.**

**221. The Committee considered the role NPAs have in balancing their broad range of aims when undertaking their functions, especially when preparing and implementing their national park plans. Some stakeholder groups expressed significant concern that the revised aims would not go far enough in protecting rural communities' needs, such as housing, or sectors' interests, such as forestry or agriculture. The Committee asks the Cabinet Secretary how these issues would be addressed by the amended aims.**

## Duty to facilitate implementation of national park plans

222. Section 7 concerns national park plans; these are plans in which a NPA must set out its policy for:

- managing the national park, and
- co-ordinating the exercise of—
  - the authority's functions in relation to the national park, and
  - the functions of other public bodies and office-holders so far as affecting the national park, with a view to ensuring that the national park aims in section 1 are collectively achieved in a co-ordinated way.

223. The Scottish Ministers determine when a NPA is to submit a plan to them. A NPA must review their plan at least once every five years.

224. Section 14 of the 2000 Act states that:

” The Scottish Ministers, a national park authority, a local authority and any other public body or office-holder must, in exercising functions so far as affecting a national park, have regard to the national park plan as adopted under section 12(7)(a). [Emphasis added]

225. Section 7 would replace the underlined words with “facilitate the implementation of”. The aim is to make plans a significantly stronger influence on the work by other public bodies that can influence the effectiveness of national parks and, in particular, delivery of plan outcomes.

226. This enhanced duty is qualified by further wording added to section 14: relevant public bodies are only required to facilitate the implementation of plans inasmuch as this would be “consistent with the proper exercise of their other functions”.

227. The explanatory notes to the Bill state that:

” How each body will facilitate the implementation of the national park plan will be specific to the body and the circumstances but involves the way in which the body uses its capacity, resources and strategic approach to help implement the national park plan and may at times include financial contributions. [...] Each public body will determine how best to organise their own resources and strategic approach to help execute this action.

228. Scottish Government officials told the Committee they expected this change would require relevant bodies, such as local authorities, to take legal advice as to how the new duty is to be applied in specific circumstances.<sup>[4]</sup> Local authorities' evidence indicated some uncertainty at this stage about what the change would mean in practice to their own planning and decision-taking. They indicated it would mean looking even more carefully at national park plans than at present and determining how specific provisions inter-relate with local authority priorities.

229. Representatives of the two national parks welcomed the proposal. They said it

would change a somewhat “passive” duty in the current law to a more active one, requiring greater engagement with the content of the plan. They said they had generally good relations with partner organisations but could sometimes encounter resistance to facilitating aspects of park plans. They suggested that might be because of disagreement but it might also be because the partner organisation did not feel empowered to help in that way and that the revised wording could make a difference.

230. The financial memorandum accompanying the Bill sets out the Scottish Government's view that this proposal would be cost-neutral. It says that implementing a national park plan:
- ” may, at times, include financial contributions from public bodies that are recognised within the national park plans as delivery partners for actions within these plans. However, it does not generate unforeseen costs or savings, as national park plans and the actions within them are drawn up and agreed with input from relevant delivery partners.
231. The Committee explored with NPAs a scenario where a plan set out priorities or proposals which the NPA itself would not have the wherewithal to finance and queried the extent to which the strengthened duty could place a financial obligation on other public bodies. Cairngorms NPA said that its present approach was always to try to reach pragmatic decisions with their partners on the basis of what could realistically be done together. He said preparing a plan was already a “huge engagement process” for the authority and its partners and expected this to continue. Both NPAs and a number of other bodies suggested the change would lead to partner organisations, in their own self-interest, being even more involved in the development and consultation on plans in order to ensure shared ownership of realistic goals.
232. Aberdeenshire Council, which overlaps the Cairngorms NPA said it had “no objection” to the change but that it would likely:
- ” result in the need for increased cooperation with the national park and an increased focus on the aims of the park across all aspects of our work. Certainly, in the early stages, but possibly going forwards also, this is likely to result in increased work. It may require the redistribution of our finite resources. We would ask that this aspect is carefully considered and that funding is made available by Government to aid the alignment.
233. Participants at the Committee's community engagement event also believed collaboration between local authorities and NPAs would deepen as a consequence of new requirements. They argued that the proposed changes would act as a new line of accountability between local authorities and the communities they serve to deliver the overarching objectives of national park plans.
234. NFUS also raised public bodies’ resources and capacity, suggesting the proposal reflected a long-term trend of diluting public bodies’ core function through the steady accretion of additional duties through a process of legislative attrition. The NFUS suggested this makes it harder for public bodies to carry out their own core roles and it made the legal position ever more complicated.
235. Most environmental and nature organisations who expressed a view welcomed the

revised duty. The change was felt to reflect the importance of national park plans as instruments to achieve nationally important objectives. As Action to Protect Rural Scotland stated, the present duty makes it hard to hold organisations to account because “they might say ‘we’ve had regard to it but we’ve ignored it’” whereas the new wording “implies that the person will have to take the park plan seriously”.

236. Some evidence from the environmental sector said that the new duty *ought* to have financial implications for public sector agencies, such as SEPA, Nature Scot and Scottish Water, as that was, in a sense, the point of strengthening the duty. There were views that the Bill should go further and require all public bodies to “directly support” national park aims and plans.
237. Some evidence raised the role of the private sector in relation to implementing national park plans. Noting that most land in national parks is privately owned, SE LINK argued that “achieving a synergy of aims and activities is as relevant for private bodies as it is between public bodies”. SE Link queried how Ministers propose to ensure private landowners, as well as public bodies, play an enhanced delivery role.
238. Some land management organisations raised a concern that public bodies, in the course of carrying out the proposed duty to facilitate the implementation of national park plans, would impact on the private sector and, in particular, managers of privately owned land. In relation to the preparation and consultation on national park plans, Confor and the NFUS challenged the positive image of the national park consultation process presented in other evidence. Confor said that the reality for the commercial forestry industry was that it tended to feel excluded, with its proposals often ignored and, instead, national plan proposals affecting commercial forestry felt “imposed”. Given this, Confor felt the change being proposed would likely make things worse. Scottish Forestry, the public sector body responsible for forestry policy, accepted that opportunities for productive forestry in national parks were more limited than elsewhere, which was to be expected, but said there could be scope for more productive woodland in national parks. The NFUS felt that existing parks had not delivered as well as they could for rural communities and businesses and that strengthening the legal duty risked compounding that. The Nature Friendly Farming Network was more cautiously supportive of the change, provided that increased funding and support went with it, and that NPAs treated farmers and crofters as partners in delivery.
239. Concerns were also raised in relation to the impact of public bodies giving effect to the enhanced duty. Citing a specific example that the Cairngorms NPA had given the Committee about the proposed change potentially making a positive difference in reducing deer density, SLE set out its concerns around a possible scenario where:
- ” For example – the Cairngorms national park plan sets a target of 5-8 deer per km<sup>2</sup> by 2030. If facilitating the delivery of this target becomes obligatory, it is not beyond the realms of possibility that this would act as a catalyst for NatureScot to exercise its regulatory powers in relation to managing wild deer, which is exacerbated further by the new ground for intervention based on nature restoration. It is important that having a duty to facilitate national park plans does not result in an emboldening of regulatory bodies to use statutory powers.

240. SLE also said the logic of the proposed change seemed to lead to a possible situation where public bodies could end up helping implement a proposal in a national park plan that contradicts national policy. SLE gave one possible example as muirburn, suggesting a scenario whereby muirburn is banned in a park plan despite being allowed under certain licensable purposes by Scottish Government policy. SLE called for further reflection on the implications of the change.

