

## Consultation on protecting hedgerows

Wildlife and Countryside Link response: September 2023

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

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### Introduction

- The gap between the end of cross compliance from January 2024 and the enactment of a Statutory Instrument on Hedgerows in 2024 is a significant risk to nature. Given the delays that have held back policy development and the gap mentioned above, it is important that the regulations are released and swiftly implemented to ensure that there are no further losses to hedgerow protections in 2024. Further delays or the establishment of a voluntary framework will provide a very weak form of protection, likely resulting in damage to hedgerows the biodiversity reliant on these ecosystems, and a potential loss of stored carbon.
- Although The Hedgerows Regulations 1997 apply a limited degree of legal protection, they fail to fill regulatory gaps brought by the end of cross-compliance that would otherwise prevent damaging land management practices.
- Defra must ensure that the regulations strengthen hedgerow protections to ensure that both on-farm and off-farm hedgerows cannot be damaged by harmful land management practices or cut at inappropriate times.
- There is an opportunity for Defra to go further than cross-compliance, by ending a previous suite of exemptions. This would increase the protective baseline for existing hedges and complement ELMS measures to encourage hedge restoration, adding up to an effective policy package capable of delivering the Environment Improvement Plan hedges target.

### Responses to consultation questions

#### **Question 9: Should we maintain the requirement for buffer strips that are 2m from the centre of the hedgerow?**

Yes. Buffer strips play a significant role in protecting hedgerows from inappropriate land management practices. We recommend that the ban on the cultivation or application of pesticides and fertilisers (as well as spraying and green cover rules) within 2 metres from the centre of the hedge is transferred over from cross compliance.

A 2m buffer strip is beneficial to farmers, representing a cost-effective way of maximising the natural capital of agricultural land. Retaining a 2m buffer strip as a minimum, and a requirement for the appropriate margin type to be established for the land in question, would protect hedgerows from oversaturation of water (particularly where a hedge is in, or delineates, a flood plain), soil erosion, over grazing and run-off from pesticide, manure and fertiliser applications.<sup>1</sup>

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<sup>1</sup> [http://nwrn.eu/sites/default/files/nwrn\\_ressources/a2 - buffer strips and hedges.pdf](http://nwrn.eu/sites/default/files/nwrn_ressources/a2_-_buffer_strips_and_hedges.pdf)

Buffer strips are also important species-rich habitats that are home to wildflowers, insects and pollinators in the wider hedgerow ecosystem, as well as the bat and bird species reliant on them.<sup>23</sup> Hedgerows and grassy or flower-rich buffer strips work together as an interconnected structural arrangement, mimicking key elements of woodland edge that favour biodiversity – providing shelter, microclimate and proximity of complementary habitats.

In an arable landscape, these strips provide nesting and foraging habitats for a range of birds, invertebrates (including beneficial insects for crop pest management, e.g. ground beetles), bats and mammals.<sup>45</sup> In improved grasslands, hedgerows and their buffer strips can support a reservoir of species that have survived the intensive management of the interior of a field.

Defra should consider further scaling up ambition and extending this requirement from 2m up to 4m (the minimum requirement under SFI) in the regulations, particularly as 2m from the centre of the hedge varies when a hedge is cut.

Defra should also consider extending the buffer strip if there is a ditch next to the hedge to protect from run off and allow sufficient space for valuable wetland marginal habitats, which would substantially benefit invertebrate species.<sup>6</sup> Similarly, Defra should consider extension where there are mature trees in the hedge as ploughing and other ground disturbance negatively impacts tree roots and networks of mycorrhizal fungi. In circumstances where there is a mature tree in the hedge, land managers should be subject to a requirement to extend the buffer strip. Defra may draw from the planning context, where a Root Protection Area radius of 6m is required for a mature Ash or Sycamore with a stem diameter of 0.5.<sup>7</sup>

#### **Question 10: If we maintain the 2m buffer strip requirement, should we also replicate an exemption for field sizes under 2 hectares?**

The exemption should not be replicated as it represents a gap in the existing cross-compliance baseline.

