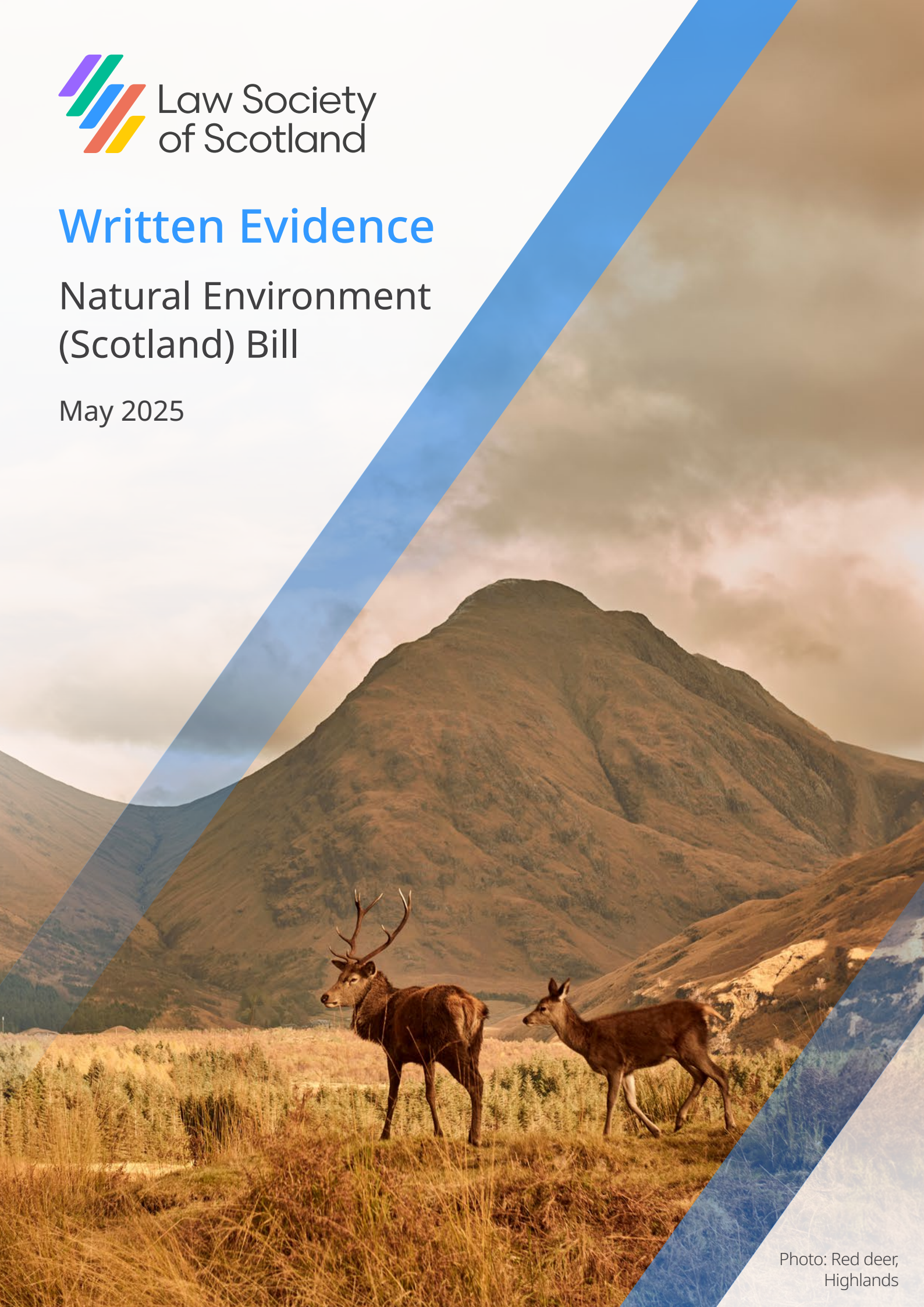


# Written Evidence

## Natural Environment (Scotland) Bill

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## Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and respond to the Rural Affairs and Islands Committee of the Scottish Parliament's call for views<sup>1</sup> on the Natural Environment (Scotland) Bill ("the Bill")<sup>2</sup>. We have the following comments to put forward for consideration.

## General

We previously responded to the Scottish Government's Consultation on Scotland's Strategic Framework for Biodiversity in 2023<sup>3</sup> and welcome the opportunity to provide further comments on this area.

We note the wide-ranging nature of the Bill, containing a mixture of provisions applying to nature targets, planning, national parks and deer management.

As discussed below, there are areas where greater clarity on the Bill's provisions would be welcomed, including accountability measures for nature targets, the level of power granted to Ministers and alignment with the UK and Europe on provisions relating to Environment Impact Assessments (EIA).

