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Debate on legal protections for hedgerows

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Summary

A Westminster Hall debate on legal protections for hedgerows has been scheduled for Wednesday 24 January 2024. The debate will be led by Selaine Saxby MP.

1 Background

1.1 Hedgerow Regulations

Under the [Hedgerows Regulations 1997](#) certain hedgerows are protected from removal if they meet certain characteristics. The aim of the regulations was to address an ongoing loss of hedgerows. Some 19% of hedgerows had been lost in England and 23% in Wales between 1984 and 1990.¹

The regulations protect hedgerows over 30 years old and which are over 20 metres long (or, if shorter than 20 metres, they meet another hedge at each end) and which have any feature that means they are deemed ‘important’ (see below). Such hedgerows may not be removed without the consent of the Local Planning Authority (LPA). Removing protected hedgerows without the LPA’s consent is criminal offence.

The government publication [The Hedgerow Regulations 1997 Guide to the Law and Good Practice \(PDF\)](#) published in 1997 provides further information on the scope of the legislation. The Guide also discusses the significance of hedgerows as landscape and historical features and their importance for plant and animal species.²

Definition of an ‘important’ hedgerow

[The Regulations](#) set out the conditions a hedgerow needs to meet to be considered ‘important’ and therefore require permission from the LPA to be removed.

The Regulations apply to a hedgerow if it meets the following conditions:

- 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, if—
 - (a) it has a continuous length of, or exceeding, 20 metres; or
 - (b) it has a continuous length of less than 20 metres and, at each end, meets (whether by intersection or junction) another hedgerow.

¹ Department of Environment, Transport and Regions, [The Hedgerow Regulations 1997 Guide to the Law and Good Practice \(PDF\)](#), 1997

² Department of Environment, Transport and Regions, [The Hedgerow Regulations 1997 Guide to the Law and Good Practice \(PDF\)](#), 1997

- Is classified as important, meaning if it, or the hedgerow of which it is a stretch:
 - (a) has existed for 30 years or more; and
 - (b) satisfies at least one of the criteria listed in Part II of Schedule 1.
- Schedule 1 includes definitions of a list of features which would mean hedgerow is important because of:
 - historic and archaeological features
 - wildlife and landscape features (including reference to relevant plant and animal species and the number of mature trees in a hedgerow).

1.2 Further protections for hedgerows: farm funding schemes

Cross compliance

As highlighted by the charity [Woodland Trust](#), there are two practices that can be particularly harmful to hedgerows:

- Agricultural chemicals spread right up to the hedge foot
- heavy or badly timed cutting can lead to physical damage and reduce the benefits to wildlife, people and climate.³

Neither of these practices are explicitly prohibited by law. However, until the end of 2023 they were restricted under the rules of government farm funding schemes, including the Basic Payment Scheme (BPS) and Countryside Stewardship. Farmers or land managers who claimed payments between 2005 and 2023 had to follow so-called ‘cross compliance’ rules. The rules covered issues such as the environmental and agricultural condition of land and set standards for the protection of landscape and plants, amongst other things.

For hedgerows, the cross compliance requirements were that land managers had to take all reasonable steps to keep a green cover on land within 2 metres of a hedge and were banned from cultivating or applying fertilisers or pesticides to land within 2 metres of the centre of a hedge. Hedges must not

³ [Woodland Trust, Hedgerows](#) [website visited 18 January 2024]

be cut or trimmed between 1 March and 31 August, with the aim of protecting nesting birds.⁴

End of cross compliance

The government is changing the way in which it supports farmers now that the UK is no longer a member of the EU and has left the EU's Common Agricultural Policy (CAP). Cross compliance rules ceased to apply to farm payments from 1 January 2024.

During an agricultural transition period from 2021 to 2027, BPS payments are being phased out in England. Schemes to reward farmers for provision of 'public goods' such as environmental or animal welfare improvements are being phased in under the umbrella of 'Environmental Land Management' (ELM) approaches.

While the BPS ended in 2023, in the transition period farmers are eligible for 'de-linked payments' based on their BPS payments in 2020-22. However, from January 2024, farmers no longer need to adhere to the cross compliance rules, including those on hedgerow management, in order to receive funding.

The Library briefing, [Farm funding: implementing new approaches](#) (March 2023) sets out more detail on the new schemes.

