



Coed Cadw – the Woodland Trust - Agriculture (Wales) Bill

Agriculture (Wales) Bill

Economy, Trade, and Rural Affairs Committee

Consultation

<https://business.senedd.wales/mgConsultationDisplay.aspx?id=489&RPID=1031467995&cp=yes>

1. INTRODUCTION

- 1.1. Coed Cadw -The Woodland Trust is the UK's largest woodland conservation charity, working for a UK rich in native woods and trees, for people and wildlife. In Wales we have over 26,000 supporters. We own and manage over 100 sites in Wales covering 2,897 hectares (7,159 acres). Our estate is mostly woodland but does include some land on which we maintain grazing through farm business tenancies.
- 1.2. We have a small landowner advisory team who work with landowners to facilitate new woodland creation and the restoration of ancient woodland. We advocate use of Welsh Government grants but also provide some direct support for small scale new woodland creation through our tree pack, farm trees and MOREwoods schemes. These schemes use funding from corporate partnerships.
- 1.3. We support the joint statement produced with other environmental NGOs by Wales Environment link which includes six tests of whether the Bill enables sustainable food and farming that co-delivers on the following:-
 1. *Restores and maintains farmland wildlife and the environment,*
 2. *significantly reduce harmful emissions that are contributing to climate change,*
 3. *stops using imported animal feeds linked to destroying the natural world overseas,*
 4. *develops opportunities to diversify food production for local markets.*
 5. *supports opportunities for community ownership, new entrants, better public access and engagement in land use decisions, and*
 6. *sets and effective regulatory baseline, backed by fair and clear civil and legal sanctions, that all farmers, land managers and landowners must comply with.*

2. PART 1 – SUSTAINABLE LAND MANAGEMENT

The objectives

- 2.1. We support the definition of the four SLM objectives, the need for transformational change and Welsh Ministers having a duty to deliver this. The four objectives taken together provide a reasonably definition of what SLM is and we would not want to see this limited by narrower definitions.
- 2.2. We think the commitment to the delivery of SLM must be the fundamental principle underlying the Bill. The test for all wording should be that it supports this.
- 2.3. These 4 objectives seem consistent with the definition of sustainable management of natural resources (SMNR) in the Environment (Wales) Act, and we suggest there should be explicit reference to this.

“using natural resources in a way and at a rate that maintains and enhances the resilience of ecosystems and the benefits they provide. In doing so, meeting the needs of present generations of people without compromising the ability of future generations to meet their

needs, and contributing to the achievement of the well-being goals in the Well-being of Future Generations Act.”¹

- 2.4. Producing food remains a key role but alongside other essential requirements from the land – climate change mitigation water resources, timber, biodiversity, landscape and recreation. This requires the seeking the synergies rather than meeting one objective at the exclusion of others.
- 2.5. We do not think the SLM objectives can be delivered without effective regulation. We would like to see the Bill include a duty for Ministers to bring forward and maintain a clear summary of National Minimum Standards for agriculture. We suggest continuity with the existing GEAC requirements is beneficial but would also like to see a further consultation that would allow some updating and modifications, for example updating regulatory standards for hedgerows and trees on farms.
- 2.6. We think there are 3 reasons why this is needed: -
- Private landowners who are in receipt of public funding must not only comply with the law and be seen to be complying with the law.
 - regulatory compliance is an important fairness baseline, preventing those most dismissive of impacts on others from gaining competitive advantage.
 - There is a need for adequate investment in monitoring and enforcement that has been sadly lacking in relation to water quality.
- 2.7. Setting out National Minimum Standards for agriculture would be an opportunity to clarify the regulation of trees in agroforestry. A baseline requirement is that of felling consent, but we envisage that the vast majority of agroforestry operations would be within the felling licence exemption regime. Tree Preservation Orders, the Hedgerow Regulations, species protection legislation, plant health regulations and planning regulations may all impinge on the management or removal of trees on farms and we strongly recommend that scattered tree cover on farms does NOT need to be made subject to regulation under the UK Forest Standard.

