

The Protection of Hedgerows in Wales

AIDIC

Asesydd Interim Diogelu'r Amgylchedd Cymru

IEPAW

Interim Environmental Protection Assessor for Wales



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Foreword

Hedgerows are important components of the Welsh countryside and its urban environment. They are recognised as a priority habitat in the Environment (Wales) Act 2016 and their conservation and sustainable management should be playing a crucial role in addressing the nature and climate crises. They are the home and source of food and shelter for a range of animals and can provide a corridor linking habitats. They play a role in addressing the climate change crisis both by storing carbon and by holding back water thereby reducing the risk of flooding.

Hedgerows are also fundamental to the landscape of the Welsh countryside. Some of them are extremely old and make a significant contribution to the culture of an area.

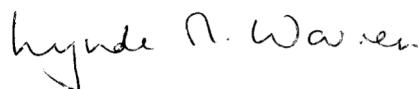
Unfortunately, however, our hedgerows are not doing well. Natural Resources Wales has stated that only 17 per cent were in good condition at the time of the last survey in 2016 and we received no evidence to suggest the situation has improved.

Hedgerows have not had the legal protection that they deserve. The Hedgerows Regulations protect only a select few from removal providing they meet an outdated, complex definition of 'importance' and do not mention the need for management. In this report we call for a drastic review of the legislation such that every hedgerow is protected unless its removal can be legally justified.

We are pleased to see the inclusion of hedgerow management in the proposals for the Sustainable Farming Scheme. Management of hedgerows in a manner that is most beneficial to wildlife demands considerable resources, however, and farmers will need to be adequately compensated for their work.

Under current legislation, there is no specific protection for urban hedgerows, despite the fact that they provide many ecosystem services, especially for biodiversity. We recommend that hedgerows should be brought within the planning regime and that local planning authorities should be provided with guidance on the factors to be taken into when they consider planning applications.

This report is the culmination of more than three years work. Most of this was done when Nerys Llewelyn Jones was the Interim Environmental Protection Assessor for Wales. For most of this time she worked on her own. Anna Heslop and I joined her as deputies in May 2024 and in March 2025 I took over her role. The credit for this report is therefore down to Nerys; any errors, however, rest with me.



Interim Environmental Protection Assessor for Wales

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We are grateful to the following students who worked on the report and to their supervisors Tabea Wilkes and Ben Pontin:

Nikita Caldeira, Melissa James, Omeesha Kandlapelli, Ema Mikolasova and Devendra Rajan Selvarajan, who drafted material, and to the following students who assisted with research and proof reading: Charlene Antwi-Boasiako, Rose Hancock, Akshat Khettry and Catherine Maunder.

Role of the Interim Environmental Protection Assessor for Wales (IEPAW)

The IEPAW provides members of the public with an independent mechanism to raise submissions about the functioning of environmental law in Wales. The IEPAW advises the Welsh Ministers if the submissions raised fall within the remit of the IEPAW and makes recommendations for any action they consider may need to be taken.

The interim measures are non-statutory and their main purpose is to:

provide oversight of the functioning of environmental law in Wales; and

consider systematic issues relating to the working/functioning of environmental law in Wales.

The functioning of environmental law may mean considering whether:

- the law is fit for purpose or still relevant;
- the information or explanatory material on the law is accessible, clear and certain; or
- the practical implementation of the law is effective.

The scope of the interim measures does not cover:

- breaches in environmental law;
- areas of non-compliance with environmental law; and
- issues raised that are covered by another complaints mechanism or process.

The IEPAW's aim is to identify where action may need to be taken to correct functioning issues that will improve environmental outcomes. Its strategic objectives are to:

- provide a service to the public that allows them to make submissions to the IEPAW;
- advise the Welsh Ministers on any action that may be required; and
- contribute to the development of the permanent approach to environmental governance in Wales.

Executive Summary

This report on hedgerows was written in response to submissions received in 2021 primarily concerning the efficacy of the Hedgerow Regulations 1997. There were also concerns over the use of bird-deterrent netting of hedgerows. The IEPAW obtained evidence at a panel discussion held at the Royal Welsh Show in July 2022 and in response to a Call for Evidence issued in August 2022. To address the issues raised the report

- assesses whether existing legal framework is functioning effectively;
- identifies areas where the existing legal protection may not be delivering the intended benefits, particularly in relation to the protection of biodiversity;
- identifies potential gaps in existing legislation;
- identifies areas where the practical application of the legislation may be impeded; and
- provides recommendations for how the law could be improved.

Hedgerows in Wales

According to Natural Resources Wales (NRW)'s 2020 assessment only 17 per cent of hedgerows in Wales were in good condition in 2016. For hedgerows on arable land, this figure dropped to 2 per cent.

The Importance of Hedgerows in Wales

The conservation and sustainable management of hedgerows is essential in maintaining Wales' biodiversity, protecting vital ecosystems, and combating climate change. Urbanisation, changes in how the land is used, farming practices, as well as the impacts of climate change, can threaten these ecosystems. Removing established hedgerows can fragment entire ecosystems, disrupting wildlife and interrupting ecosystem services. The same is true of poor management of existing hedgerows, since newly-established hedgerows do not have the same value in terms of wildlife, landscape, and historical significance compared to long-established hedgerows.

Hedgerow restoration and management could play a role in addressing the biodiversity crisis in Wales and helping to build a resilient Wales. Unfortunately, a large proportion of hedgerows are either over-managed or neglected. Hedgerows also provide a range of other ecosystem services. They can help prevent soil erosion, maintain soil health and improve water quality. Hedgerows are also important carbon sinks. On average there can be about 300 m³ of wood in every kilometre of hedgerow which equates to between 60 and 100 tonnes of carbon per kilometre in the above ground biomass alone.

Cultural Importance

The UK is rightly known throughout the world for its rich and varied patterns of hedgerows. In Wales, hedgerows are an important part of our cultural and landscape heritage and make a vital contribu-

tion to a locality's sense of place. Many Welsh hedgerows are ancient and are of historical interest. This is particularly true where they mark parish boundaries, ancient monuments or other such features. The lives of hedgerows are prolonged by repeated pollarding, often making them older than many of the historic buildings that society values highly (e.g. parish churches). As such, hedgerows enable today's generations to connect with their locality and its history.

The Legal Framework

For Wales, the only legislation directly and solely related to the protection of hedgerows is the Hedgerow Regulations 1997. We have concluded that these Regulations are unsatisfactory in a number of respects not least because, as they predate devolution, they do not align with the sustainability principles set out in the Well-being of Future Generations (Wales) Act 2015, the Environment (Wales) Act 2016 or the Agriculture (Wales) Act 2023. We consider these omissions would be sufficient grounds for amending the Regulations even without the detailed calls for change highlighted in the evidence.

We have concluded that there are several options for reform. Our starting point is the need to address the problems with the Regulations and we make a number of recommendations specific to these. Other options include amending the Agriculture (Wales) Act 2023 to introduce specific protection for hedgerows in Wales or introducing a devolved Hedgerow Protection (Wales) Bill. Any legislative reform should, as a minimum:

- introduce a presumption that all hedgerows are of social, cultural, economic and ecological importance and hereby override the current narrow and overly convoluted criteria used to classify a hedgerow as 'important';
- strive to bring the protection of hedgerows in line with Wales' post devolution ambitions by incorporating:
 - **the aspects of resilience under the Environment (Wales) Act;**
 - **the principles of Sustainable Development under the Wellbeing of Future Generations (Wales) Act;**
 - **the principles of Sustainable Land Management under the Agriculture (Wales) Act; and**
 - **any local terminology used for 'hedgerows';**
- be supported by updated practice guidance to provide practical advice to farmers, landowners and land managers, as well as local authorities, in implementing the legislation;
- be supported by an adequate funding structure that supports and enables the sustainable management of hedgerows: and
- be considered as part of the National Minimum Standards/Universal Actions and regulatory baseline to be introduced as part of the Sustainable Farming Scheme.

What is a hedgerow and when is it important?

There is no definition of 'hedgerow' in the Regulations but it is clear that not all hedgerows are included. They only cover hedgerows growing in, or adjacent to land used for agriculture or forestry, common land and protected land (i.e. nature reserves and Sites of Special Scientific Interest) and not all of these. The following categories of hedgerow are excluded from the Regulations, either specifically or by default:

- hedgerows within the curtilage of, or marking a boundary of the curtilage, of a dwelling house;
- most hedgerows on non-agricultural or forestry land;
- hedgerows of length less than 20 m unless connected to another hedgerow;
- hedgerows that have grown into a line of trees; and
- other types of field boundary such as hedge banks and cloddiau

Furthermore, even hedgerows that are covered by the Regulations are only protected if they are deemed to be 'important'. We received evidence on the following reasons why the criteria for determining importance were both inappropriate and difficult to apply:

- the information to be used to determine whether a hedgerow is 'important' because of the animals it supports is outdated as is the relevant date (pre 1997) against which evidence of importance is to be assessed;
- the 30 years age requirement for a hedgerow to be considered important is based on the notion that age indicates biodiversity value and fails to recognise the fact that biodiversity value does not necessarily correlate with age;
- the criteria for assessing importance on the basis of the plant communities present are complicated and not easy to work with and are based on incomplete lists of species.

We do not agree that hedgerows of less than 20 metres in length are necessarily of no biodiversity interest but accept that hedgerows below a minimum length should probably be excluded from the definition of hedgerows. This minimum length should be substantially less than 20 metres. We agree that hedgerows that have grown into lines of trees are of value, not least because they may consist of mature trees. We conclude that they should be protected, either by bringing them within the remit of the Regulations or by other means. Banks and walls are not specifically protected in the Regulations and are only included in the list of associated features. We agree that the failure to include them as features in their own right risks them being excluded from consideration.

The Regulations are silent on other, non-agricultural land. We agree with the view that hedgerows forming the boundary of public and non-domestic private property including industrial sites, cemeteries and parks should be covered by the Regulations. We also agree with the view that where a hedgerow forms the boundary between a dwelling house and agricultural land it should be covered by the Regulations. While we also think that other garden hedgerows should be protected, we do

not think that the Regulations are the best way of achieving this protection.

Most importantly, we note that hedgerows are listed under section 7 of the Environment (Wales) Act 2016 as a habitat of principal importance for the purpose of maintaining and enhancing biodiversity in Wales (priority habitat). The Act requires Ministers to take all reasonable steps to maintain and enhance these priority habitats and public authorities are required to have regard to them. We think it is essential, therefore, for all hedgerows to be protected.

Hedgerow Removal

We consider that changes are needed in the law and practice on the removal of hedgerows. We agree that the defence of 'proper management' against a charge of unauthorised removal of hedge should be removed from the list of permitted works as it is open to abuse.

Under the Regulations, an owner of land proposing to remove a hedgerow must notify the local authority of their intentions by sending a Hedgerow Removal Notice. The local authority then has 42 days in which to determine whether the hedgerow is 'important' in which case it can issue a Hedgerow Retention Notice. If the local authority is unable to make this determination within the legal timeframe the hedgerow can legally be removed unless an extension has been agreed with the applicant. We do not think this is satisfactory and believe the local authority should have power to issue an extension notice where there are practical reasons making it impossible for them to make the determination within 42 days. The Regulations require the local authority to consult the relevant community council before deciding whether to issue a notice. We think that NRW should also be consulted.

We were told that requiring a hedgerow to be replaced was generally regarded as preferable to the option of prosecution. This is partly because of the financial and time resources involved in bringing an action and partly because replacement does at least ensure that a hedgerow is recreated. However, the local authority has no powers to enforce a Hedgerow Replacement Notice. If the owner fails to comply the local authority still has the option to prosecute for unlawful removal of a hedgerow and/or can carry out the replanting itself, both of which are resource intensive. We think that it should be an offence to fail to comply with a Hedgerow Replacement Notice. We also think that where there has been a satisfactory prosecution, the person found guilty should be issued with a mandatory Hedgerow Replacement Notice in addition to a fine.

We note that the Management of Hedgerows (England) Regulations 2024 introduce the option of civil sanctions where an offence has occurred. We believe that consideration should be given to whether civil sanctions for offences in Wales could provide a greater deterrent than the threat of prosecution and might be less demanding of resources.

A significant number of respondents identified land use change, and in particular farming practices, as the main threat to hedgerows in Wales. In order to ensure the protection of hedgerows, funding schemes should be reviewed to ensure that these not only discourage unsustainable management practices but actively encourage more sustainable management practices. Our attention was drawn to a potential skills gap regarding more sustainable management practices and the need for funding to be available for any training and upskilling needed to encourage the use of more sustainable

practices. We do not think it would be practicable to require farmers to adopt traditional hedgerow management techniques. We do believe, however, that farmers should be encouraged to manage their hedgerows in a way that is beneficial to wildlife and that they should be financially rewarded for so doing.

We received a number of suggestions relating to funding support for hedgerow work under the Sustainable Farming Scheme (SFS). We think that all of these are worth considering and we are pleased to note the revised proposals found in the Universal Actions of the SFS outlined in November 2024. It is important that there is clear guidance provided to farmers as to what constitutes good hedgerow management for the purposes of environmental and biodiversity outcomes. For similar reasons, we are strongly supportive of the Hedgerow Carbon Code as this would allow farmers to generate an income from their work on hedgerow management.

Non-Agricultural Hedgerows

We think that the Hedgerow Regulation procedures relating to removal of hedgerows should apply to non-agricultural public and private land, other than domestic properties. In most such cases, the removal is likely to relate to a proposed development for which planning permission would be required. The inclusion of a further requirement to issue a Hedgerow Removal Notice should ensure that hedgerows are not removed prior to making a planning application.

It was also suggested to us that garden hedgerows should be included in the remit of the Regulations. We agree that these are important contributors to urban green infrastructure. Their contribution to ecosystem services is not limited to their biodiversity values. They can improve air quality and help to reduce flooding. We conclude that these hedgerows need protection but we are not convinced that the Hedgerow Regulations are the best way to safeguard them not least because all landowners would have to be made aware of the need to send the local authority a Hedgerow Removal Notice. Also, a failure to comply with the Regulations could lead to a criminal conviction.

We consider that the best way to protect garden hedgerows is through the planning system. Domestic householders are already aware of the need to obtain planning permission for development so this approach would avoid the need of having to introduce a completely new legal framework. The removal of a hedgerow could be brought within the regime for planning permission. In most situations, it could be added to the list of permitted development under the General Development Order. There would need to be criteria to identify hedgerows for which a planning application would be required.

Netting

We are of the view that netting is unnecessary. Its sole purpose is to prevent birds from nesting and thereby allow the hedgerow owner to remove the hedge in the breeding season without the risk of committing an offence under the Wildlife and Countryside Act 1981. We believe there should be a ban on netting for all hedgerows.