New farm support schemes

Defra says that it wants "to increase the length of hedgerows and make the most of the benefits existing hedgerows offer to wildlife, water quality and carbon sequestration".⁵ It is incorporating hedgerow management into its new approach to farm support, called environmental land management (ELM)

The new ELM approach has several tiers. Under each of the tiers there are various activities that farmers can do to qualify for funding:

- Firstly, farmers can apply for funding under a new Sustainable Farming Incentive (SFI) scheme.
- Secondly, Countryside Stewardship plus (Local Nature Recovery) scheme pays for locally targeted actions to make space for nature alongside food production. Examples of funded actions are managing and creating habitats as well as adding trees or hedgerows to fields.

⁴ Rural Payments Agency, [The guide to cross compliance in England\(PDF\)](#) , 2022

⁵ Defra farming blog, [How we're supporting hedgerows](#) 5 April 2023

- Thirdly, Landscape Recovery (LR) focuses on large-scale, long-term, significant habitat restoration and land use change.

The SFI includes hedgerow options. Farmers will be paid to undertake certain activities focused on improving hedgerows and hedgerow trees. The [government's guidance on SFI actions for hedgerows](#) (updated September 2023) explains that these actions include:

- HRW1: Assess and record hedgerow condition
- HRW2: Manage hedgerows
- HRW3: Maintain or establish hedgerow trees

These actions should help to:

- maintain and strengthen the contribution of hedges to landscape character
- provide shelter and nesting cover, as well as flower and berry food resources for insects, birds and mammals
- increase resilience to climate change and contribute to improving local air quality
- provide shelter from wind and the elements for livestock and crops, which can help improve productivity
- form part of an integrated pest management approach.⁶

The payment rates are £5, £13, and £10 per hectare per year for HRW 1,2 and 3 respectively.⁷

Funding has been provided under [Countryside Stewardship](#) (CS) for some years to pay for the management of hedgerows by rotational cutting and leaving some hedgerows uncut, as well as capital grants to plant and restore hedgerows. Countryside Stewardship plus, the new scheme following on from CS, develops these schemes to include payments for new actions including:

- annual incremental cutting
- leaving hedgerows uncut for longer
- assessing and recording hedgerow condition
- maintaining existing hedgerow trees or establishing new ones.⁸

⁶ Defra, [SFI Actions for Hedgerows](#), updated September 2023

⁷ Defra, [SFI 2023 and SFI pilot payment rate changes from 1 January 2024](#), 9 January 2024

⁸ Defra farming blog, [How we're supporting hedgerows](#) 5 April 2023

1.3

Future changes to regulations: Defra consultation

Cross compliance rules no longer apply but existing legal protections under the [Hedgerows Regulations 1997](#) remain. However, the cross compliance rules for hedgerows do not have exactly the same requirements in domestic law. The government says that it wants to “support farmers to maintain standards as we move away from cross compliance” and is “actively considering the most appropriate approach to prevent environmental harm and encourage good practice, whether that is through regulation, incentives or other means”.

Defra consulted from June to September 2023 on extending existing Hedgerow Regulations to “protect the structure of hedgerows and prevent cutting during the bird-rearing season”.⁹

The consultation includes two options for legislation, with different timings. Defra says that quickest option would be to replicate cross compliance requirements in domestic law by making changes to the Hedgerows Regulations 1997.¹⁰ Measures could be introduced in Summer 2024 as a “minimum level of protection”. The consultation said that this could potentially be followed by a second stage of “broader protections once we have a suitable legislative route”.¹¹

The second option would be to consider new legal protections. The consultation document says this could provide 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”. This would need primary legislation which could “begin no sooner than Autumn 2024. This would mean measures coming into force late 2025 at the earliest”.¹²

The government said in December 2023 that it would publish its response to the consultation and more guidance in the coming weeks.¹³

The first option would:

⁹ Defra, [Consultation on Protecting hedgerows](#), June 2023

¹⁰ Using powers conferred on the Secretary of State under Section 97 of [Environment Act 1995](#)

¹¹ Defra, [Consultation on Protecting hedgerows](#), June 2023, p6

¹² Defra, [Consultation on Protecting hedgerows](#), June 2023, p8

¹³ RPA, [Environmental Stewardship agreements: addendum to 2nd, 3rd and 4th edition Environmental Stewardship handbooks](#), 6 December 2023

- require green cover on land 2 metres from the centre of a hedgerow (on all fields over 2 hectares). This means that cultivation on this strip of land is prohibited.
- maintain the current cross compliance requirement not to spray pesticide or fertiliser on land within 2 metres of the base of a hedgerow (on all fields over 2 hectares).
- prohibit hedge trimming between 1 March and 31 August to protect nesting birds and their food source.¹⁴

