**EXPLANATORY MEMORANDUM TO**

**THE MANAGEMENT OF HEDGEROWS (ENGLAND) REGULATIONS 2024**

**2024 No. 680**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

## 2. Declaration

2.1 The Rt Hon Sir Mark Spencer MP, Minster for Food, Farming and Fisheries at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Claire Northridge and Karen Steele, Deputy Directors for Legal Standards Policy at the Department for Environment, Food and Rural Affairs confirm that this Explanatory Memorandum meets the required standard.

## 3. Contact

3.1 Katherine Lancey at the Department for Environment, Food and Rural Affairs (Defra) email: Katherine.Lancey@defra.gov.uk can be contacted with any queries regarding the instrument.

## Part One: Explanation, and context, of the Instrument

## 4. Overview of the Instrument

***What does the legislation do?***

4.1 This instrument will bring into law requirements for the management of hedgerows on agricultural land which broadly replicate the previous requirements that existed under the EU Common Agricultural Policy.

4.2 Under the Common Agricultural Policy, cross compliance rules linked with subsidy payments had set requirements in relation to hedgerow protection and maintenance. These rules ceased to have effect on 31 December 2023. The existing protections for hedgerows in domestic legislation are more limited in scope and relate to preventing the removal of hedgerows. They do not include key measures which were in place through cross compliance to protect wildlife by prohibiting the cutting of hedgerows during the bird nesting and rearing season and protecting hedgerows from damage as a result of cultivation or chemical spraying by requiring a green cover ‘buffer zone’ of 2 metres from the centre of a hedge.

4.3 A public consultation on the protection of hedgerows held in 2023 showed widespread support for continuing to protect hedgerows in domestic law, as had been the case under cross compliance.

4.4 This instrument will broadly replicate the legal requirements for hedgerow protection which were in force previously through cross compliance by:

- requiring farmers and land managers to maintain green cover 'buffer zones' 2 metres from the centre of a hedgerow, prohibiting cultivation or the application of pesticides or fertilisers; and
- reintroducing a ban on cutting or trimming hedgerows between 1 March and 31 August inclusive, to maintain the health of the wildlife within the hedgerow.

***Where does the legislation extend to, and apply?***

4.5 The extent of this instrument is England and Wales.

4.6 The territorial application of this instrument is England only.

## 5. Policy Context

***What is being done and why?***

5.1 This instrument will create legal protections for hedgerows located on land used for agriculture which includes the breeding or keeping of horses, ponies or donkeys. Hedgerows will be protected from damage by ensuring green cover buffer strips are established or maintained on land adjacent to them. In addition, hedge nesting birds will be protected by prohibiting the cutting or trimming of hedgerows during a specified time period. In response to our consultation there was overwhelming support for action to continue protecting hedgerows and the wildlife within them in this way.

5.2 These requirements will protect hedgerows that are deemed "important" in this instrument for the purposes of the power to regulate in respect of hedgerows in section 97 of the Environment Act 1995.

5.3 To create a fair and proportionate approach to these Regulations, there are certain exceptions to each of these requirements as set out in paragraphs 5.6, 5.7 and 5.8 below.

5.4 The provisions in this instrument are necessary in order to provide similar protection for hedgerows as was previously provided by cross compliance rules. They broadly replicate those in force under cross compliance and as such will be familiar to the majority of farmers and land managers to whom they will apply. Additionally, the requirements will apply for the first time to those farms who were not formerly subject to cross compliance rules. In order to accommodate those who do not have buffer strips in place when this instrument comes into force, the general maintenance requirements for hedgerows apply to land used for crop production only from the time of the end of the first harvest that takes place after 1 July 2024.

*Requirement to establish and maintain a buffer strip*

5.5 The requirement for a buffer strip protects the hedgerow from harm caused by the cultivation of land or the spraying of chemicals. Subject to certain exceptions described below, it requires the establishment and maintenance of a strip of green cover extending 2 metres from the centre of a hedgerow.

5.6 The requirements of this instrument in relation to buffer strips will not apply to land used for an allotment within the meaning of section 1 of the Allotments Act 1925.

5.7 This requirement for a buffer strip will not apply to:

- land either side of a hedge which is less than 5 years old.
- land forming part of a parcel of 2 hectares or less, as measured within permanent boundary features

- the casting up of a traditional hedgerow bank during the period beginning 1st September in any year and ending on 28th or, as the case may be, 29th February in the following year, inclusive of those dates
- land on the side of any hedge which is facing a dwelling where the hedge marks a boundary of the curtilage of the dwelling.

5.8 Furthermore, the rules governing buffer strips will not apply to:

- the application of pesticides where this consists solely in the spot-application of herbicides to control the spread of invasive or injurious weeds;
- land which was previously not required to have green cover and where cultivation is necessary in order to establish green cover;
- land which is being cultivated because there is otherwise a risk to human or animal health and safety;
- land in respect of written permission has been received from the Regulator to cultivate in order to enhance the environment; improve public or agricultural access or for reasons relating to livestock or crop production.

*Establishment of a cutting ban period*

5.9 The purpose of introducing a ban on cutting or trimming hedgerows between certain dates is to protect active bird nests during this time. The instrument introduces such a ban between 1 March and 31 August inclusive, subject to the exceptions noted in paragraph 5.10 below.