Guidance

The Hedgerows Regulations 1997: A Guide to the Law and Good Practice has not been amended since it was issued 1997. We consider that several concerns raised in evidence could best be addressed in revised guidance.

Many hedgerows of landscape importance come within the remit of the Regulations because of their historic or archaeological interest. However, hedgerows that have been established more recently but are nevertheless regarded as significant for the culture of the local community are not included. We do not think it is possible to come up with a criterion for defining a hedgerow of cultural importance because this will depend on the local circumstances. This is not a reason for excluding these types of hedgerows from protection, however. We conclude that guidance to assist local authorities in deciding whether a hedgerow is of local cultural importance should be included in the Guide.

The mere existence of an updated Guide will not suffice, however, and it must be accompanied by strategic communication in order to address the disparate levels of awareness of the Regulations across landowners, local authorities, and the general public.

Hedgerow Inventory

It is clear from the evidence received that there is some confusion over the length of hedgerow present in Wales. It was suggested to us that an inventory for ancient hedgerows based on identifying those hedges shown on Ordnance Survey maps that are still present would be relatively straightforward to compile. It was also suggested that farmers might be paid for mapping out current hedgerows under SFS in order to build up an inventory. We consider that a data base for Wales along the lines of the detailed land cover programme carried out in England could be of great use in determining the importance of hedgerows.

Recommendations

Recommendation 1: The Welsh Government should raise awareness of the importance of protecting hedgerows including by the provision of clear guidance for the public and local authorities on the requirements for the legal protection of hedgerows

Recommendation 2: The Welsh Government in the next Senedd term should legislate to provide legal protection of hedgerows in Wales that reflects their status as priority habitats. Welsh ministers should consult on whether this could best be achieved through substantial revision of the Hedgerow Regulations or by new primary legislation.

Recommendation 3: Regardless of the form this new protection takes, it should provide:

- a legal definition of ‘hedgerow’ to include any hedgerow longer than a prescribed minimum (to be determined and subject to evidence being obtained as to what this minimum should be) and associated features such as hedge banks and cloddiau;
- a definition of ‘other woody linear features’; and
- legal protection against removal for all hedgerows and other woody linear features unless authorised.

Recommendation 4: The Welsh Government in the next Senedd term should amend the provisions relating to authorised removal of a hedgerow to:

- make it a requirement for the local authority to consult NRW on the proposal to remove the hedgerow;
- place a duty on NRW to advise the local authority whether or not to issue a Hedgerow Retention Notice and to require the local authority to take account of this advice when making their decision;
- extend to NRW the same rights to enter land as are available to the local authority to inspect the hedgerow; and
- give power to the local authority to issue an extension notice in those situations where they are unable to assess the value of a hedgerow within the specified time period.

Recommendation 5: The Welsh Government in the next Senedd term should remove ‘proper management of the hedgerow’ from the list of permitted works.

Recommendation 6: The Welsh Government in the next Senedd term should amend the section on offences in the Regulations:

- so that a person found guilty under Regulation 7 is issued with a mandatory Hedgerow Replacement Notice in addition to a fine; and
- to make it an offence to fail to comply with a Hedgerow Replacement Notice.

Recommendation 7: The Welsh Government should consider whether the option of civil sanctions may be appropriate.

Recommendation 8: The Welsh Government should urgently, in this Senedd term as part of the changes to agricultural policy in Wales

- provide financial support including capital grants to farmers to manage hedgerows in a sustainable manner so as to maintain and enhance their biodiversity value;
- include hedgerows in the SFS as part of the habitat area requirements in Universal Action 7 for Habitat Management;
- support and progress the Hedgerow Carbon Code;
- give due consideration to the possibility of additional payments as part of the Optional level of the SFS for having a proportion of hedges fruiting and flowering each year; and
- commission research and knowledge transfer events into the potential benefits of wildlife hedge laying techniques

Recommendation 9: The Welsh Government in the next Senedd term should consult on the best way of managing hedgerows on non-agricultural land.

Recommendation 10: The Welsh Government should urgently act to ban the use of netting of all hedgerows.

Recommendation 11: In the interim, and until netting of hedgerows is banned, the Welsh Government should urgently issue guidance to local authorities explaining:

- the presumption against netting at any time;
- the legal restraints on the use of netting; and

- the need for vigilance to detect unlawful netting.

Recommendation 12: The Welsh Government should:

- issue new or revised guidance on the Hedgerow Regulations;
- raise awareness of the existence of the guidance once published; and
- consider including in the guidance reference to best practice in hedgerow management.

Recommendation 13: The Welsh Government in this Senedd term should issue planning guidance to local authorities on the need to consider historical, archaeological, ecological and culture factors when considering an application for planning permission to remove a hedgerow.

Recommendation 14: The Welsh Government take action to fund and provide an inventory of Welsh hedgerows and we suggest that some of the collection of data may be undertaken via the SFS.

List of Abbreviations

ALGE	Association of Local Government Ecologists
BBNPA	Brecon Beacons National Park Authority
CIEEM	Chartered Institute of Ecology and Environmental Management
CPRE	Campaign to Protect Rural England
DETR	Department of the Environment, Transport and the Regions
Defra	Department of the Environment, Food and Regional Affairs
EIA	Environmental Impact Assessment
EU	European Union
FUW	Farmers' Union of Wales
HC	House of Commons
IEPAW	Interim Environmental Protection Assessor for Wales
LPA	Local Planning Authority
NPTC	Neath Port Talbot Council
NFU	National Farmers' Union
NGO	Non Governmental Organisation
NRW	Natural Resources Wales
PCNPA	Pembrokeshire Coast National Park Authority
PPW	Planning Policy Wales
SFS	Sustainable Farming Scheme
SoNaRR	State of Natural Resources Report
SSSI	Site of Special Scientific Interest
UA	Universal Action
UK BAP	United Kingdom Biodiversity Action Plan
UKCEH	United Kingdom Centre for Ecology and Hydrology
UKELA	United Kingdom Environmental Law Association
WCA	Wildlife and Countryside Act
WTW	Wildlife Trusts Wales

1. Purpose of Report

This report is written in response to submissions received between November 2021 and December 2021. Four submissions were received in total. The submissions were sent to the IEPAW on 4 November 2021, 17 December 2021 and two on 20 December 2021.

Redacted versions of these separate submissions are included in Appendix 1. These submissions raise related questions and the IEPAW therefore decided to produce one report by way of a combined response and report to the Welsh Ministers accordingly.

The concerns included:

- whether the Hedgerow Regulations 1997 are meeting their stated aim to protect hedgerows effectively;
- whether these Regulations are sufficiently well understood or properly enforced;
- whether the law should be applied more broadly to cover parks and gardens as well as farm land;
- whether grant funding is encouraging the removal of overgrown hedges; and
- the impact of the use of bird-deterrent netting on hedgerows.

Further to receipt of the submissions, brief responses were sent by the IEPAW to each submitter confirming the questions that the IEPAW would consider and that a report would be produced.

Given the importance of hedgerows to the environment and biodiversity in Wales the IEPAW decided to seek further evidence on the issue. It held a panel discussion during the Royal Welsh Show in July 2022 on existing hedgerow legislation in Wales and how best to approach future hedgerow management to deliver environmental outcomes. This was followed by a Call for Evidence launched in August 2022 with a closing date for responses on 2nd September 2022.

To address the issues raised in the submissions, this report:

- assesses whether the existing legal framework is functioning effectively;
- identifies areas where the existing legal protection may not be delivering the intended benefits, particularly in relation to the protection of biodiversity;
- identifies potential gaps in existing legislation;
- identifies areas where the practical application of the legislation may be impeded; and
- makes recommendations for how the law could be improved.

2. Background

2.1 State of Hedgerows in Wales

It is estimated that 25 per cent of hedgerows in Wales were destroyed between 1984 and 1990.¹ Conditions stabilised following the introduction of the Hedgerows Regulations in 1997 and cross compliance protection as part of the Single Payment Scheme and then Basic Payment Scheme. The amount of hedgerow actually increased in 2007 since when it has remained more or less stable.

The number of hedgerow trees in Britain fell from 56 million in 1951 to just 2 million in 2007, partly because of losses due to Dutch Elm Disease.² The canopy of hedgerow trees has been estimated to cover 6000 ha of which 3600 consisted of groups of trees and 2400 of lone standards.³ The total length of hedgerows in Wales is unclear. The Countryside Survey 2007⁴ gave a figure of 106,000 km of woody linear features, defined as including hedges, lines of trees, shrubs and relict hedges. Later reports give estimates of hedgerows, defined as boundary lines of trees and shrubs over 20 m long, less than 3 m in height, and a mean width of less than 4 m at the base, of 75,000-76,000 km.⁵ To further confuse matters, Coed Cadw give an estimate of 76,000 km of hedges in Wales with a further 106,000 km of 'woody linear features'.⁶

The Countryside Survey reported that 78 per cent of hedgerows in Wales were in 'unfavourable condition'.⁷ Natural Resources Wales (NRW)'s 2020 assessment⁸ found that, in 2016, only 17 per

1 The Second State of Natural Resources Report (SoNaRR 2020). <https://naturalresources.wales/media/693343/2020-ecosystem-enclosed-farmland.pdf> at p. 23

2 SoNaRR 2020 see note 1 at page 23.

3 Beauchamp, K. and Jenkins, T. (2020) Woodland Creation in Wales: Report for the Wales Land Management Forum, The Research Agency of the Forestry Commission. Welsh Government. Available at: https://www.gov.wales/sites/default/files/publications/2021-07/woodland-creation-wales-report_0.pdf.

4 As quoted in Woodland Trust (2021) State of the UK's Woods and Trees Table 1.1.4 <https://www.woodlandtrust.org.uk/media/51705/state-of-the-uks-woods-and-trees-2021-thewoodlandtrust.pdf>.

5 Brewer et al (2017) Tree Cover Outside Woodland in Great Britain, Forestry Commission, quoted in Woodland Trust and Beauchamp. See notes 4 & 3 above.

6 Coed Cadw, written evidence at para. 1.7.

7 As quoted in NRW (2014) The State of Natural Resources Report (SoNaRR). Assessment of the Achievement of Sustainable Management of Natural Resources. Technical Report. Chapter 3 Summary of Extent, Condition and Trends of Natural Resources and Ecosystems in Wales at para. 3.8. <https://cdn.cyfoethnaturiol.cymru/media/684348/chapter-3-state-and-trends-final-for-publication.pdf>.

8 The Second State of Natural Resources Report (SoNaRR 2020). <https://naturalresources.wales/media/693343/2020-ecosystem-enclosed-farmland.pdf> at p. 23.

cent of hedgerows in Wales met all the criteria for good condition (i.e. structure and margins). For arable land, the figure was just 2 per cent. The structural condition showed some improvement since 2007, however, with 61 per cent meeting the criteria for good structural condition. Serious concerns have been expressed over the impact of Chalara given that ash is found in considerable quantities in hedgerows both as shrub and as trees. Without proper ongoing management ash die back could result in damaging gaps in hedgerows.⁹

2.2 The Importance of Hedgerows in Wales

The conservation and sustainable management of hedgerows is essential for maintaining Wales' biodiversity, protecting vital ecosystems and combating climate change. Urbanisation, changes in how the land is used, farming practices, as well as the impacts of climate change, can threaten these ecosystems. Removing established hedgerows can fragment entire ecosystems, disrupting wildlife and interrupting ecosystem services. The same is true of poor management of existing hedgerows as newly-established hedgerows do not have the same value in terms of wildlife, landscape and historical significance compared to long-established hedgerows. The Hedgerows Regulations 1997 were introduced to address extensive grubbing up of hedges as a result of changing agricultural practices and demand for land development and so are only concerned with the removal of hedgerows. They are silent on the management of existing hedgerows and on the risk for biodiversity caused by indiscriminate new planting including for purposes of meeting carbon net zero commitments.

2.3 Environmental Importance

2.3.1 Biodiversity

Hedgerows are an integral part of the rural and urban environment of Wales providing a range of environmental, economic and social benefits. Their importance for biodiversity was recognised by their status as a UK Biodiversity Action Plan (UK BAP) Priority Habitat¹⁰ and they are included in the list of priority habitats under section 7 of the Environment (Wales) Act 2016.

Hedgerows are rich in biodiversity, on average hosting more plant species than woodlands and grasslands.¹¹ They are also vitally important for other wildlife. Over 600 plant, 1500 insects, 65

9 Beauchamp note 3 above.

10 UK BAP Priority Habitats were the habitats identified in the UK BAP Action Plan as being most under threat and requiring conservation action. Although no longer of direct relevance following devolution, the list of priority habitats continues to be an important reference for country-based measures.

11 Vannest T et al (2020) Plant diversity in hedgerows and road verges across Europe. *Journal of Applied Ecology*

bird and 20 mammal species are known to utilise hedgerow habitats.¹² They provide breeding and nesting sites for many bird species, food for bees and butterflies and shelter to mammals such as hedgehogs, bats and foxes. As linear features, hedgerows are essential for ecosystem resilience through the provision of crucial wildlife corridors, thereby creating connectivity between fragmented habitats and offering refuge to species impacted by habitat degradation and the increasing impacts of climate change.

Hedgerow restoration and management could play a role in addressing the biodiversity crisis in Wales and helping to build a resilient Wales. Unfortunately, a large proportion of hedgerows are either over-managed or neglected. The currently favoured management practice of flailing a hedge once a year can destroy much of the biodiversity value of a hedgerow. There is evidence to suggest that 68 per cent of farmers have never taken any advice on how to manage their hedgerows and there is a general lack of understanding of good management practice.¹³ It is acknowledged however that many of our existing hedgerows have been planted and maintained by farmers.

2.3.2 Ecosystem Services

Hedgerows also provide a range of other ecosystem services. They are long-established agricultural features in Wales where they function as agroforestry systems and enhance the relationship between agriculture and woodland management.¹⁴ Hedgerows can provide considerable benefits for animal health and welfare. They provide shelter for livestock and crops, in winter reducing wind chill and in summer reducing heat stress.¹⁵

Hedgerows can prevent soil erosion, maintain soil health and improve water quality. They can reduce flooding by increasing infiltration rates and slowing water flows¹⁶ - an increasingly important feature due to the consequences of the climate crisis. It has been estimated that a 50 m hedgerow at the bottom of a 1 ha field can store between 150-375 m³ of water in rainy periods for slow release

57(7) 1244-1257 doi.org/10.1111/1365-2664.13620.