Field sizes under 2 hectares are home to crucial hedgerows and removing the exemption will ensure that these hedgerows are better protected from harmful land management and cutting practices. This represents an opportunity to improve protections and go further than cross compliance – it should be seized.

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<sup>2</sup> <https://besjournals.onlinelibrary.wiley.com/doi/10.1111/1365-2664.14132>

<sup>3</sup> <https://www.sciencedirect.com/science/article/abs/pii/S0167880915002327>

<sup>4</sup> [https://www.rspb.org.uk/globalassets/downloads/documents/farming-advice/buffer-strips-on-grassland-advisory-sheet-england\\_tcm9-207690.pdf](https://www.rspb.org.uk/globalassets/downloads/documents/farming-advice/buffer-strips-on-grassland-advisory-sheet-england_tcm9-207690.pdf)

<sup>5</sup> <https://cdn.bats.org.uk/uploads/pdf/Resources/For-professionals/BFTB-GLEB-Habitat-management-guide.pdf?v=1634908572#:~:text=rough%2Fspecies-rich%20grassland%20can,for%20grey%20long-%20eared%20bats.&text=Increase%20availability%20of%20grass%20buffer,manage%20effectively%20by%20cutting%2Fgrazing.>

<sup>6</sup> <https://resjournals.onlinelibrary.wiley.com/doi/abs/10.1111/icad.12455#:~:text=While%20dense%20hedgerows%20with%20adjacent,watercourses%20or%20open%20hedgerows%20only.>

<sup>7</sup> British Standard 5837 (2012) Trees in Relation to Design, Demolition and Construction

Smaller field sizes are a key part of important landscapes, including pre-enclosure field patterns with high historic, social and aesthetic value. Such landscapes also tend to be more biologically diverse and contain higher proportions of species of high nature conservation priority, due to the lower levels of intensive agricultural activity with which they are associated. In particular, many ancient meadows and other species-rich grasslands are less than 2 hectares and their hedgerows are a key part of their ecosystem.<sup>8</sup>

Parcels of land under 2 hectares are already exempt from the EIA Agriculture Regulations, meaning that there is no protection for these precious fragments of land, including areas of priority habitat.<sup>9</sup>

**Question 11: If we maintain the 2m buffer strip requirement, should we also replicate an exemption for hedgerows under 5 years old?**

No, the exemption should not be replicated. Hedgerows under 5 years old are still becoming established and appropriate protective margins should be maintained to ensure their development into maturity. The protection of a buffer strip where suites of plant, fungi and animal species can find a niche is a vital component of successful hedgerow establishment. Mature hedgerow trees are also a key component of hedgerow ecosystems, and Natural England set increasing their presence in hedgerows as a parameter for achieving Favourable Conservation Status for hedgerows.<sup>10</sup> Defra has committed in the Environment Improvement Plan to the creation or restoration of 30,000 miles of hedgerows by 2037 and 45,000 miles of hedgerows by 2050.<sup>11</sup> An exemption for hedgerows under 5 years old puts these new hedges, and the achievement of the Environmental Improvement Plan target, at risk.

The SFI covers the establishment of new hedgerow trees, and jeopardising SFI-funded trees undermines the public's investment in them and wastes farmers' and land managers' time and resources. Regulatory exemptions for new hedgerow trees combined with SFI establishment payments may lead to perverse outcomes whereby mature, established hedgerows are removed and replaced with new hedgerows. The regulations must ensure that there are no exemptions that may be exploited for financial gain at the expense of environmental targets. The regulations should be aligned with the SFI; new saplings and those in development are important hedgerows that would still benefit from mandatory buffer strips during their establishment period.