The Duty

- 2.8. We interpret Section 2(2) to indicate that the Duty on Ministers does not extend to cover forestry and other non-agricultural land-uses.
- 2.9. We think it is crucial that the Duty on Ministers is to deliver all four objectives in a balanced way and not trading one off against another, as described in the Explanatory Memorandum
- 28 “exercise the function in the way that best contributes to achieving those objectives (taken together)”.*

We suggest the “taken together” is fundamental and reflects the intent of Wellbeing for Future Generations Act. We think the commitment to the co-delivery of multiple objectives and explicit support for land sharing need to be an essential foundation of policy.

- 2.10. We are very glad to see that agroforestry is defined as an agricultural activity. It may be necessary to clarify the dividing line between forestry and agroforestry as an agricultural activity, especially to clarify regulatory provisions.

Monitoring and Reporting

- 2.11. We agree with the importance of SLM reporting and monitoring and the need for evidence-based indicators for each SLM objective.

¹ <https://naturalresources.wales/media/678317/introducing-smnr-booklet-english.pdf>

- 2.12. We would like to see an explicit requirement for a balanced basket of indicators and targets. Targets based on individual indicators should be avoided and are contrary to the need to take all objectives together in a balanced way. Focus on individual indicators risk favouring quantity over quality with perverse and unintended consequences.
- 2.13. We note – 5 (2) that Welsh Ministers must have regard for the State of Natural Resources Report and for Natural Resources Policy published under the Environment Act but note that under section 5 (3) there is no explicit requirement to consult NRW in addition to the Future Generations Commissioner. Given the nature of the SLM objectives we think it essential that Ministers consult their principle environmental adviser and regulator.
- 2.14. Could it be clarified that data gathered from farmers for SLM reporting will be available to NRW to inform the State of Natural Resources Report (SoNaRR)?
- 2.15. We note that SoNaRR explicitly reports on forestry and ask to what extent this report on forestry should match what is covered by SLM reporting on agriculture?

3. PART 2: SUPPORT FOR AGRICULTURE ETC.

- 3.1. We think it is vital that the power to provide support is expressly subject to the overarching requirement of achieving the SLM objectives in a balanced way, as explained in the Explanatory Memorandum:

“As set out under the SLM framework, the power to provide support must be exercised in the way the Welsh Ministers consider best contributes to achieving the SLM objectives, so far as consistent with the proper exercise of that function.”
- 3.2. We note that the list of current purposes (p34) does largely match up with the list of outcomes given for the SFS.
- 3.3. One discrepancy is that the SFS outcome is **maximising carbon storage**, whereas the Agriculture Bill purpose includes reference to sequestration. The SFS wording, focusing on carbon storage, is preferable and clearer. Increasing sequestration does not in its self necessarily contribute anything to climate mitigation and can be used to justify continued emissions.
- 3.4. We note that this list of purposes is not definitive and may be subsequently changed. Again the Explanatory Memorandum provide reassurances: *“Any support given must contribute towards achieving the SLM objectives”* and we understand this to be written into Section 2 of the Bill.
- 3.5. The clarification -13 (3) - of how the Impact Report relates to the Sustainable Land Management Report is welcome.
- 3.6. We would like to see an expectation that agricultural support effectively addresses issues identified in SoNaRR. Given the preponderance of farmland in Wales, we suggest there does need to be an explicit link between these reports and the State of Natural Resources Report, and to whatever biodiversity target reporting the Welsh Government introduces in light of its recent commitment to targets for biodiversity.
- 3.7. We welcome the power to extend support to using land as farm woodland or for agroforestry and to ancillary activities relating to nature conservation and ecosystem resilience on land used for agriculture. (Sections 48 & 49)
- 3.8. We note that section 11 gives Ministers powers to make provision about checking eligibility for support but does not require Ministers to bring forward the necessary regulations. We think there must be a commitment to do this – see our para 2.5 – 2.7.