- 12 Graham L et al (2018) The influence of hedgerow structural conditions on wildlife habitat provision in farmed landscapes. *Biological Conservation* 220, 122-131.
- 13 SoNaRR 2020 note 1 above at p. 24.
- 14 Tilzey M (2021) The political ecology of hedgerows and their relationship to agroecology and food sovereignty in the UK. *Frontiers* doi.org/10.3389/fsufs.2021.752293
- 15 People's Trust for Endangered Species *What have hedgerows ever done for us?* Available at: <https://ptes.org/hedgerow/what-have-hedgerows-ever-done-for-us/>.
- 16 Tilzey note 14 above

down slope in dry periods.¹⁷ There is evidence that hedgerows can reduce peak flows of nearby watercourses following heavy rainfall by up to 50 per cent.¹⁸

Hedgerows are also important carbon sinks. On average there can be about 300 m³ of wood in every kilometre of hedgerow which equates to between 60 and 100 tonnes of carbon per kilometre in the above ground biomass alone.¹⁹

The rising demand for food and increase in crop cultivation has driven the decline of farmland biodiversity. Properly managed, high-quality hedgerows can provide a nature-based solution to this problem by restoring habitat diversity for flora, invertebrates, and other wildlife.²⁰ This would result in an increased abundance of pollinators, as well as the potential for biological pest control in the surrounding landscape. It would thus reduce the need for pesticides and pollination services, meaning lower costs for farmers, as well as reduced air and water pollution.²¹

Hedgerow management will be included in the Sustainable Farming Scheme (SFS) to be introduced in 2026.²² The carbon sequestration potential of hedgerows has been recognised and commodified in the newly piloted Hedgerow Carbon Code which aims to provide an opportunity to generate an alternative income stream from carbon and biodiversity credit trading. Such credit trading is estimated to have a market value of over £60m, to be delivered directly by the farming community.²³ NRW believes that recognition of the potential of hedgerows to sequester carbon should lead to positive measures to increase the volume of existing hedgerows and create new ones.²⁴

Outside of the farming environment, there are also possibilities for hedgerows to play a role in urban

17 People's Trust for Endangered Species note 15 above.

18 SoNaRR2020 note 1 above at p. 44.

19 Vanneste T and De Frenne P (2020) Hedging against biodiversity loss *The Applied Ecologist*. Available at <https://appliedecologistsblog.com/2020/05/14/hedging-against-biodiversity-loss/>.

20 Garratt MPD et al (2017) The benefits of hedgerows for pollinators and natural enemies depends on hedge quality and landscape context. *Agriculture, Ecosystems & Environment* 247, 363-370 doi.org/10.1016/j.agee.2017.06.048.

21 Stiles W *The Benefits of Hedgerows and Trees for Agriculture*. <https://businesswales.gov.wales/farmingconnect/news-and-events/technical-articles/benefits-hedgerows-and-trees-agriculture>.

22 <https://www.gov.wales/sustainable-farming-scheme-proposed-scheme-outline-2024-html>

23 <https://www.allertontrust.org.uk/projects/hedgerow-carbon-code/>.

24 SoNaRR2020 note 1 above at p. 25.

green infrastructure.²⁵

2.3.3 Cultural Importance

The UK is rightly known throughout the world for its rich and varied patterns of hedgerows. In Wales, hedgerows are an important part of our cultural and landscape heritage and make a vital contribution to a locality's sense of place. We had an interesting debate about what constitutes a hedgerow in different parts of Wales at the Royal Welsh event the IEPAW hosted in 2022.

Many Welsh hedgerows are ancient and are of historical interest. This is particularly true where they mark parish boundaries, ancient monuments or other such features. The lives of hedgerows are prolonged by repeated pollarding, often making them older than many of the historic buildings that society values highly (e.g. parish churches). As such, hedgerows enable today's generations to connect with their locality and its history.

3. The Legal Framework

3.1 The Hedgerows Regulations 1997

For Wales, the only piece of legislation directly and solely related to the protection of hedgerows is the Hedgerows Regulations 1997.²⁶ In the years before this, there had been increasing concerns over the loss of hedgerows²⁷ and the Conservative Manifesto of 1992²⁸ had promised to address these by introducing a Hedgerow Incentive Scheme. Provisions were accordingly included in the Environment Act 1995 section 97 which empowered ministers to make regulations for the protection of important hedgerows in England and Wales.²⁹ The Regulations themselves were not made until 1997.

25 Höpfl L et al (2021) Initiating research into adapting rural hedging techniques, hedge types, and hedgerow networks as novel urban green systems. *Land* 10(5) 529 doi.org/10.3390/land.10050529.

26 The Hedgerows Regulations 1997 SI 1997/1160.

27 The Institute of Terrestrial Ecology reported that the total length of hedgerows in Wales had fallen by 25 per cent between 1984 and 1990 (see *The Hedgerows Regulations 1997: A Guide to the Law and Good Practice* DEFRA 1997 para. 2.4).

28 <http://www.conservativemanifesto.com/1992/1992-conservative-manifesto.shtml>

29 The Act does not contain a definition of 'hedgerow' beyond stating that it includes 'any stretch of hedgerow'. Section 97(2) states that the question of whether a hedgerow is or is not 'important' is to be determined in accordance with prescribed criteria.

Section 97 was introduced only after repeated failed attempts to introduce a more comprehensive hedgerow bill into Parliament which would have introduced measures for the management and restoration of hedgerows together with a presumption against their removal.³⁰ The Regulations are much more limited in scope. The Government's approach was influenced by the results of a hedgerow survey covering the period of 1990 to 1993 which showed that the rate of hedgerow removal had more than halved to 3600 km per year compared with 9500 km per year between 1984 and 1990 and that new planting had increased to 4400 km per year. Against the backdrop of growth in hedgerow coverage, the UK Government decided to focus protection on the most important hedgerows for which new planting is no substitute.³¹ The UK Government thought that about 20 per cent of hedgerows were likely to be identified as important.³² There were nevertheless concerns over the efficacy of the measures to provide adequate protection as indicated in the debates on the draft Regulations and on the motion to approve them³³ together with the subsequent Select Committee inquiry.³⁴

3.1.1 Categories of Hedgerows

The sole purpose of the Regulations was to prevent the removal of hedgerows. The legislation was not concerned with hedgerow management. Not all hedgerows are covered, only those in the countryside defined as those on or adjoining common land, village greens, protected land (i.e. Sites of Scientific Interest (SSSIs)) or land used for agriculture, forestry or the keeping of horses, ponies or donkeys.³⁵ Garden hedges are excluded, as are hedgerows marking the boundary of a dwelling house regardless of the use of the adjoining land.³⁶ There are also length restrictions on hedgerows included in the Regulations: hedgerows must be at least 20 metres long or, if less than 20 metres long, connected to another hedgerow so as to form a continuous network.³⁷ If a hedgerow meets one of these requirements the Regulations will apply provided that the hedgerow also meets the criteria for determining 'important' hedgerows.³⁸

30 Including the Hedgerow Protection Bill, a Private Member's Bill which failed to get a 2nd reading in May 1993.

31 HC Debs vol 291 col. 308 26 February 1997, Mr Clappison, Minister for Environment.

32 Ibid at col 309.

33 HC Debs vol 291, 26 February 1997 and vol 292, 20 March 1997.

34 Select Committee on Environment, Transport and Regional Affairs, 13th Report Session 1997-98 *The Protection of Field Boundaries* HC-969

35 Regulation 3(1).

36 Regulation 3(3). According the Defra guidance, threats to urban hedgerows were best dealt with through local authority planning powers, *The Hedgerows Regulations 1977: A Guide to the Law and Good Practice* DEFRA 1997 para. 3.8.

37 Regulation 3(1) (a) and (b).

38 Regulation 4.

3.1.2 Criteria for Determining ‘Important’ Hedgerows

In order to be important, the hedgerow has to have existed for 30 years or more. It must also satisfy at least one of the criteria in Schedule 1 Part II of the Regulations. The headline criteria are archaeological and historical value, wildlife and landscape value.

To meet the archaeological and historical criterion³⁹ the hedgerow must:

- mark a pre-1850 parish or township boundary; or
- incorporate an archaeological feature; or
- be situated in an archaeological site and be associated with a monument or feature of that site; or
- mark the boundary of a pre-1600 estate or manor; or
- form an integral part of a field system pre-dating the Inclosure Acts.

To meet the wildlife criterion, the hedgerow must either contain specified protected species and/or species categorised as endangered, extinct, rare or vulnerable or contain a specified number of specific species of woody plants with associated features where appropriate.⁴⁰

Under the species criterion, the hedgerow must:

- contain species of birds, animals or plants listed in schedules to the Wildlife and Countryside Act⁴¹; or
- contain species of birds and animals categorised as endangered, extinct, rare or vulnerable in Britain within a 5 year period immediately before 1997;⁴² or
- contain species of plants categorised as endangered, extinct, rare or vulnerable in Britain within a 10 year period immediately before 1997.⁴³

39 Schedule 1 Part II 1-5.

40 Schedule 1 Part II 6-7

41 Schedule 1 Part II 6(1)(a) refers to the WCA Schedule I Part I birds protected at all times, WCA Schedule 5 protected animals and Schedule 8 protected plants. Schedules 5 and 8 are subject to regular reviews.

42 Schedule 1 Part II 6(i)(b)(i) and 6(3)(c).

43 Schedule 1 Part II 6(i)(b)(ii) and 6(3)(c).

To be classified as ‘important’ on the basis of its plant composition⁴⁴, a hedgerow must include:

- at least seven woody species⁴⁵, on average, in a 30-metre length; or
- at least six woody species, on average, in a 30-metre length and have at least three ‘associated features’; or
- at least six woody species, on average, in a 30-metre length, including a black poplar tree, or large-leaved lime, or small leaved lime, or wild service tree; or
- at least five woody species, on average in a 30-metre length and have at least four associated features.

In summary, the associated features are⁴⁶:

- a bank or wall which supports the hedgerow;
- gaps which in aggregate do not exceed 10 per cent of the length of the hedgerow;
- at least one standard tree per 50 metres;
- at least three species from a list of 57 woodland plants;⁴⁷
- a ditch along at least half the length of the hedgerow;
- a number of connections with other hedgerows, ponds or woodland;
- a parallel hedge within 15 metres.

To meet the landscape criterion⁴⁸ the hedgerow must:

- be adjacent to a bridleway, footpath, road used as a public path, or a byway open to all traffic; and
- include at least four woody species; and
- include at least two associated features.

3.1.3 Removal or Retention of Important Hedgerows

Removal of an important hedgerow is prohibited unless authorised in advance. ‘Remove’ is defined

⁴⁴ Schedule 1 Part II 7(i)(a)(i)–(d).

⁴⁵ Schedule 3 of the Regulations lists 56 species of trees and shrubs defined as ‘woody species’.

⁴⁶ Schedule 1 Part II 7(4) (a)–(i).

⁴⁷ As listed in Schedule 2 of the Regulations ‘Woodland Species’.

⁴⁸ Schedule 8 (a) and (b).

as 'uproot or otherwise destroy'.⁴⁹ With some exceptions⁵⁰, anyone wishing to remove all or any part of an important hedgerow must notify the local planning authority of their intentions. The Local Planning Authority (LPA) then has 42 days in which to decide whether to issue a 'Hedgerow Retention Notice' prohibiting the removal. During this time the LPA has to determine whether or not the hedgerow meets the criteria for importance and also has to consult the relevant community council. If it concludes that the hedgerow is important it must issue the retention notice unless it is satisfied that the circumstances justify removal. According to the Guidance such circumstances are likely to be exceptional.⁵¹

3.1.4 Offences

It is an offence under Regulation 7 to remove an 'important' hedgerow:

- a) if the local authority has issued a Hedgerow Retention Notice; or
- b) within 42 days of the receipt by the local authority of a Hedgerow Removal Notice from the applicant; or
- c) the removal is not carried out in accordance with the proposals in the Hedgerow Removal Notice; or
- d) more than two years have passed since the date of service of a Hedgerow Removal Notice

It is also an offence to carry out work in contravention of a Hedgerow Retention Notice.⁵²

In both situations, the offence applies to any person who intentionally or recklessly removes, or causes or permits another person to remove the hedgerow.

The offences carry a fine not exceeding the statutory maximum on summary conviction or an unlimited fine on indictment.⁵³ In determining the amount of any fine, the court must have regard to any financial benefit which has accrued or is likely to accrue to the offender.⁵⁴

⁴⁹ Environment Act 1997 s. 97(8).

⁵⁰ Under Regulation 6, removal is permitted if it is required, inter alia, for access, for carrying out permitted development, or for proper management of the hedge.

⁵¹ *The Hedgerows Regulations 1977: A Guide to the Law and Good Practice* DEFRA 1997 para. 8.16.

⁵² Regulation 7(1).

⁵³ Regulation 7(4).

⁵⁴ Regulation 7(6).

3.1.5 Replacement

The local authority may issue a Hedgerow Replacement Notice where a hedgerow has been removed in contravention of the Regulations. This can be done whether or not criminal proceedings have been taken.⁵⁵

3.2 Other relevant law and policy

3.2.1 Inclosure Acts

The importance of hedgerows as stock-proof field boundaries has been recognised since at least Anglo-Saxon times. For example, measures to compensate for landowners where a neighbour's cattle had broken through a hedge onto arable land are included in laws enacted by King Ine of Wessex in the late 7th century.⁵⁶ Hedgerows become a much more prominent element of the countryside from the Middle Ages onwards as a result of various Acts to convert common land into private ownership by enclosing it with a fixed boundary. Over 5000 separate Acts were passed in a 300 year period starting in the early 1600s. By the 18th century, the process had become formalised and a series of generally applicable Inclosure Acts were enacted. These not only transfer rights of common to individual owners, they also require the owner to maintain the hedgerow. In the Flamborough case⁵⁷ it was held that a member of the public had standing to bring an action under the Flamborough Inclosure Act 1765 which required the owner to 'build and forever maintain a quickwood⁵⁸ (or quickset) hedge'. This was a special case because the hedgerow formed the boundary between the field and the road and was, therefore, found to be of benefit not only to the owner of the field but also to the public in general. It does indicate, however, that action may be possible under similar circumstances. Similar wording can be found in other Inclosure Acts which have been used to enforce obligations by directly affected landowners.⁵⁹ Depending on the wording in the relevant Inclosure Act, the obligation to maintain the hedge will take precedence over a right to remove a hedgerow granted under the Regulations.⁶⁰

⁵⁵ Regulation 8.

⁵⁶ Laws of Ine, cited in Pollard, Hooper & Moore 1974 *Hedges*: New Naturalist.

⁵⁷ The judge in *Sinclair and Yorkshire Wildlife Trust v Flamborough Parish Council* issued a declaration stating that the Parish Council was required forever to maintain the hedge.