**241. The Committee notes the NPAs' and environmental NGOs' support for the strengthened duty to facilitate the implementation of national park plans and supports the strengthened duty as an important tool to deliver national park plan objectives. Concerns were shared with members, however, about how this would operate in practice, in particular the resource implications for the public sector bodies to whom the duty would apply and the impact on private land managers or owners. The Committee also notes the wider consultation process NPAs must follow when drafting their plans and expects this statutory process will ensure they collaborate effectively to produce national park plans which will protect the land, and its communities, in partnership with other public sector bodies to ensure the plans and their objectives are realistic and achievable.**

## Fixed penalty notices

242. Schedule 2, paragraph 8(1) of the 2000 Act gives NPAs the ability to create byelaws. These can be used to protect the natural and cultural heritage of the national park; prevent damage to the land; or secure public enjoyment and safety. Paragraph 8(2) says that such byelaws could, for example:

- regulate or prohibit fires
- prohibit dropping rubbish or littering
- prevent or suppress nuisances
- regulate vehicle use on non-public roads or
- regulate the exercise of recreational activities.

243. The 2000 Act also largely transposes to NPAs the same rules on how to make, revise, promulgate, etc. byelaws as apply to local authorities. This includes enforcement: the relevant provision says that councils or NPAs making byelaws may provide “that persons contravening the byelaws shall be liable on summary conviction to a fine not exceeding such sum as may be fixed by the enactment conferring the power to make the byelaws, or, if no sum is so fixed, the sum of level 2 [currently £500] on the standard scale”.

244. The Bill does not change any of this, but adds a new section 26A into the 2000 Act. This empowers the Scottish Ministers to “by regulations make provision for and in connection with the issuing of fixed penalty notices for offences against national park byelaws”.

245. The remainder of the new section 26A sets out a number of provisions amounting mainly to procedural ‘ground-rules’ about matters that must be set out in any regulations creating a fixed penalty regime that are laid under the new power. It also lists some other matters that regulations may set out. Whilst the main purpose of the regime would be to provide a means of bypassing the criminal justice system, it would also introduce two new crimes: of obstructing a person exercising functions in relation to fixed penalty notices and of failing to provide information requested in connection with a fixed penalty notice.
246. As set out above, the maximum penalty is set at level 2 on the standard scale, mirroring the current penalty for conviction under a national park byelaw. However, the financial memorandum notes that the Loch Lomond and Trossachs NPA has proposed charging fines of around £80 under a fixed penalty regime and asserts this to be an “appropriate” level for byelaw fines.
247. Regulations made under new section 26A would be subject to the affirmative procedure. Considering the power from a technical rather than a policy perspective, the DPLR Committee reported that it “accepts the proposed power in principle and is content with the choice of procedure”.
248. The Loch Lomond and the Trossachs NPA has some byelaws in place, mainly about regulating water activities and camping in or around Loch Lomond, with others in contemplation. The Committee heard how the NPA felt these byelaws were needed, on the grounds of public safety and to reduce the risk of people getting in trouble on the loch. This discussion illustrates the crucial role park rangers play as NPAs’ main interface with the public, educating and explaining and helping keep people safe.
249. The explanatory notes to the Bill add that the Loch Lomond and the Trossachs NPA “already has the ability to issue fixed penalty notices for littering and fly-tipping offences under the Environmental Protection Act 1990 (sections 33A(11A)(b) and 88(10)(b))”. Cairngorms NPA does not have this power.
250. The Cairngorms NPA, in 2023-24, consulted on creating its first set of byelaws, about lighting fires or barbecues. In April, the NPA told the Committee that it was on the point of submitting them to the Scottish Government for approval.<sup>vi</sup>
251. The Scottish Government notes that the current legal position leaves the discretion on enforcing contravention of national park byelaws with the Crown Office and Procurator Fiscal Service (COPFS). It says that creating a fixed penalty regime would amount to “a more proportionate and streamlined approach” and add to the existing enforcement remedies that includes verbal warnings, letters from NPAs or reports to the COPFS. The policy memorandum says fixed penalties “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”.
252. The Scottish Government's best estimate of the maximum cost to itself of creating a fixed penalty regime for national parks is around £41,500. It expects it to lead to

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<sup>vi</sup> In September, new byelaws for lighting fires and barbecues were approved by the Scottish Government and will take effect on 1 April 2026.

only minor savings to the COPFS, with negligible income (in the low hundreds per annum) accruing to NPAs from levying fines. Staffing costs to NPAs were estimated at an additional £8,500 to “update procedures, training and guidance for rangers with associated public communications campaigns.” The financial memorandum stated the ongoing administrative costs to the Loch Lomond and the Trossachs NPA would be cost-neutral.

253. Both NPAs welcomed provision on fixed penalty notices. The representative of Loch Lomond and the Trossachs NPA said the park had:

” lots of experience operating byelaws and very much using them as a behaviour change tool to get voluntary behaviour change. A lot of our ranger service’s engagement with the public is educational, explaining to people how the byelaws work and what they are there to try to achieve. It is about people’s responsibility to respect the environment, communities and other people’s enjoyment. The vast majority of those conversations are positive, but some are not.

254. He added that, in the previous year, there had been 890 “conversations” about byelaw breaches that had resulted in voluntary compliance with 12 cases escalated to the procurator fiscal. Escalation meant significant work for NPA staff in a context where the court system felt “quite overwhelmed”. By contrast:

” If people know that our rangers can issue a fixed penalty notice for a relatively straightforward breach, we think that that will help to get compliance. People just knowing that we can issue a fine helps with the conversation, but it is also proportionate and no one has to appear in court when it is a breach that our rangers can deal with themselves. They are fully trained to do that. We already use fixed penalty notices in respect of litter. An example of that would be abandoned campsites under the permit system. We treat that as a fly-tipping offence and issue fines for fly-tipping. We already have lots of experience of dealing with fixed penalty notices.

255. As noted, Cairngorms NPA is in a different position, with no experience yet of enforcing byelaws, but it also welcomed this provision. The Cairngorms NPA said that knowing this legislative change had been proposed had been one of the main factors behind the consultation on introducing byelaws for the first time, as it felt a fixed penalty regime would make byelaws more “doable” and were in a good place to learn from Loch Lomond and the Trossachs NPA’s experience of making byelaws work.

256. Both NPAs expressed some scepticism over whether a fixed penalty regime for national parks could include fines for car parking infractions, as they did not think national parks themselves have the key legal or ownership rights in this area to make byelaws “bite”.

257. Many of the organisations who expressed a view on introducing a fixed penalty regime gave the proposal a cautious welcome. They agreed it seemed a proportionate measure to prevent anti-social behaviour or nuisance. Local authority evidence called for close consultation on any proposal for national park byelaws and fines within their area. The NFUS, whilst welcoming the measure, queried whether national parks would have the capacity to make a fixed penalty regime work. SLE supported the provision but raised the importance of rangers getting the

training they need to make the system work effectively.