**Question 12: Should we maintain a no cutting period to ensure hedgerows are managed in a way which protects important bird species?**

Yes, an appropriate no cutting period for hedgerows should be maintained. It is estimated that 40% of UK hedges (95,000 miles) are ancient or species rich.<sup>12</sup> These vital habitats support 130 priority species

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<sup>8</sup> <https://www.wildlifetrusts.org/natural-solutions-climate-change/grassland-solutions>

<sup>9</sup> <https://www.gov.uk/guidance/eia-agriculture-regulations-apply-to-make-changes-to-rural-land>

<sup>10</sup> <https://publications.naturalengland.org.uk/publication/5565675205820416#:~:text=This%20document%20set>

<sup>11</sup> Environmental Improvement Plan (2023)

<https://www.gov.uk/government/publications/environmental-improvement-plan>

<sup>12</sup> <https://www.woodlandtrust.org.uk/trees-woods-and-wildlife/habitats/hedgerows/>

under England's Biodiversity Action Plan, including important bird species and other mammals, amphibians, reptiles and invertebrates.<sup>13</sup>

Bird species use hedges for food, nesting and their homes. Inappropriate hedge trimming, hedge cutting practices and buffer strip management practices, particularly at the wrong time of the year, threatens nesting bird species as well as the sources of food, nesting sites and migration periods for (but not limited to) bumblebees, invertebrate populations and mammal species.<sup>14</sup> Failing to require a robust no cutting period would be short-sighted and risk the further decline and endangerment of bird species and other wildlife.

Limitations on trimming practices (e.g., requiring an appropriate, three-year rotational trimming cycle based on the maturity and height of the hedge) and a no cutting period will provide an important regulatory baseline for ensuring inappropriate land management practices, including intensive or neglectful cutting as well as contributing to carbon sequestration due to reduced cutting.<sup>15</sup> The SFI should fund rotational trimming, laying and double fencing, as well as expert advice, to this effect.

**Question 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**

The no cutting period should at the absolute minimum remain 1 March to 31 August. There is clear, established evidence that farmland birds nest from March through August into early September. Nests are in the outer layers of hedges, which are vulnerable to trimming and this period covers the height of the bird breeding season. Bringing forward the end date would disproportionately, negatively impact breeding success for species of conservation concern.<sup>1617 1819</sup>

However, we call for Defra to extend the no cutting period to the end of September, and no earlier than 15 September. Defra must consider the evidence for extending the date to the end of September, including the need for the regulations to be made fit for purpose in a rapidly changing climate. Several farmland bird species such as Wood Pigeon and Turtle Dove now routinely nest into

<sup>13</sup> <https://www.rspb.org.uk/globalassets/downloads/documents/mind-the-gap-report-final.pdf>

<sup>14</sup> [https://bumblebeeconservation.org/wp-content/uploads/2017/08/BBCT\\_Land\\_Factsheet\\_6\\_Managing\\_hedges\\_edges.pdf#:~:text=It%20is%20important%20not%20to%20cut%20hedges%20or,management%20also%20ensures%20nesting%20birds%20are%20not%20disturbed.](https://bumblebeeconservation.org/wp-content/uploads/2017/08/BBCT_Land_Factsheet_6_Managing_hedges_edges.pdf#:~:text=It%20is%20important%20not%20to%20cut%20hedges%20or,management%20also%20ensures%20nesting%20birds%20are%20not%20disturbed.)

<sup>15</sup>Supporting evidence towards the value of a three year cutting cycle:  
[https://www.ceh.ac.uk/sites/default/files/HedgeCuttingRegimes\\_Leaflet\\_Feb18.pdf](https://www.ceh.ac.uk/sites/default/files/HedgeCuttingRegimes_Leaflet_Feb18.pdf) and  
<https://ptes.org/hedgerow/threats-to-hedgerows/>

<sup>16</sup> <https://bou.org.uk/wp-content/uploads/2020/06/LFB-1-18-Moorcroft-Wilson.pdf>

<sup>17</sup> <https://doi.org/10.1016/j.baee.2018.11.004>  
<https://ptes.org/hedgerow/threats-to-hedgerows/>

<sup>19</sup> <https://www.tandfonline.com/doi/abs/10.1080/00063659709461039>

September,<sup>20</sup> some bird species such as Bullfinches have delayed nesting periods, many priority bumblebees are late emerging and nest into September and October, and bat activity/torpor timings coincide with this period. Defra should also consider the evidence for a requirement for the no cutting period to extend, and to 31 October in areas where dormice are present.