⁵⁸ i.e. a living hedge as opposed to posts and rails.

⁵⁹ In *Garnett v Pratt* [1926] Ch 897 it was confirmed that an adjacent landowner who is directly affected could enforce this requirement.

⁶⁰ Written answers by Lord Whitty, HL Debs vol 595 3 Dec 1988 col 49W and vol 609 7 February 2000 col 66W.

3.2.2 Sites of Special Scientific Interest

Hedgerows may be protected on scientific grounds under the Wildlife and Countryside Act 1981 (WCA), section 28 of which makes provision for the conservation of hedgerows within SSSIs where they constitute habitats relevant to the designation. Hedgerow removal is usually included on the list of Operations Likely to Damage the Special Interest and would require consent from NRW.

3.2.3 Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017⁶¹

Large scale removal of hedgerows (2 to 4 km) on agricultural land would be regarded as restructuring under these Regulations and any planned removal on this scale for agricultural purposes would require a screening decision for an EIA.

3.2.4 Environment (Wales) Act 2016

Hedgerows are listed under section 7 as a habitat of principal importance for the purposes of maintaining and enhancing biodiversity in Wales ('priority habitat'). Section 7(3) requires Ministers to take all reasonable steps to maintain and enhance listed habitats and encourage others to do likewise. Furthermore, under section 6, public authorities must have regard to section 7 listings in respect of their duties to seek and maintain biodiversity in the exercise of their functions. Priority habitats are also clearly referred to in Planning Policy Wales (PPW).

3.2.5 Planning Policy Wales

Planning Policy Wales notes that hedgerows are of great importance for biodiversity and are important connecting habitats.⁶² It goes on to state that planning authorities should protect hedgerows 'where they have ecological value, contribute to the character or amenity of a particular location or perform a beneficial and identifiable green infrastructure function.'⁶³ 'Retention, protection and integration should be identified in planning applications'⁶⁴ and permission to remove a hedgerow should only be granted where it would achieve 'significant and clearly defined public benefits.'⁶⁵ Protection is to be delivered, 'where appropriate, through locally specific strategies and policies, ... conditions

61 SI No 2017/565, W 134.

62 *Planning Policy Wales* 12th edition February 2024 at para. 6.4.37.

63 Ibid at para. 6.4.39.

64 Ibid at para. 6.4.40.

65 Ibid at para. 6.4.42.

on planning permission and/or Tree Preservation Orders.¹⁶⁶

3.2.6 Agricultural Policy

The Agriculture (Wales) Act 2023 does not include specific provisions in relation to hedgerow regulation but the management of hedgerows is clearly relevant for the maintenance and enhanced resilience of ecosystems and the services they provide, one of the sustainable land management objectives set out in Part I.⁶⁷ The connection between and within ecosystems is identified as a relevant factor in relation to this objective.⁶⁸

All hedgerows are currently protected from removal by cross compliance rules on farms that are taking part in the Basic Payment Scheme. Hedgerow management is included in the Universal Actions (UAs) in the Sustainable Farming Scheme (SFS), due to be introduced in 2026.⁶⁹ Compliance with the UAs is a requirement for gaining access to the SFS.

The objective of UA11 Hedgerow Management is to ‘increase the size and density of regularly trimmed hedgerows to benefit livestock, carbon storage, biodiversity and landscape.

To complete this UA, farmers will need to:

- manage their hedgerows by not trimming or cutting every year (they can cut every second year or less frequently);
- cut incrementally to increase the height, width and density to a higher and wider point each time up to an optimal size to deliver their full benefits. The Welsh Government will provide advice on what good, size and density, looks like to support this;
- support hedgerow trees, on average every 50 metres, by retaining existing trees and identifying specimens to grow if needed;
- maintain a one metre buffer zone from the base of the hedge with no cultivation, fertiliser, pesticides or application of any other inputs; and
- continue to adhere to cutting dates to protect nesting birds (no cutting between 1 March to

66 Ibid at para. 6.4.44.

67 Agriculture (Wales) Act 2023 s. 1(4).

68 Ibid s. 1(7).

69 Sustainable Farming Scheme: proposed scheme outline (2024) published 25 November 2024 <https://www.gov.wales/sustainable-farming-scheme-proposed-scheme-outline-2024-html#158366>.

31 August)

UA 13 Tree Planting and Hedgerow Creation Opportunity Plan is also relevant. This requires farmers to ‘develop a plan which identifies the opportunities for ... creating new hedgerows ... to deliver multiple benefits’.

3.2.7 Climate Change

The role of hedgerows in combatting climate change has been considered by the UK Climate Change Committee. It has recommended that the area covered by hedgerows should be increased to around 181,000 hectares by 2025.⁷⁰ This amounts to a 40 per cent increase. Although analysis suggested that hedgerow creation is not cost-effective from a carbon perspective alone, the Committee considered that the large range of other environmental benefits did justify public spending.⁷¹

4. Analysis of evidence

The IEPAW received evidence from 14 respondents, listed in Appendix 2, in response to the following questions posed in the Call for Evidence:

- whether the Hedgerow Regulations 1997 are meeting their stated aim to protect hedgerows effectively;
- whether these Regulations are sufficiently well understood or properly enforced;
- whether the law should be applied more broadly to cover parks and gardens as well as farmland;
- whether grant funding is encouraging the removal of overgrown hedges; and
- the impact of the use of bird-deterrent netting on hedgerows.

4.1 The Importance of Welsh Hedgerows

Several respondents emphasised the importance of hedgerows in Wales for both their wildlife and cultural values. It was even claimed that hedgerows are the number one habitat resource in the countryside of Wales because, as ecological corridors between woodland patches and other protected sites, they play an increasing role in helping species adapt to climate change, while also playing a vital role in conservation amongst intensively farmed landscapes.⁷² It was noted that they

70 *Land Use: Policies for a Net Zero UK* Climate Change Committee 2020 at p. 34 <https://www.theccc.org.uk/publication/land-use-policies-for-a-net-zero-uk/>.

71 *Ibid* at p. 93.

72 Wildlife Trusts Wales (WTW) written evidence, p. 1.

provide a rare example of ‘natural heritage’ that enjoys legal protection as a result of its contribution to cultural heritage as some hedgerows contain archaeological features or provide the setting for archaeological sites.⁷³ There were concerns, however, over the increasing lack of diversity in hedgerows; they are becoming too homogeneous and uniform as a result of default management practices.⁷⁴ NRW noted that trees in hedgerows are continuing to decline in number and that the loss is rapidly accelerating due to Ash Dieback (*Chalara*).

4.2 Remit of Hedgerow Regulations

4.2.1 Efficacy of the Regulations

There was some support for the efficacy of the Regulations in reducing the widespread removal of hedgerows.⁷⁵ The Regulations were considered to be valuable in that they confirm that hedges are important and should not be removed. This is a simple and clear legal requirement that is not matched for other valuable habitats such as ancient woodland or ancient trees.⁷⁶ Several local authorities noted that they now received very few Hedgerow Removal Notices and that numbers had dropped significantly since the first few years following the introduction of the Regulations.⁷⁷ There was considerable criticism of the scope of the Regulations, however, both in terms of the types of hedgerow covered and the protective measures available. The overwhelming view was that the Regulations do not protect the majority of hedgerows from removal and do not protect any of them from poor management.

4.2.2 Definition of Hedgerow

Neither the Regulations nor the governing Act defines ‘hedgerow’. The Act merely states that ‘hedgerow’ includes any stretch of hedgerow. The Guide to the Regulations suggests using the Oxford English Dictionary definition: ‘a row of bushes forming a hedge with the trees etc growing in it; line of hedge’.⁷⁸ It goes on to state that ‘where a former hedgerow has not been actively managed and has

73 UK Environmental Law Association (UKELA) written evidence

74 Arfon Williams, as recorded in note of Royal Welsh Stakeholder Event Panel Discussion, p.3.

75 Written evidence from Pembrokeshire Coast National Park Authority (PCNPA), Bannau Brycheiniog National Park Authority (BBNPA) and Coed Cadw. NRW noted that hedgerow extent had stabilised since the introduction of the Regulations.

76 Coed Cadw written evidence at para 1.1.

77 PCNPA and BBNPA receive no more than single figures of Hedgerow Removal Notices each year and sometimes none at all and Neath Port Talbot Council (NPTC) has only received a handful of Notices in the last 15 years.

78 *The Hedgerow Regulations 1997. A Guide to the Law and Good Practice* para. 3.3.

grown into a line of trees, it is not covered by the Regulations'.⁷⁹ Several submissions commented that the distinction between a hedgerow and a line of trees was not always easy to recognise.⁸⁰ For example, a row of hawthorn or hazel bushes which have not been managed can be tall; they would not be classified as a line of trees.⁸¹

There were comments on the failure of the Regulations to protect hedgerow trees. Coed Cadw felt that while the Regulations have been important and successful in reducing the removal and destruction of hedges they have not been successful in preventing the loss of hedgerow trees including veteran and ancient trees most of which have no legal protection.⁸² Protection from felling relies on the felling regulations made under the Forestry Act 1967.⁸³

There were concerns that the Regulations do not take account of the variety of different types of hedgerow. For example, in the Pembrokeshire Coast National Park the majority of the hedges are on Pembrokeshire hedge banks. Where these are recorded on Tithe Maps they may qualify as important under the archaeology and history criteria as historic boundary markers.⁸⁴ There are similar concerns over cloddiau, a type of boundary particularly characteristic of the Llŷn Peninsula. Cloddiau are raised earth banks, usually stone faced, with possibly a hedge planted on the top.⁸⁵ There is no specific mention of hedge bank features in the Regulations other than as an associated feature.⁸⁶ This is despite the fact that the Guide states stone walls are not covered 'unless, as is common in ... parts of Wales, land supporting the hedgerow consists of an earth and/or stone bank with the hedgerow growing along the top'.⁸⁷

At the Royal Welsh Stakeholder event it was suggested that the definition is too narrow as it only

79 Ibid para. 3.4.

80 Written evidence from Association of Local Government Ecologists Wales (ALGE Wales), BBNPA and PCN-PA.

81 Written evidence from PCNPA and ALGE (Wales).

82 Coed Cadw written evidence para. 1.1

83 See [https://www.gov.wales/tree-felling-forestry-act-1967-and-new-powers#:~:text=Natural%20Resources%20Wales%20\(NRW\)%20regulates,licence%20on%20the%20NRW%20website](https://www.gov.wales/tree-felling-forestry-act-1967-and-new-powers#:~:text=Natural%20Resources%20Wales%20(NRW)%20regulates,licence%20on%20the%20NRW%20website) for an overview of tree felling regulation in Wales.

84 Nature at Risk Ceredigion, written evidence, p.4.

85 Cloddiau <https://www.gwynedd.llyw.cymru/en/Council/Documents---Council/Strategies-and-policies/Environment-and-planning/Biodiversity/Habitat-Action-Plans/Cloddiau-HAP.pdf>

86 Nature at Risk Ceredigion, written evidence, p.4. Schedule I Part 2 7(4)(a) includes 'a bank or wall which supports the hedgerow along at least half its length' in the list of associated features

87 *The Hedgerow Regulations 1997 A Guide to the Law and Good Practice*, para. 3.5.

protects the growing part of the hedgerow rather than the whole structure including ancient trees forming part of the hedge, ditches and banks.⁸⁸ Coed Cadw would like to see a modification to the Regulations to include a definition of a hedgerow that clearly distinguishes between the ‘hedge’- the growing shrub component, and the hedgerow – all those other living and structural components that make up the field boundary.⁸⁹

4.2.3 Urban and Other Hedgerows

There was some support, mainly from local authorities,⁹⁰ for extending the scope of the Regulations to cover non-agricultural hedgerows although one local authority did not support this, on the basis that it was not clear who would be administering it.⁹¹

It was noted that while the Regulations expressly exclude garden hedgerows they are silent on other areas of land including parkland, cemeteries and industrial estates and any privately owned land that is not within the curtilage of a dwelling. Any of these might have hedgerow boundaries.⁹²

One submission noted that there is no distinction between rural and urban hedgerows in the provisions of section 97 of the Environment Act and, therefore, no reason why urban hedgerows have to be excluded.⁹³ If the purpose of the Regulations were to be changed to ensure biodiverse hedgerows are protected then there is an argument for expanding the remit to reduce the likelihood of garden hedgerows being lost, particularly where they adjoin agricultural land.⁹⁴ If, however, the purpose of the Regulations is restricted to protecting important hedgerows in the countryside, it makes sense to continue to exclude parks and gardens.⁹⁵

Even those in favour of a change in remit expressed concerns over the implications for resources. With any increase in the remit of the Regulations, there would be new demands placed on local au-

88 Jerry Langford as recorded in the note of the Royal Welsh Stakeholder Event Panel Discussion, p. 2. A similar view is expressed in written evidence from Coed Cadw at para. 2.3.

89 Coed Cadw written evidence at para. 5.4.1.

90 As expressed in written evidence from BBNPA p.4, PCNPA p.4 and NPTCp.2.

91 Swansea Council written evidence.

92 PCNPA written evidence para 3g; Farmers' Union Wales (FUW) written evidence p. 4.

93 BBNPA written evidence para. 3a.

94 BBNPA written evidence para. 3b; PCNPA paragraph 3b;

95 ALGE Wales written evidence p. 3; NPTC p. 3.

thorities and additional resources would be required⁹⁶ not least because of the potential requirement for further research into threats to, and values of, urban hedgerows.⁹⁷

If the scope of the Regulations were to be expanded, it would be important to recognise that not all urban hedgerows should necessarily be covered by the Regulations. It was felt that the most important urban hedgerows were those that formed a boundary with agricultural land. It was argued that these types of hedgerow can often be essential features for the transition from ‘peri-urban’ into rural and should be protected. Their loss followed by replacement with a garden-style fence would be detrimental to the character and appearance of settlement boundaries.⁹⁸ Requiring local authorities to have to apply the Regulations on garden hedgerows between adjoining properties, however, was not favoured. Although such hedgerows may have significant benefits to urban wildlife, there was a potential for creating additional and unnecessary civil disputes.⁹⁹ It was suggested that this type of hedgerow would be exempt as they are unlikely to be of public interest.¹⁰⁰

It was claimed that there are far fewer obligations to protect existing hedgerows for developments such as roads and housing and fewer, if any, consequences for removing them.¹⁰¹ It was suggested that threats of removal and wholesale loss may now be more frequent from development than from farming activity. In particular, roadside development often results in the removal of hedgerows on the road frontage, some of which may be ancient.¹⁰²

4.2.4 Definition of “Important” Hedgerow

Several submissions commented on the problems associated with the definition of ‘important’ under the Wildlife and Landscape heading. In relation to wildlife, comments fell into two broad categories: concerns over the wording of the definition and the difficulties encountered when trying to use it, and concerns over its failure to take account of current thinking on the role of hedgerows as priority habitats.