258. The Law Society said the Scottish Government should aim to make any new fixed penalty regime for national parks as consistent as possible with those already in existence in Scotland to avoid a drift into a confusing “proliferation” of different processes.
259. Action to Protect Rural Scotland recognised the current challenges facing NPAs, especially in relation to wildfires. It said that fixed penalty notices “seems to be a practical, and perhaps a more proportionate, response” to the current process for enforcing byelaws which “seems to be quite slow and onerous”.
260. Scottish Environment LINK and some of its affiliate organisations, however, expressed doubts about the proposal and about the utility of byelaws generally. Scottish Environment LINK said that the practices byelaws tried to address were not unique to the two national parks and that going further down the route of using byelaws risked enshrining a two-tier approach to addressing problem behaviour (with, possibly, the risk of the behaviour being displaced outside the park), as well as creating two tiers of ranger. They noted that rangers often worked alone in physical isolation from colleagues and not all were experienced in handling anti-social behaviour. Scottish Environment LINK said introducing fixed penalties “in itself represents a shift along the spectrum towards enforcement”, making it increasingly “the first tool in the box” for national parks and rangers. It thought this risk could be mitigated with guidance and monitoring of the regime from its introduction.
261. The Cabinet Secretary said national parks’ ability to use byelaws to address concerns over issues like public safety or environmental protection was “important and powerful” and that fixed penalties would add to their usefulness. Rather than being a distraction from the work rangers did, she thought it would supplement their key role of educating the public and securing compliance by consent. She said enforcement via a penalty should be a “last resort” but that just knowing it was an option would give rangers increased confidence in their role.

- 262. The Committee supports the proposals to give the Scottish Ministers powers to set up a fixed penalty regime to enforce NPA byelaws to enable NPAs to utilise better the protections offered by byelaws. The Committee notes, however, points raised by stakeholders about how the fixed penalty regime would work in practice and the impact on park rangers, whose role has previously focused on education rather than enforcement. The Committee also notes the call from the Law Society that any fixed penalty regime for NPAs should be consistent with others already in place elsewhere in Scotland, and from local authorities that they should be closely consulted on any byelaws and fixed penalty regimes in their areas.**
- 263. With this in mind, the Committee asks for details of how the Scottish Government intends to support NPAs in establishing their fixed penalty regimes, including what, if any, formal guidance it will provide in order to assist with formulating their approach to enforcement.**

# Part 4 - Deer Management

## Introduction

264. Part 4 of the Bill makes provision relating to deer management in Scotland.
265. The Committee's report sets out the background to deer management and policy in Scotland, the development of these legislative proposals and the key issues which were raised in the Committee's inquiry.
266. The DPLR Committee considered the delegated powers in Part 4 conferred through sections 12, 16 and 28 of the Bill. That Committee was content in principle with these powers and their respective procedures.
267. The FPA Committee considered the financial implications of Part 4. That Committee highlighted a number of themes raised with them in evidence, such as:
- Concerns about the additional financial burden placed on landowners as a result of provisions in the Bill, as well as the associated costs on the deer management sector from increasing their deer culls.
  - Calls for support schemes and investment in facilities to offset these costs on practitioners, such as improvements to market conditions for the sale of wild venison.

## Background to deer management in Scotland

268. Deer numbers have increased in Scotland over recent decades, resulting in damaged habitats which are preventing nature restoration in some areas. Whilst the overall population of wild deer in Scotland is disputed, it is estimated that deer numbers have increased from approximately 500,000 in 1990 to current levels of between 750,000 and 1 million.<sup>vii</sup> Deer management is therefore necessary in many areas and is largely undertaken on a voluntary basis.
269. The methods by which deer are controlled in Scotland vary across geographical areas and local contexts. In the Uplands, where wild red deer are densely populated, culls are primarily carried out by Deer Management Groups. Although similar groups also exist in the lowlands of Scotland, most deer management is undertaken through localised stalking by smaller landholdings, whose activities are focussed on populations of wild roe and fallow deer. Different approaches to deer management are also adopted in urban and rural environments. Whilst most deer management is carried out by the private sector, some is also done on public land by public bodies. Further information on the background to deer management in Scotland can be found in [the SPICe Bill Briefing](#).
270. The current regulatory framework for deer management is set out in the [Deer \(Scotland\) Act 1996](#) (the 1996 Act).

## Deer Working Group and consultation for legislative reform

271. In response to growing evidence of the environmental damage caused by wild deer, the Scottish Government established an independent Deer Working Group (DWG) in 2017 tasked with advising the Scottish Ministers on deer management policy.
272. In 2019, the DWG published '[The management of wild deer in Scotland: Deer Working Group report](#)' which included 99 recommendations for improvements to the legislative and policy frameworks to support a sustainable approach to managing deer. [The then Cabinet Secretary responded to the DWG report in 2021](#) and accepted most of the recommendations. A commitment to implement the recommendations from the DWG report was embedded in the Scottish Government's [Programme for Government 2021-22](#).
273. In 2024, the Scottish Government launched a consultation '[Managing deer for climate and nature: consultation](#)'. The [consultation paper](#) said "the purpose of our proposals is to modernise the legislation which governs deer management in Scotland and ensure it is fit for purpose in the context of the biodiversity and climate crises". The Scottish Government subsequently [published its analysis of consultation responses](#).

## RAI Committee consideration of Part 4

274. The Committee heard a number of key themes from its scrutiny of Part 4 of the Bill:
- Broad consensus that reforms to legislative framework for deer management were needed to mitigate the impacts of wild deer on the natural environment;
  - Concerns about insufficient detail about how enforcement powers in the Bill would be used by NatureScot, and the impact the use of these powers may have on land managers and deer management practitioners;
  - The importance of robust data to support evidence-led decision-making regarding deer control measures. The national deer app, currently in development by NatureScot, was emphasised as potentially providing a significant mechanism for collecting data and improving traceability of national and local deer populations;
  - Strong support for measures to increase wild venison consumption, yet there remained mixed views about the implications of the specific proposals in the Bill to remove the licensing requirement for dealing in venison;

## Aims and purposes of deer management – to include “to safeguard the public interest”

275. Section 10 of the Bill amends Section 1 of the 1996 Act, adding ‘to safeguard the public interest’ to NatureScot’s existing aims and purposes in relation to exercising their statutory duties regarding deer management.

276. The Bill does not provide a definition of 'public interest' but the explanatory note states that "the expression is to be understood and applied contextually; what constitutes the public interest in different situations may be different" and adds that it "may also evolve and change over time".
277. NatureScot told the Committee the addition would not "make any significant difference to how we administer the legislation" as NatureScot has "always had to take [the public interest] into account. NatureScot added that "with the importance of nature and climate in policy terms and the pressures coming to bear through the land-use lens, it feels like the right time to amend the deer legislation".
278. There was broad agreement amongst stakeholders with the inclusion of the public interest as a statutory aim of deer management.
279. The Committee also considered the absence of a definition of the term. NatureScot acknowledged the importance of clarity around what is meant by the term and that it is "collectively understood, clearly defined, articulated and well evidenced". A number of deer management stakeholders expressed concerns about the vagueness of the term. SLE said "the aim is so woolly and subjective that it would be relatively easy for NatureScot to justify any form of regulatory intervention by claiming it was safeguarding the public interest". The Association of Deer Management Groups (ADMG) said:
- ” We have been asked to manage deer in the public interest for quite a long time, but it is still difficult to define. In fact, it was so difficult that, when the deer management groups were assessed, there were 101 criteria for how we manage deer in the public interest.
280. Participants at the Committee's online meeting with deer management practitioners highlighted that the public interest would differ depending on the location with, for example, traditional deer stalking being more important in the highlands whilst road safety is more important in the lowlands.
281. Other stakeholders, such as Scottish Environment LINK, were comfortable with the wording in the Bill. Forestry and Land Scotland (FLS) commented that "it is not helpful to define 'public interest' too tightly, but it is nonetheless important to have 'public interest' in the bill".
282. The Committee discussed where any definition of public interest could be set out. Many stakeholders argued that it was appropriate for this to be detailed in the Code of Practice on Deer Management (the Deer Code) rather than on the face of the Bill. NatureScot noted that many of the policy objectives "are sometimes quite hard to express in primary legislation" and that the deer code would "help articulate that more robustly". The Cairngorms NPA said using the Deer Code for this purpose allows the defining of public interest "to be changed as things change over time, whereas putting things in primary legislation tends to tie them down for a long time". It added that this was particularly important given "over the past 10 or 15 years, the definition of public interest has changed when it comes to land". SLE argued the Bill should be amended to require a definition to be included in the Deer Code.
283. In written correspondence, NatureScot said it "will begin work on the revision of the Code over the summer of 2025 and [it is] currently putting in place plans to manage this process" with a view to "having a draft for wider consultation next spring".