Defra must ensure there is no regulatory gap following the end of cross compliance from January as such a gap will disturb 2024 species breeding and nesting seasons.

Any no cutting period should encourage a late winter (late January/February) trimming and cutting period, accounting for species that lay their eggs late in Autumn that would consequently be impacted by any earlier cutting period.

**Question 14: If we maintain a no cutting period, should we also replicate exemptions to the regulations?**

We encourage Defra to consider reducing unreasonable or unnecessary exemptions that may otherwise compromise the Environmental Improvement Plan targets and the spirit of ELM schemes. Exemptions during the no cutting period should only be available in a limited set of exceptional circumstances, such as where a hedge is diseased and poses a risk to the public. For example, an exemption for hedge laying and coppicing during 1 March to 30 April should not be replicated as many bird species establish nests or are already nesting in this period. Hedges may be laid from late September to the end of February.

Accordingly, the only exemptions that should be replicated are safety and danger exemptions: where the hedge overhangs a highway, road or footpath and which either restricts a public or private right of way or presents a danger to vehicles, pedestrians or horse riders.

There may be other instances where hedgerow management requires deviation from the regulations for species-specific outcomes and tailored management practices. Defra should tailor exemptions to hedgerow regulations to deliver appropriate habitat management practices that align with environmental and local biodiversity priority outcomes and relevant Local Nature Recovery Strategies.

**Question 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)?**

The scope of exemptions should be limited, as outlined in the response to Q14. In these limited circumstances, the grant of any exemption must be subject to the delivery of notice to and grant of permission by an appropriate regulator.

However, a requirement to apply to a relevant, well-resourced authority must be established within a new, robust framework for regulations that transfers the cross-compliance requirements at a minimum. The relevant authority will also need financial support to avoid budgetary constraints that could compromise the effective administration of hedgerow exemption applications. Further funding should also be provided to enable better administration and monitoring of the regulations across the board.

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<sup>20</sup> <https://www.rspb.org.uk/our-work/conservation/conservation-and-sustainability/farming/advice/helping-species/turtle-dove/>

Local authorities already find it difficult to appropriately monitor practices and enforce hedgerows/enforce obligations under the Hedgerows Regulations. Nationally, the Hedgerows Regulations only protect 41.8% of hedgerows when there is a request to remove them.<sup>21</sup>

**Question 16: Should we introduce a new exemption to the hedgerow management requirements for farms under 5 hectares?**

We strongly disagree with further exemptions based on farm size. Introducing a new exemption for farms under 5 hectares risks compromising the delivery of the Environmental Improvement Plan target.

Farms under 5 hectares remain responsible for hedgerows and their management, and they should be disincentivised from engaging in damaging management practices that would otherwise compromise hedges and the species that rely on them. Nature does not recognise boundaries between farms and so the regulations should be just as protective of hedgerows on small farms as on large farms.

The stored carbon that will be released if there is an exemption is significant.<sup>22</sup> For this and the above reasons, farms under 5 hectares should be subject to the same requirements for hedgerow management.

**Question 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."**

We disagree with the above outlined approach to defining important hedgerows as it creates a regulatory gap between 'important' hedges in agricultural areas and other hedges, which have substantial biodiversity value regardless of length. The new hedgerow regulations should apply to all hedgerows. It is concerning that the above definition excludes a significant number of hedgerows if limited to 'hedgerows growing in or adjacent to, **any land which forms part of the agricultural area of a holding**'. The above outlined changes would also cause confusion with the definition of an 'important' hedgerow under the Hedgerows Regulations because the Regulations are selective and distinguish important hedgerows from hedgerows in general.