96 PCNPA written evidence para. 3h

97 BBNPA written evidence para. 3c.

98 PCNPA written evidence para. 3d-f.

99 BBNPA written evidence para. 3d.

100 PCNPA written evidence para. 3f.

101 FUW written evidence p. 4.

102 Coed Cadw written evidence para. 3.2-3.3.

4.2.5 Hedgerow Regulations Schedules

The following issues about the wording in the Schedules were raised:

- complexity of criteria;
- 30 year rule;
- measuring across 30 metres;
- lists of woodland and woody species;
- source material; and
- field surveys.

The definition of an ‘important’ hedgerow is thought to be over complicated.¹⁰³ It is based on a combination of the age of the hedgerow and the number of species contained within it. At the Royal Welsh Stakeholder event it was considered that how old a hedgerow is should be taken into account in determining its ‘importance’ and that the protection of ancient hedgerows should be prioritised based on biodiversity, as well as historical and cultural value.¹⁰⁴ The age limit of 30 years was, however, challenged. While this may make sense on archaeological and historical grounds, it is not necessarily a good measure of biodiversity value. In particular, it was felt that by excluding younger hedgerows the opportunity of protecting future mature hedgerows was missed.¹⁰⁵

The criterion relating to the presence of listed species was heavily criticised first for being based on out of date, often unobtainable information¹⁰⁶ and second for relying on information immediately preceding 24 March 1977, the ‘relevant date’ given in the Regulations.¹⁰⁷ Records from after that date cannot be considered and the Regulations expressly exclude the possibility of taking account of any subsequent revisions, supplements or modifications.¹⁰⁸

¹⁰³ NRW written evidence para 2.

¹⁰⁴ Jerry Langford as recorded in the note of the Royal Welsh Stakeholder Event Panel Discussion, pp.2-3.

¹⁰⁵ WTW written evidence para 4.

¹⁰⁶ NRW recommends that these references be removed or updated. NRW written evidence para 1.

¹⁰⁷ NRW recommend that, as a minimum amendment, the term ‘relevant date’ should be removed from the Regulations. NRW written evidence para 1.

¹⁰⁸ The Hedgerow Regulations Part I. NRW were of the opinion that local authorities tend to ignore this wording and consider later survey information which could, therefore, lead to regulation enforcement being challenged on technical grounds. NRW written evidence page 3.

There were also concerns over the focus on species ‘contained’ within a hedgerow. Hedgerows can have important impacts on species that do not ‘inhabit’ them. For example, they can provide corridors for foraging or echo-sounding pathways for bats.¹⁰⁹

The complex formulae for determining importance on the basis of the number of woody species in a given stretch was also challenged. Relatively young hedgerows, even if more than 30 years old might still fail this test despite having the potential to continue to develop with time.¹¹⁰ The criterion requires the presence of a given number of woody species in 30 metre stretches of hedgerow. There were more fundamental concerns over the basis for the 30 metre assessment. This was assumed to have been based on Hooper’s Rule of Hedgerow Age which states that the age can be calculated using a formula one term of which is the number of species in a 30 yard stretch.¹¹¹ It was suggested that the number should be assessed over the entire hedgerow given that over the full length there may be more species than are observed in any one 30 metre section given that the natural establishment of species is unlikely to be evenly distributed along the entire length.¹¹² The formula might work for determining the age of a hedgerow but this is not the question being asked.¹¹³

Issues were also raised over the plants included in the lists of woody species and woodland plants. One submission claimed that there were arbitrary standards about what constitutes a hedgerow with some species of woody stemmed plants included and others not.¹¹⁴ Woody species are defined in the Regulations as the species and sub-species listed in Schedule 3 and any hybrid but not any cultivar.¹¹⁵ This begs the question as to whether different sub-species are to be counted separately. As there is nothing in the Regulations to indicate whether Latin names or common names have priority, confusion may also arise when future research leads to nomenclature changes such as the splitting of species.¹¹⁶ For the most part, Schedule 3 lists species but there are some instances where a plant is identified by genus suggesting that all species within the genus will be included. The Guide, however, states that different varieties of these groups only count as a single woody species. It is assumed that this is intended to refer to all species and hybrids but this is not the scientific meaning

¹⁰⁹ UKELA written evidence at para 12.

¹¹⁰ WTW written evidence para 4.

¹¹¹ PCNPA written evidence para 1.m.

¹¹² BBNPA written evidence para 1.j.

¹¹³ PCNPA written evidence para 1.n.

¹¹⁴ Original submission to IEPAW received 4.11.21, name of submitter redacted. See Appendix 1.

¹¹⁵ The Hedgerow Regulations Part I.

¹¹⁶ Thomas B A (2000) ‘Do the Hedgerow Regulations conserve the biodiversity of British hedgerows?’ *International Journal of Biosciences and the Law* 2, 67-90 at page 76 cited in written evidence from B A Thomas and UKELA.

of the term ‘variety’ and, in any event, no explanation is given as to why they should not each be counted separately.¹¹⁷ Furthermore, the list of woody species omits a number of common hedgerow species such as horse chestnut, sweet chestnut, sycamore and barberry presumably because these are not native species. Yet these were brought into the country hundreds of years ago. Sycamore, for example, was introduced in 1250, long before the majority of hedges were laid.¹¹⁸

The list of woodland species in Schedule 2 has also been criticised. There are only 57 species, which is a small proportion of the plants found growing through or under woody plants in hedgerows. Also, taxonomic changes since 1997 have led to some named species being split into two or more new species.¹¹⁹

A further problem identified was the failure to take account of local genetic differences, which means that the character of local features is not protected. The need to protect this genetic diversity was considered to be increasingly important. For example, it was feared that poor management is leading to the permanent loss of the local Welsh provenances of hawthorn, hazel, wych elm and elder at a time when genetic resources need to be conserved in the face of climate change and increasing pests and diseases.¹²⁰

The importance of ancient trees within hedgerows was also ignored and it was argued that the Regulations should be amended so that ancient trees and old tree trunks are specifically protected from cutting.¹²¹

The reliance on the presence of specified species also presents practical problems of identification. Assessment of importance necessitates a botanical field survey which requires skills that are not always available to a local authority. The problem is exacerbated if the survey has to be undertaken in winter as greater skill is needed to identify trees without leaves.¹²²

4.2.6 Ecological Value of Hedgerows

117 Thomas op cit at p. 77.

118 Thomas op cit at p. 77.

119 Thomas op cit at p. 78.

120 WTW written evidence, p. 2

121 Coed Cadw, para. 3.12.

122 NRW written evidence p. 3.

Several respondents commented on the inadequacies of the Regulations for the protection of biodiversity because hedges under 30 years have no protection and hedges can be coppiced or flailed.¹²³ It was noted in evidence that the criteria for importance do not align with the definition of principal importance under section 7 of the Environment (Wales) Act 2016. According to the review of the Regulations published in 1998,¹²⁴ only 20 per cent of hedgerows were classified as important which leaves a high proportion of habitat of principal importance unprotected by the Regulations.¹²⁵ It was considered that the criteria do not fully reflect the ecological function of hedgerow habitats and the nature emergency we have in Wales.¹²⁶ It was suggested that, rather than providing protection only to a few hedgerows recognised as important, there was a need for a regulatory system that begins with the presumption that any hedge is of ecological value.¹²⁷

4.2.7 Landscape Value of Hedgerows

Several submissions commented on the failure of the Regulations to consider the value of hedgerows in terms of landscape and cultural heritage.¹²⁸ Hedgerows were described as a key feature within the Welsh landscape. Established and maintained by farmers over many generations, hedgerows and the traditional skills required for their management form an important part of the heritage and culture of rural Wales¹²⁹ and they help define a sense of place and history; once gone they cannot be easily replaced.¹³⁰ They can be of significant cultural interest at the local level because of variations in the plants grown in hedgerows¹³¹ and in associated features such as hedge banks.¹³² It was noted that there are parallels between ‘important’ hedgerows as defined in the Regulations and ancient woodland and ancient trees. All are particularly valuable as historic cultural and landscape features, as well as for wildlife.¹³³

¹²³ Swansea Council written evidence p. 1.

¹²⁴ DETR (1998) *Review of The Hedgerow Regulations 1997* cited in written evidence from BBNPA at para. 1.d. BBNPA went on to say that most in-field hedgerows rarely have the required number of woody species and associated features to qualify as important, para. 1.h.

¹²⁵ NRW written evidence p. 4.

¹²⁶ NPTC written evidence p.1; ALGE Wales written evidence p. 1; PCNPA written evidence para 1. e.-f; BBNPA written evidence para. 1.e

¹²⁷ UKELA written evidence para. 4.

¹²⁸ Original submission to IEPAW received 4.11.21, name of submitter redacted; Thomas at note 116 p. 69.

¹²⁹ National Farmers Union Cymru (NFU Cymru) written evidence p.1; a view shared in written evidence from Victoria Jenkins.

¹³⁰ Coed Cadw written evidence para. 1.7.

¹³¹ For example, Ceredigion laburnum hedgerows.

¹³² For example, Pembrokeshire hedgebanks.

¹³³ Coed Cadw written evidence.

Despite the inclusion of ‘landscape’ in the Wildlife and Landscape heading, the Regulations contain no criteria for the assessment of landscape value. It was suggested that the definition of hedgerows to be protected should be amended to take account of this omission.¹³⁴

4.2.8 Definition of Proper Management

As noted in several submissions of evidence, the Regulations were not designed to influence how hedgerows are managed.¹³⁵ The removal of a hedgerow for the proper management of the hedgerow is permitted, however, without the need for a Hedgerow Removal Notice. ‘Proper management’ is not defined. In the case of *Conwy County Borough Council v Lloyd*,¹³⁶ Lloyd had given the Conwy County Borough Council notice of his intention to remove a hedgerow as required under the Regulations. Lloyd removed the hedgerow before the end of 42-day period, but successfully claimed that his actions were permitted under the ‘proper management’ exception. Evidence presented to IEPAW questioned how the complete removal of hedgerow could ever amount to proper management and it was argued that this exception should be removed.¹³⁷

4.3 Enforcement of the Regulations

4.3.1 Awareness and Understanding of the Regulations

The evidence presented a mix of different views on levels of awareness and understanding of the Regulations. Some felt that landowners are often unaware of the Regulations¹³⁸ although it was also stated that most landowners are aware of them¹³⁹ and that they are well understood by the farming community.¹⁴⁰ In some areas, the public seem to be well informed and it is often the public that report suspected breaches.¹⁴¹ Even here, however, the understanding and interpretation of the Regulations is sometimes incorrect. It was suggested that raising awareness among relevant landowners, devel-

¹³⁴ NRW written evidence p. 4.

¹³⁵ NPTC written evidence p.2; BBNPA written evidence, para. 2f; PCNPA written evidence para. 1f.

¹³⁶ *R (on the application of Conwy County Borough Council) v Lloyd* [2003] EWHC 264 (Admin).

¹³⁷ NRW written evidence p. 3.

¹³⁸ Neath Port Talbot Council, written evidence para. 2; ALGE Wales, written evidence p. 2.

¹³⁹ BBNPA written evidence para. 1k

¹⁴⁰ NFU written evidence, p. 3

¹⁴¹ BBNPA written evidence para. 2a; ALGE Wales, written evidence p. 2.

opers and planners, possibly at an all Wales level, would be useful.¹⁴² One particular concern was that sometimes people are under the misapprehension that any length of hedgerow of less than 20 metre can be removed without serving notice.¹⁴³

There was a similar mix of views about the level of understanding within local authorities. One local authority stated that the Regulations are well understood by its planning department¹⁴⁴ but it was also alleged that local authorities may not fully understand the Regulations, causing confusion for landowners.¹⁴⁵ A Campaign to Protect Rural England (CPRE) survey of English authorities found inconsistencies between local authorities in the proportion of hedgerows protected, varying between 9 and 97 per cent, suggesting that the Regulations are being applied inconsistently in England. In the same survey, 63 per cent of local authorities in England found the Regulation difficult to use.¹⁴⁶ We do not know whether we can draw similar parallels to the findings of that survey in Wales.

4.3.2 Dealing with Breaches of Regulations

Increased and prompt enforcement action was considered necessary.¹⁴⁷ It was alleged that local authorities do not have sufficient resources to apply the Regulations.¹⁴⁸ Furthermore, the law is being applied retrospectively, when the damage to wildlife and biodiversity has already been done.¹⁴⁹ Evidence from local authorities referred to the need for sufficient resources to undertake enforcement¹⁵⁰ and also highlighted the financial risks involved. Replanting is generally seen as the best outcome for enforcement action. A Hedgerow Replacement Notice can be issued whether or not the local authority institutes proceedings for breach of the Regulations but prosecution is not usually pursued because it could result in minimal fines that are not a deterrent.¹⁵¹ It was alleged that often large companies will risk paying a fine in order to put themselves above the law.¹⁵² Where a Hedgerow

142 Nature at Risk Ceredigion, written evidence, p.4; BBNPA written evidence para. 2a; ALGE Wales, written evidence p. 2.

143 BBNPA written evidence para. 2b.

144 Swansea Council written evidence.

145 Original submission to IEPAW received 4.11.21, name of submitter redacted.

146 *England's Hedgerows: Don't Cut Them Out* https://www.cpre.org.uk/wp-content/uploads/2019/11/Englands_Hedgerows_dont_cut_them_out_1.pdf Cited in written evidence from NRW, p. 3

147 Nature at Risk Ceredigion, written evidence, p. 4.

148 Original submission to IEPAW received 4.11.21, name of submitter redacted.

149 Nature at Risk Ceredigion, written evidence, p. 2.

150 BBNPA written evidence at para 2e.

151 BBNPA written evidence at para 2f.

152 Jerry Langford as recorded in the note of the Royal Welsh Stakeholder Event Panel Discussion, p.2

Replacement Notice has been issued significant staff time will be needed to pursue this and check that replanting has been undertaken. If a landowner does not comply with the notice, there does not appear to be a further penalty option for the local authority to pursue as the local authority cannot prosecute for non-compliance.¹⁵³ The local authority could then consider prosecution for the original breach, at significant costs with no guarantee of being able to reclaim them in full. The alternative is for the local authority to carry out the planting itself but this also has associated risks and costs above what might be reclaimed.¹⁵⁴ Coed Cadw suggested that local authorities should have the resources to support replacement planting in addition to using their powers to require replanting of hedges that have been illegally removed.¹⁵⁵

4.3.4 The Guide to the Law and Good Practice

The Hedgerow Regulations 1997: A Guide to the Law and Good Practice was issued in 1997 and is now out of date. It was suggested that new guidance should be issued if substantial changes are made to the Regulations but, even if they remain largely unchanged, an updated version would be welcome.¹⁵⁶ Raised awareness of the existence of the Guide was also proposed¹⁵⁷ and it is suggested that perhaps a guide could be extended to include matters of hedgerow management as an easy inclusive reference point.

