



Rural Payments
Agency

Consultation on the regulatory approach and use of civil sanctions for hedgerow management

29 October 2024

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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Introduction

As set out in Defra's Agricultural Transition Plan, we are continuing to improve the way we regulate, replacing EU-scheme based regulation and enforcement with an approach which is clearer, fairer and more effective. We also want to develop a more trusting relationship with farmers and land managers. We want to ensure that farmers receive the support they need to comply with the law, and we will work with farmers to help prevent harm.

Reflecting the regulators' code and the principles of good regulation, we will take a supportive approach to regulation. As well as providing appropriate advice and guidance to those we regulate, we are providing further training to field officers. We will provide transparency about the processes and actions we will take when we find non-compliance. Our approach will be risk-based, focussing enforcement activity on priority risks and assessing risk when deciding on the appropriate level of intervention. We will be transparent, providing statistics on our regulatory and enforcement activity and will publish an annual report.

Hedgerows are a vital part of our countryside. They benefit our wildlife, the environment, and our landscapes. We know that farmers, land managers, and the general public greatly value hedgerows. The Management of Hedgerows (England) Regulations 2024 ('the Regulations') set out the rules for hedgerow management together with our approach to enforcement and the civil sanctions which may apply. The RPA has been appointed by the Secretary of State for the Department for Environment, Food and Rural Affairs to act on his behalf as Regulator in respect of the Regulations.

This consultation seeks views on the approach to the use of civil and criminal sanctions. The RPA has a range of actions or 'sanctions' available to help them enforce the Regulations including both civil sanctions and criminal sanctions. Criminal sanctions will only be used for the most serious offences.

'We' in this document should be taken as referring to the RPA. This consultation will be open for six weeks from 29 October 2024 and will close on 10 December 2024.

We have already spoken to a range of interested parties and received valuable feedback about how we might best enforce these regulations. We now welcome responses to this formal consultation from farmers, land managers, NGOs, consultants, charitable organisations, the general public, and any other person or group who has an interest in the future management and regulation of hedgerows in England following the end of cross compliance.

Previous consultation

The consultation Protecting Hedgerows in England ran for 12 weeks from 28 June to 20 September 2023. It set out the government's proposals to broadly replicate in domestic legislation the hedgerow management rules which were formerly part of the EU's 'cross compliance' framework. These rules included maintaining green cover 2 metres from the centre of a hedgerow (commonly known as 'buffer strips'), prohibiting hedge cutting

between March 1 and August 31 and the relevant exemptions related to these rules. The consultation also proposed a suite of civil sanctions that could be used to address non-compliance with the rules as part of a proportionate, supportive regime. Having considered carefully the responses to that consultation, the Regulations were developed to broadly replicate and update the rules on hedgerow protection. The main provisions of the new legislation are:

Buffer strips

- replicate the requirement for a buffer strip 2 metres wide as measured from the centre of the hedgerow
- continue to allow the spot application of pesticides within buffer strips to control the spread of invasive and injurious weeds
- continue to exempt hedgerows under 5 years old
- continue to exempt fields of under 2 hectares from the requirement to have a buffer strip

Cutting ban and related exemptions

- maintain a cutting ban period from 1 March to 31 August inclusive
- permit cutting or trimming during the cutting ban period:
 - if the hedgerow overhangs a highway, road or footpath over which there is a public or private right of way and the overhanging hedgerow obstructs the passage of, or is a danger to, users;
 - if the hedgerow obstructs the view of such users or the light from a public lamp; or
 - if the hedgerow is dead, diseased, damaged or insecurely rooted and, because of its condition, the hedgerow, or part of it, is likely to cause danger by falling on to a highway, road or footpath
- permit cutting or trimming a hedgerow, or a tree growing in a hedgerow, in August for the purposes of sowing oilseed rape or temporary grassland during the same August provided that the RPA has been notified in advance in writing either by email or post.

The new rules, including all exemptions, can be found in the statutory instrument (Annex C).

Statutory Guidance

Statutory guidance has been drafted to explain how the RPA plans to approach enforcing the new regulations. We will seek to ensure that enforcement is clear, fair, and proportionate. We will take an advice led approach with a focus on providing advice and guidance in the first instance before any sanctions are considered if appropriate. Where necessary we will impose civil sanctions on those who are found in breach of the requirements of the regulations. This consultation document outlines the proposed enforcement approach and invites views on it. More details can be found in the statutory guidance (Annex A). Please read this guidance before completing the consultation.