Part 2 Chapter 2 - powers to modify legislation relating to financial and other support

- 3.9. The powers to enable Welsh Ministers to continue operation of existing farming support beyond 2020 appear to be indefinite? The Explanatory Memorandum states that these powers are to replace time limited powers in the Agriculture Act 2020 but we are not clear whether these replacement powers are themselves time limited?

3.146 These powers will replace the time limited powers to modify Rural Development, in the AA 2020, which may be needed to provide support alongside any new scheme(s) set up under the Bill.

- 3.10. This implies that Ministers may have the power to run two support schemes in parallel for an indefinite period. This is of concern given that the duty to achieve SLM does not apply to the provisions of sections 15 and 16.

Part 2 Chapter 4 Agricultural Tenancies

- 3.11. It has been made clear to us that the typical legal requirements and duration of tenancy agreements will make it difficult for tenants to benefit from the SFS. In particular tenants are unlikely to be able to take actions to meet the proposed 10% tree cover threshold for qualification for universal payments under SFS.
- 3.12. Under legal definitions of agricultural activity generally used for tenancy agreements, tenants generally do not have the right to plant trees and do not have responsibility for existing trees. They generally do have responsibility for the maintenance of hedgerows and this may offer some with a way in to SFS.
- 3.13. An ideal situation might be where there is incentive for landlords to invest in tree and habitat cover as part of the resources and capital asset of the land, whilst enabling tenants to benefit from SFS payments towards the costs of maintaining those assets.

PART 3 - MATTERS RELATING TO AGRICULTURE AND AGRICULTURAL PRODUCTS

No comments

4. PART 4 FORESTRY

- 4.1. Our interest is in the protection and restoration of ancient woodland and ancient trees. Ancient woodland is by far the richest woodland habitat and only covers 4.5 % of Wales. Most is in poor ecological condition and the evidence points to continuing decline. There is an on-going problem of ancient woodland decline, and it is not credible to claim that this is entirely due to historic practice.
- 4.2. The Welsh Government in its updated Programme for Government 2021 commits to “Strengthen the protections for ancient woodlands.” There is nothing currently in law that requires the protection and restoration of ancient woodland.
- 4.3. We support the new powers proposed and the power to add conditions to felling licences could be helpful for ancient woodland conservation, especially in relation to limiting the scale of felling, preventing damage to ancient woodland features such as veteran trees and facilitating the removal of invasive non-native tree species. It is not clear whether or how NRW will use the proposed new powers to achieve this, or that recording and reporting mechanisms will reveal the impact on ancient woodland condition.

- 4.4. We would like to see felling licence conditions used where needed to ensure the requirement for the protection of ancient woodland features in line with the minimum requirement of UK Forest Standard (UKFS)²:
- that *'features of ancient woodland remnants are protected'* and *'retained'*? and
 - that in terms of restocking, that applicants must, *'in ancient semi-natural woodlands, avoid introducing non-native species unless they would maintain or enhance the ecological function of the woodland'* (with the onus to applicant to demonstrate this)
- 4.5. The public information on felling licence applications that is provided by NRW³ does not currently include information on whether woods are ancient or have other protected status and does not include the outcome of the licence applications or any information on felling licence conditions. It is not possible to assess the impact of felling from information on this register.
- 4.6. We ask whether the Bill can be amended to ensure monitoring and reporting on the impact of felling consents that is equivalent to the requirements for reporting on the achievements of the SLM objectives and the support scheme impact report?
- 4.7. We would like to see support through SFS for the care and protection of ancient and veteran trees.
- 4.8. Ideally we would like to see other measures to protect ancient and veteran trees and small areas of ancient woodland, especially those of special heritage importance.