4.4 Proposed Changes to Regulations and Guidance

The evidence included the following proposals for changes to the Regulations and/or Guidance.

- The penalties for breach of the Regulations were not considered to be severe enough to act as a deterrent and it was suggested that these should be increased.¹⁵⁸
- Guidance on the time for dealing with breaches would be helpful as there does not appear to be a time limit imposed on local authorities to act where unauthorised works have been brought to their attention.¹⁵⁹
- Where replanting takes place on a site where a hedge bank was also present, clarity is needed on the requirement to reinstate the hedge bank as failure to do this would have a

¹⁵³ NPTC written evidence, p. 2.

¹⁵⁴ BBNPA written evidence at para 2e.

¹⁵⁵ Coed Cadw written evidence, para 5.6.

¹⁵⁶ BBNPA written evidence at para 2b; NRW written evidence at p. 4.

¹⁵⁷ Nature at Risk Ceredigion, written evidence, p.4.

¹⁵⁸ Nature at Risk Ceredigion, written evidence, p. 2.

¹⁵⁹ PCNPA written evidence para. 2f.

detrimental impact on the character and appearance of the area. The guidance appears to consider the hedge bank as protected but it is not mentioned in the Regulations themselves.¹⁶⁰

- The exemption from the need to send in a Hedgerow Removal Notice where the removal is required for the proper management of the hedgerow should be removed as there is no definition of ‘proper management’ and the exemption has been used to justify the complete removal of a hedgerow.¹⁶¹
- The guide to the Regulations is outdated and should be revised.¹⁶²
- The definition of hedgerows to be protected should be reviewed and consideration given to the wider context of hedgerows, hedgerow trees and the ecosystem services they provide, including for biodiversity, carbon sequestration and landscape.
- The definitions used in the Regulations should be modified so that ancient trees and old hedgerow stools are specifically protected from cutting or removal.¹⁶³

4.5 Hedgerow Management

The biodiversity value of a hedgerow is largely dependent on how it is looked after. It was recognised that hedges must be regularly managed either by layering or coppicing because otherwise shrubs grow larger and taller allowing gaps to appear. As a result, the herbaceous flora is less protected from exposure and therefore declines leading to a loss of fauna reliant upon it. Ultimately this could lead to a hedgerow no longer containing the diversity of species needed for it to be identified as ‘important’.¹⁶⁴

4.5.1 Management Techniques

Neglect is not the only problem, however and several respondents commented on the damage caused to the ecological interest of hedgerows by poor management, notably inappropriate coppicing. Respondents from the farming community referred to the advantages of coppicing, noting that it can lead to more dense and fuller hedges.¹⁶⁵ While coppicing of overgrown hedgerows can appear severe, to the extent that it is sometimes misinterpreted as hedgerow removal, the resultant

¹⁶⁰ PCNPA written evidence para. 2e.

¹⁶¹ NRW written evidence p. 4.

¹⁶² NRW written evidence p. 5.

¹⁶³ Coed Cadw, para. 3.12.

¹⁶⁴ Barry Thomas, written evidence.

¹⁶⁵ FUW written evidence, p. 4.

regrowth can help to bring overgrown/undermanaged hedgerows into a favourable management regime for the future.¹⁶⁶ Other respondents, however, were less enthusiastic. One claimed that the modern practice of using mechanical flail cutters once every one to three years has significantly reduced the wildlife potential because some hedgerow species take two to three years to flower so they cannot provide the nectar or berries for insects and birds.¹⁶⁷ Another referred to instances of severe cutting back of hedgerows, sometimes with tree shears, which has a significant negative impact, reducing connectivity between habitats.¹⁶⁸ Hedgerow coppicing as a management technique for the production of biomass fuel was also raised as a particular concern.¹⁶⁹ It was claimed that the increasing demand for woodchip for biomass and the consequent use by contractors of larger more efficient machinery such as tree shears and industrial chippers has destroyed many thousands of kilometres of ancient hedgerow habitat across Wales over the last 20 years.¹⁷⁰

Despite these problems, coppicing is the main means of hedgerow management. One respondent said that best practice should no longer support coppicing of old hedgerows in particular, since those hedgerows still intact across Wales (ancient hawthorn, hazel or rowan) will not be able to recover from the impact of coppicing.¹⁷¹ It was noted that most official guidance on coppicing does not explain how it should be done in a conservation-friendly way.¹⁷² More explicit protection for the 'old growth' components of ancient hedgerows, including the old hedgerow stools and any ancient trees present, was called for and it was suggested that the Regulations should be amended so that ancient trees and old stools are specifically protected from cutting.¹⁷³ In similar vein, it was noted that the 1998 report of the Hedgerow Review Group had suggested that a general provision might be necessary to prevent deliberate and systematic removal of one or more species through too frequent coppicing.¹⁷⁴

Management by laying has been driven out by the high cost relative to coppicing.¹⁷⁵ One respon-

166 NFU written evidence, p. 3.

167 WTW written evidence, para. 3; Rhianne Jones as recorded in the note of the Royal Welsh Stakeholder Event Panel Discussion, p. 3.

168 BBNPA written evidence, para. 1f.

169 PCNPA written evidence, para. 1g which cites a number of publications referring to obtaining wood fuel from hedgerows.

170 WTW written evidence, para. 5.

171 WTW written evidence, para. 5.

172 Coed Cadw written evidence, para. 3.8.

173 Coed Cadw written evidence, para. 2.4.

174 Cited in written evidence from Barry Thomas.

175 WTW written evidence, para. 3.

dent explained that hedge laying is a highly specialised, technical skill with distinct styles specific to geographic locations evolving over many generations, the cost of which is nowhere near covered by grant schemes.¹⁷⁶ It was suggested, however, that these traditional hedge laying techniques may not be the best approach in all instances. Traditional laying can protect existing hedgerows to a limited extent, but at least half of the woody material is removed in the process damaging the shelter and food being provided by the hedgerow. It is also very expensive and time consuming so it is unlikely to be regarded as a practical management option for most hedgerows.¹⁷⁷ Instead, a wildlife hedge laying technique, which is quicker and more beneficial to wildlife, was advocated. This has been demonstrated to be a more sustainable, less expensive technique in hedgerows managed by North Wales Wildlife Trust. It involves cutting stems for laying only part of the way through as low to the ground as possible. The hedge is gently pushed over in sections and compressed to lock it together and ensure stability in the wind. The hedge is then fenced each side at least 1 metre from the base of the hedge.¹⁷⁸ It was also stated, however, that double fencing, which was claimed to be a default in hedgerow management, contributes to the homogeneity and loss of diversity of hedgerows¹⁷⁹ although it protects the regrowth of coppiced hedges from grazing livestock and is necessary for grant funding.¹⁸⁰

4.5.2 Grant Funded Removal

There were several responses to the question of whether grant funding is encouraging the removal of overgrown hedges. One of the original submissions provided examples of what were thought to be unintended consequences of an otherwise lawful scheme where grant funding is available to remove overgrown hedges and replace them with new ones. In one instance, mature trees were felled at ground level and the stumps interplanted with whips. In another instance, an intermittent straggly hedge including several mature trees was removed to be fenced and replanted.¹⁸¹ One National Park Authority respondent stated that they had witnessed significant loss of both hedgerows and hedgerow trees in some parts of the Park which was apparently incentivised by the Glastir Small Grants Scheme.¹⁸² It was agreed that the concerns probably did relate to this scheme, which had provided funding to fill gaps in and coppice existing hedgerows.¹⁸³ The suggestion that this amounted to farmers using grant funding to ‘rip out’ hedgerows, however, was held to be a widespread

¹⁷⁶ NFU Cymru, written evidence, p. 3.

¹⁷⁷ WTW written evidence, para. 7.

¹⁷⁸ WTW written evidence, paras 6, 8-9.

¹⁷⁹ Arfon Williams as recorded in the note of the Royal Welsh Stakeholder Event Panel Discussion, p. 2.

¹⁸⁰ NFU written evidence, p. 3.

¹⁸¹ Original submission to IEPAW received 17-12-21, name of submitter redacted. See Annex 1.

¹⁸² BBNPA written evidence at para. 4.

¹⁸³ FUW written evidence, p.4.

misunderstanding amongst the public.¹⁸⁴ The removal of hedgerows through road and housing developments was referred to in comparison. It was claimed that there were far fewer obligations to protect existing hedgerows or consequences for removing them,¹⁸⁵ and concerns were raised about the level of protection given to hedgerows in planning decisions.¹⁸⁶

4.6 Funding

Several respondents commented on the cost of hedgerow maintenance. For example, the high cost associated with traditional hedgerow management such as laying is thought to have led to the increased use of coppicing.¹⁸⁷ It was stated that if the Welsh Government wishes to encourage the practice of hedge laying instead of coppicing, it needs to address the cost issue and ensure fair reward.¹⁸⁸ At present, it was claimed that capital grant support for hedgerow management is insufficient and that grant schemes currently do not offer fair compensation to farmers undertaking the practice of hedge-laying or reflect the environmental value and outcome it provides.¹⁸⁹

There was also a concern over the implementation of Glastir small grants used for planting new hedgerows in that many hedgerows are being replanted with stock imported from continental Europe which is less well adapted to local growing conditions than native stock. Instead, the focus of funding schemes should be to conserve mature hedges by adopting more sustainable management practices.¹⁹⁰

Ensuring hedgerows are an important consideration in the new SFS was viewed as vitally important.¹⁹¹ There was support for the original suggestion that hedgerows should be included in the 10 per cent of farmland managed for nature under the proposed SFS¹⁹² instead of farmers having to

184 NFU written evidence, p. 3.

185 FUW written evidence, p. 4.

186 UKELA written evidence, section 3.1.

187 WTW, written evidence para. 7.

188 NFU written evidence, p. 3.

189 FUW written evidence, p. 5.

190 WTW written evidence, para. 6; Thomas (2000) 'Do the Hedgerow Regulations conserve the biodiversity of British hedgerows?' *International Journal of Biosciences and the Law* 2, 67-90 at page 68 cited in written evidence from B A Thomas and UKELA.

191 UKELA written evidence, para. 21.

192 Jerry Langford as recorded in the note of the Royal Welsh Stakeholder Event Panel Discussion, Submission, p.2; FUW written evidence, p.5; NFU, written evidence, p. 3; Coed Cadw, written evidence, para. 5.22. Details of the original proposals for the SFS can be found at <https://www.gov.wales/sustainable-farming-scheme-guide>

manage new and existing hedgerows in line with the ‘hedgerow management cycle’ in order to qualify for the baseline payment as was proposed. A clearer explanation of what is meant by the ‘hedgerow management cycle’ was also sought.¹⁹³ As noted above, the 10 per cent requirement has been dropped and there are new Universal Actions relating to hedgerows in the updated SFS. These changes were made during the writing of this report and we have received no evidence in respect of them. We note, however, the view expressed in response to the Call for Evidence that currently hedgerows can be perceived as a burden on owners and managers who currently bear the cost of their maintenance.¹⁹⁴

Funding for training was also considered to be important and should be factored into future farming schemes¹⁹⁵ to avoid encouraging a single approach (double fencing) to hedgerow management and the loss of traditional skills.¹⁹⁶ It was suggested that fencing contractors and farmers should be trained and supported to adopt wildlife hedge laying as a preferred method of management, which will allow hedges to regenerate and maintain their ecological function in providing shelter and food to wildlife.¹⁹⁷

FUW made a number of recommendations relating to funding:

- incorporate hedgerows into the 10 per cent tree cover requirement as part of SFS Universal Actions;
- include a payment for mapping out current hedgerows in order to build up a more accurate inventory;
- improve capital grant support for hedgerow management;
- support and progress the Hedgerow Carbon Code; and
- provide additional payments for having a proportion of hedges fruiting and flowering each year to reflect the biodiversity value of such management.

193 FUW written evidence, pp. 4-5.

194 Coed Cadw written evidence, para. 5.23.

195 Arfon Williams as recorded in the note of the Royal Welsh Stakeholder Event Panel Discussion, p. 4; WTW written evidence para. 9

196 Geraint Davies as recorded in the note of the Royal Welsh Stakeholder Event Panel Discussion, p. 4.

197 WTW written evidence , para. 9

4.7 Netting

IEPAW received two related submissions about netting. Evidence from the farming community explained that under cross compliance rules, trees cannot generally be cut or trimmed during the breeding season, i.e. from 1st March to 31st August.¹⁹⁸ In exceptional circumstances, hedge restoration, i.e. laying or coppicing, is permitted up to 1 April as long as written permission is obtained from NRW in advance.¹⁹⁹

The issues raised in the submissions, however, were prompted because of concerns over the use of netting in relation to development subject to planning laws.²⁰⁰ IEPAW is not able to look into the details of individual cases but the submissions raised points of general interest which led to the inclusion of a question on the impact of the use of bird-deterrent netting on hedgerows in the Call for Evidence.

Netting was described as a cynical ploy by developers to stop birds nesting²⁰¹ and thereby avoiding the risk of committing the offence under the WCA of taking, damaging or destroying an active nest.²⁰² In June 2019, the then Minister for Housing and Local Government had written to all heads of planning stating that netting 'should only be considered as a last resort measure, after a full consideration of other alternatives and under exceptional circumstances only following the grant of planning permission'.²⁰³ In her letter she referred to guidance on the use of netting provided by the Chartered Institute of Ecology and Environmental Managers (CIEEM).²⁰⁴ This stated that:

- planning permission must have been granted in advance;
- netting is installed with advice from an ecologist;
- netting is used in such a way that it will not catch and hold birds and other wildlife;
- precautions must be taken to ensure no wildlife is trapped at the time of installation; and

198 FUW written evidence, p. 2; NFU written evidence, p. 2

199 NFU written evidence, p. 2

200 Original submissions to IEPAW received 20-12-21, name of submitter redacted. See Annex 1.

201 Appendix 4 of Original submission to IEPAW received 20-12-21, name of submitter redacted. See Appendix 1.

202 NRW written evidence, p. 5.

203 Cited in Appendix 1 of Original submission to IEPAW received 20-12-21. See Appendix 1.

204 CIEEM at <https://cieem.net/cieem-and-rspb-advise-against-netting-on-hedges-and-trees> included as Appendix 2 to the original submission to IEPAW received 20-12-21. See Appendix 1.