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<sup>21</sup> [https://www.cpre.org.uk/wp-content/uploads/2019/11/Englands\\_Hedgerows\\_dont\\_cut\\_them\\_out\\_1.pdf](https://www.cpre.org.uk/wp-content/uploads/2019/11/Englands_Hedgerows_dont_cut_them_out_1.pdf)

<sup>22</sup> <https://www.rspb.org.uk/globalassets/downloads/documents/mind-the-gap-report-final.pdf> p 20 and 26

The Hedgerows Regulations should be amended to incorporate the additional protections contained in cross-compliance and extended to all hedgerows. But the current Hedgerows Regulations should also be improved so that more hedgerows of importance to local landscapes can be protected by a local council, regardless of whether they meet the national 'importance' criteria.

However, we strongly encourage Defra to establish an ambitious, comprehensive (and ideally legal) definition of a hedge and other linear features<sup>2324</sup> that incorporate hedgerows in urban, peri-urban and a broader range of rural areas as well as hedgerows connected to agricultural land and base future regulations upon such definition. In absence of such a legal definition, it appears unlikely Defra can give effect to the protection of all hedgerows and replicate the protections under cross compliance – and it is uncertain that the courts would uphold such requirements in absence of legal clarity. Further amendments may encompass the local importance and landscape value of hedgerows.<sup>25</sup>

We also strongly suggest that Defra makes the definition robust and comprehensive, and with this aim, incorporates all important structural components of hedgerows as holistic habitats, including the shrubs, trees, flower-rich and tussocky margins, banks and ditches within the hedgerow margins.<sup>26</sup>

### **Question 18: Where should we focus our ambitions for future hedgerows policy?**

Future hedgerows policy should focus on prohibiting the removal of all hedgerows on agricultural and non-agricultural land without permission from the appropriate regulatory authority. It should also mandate that hedgerows are maintained and managed ecologically, based on a comprehensive suite of management practices that are additional to the ELM schemes and which incorporate and build upon the existing cross-compliance rules into the Hedgerows Regulations. For example, additional protections should be set out for hedgerow trees, particularly identifying and protecting ancients.

Ambitious minimum hedgerow protections must be introduced as a statutory requirement rather than focusing on uptake as a metric of success. For example, even if the Defra target of 70% uptake to the SFI is met, 117,600km of hedgerow will be left unprotected following the end of cross compliance. If only 50% uptake is reached, nearly 200,000km of hedgerow will be at risk.<sup>27</sup>

ELM cannot be the main means of ambitiously protecting these vital environmental assets: paying for activities that were previously mandated by regulations is poor value for money, and the cost to government will be greater and see poorer environmental outcomes if uptake is low. ELM funding should instead focus on extending and improving hedgerows, as well as creating new hedgerows, to help meet the Environmental Improvement Plan target, as opposed to protecting them, which will be the role of new regulation. Regulation must complement the incentivisation framework in ELM.

Future hedgerow policy should also consider how Defra supports improving the quality of hedges that would result in denser, more complex vegetation structures. Restoring hedgerows should be

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<sup>23</sup> E.g., Natural England (2020) 'Definition of Favourable Conservation Status for Hedgerows'  
<https://publications.naturalengland.org.uk/publication/5565675205820416>

<sup>24</sup> E.g., Also defined under the Defra (2007) Hedgerow Survey Handbook  
[https://www.hedgelink.org.uk/cms/cms\\_content/files/89\\_hedgerow-survey-handbook.pdf](https://www.hedgelink.org.uk/cms/cms_content/files/89_hedgerow-survey-handbook.pdf) p. 100

<sup>25</sup> [https://www.cpre.org.uk/wp-content/uploads/2019/11/Englands\\_Hedgerows\\_dont\\_cut\\_them\\_out\\_1.pdf](https://www.cpre.org.uk/wp-content/uploads/2019/11/Englands_Hedgerows_dont_cut_them_out_1.pdf)

