



Department
for Environment
Food & Rural Affairs

Consultation on protecting hedgerows

Ensuring continued protections for hedgerows after
the end of cross compliance

June 2023

We are the Department for Environment, Food and Rural Affairs. We are 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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Part one

Introduction

Hedgerows are the very essence of our countryside, they are important boundary features and help farmers manage livestock, slow soil erosion and water run-off, and support crop pollinators for food production. They are crucial for climate adaptation and storing carbon and are a key part of our Net Zero commitment.

Hedgerows also provide vital resources for mammals, birds and other species. They act as wildlife corridors – allowing species to move between isolated habitats. They can also harbour beneficial insects that predate crop pests, supporting an integrated pest management approach for farmers. And, of course, they add to the beauty of our countryside.

Through Countryside Stewardship we pay for some management of hedgerows and offer capital grants to plant and restore hedgerows or plant trees within a hedgerow. We have supported farmers to create or restore 8,450 miles of hedgerow through these, and through our new schemes we want to do even more. The Sustainable Farming Incentive will reward farmers for increasing hedgerow length and optimising existing hedgerows to improve the offer to wildlife, water quality and carbon sequestration.

As well as rewarding those who are actively improving hedgerows, we want to ensure we have the appropriate level of protection for hedgerows. This consultation seeks your views on the best way to do this.

As a result of the UK exiting the European Union, Common Agricultural Policy (CAP) legislation is being repealed and replaced in England with a domestic agriculture policy – the centrepiece of which is the Environmental Land Management (ELM) schemes. This will reward farmers and land managers with public money for providing public benefits, such as clean air, clean and plentiful water, flood protection and thriving wildlife.

To receive Basic Payment Scheme (BPS) or land based rural development payments under CAP, or the Countryside Stewardship land-based schemes set up following EU exit, applicants must currently comply with specific rules to maintain overall standards of agricultural, environmental, animal and plant health protection. Cross compliance rules (which were transposed into domestic law after EU Exit) consist of:

- Statutory Management Requirements (SMRs)
- Good Agricultural and Environmental Conditions (GAECs)

In the event of a breach of these rules, percentage penalties and deductions are made from payments. We have already acted to improve proportionality in enforcement of these rules. However, from the beginning of 2024, Direct Payments will be “delinked” from the amount of land a farmer has, and the cross compliance regulatory framework will no longer apply. From 2024, if the rules are not adhered to, financial penalties will no longer be automatically applied or deducted from any direct payments. Instead, we want to

introduce a system which is fairer, with advice and guidance being offered as a first step to help people into compliance wherever possible. If we do need to issue a penalty, our intention is that it will reflect the harm or damage which has actually taken place and will not be based on a percentage of any scheme payments.

We want to support farmers to maintain standards as we move away from cross compliance. In most cases, these rules are already in domestic legislation and will continue to provide important protections to the environment and animals. Farmers and land managers must continue to comply with these requirements, and regulatory authorities have powers to enforce. As we progress through the agricultural transition, we are reforming our approach to farm regulation to make it clearer, fairer and more effective. We want to build trust and confidence in the regulatory system by making it less prescriptive and burdensome for farmers, providing better advice and support, and using better-targeted inspection and enforcement to tackle areas and activities of significant harm.

However, some of the cross compliance rules do not have exactly the same requirements in domestic law – this includes hedgerows and other field boundaries, soils, and watercourse buffer strips. In all these areas we are actively considering the most appropriate approach to prevent environmental harm and encourage good practice, whether that is through regulation, incentives or other means.

Under cross compliance, management measures to protect hedgerows are covered by GAEC 7a. This states that a buffer strip should be maintained within 2 metres of the centre of a hedge, where cultivation of land is prohibited and where fertilisers or pesticides are not to be applied. It also stipulates that a hedge must not be cut between 1 March and 31 August (subject to certain exemptions).