- the netting should be checked three times a day.

Evidence from respondents was strongly in support of netting only being used when there is a genuine need to protect birds from harm during development and where planning permission has already been granted (which was not the case in the example raised in the submission). It should be kept to a minimum.²⁰⁵ It was also felt that netting is ineffective, especially where it is not maintained, and that it is dangerous to wildlife (and pets) in general, causing trapped animals to suffer injuries often resulting in death.²⁰⁶ Also, if netting is not maintained, it can become a safety hazard when it is replaced during bird-nesting season. Furthermore, netting is made from single use nylon plastic which, when it degrades, can release micro-plastics into the environment.²⁰⁷

The need for netting at all was questioned. It was felt that appropriate timing of hedgerow works could be used to avoid wildlife impacts without resorting to netting and it was suggested that the use of netting in all settings should be discouraged or banned.²⁰⁸

4.8 Comments on other Legislation and Policy

One of the criticisms of the Hedgerow Regulations that was repeatedly raised in evidence was the fact that they do not properly relate to more recent legislation.

The most serious comment was that the criteria in the Regulations for identifying 'important' hedgerows do not reflect the status of hedgerows as a priority habitat²⁰⁹ as defined under section 7 of the Environment (Wales) Act and that there was a need for the two pieces of legislation to be brought in line with each other.

The relationship between section 7 and planning policy was also commented on. The inclusion of hedgerows in the list of priority habitats was regarded as essential in protecting hedgerows in Wales, as the section 7 listing feeds through into planning guidance to ensure that ancient hedges, trees

²⁰⁵ NRW written evidence, p. 5.

²⁰⁶ BBNPA written evidence, para. 5a. Similar views were expressed by PCNPA, NPTC and ALGE Wales.

²⁰⁷ Original submission to IEPAW received 20-12-21. See Appendix 1.

²⁰⁸ BBNPA written evidence, para. 5b. Similar views were expressed by PCNPA, NPTC and ALGE Wales.

²⁰⁹ BBNPA written evidence, para. 1e; PCNPA written evidence, para. 1f.

and woodland should not be damaged.²¹⁰ Closer consideration of the fate of hedgerows on development sites was called for²¹¹ and it was noted that Planning Policy Wales (PPW) does not specifically refer to the Hedgerow Regulations although it does note the importance of hedgerows and states that they should be protected. This is another example of where the Regulations have not been lined up with later policy.

The ability of local authorities to meet their obligations in relation to hedgerows may not be straightforward. It was suggested that given the extensive list of section 7 priority species and habitats, it may be difficult to ensure that hedgerows are not destroyed without further differentiation of the specific significance of hedgerows²¹². There was also a need for local authorities to have the resources to use their powers to require replanting of hedges that have been illegally removed. They should have additional resources to support replacement planting for hedgerows, regardless of their designation as ‘important’ under the Regulations.²¹³ It was noted, however, that the land use planning system applies only to ‘development’ which excludes many agricultural activities and can only prevent damage to hedgerows; it is not a system that can compel landowners to maintain and enhance the hedgerows on their land.²¹⁴

The Wellbeing of Future Generations (Wales) Act was referred to in the submissions relating to netting where it was claimed that proposals for the removal of valuable habitat such as hedgerows must consider impacts on future generations.²¹⁵

5. Conclusions and Recommendations

The Hedgerow Regulations 1977, which protect some hedgerows from illegal removal, predate devolution in Wales. The Regulations therefore do not align with legislation made in Wales subsequently, namely the Well-being of Future Generations (Wales) Act 2015, the Environment (Wales) Act 2016 or the Agriculture (Wales) Act 2023. In particular, they do not reflect the principle of sustainable management of natural resources, the sustainable development objectives, or the corresponding

210 Coed Cadw written evidence, para. 5.15.

211 Coed Cadw, written evidence, para. 3.4.

212 UKELA written evidence, para. 20.

213 Coed Cadw written evidence, para 5.6.

214 UKELA written evidence, para. 21.

215 Original submission to IEPAW received 20-12-21, p.2; name redacted. See Appendix 1.

sustainable land management objectives. We consider these omissions would be sufficient grounds to amend the Regulations even without the detailed calls for change that were highlighted in the evidence.

A number of the recommendations set out below assume reform or replacement of the Hedgerow Regulations. This is not the only option for reform, however, and several legal avenues may be available to provide better protection for hedgerows in Wales. These are as follows:

- amending parts of the existing Hedgerow Regulations as they apply to Wales;
- amending the Agriculture (Wales) Act to introduce specific protection for hedgerows in Wales, in line with the Sustainable Land Management principles;
- introducing a devolved Hedgerow Protection (Wales) Bill.

All avenues provide an opportunity to address the current shortcomings of the Hedgerow Regulations. Any legislative reform should as a minimum:

- introduce a presumption that all hedgerows are of, social, cultural, economic and ecological importance and hereby override the current narrow and overly convoluted criteria used to classify a hedgerow as ‘important’;
- strive to bring the protection of hedgerows in line with Wales’ post devolution ambitions by incorporating:
 - **the aspects of resilience under the Environment (Wales) Act;**
 - **the principles of Sustainable Development under the Wellbeing of Future Generations (Wales) Act;**
 - **the principles of Sustainable Land Management under the Agriculture (Wales) Act; and**
 - **any local terminology used for ‘hedgerows’;**
- be supported by updated practice guidance to provide practical advice to farmers, landowners and land managers, as well as local authorities, in implementing the legislation;
- be supported by an adequate funding structure that supports and enables the sustainable management of hedgerows: and
- be considered as part of the National Minimum Standards/Universal Actions and regulatory baseline to be introduced as part of the Sustainable Farming Scheme.

In respect of all of the recommendations set out below, local communities and stakeholders should be involved at every stage of development and implementation of amendments to the law on hedgerows in Wales to ensure that they reflect local needs and priorities.

5.1 Hedgerow Regulations

The Hedgerow Regulations were criticised in the evidence for their failure to provide a clear definition of ‘hedgerow’ and for the criteria used to identify ‘important’ hedgerows. This is not the first time criticisms of this sort have been aired. The new Labour Government, which came into power soon after the Regulations came into force, immediately instigated a review²¹⁶ to consider how they could be strengthened. Unfortunately, the review’s findings were not acted upon. The House of Commons Environment, Transport and Regional Affairs Committee held an inquiry into field boundaries in 1998. They concluded that ‘the Government must introduce primary legislation for the protection of field boundaries’.²¹⁷ Again, nothing happened. The need for reform voiced in 1998 is even stronger now.

We are of the view that a substantial reform is needed. The scope of protection should be extended to include a wider range of field boundaries in both agricultural and urban settings. There is also a fundamental need to amend or, preferably, remove the requirement for a hedgerow to be ‘important’.

5.2 The Importance of Hedgerows

Hedgerows in Wales are a principal habitat as defined in the Environment (Wales) Act 2016. Their importance is also recognised in planning policy in PPW12. The important biodiversity role played by hedgerows was recognised in all the evidence we received. The need for hedgerows to be protected in order to do this was a given. Unfortunately, the Hedgerow Regulations do not reflect this and instead limit protection to hedgerows deemed as important.

We agree with the views expressed in the evidence. The status of hedgerows as a priority habitat under the Environment (Wales) Act 2016 must be supported by appropriate measures to protect them including for future generations.

Recommendation 1: The Welsh Government should raise awareness of the importance of protecting hedgerows including by the provision of clear guidance for the public and local authorities on the requirements for the legal protection of hedgerows

216 DETR (1998) *The Review of the Hedgerow Regulations 1997*.

217 House of Commons Environment, Transport and Regional Affairs Committee *The Protection of Field Boundaries* 13th Report, Session 1997-98, 12 November 1998, HC 969-I, Summary of Conclusions and Recommendations.

5.3 Definition of Hedgerow and Criteria for Importance

The Hedgerow Regulations apply an unnecessarily complicated and outdated set of criteria for determining whether a hedgerow is important and do not even define what is meant by a 'hedgerow'. The following categories of hedgerow are excluded from the Regulations, either specifically or by default:

- hedgerows within the curtilage of, or marking a boundary of the curtilage, of a dwelling house;
- hedgerows on non-agricultural or forestry land;
- hedgerows of length less than 20 m unless connected to another hedgerow;
- hedgerows that have grown into a line of trees; and
- other types of field boundary such as hedge banks and cloddiau

The Regulations are silent on other, non-agricultural land. We agree with the view that hedgerows forming the boundary of public and non-domestic private property including industrial sites, cemeteries and parks should be covered by the Regulations.

We also agree with the view that, where a hedgerow forms the boundary between a dwelling house and agricultural land, it should be covered by the Regulations. While we also think that other garden hedgerows should be protected, we do not think that the Regulations are the best way of achieving this protection.

We do not agree that hedgerows of less than 20 metres in length are necessarily of no biodiversity interest. We agree, however, that hedgerows below a minimum length should probably be excluded from the definition of hedgerows but think this minimum length should be substantially less than 20 metres.

We agree that hedgerows that have grown into lines of trees are of value, not least because they may consist of mature trees. We conclude that they should be protected, either by bringing them within the remit of the Regulations or by other means.

Banks and walls are not specifically protected in the Regulations and are only included in the list of associated features. We agree that the failure to include them as features in their own right risks them being excluded from consideration.

We agree that the information used to determine whether a hedgerow is 'important' because of the

animals it supports is outdated as is the relevant date against which evidence of importance is to be judged. We also agree that the 30 years age requirement fails to recognise the fact that biodiversity value does not necessarily correlate with age. We also agree that the criteria for assessing importance on the basis of the plant communities present are complicated and not easy to work with and are based on incomplete lists of species.

We conclude that, if a definition of importance were to be retained it would have to be amended to

- remove the requirement for a hedgerow to be at least 30 years old;
- replace the criterion set out in Schedule 1, Part II paragraph 6 with a reference to species included in the list of principal species drawn up under the Environment (Wales) Act 2016 section 7; and
- remove all references to the 'relevant date'.

We do not see the need for any of these provisions, however, and would prefer them to be replaced with a new definition of hedgerows that reflects their status as priority habitats.

Recommendation 2: The Welsh Government in the next Senedd term should legislate to provide legal protection of hedgerows in Wales that reflects their status as priority habitats. Welsh ministers should consult on whether this could best be achieved through substantial revision of the Hedgerow Regulations or by new primary legislation.

Recommendation 3: Regardless of the form this new protection takes, it should provide:

- a legal definition of 'hedgerow' to include any hedgerow longer than a prescribed minimum (to be determined and subject to evidence being obtained as to what this minimum should be) and associated features such as hedge banks and cloddiau;
- a definition of 'other woody linear features'; and
- legal protection against removal for all hedgerows and other woody linear features unless authorised.

5.4 Removal of Hedgerows

No concerns were expressed in the evidence about the requirement for the owner to send a Hedgerow Removal Notice to the relevant local authority prior to removal. There were, however, concerns

over the process for deciding whether to issue a Hedgerow Retention Notice.

Under the Regulations, the local authority has to consult the community council on the proposal to remove a hedgerow but does not need to consult NRW. Before issuing a Hedgerow Retention Notice, it must first satisfy itself that the hedgerow is 'important'. It has 42 days in which to reach its decision. Unless an extension is agreed with the applicant, the hedgerow may be removed if the Hedgerow Retention Notice is not issued before the end of this period.

Recommendation 4: The Welsh Government in the next Senedd term should amend the provisions relating to authorised removal of a hedgerow to:

- make it a requirement for the local authority to consult NRW on the proposal to remove the hedgerow;
- place a duty on NRW to advise the local authority whether or not to issue a Hedgerow Retention Notice and to require the local authority to take account of this advice when making their decision;
- extend to NRW the same rights to enter land as are available to the local authority to inspect the hedgerow; and
- give power to the local authority to issue an extension notice in those situations where they are unable to assess the value of a hedgerow within the specified time period.

5.5 Permitted Work

In the case of *Conwy County Council v Lloyd* it was decided that removal of a hedge was permitted work if it was carried out as 'proper management'.

Recommendation 5: The Welsh Government in the next Senedd term should remove 'proper management of the hedgerow' from the list of permitted works.

5.6 Enforcement

We were told that requiring a hedgerow to be replaced was generally regarded as preferable to the option of prosecution. This is partly because of the financial and time resources involved in bringing action and partly because replacement does at least ensure that a hedgerow is recreated. However, the local authority has no powers to enforce a Hedgerow Replacement Notice. If the owner fails to comply the local authority does still have the option to prosecute for unlawful removal of a hedgerow and/or can carry out the replanting itself both of which are resource intensive.

Recommendation 6: The Welsh Government in the next Senedd term should amend the section on offences in the Regulations:

- so that a person found guilty under Regulation 7 is issued with a mandatory Hedgerow Replacement Notice in addition to a fine; and
- to make it an offence to fail to comply with a Hedgerow Replacement Notice.

We note that the Management of Hedgerows (England) Regulations 2024 introduce the option of civil sanctions where an offence has occurred. We believe that consideration should be given to whether civil sanctions could provide a greater deterrent than the threat of prosecution and might be less demanding of resources. It would be useful in time to assess the impact of the Management of Hedgerows (England) Regulations and any benefits of this approach that could be replicated in Wales.

Recommendation 7: The Welsh Government should consider whether the option of civil sanctions may be appropriate.

5.7 Hedgerow Management

A significant number of respondents identified land use change, and in particular unsustainable farming practices, as the main threat to hedgerows in Wales. In order to ensure the protection of hedgerows, funding schemes should be reviewed to ensure that these not only discourage unsustainable management practices but actively encourage more sustainable management practices. Our attention was drawn to a potential skills gap regarding more sustainable management practices and the need for funding to be available for any training and upskilling needed to encourage the use of more sustainable practices.

The benefits of hedgerow laying when compared with management by flailing and coppicing were commented on in evidence from the farming community, non-governmental organisations and public bodies. The relative costs were also commented on. We do not think it would be practical to require farmers to adopt traditional hedgerow management techniques. We do believe, however, that farmers should be encouraged to manage their hedgerows in a way that is beneficial to wildlife and that they should be financially rewarded for so doing. We think that the wildlife hedge laying technique advocated by Wildlife Trusts Wales (WTW) is worth investigating further as this could provide a more cost effective way to manage hedgerows.

Financial support for farmers in Wales is in the process of change. The cross compliance rules that apply under the Basic Payment Scheme will end with that scheme in 2025. In England, these rules

have been replicated into domestic law in the Management of Hedgerows (England) Regulations 2024. In Wales they are to be replaced by the SFS.