284. The Minister for Agriculture and Connectivity suggested that the term should be interpreted as “a general understanding of what the public interest is”. The Minister confirmed that a definition would be included in the Deer Code and that this would be informed by engagement between NatureScot and local stakeholders to ensure it takes account of the local area in which it is applicable.

**285. The Committee agrees with the section 10 addition of safeguarding the public interest to the statutory aims and purposes of deer management. The Committee also agrees that it would be useful for NatureScot to provide a definition of how it would interpret the public interest when exercising its duties and that this definition should reflect the different landscapes where deer are managed. The Committee agrees the Deer Code would be the most appropriate document for a definition to be set out. The Committee would welcome the draft revised deer code being ready for consultation as soon as practicable.**

## NatureScot representation on advisory panels

286. Section 11 of the Bill would allow NatureScot to appoint NatureScot staff as members of advisory panels. Advisory panels may be appointed by NatureScot, with the approval of the Scottish Ministers, to provide advice to NatureScot on any matter relating to how it exercises its deer functions. Currently, NatureScot staff can only attend as observers.
287. NatureScot told the Committee that "advisory panels can have a range of relevant individuals, and our view is that this minor change will allow NatureScot, as Scottish government's principal advisors on deer management to better advise and support the work of a panel, to ensure more effective outcomes".
288. Some stakeholders highlighted the potential benefits of this proposal. Trees for Life said that "there is a wide variety of expertise across a range of specialisms within NatureScot, and it makes sense for decision makers to have access to that".
289. A number of stakeholders, however, argued it would be inappropriate for NatureScot to actively participate in proceedings which would shape advice that would inform its own regulatory activities. At the Committee's online meeting with deer management practitioners, there was some support for reforms to the advisory panels but concerns that NatureScot could become both 'judge and jury' and seen to be 'marking their own homework'. Practitioners suggested local, rather than head office, staff involvement given their local knowledge.
290. [In a letter to the Committee on 9 June](#), the Minister explained that only two panels have been appointed since NatureScot took on regulatory responsibility for deer management in 2010. These related to authorisations for night shooting and lowland deer management. He said that:

” while the Bill allows the Scottish Ministers to appoint NatureScot to a panel it does not require them to do so. [...] Whether or not it would be appropriate, or helpful for NatureScot to participate as a member of a particular panel, rather than simply act as an observer, will very much depend on the nature of the panel and why it has been convened.

291. **The Committee heard evidence which supported changes which would allow NatureScot to participate as a full member of advisory panels in order to improve the panels’ efficiency. However, we also heard concerns that a conflict of interest may arise from NatureScot’s role as a regulator responsible for enforcing deer management measures. In its response to this report, the Committee asks the Scottish Government for further information about how the governance arrangements of any advisory panels would address these concerns.**

## Grounds for intervention for nature restoration

292. Sections 6A, 7 and 8 of the 1996 Act confer on NatureScot three voluntary and compulsory enforcement powers to support its regulatory activities relating to deer management. These are:
- **Deer management plan (Section 6A)** - If certain conditions are met, NatureScot may serve a notice to a land owner to prepare a plan which details the measures they will take to limit the number of deer. This may be in order to protect natural heritage, agricultural land, public safety or other factors. The plan must be submitted to NatureScot for approval.
  - **Control agreement (Section 7)** - NatureScot can enter into a formal agreement with a landowner which describes specific control measures that will be carried out by to reduce the impacts from deer. In entering into this agreement, a landowner may be entitled to public funding and additional support from NatureScot to fulfil its responsibilities.
  - **Control scheme (Section 8)** - if NatureScot is unable to enter into a voluntary agreement with a land owner, or there has been a breach of the conditions of an existing agreement, NatureScot can invoke a compulsory control scheme that compels actions to be taken. In establishing a control scheme, NatureScot must specify matters such as the control area, the deer management measures that should be implemented, the number and species of deer that should be culled and any time limits that are applied.
293. The conditions that would lead to NatureScot utilising its powers under these provisions are also established in the 1996 Act. These circumstances are set out in the policy memorandum as "where deer or steps being taken or not being taken for the management of deer are causing, or are likely to cause, damage or injury in some way or have become a danger (or potential danger to public safety) and the management of those deer is necessary for preventing such damage or injury, remedying it or preventing the danger".

294. Section 13 of the Bill seeks to insert sections 6ZA and 6ZB into the 1996 Act; section 6ZA would restate the current grounds for intervention and section 6ZB would introduce a new ground for intervention related to nature restoration.
295. The policy memorandum highlights that section 6ZB is not based on a recommendation by the DWG. It goes on, however, to state that "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". The policy memorandum further reports that "whilst the changes proposed by the DWG largely relate to removing barriers to more effective control" it asserts "biodiversity and climate change outcomes would not be met with the application of these changes alone".
296. No comments or concerns were raised with the Committee relating to the proposed section 6ZA.
297. NatureScot was supportive of the new ground for intervention for nature restoration as a way to "ensure that we are well equipped, forward looking and able to put in place deer management provisions to enhance nature rather than only respond to concerns about damage".
298. Some stakeholders raised concerns about proposals in section 16 to register a control scheme against the title deeds of a landholding. SLE asserted that "new owners or occupiers who are unconnected to previous owners or occupiers ought not to be held liable for their predecessors' actions". SLE argued that, "in those limited circumstances where a new owner or occupier succeeds while a control scheme is in force, it would make more sense to de-escalate to a control agreement".
299. Some stakeholders were supportive of the new grounds for intervention as a way of tackling biodiversity loss and climate change and promoting sustainable deer management. The Cairngorms NPA said "there is no doubt that a lot of enhancement and restoration will be done voluntarily, as it currently is, but intervention will be needed in some places and we must ensure that we have the right mechanisms for it".
300. Deer management practitioners, however, were concerned about how the proposed new ground would work in practice.
301. In particular, stakeholders were concerned about the criteria NatureScot would use when deciding whether the ground for intervention for nature restoration had been met. The ADMG noted that, whilst intervention thresholds under the existing grounds/proposed section 6ZA were quantifiable, the threshold for the new proposed ground of intervention/section 6ZB is unclear.
302. Many stakeholders said there were significant gaps in baseline data relating to wild deer populations, especially around deer densities, which could create challenges in terms of informing NatureScot's decision-making relating to intervening on this ground. Invercauld Estate also argued that the term 'restoration' "implies returning to a previous condition, at an undefined point in time, irrespective of whether this is a positive change environmentally or socio-economically, at either a local or a global level". SLE said:

