

NORTHERN IRELAND ASSEMBLY COMMITTEE FOR INFRASTRUCTURE**CALL FOR EVIDENCE – TREE PROTECTION BILL****RESPONSE FROM THE ULSTER FARMERS' UNION**Introduction

The Ulster Farmers' Union (UFU) represents around 12,000 farming families across Northern Ireland and is the largest democratic voluntary organisation representing farmers and growers here. Our members manage and care for a significant proportion of Northern Ireland's agricultural land, including areas of woodland, hedgerows and mature trees that form an important part of the rural landscape.

The 2025 Agricultural Census recorded 25,834 farms managing approximately 1.03 million hectares, excluding common land¹. The UFU therefore has a strong interest in ensuring that any changes to tree and woodland protection legislation are practical, proportionate and take full account of the realities of managing productive farm businesses, and welcomes the opportunity to respond to the Call for Evidence.

The UFU supports proportionate measures generally to protect genuinely important, ancient trees and woodland. Trees and woodland form an important part of the farmed landscape and can provide environmental, landscape and agricultural benefits. Every farm has some form of natural habitat, and therefore the vast majority of farm families are likely to be within the scope of the Bill. We recognise, however, that much ancient woodland is within the public estate.

The UFU is concerned that several provisions within the Tree Protection Bill, as introduced, could create disproportionate restrictions, costs and liabilities for farmers and landowners. In particular, the Bill has implications for routine agricultural development, permitted development rights, the management of trees on working farms and the liability of landowners where a third party is responsible for a breach.

The UFU believes it prudent to bring these concerns and considerations to the Committee's attention to inform their scrutiny.

Clause 1 - Tree preservation orders: councils

Clause 1 would expand the basis upon which councils may make Tree Preservation Orders (TPOs) by adding "ecosystem services" alongside amenity. It would also introduce specific provisions relating to ancient trees.

¹ Department of Agriculture, Environment and Rural Affairs, *Results from the June Agricultural Census 2025*, <https://www.daera-ni.gov.uk/news/results-june-agricultural-census-2025>

The UFU recognises that trees provide important ecosystem services on farms. However, the definition contained later in the Bill is extremely broad and includes matters such as flood regulation, erosion control, soil quality regulation, primary production, water cycling and nutrient cycling. Almost any mature tree on agricultural land could arguably provide one or more of these functions. The UFU is therefore concerned that the Bill could substantially expand the circumstances in which councils may impose TPOs on trees within the farmed landscape without consideration of any unintended consequences or meaningful engagement with the landowner.

This represents a potentially significant departure from the way TPOs are currently presented to landowners. Current NI public guidance states that TPOs may be made where the removal of selected trees or woodland is likely to have a significant impact on the local environment and its enjoyment by the public.² The UFU is concerned that the much wider ecosystem-services test proposed by the Bill is not accompanied by an equivalent significance threshold.

There should be a clear proportionality or materiality threshold before ecosystem services can form the basis of a TPO. Protection should be targeted at trees which make a significant contribution rather than allowing routine farm trees to become subject to additional restrictions simply because they provide some environmental function.

Clause 1 would also require a council to make a TPO where a suitably qualified arboriculturist confirms that a tree is ancient, unless the tree is dead. The condition, health or structural integrity of the tree cannot be used as a reason not to make the order.

The UFU is particularly concerned about how the proposed mandatory protection of ancient trees would operate where a tree is affected by serious disease, including ash dieback. Northern Ireland's TPO regime has previously been amended so that dying trees are no longer automatically exempt from protection, with the Department recognising at the time that diseases such as ash dieback could nevertheless give rise to serious health and safety issues requiring individual consideration³. DAERA currently advises that ash dieback is widespread across Northern Ireland and that affected trees can become structurally weakened, creating risks to people, property and infrastructure⁴. The UFU therefore believes it is essential that the Bill preserves a clear, timely and workable route for necessary works to diseased or structurally compromised protected trees, particularly where they are located beside roads, farm buildings, yards or other areas of regular activity.

The UFU would ask the Committee to consider the practical implications where ancient trees are located beside farm buildings, yards, roads, livestock areas or other working parts of a farm.

² NIDirect, *Tree preservation*, <https://www.nidirect.gov.uk/articles/tree-preservation>

³ Northern Ireland Assembly, *Planning Bill: Clause by Clause Summary of Responses – Clauses 3-28*, <https://www.niassembly.gov.uk/globalassets/documents/environment/legislation/planning-bill/written-submissions/planning-bill-clause-by-clause---remaining-clauses.pdf>

⁴ Department of Agriculture, Environment and Rural Affairs, *Ash Dieback*, <https://www.daera-ni.gov.uk/articles/ash-dieback>

Clause 2 – Provisional tree preservation orders

Clause 2 provides that certain provisional TPOs may be deemed confirmed where no objections or representations have been received and the council has not revoked the order.

The UFU seek reassurance that affected landowners are properly and directly notified before an order can become confirmed by default. Farm businesses should not find that restrictions have become permanent simply because they were unaware that an objection had to be lodged within a particular period. This is particularly important given previous and regularly occurring instances where local and central government have struggled to correctly identify and contact affected landowners in relation to schemes such as the development of infrastructure projects, meaning landowners have not been notified about developments relating to their land.