Outside cross compliance, legal protection for hedgerows is provided by the Hedgerows Regulations 1997 (which applies to England and Wales). These prohibit the removal or partial removal of hedgerows of 20 metres or more growing on common land, protected land or agricultural land (apart from those near dwelling houses) without prior notice given to local planning authorities. The local planning authority is responsible for deciding whether a hedgerow is 'important' (according to criteria relating to its wildlife, landscape, historical or archaeological value set out in the Regulations) and therefore should not be removed. The Wildlife and Countryside Act 1981 also contains various offences relating to removing the nests and eggs of wild birds, disturbing nest-building wild birds or their young, and damaging or destroying the sheltering places of wild animals. But there is no direct domestic equivalent of the hedgerow management measures in GAEC 7a.

This consultation seeks your views on the best way forward for protecting hedgerows in England.

Part two

What are we proposing?

As a first step towards preventing future environmental harm to hedgerows, we could replicate the existing cross compliance requirements in domestic law, by making changes to the Hedgerows Regulations 1997 to include hedgerow management measures that would sit alongside existing provisions relating to removal of hedgerows in England. We can do this using powers conferred on the Secretary of State under Section 97 of Environment Act 1995.

We could introduce these measures in Summer 2024 as a minimum level of protection. This is the quickest way to ensure that basic hedgerow management actions become legal requirements and would provide a set of measures that would be familiar to the majority of farmers and land managers (see section (e) below on exemptions and the subsequent section on scope). This would ensure minimum protections are in place as soon as possible after losing cross compliance and could potentially be followed by a second stage of broader protections once we have a suitable legislative route.

The measures we could replicate are:

- a) Maintaining the current GAEC 7a requirement to ensure green cover on land 2 metres from the centre of a hedgerow (on all fields over 2 hectares).**

Cross compliance requires that green cover be maintained on land around a hedgerow. This means that cultivation on this strip of land is prohibited. This is because cultivation can damage the roots of the hedgerow, which can in turn damage the overall structure and resilience of the hedgerow over time. This can eventually lead to loss of parts of the hedgerow as the roots become unable to support the structure.

Farmers and land managers who are in receipt of BPS payments, have a Rural Development (RD), Countryside Stewardship (CS) or Environmental Stewardship (ES) agreement are already subject to this requirement to receive payments, unless they qualify for an exemption under the cross compliance rules.

- b) Maintaining the current GAEC 7a requirement not to spray pesticide or fertiliser on land within 2 metres of the base of a hedgerow (on all fields over 2 hectares).**

GAEC 7a prohibits the application of pesticides and fertilisers within 2 metres of the base of a hedgerow. This requirement is in place because spraying of fertilisers and pesticides near to the base of a hedgerow can destroy some plants within the hedgerow and kill or reduce the number of insects within the hedgerow. Spraying can also impact on the resilience of a hedgerow, potentially leading to gaps.

As above, farmers and land managers in receipt of BPS, RD, CS or ES are already subject to this requirement, unless they qualify for an exemption under the cross compliance rules.

c) Ensuring that hedge cutting and management takes account of wildlife within hedgerows and supports biodiversity.

Under cross compliance, cutting hedgerows is prohibited between 1 March and 31 August to protect nesting birds and their food source. We understand that cutting ban dates can be difficult to comply with for various reasons, for example, due to farm type or weather conditions outside the nesting season.

We are seeking your views on replicating the protections a cutting ban period brings and giving the opportunity for respondents to suggest alternatives in place of the existing cutting ban dates. Based on responses received through this consultation exercise, and on existing evidence, we will then formulate an approach that is outcome-focused and easy to follow, and which ensures that wildlife in hedgerows continues to be protected in the most appropriate way.

d) Introducing a new definition of an ‘important’ hedgerow in addition to the existing definition in the Hedgerows Regulations 1997.

Hedgerows are currently defined as ‘important’ if they have existed for 30 years or more and they meet one or more of the criteria set out in Schedule 1 of the Hedgerows Regulations 1997 (for example, if they contain species of wildlife). If a hedgerow meets this criterion, there are provisions in place to prohibit its removal. This definition in respect of removal of hedgerows will remain the same.

Under cross compliance the hedgerow management rules apply to any hedgerow growing in, or adjacent to, any land which forms part of the agricultural area of a holding which has one of the following:

- a continuous length of at least 20 metres, or is part of any such length
- a continuous length of less than 20 metres where it meets (at an intersection or junction) another hedge at each end

Any gap of 20 metres or less and any gap resulting from a breach of the Hedgerows Regulations 1997 will be treated as part of the hedgerow.