- ” We have relatively good data from deer management groups, which are not only culling deer but delivering good things such as peatland restoration and habitat restoration. The question that follows is how we can apply a provision such as the one in proposed new section 6ZB to the lowlands in Scotland. I do not think that it is possible to do that, because there is a lack of suitable data.
303. Other stakeholders, however, thought there is sufficient baseline data and, regardless, suggested that the criteria should be informed by the localised impacts of deer on the landscape and habitat rather than a specific focus on deer numbers. A joint submission from the John Muir Trust and Trees for Life argued that "methods for defining restored natural habitat condition and for measuring progress towards that condition have been well-tested over recent decades" and therefore "we can identify when a woodland or peatland is ecologically healthy or degraded and which natural attributes it might be lacking". In particular, John Muir Trust noted that woodland herbivore impact assessments offered "a particularly strong methodology for woodlands", adding "you can use that as a baseline now in any part of the country to assess the impact of browsing on that habitat—to what extent is it preventing or allowing that habitat to diversify, regenerate and adapt to change over time".
304. Deer practitioners also expressed concerns that the new grounds for intervention could affect the current collaborative relationship between NatureScot and voluntary deer management groups. Deer management stakeholders at the Committee's roundtable emphasised the value of trust and a good relationship with NatureScot developed over the years. Deer practitioners at the Committee's online event shared concerns that a lack of detail around when the new powers would be enforced, could erode trust that has been developed through collaboration. It was suggested by some stakeholders that the Scottish Government could more concretely deliver on its objectives by targeted financial support to encourage stalkers to increase deer culls.
305. In response to concerns raised by stakeholders, the Minister highlighted the "huge amount of goodwill in the sector" for tackling environmental damage caused by high deer numbers and the support for the proposed new ground for intervention:
- ” Everybody is actually on board with that—that is one of the things that I have taken from my engagement with stakeholders in the bill. They may be unhappy with individual bits of the bill, but the overall consensus is that we want to do this, and we want to do it collectively.
306. The Minister sought to reassure the deer management sector that, although the Bill may lead to an increase in interventions, the Scottish Government did not expect an increase in the use of section 8 powers.
307. [In a letter to the Committee on 29 May](#), NatureScot provided three case studies setting out how it intended to exercise the new ground for intervention in Section 6ZB in three environments: 'Transition between upland and lowland Scotland'; 'Upland habitats – peatland restoration' and 'Central belt – peri-urban setting'. A further list of examples was shared with the Committee in [correspondence by the Minister on 9 June](#). During his evidence to the Committee, the Minister stated the development of criteria relating to the new grounds for interventions "will be done absolutely in consultation with stakeholders, so that we get it right" and confirmed

this would be developed and set out in the deer code.

308. In relation to specific concerns relating to the proposals in section 16 to register a control scheme against the title deeds of a landholding or not automatically de-escalate a control scheme after a transfer of title, the Minister explained the rationale for keeping the order in place:

” If NatureScot were to de-escalate a control scheme and the new owner said that they would carry that out and then did not comply, NatureScot would be back to square 1. It would land back on the minister’s desk to be signed off, and so on. If the order stays with the land, the process is there. It is not about the individual; it is about the landscape-scale management of the deer in the area. If a control scheme stays in place, it is actually an incentive for the people who are selling their land to make sure that they have deer management in place.

309. A Scottish Government official confirmed that the 1996 Act already requires NatureScot to conduct an annual review of section 8 Orders and that there is already a process to revoke a control scheme. The official confirmed, therefore, that “there is nothing that necessitates a provision for this specific circumstance”.

310. In relation to the data available to inform NatureScot’s decision-making, the Minister emphasised the importance of NatureScot’s new deer app in developing a robust evidence-base from landowners on matters such as deer densities. A Scottish Government official added that NatureScot also deploy other methods to gather data through deer censuses, as well as carry out deer counts through utilising helicopters and other technologies.

**311. The Committee agrees that the importance of nature restoration in the context of a biodiversity and climate crisis requires effective deer management, especially in degraded habitats or areas of high deer numbers. The Committee recognises that deer managers in large areas of Scotland already, voluntarily, carry out routine deer management to support nature enhancement and regeneration. This voluntary deer management is vital and must be supported and encouraged to continue. Given the extent of nature restoration required to meet nature targets, however, the Committee agrees that it would be helpful for NatureScot to have this proposed ground for intervention ‘in its toolkit’.**

**312. At the same time, the Committee recognises the concerns from the deer management sector about the lack of detail around how the new ground for intervention would be used. It is critical that the Scottish Government does not erode the trust and consensus that has been carefully built within the deer management sector in recent years. The Committee notes, and welcomes, the Scottish Government’s illustrative examples of when the proposed new ground would be used and the Minister’s statement that he did not expect a noticeable increase in section 8 orders.**

**313. The Committee notes the criteria for the use of the proposed new ground of intervention would be detailed in the deer code, which is laid in Parliament and subject to parliamentary scrutiny before it may come into effect. This**

**will provide an opportunity for the successor committee to take a view on whether the revised Deer Code has adequately addressed the concerns raised to this Committee.**

## **NatureScot investigatory powers (Sections 21 - 23)**

314. Sections 21 to 23 amend NatureScot's existing investigatory powers: section 21 would provide new powers of entry onto land for persons authorised by NatureScot, this includes reducing the notice period for entry for certain purposes from 14 to 5 working days. The financial memorandum says this "will simply give NatureScot the flexibility to take action on a shorter timeframe than is currently possible, and allow for preventative measure to be taken sooner". It notes that this "will not increase the occasions where NatureScot can enter land, as it does not change the criteria for doing so". Section 22 would enable NatureScot to compel owners or occupiers of land to provide certain information and documentation; and section 23 would enable NatureScot to serve notices electronically.
315. NatureScot said the new powers would streamline the process so the agency could "more effectively enter on to land in circumstances when we do not have agreement in place" and ensure "the information and data that we might require to make decisions on those regulatory processes are available to us". [In correspondence to the Committee on 29 May](#), it stated that "taken together these changes will support our ability to make the best-informed decisions for regulatory intervention".
316. Some stakeholders agreed that new powers would improve NatureScot's capabilities to take urgent action. Scottish Environment LINK noted that "if they [deer] are damaging the enhancement that you are seeking to achieve, swift action is the order of the day". FLS agreed, commenting that "if you get an incursion, which is a serious issue, speed of response is very important, so I can see the absolute logic of the reduced timescale".
317. The Committee also heard strong concerns from some deer management stakeholders, however, about the additional pressures these amended powers could have on owners and occupiers of land. The Scottish Association for Country Sports called for these powers to be "used proportionally" and the British Association for Shooting and Conservation (BASC) told Members that "the broad powers could, at best, be classed as intrusive".
318. The Minister told the Committee the changes reflected a general understanding that there are instances when an expedited timeframe for action may be necessary. He added that powers would only be used following "a conversation" between NatureScot and the landowner and would not be "a surprise" to the landowner/ occupier. In relation to the five-day notice period, the Minister confirmed that "there will be flexibility, but only within the bounds of reasonableness".

