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Rural Affairs and Islands Committee
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1. Environmental Standards Scotland (ESS) welcomes the opportunity to respond to the Rural Affairs and Islands Committee's call for views on the Scottish Government's Natural Environment (Scotland) Bill.
2. ESS is a non-ministerial office directly accountable to Scottish Parliament. Since 1 October 2021, it has been a component of the system of environmental governance in Scotland following the UK's exit from the European Union and the end of oversight of implementation of European Union environmental law by the European Commission and the European Court of Justice. ESS' remit is to:
 - ensure public authorities, including the Scottish Government, public bodies and local authorities, comply with environmental law
 - monitor and take action to improve the effectiveness of environmental law and its implementation.

Part 1

Are statutory nature targets needed in Scotland?

3. Yes. Statutory targets ensure that there is a legal duty to act for relevant public bodies and establish a long-term approach. These targets should be ambitious but achievable with sufficient action. They must be supported by effective and transparent reporting and monitoring of progress and should be adequately resourced. Establishing this

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framework of targets in legislation will help to provide clarity and certainty about the long-term direction of government policy. The approach of establishing a framework in primary legislation and setting the details of the targets in secondary legislation should be supported by a robust process for establishing, verifying, reviewing, monitoring and reporting on targets. This should be evidence-based, independent and appropriately resourced to ensure that the framework and the targets are effective.

Are you satisfied with the proposed topics for nature targets set out in the Bill?

4. The policy memorandum states that the Biodiversity Programme Advisory Group (PAG) proposed seven target topic areas. Three are included in the Bill, two have merit for the development of statutory targets and further development is proposed by the Scottish Government and two further targets have been deemed unsuitable for statutory targets but are relevant to the successful delivery of the Scottish Biodiversity Strategy.
5. The three target topic areas included in the Bill will allow for a broad range of targets that consider habitat, species and environmental condition to be established through secondary legislation. ESS recognises that there is benefit in having a suite of statutory and non-statutory targets and measures to deliver biodiversity policy in Scotland. However, it is important that this Bill provides a responsive, robust and futureproof framework for target setting that recognises the breadth of challenges, pressures and opportunities for biodiversity and developments in evidence and research. This should recognise that areas with developing evidence bases, such as “Ecosystem health and integrity” may be important additions to the suite of statutory target topics.
6. The Bill as introduced provides scope for additional targets to be made or for the target topics to be added to or amended. However the triggers for considering additional targets or topics could be strengthened to ensure that there is sufficient scope for important additions to be made to the suite of targets in a timely manner and for a clear mechanism for independent triggers for the Scottish Government to consider additional targets or topics.
7. The policy memorandum states that the PAG proposed “Investment in nature” and “Positive outcomes for biodiversity in public sector and government policy” as target topics but that they have been judged not suitable for statutory targets. Ensuring sufficient investment in nature and mainstreaming delivery of biodiversity policy are

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essential elements in driving the systemic change that is required to meet Scotland's Global Biodiversity Framework commitments and halting and reversing biodiversity decline. Whether or not there is a statutory element to these two components, it is important that the combination of statutory and non-statutory delivery of biodiversity policy and targets is sufficiently ambitious, comprehensive and strategic to drive effective outcomes.

Do you have a view on the framework established in the Bill for how nature targets will be governed, including how targets will be set, monitored, reviewed and reported on?

8. It is important that targets are set and assessed at the appropriate spatial scale and timescale. In delivering against these targets and monitoring the outcomes and outputs, the evidence base and understanding of the specific natural system may develop over time. Therefore targets should be responsive and adaptable. It may also be appropriate for some targets to combine both outcome and output metrics, for example when aiming to restore x hectares of a particular habitat there may be additional benefit to prioritising the restoration of sites that are most at risk, highest quality or other factors.
9. As noted in response to the previous question, the Bill as introduced provides scope for additional targets to be made or for the target topics to be added to or amended. However the triggers for considering additional targets or topics could be strengthened to ensure that there is sufficient scope for important additions to be made to the suite of targets in a timely manner and for a clear mechanism for independent triggers for the Scottish Government to consider additional targets or topics.
10. An independent monitoring and review function will help to provide effective scrutiny of these targets as part of the proposed governance system. As noted in our response to the Scottish Government's consultation on its Review of Environmental Governance ([ESS-Consultation-Response-Environmental-Governance-Review-Consultation-20231011.pdf](#)), monitoring and reporting are significant elements of the role preformed by the European Commission (EC) and the European Environment Agency (EEA) both on behalf of member states and to ensure that environmental law is effectively implemented. While some of the functions they undertake are part of ESS' current remit, elements of the EC and EEA functions have not been fully replicated in Scottish

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environmental governance functions post-EU exit. The proposed Independent Review Body could help to remedy part of this gap for biodiversity.