We want to ensure a similar proportion of hedgerows are subject to hedgerow management measures as currently, under cross-compliance. We are seeking your views on whether the current cross compliance criteria should be replicated and used as the definition of an ‘important’ hedgerow for the proposed management measures only.

e) Exemptions to the regulations.

Currently under cross compliance farmers and land managers can apply to cut or trim hedgerows for the purposes of sowing oilseed rape or temporary grassland during the

month of August. At present, a farmer or land manager must apply to the Rural Payments Agency (RPA), explaining why they wish to cut or trim a hedgerow and the land parcel it will affect.

We are seeking your views on whether we should replicate this exemption. We are keen to reduce burdens on farmers where we can and will streamline processes to make them more efficient for farmers where possible. We are therefore also seeking your views on whether we should replicate the requirement that a farmer or land manager must apply to the appropriate regulator seeking approval.

Farmers and land managers are also exempt from keeping green cover on land within 2 metres of the centre of a hedgerow if the land parcel is 2 hectares or less, or if a hedgerow is less than 5 years old. We are seeking your views on whether we should also replicate these exemptions.

For farmers who were not receiving payments under BPS or who did not have a RD, CS or ES agreement where it is a requirement to adhere to cross compliance rules (including the rules applicable to managing hedgerows), these would be new requirements. To minimise any additional burden from these requirements, we are considering an additional exemption for farms under 5 hectares, to mirror the BPS eligible land. Providing this additional exemption would reduce the number of farmers who would need to meet these requirements who do not already have to do so, and we are seeking your views on whether this should be introduced.

Alternative Approach

Rather than simply replicating existing requirements as soon as possible, we could look to develop new legal protections for hedgerows. This could give us more flexibility to shape hedgerows policy to help achieve environmental and net zero outcomes and allow us to consider protecting a broader range of hedgerows, beyond just those on agricultural land.

We are interested in your views on what requirements would be most effective at preventing environmental harm without unnecessary burdens on farmers or others with hedgerows on their land. Legislating for different protections may mean needing alternative legislative routes. If we need primary legislation, this could begin no sooner than Autumn 2024. This would mean measures coming into force late 2025 at the earliest.

Who will be affected by these proposals?

Amending the Hedgerows Regulations 1997 to include management measures would impact on all farmers and land managers in England who have hedgerows on their agricultural land, aside from those covered by various exemptions. Those who are already governed by cross compliance requirements would not be subject to any additional burden because of these proposals. These proposals would also impact local planning authorities, the RPA and Defra in their delivery roles, which is discussed in part 3 below.

Hedgerows Regulations 1997 specifies that it only applies to “any hedgerow growing in, or adjacent to, any common land, protected land, or land used for agriculture, forestry or the breeding or keeping of horses, ponies or donkeys”. Whilst we recognise the value and importance of hedgerows for both biodiversity and carbon storage extends beyond those on agricultural land, for the purposes of amending the Hedgerows Regulations 1997 we would only consider those hedgerows as defined above.

We recognise that hedgerows are a hallmark of our British countryside and are of interest to a much wider group than those who will be directly subject to the regulations governing them. We welcome responses from farmers, land managers, NGOs, consultants, charitable organisations, the public and any other person or group who has an interest in the future management of hedgerows after the end of cross compliance.

Part three

Delivery

Currently, local planning authorities have enforcement responsibility under the Hedgerows Regulations 1997. If a landowner wants to remove a hedgerow, they must first notify their local planning authority, which then assesses whether the hedgerow is 'important' based on its age and archaeological, historical, wildlife or landscape value as set out in the Regulations. If deemed 'important' the hedgerow must be retained unless the local planning authority is satisfied there are circumstances which justifies its removal. It is a criminal offence to remove an important hedgerow without permission, for which you can receive an unlimited fine or be ordered to replace the illegally removed hedgerow. We are not proposing any changes regarding the removal of hedgerows at this time.