The option would also introduce a new regulatory definition of an ‘important’ hedgerow to replicate the cross compliance definition which applies rules 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.¹⁵

The government wants to ensure a similar proportion of hedgerows are subject to hedgerow management measures as was the case under cross compliance.¹⁶ It does not propose amending the Hedgerows Regulations 1997 to include hedgerows on non-agricultural land: the rules would continue to apply only to hedgerows “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”.¹⁷

The consultation also asked whether the current exemptions to cross compliance rules should be replicated. Those exemptions are:

- to allow cutting or trimming hedgerows for the purposes of sowing oilseed rape or temporary grassland during August
- to exempt the green cover requirement on land within 2 metres of the centre of a hedgerow if it is less than 5 years old.¹⁸

For farmers who were not receiving payments under cross compliance rules the changes would be impose new requirements. The government is

¹⁴ Defra, [Consultation on Protecting hedgerows](#), June 2023, pp6 & 7

¹⁵ Defra, [Consultation on Protecting hedgerows](#), June 2023, p7

¹⁶ Defra, [Consultation on Protecting hedgerows](#), June 2023, p7

¹⁷ Defra, [Consultation on Protecting hedgerows](#), June 2023, p9

¹⁸ Defra, [Consultation on Protecting hedgerows](#), June 2023, p7

therefore proposing to exempt farms under 5 hectares, in line with the exemption that applied under cross compliance.¹⁹

Enforcement

Currently the Local Planning Authority enforces hedgerows regulations, and the Rural Payments Agency (RPA) regulates the cross compliance framework for farm payments. The government intends the RPA to be the regulator in future although the consultation documents said that “the exact delivery approach we take to ensure compliance with future requirements will depend on the outcome of this consultation”.²⁰ It intends to introduce civil sanctions to ensure there are “a range of proportionate consequences so a regulator can respond to individual circumstances.” Such sanctions could include stop notices; compliance notices; restoration notices; fixed monetary penalties; and variable monetary penalties.²¹

Stakeholder views

A number of environmental charities have criticised the government for ending cross compliance rules and leaving a gap before any new rules are put in place during which farmers may decide to withdraw from beneficial practices required under the cross compliance framework.²² The Wildlife Trust said that:

The UK Government has ripped up important rules that help protect hedgerows and require buffer strips to prevent river pollution. This danger is compounded by low levels of uptake into new farming schemes which incentivise only the most basic green practices on farm, leaving nature at a net loss.²³

For example, farmers could decide to trim hedges in spring and summer this year as the prohibition on cutting hedges in nesting season no longer applies. The RSPB argued that this “could have a catastrophic impact upon iconic farmland species such as Yellowhammer, Cirl Bunting and Turtle Dove”. The RSPB called for the “gaps in protections to be filled and monitoring and enforcement to be stepped up”.²⁴

The National Farmers’ Union (NFU) has said that it preferred an approach building on cross compliance rules because they provided “an adequate basis in balancing farming practicalities with environmental protection”:

One of our key asks remains that any regulatory framework minimises burden for farmers, ensuring farmers are not forced to spend valuable time and

¹⁹ Defra, [Consultation on Protecting hedgerows](#), June 2023, p8

²⁰ Defra, [Consultation on Protecting hedgerows](#), June 2023, p10

²¹ Defra, [Consultation on Protecting hedgerows](#), June 2023, pp 10-12

²³ The Wildlife Trusts, [Wildlife at risk on farms as vital hedge and river rules vanish](#), 4 January 2024

²³ The Wildlife Trusts, [Wildlife at risk on farms as vital hedge and river rules vanish](#), 4 January 2024

²⁴ The Wildlife Trusts, [Wildlife at risk on farms as vital hedge and river rules vanish](#), 4 January 2024

resources on complying with bureaucratic exercises, a satisfactory balance must be struck.²⁵

²⁵ NFU press release, [The future of hedgerow protections: NFU consultation response](#), 12 October 2023

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PQs

Agriculture: Subsidies

Asked by: Lucas, Caroline

To ask the Secretary of State for Environment, Food and Rural Affairs, with reference to the guidance on cross compliance updated on 14 February 2023, which (a) cross compliance standards and (b) rules for participants in the Basic Payments Scheme or Countryside Stewardship will cease to have effect in 2024 and are not otherwise provided for in their entirety in English law as of 23 November 2023.

Answering member: Mark Spencer | Department: Department for Environment, Food and Rural Affairs

Good Agricultural and Environmental Condition (GAEC) cross compliance rules 1, 4, 5 and 7a are not fully replicated in existing domestic legislation as follows.