Clause 3 – Penalties for contravention of tree preservation orders

Clause 3 expands liability to a person who knowingly causes or permits a protected tree to be cut down, uprooted, destroyed, damaged, topped or lopped in the manner described in the Bill. The UFU understands the intention of ensuring that those who deliberately instruct or permit unlawful work cannot escape enforcement.

However, farms routinely involve contractors, tenants, utility providers and other third parties carrying out work on agricultural land. The UFU would want the legislation and associated guidance to make clear that a landowner should not become liable merely because unlawful activity occurred on their property and was outside of their control at that time.

The requirement that the person “knowingly” caused or permitted the activity is important and must be interpreted robustly.

Clause 4 – Replacement of trees

Clause 4 would require replacement trees to meet the specification of a “heavy standard tree”. It would also place a continuing obligation to replace a tree where a replacement dies, becomes damaged or diseased, or is removed within five years.

The UFU has concerns regarding the potential cost of purchasing, planting and establishing heavy-standard trees, particularly where a replacement is required in an exposed or otherwise unsuitable agricultural location.

The requirement is also materially more prescriptive than the existing requirement to plant a replacement tree of an “appropriate size and species”. The Bill would mandate a “heavy standard” meeting BS 8545:2014 or an equivalent standard, thereby removing some of the flexibility currently available to determine an appropriate replacement for an individual site.

The Bill does recognise that where the landowner was not responsible for the original breach, the replacement duty should initially fall on the person responsible. However, if that individual fails to replace the tree within 18 months, the landowner ultimately becomes responsible. The landowner may then seek to recover the costs.

The UFU does not believe that an innocent landowner should become financially responsible for another person's unlawful conduct simply because the offender has failed to comply with their duties.

A statutory right to recover costs does not adequately protect a farmer where the person responsible cannot be found, refuses to pay or lacks the financial resources to meet the cost.

Clause 5 – Council inspection of replacement trees

Clause 5 would require councils to inspect replacement trees annually for five years. Councils may require landowners to provide evidence that a tree has become established and may require remedial action.

The UFU accepts that replacement planting must have a reasonable prospect of becoming established. However, any requirements placed on farmers should remain proportionate and should take account of circumstances outside the landowner's control, including severe weather, disease and damage by wildlife.

There should also be clarity over what forms of evidence councils may reasonably request, and inspections should be mutually agreed with landowners in advance.

Clause 6 – Enforcement of duties as to replacement trees

Clause 6 allows councils to enter land, undertake planting and recover costs where an enforcement notice has not been complied with. Where the person responsible for the breach cannot be identified, cannot be found or is insolvent, the council may recover the cost from the owner of the land. This is a significant concern for the UFU, as the provision could result in a farmer or landowner who did not cause, authorise or benefit from a breach becoming financially responsible simply because the actual offender cannot pay.

The UFU considers this fundamentally unfair. Ownership of the land should not make an innocent party the payer of last resort for another person's unlawful act. Given the prevalence of conacre land across Northern Ireland, this provision could potentially expose a significant number of farm families and landowners to liability for breaches for which they had no responsibility.

Clause 7 – Tree Protection Map

The UFU recognises that a centralised Tree Protection Map could provide greater clarity for farmers and landowners by making it easier to identify whether trees are subject to a TPO or whether land falls within a conservation area.

However, the UFU is not in a position to give unqualified support to the proposal without further detail on the information that will be made publicly available, how landowner privacy will be protected, how mapping accuracy will be assured and how errors will be corrected.

For many agricultural businesses, the farm is also the farmer's family home. A publicly accessible and searchable system showing detailed information about protected trees on private property could therefore raise legitimate privacy concerns, particularly if information can be linked to individual owners, occupiers or residential addresses.

The UFU also notes that the Bill leaves significant detail about the information to be made available through the map to subsequent regulations. It is therefore difficult to assess the full impact of the proposal at this stage.

There are also practical concerns around accuracy. Farmers and landowners may rely on the Tree Protection Map when deciding whether works can lawfully be carried out. Incorrect, incomplete or outdated information could therefore have significant consequences. The need for certainty is illustrated by DAERA's existing Woodland Register⁵, which expressly states that mapped woodland boundaries do not reflect legal boundaries, should be treated as indicative, and may contain errors or omissions. Where information is intended to inform statutory restrictions on land use, the UFU believes a clear process for verifying and correcting mapped information will be essential.

The UFU believes that farmers and landowners should have straightforward access to definitive information about restrictions affecting their own land. However, this does not necessarily require all underlying information to be made freely and publicly searchable.

Clause 8 – Determination of planning applications

Clause 8 would require planning permission to be refused where development would result in the loss or deterioration of ancient or long-established woodland, development within 15 metres of such woodland, or deterioration of an ancient tree subject to a TPO, unless the applicant demonstrates "wholly exceptional circumstances".