Under the cross compliance framework, the RPA are responsible for ensuring the rules for managing hedgerows on agricultural land are followed. Currently, penalties are calculated on a percentage of the subsidies received by the farmer or land manager. This can lead to penalties which are financially disproportionate and not representative of the severity of any actual harm. We have ensured that this will not continue when we move away from cross compliance in 2024.

The exact delivery approach we take to ensure compliance with future requirements will depend on the outcome of this consultation, but we intend for the RPA to be the regulator.

If we are to introduce hedgerow management requirements into domestic law, we will consider a range of options for how we enforce the rules. We are seeking your views on the most appropriate enforcement regime for the management of hedgerows. We will ensure any enforcement mechanisms used are proportionate, effective and fair, in line with our vision for the farming regulatory system. We are proposing to introduce civil sanctions to ensure there are a range of proportionate consequences so a regulator can respond to individual circumstances. Civil sanctions are becoming more widely used across government and provide a more proportionate way to deal with less serious issues. These sanctions can include stop notices, compliance notices, restoration notices, fixed monetary penalties and variable monetary penalties. Criminal sanctions will remain an option but would only be used for the most serious issues.

What Civil Sanctions are we proposing?

We propose to bring in enforcement measures for the hedgerow regulations, using either the Regulatory Enforcement and Sanctions Act 2008 (RESA) or new primary legislation. We will use proportionate enforcement mechanisms and tools to encourage compliance with management requirements and take effective actions against harmful activities. An example of a harmful activity would be spraying herbicides too close to a hedge destroying it as both a landscape feature and wildlife habitat. In this example, the harm could have been an accidental oversight or a deliberate action. The areas damaged could vary in size and would therefore need to be addressed in very different ways.

In most cases, we envisage advice and guidance will be the first step to help individuals, rather than penalties. If appropriate, this would then be followed by a series of other actions and sanctions, aiming to rectify or undo any harms which have already taken place. Continued or repeat offences would result in the application of a monetary penalty.

The sanctions we propose to make available to the regulator will be:

- stop notices
- compliance notices
- restoration notices
- fixed monetary penalties
- variable monetary penalties

These sanctions are set out in Part 3 of the RESA 2008 and section 60 specifies a requirement to consult those who will be affected by the policy. This consultation meets that condition.

An outline of the proposed sanctions is given below along with an example of how each might be used. These examples are only for illustrative purposes and do not represent the final position of the regulator.

Stop Notice

A stop notice prohibits a person (or company) from performing a harmful activity, specified in the notice, until mitigation measures have been put in place. The regulator must justifiably believe that the activity will cause or present a significant risk of causing serious harm to the environment, and that without the stop notice the person committing harm will continue. A stop notice can be seen as a preventative tool, due to the restriction of activity. For example, a farmer or land manager could be issued with a stop notice if they were in the process of cutting a hedge during the restricted cutting period, without an exemption. This would stop the cutting with immediate effect, preventing any further harms taking place.

Compliance Notice

Compliance notices require a person to take specific or measured steps in a fixed time frame to prevent harm from continuing or reoccurring. This can be seen as a sanction for the increased severity of harm, with guidance given to try and rectify harms to the environment. For example, if a farmer or land manager has been issued with a stop notice for cutting a hedge during the no cutting period, they may also be issued with a compliance notice. This would require them to provide evidence that they have not cut further hedges before the end of the no cutting period.

Restoration Notice

A restoration notice carries the requirement to rectify damage resulting from non-compliance. For example, a farmer or land manager could be issued with a restoration

notice for a section of hedgerow that has been destroyed by the over-use of herbicides instructing them to replant the destroyed section.

Variable Monetary Penalty

A Variable Monetary Penalty (VMP) requires a financial penalty to be paid to the regulator, with the value at the determination of the regulatory body. Although the regulator can determine the value of the penalty, guidance will be published directly from the regulator setting out the matters likely to be taken into account when determining the amount. VMPs may be used in conjunction with other sanctions. For example, if a compliance notice has been issued for cutting a length of hedgerow during the no cutting period, a VMP may also be issued. The value of the penalty may be linked to the length of hedge cut or actual harm caused as determined by the regulator.