Responding to this consultation

Not all questions in this consultation are mandatory, but please do answer as many questions as possible.

You can respond to this consultation in the following ways:

Online using the Citizen Space consultation hub at:

consult.defra.gov.uk/legal-standards/consultation-on-hedgerow-regulatory-approach

Or in writing to:

Hedgerow Protections Team
2nd Floor, Seacole Block,
2 Marsham Street,
London, SW1P 4DF

A summary of the consultation responses will be published on <https://www.gov.uk/government/consultations/hedgerow-management-regulatory-approach-and-use-of-civil-sanctions>.

Please read the statutory guidance (Annex A) and the consultation document in full before responding.

Duration

This consultation will run for six weeks. This is in line with the Cabinet Office's 'Consultation Principles' which advises government departments to adopt proportionate consultation procedures. The consultation opens on 29 October 2024. The consultation closes on 10 December 2024.

After the consultation

A summary of the responses to this consultation and the government response will be published and placed on Defra's website at www.gov.uk/defra.

The summary will include a list of respondents and organisations that responded but not personal names, addresses or other contact details. However, information provided in response to this consultation document, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes for example, Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018. If you want information, including personal data that you provide, to be treated as confidential please say so clearly in writing when you submit your response to the consultation and explain why you need these details to be kept confidential.

If we receive a request for disclosure under the FOIA, we will take full account of your explanation, but due to the law we cannot provide an assurance that confidentiality can be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as a confidentiality request.

Defra is the data controller in respect of any personal data that you provide, and Defra's Personal Information Charter on GOV.UK gives details of your rights in respect of the handling of your personal data.

Campaign responses

We recognise that respondents may choose to use some standard text to inform their response. Campaigns are when organisations (or individuals) coordinate responses across their membership or support base, often by suggesting a set of wording for respondents to use. Campaign responses are usually very similar or identical to each other. For this consultation, campaign responses may be analysed separately to other responses to ensure the breadth of views received can be summarised effectively and efficiently. All campaign responses will be taken into account in the final analysis of public views and campaigns help provide an indication of the strength of feeling on an issue. The preferred route for all respondents to provide their views (including where a response is based on a campaign) is via the Citizen Space platform.

Compliance with the consultation principles

This consultation is being conducted in line with the consultation principles set out in the Better Regulation Executive guidance.

If you have any comments or complaints about the consultation process, please email them to consultation.coordinator@defra.gov.uk.

Part one

What we are proposing

We propose to bring in enforcement measures for the hedgerow regulations, using powers in Part 3 of the Regulatory Enforcement and Sanctions (RES) Act 2008. We will use proportionate enforcement mechanisms and tools to encourage compliance with management requirements and take effective actions against harmful activities. The details of how and when enforcement actions will be used can be found in the statutory guidance (Annex A). The RES Act requires the government to consult on the use of the powers conferred under it. This consultation fulfils that obligation.

The sanctions available to us will be stop notices, compliance notices, restoration notices, and variable monetary penalties. We also have criminal sanctions available to us for the most serious cases.

Compliance Notice

This requires a person to take specified steps within a specified period of time to ensure that an offence does not continue or happen again.

Restoration Notice

This requires a person to take specified steps within a stated period to ensure that the position is restored, so far as possible, to what it would have been if no offence had been committed.

Stop Notice

This prevents a person from carrying on an activity until they have taken steps to come back into compliance. A stop notice can only be used where we reasonably believe that an unlawful activity is causing or presents a significant risk of causing serious harm to human health or the environment.

Variable Monetary Penalty

In more serious cases, this allows us to calculate the amount of the fine necessary to remove any financial benefit derived from not complying with the hedgerow protection rules where appropriate as well as acting as a deterrent to non-compliance. They will be typically used for more serious offences and as an alternative to prosecutions for significant offences where there are strong mitigating factors. The financial penalty is paid into the Government's Consolidated Fund.

Process of Appeal

An appeals process will be introduced for anyone who believes any sanctions were applied unfairly, unreasonably or based on an error (either of law or facts).