We received a number of suggestions relating to funding support for hedgerow work under the SFS. We think that all of these are worth considering and we are pleased to note the revised proposals found in the Universal Actions of the SFS outlined in November 2024. It is important that there is clear guidance provided to farmers as to what constitutes good hedgerow management for the purposes of environmental and biodiversity outcomes.

We also welcome the establishment of the Trees and Hedgerows Stakeholder Delivery Group²¹⁸ recently set up by the Welsh Government to support the delivery of targets for tree planting and hedgerow creation. The role of the Group encompasses some of the ideas covered by this report including promoting recognition of the multiple benefits of trees and hedges for farm businesses and the environment.

For similar reasons, we are strongly supportive of the Hedgerow Carbon Code as this would allow farmers to generate an income from their work on hedgerow management. We note that the Welsh Government envisages that the work of the Trees and Hedgerows Stakeholder Delivery Group will consider how to action recommendations of the Carbon Panel to support the delivery of more tree planting and hedgerow creation in Wales.

Recommendation 8: The Welsh Government should urgently, in this Senedd term as part of the changes to agricultural policy in Wales

- provide financial support including capital grants to farmers to manage hedgerows in a sustainable manner so as to maintain and enhance their biodiversity value;
- include hedgerows in the SFS as part of the habitat area requirements in Universal Action 7 for Habitat Management;
- support and progress the Hedgerow Carbon Code;
- give due consideration to the possibility of additional payments as part of the Optional level of the SFS for having a proportion of hedges fruiting and flowering each year; and

218 <https://www.gov.wales/sites/default/files/pdf-versions/2025/3/1/1742213758/trees-and-hedgerows-stakeholder-delivery-group-terms-reference.pdf>

- commission research and knowledge transfer events into the potential benefits of wildlife hedge laying techniques

5.8 Non-Agricultural Hedgerows

As noted above, we think that the Hedgerow Regulation procedures relating to removal of hedgerows should apply to non-agricultural public and private land, other than domestic properties. In most such cases, the removal is likely to relate to a proposed development for which planning permission would be required. The inclusion of a further requirement to issue a Hedgerow Removal Notice should ensure that hedgerows are not removed prior to making a planning application.

It was also suggested to us that garden hedgerows should be included in the remit of the Regulations. We agree that these are important contributors to urban green infrastructure. Their contribution to ecosystem services is not limited to their biodiversity values. They can improve air quality and help to reduce flooding. We conclude that these hedgerows need protection but we are not convinced that the Hedgerow Regulations are the best way to safeguard them not least because all landowners would have to be made aware of the need to send the local authority a Hedgerow Removal Notice. Also, a failure to comply with the Regulations could lead to a criminal conviction.

We consider that the best way to protect garden hedgerows is through the planning system. Domestic householders are already aware of the need to obtain planning permission for development so this approach would avoid the need for a completely new legal framework. The removal of a hedgerow could be brought within the regime for planning permission. In most situations, it could be added to the list of permitted development under the General Development Order. There would need to be criteria to identify hedgerows for which a planning application would be required.

Recommendation 9: The Welsh Government in the next Senedd term should consult on the best way of managing hedgerows on non-agricultural land.

5.9 Netting

We are of the view that netting is unnecessary. Its sole purpose is to prevent birds from nesting and thereby allow the hedgerow owner to remove the hedge in the breeding season without the risk of committing an offence under the Wildlife and Countryside Act 1981. We believe there should be a ban on netting for all hedgerows.

Recommendation 10: The Welsh Government should urgently act to ban the use of netting of all hedgerows.

One of the issues raised in the submissions we received relating to netting was the failure of the local authority to take action against the offence. This may be due in part, at least, to a lack of awareness of the issues which might be remedied through the provision of appropriate guidance.

Recommendation 11: In the interim, and until netting of hedgerows is banned, the Welsh Government should urgently issue guidance to local authorities explaining:

- the presumption against netting at any time;
- the legal restraints on the use of netting; and
- the need for vigilance to detect unlawful netting.

5.10 Guidance

The Hedgerows Regulations Guide to the Law and Good Practice was issued by DETR in 1997 to accompany the Regulations. It was subsequently adopted by Defra without change and has not been revisited since. Much of it is out of date and, if the Regulations are amended or replaced, there will be a need for new guidance. We consider that several issues raised in evidence could best be addressed in revised guidance.

Many hedgerows of landscape importance will be included in the Regulations because of their historic or archaeological interest but this category will not include hedgerows that have been established more recently but are nevertheless regarded as significant for the culture of the local community. We do not think it is possible to come up with a criterion for defining a hedgerow of cultural importance because this will depend on the local circumstances. This is not a reason for excluding these types of hedgerows from protection, however. We conclude that guidance to assist local authorities in deciding whether a hedgerow is of local cultural importance should be included in a new Guide.

In light of the evidence we received, we think that further guidance for local authorities is needed in respect of other aspects of hedgerow management. If hedgerow protection extends to gardens, local authorities will also need guidance on whether a proposed removal is covered by permitted development rights.

The mere existence of an updated Guide will not suffice, however, and it must be accompanied by

strategic communication in order to address the disparate levels of awareness of the Regulations across landowners, local authorities, and the general public.

Recommendation 12: The Welsh Government should:

- issue new or revised guidance on the Hedgerow Regulations;
- raise awareness of the existence of the guidance once published; and
- consider including in the guidance reference to best practice in hedgerow management.

Recommendation 13: The Welsh Government in this Senedd term should issue planning guidance to local authorities on the need to consider historical, archaeological, ecological and culture factors when considering an application for planning permission to remove a hedgerow.

5.11 Hedgerow Inventory

It is clear from the evidence received that there is some confusion over the length of hedgerow present in Wales. It was suggested to us that an inventory for ancient hedgerows based on identifying those hedges shown on Ordnance Survey maps that are still present would be relatively straightforward to compile. It was also suggested that farmers might be paid for mapping out current hedgerows under SFS in order to build up an inventory. We note that the UK Centre for Ecology and Hydrology (UKCEH) has updated its 2016 Woody Linear Features Framework²¹⁹ by producing Land Cover Plus: Hedgerows²²⁰ a national LIDAR programme which provides an accurate detailed data set for England incorporating data on tree and shrub height. We consider that a similar data base for Wales could be of great use in determining the importance of hedgerows.

Recommendation 14: The Welsh Government take action to fund and provide an inventory of Welsh hedgerows and we suggest that some of the collection of data may be undertaken via the SFS.

<https://www.gov.wales/sites/default/files/pdf-versions/2025/3/1/1742213758/trees-and-hedgerows-stakeholder-delivery-group-terms-reference.pdf>

²¹⁹ <https://www.ceh.ac.uk/data/woody-linear-features-framework>

²²⁰ <https://www.ceh.ac.uk/data/ukceh-land-cover-plus-hedgerows-2016-2021-england>

Appendix 1 Submissions

IEPAW009 redacted email dated 4-11-21

Dear Assessor,

I'm writing to you as I understand from previous colleagues that your new role is to consider areas of environmental law in Wales that are not functioning effectively. I have previously raised my concerns with a number of local authorities, Welsh Government and staff in Natural Resources Wales the environment regulator.

The hedgerow regulations 1997 are not fit for purpose as they do not meet their stated aim to protect hedgerows effectively in (England and) Wales. They allow a substantial amount of existing hedgerows to be removed or damaged, due to wording and complexity of the regulations. Local authorities seem to either not have sufficient resources to apply them or don't understand them fully and as a result there is confusion amongst landowners about the rules. They only apply in farmland and not parks or 'gardens' with the term garden ill-defined. They also have arbitrary standards about what constitutes a hedgerow with some species of woody stemmed plants included and others not.

My understanding is that local authorities and natural resources Wales have been asking for improvements for some time as have organisations in England. I hope you will have time to investigate this as it is an issue that has resulted in the loss and degradation of much of Wales' hedgerows and as I'm sure you will be aware they are important reserves for biodiversity and features of our rural landscape.

IEPAW016 Redacted email dated 17-12-21

Dear Dr Llewellyn Jones,

I am writing with reference to your role as Interim Environmental Protection Assessor.

I am part of a small group of people setting up a new voluntary group whose initial aim is to collect information on the very large number of incidents of environmental damage which occur routinely "below the radar". The premise is that while each of these incidents may be relatively small in scale, and many will be within the law, the large number of them add up to a significant loss of nature.

Is this something which would come within your remit? Would it be useful to you receive a dossier of such incidents by, say, January 2023?

One activity in particular that concerns me is, I believe, actually part of an agri-environment scheme.. It appears that grant funding is available to landowners / managers to remove "overgrown" hedges and replace them with new ones. The problem is that overgrown hedges can contain mature trees often many decades old. There have been two recent examples of this within

one mile of my home in north Ceredigion. In one something like seventy mature hawthorns were felled at ground level - many of these being seventy years old or older. The stumps were then interplanted with “whips” to create a new hedge. The loss of landscape and environmental value will take many years to recover. Not far away a straggly, intermittent hedge was removed to be fenced and replanted, but this included several tall mature deciduous trees of various species.

It seems that this is the unintended consequence of an otherwise useful scheme. Is this something you would be able to look into?

IEPAW017 Redacted email dated 20-12-21

Dear Dr Llewelyn Jones,

I'm sure you're fully aware of the highly controversial practice of netting over nesting/feeding/roosting habitats to facilitate developers removing trees, shrubs or hedgerows during nesting season.

I'd like to draw your attention to a particular case of netting use which illustrates the problems so well, and should prove a test case for how poorly wildlife and habitat is protected in Wales. This link gives you access to the google drive spreadsheet of the timeline of events and documents: <https://docs.google.com/spreadsheets/d/1ikkMGXI8Hj9EoTN81DoHcSbHug8ws4PZkn61nbi83xw/edit?usp=sharing>

To summarise: A developer (himself sitting on the planning committee, aware of all regulations and advice) decided to develop a field as a crematorium. Despite not submitting a planning application (please note - “only be considered as a last resort measure, after a full consideration of other alternatives and under exceptional circumstances only following the grant of planning permission.” Julie James AC/AM)... at the beginning of the nesting season in early March he netted a length of hedge for removal. Removal of the hedge, not relocation - which would be perfectly possible during the winter months whilst the hedge is dormant.

There was public uproar, some about the proposal itself from locals who could see issues with traffic on the small road and also significant opposition to the netting, from CPRW, many highly respected conservationists, Wildlife Trusts and Powys' own County Ecologist who wrote:

“Recommendation has been made previously regarding compensation for the impact to roadside hedgerows. However, it has since come to the notice of the LPA that netting specifically designed to exclude nesting birds has been placed over the relevant stretches of hedgerow to facilitate removal of the hedges during bird nesting season. This is considered presumptuous and wholly inappropriate given that a decision on the application has not yet been made. It also contradicts the advice provided to the applicant by their ecological consultant that recommended (in accordance with best practice) that hedgerow removal should take place outside of nesting season or that a thorough site check for nesting birds should be undertaken by an experienced ecologist prior to

removal.”

With NRW and Powys CC doing nothing to uphold the regulations to protect both the hedge and wildlife, the netting was removed by 3 activists who then handed themselves in for voluntary interview and were subsequently charged and convicted of criminal damage. What they did was highlight this ludicrous situation. Their defence was ‘necessity’. (full disclosure) One of them was **redacted details**.

We do HAVE laws to protect habitats like hedges: Hedges are protected under the Hedgerow Regulations 1997 and listed as a Priority habitat of principle importance under Section 7 of the Environment (Wales) Act 2016. Under Section 6 of that Act this means that all public authorities, such as Powys Council and NRW have to take this critical importance into account in any decision making. We the Future Generations Act which also applies to removal of valuable habitat and it’s impact on future generations in Wales. We have laws to protect wildlife, and the netting was obviously never checked to see whether animals were trapped (which would be a wildlife crime and criminal offence). As you can see the hedge grew through the netting. Eventually the netting broke up and was strewn across the road this autumn, becoming a danger to traffic. Only then was it removed by the councillor. At no point did NRW or Powys CC inspect the netting, check that the hedge had been surveyed before the netting was placed (there was no survey of the hedge on the ecologist report from the developer), even to check the developer had planning permission in place before use of the netting, or any of the other many steps that should have served to prevent it’s use.

As you know hedgerows are a key semi-natural habitat in intensively farmed landscapes, and provide food and nesting resources, shelter, corridors and habitat niches for wildlife. We’ve lost over half of our hedgerows due to intensification of farming and what we have left, much is in poor condition, but as such it’s even more valuable. As the most widespread semi-natural habitat in the UK, hedgerows support a large diversity of flora and fauna. There are 130 Biodiversity Action Plan species closely associated with hedges and many more that use them for food and/or shelter during some of their lifecycle.

I specifically refer you to the evidence from **Redacted name of specialist** who drew up the guidance that the WAG sent to all heads of planning in Wales, none of which was or is followed. I also refer you to the 2nd Ecology report from the 31st March. The netting guidance from CIEEM is in light blue top left, along with the letter to heads of planning from Julie James.

So the question is - will Wales lead the way in stopping this practice once and for all? We who are concerned about the plummeting wildlife and habitat degradation in Wales certainly hope so.

I hope you can take some time to look at the evidence and explore the case as a useful first step

to finally closing this loophole.

FYI: The planning application did get submitted, was passed despite not meeting the rules for Local Development Plans in Powys, being a large development in open countryside. The application was then 'called in' by the WAG as there were numerous flaws in the approval, among them the "significant" departure from the LDP with no justification given. If I was cynical, I would say that, being a member of the planning committee... rules do not apply...

But, back to the netting. I hope you agree after review of this practice and the evidence here, it is one thing we can very well do without?

IEPAW018 Redacted email dated 20-12-21

Re: Wildlife protection in Wales

Dear Dr. Nerys Llewelyn Jones (and team),

In 2019 the then Minister for Housing & Local Government, Julie James MS signed a letter regarding the use of bird/wildlife deterrent netting (Appendix 1). We understand that this was sent to all County Council planning departments in Wales. CIEEM guidelines for its use were also published (Appendix 2).

In March this year 3 of us carefully removed netting from a hedgerow in protest and in reflection of the 350,000+ people that signed the 2019 petition (Appendix 3); and the many individuals and organisations that objected to this particular use of the netting*. These include CPRW, RSPB, Montgomeryshire Wildlife Trust and the actual Powys County Council Ecologist.

On the **Redacted date** three of us were convicted of criminal damage (cutting of zip ties and consequential tearing of the netting despite our care; and the fourth convicted of 'encouraging' us to do this action.