319. **The Committee is content with the proposed changes to NatureScot's investigatory powers set out in sections 21 to 23. The Committee notes**

**some stakeholders' concerns about the reduced notice period for entry on to land for certain purposes from 14 to 5 working days. The Committee also notes the Minister's confirmation that any notice to enter on to land would follow a conversation with NatureScot and would not be "a surprise" to the landowner/occupier.**

## **Authorisations for particular activities (Sections 24 - 31)**

320. A 'register of persons competent to shoot deer' was established under the 1996 Act; section 28 would extend the requirement to register to include those who wish to carry out a specific activity which requires authorisation from NatureScot. The policy memorandum states that the register will act as a demonstration of "baseline competence for everyone shooting deer in Scotland will be required".
321. The 1996 Act provisions relating to these specific activities – taking or killing deer during close seasons; at night or with a shotgun; or the use of vehicles to drive deer – are updated by sections 24 to 27. The 1996 Act provides that NatureScot shall not grant authorisations unless it is satisfied that the person concerned is a fit and competent person; section 30 would add registration on the register of authorised persons as a reason for NatureScot to assess a person as being fit and competent for the purpose of granting authorisations.
322. The explanatory note says that "once a person is on the register as holding an authorisation for a specified activity, they will not need to subsequently go back to SNH [NatureScot] to get an authorisation for each specific occasion of carrying out the specified activity".
323. It would remain possible for a person to obtain a 'one-off authorisation' outside the registration process".
324. NatureScot told the Committee that the register would "provide an opportunity to demonstrate and enhance the already high standards of training and expertise amongst practitioners and reflect the importance of best practice in deer management".
325. A number of witnesses identified the benefits of setting a mandatory level of competence as a way of ensuring standards in animal welfare, food hygiene and public safety were met. FLS explained that "having some clarity around how 'competence' is defined are really important in maintaining public confidence". SLE stated that the changes "would significantly reduce bureaucratic burdens for both the regulator and deer managers".
326. Some stakeholders were concerned about the risks associated with night shooting in woodlands areas or near well-used public spaces and called for more stringent tests of competence to be applied to authorisation for this activity. Onekind stated that "people will need to display a higher level of competence than baseline to be considered fit and competent to shoot deer at night, as this requires additional skills to perform well and protect deer welfare". A Scottish Government official confirmed

it “envisages that there will be a higher standard of competence for such circumstances than the baseline competence”.

327. The Committee also heard, however, strong opposition to the proposals from BASC, who said "self-regulation has served us well over many decades and has ensured high standards on a voluntary basis". BASC also stated it has "seen no empirical evidence to the effect that mandatory training or a mandatory level of competence should be introduced".
328. Evidence from stakeholders also noted concerns about the potential unintended consequences that could arise as a result of the proposed changes. Game & Wildlife Conservation Trust suggested that the register could risk reducing the pool of available stalkers, particularly "amongst the voluntary and recreational sporting hunters in low ground ". Deer practitioners at the Committee's online event explained that financial burdens of accessing the register could disproportionately impact on lower income stalkers who aren't currently required to register and called for support with any additional training costs.
329. The Minister told the Committee that these provisions were “not just about deer welfare; it is about public concern and public safety; especially with increasing numbers of deer and more venison entering the food chain”. He added that “most of our deer stalkers are very competent—there is no doubt about that—but there is evidence that that is not 100 per cent the case, and there is evidence that wounding rates are between 6 and 17 per cent, which is too high for us to ignore”. The Minister also referred to the support for these proposals in responses to the Scottish Government’s consultation.
330. The Committee discussed how practitioners could be required to demonstrate a minimum level of competence. Many stakeholders suggested a deer stalking certificate (DSC), although OneKind argued that a higher level qualification, DSC2, should be required "to ensure competency and maximise the number of deer killed rather than wounded". Alternative methods of eligibility, such as 'grandfather rights' or a referee scheme, were also discussed. SLE said these approaches would be applicable “in situations where you might have a professional deer manager who has been at it for 40 years, has not done his deer stalking certificate level 1 but could easily provide you with a referee or a reference that supports his ability to kill deer professionally”. NatureScot asserted that standards would be developed with the industry, and that aspects such as grandfather rights and references "are on the table".
331. Several stakeholders also called for those who are supervised by a registered professional, for example international guests on a sporting estate, to be exempted from the requirement to register. NatureScot confirmed the Bill would not extend to anyone "as long as they are accompanied by someone who is trained". They added that "quite a lot of those guests will already have secured qualifications in their own countries, which probably require a higher standard than we are asking for in Scotland" but noted that "where they did not have such a qualification, it would mostly be addressed by accompanied stalking with somebody who was competent to do that".
332. The Minister told the Committee that much of the detail relating to the criteria for registration would be set out in secondary legislation. In relation to ‘grandfathers’ rights’, the Minister repeated NatureScot’s confirmation that this would be

considered and added that the Scottish Government “will then consider how to manage the transition, ensuring that everybody gets up to that fit and competent state”.

333. **The Committee agrees with the proposals relating to extending the register of persons competent to shoot deer to include those authorised to undertake specific activities which require authorisations from NatureScot. The Committee notes, however, that this will mean a change for some deer management practitioners, such as non-certified stalkers, and that calls for ‘grandfather rights’ and referee schemes have been made. The Committee calls on the Scottish Government to set out how it would support these practitioners through the transition. The Committee encourages its successor committee, when it considers the secondary legislation implementing these sections, to follow up on these support measures.**

## Repeal of Venison Dealer Licence (Section 33)

334. Section 33 of the Bill seeks to remove sections 33-36 of the 1996 Act which requires anyone who sells venison to hold a venison dealer licence (VDL).
335. The policy memorandum states that "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". It adds that removing venison licensing aligns with Scottish Government's ambitions around tackling the nature and climate emergency through effective deer management by increasing its availability.
336. [In correspondence to the Committee dated 23 April](#), the Scottish Government Bill team provided details of hygiene and food safety standards that currently govern the sale, traceability and consumption of wild game products such as venison. It explains that most food standards regulations around wild game are derived from assimilated EU law, with further guidance on the handling and processing of deer carcasses detailed in the Wild Game Guide and the Wild Deer Best Practice Guide. In addition, officials noted the proposed removal of the VDL had been discussed with Food Standards Scotland and NatureScot and "neither were of the view that a VDL provides either useful data or information, or any additional food safety requirement".
337. Many stakeholders emphasised the importance of the wild venison sales in supporting the wider deer management sector and nature restoration, as well as providing a food source. North Ayrshire Council told the Committee that making wild venison products more affordable and easily accessible for consumers could also bring noticeable environmental, public health and socio-economic benefits for local communities.
338. Problems in relation to the cost, effectiveness and design of the current system was highlighted in evidence to the Committee by some stakeholders who welcomed the removal of the VDL to remove barriers to get wild venison to market. Scottish

Environment LINK said the current system was “quite burdensome”, noting that many producers are currently working to three different licensing schemes: the VDL, Scottish Quality Wild Venison and Food Standards Scotland.