5.10 Cutting or trimming during the cutting ban period is permitted in the following circumstances:

- if the hedgerow overhangs a highway, road or footpath over which there is a public or private right of way and it obstructs the passage of, or is a danger to, vehicles, or users;
- if the hedgerow is dead, diseased, damaged or insecurely rooted and because of its condition, it or part of it, is likely to cause danger by falling on to a highway, road or footpath;
- if it is undertaken in order to carry out hedge-laying or coppicing;
- if it is undertaken in order to trim by hand a newly laid hedgerow within 6 months of that hedgerow being laid; and
- if the cutting and trimming takes place during the month of August and is for the purposes of sowing oilseed rape or temporary grassland during that month, and the owner has notified the Secretary of State, named in the instrument as the Regulator, in writing before undertaking any cutting or trimming.

*Previous policy*

5.11 Under the EU Common Agricultural Policy, beneficiaries under the Basic Payment Scheme ("BPS") and land-based rural development schemes were required to meet minimum standards for the environment, public, animal and plant health and animal welfare. This was known as cross compliance. These standards included rules on hedgerow management and protection.

5.12 As part of the Government's wider agricultural reforms in England, the cross compliance system ended in England on 31 December 2023.

5.13 Although existing domestic laws continue to protect the environment, public, animal and plant health and animal welfare they do not provide the protections for hedgerows

previously afforded by the cross compliance rules. This instrument broadly replicates the protections for hedgerows which were previously part of cross compliance and extends them for the first time to small farms of 5 hectares or less.

## 6. Legislative and Legal Context

***How has the law changed?***

6.1 The principal source of protection for hedgerows in domestic legislation is the Hedgerows Regulations 1997 (S.I.1997/1160). These apply to the removal of hedgerows and will not change. This instrument uses powers conferred on the Secretary of State by section 97 of the Environment Act 1995 ("the 1995 Act") and section 62 of the Regulatory Enforcement and Sanctions Act 2008 ("the 2008 Act") to make new regulations in relation to hedgerows protection and management. These regulations introduce a power for the Regulator to impose certain civil sanctions in respect of an offence committed under the Regulations. Where a person has received a notice of intent in relation to the use of a civil sanction, they may make representations and objections to the notice and offer an undertaking to the Regulator to take action (including the payment of a sum of money) to benefit any person affected by the offence. The Regulator may, at its discretion, accept such an undertaking in lieu of imposing a civil sanction.

***Why was this approach taken to change the law?***

6.2 This is the only possible approach to make the necessary changes.

## 7. Consultation

***Summary of consultation outcome and methodology***

7.1 Defra carried out a public consultation on 'Protecting hedgerows: Ensuring continued protections for hedgerows after the end of cross compliance'. The consultation asked for views, from anyone with an interest in hedgerows, on the best way forward to protect hedgerows in England. It ran from June to September 2023 and received nearly 9,000 responses. There was overwhelming support from farmers, environmental non-governmental organisations and members of the public to strengthen hedgerows protection in domestic law, as soon as possible.

7.2 A full summary of responses to the 2023 consultation has been published[1].

## 8. Applicable Guidance

8.1 As required under the 2008 Act, we will be providing guidance on the enforcement of these regulations. We will hold a public consultation on that guidance once the Statutory Instrument is made.

# Part Two: Impact and the Better Regulation Framework

## 9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because its impact has been assessed as de minimis. This is on the basis that it broadly replicates previous requirements which already applied to most farmers.

1 https://www.gov.uk/government/consultations/protecting-hedgerows-in-england/outcome/summary-of-responses-and-government-response

***Impact on businesses, charities and voluntary bodies***

9.2 There is no significant impact on business, charities or voluntary bodies because this SI broadly replicates previous regulatory standards. Overall, the impact on businesses will be small. There will be some additional impacts on businesses not previously claiming BPS or participating in land based rural development schemes and therefore not covered by cross compliance rules but overall this impact will be minimal.

9.3 The legislation does impact small or micro businesses, but these impacts have been judged to be minimal.

9.4 The basis for the final decision to take no action to assist small businesses is that no disproportionate impacts are expected to affect small and micro businesses.

9.5 There is no significant impact on the public sector because the regulations primarily affect agricultural businesses.

## 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

10.1 Defra and its agencies will monitor and review the impact of this instrument as part of its standard policy-making procedures.

10.2 A statutory review clause is included in the instrument to review the enforcement and civil sanctions provisions of these Regulations under section 67 of the 2008 Act as soon as practicable after the end of the period of 3 years from the date on which the Regulations come into force. In addition, a review of the regulatory provisions contained in these Regulations must be carried out at least every five years as required under section 30(4) of the Small Business, Enterprise and Employment Act 2015.

# Part Three: Statements and Matters of Particular Interest to Parliament

## 11. Matters of special interest to Parliament

11.1 The Government proposes to bring the SI into force sooner than the usual minimum period of 21 days after laying such that the Regulations will come into force on the day after the day on which they are made. This is to maintain hedgerow protections and minimise the gap between the end of cross compliance requirements and the introduction of legal requirements. In particular, the Government proposes to introduce the requirement of a ban on cutting hedgerows between 1 March and 31 August as soon as possible, to avoid any potential damage to nesting birds and to minimise any destruction of wildlife. These requirements are well known to farmers, as the majority have been subject to them as part of the cross compliance regime. The Government plan to inform all those directly affected of our intentions as soon as the instrument is laid in draft so that they have as much notice of these measures as possible. However, the Government believes that the SI coming into force shortly after the Minister has the power to make the SI will give industry certainty at the earliest opportunity to enable them and the regulator to maintain protections (and their hedgerow cutting cycles) with minimal gap and therefore minimal harm to any nesting birds and wildlife.

## 12. European Convention on Human Rights

12.1 The Rt Hon Sir Mark Spencer MP, Minster for Food, Farming and Fisheries at the Department for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

"In my view the provisions of The Management of Hedgerows (England) Regulations 2024 are compatible with the Convention rights."

## 13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").