11. The Scottish Government asked ESS to provide high and low costing estimates for the Independent Review Body functions based on a high-level description provided. As noted in the Financial Memorandum, at the time of the request for costings given the limited detail provided at that stage, it was not possible to accurately estimate the ongoing costs to ESS associated with the provision in the Bill. This is because those costs will depend on the final detail of the nature restoration targets to be laid in regulations, the quality of available data to assess progress against those targets, the level and detail of the scrutiny applied by ESS on an ongoing basis, the length and complexity of each report prepared by the Scottish Government, and the extent to which the Scottish Government has fulfilled its duty in achieving the targets, monitoring and reporting on them.
12. The lower figure provided in the Financial Memorandum represents the minimum ESS considers necessary to deliver the new functions as they are currently set out, and based in part on the analogue to the Office for Environmental Protection's monitoring and reporting on the Environmental Improvement Plan in England. The upper figure provided represents the potential cost, noting the complexities listed above, for ESS to provide effective scrutiny of the targets where additional work is required by ESS to analyse and synthesise the evidence for delivery of the targets.

Is there anything else you would like to say about Part 1 of the Bill on nature targets?

13. The Bill as introduced adds a new section 2G(2) to the Nature Conservation (Scotland) Act 2004. This states that Environmental Standards Scotland is to submit reports to the Scottish Ministers for these to be laid before the Scottish Parliament by the Scottish Ministers. ESS is a non-ministerial office directly accountable to the Scottish Parliament. 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. Therefore it is ESS' view that this provision should be amended to allow ESS to lay any statutory reports directly before the Scottish Parliament.

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14. For the broader estimated costs for the Natural Environment (Scotland) Bill, we would like to see more evidence for an appropriate level of investment in developing nature restoration targets and collecting and analysing high quality data and evidence on progress against these.
15. Appropriate levels of investment in the public authorities responsible for this data collection and reporting will be essential for the effectiveness of the Bill and its implementation. This should be considered in the context of the Edinburgh Declaration on post-2020 Global Biodiversity Framework. Target 19 of the Kunming-Montreal Global Biodiversity Framework commits signatories to substantially increase the level of financial resources to implement national biodiversity strategies and action plans. In 2020, the Scottish Government demonstrated leadership on subnational implementation of the Global Biodiversity Framework by convening over 200 signatories to the Edinburgh Declaration. The Declaration committed Scotland to implementing appropriate actions to deliver on the post-2020 global biodiversity framework goals and increasing resource mobilisation for investment in biodiversity action at a subnational level.

Part 2

Do you support the Scottish Government being granted powers to modify or restate EIA legislation and Habitats Regulations?

16. Yes. As noted in our response to the Scottish Government's consultation on [ESS-Consultation-Response-Scottish-Government-EIA-HRA-Enabling-Powers-May-2024.pdf](#) ESS broadly supports the principles of the Scottish Government's proposals for additional enabling powers to allow future amendment of both the EIA and Habitats regulations. This is provided they are used to strengthen environmental law and its application in Scotland. The enabling powers must be used to ensure that the assessment processes remain rigorous and a high degree of environmental protection is maintained.
17. It is welcome to see the rationale set out by the Scottish Government that 'the enabling power is not intended to be used to move away from or weaken the 1994 Habitats

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regulations or the EIA regimes, and the vital protections they provide'.¹ We previously responded that, to ensure that the scope of the enabling powers is appropriate, they should be defined objectively, framed as narrowly as possible and any powers to make (or amend) secondary legislation restricted by effective legal boundaries. For example by having an overarching principle that amending the regulations provides improved environmental outcomes and maintains a high level of environmental protection, as described in the following answer.

Do you agree with the purposes set out in the Bill for which powers to amend those regimes may be used?

18. ESS broadly agree with the purposes set out in the Bill, however there should be an overarching principle that amending the regulations provides improved environmental outcomes and maintains a high level of environmental protection. This includes ensuring that Scotland keeps pace with wider developments in environmental law and standards in this field. Without this overarching principle, there is a risk that the Bill as written could allow for changes that do not provide environmental benefits or lead to negative environmental outcomes.

Is there anything else you would like to say about Part 2 of the Bill on powers to modify EIA legislation and Habitats Regulations?

19. As noted in response to the previous question, there should be an overarching principle that amending the regulations provides improved environmental outcomes and maintains a high level of environmental protection. Without this overarching principle there is a risk that the Bill as written could allow for changes that do not provide environmental benefit or lead to negative environmental outcomes.

Part 3

Do you agree with proposed changes to the aims of National Parks in the Bill?

20. It is helpful to see the changes made to simplify and ensure consistency in language. ESS agree with the changes to promote sustainable management, as well as use of natural resources within the park.

