



Scottish  
Wildlife  
Trust

Written evidence for the Rural Economy and  
Connectivity Committee, Scottish Parliament

# Agriculture (Retained EU Law and Data) (Scotland) Bill

Scottish Wildlife Trust

*3 January 2020*

*We have 10 years to solve 75% of Scotland's emissions pollution; 1 in 9 species are at risk of extinction. This Bill could impact >80% of Scotland's land for half this decade, yet mentions neither of these problems, has no environmental assessment, and enables a transition without specifying a destination.*

The Scottish Wildlife Trust welcomes the opportunity to provide written evidence to the Rural Economy and Connectivity Committee of the Scottish Parliament on the Agriculture (Retained EU Law and Data) (Scotland) Bill (hereafter 'the Bill'). We note the quick turnaround over the Christmas and Hogmanay period, for written evidence to the Committee and trust there will be further opportunities for stakeholder engagement during the scrutiny of this Bill.

The Trust would like to highlight that we have contributed substantially to the written evidence submitted by Scottish Environment LINK and fully support its conclusions. We also contributed to the provision of oral evidence for the REC Committee on the 4 December 2019, delivered by Vicki Swales (RSPB Scotland) and Pete Ritchie (Nourish Scotland), representing LINK. We equally support the evidence given on that occasion.

## Key Points

- We remain in the dark about what this transitional period is in fact transitioning to. The Committee on Climate Change UK concluded that *"The Scottish Government's plans for a long-term policy framework to replace the EU Common Agricultural Policy (CAP) are lagging behind both England and Wales."* This Bill needs a clear strategy to sit alongside it, we have had time to do this in Scotland, but the opportunity has not been taken. Therefore, no changes in direction should be taking place without agreement on the way forward.
- The Bill does not acknowledge either the climate or nature emergencies despite the Programme for Government commitments or the crucial years it covers and its huge relative impact.
- The Trust welcomes and supports Parliament's ambitious climate targets. Agriculture is a substantial part of that puzzle, being the second largest emitter in Scotland behind transport accounting for C.25% of emissions<sup>i</sup>. The present and next Governments must put in place policy which will help directly tackle three-quarters of Scotland's emissions by 2030. This Bill should be one of those mechanisms.
- The Trust is concerned that the Scottish Government has not taken the first opportunity presented to them to enshrine the Principle of Non-Regression<sup>ii</sup>, despite Scottish Government assurances<sup>iii</sup>. This has only become more important since the drafting of this Bill.
- Public money should be used to pay for things that are vital for a healthy environment and society but don't provide an economic return i.e. habitat for wildlife and storage of carbon. This public spend should be aligned with the goal of leveraging further private funding to deliver environmental benefits that carry economic, social and environmental gains. This type of strategic thinking is important for diversifying land managers incomes in the long term and vital for meeting the twin challenges of the biodiversity crisis and climate emergency.
- The intention to proceed without a Strategic Environmental Assessment despite the negative environmental impacts perpetuated under the current system of incentives, reproduced by this Bill, is unacceptable.
- The powers granted to Ministers in this Bill as it stands would be indefinite. The Trust believes a sunset provision is necessary on the powers granted in this Bill to prevent their exploitation by a future Government.
- We are concerned that, as worded, the modulation between Pillars 1 and 2 would allow for the funds to flow either way. We would strongly support a limit on this modulation so that Pillar 2's provisions cannot be decreased whilst the overall system remains in place. This Bill should be part of the package of mechanisms that facilitate a low- and zero-carbon transition. As it stands, the Bill reproduces and enables business-as-usual.
- To combat this, a purpose statement on the face of the Bill should be used to ensure compliance with, and demonstrate progress towards, the National Performance Framework and the Sustainable Development Goals.

## Purpose, Scope and Impact

The Bill should set out clearly the *purposes* for which Ministers will make grants to farmers, land managers, and others. There should be an explicit statement about what agricultural support is for on the face of the Bill.