PART 5 WILDLIFE

No comments

5. PART 6 – GENERAL

Purpose and intended effect of the legislation:

- 5.1. We welcome the updating of the definition of agriculture and we support the definition of “ancillary activity” split into business actions and environmental that include:

49 (a) *taking action, on land used for agriculture—
to create and manage habitats, or for other purposes relating to nature 15
conservation,
to mitigate and adapt to climate change, or
to maintain and enhance the resilience of ecosystems;*

And described in the Explanatory Memorandum:

3.301 “The environmental actions that form part of the definition of “ancillary activity” capture steps which may be taken to assist in the achievement of the SLM objectives on land used for agriculture. These steps may not directly produce an agricultural product, but capture many of the wider actions that many farmers in Wales already undertake. Examples could include natural flood defence, energy management plans and ecosystem creation such as beetle banks.”

² <https://naturalresources.wales/guidance-and-advice/environmental-topics/woodlands-and-forests/uk-forestry-standard/?lang=en>

³ <https://naturalresources.wales/permits-and-permissions/tree-felling-and-other-regulations/forestry-public-register/felling-licence-register/?lang=en>

5.2. We point out that many of these ancillary activities are necessary to maintain the sustainability of agricultural production

5.3. Glad to see specific inclusion of agroforestry in clause 48 on the meaning of “agriculture” and related references:-

48 (1) (f) using land as farm woodland or for agroforestry;

5.4. We think it is necessary to redefine the previously sharp separation of agricultural land and woodland as separate land uses and recognise the extent to which tree cover can significantly overlap with agricultural land use.

6. Any potential barriers to the implementation of the Bill’s provisions and whether the Bill takes account of them (including the UK Internal Market Act 2020 and any international law?;

6.1. The barriers to entry for agricultural tenants noted above

7. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

7.1. We support the view presented by Wales Environment Link that secondary legislation should mostly require affirmative motions to ensure scrutiny and debate and democratic process.

8. Whether there are any unintended consequences arising from the Bill?

8.1. No comments

9. The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)?

9.1. The need to cost out the administrative costs is reasonable but we think attempts to value benefits of the changes to forestry regulation using traditional CBA have been pretty pointless

9.2. The costs of not doing what the Bill sets out to do would be calamitous, the benefits of doing so are huge, but are unquantifiable by established financial procedures.

9.3. The benefits include not continuing to degrade agricultural capacity and sustainability; trying to mitigate further climate instability; arresting biosphere collapse, and positive outcomes in the delivery on public benefits, for example relating to wellbeing, and increasing the nations stock of national capital.

9.4. More prosaically the fundamental benefit of the proposed forestry regulation measures is to create a level playing field. rather than a race to the bottom with no effective constraint on the minority of people willing to do the most damage and impose impacts on others.

9.5. We raised similar points in our response to the consultation on the Audit Wales program⁴.

9.6. Our suggestions on where the audit program could have impact, included the following

- *Guide and demonstrate how the pursuit of targets and financial analysis should reflect and be balanced by application of the goals, principles and ways of working set out in the Well-being of Future Generations Act and the Socio-economic Duty. Examples could include establishing financial checks and balances that fully cost impacts on stakeholders, public benefits and natural capital values, and prevent the rush to renewable energy installations or afforestation do not damage biodiversity and drive up inequality.*
- *Enforce quality requirements for the auditing and reporting of carbon emissions, sequestration and storage*

⁴ **Audit Wales:** [Seeking Views on the Auditor General’s Work Programme](#) - March 2022

- *Implement the recommendations of the Dasgupta Review - Provide guidance and examples of the accounting for dependences and impacts on Nature in project and service financial assessments, and the accounting for of climate and nature related financial risk.*

9.7. We supported the Auditor General’s proposal to look at agricultural and rural support, noting that:

The issues raised above about valuing natural capital and ecosystem services are relevant to this, enabling farmers and other landowners to receive recognition and income for non-market benefits that they provide to society. There are significant risks that public funding does not support public benefit outcomes and that scheme complexity and inflexibility results in perverse outcomes.