339. Other stakeholders, however, whilst broadly agreeing with the deficiencies of the VDL system, were concerned that deregulation of wild venison sales could risk undermining public confidence in the quality of wild venison. Scottish Venison noted that “in the venison trade, public confidence is all important”, noting that the sector's reputation had been impacted by a food scare in 2015. A joint submission from ADMG, Scottish Environment LINK, SLE and Scottish Venison called for the VDLs to “remain until a better system is implemented in their place”. They argued this approach would help “to ensure traceability and clamp down on rogue sales/grey/black market”.
340. Stakeholders identified that NatureScot’s new national deer app currently in development could be used to address concerns around food safety and traceability. SLE said the new app could potentially “allow for full traceability from carcass to kitchen” by helping to support “straightforward data submission, access, and reporting, ultimately supporting a more accurate and comprehensive understanding of deer management across Scotland”. Cairngorms NPA said “it looks like the app is really good, so we can think about how we might use that” but added “there would be a resource implication for NatureScot and others in rolling it out”.
341. When asked about this issue in evidence, the Minister said the origins of the VDL “was not about food safety; it was to prevent poaching”. He emphasised that wild venison is covered by the same food standards legislation as all other meat and that the provision was supported by Food Standards Scotland. The Minister agreed that the NatureScot app would improve the data about wild deer in Scotland. Officials confirmed the app is used in some parts of Scotland but has not yet been rolled out nationally.
342. The importance of more widely supporting the wild venison sector was also discussed by the Committee. Public procurement was consistently identified as one area where the Scottish Government could incentivise the supply and consumption of wild venison, with the supply of local venison to schools in Argyll & Bute given as a best practice example.
343. A lack of infrastructure and food processing facilities were repeatedly highlighted as a significant barrier to small-scale producers and recreational stalkers in taking venison to market. SLE said that “investment in community deer larders and chillers is essential to increasing the local processing and consumption of venison, aligning with the goals of the Good Food Nation initiatives”.
344. The Minister said a key focus of the Scottish Government going forward was regarding marketing of wild venison as “another iconic Scottish food that we can celebrate”. A Scottish Government official confirmed that NatureScot was reviewing infrastructure as part of its work on the venison pilot projects, adding that “we are keen to hear from stakeholders about where there could be more support for infrastructure”.

345. **The Committee has heard mixed evidence relating to the venison dealer licence. Some stakeholders have told the Committee it is burdensome and ineffectively enforced. Others accept there are problems with the scheme but say a scheme of some sort is essential to guarantee traceability and consequently consumer confidence in Scottish wild venison. They call for a new scheme to be in place before the venison dealer licence scheme is abolished. The Minister said the scheme originated to tackle poaching and he emphasised the same food standards apply to wild venison as any other meat product.**
346. **Given the deer management sector’s concerns about maintaining traceability of wild venison, and noting the consensus around the potential role the NatureScot app could play in this respect, the Committee suggests the current licence scheme is maintained until the app has been fully tested and rolled out across Scotland. The Committee calls on the Scottish Government and NatureScot to establish a definitive nationwide launch date for the app to accelerate progress towards a replacement system. The Committee asks Food Standards Scotland to set out how it would manage the traceability of wild venison without the venison dealer licence. The Committee also asks the Scottish Government to respond to this point before Stage 2.**
347. **The Committee encourages the Scottish Government to continue to support the wild venison sector, especially by exploring opportunities to expand consumption through local supply chains and public procurement. The Committee agrees support for community larders is essential to support the wild venison sector, especially if the venison dealer licence scheme is repealed and access to the market is broadened as a result.**

## **Impact of rising deer numbers for tenant farms on large scale landholdings**

348. The Scottish Tenant Farmers Association wrote to the Committee after members had concluded evidence gathering to highlight its concerns regarding the impact of deer on tenanted farmland. It states that tenant farmers’ right under the 1996 Act to take deer on improved land, ie cropping land and improved grassland, is limited because, “during the open season for female deer, they are more likely to be found on unimproved land where tenants have no right to take deer”. The Association highlights the DWG’s recommendation – which was not provided for in the Bill – that the statutory rights of occupiers (which includes farm tenants) should be amended to apply to the occupiers of any land type, not just improved land.
349. The Committee did not have an opportunity to raise this with stakeholders and the Minister but highlights it in its report for the Parliament’s information.
350. **The Committee asks the Scottish Government to reply to this issue in its response to this report.**

## Wider issues raised in evidence to the Committee

351. Several submissions of written evidence highlighted the issue of falconry and, in particular, the problems faced by falconers as a result of provisions in the [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020](#) which restrict the killing of mountain hares. The International Association for Falconry and Conservation of Birds of Prey said that “the law, although well-meaning, has resulted in four years of unnecessary restriction on a low environmental impact activity with extensive cultural significance”. It added that the changes “raised welfare issues as it has prevented falconers birds of prey from being flown in much of Scotland and displaying their natural instincts and behaviour”. It argued that the Bill provided an opportunity to amend the legislation to “restore legal certainty, respect cultural heritage, ensure welfare of birds of prey and correct a long-standing legislative error”.
352. The Committee also received a representation from FMS suggesting the Bill would be an appropriate vehicle to amend the [Salmon and Freshwater Fisheries \(Consolidation\) \(Scotland\) Act 2003](#). FMS argued that the penalties for offences which result in the death of salmon and other freshwater species should be increased as the current financial penalties for salmon poaching “no longer provide a suitable deterrent given the endangered status of salmon stocks and need to be updated”. It said the change would ensure sanctions are “commensurate with the significance of the offence and aligned with penalties for other wildlife crimes under Scottish law”.

# Conclusion

353. **Notwithstanding the recommendations in this report about how some of the Bill's provisions could be strengthened and improved, the Committee supports the general principles of this Bill.**

## Annexe A - extract of minutes

### 8th Meeting, 2025 (Session 6), Wednesday 5 March 2025

**Natural Environment (Scotland) Bill:** The Committee took evidence from— Dr Jack Bloodworth, Principal Science Adviser, Rural and Environmental Science and Analytical Services Division; Leia Fitzgerald, Head of Nature Division Bill Unit; Lisa McCann, Head of Biodiversity Unit; Norman Munro, Solicitor, Marine, Planning and Natural Resources Division; and Joanne Napier, Senior Policy Officer, Offshore Energy Environmental Legislative Reform Unit, Scottish Government.

and then from— Hugh Dignon, Head of Wildlife Management Unit; Leia Fitzgerald

Head of Nature Division Bill Unit; Norman Munro, Solicitor, Marine, Planning and Natural Resources Division, Scottish Government.

### 12th Meeting, 2025 (Session 6), Wednesday 2 April 2025

**Natural Environment (Scotland) Bill:** The Committee took evidence from— Mark Lodge, Senior Planning and Strategies Officer, Argyll & Bute Council; Grant Moir, Chief Executive Officer, Cairngorms National Park Authority; Gordon Watson, Chief Executive Officer, Loch Lomond and the Trossachs National Park Authority.

### 14th Meeting, 2025 (Session 6), Wednesday 30 April 2025

**Natural Environment (Scotland) Bill:** The Committee took evidence from— Donald Fraser, Head of Wildlife Management; and Robbie Kernahan, Director of Green Economy, NatureScot.

and then from— Peter Clark, Scotland Director, British Association for Shooting and Conservation; Ross Ewing, Director of Moorland, Scottish Land and Estates; David Fleetwood, Director of Policy, John Muir Trust; Alan McDonnell, Head of Nature Restoration, Trees for Life; Grant Moir, Chief Executive Officer, Cairngorms National Park Authority; Duncan Orr-Ewing, Head of Species and Land Management, RSPB Scotland, LINK Deer Group; Dick Playfair, Secretary, Scottish Venison Association; Graeme Prest, Director of Land Management and Regions, Forestry and Land Scotland; and Tom Turnbull, Chairman, Association of Deer Management Groups.

### 15th Meeting, 2025 (Session 6), Wednesday 7 May 2025

**Natural Environment (Scotland) Bill:** The Committee took evidence from— Professor Rob Brooker, Head of Ecological Sciences, The James Hutton Institute; Professor James Harrison, Professor of Environmental Law, University of Edinburgh;

Professor Davy McCracken, Head of Department and Head of Research Centre, Scotland's Rural College; Professor Kirsty Park, Head of Biological & Environmental Sciences, University of Stirling; Professor Beth Scott, Professor of Marine Ecology, University of Aberdeen; and Jamie Whittle, Convener, Environmental Law Sub-committee, Law Society of Scotland.