As the Cabinet Secretary for Rural Economy and Connectivity, Fergus Ewing, has outlined in his letter to the REC Committee on 30 November 2019,

*It will be essential that future rural policy links to the outcomes set out in National Performance Framework and the UN Sustainable Development Goals.*

*I expect future policy to focus on:*

- *Enhancing biodiversity*
- *Lowering greenhouse gas emissions*
- *Growing the rural economy*
- *Maintaining populations*
- *Tackle poverty and inequalities*

The Scottish Wildlife Trust agrees with and supports these aims for future rural policy and offers evidence in this response to the first two items.

Yet, it remains unclear how the proposed Bill is consistent with the aims of the Scottish Government for future rural policy. The Trust believes a purpose statement in the Bill should:

- Outline how agricultural support will meet the Scottish Government's National Outcomes;
- comply with the National Performance Framework;
- further progress towards the Sustainable Development Goals;
- and confer a duty that any 'simplifications' and 'improvements can demonstrate compliance with existing environmental protections as a minimum.

If and where powers diverge from the CAP regulations, they should only be used in ways that meet this purpose statement.

## Enhancing biodiversity and lowering greenhouse gas emissions

The Committee on Climate Change's Scotland report, published 17<sup>th</sup> December 2019 (*Reducing Emissions in Scotland: 2019 Progress Report to Parliament*) concluded that:

*The Scottish Government's plans for a long-term policy framework to replace the EU Common Agricultural Policy (CAP) are lagging behind both England and Wales. There is now an urgent need to define a post-CAP framework for the 2020s that can significantly reduce emissions from agriculture and deliver transformational land-use change across Scotland.<sup>iv</sup>*

It also noted that 'Decisions over the next 12 months are likely to determine the direction of the next 25 years. It is untenable for the Agriculture Bill not to demonstrate compliance with these urgent requirements to meet Scotland's legislated targets.

As such, **the present and next Governments must put in place those instruments which will solve three-quarters of Scotland's emissions pollution.** This Bill should be one of those mechanisms. The IPCC warns we have ten years to avoid catastrophic climate breakdown while Scotland has committed to reduce its greenhouse gas emissions by 75% by 2030, with net-zero emissions by 2045. To get there, land uses must adapt – native, biodiverse forestry and

peatland recovery are essential to meet these targets, to both store carbon and prevent losses from damaged peatlands. The preservation and recovery of our soils is essential not just for food production but for biodiversity, carbon storage, and provision of other ecosystem services. This Bill could impact the management of around 75% of Scotland's land<sup>v</sup> for nearly half of this crucial decade. It has significant potential to influence the use of land to combat climate and biodiversity emergencies, while producing healthy, sustainable food to help meet the Scottish Government's ambition of Becoming a Good Food Nation, but this is currently unrealised.

The consideration of a Strategic Environmental Assessment (SEA) for the Bill states that it will have no impact on the environment. This is unacceptable at a time when agriculture is contributing nearly a quarter of Scotland's territorial greenhouse gas emissions and plays a substantial role in the net-decline of biodiversity, as the recent State of Nature Report<sup>vi</sup> reconfirms. Of these current emissions, totalling 9.7 MtCO<sub>2</sub>e, 4.3 MtCO<sub>2</sub>e is methane and 2.6 MtCO<sub>2</sub>e nitrous oxide (in 2017), accounting for the vast majority of these greenhouse gas emissions in Scotland.

Given these impacts, at a time when Scottish land must be managed to tackle the pressing issues of biodiversity loss and climate breakdown rather than exacerbate them, and that a Business and Regulatory Impact Assessment was undertaken, the Trust would assert that an SEA is necessary.

The Bill must not entertain the continuation of business as usual and play a simple passive 'enabling' role. On the contrary, the next five years are essential if we are to meet the 2030 emissions target and start to contend with the scale of biodiversity loss and its main drivers in Scotland.

All eyes will be on Scotland over 2020, both for the UN Convention on Biodiversity intersessional meeting in April and particularly for the UN Climate Change Conference COP26 in November. Scotland has to be prepared to demonstrate action on these critical issues if it expects the same of others.

The Committee on Climate Change's November 2018 report concluded that:

- Climate change impacts are already altering the land's use, while the services provided by the natural environment are being degraded.
- Land is a critical natural resource, but past policies governing the use of UK land have been fragmented and incomplete.
- New land-use policy must promote radically different uses of UK land
- Alternative uses of land can be economic for farmers and land managers, but Government must provide help for them to transition.