The UFU understands the case for strong protection against the destruction of important woodland. However, the Bill appears to apply the same presumption against development simply because development is situated within 15 metres of woodland, regardless of whether

⁵ Department of Agriculture, Environment and Rural Affairs, *Woodland Register*, <https://www.daera-ni.gov.uk/publications/woodland-register>

any actual harm would occur. For farms with constrained yards or historic woodland close to existing farm infrastructure, this could substantially restrict investment and development.

The test of “wholly exceptional circumstances” also appears exceptionally high. A development which has no meaningful adverse impact on the woodland could nevertheless be refused simply because it lies within the prescribed distance. This could affect new agricultural buildings, farmyard extensions, access arrangements and farm diversification proposals.

Clause 9 – Permitted development

Clause 9 provides that permitted development rights will not authorise development involving the loss or deterioration of ancient or long-established woodland or development within 15 metres of such woodland.

Permitted development rights are important to agricultural businesses because they allow certain necessary farm development to proceed without the cost and delay associated with a full planning application. Under the Bill, it appears that the simple fact that development is located within 15 metres of ancient or long-established woodland would remove those rights, even where no damage would occur. The Bill's Explanatory and Financial Memorandum confirms that permitted development rights “will no longer be available” where development involves the loss or deterioration of ancient or long-established woodland or development within 15 metres of such woodland⁶.

The UFU considers a blanket approach disproportionate, as there may be established farmyards where woodland lies close to buildings because of the historic pattern of development. Removing permitted development rights could prevent or delay otherwise routine agricultural investment. The UFU has been unable to identify any published assessment quantifying the number of agricultural holdings, farmyards or hectares of agricultural land that would fall within the proposed restrictions. Before restrictions of this nature are introduced, the UFU believes the likely impact on agricultural businesses should be quantified, including the number of farm holdings and existing farmyards falling within the proposed 15-metre zone.

Clause 10 – Ecosystem services

Clause 10 defines ecosystem services for the purposes of the expanded TPO regime. These include cultural, regulating and supporting services such as flood regulation, erosion control,

⁶ Northern Ireland Assembly, *Tree Protection Bill: Explanatory and Financial Memorandum*, <https://www.niassembly.gov.uk/assembly-business/legislation/2022-2027-mandate/primary-legislation-bills-22-27-mandate/tree-protection-bill/efm---as-introduced/>

soil regulation, primary production and nutrient cycling. The UFU considers this definition too broad unless accompanied by a meaningful threshold.

Almost every tree could be said to make some contribution to climate regulation, soil processes, water cycling or nutrient cycling. The legislation should therefore require a council to demonstrate that the relevant ecosystem service is significant and that making a TPO is necessary and proportionate.

Clauses 11 and 12 – Definition of ancient and long-established woodland

The Bill defines ancient woodland as land continuously wooded since at least the end of 1600 and long-established woodland as land shown to have been continuously wooded since the first six-inch Ordnance Survey maps of 1830–1844. These definitions have significant practical consequences because clauses 8 and 9 would attach substantial planning restrictions to land falling within either category, including restrictions on development within 15 metres of the woodland boundary and the removal of permitted development rights in those circumstances.

The UFU therefore believes there must be a robust, transparent and challengeable process for determining both whether land meets these definitions and where the precise woodland boundary lies. This is particularly important where historic mapping is being used to determine modern statutory restrictions. Land use, woodland extent and field boundaries may have changed considerably over almost two centuries, while historic mapping may not always provide the degree of precision necessary to determine whether a proposed development falls inside or outside a 15-metre statutory buffer.

The principal existing source of information is the Northern Ireland Ancient Woodland Inventory, developed through the Woodland Trust's "Back on the Map" project between 2002 and 2007⁷ using historic Ordnance Survey mapping, documentary evidence and field survey⁸. The published inventory is a static dataset, with the boundaries of ancient and long-established woodland not subject to review as part of the dataset.¹⁰ While the inventory is a valuable environmental resource, the UFU does not believe that an environmental inventory should, without appropriate safeguards, become determinative of whether agricultural development can proceed or permitted development rights can be exercised.

Where the classification or precise boundary of woodland could determine whether significant statutory planning restrictions apply, affected farmers and landowners must have a clear mechanism to challenge that classification or boundary and to submit alternative historical, cartographic or site-based evidence. The final determination should be based on the best available evidence rather than reliance on a mapped designation alone.

⁷ Woodland Trust, *Back on the Map*, <https://ati.woodlandtrust.org.uk/back-on-the-map>

⁸ Woodland Trust, *Northern Ireland Ancient Woodland Inventory*,
<https://www.arcgis.com/home/item.html?id=8b3ee92ff63e4915aaf5930850ae4688>



Ulster Farmers' Union
475 Antrim Road, Belfast, BT15 3DA
T 02890 370 222
E info@ufuhq.com

Conclusion

The UFU appreciates the opportunity to contribute to the scrutiny of the Bill. While we recognise its objectives, a number of the provisions outlined above raise legitimate practical concerns and could have unintended consequences for farmers and landowners. We would therefore ask that these issues are carefully considered as the Bill progresses and look forward to engaging further throughout the scrutiny process.