<sup>26</sup> [https://www.wcl.org.uk/docs/Defra\\_LNR\\_and\\_SFI\\_engagement-Link\\_briefing-Final-August2022.pdf](https://www.wcl.org.uk/docs/Defra_LNR_and_SFI_engagement-Link_briefing-Final-August2022.pdf)

<sup>27</sup> <https://www.rspb.org.uk/globalassets/downloads/documents/mind-the-gap-report-final.pdf>

considered in terms of their extent, size, connectedness, structural complexity, native species mix, landscape fit and condition. Hedgerows function best for a wide range of species when they are densely interconnected with structural complexity, including hedgerow trees and the effects of hedge laying rather than open flailing. Evidence shows a diversity of hedgerow structures that are well connected are important for ecological processes<sup>28</sup> and should be retained and extended, while also giving due consideration to existing conservation needs in any local area or region. Examples of where this has been successfully undertaken, such as the Knepp Rewilding Project and the expansion of nightingale populations as a result<sup>29</sup>, should be used for guidance. A diversity of locally native species is also important for maintaining and restoring biodiversity, and is an adaptive measure against the risks of invasive pathogens. Hedgerow condition is also a function of the annual timing and inter-year cycles of cutting and the way in which the cutting is carried out. Flailing hedges annually so that they have a bare structure over winter minimises their value for a wide range of biodiversity and reducing this practice should be an objective of future policy.

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

Yes, we strongly agree with extending the protections to hedgerows outside of agricultural land. Approximately 30% of hedgerows in the UK are found outside of farmland.<sup>30</sup> The Hedgerows Regulations do not provide protection for hedges outside of agricultural land, including garden hedgerows and those on land earmarked for development. Outline planning permission does not override the Hedgerows Regulations, but full permission does. This creates a gap that threatens the interconnected structural diversity of both on-farm and off-farm hedgerow networks. Hence, planning conditions accompanied by regulations to protect and retain hedgerows is crucial. The ecological interaction between hedgerows and grassy or flower-rich margins, including road verges, gives both habitats additional importance for biodiversity which is critical in reaching the Environment Act targets for nature's recovery.

These hedges are not only of cultural, landscape and historical importance – they are also part of complex, fully-functioning ecosystems and are important carbon stores and therefore require protection to ensure their storage potential aligns with Committee on Climate Change recommendations of a 40% increase in the extent of UK hedgerows by 2050<sup>31</sup> and the Favourable Conservation Status for hedgerows by Natural England.<sup>32</sup> The ecological connectivity that hedgerows and their buffers provide as linear features across the landscape make them a critical feature of climate change adaptation, allowing species to move and thrive elsewhere as their environment changes. Equally, non-agricultural hedgerows also serve an important role in both rural and urban areas by reducing flood risk, providing shade and removing airborne pollutants. Once destroyed, the nature, carbon savings and ecosystem services derived from these habitats cannot be restored to the same level of a well-managed, established hedge and buffer margins. There are socio-economic

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<sup>28</sup> <https://besjournals.onlinelibrary.wiley.com/doi/full/10.1002/2688-8319.12209>

<sup>29</sup> <https://knepp.co.uk/wp-content/uploads/2022/01/Benefits-of-extensive-agriculture-for-the-nightingale-Hicks-O.-Burrell-C.-Lord-A.M.pdf>

<sup>30</sup> <https://www.ukauthority.com/articles/os-builds-hedge-data-layer-for-rural-payments/>

<sup>31</sup> <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

<sup>32</sup> <https://publications.naturalengland.org.uk/publication/5565675205820416>



benefits to increasing hedgerows too. Research commissioned by CPRE revealed that increasing hedgerows by 40% will provide 25,000 much needed jobs over a 30 year period.<sup>33</sup>

## Responses to delivery questions

### **Question 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:**

We strongly agree. Stop notices are an effective first-line response to first instances of harmful activity and non-serious breaches to regulations. These notices should be used in conjunction with other first-line responses (and where appropriate, monetary penalties) that operate as deterrents and the provision of robust advice and guidance. Advice and guidance on their own do not form appropriate deterrents, and therefore should be complemented by first line responses to harmful activity.