It recommends that:

- New land use policy should promote transformational land uses and reward landowners for public goods that deliver climate mitigation and adaptation objectives. New policies should also reflect better the value of the goods and services that land provides.
- Support should be provided to help land managers transition to alternative land uses.

Business-as-usual isn't an option: it's the difference between coordinated change through design or chaotic change through disaster. As a developed country, Scotland has a responsibility and key role to play to ensure our food system moves to a sustainable footing, and to safeguard our ecosystems for future generations. We must transition to an integrated, agroecological system.

Agricultural systems have placed considerable and unmatched pressures on our environment, and new ways in which we've disrupted Scotland's ecosystems continue to emerge. The [James Hutton Greening Review](#) identified that 'Farmland biodiversity has shown serious declines in habitat diversity and species numbers' owing to changes

in land use, intensification, and pesticide use<sup>vii</sup>. The [2016 interim report](#) on Scotland's progress towards the binding Aichi Biodiversity Targets set by the UN Convention on Biological Diversity outlines that:

Scotland's biodiversity indicators, the condition of notified habitats and species on protected areas, and progress towards meeting Scotland's biodiversity targets demonstrated that biodiversity loss had not yet been halted and would require renewed and sustained effort over a longer period.<sup>viii</sup>

We need to halt and reverse biodiversity decline through more responsible land management. The most recent [report by the Intergovernmental Panel on Climate Change](#)<sup>ix</sup> (IPCC) warns that 'transitions in global and regional land use are found in all pathways limiting global warming to 1.5°C with no or limited overshoot'. The report also highlights the importance of non-CO2 emissions reductions - limiting global warming to 1.5°C will require a 35% reduction of methane by 2050, relative to 2010, significant reductions in nitrous oxide and black carbon. Agriculture and related land use account for 68% of methane and 79% of nitrous oxide emissions in Scotland - there's no way forward that keeps the planet on a sustainable footing without urgent transitions in land use. While Scotland's agricultural greenhouse gas emissions have declined since the 1990s, these declines '[are often associated with reduced production rather than increased efficiency](#)'<sup>x</sup>, and agricultural systems continue to contribute a quarter of Scotland's emissions – the second largest contributor nationally.

The IPCC report states that the 'implementation of land-based mitigation options would require overcoming socio-economic, institutional, technological, financing and environmental barriers that differ across regions.' This could be facilitated in Scotland by the effective delivery of the Land Use Strategy and roll out of regional land use frameworks, two key commitments of the Scottish Government as recently as the 2019-20 Programme for Government.

Farm systems have a central role to play through small actions like soil testing through to adopting agroecological approaches, which ultimately benefit farm businesses too. We need to end the false dichotomy that makes us choose between food and nature: integrated land use can work for both. A healthy environment is essential for quality food and drink, from topsoil fertility to water quality and crop resilience. By transitioning to a sustainable system now, we can design and shape workable solutions before we reach the cliff edge. That means delivering multiple benefits to different stakeholders, while contributing to other issues of social justice – access to nature, healthy and affordable food, and intergenerational equality.

Public funding must be better aligned with the goal of leveraging further private funding to deliver environmental benefits that carry economic gains, such as through improved efficiency. Indeed, industry voices have called for better alignment with the Scotch Whisky Association recently commenting that: *"it strikes us that conservation finance type approaches, as discussed under the Scottish Wildlife Trust/SEPA £1 Billion challenge project, is only part of the answer and we really need to align land management subsidies and other financial incentives so that we are all pulling in the same direction"*.

This Bill must therefore start to address this by drawing together the patchwork of strategies, commitments, and legislation. In short, the Bill needs to contribute to policy coherence, rather than attempt to stand alone as merely 'enabling' legislation.