We generally highlight the ongoing and prospective legislative and policy reform within the wider legal landscape. For example, legislation which interacts with aspects of the Bill currently before the Parliament or being implemented includes the Land Reform (Scotland) Bill, the Wildlife Management and Muirburn (Scotland) Act 2024, the Agriculture and Rural Communities (Scotland) Act 2024 and the Climate Change (Emissions Reduction Targets) (Scotland) Act 2024.

We highlight the importance of considering the legal interplay and overlap between such legislation to ensure a consistent and aligned approach, and ensuring that these do not contradict or conflict with one another.

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<sup>1</sup> [Natural Environment \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

<sup>2</sup> [Natural Environment \(Scotland\) Bill | Scottish Parliament Website](#)

<sup>3</sup> [Scotland's strategic-framework-for-biodiversity](#)

We also highlight that many other wider, non-legal factors, will impact on the operation and deliverability of the proposals, for example ensuring appropriate resourcing and capacity, expertise, and the availability of data.

In a response to the Scottish Government's Review of the Effectiveness of Environmental Governance in October 2023,<sup>4</sup> we highlighted the importance of appropriate resourcing and prioritisation in the context of effective monitoring and enforcement. This is likewise an important consideration in the context of the Bill as introduced.

## Questions in the call for views

### Part 1- Targets for improving biodiversity

#### 1. Are statutory nature targets needed in Scotland?

In principle, we support the introduction of statutory nature targets. They can act as useful tools and align with existing measures on climate emissions. We also note that many public bodies have nature targets within their annual operating plans.

However, we would highlight the issue of enforcement of these targets. There are numerous examples in recent years of statutory targets being missed by the Scottish Government, including the interim climate targets. As a result, the Scottish Government brought forward the Climate Change (Emissions Reductions Target) Act 2024, overhauling the carbon emissions reductions framework and replacing it with a system of carbon budgeting. Statutory nature targets will have little legitimacy if Ministers simply legislate to replace them if they are in danger of missing them.

Furthermore, we would welcome clarity in how public bodies will be held accountable for legal targets, particularly for organisations such as local authorities who have a wider remit than focused statutory organisations such as National Parks.

Similar to our previous response to the consultation on Scotland's strategic framework for Biodiversity in December 2023,<sup>5</sup> we would welcome more detail on the accountability aspects of these targets, such as the consequences should the targets be missed.

We would specifically question what framework these targets would exist within. The Climate Change (Emission Reduction Target) (Scotland) Act 2009 created a framework for the reporting of emissions reductions by public bodies, including local authorities. Clarity on whether the Scottish Government intends to include

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<sup>4</sup> [Review of the effectiveness of environmental governance](#)

<sup>5</sup> [Scotland's strategic framework for Biodiversity](#)



nature targets within this framework or create a new reporting framework for nature targets would be welcome.

Further, if the Scottish Government intends to include nature targets within this existing framework, we would seek clarity on whether this framework will align with National Planning Framework 4 (NPF4) which enshrines parity between climate and nature obligations in the planning system. We suggest that the Scottish Government explores how to reconcile any tension between climate and nature obligations for public bodies, and gives consideration to the creation of a joint-reporting system to resolve this.

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

We would welcome further clarification on what constitutes a target. Is it as specific as the number of X species alive by X date? Targets should be clear and measurable.

We would also welcome clarity on how the targets will measure outcomes of nature restoration projects.

## 3. 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?

Please see our answer to Question 1.

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

We would welcome clarity on whether the Scottish Government will take into account existing international frameworks in this area when creating nature targets. For example, the 2022 Kunming-Montreal Global Biodiversity Framework includes targets for nature restoration by 2030. Clarity on how this will affect the development of nature targets would be welcome.

# Part 2 – Power to modify or restate environmental impact assessment (EIA) legislation and Habitats Regulations

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

We support the inclusion of a clear and comprehensive legal basis for amending the existing EIA and habitats assessments rules. However, we highlight the extremely broad nature of these powers as proposed and our concerns relating to the limited parliamentary scrutiny afforded to them.

We would highlight our previous responses to the Scottish Government's consultations *Enabling powers for Scotland's Environmental Impact Assessment*

*regimes & Habitats Regulations in May 2024<sup>6</sup> and Proposals to Amend Scottish Government policy on the Protection Afforded to Certain Ramsar Features in February 2025.<sup>7</sup>*

Specifically, we would highlight our comments regarding the importance of understanding how a divergence, or convergence, of approaches across the United Kingdom and Europe could impact large-scale and cross border developments. It is important that there is legal clarity and certainty for those operating in this area, and we consider that the potential impact of such divergences would merit consideration.