Scope

The Management of Hedgerows (England) Regulations 2024 applies to hedgerows defined in the regulations as:

- growing in or adjacent to agricultural land and which has:
- a continuous length of 20 metres or more; or
- a continuous length of less than 20 metres and, at each end, meets (whether by intersection or junction) another hedgerow.

The statutory guidance on enforcement at Annex A applies to any person who carries out actions in breach of the Regulations or any person who causes or permits another person to carry out such actions.

In this context, 'agricultural land' means land that is used for:

- horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including horses, ponies and any creature kept for the production of food, wool, skins or fur, or for the purposes of its use in the farming of land);
- grazing land, meadow land, osier land, market gardens and nursery grounds;
- woodlands where that use is ancillary to the farming of land for other agricultural purposes.

The proposals in this consultation document will impact on all farmers and land managers in **England** who have hedgerows on their agricultural land.

Whilst we recognise that the value and importance of hedgerows for biodiversity, carbon storage and the landscape extend beyond agricultural land, the Regulations, and their associated enforcement apply only to agricultural land as set out above. Any further changes to hedgerow management beyond agricultural land would be subject to a separate future consultation.

Part two

Enforcement

Until the end of 2023 the RPA enforced hedgerow management through cross-compliance. The cross-compliance rules were broadly about maintaining a buffer strip, and only allowing cutting and trimming of hedgerows at certain times of the year. These rules only applied to farms which were claiming direct payments (such as BPS or ES) and any breach of the hedgerow management rules resulted in a deduction from the subsidy claim. This could result in disproportionate levels of penalty. It also meant that only those who claimed direct payments had to follow hedgerow management regulations. The new Management of Hedgerows (England) Regulations 2024 broadly replicate the rules that existed under the previous system. The RPA will be the regulator for these new regulations, and our enforcement will be based on the principle that prevention is better than cure. We will use an outcome focused approach that is supportive of those we regulate doing the right thing but allows us to take action in more serious cases. Advice and guidance may be appropriate before taking enforcement action unless in cases of significant harm.

Consultation questions

Characteristic questions

1. Would you like your response to be confidential?

- a. YES
- b. NO

If Yes, please give your reason

2. What is your name?

3. Are you responding on behalf of an organisation? If Yes, what is it called?

4. If you are responding as part of a campaign, what is its name of the organisation that coordinated the response?

Campaigns are when organisations (or individuals) coordinate responses across their membership or support base, often by suggesting a set of wording for respondents to use. Campaign responses are usually very similar or identical to each other.

5. What is your email address?

6. In which part of the United Kingdom are you based? (Please tick all that apply)

- England
- Wales
- Scotland
- Northern Ireland
- other (please state)

7. If you are based outside of England, please briefly describe how these regulations will impact you. E.g. "I live in Scotland but own a farm in England".

Please note that these regulations only apply in England and therefore your response will be discarded if you are not impacted by them.

8. It would be helpful for our analysis if you could indicate with which of these sectors you or your organisation are most aligned. (please tick or circle one which is most applicable to you):

- farm business (please specify)
- farm supply chain
- farm advisor
- equestrian
- public body or local authority
- trade body
- academic body
- non-governmental organisation
- member of the general public

- other (please state)

9. (if farm business selected): If you are a farmer or a land manager, what enterprises do you have on your farm? (select all that apply)

- cereals
- general cropping
- mixed
- dairy
- lowland grazing livestock
- less favoured areas (LFA) grazing livestock
- horticulture
- specialist pigs
- specialist poultry
- other (please specify)

10. Are you happy to be contacted in the future for further research?

Consultation questions

The following questions relate to the enforcement approach set out in the statutory guidance at Annex A.

1. Do you agree with our approach to the application of civil sanctions?
 - YES
 - NO – Please explain
2. Do you agree with our approach to appeals?
 - YES
 - NO – Please explain
3. Do you agree with our approach to publishing the details of enforcement actions we have taken?
 - YES
 - NO – Please explain
4. If you have any comments about the statutory guidance at Annex A in relation to either its factual accuracy, clarity, or ease of understanding, we would welcome a detailed description. Please indicate the paragraph and page reference where applicable.