¹ [Policy Memorandum accessible](#) para 137

21. As consulted upon, we agreed that giving greater weight to biodiversity and climate change in the aims where there is a conflict was important, and it is welcome to see biodiversity on the face of the Bill within the aims. However, with the changes as proposed it is unclear how the range of sub aims will be balanced when a conflict arises and the National Park 'principle' (S9(6) of the 2000 Act) applies, and whether this reduces the weighting of biodiversity considerations in decision making.
22. It is important to ensure there is sufficient clarity on what these new aims mean for management of the National Parks, to support effective implementation, especially with the advent of a potential new national park.

Do you agree with new duties around the implementation of National Park Plans that are set out in the Bill?

23. Yes, this obligation is positive and beneficial in principle but will add extra complexity into the roles of other public bodies that operate within the National Parks in how they balance their priorities and activities. It is important that this duty is clear and adequately supported by appropriate guidance.

Do you support provisions in the Bill enabling the Scottish Government to make regulations for the issuing of fixed penalty notices for breaches of National Park byelaws?

24. Yes, ensuring compliance with environmental law is important. An expansion in the range of enforcement tools available to National Parks should support this.

Is there anything else you would like to say about Part 3 of the Bill on National Parks?

Part 4

Do you agree with the proposed changes in the Bill to the statutory aims and purposes of deer management?

25. ESS broadly support the proposed shift in statutory aims and purposes towards greater emphasis on conservation, sustainability, and nature restoration. The inclusion of deer welfare as an explicit consideration under the aims and purposes of deer management is a welcome development.

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26. The recognition of the public interest in sustainable and effective deer management aligns with wider policy priorities, including biodiversity and climate goals. While the revised aim sets a positive direction, the Bill provides limited detail on how they will be implemented or translated into operational priorities. Further clarity on delivery mechanisms and monitoring would support a more informed assessment of their likely impact.

Do you have any comments on Section 11 of the Bill regarding NatureScot representation on advisory panels?

Do you agree with the proposed changes in Section 12 which changes how frequently NatureScot reviews compliance with the code of practice for deer management?

27. The proposed changes appear positive as they would allow NatureScot to review compliance at any time, rather than being restricted to a fixed 3-year cycle. This provides greater flexibility to respond to emerging conservation concerns or changing deer impacts on habitats and land use.
28. ESS supports the move towards a more adaptive management approach, which is consistent with wider goals around nature restoration and biodiversity recovery. It will be important that NatureScot communicates its review process transparently, including when and why reviews are undertaken.

Do you support the new ground for intervention by NatureScot for the purpose of nature restoration, as set out in the Bill?

29. ESS supports, in principle, the introduction of nature restoration as a ground for intervention by NatureScot, particularly where deer impacts are undermining ecological recovery or land management aligned with national biodiversity and climate objectives.

Do you agree with modifications set out in the Bill for the operation of deer management plans, control agreements and control schemes?

30. We support the proposal to give NatureScot the power to require Deer Management Plans (DMPs) with clear responsibilities and timelines. This should improve transparency and accountability in deer management.

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31. The ability to monitor and evaluate DMPs should also strengthen compliance and enable a more adaptive, evidence-based approach. The apparent escalation approach from DMPs to voluntary control agreements to control schemes appears to be a proportionate and collaborative framework.
32. The success of this approach will depend on resourcing and capacity within NatureScot to assess, implement and follow up on DMPs and control scheme. Without this, there is a risk that the new powers could be underused or inconsistently applied.

Do you agree with the proposed changes to investigatory powers for NatureScot as set out in Section 21 and Section 22 of the Bill?

Do you have a view on proposals in the Bill for changes to the authorisations issued by NatureScot for:

- a. the culling of deer during the closed seasons**
- b. the culling of deer at night**
- c. the use of vehicles to drive deer**

Do you support a new offence of shooting a deer with a shotgun, along with a corresponding ability for NatureScot to authorise the activity in appropriate circumstances?

33. We support the creation of a new offence for shooting deer with a shotgun, as it promotes improved animal welfare and consistency in deer control practice.
34. The ability for NatureScot to authorise the activity in exceptional cases is appropriate provided it is backed by strong safeguards and transparent decision-making.

Do you have any comments on Section 28 and 30 of the Bill in regard to the register of authorised persons and requirement to be fit and competent for certain authorisations?

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35. We support the intent of Sections 28 and 30 to strengthen safeguards around deer control activities by clarifying and expanding the requirement to be 'fit and competent' and linking to a formal register of authorised persons.
36. The effectiveness of these provisions will depend on clear implementation guidance and support for training.

Do you agree that a new offence should be created for a person failing to report the taking or killing of stray farmed deer?

Do you agree with provisions which remove the need for venison dealer licences?

Is there anything else you would like to say about Part 4 of the Bill on deer management?

ESS welcome further engagement on the Natural Environment (Scotland) Bill and in particular the development of the Independent Review Body functions. I hope this information is useful in the Committee's considerations.

Yours sincerely

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