Whilst we can see the benefit of the proposed powers in the Bill, we would highlight that Part 6 of the Levelling-Up and Regeneration Act 2023 provides the power to make regulations to replace EIA with a system of environmental outcomes reports. We understand that that the UK Government still intends to proceed with this new mechanism. It is not clear to us how it is intended that the powers in Part 2 of the Bill would sit with the powers in Part 6 of the 2023 Act. Although section 157 of the 2023 Act contains restrictions on when the Secretary of State can make regulations which contain provisions within Scottish devolved legislative competence, there is the potential for different approaches to be taken to the assessment of environmental impacts for matter within and outwith devolved competence. For example, the Secretary of State might proceed with regulations for environmental outcomes reports in relation to applications under the Electricity Act 1989 but Scottish Ministers could retain EIA for applications under the Town and Country Planning (Scotland) Act 1997. We would suggest that a joined-up approach is required between the UK and Scottish Governments to minimise the risk of confusion arising from different regulatory assessment regimes that might apply to the same project.

Furthermore, we would highlight the potential for a conflict between the proposed powers regarding EIA with the intention of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (Continuity Act) to align with the European Union on environmental rules and regulations. The proposed powers may facilitate divergence from EU rules and regulations, counter to the aims and intention of the earlier Continuity Act.

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

We understand that the purpose of the power to modify would be to reinforce or update existing provisions, rather than replace them with new provisions. If this is incorrect, we would be concerned about the parameters of modification under

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<sup>6</sup> [Enabling powers for Scotland's environmental impact assessment regimes & habitat regulations](#)

<sup>7</sup> [Proposals to Amend Scottish Government Policy on the Protection Afforded to Certain Ramsar Features](#)

these provisions, and would welcome consideration on whether the power to modify or restate is too wide and should be limited.

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

We would stress the need for robust consultation on any proposed modifications to existing legislation, including the conducting of impact assessments alongside stronger provisions for parliamentary oversight. We would suggest that consideration should be given towards whether an affirmative procedure is appropriate for any further regulations made under Part 2, section 2 of the Bill and whether any regulations should be subject to the 'super-affirmative' procedure.

Furthermore, it would be useful to have clarification regarding the exclusion of Electricity EIA regulations from this section of the Bill.

## Part 3 – National Parks

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

We note that this section of the largely bill reinforces the existing aims around national parks, which we welcome.

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

We note the provisions in the Bill regarding the implementation of National Park Plans.

### 3. 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?

We would highlight the need for consistency in the creation of fixed-penalty schemes, with several of these schemes already being operational in Scotland. Any fixed penalty scheme (section 9) introduced under the new provisions should consider mirroring or adopting existing procedures so as to avoid a proliferation of separate, slightly different, procedures that may drift apart if future amendments are not rigorously applied across all relevant areas.

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

We have no comments.

## Part 4 – Deer management

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

As we highlighted in our general comments, we note the ongoing and prospective legislative and policy reform within the wider agricultural, environmental, and land management legal landscape- including the Land Reform (Scotland) Bill and the implementation of the Wildlife Management and Muirburn (Scotland) Act 2024, the Agriculture and Rural Communities (Scotland) Act 2024.

We would highlight that due a complex matrix of landownership and stakeholders that it is difficult to enforce consistent deer management across the country. We again note the ongoing parliamentary scrutiny of the Land Reform (Scotland) Bill. We would highlight that the interaction between the provisions here and those in section 20 of the current Land Reform (Scotland) Bill (compensation for damage by game) must be clear to ensure joined-up legislation that matches powers and liabilities.

We would welcome clarity from the Scottish Government on the application of Part 4 of the Bill in regard to crofters, given the broad range of activities that crofters undertake that may be impacted by deer density.

We would further note that consideration should be given towards providing clarity on how these provisions interact with peatland restoration projects, given the strategic importance of peatland within the Scottish Government's climate and nature policy objectives.

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

We have no comments.

### 3. 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?

We have no comments.

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

We have concerns about the drafting of section 6ZB, which potentially makes it unclear and opens up space for legal challenge.

We would welcome further clarity from the Scottish Government on this provision, particularly on the application for intervention by NatureScot where there are multiple stakeholders involved.



## Part 4 – Deer management

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

We have no comments.

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

We note the proposed changes to investigatory powers and welcome the clarity from the Scottish Government on the detail of these proposed powers.

3. 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

We have no comments.

3. 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?

We have no comments.

## Part 4 – Deer management

1. 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?

We have no comments.

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

We have no comments.

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

We have no comments.

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

We have no comments.

### General/aspects not in the Bill

1. Are there any areas not addressed by the Bill that you believe should be included? If so, what are they



We have no further comments.

For further information, please contact:

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