#### 16th Meeting, 2025 (Session 6), Wednesday 14 May 2025

**Natural Environment (Scotland) Bill:** The Committee took evidence from— Rea Cris, Public Affairs Manager, Open Seas; Calum Duncan, Head of Policy and Advocacy, Marine Conservation Society; Dr Nick Hesford, Interim Director, Scotland

Game and Wildlife Conservation Trust; Dan Paris, Director of Policy and Engagement, Scottish Environment LINK; Nikki Sinclair, Green Belts Alliance Manager/National Parks Strategy Project Manager, Action to Protect Rural Scotland; Ailis Watt, Senior Land Use Policy Officer, RSPB Scotland; and Bruce Wilson, Head of Policy and Advocacy, Scottish Wildlife Trust.

#### 17th Meeting, 2025 (Session 6), Wednesday 21 May 2025

**Natural Environment (Scotland) Bill:** The Committee took evidence from— Jacqueline Cook, Planning and Development Committee Vice Chair, Scottish Property Federation; Sarah Cowie, Senior Policy Manager Climate, Land and Business, National Farmers Union Scotland; Emily Johns, Nature Strategy Manager,

SSEN Transmission; Stuart Goodall, Chief Executive, Confor; Elspeth Macdonald, Chief Executive, Scottish Fishermen's Federation; Dr Caroline McParland, Vice President for Scotland, Chartered Institute of Ecology and Environmental Management; Jenny Munro, Policy and Practice Officer, Royal Town Planning Institute; and Stephen Young, Director of Policy, Scottish Land and Estates.

#### 18th Meeting, 2025 (Session 6), Wednesday 28 May 2025

**Natural Environment (Scotland) Bill:** The Committee took evidence from— Annie Breaden, Director of Corporate Operations, Crown Estate Scotland; Brendan Callaghan, Director of Operational Delivery, Scottish Forestry; Alex Flucker, Chief Operating Officer, Data, Evidence, and Innovation, Scottish Environment Protection Agency; Dr Katherine Leys, Head of Biodiversity and Geodiversity, NatureScot; and Dr Chris Tuckett, Chief Officer for Strategy and Impact, Joint Nature Conservation Committee.

and then from— Alan Hunt, Head of Policy Analysis and Horizon Scanning, Environmental Standards Scotland; and Neil Langhorn, Head of Strategy and Analysis, Environmental Standards Scotland.

#### 19th Meeting, 2025 (Session 6), Wednesday 4 June 2025

**Natural Environment (Scotland) Bill:** The Committee took evidence from— Gillian Martin, Cabinet Secretary for Net Zero and Energy; Leia Fitzgerald, Head of Nature Division Bill Unit; Lisa McCann, Head of Biodiversity Unit; and Joan McHutchison, Solicitor, Scottish Government.

and then from—Gillian Martin, Cabinet Secretary for Net Zero and Energy

; Stewart Cunningham, Solicitor, Leia Fitzgerald, Head of Nature Division Bill Unit, and

Joanne Napier, Senior Policy Officer, Offshore Energy, Scottish Government.

and then from—Jim Fairlie, Minister for Agriculture and Connectivity, Leia Fitzgerald

Head of Nature Division Bill Unit; Hazel Reilly, Solicitor; Brodie Wilson, Policy Manager, Wildlife Management Team; and Sam Turner, Team Leader, Wildlife Management Team, Scottish Government.

### 20th Meeting, 2025 (Session 6), Wednesday 11 June 2025

**Natural Environment (Scotland) Bill:** The Committee took evidence from—

Mairi Gougeon, Cabinet Secretary for Rural Affairs, Land Reform and Islands; Brittany Brown, Policy Lead; Jenny Gibbons, Team Leader, National Parks; Felicity Hollands, Deputy Bill Team Leader; and Hazel Reilly, Solicitor, Scottish Government.

### 21st Meeting, 2025 (Session 6), Wednesday 18 June 2025

**Natural Environment (Scotland) Bill:** The Committee considered a draft report. Various changes were agreed to, and the Committee agreed to consider a revised draft, in private, at its next meeting.

### 22nd Meeting, 2025 (Session 6), Wednesday 25 June 2025

**Natural Environment (Scotland) Bill:** The Committee considered a draft report. Various changes were agreed to, and the Committee agreed to consider a further draft, in private, at a future meeting.

### 24th Meeting, 2025 (Session 6), Wednesday 10 September 2025

**Natural Environment (Scotland) Bill (in private):** The Committee considered a draft report. Various changes were agreed to, and the Committee agreed to consider a further draft, in private, at a future meeting.

### 25th Meeting, 2025 (Session 6), Wednesday 17 September 2025

**Natural Environment (Scotland) Bill (in private):** The Committee considered a draft report. Various changes were agreed to. The Committee delegated to the Convener responsibility for finalising the draft report for publication.

## Annexe B - evidence collected by the FPA Committee

We have received 12 submission to the FM call for views which are saved here: [https://yourviews.parliament.scot/finance/natural-environment-bill-fm/consultation/published\\_select\\_respondent](https://yourviews.parliament.scot/finance/natural-environment-bill-fm/consultation/published_select_respondent)

The concerns expressed in the submissions focussed broadly on two themes:

### Costs following the exercise of powers given by the bill

The respondents made the following points:

- The FM does not include financial estimates arising from the use of powers under Part 2 of the bill given that that Scottish Government said that it is not intending to use this power in the short term.
- Environmental Standards Scotland is given additional functions through the Bill. They do not have concerns that the costs related to them are misrepresented in the FM.
- Ministers have a duty to impose nature restoration targets but no detail is given regarding costs that may arise from the imposition of those targets.

#### Costs associated with deer management (Part 4)

The Bill aims to reduce the number of deer to restore biodiversity with an aim to increase the cull levels by around 50,000 per annum. Deer management costs were, by a significant margin, the most contentious aspect discussed by the respondents. The Bill sets new powers for NatureScot. These include:

- The power to set up a control scheme which will compel landowners to undertake deer management.
- The power to require information and documentation
- The power to create deer management plans on specific land and then recover the costs from the landowner.

The respondents made the following points:

- Concern about the extra powers given to NatureScot which may have significant costs implications for landowners.
- Currently more than 80% of deer management is done privately and not enough consideration was given to the financial burden for private deer management by landowners.
- No proper recognition of the associated costs that will arise from increased cull targets such as chillers and larders.
- There should be more support schemes to offset the financial burden of deer culling, especially in areas where natural recovery through venison sales is not viable.
- More needs to be done to support the venison industry, as venison is currently produced at a net loss. This has implications for the financial sustainability of the increased cull targets.

## **Annexe C - Suggestions for amendments to the proposed national park aims**

**Aberdeenshire Council** said it was important to qualify “access” with “responsible

**SE Link** called for further definition of “cultural”.

**The National Trust for Scotland** welcomed the express reference to restoring and

regenerating biodiversity now being brought in via subsection (2) but said this should be the language used in subsection (1) itself; in the “nature” aim itself in subsection (1), rather than it referring to nature *conservation*: language they saw as reflecting an outdated and more limited policy approach.

**The James Hutton Institute** said a reference should be made to “wellbeing” in the sustainable development aim. They also wanted express reference to parks being a positive influence for biodiversity regeneration on neighbouring areas.

**Scottish Crofters Federation** said “We would be keen to see this dimension [ie crofting is “culture”] being emphasized more strongly by including a paragraph (g) under aim 4 that highlights the contribution and importance of agroecological and High Nature Value practices”.