Fixed Monetary Penalty

Fixed Monetary Penalty (FMP) is a financial tool to penalise non-compliance. The regulator must be satisfied beyond reasonable doubt that the person or company has committed the offence. Unlike a VMP where there is discretion for the regulator to set the amount of penalty, the value of an FMP is determined using specific criteria or is specified in a Ministerial Order. For example, where a restoration notice has been issued for destroying a section of hedgerow, and not subsequently complied with, a fixed monetary penalty may be issued.

Process of Appeal

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

Consultation questions

Characteristic questions

1. Would you like your response to be confidential?
2. What is your name?
3. What is your email address?
4. It would be helpful for our analysis if you could indicate which of these sectors you most align yourself or your organisation with (please tick or circle one which is most applicable to you):
 - farm business (please specify)
 - farm supply chain
 - farm advisor
 - retail industry
 - manufacturing industry
 - public body or local authority
 - trade body
 - academic body
 - non-governmental organisation
 - member of the general public
 - other (please state)
5. If you are responding on behalf of an organisation, what is its name?
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 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
8. Are you happy to be contacted in the future for further research?

Consultation questions

9. Should we maintain the requirement for buffer strips that are 2m from the centre of the hedgerow?
 - Yes
 - No
 - Comment

10. If we maintain the 2m buffer strip requirement, should we also replicate an exemption for field sizes under 2 hectares?
 - Yes
 - No
 - Comment

11. If we maintain the 2m buffer strip requirement, should we also replicate an exemption for hedgerows under 5 years old?
 - Yes
 - No
 - Comment

12. Should we maintain a no cutting period to ensure hedgerows are managed in a way which protects important bird species?
 - Yes
 - No
 - Comment

13. If we maintain a no cutting period, should the no cutting period remain as 1 March to 31 August, or be amended to an alternative? Please set out your reasoning or evidence below.
 - Remain 1 March to 31 August
 - End date brought forward to 31 July
 - End date brought forward to 15 August
 - End date extended beyond 31 August
 - Alternative suggestion

14. If we maintain a no cutting period, should we also replicate exemptions to the regulations?
 - Yes
 - No
 - Comment

15. If you answered yes to the previous question, should there be a requirement to apply to the relevant authority for an exemption (as currently under cross compliance)?
 - Yes
 - No
 - Comment

16. Should we introduce a new exemption to the hedgerow management requirements for farms under 5 hectares?
 - Yes
 - No

- Comment

17. If we amend the Hedgerows Regulations 1997 to include additional management measures, we will require an additional definition of what constitutes an important hedgerow for the proposed measures. Do you agree with the below definition of an 'important hedgerow' for hedgerow management activities only?

"Hedgerow management rules apply to any hedgerow growing in, or adjacent to, any land which forms part of the agricultural area of a holding which has one of the following:

- a continuous length of at least 20 metres, or is part of any such length
- a continuous length of less than 20 metres where it meets (at an intersection or junction) another hedge at each end

Any gap of 20 metres or less and any gap resulting from a breach of the Hedgerows Regulations 1997 will be treated as part of the hedge."

- Yes
- No
- Comment

18. Where should we focus our ambitions for future hedgerows policy?

19. If we develop further protections, should we consider extending them to hedgerows outside of agricultural land?

- Yes
- No
- Comment

Delivery questions

20. Do you agree stop notices should be introduced, prohibiting a person from continuing a harmful activity? Stop notices can be used on their own or in conjunction with a monetary penalty.

- Yes
- No
- Comment

21. Do you agree compliance notices should be introduced, requiring a non-compliant person to undertake certain actions to bring themselves back into compliance?

- Yes
- No
- Comment

22. Do you agree restoration notices should be introduced to rectify any harms resulting from non-compliance?

- Yes
- No
- Comment

23. Do you agree variable monetary penalties should be introduced, increasing in value relative to the severity of actual harm?

- Yes
- No
- Comment

24. Do you agree fixed monetary penalties should be introduced, and used at the discretion of the regulator?

- Yes
- No
- Comment

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 Defra <https://consult.defra.gov.uk/legal-standards/consultation-on-protecting-hedgerows>

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://consult.defra.gov.uk/legal-standards/consultation-on-protecting-hedgerows>

Duration

This consultation will run for 12 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 28 June and closes on 20 September.

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, the 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.