

## Cross Compliance briefing from Wildlife and Countryside Link

### The Agriculture (Removal of Cross-Compliance and Miscellaneous Revocations and Amendments, etc.) (England) Regulations 2023 (SI 2023/816)

These regulations were laid in draft under the negative procedure on 18 July 2023.<sup>1</sup> They will come into effect on 1 January 2024 and remove cross-compliance requirements for recipients of payments under legacy Rural Development schemes. Originating in the system of farm support that applied when the UK was a member of the EU, cross compliance is a set of rules which farmers and land managers must follow on their holding if they are claiming payments under legacy Rural Development schemes. The Government intends to lay further regulations soon removing cross-compliance requirements for payments received under the Basic Payment Scheme (BPS).

The fifty second report of the Secondary Legislation Scrutiny Committee (SLSC) drew the regulations to the special attention of the House, due to concerns that the removal of cross compliance requirements before the full application of a post Brexit system of rules will lead to regulatory gaps.<sup>2</sup> This briefing sets out those concerns in more detail. We wish to highlight:

#### The risk of regulatory gaps

As the SLSC report to the House outlines, it is concerning that existing cross compliance policy is being removed prior to the complete establishment of the new regulatory framework. The Government's piecemeal approach to replacing cross compliance risks the protection of key parts of the rural environment.

In their response to SLSC enquiries about concerns regarding a regulatory gap, Defra stated that *"the majority of rules under cross compliance are already in domestic law"*.<sup>3</sup> 'Majority' is doing a lot of heavy lifting in this explanation – the removal of cross compliance from 1<sup>st</sup> January will leave regulatory gaps across a range of areas, including hedgerows, soil cover and watercourse buffers.<sup>4</sup> It also risks enforcement gaps on compliance; regulations that benefit from the conditionality for payments, such as domestic public rights of way, will fall away from 1<sup>st</sup> January.

Defra have made some progress on hedgerows, issuing a consultation on new protective requirements in summer 2023, but this has not been undertaken in sufficient time to prevent regulatory gaps between 1 January 2024 and the enactment of additional protections.<sup>5</sup> This leaves key environmental assets

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2023/816/contents/made>

<sup>2</sup> <https://committees.parliament.uk/publications/41542/documents/204523/default/>

<sup>3</sup> <https://committees.parliament.uk/publications/41560/documents/204690/default/>, p. 8

<sup>4</sup> Shortfalls in the application of the Farming Rules for Water mean particularly significant gaps on water regulations. See:

<https://committees.parliament.uk/writtenevidence/41556/pdf/>

<sup>5</sup> See Link response to Hedgerow consultation for more detail:

[https://www.wcl.org.uk/docs/assets/uploads/Protecting\\_Hedgerows\\_Link\\_response\\_September\\_2023.pdf](https://www.wcl.org.uk/docs/assets/uploads/Protecting_Hedgerows_Link_response_September_2023.pdf)

vulnerable for an uncertain period of time and risks a perverse outcome in the context of increasing investment in public goods through ELM, which could be undermined by the loss of these regulations.

The consultation on hedgerows was also not expansive enough to cover other looming gaps in cross compliance, such as soil and watercourses protection. In their response to the SLSC (p. 9), Defra notes that *“there are other existing measures to provide ongoing protections”* but the continued delays, lack of clarity and certainty on objectives undermines the effectiveness of these measures.

The Defra response cites the Code of Practice for Plant Protection Products and the Sustainable Farm Incentive standards as domestic standards that will stand in for cross compliance. Many of these domestic standards are guidance and voluntary incentivisation frameworks that do not apply to all farmers, as such they are not appropriate replacements for enforceable rules under regulatory conditionality. This also creates an unlevel playing field between farmers, risking a ‘race to the bottom’ as those who comply with voluntary standards are disadvantaged commercially.

Link asked Defra to publish a full transition plan, setting out how the new system would uphold the full regulatory protections offered by cross compliance. This request has not been met.

As SLSC (p. 20) observes, the Government faces *“questions about whether the provision which is now to be contained in guidance can be as effectively enforced as when its equivalent was set out in legislation”*. Link would be grateful if peers could raise these questions with Ministers when the House debates the SI and seek robust assurances.

### **The absence of an Environmental Impact Assessment**

Neither the SI nor Defra’s response to the SLSC (p. 9) are clear on why *“a full environmental impact assessment of this policy was not required”*. Given that the SI and resultant gaps will have an evidential impact on wildlife, it is not clear why Defra has determined these changes will not have a significant environmental effect when it has also acknowledged there will be gaps in protections from 1 January 2024. For example, hedgerows are key habitats and sources of biodiversity, and any gap in hedgerow compliance will inevitably have an impact on these environments.

The absence of an impact assessment of the removal of cross compliance and regulatory conditionality is problematic. An impact assessment should be carried out, along with a Habitat Regulation Assessment and Strategic Environmental Assessment.

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*Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 80 organisations to use their joint voice for the protection of the natural world.*

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