GAEC 1, which requires the maintenance of green cover, non-cultivation of land and spraying of pesticides within two metres of a water course. Domestic legislation, the Farming Rules for Water, however, provides rules preventing the application of manure and fertiliser close to a water course. It also prescribes that farmers must take all reasonable precautions to prevent pollution from cultivation practices, such as spraying pesticides. The use of pesticides is also set out in the Code of Practice for using Plant Protection Products.

GAEC 4 and GAEC 5, which require a minimum soil cover and measures to minimise soil erosion. Again, the Farming Rules for Water sets out generalised soil cover and erosion measures where it may prevent agricultural diffuse pollution. There is no reference to mitigation of wind erosion in the Farming Rules for Water. GAEC rules 4 and 5 are not covered elsewhere in domestic legislation.

GAEC 7a, which requires the maintenance of green cover within two metres of the centre of a hedge and the prohibition of cutting a hedge between 1 March and 31 August. Also, the removal of stone walls, earth and stone banks. Defra has recently consulted on new legislation to replace the cross compliance hedgerow protections. As set out in January 2023 Defra plans to pay, as part of Environmental Land Management schemes, for new actions to maintain drystone walls, stone and earth banks in good condition.

HC Deb 04 December 2023 | PQ 3459

Hedges and Ditches: Conservation

Asked by: Blake, Olivia

To ask the Secretary of State for Environment, Food and Rural Affairs, pursuant to the Answer of 15 June 2023 to Question 189114 on Hedges and Ditches: Conservation, what is her expected timeline for when the consultation on regulatory arrangements will be published.

Answering member: Mark Spencer | Department: Department for Environment, Food and Rural Affairs

On 28 June 2023, we launched a consultation on how we can best protect hedgerows through effective, proportionate regulation as we phase out farm subsidies and cross compliance rules. The consultation will be open for 12 weeks and closes at 23:59 on 20 September 2023.

We want to ensure the regulations work for wildlife, the environment and for farmers. This consultation is seeking views on the best way to maintain and improve existing protections, as well as our approach to enforcement. We would like everyone who cares about hedgerows – including farmers, stakeholder organisations and members of the public – to read our consultation document and share their views on our plans.

HC Deb 29 June 2023 | PQ 191235

Hedges and Ditches: Conservation

Asked by: Blake, Olivia

To ask the Secretary of State for Environment, Food and Rural Affairs, what assessment she has made of the potential impact on nesting birds of delinking publicly funded farm payments and minimum good practice requirements for hedges because of the transition from basic payments to the Environmental Land Management scheme.

Answering member: Mark Spencer | Department: Department for Environment, Food and Rural Affairs

We recognise the importance and value of hedgerows, which have a key role in conserving and enhancing biodiversity, tackling climate change and enhancing our countryside. As we move away from legacy EU Common Agricultural Policy arrangements, we are committed to ensuring our high environmental standards are maintained and that we have the right framework in place. Whilst the majority of hedgerows are on agricultural land, approximately a fifth are not. It is important, therefore, that all landowners recognise their importance and do their bit to protect them.

The Hedgerows Regulations 1997 set legal protections for hedgerows in England and Wales outside of cross compliance. These existing regulations prohibit the removal of most countryside hedgerows (or parts of them) without first seeking approval from the local planning authority. It decides whether a hedgerow is 'important' and should not be removed because of its wildlife, landscape, historical or archaeological value. Alongside the Hedgerows Regulations, all wild birds, their eggs and their nests are protected under the Wildlife and Countryside Act 1981, which prohibits killing, injuring or taking of wild birds or taking or damaging their eggs and nests. These regulations jointly provide important protections for most countryside hedgerows and for nesting wild birds.

In addition to these legislative protections, our new Environmental Land Management schemes will also continue to fund the improvement and management of hedgerows, in recognition of their historical, cultural and environmental value to our countryside.

We will be consulting shortly on what the regulatory arrangements for hedgerows should be after cross compliance ceases at the end of 2023 and how we can best continue to improve and protect hedgerows.

HC Deb 15 June 2023 | PQ 189114

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News items

Department for Environment, Food and Rural Affairs press release

5 January 2024

[Government to pay more to farmers who protect and enhance the environment](#)

Wildlife Trusts

4 January 2024

[Wildlife at risk on farms as vital hedge and river rules vanish](#)

NFU

12 October 2023

[The future of hedgerow protections – NFU response](#)

Farmers' Weekly

29 June 2023

[Farmers consulted on hedgerow cutting dates and buffer strips](#)

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