However, we note that local authorities have struggled with appropriately monitoring practices and enforcing obligations under the Hedgerows Regulations. There must be a significant increase in such capacity to ensure effective implementation of these regulations – this will ensure that there are no undesirable outcomes resulting from non-enforcement, including credibility of the regulator and avoiding alienation and disengagement of land managers where they experience failures of enforcement on non-compliant neighbours. We encourage Defra to establish clear regulatory and enforcement obligations upon, and appropriate funding for local authorities or ideally a national regulator that will have effective capacity for the oversight of hedgerows management.

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

We strongly agree. Compliance notices are an effective first-line response to first instances of harmful activity and non-serious breaches to regulations. These notices should be used in conjunction with other first-line responses (and where appropriate, monetary penalties) that operate as deterrents and the provision of robust advice and guidance. Advice and guidance on their own do not form appropriate deterrents, and therefore should be complemented by first line responses to harmful activity, as well as appropriate enforcement and monitoring efforts (see Q20).

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<sup>33</sup> <https://www.cpre.org.uk/wp-content/uploads/2021/09/Hedge-fund-report-executive-summary.pdf#:~:text=The%20Climate%20Change%20Committee%20%28CCC%29%20recommends%20that%20the,government%E2%80%99s%20goal%20of%20net-zero%20carbon%20emissions%20by%202050.>

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

We strongly agree. Given the ambitions outlined in the Environment Improvement Plan and ELM schemes, any harms resulting from non-compliance should be immediately rectified and the damaged or removed hedgerows to be restored under appropriate management plans.

Restoration notices are an effective first-line response to first instances of harmful activity and non-serious breaches to regulations. These notices should be used in conjunction with other first-line responses (and where appropriate, monetary penalties) that operate as deterrents and the provision of robust advice and guidance. Advice and guidance on their own do not form appropriate deterrents, and therefore should be complemented by first line responses to harmful activity in accordance with the polluter pays principle as set out in Defra's Environmental Principles Policy Statement.<sup>34</sup>

Regulation 8 of the existing Hedgerows Regulations outlines a similar duty that could be expanded in new regulations.

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

We strongly agree, on the basis that monetary penalties should be issued for recurring or serious breaches. Serious breaches and breaches that occur after a first-time infringement should receive variable monetary penalties. Variable monetary penalties are a useful second-line deterrent from harmful activity and should correspond to severity of harm.

Under the Hedgerows Regulations, it is already a criminal offence to deliberately remove a hedgerow without permission, which may result in a fine of up to £5000 in a Magistrates court or an unlimited fine in the Crown court.<sup>35</sup> Defra is encouraged to expand upon these existing provisions, remove the upper limit and enable the appropriate regulatory body to issue monetary penalties based on severity of the offence or recurring offences

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

We agree that penalties should be introduced, with fixed monetary penalties forming an appropriate option within a menu of potential options for deterring harm to hedgerows. As they are a strong deterrent, fixed monetary penalties should be applied in the most serious and intentional cases of harm.

All breaches that occur during the no cutting period should be subject to a fixed monetary penalty to deter harm to wildlife during this period.

Fixed monetary penalties may also be used in combination with variable monetary penalties.

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<sup>34</sup> <https://www.gov.uk/government/publications/environmental-principles-policy-statement/environmental-principles-policy-statement>

<sup>35</sup> Hedgerows Regulations 1997 (SI No. 1160)

As with variable monetary penalties, there must be clear guidance on penalties, their scope and their application to specific breaches.

However, the introduction of these penalties at the 'discretion of the regulator' may be hindered by the currently ineffective and weak monitoring and enforcement capacity under the existing regulatory framework, particularly if the regulator is a Local Authority. A national regulatory body (i.e., RPA) should be given a new legal duty to administer such penalties to protect the environment and legal mandate to effectively enforce such penalties.

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This response is supported by the following Link members:

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CPRE, the countryside charity  
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Soil Association  
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