## Governance

The Trust notes that the Bill will grant Ministers substantial powers which will not necessarily require Parliamentary scrutiny or approval. We note and agree with the concerns raised by the Delegated Powers and Law Reform Committee that,

The Scottish Government has stated clearly that it does not intend to use this power to make major changes (DPM paragraph 26), but this power will be available without limit of time to future governments, whose intentions cannot be known. It could be used to make changes to any aspect of the CAP, with significant effects on individuals who received CAP funding and, on the policies, delivered through the CAP. How the power will be used is not yet known and therefore cannot be scrutinised at present.<sup>xi</sup>

Moreover, while the Scottish Government has made clear its intention to consult on changes, these powers would enable a future Government ‘to make potentially significant changes without any consultation’ (*ibid.*).

We believe a time limit, or sunset clause, should be inserted to ensure the extensive powers granted to Ministers by this Bill do not become a continual feature of a post-2024 system – changes to such an important and encompassing policy should be subject to Parliamentary scrutiny.

## Brexit considerations

The Scottish Government is committed to maintaining environmental standards, so far as devolved powers permit, after the UK leaves the EU. Whilst we commend this commitment, we are concerned that it is absent from this Bill, the first primary legislation where it would have direct relevance.

Moreover, The EU CAP’s direction of travel is clear; the Less Favoured Area Support Scheme (LFASS), which covers 85% of Scotland’s land, has been replaced by the Areas facing Natural Constraint scheme and land designation. LFASS is being maintained, albeit at 80% (2019) and 40% (2020), before ending in 2021. It remains unclear what scheme might replace this, but Scotland has already diverged from EU in this regard. In 14% of farm businesses, LFASS payments comprise more than 50% of their subsidy. Despite its wide scope, LFASS remains unconnected from any environmental conditionality.

We would strongly support the inclusion of a non-regression clause in this Bill to ensure that current environmental protections are maintained as a minimum, with the possibility of Scotland to go further. The Scottish Government’s ambitions to be “world leader” in these areas cannot be realised, by definition, unless this is the case.

For the sake of policy coherence, the Bill should demonstrate cross compliance with the patchwork of climate and biodiversity strategies, including the Land Use Strategy and Regional Land Use Plans (as mentioned in the 2019-20 Programme for Government).

## Further information

We look forward to engaging with the process of this Bill and would be happy to submit any further information as the Committee, or any other body, may find helpful.

For further information, please contact:

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## References

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- <sup>i</sup> Reid, A. & Wainwright, W., 2018. Climate Change and Agriculture: How can Scottish Agriculture Contribute to Climate Change Targets?, s.l.: The Scottish Parliament Information Centre.
- <sup>ii</sup> “Any changes in law or policy should maintain or increase the level of environmental protection, and not allow any deterioration.” – Scottish Government, (2019), <https://www.gov.scot/publications/consultation-environmental-principles-governance-scotland-4/pages/9/>
- <sup>iii</sup> <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12115&mode=html>
- <sup>iv</sup> <https://www.theccc.org.uk/publication/reducing-emissions-in-scotland-2019-progress-report-to-parliament/>
- <sup>v</sup> <https://www2.gov.scot/Topics/Statistics/Browse/Agriculture-Fisheries/agritopics/LandUseAll>
- <sup>vi</sup> <https://nbn.org.uk/stateofnature2019/reports/>
- <sup>vii</sup> <https://www.gov.scot/Resource/0052/00523863.pdf>
- <sup>viii</sup> <https://www.cbd.int/doc/world/gb/gb-nr-oth-p1-en.pdf>
- <sup>ix</sup> [http://report.ipcc.ch/sr15/pdf/sr15\\_spm\\_final.pdf](http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf) p. 23. See also Chapter 3 of the full report: [http://report.ipcc.ch/sr15/pdf/sr15\\_chapter3.pdf](http://report.ipcc.ch/sr15/pdf/sr15_chapter3.pdf)
- <sup>x</sup> <https://www.gov.scot/Resource/0052/00523863.pdf> p.2
- <sup>xi</sup> [https://www.parliament.scot/S5\\_Delegated\\_Powers/General%20Documents/Clerk to SG Legislation - Qns at Stage 1 - Agriculture Bill.pdf](https://www.parliament.scot/S5_Delegated_Powers/General%20Documents/Clerk%20to%20SG%20Legislation%20-%20Qns%20at%20Stage%201%20-%20Agriculture%20Bill.pdf)