Condover Parish Council – written evidence (NER0008)

Submission from: Condover Parish Council (near Shrewsbury in Shropshire)

Concerning: The missed opportunity to effectively ensure the hedgerow and associated habitat and species diversity protections in the NERC Act 2006 address and resolve conflicts between and within prevailing Planning Regulations and the Hedgerows Regulations 1997

A Call for Changes to the Legislation to Better Protect Hedgerow Habitats and Species

Summary
Although legislation is in place which seems to intend to protect hedgerows and the habitats they provide for a diverse range of species, the range of legislation currently in place does not in practice provide the protection required. The central problems refer to:

1. The ‘relevant’ date (for planning purposes)
2. Admissible sources of documentation and evidence to protect wildlife
3. Timing of submissions to remove hedgerows – encourages planning applications ‘out of season’
4. Omissions in wildlife and habitat legislation, including NERC Act 2006, at the interface with planning regulations
5. Insufficient recognition of species diversity within environmental / ecological networks, and landscape value
6. Negatively framed legislation to permit removal of hedgerows rather than to promote support and management of hedgerows within the natural environment

The Submission made here is founded on an evaluation of the Hedgerows Regulations 1997, undertaken by Shropshire Council in 2013, in collaboration with Condover Parish Council. It shows how successive legislation has to date continued to permit removal of hedgerow habitats as a consequence of points 1 – 6 above

The Evaluation

1. Background
The Hedgerows Regulations 1997 (hereafter referred to as ‘the Regulations’) were made under section 97 of the Environment Act 1995 and came into operation 1st June 1997. They introduced arrangements for a Local Planning Authority (LPA) in England and Wales to protect important hedgerows in the countryside, by controlling their removal through a system of notification.

The Regulations apply to agricultural hedgerows and set out the mechanisms by which an ‘applicant’ gives notice to remove a hedge to the LPA, the factors which the LPA should consider in deciding whether or not to issue a Hedgerow Retention Notice, the circumstances in which a Hedgerow Replanting Notice can be issued and the mechanism by which appeals can be made by the ‘applicant’ and are decided by the Secretary of State.
Schedule 1 to the Regulations sets out in 8 paragraphs the criteria that must be used by an LPA in determining which hedgerows are important. The criteria relate to the value of a hedgerow from archaeological, historic, landscape or wildlife perspectives. If a hedgerow qualifies under any one of the criteria then it is important and the LPA can issue a Hedgerow Retention Notice to prevent its removal. The presumption is in favour of protecting and retaining important hedgerows, but an LPA cannot refuse consent if the hedgerow is not deemed to be important.

Shropshire Council became a unitary authority in April 2009. Since that time (to 2013) it has determined 112 Hedgerow Removal Notices. Of these, 94 (approximately 84%) resulted in the hedgerow being removed, 16 (approximately 14%) met the criteria for being important and have been protected by issuing a Hedgerow Retention Notice and 2 (approximately 2%) were notices to remove multiple hedgerows which resulted in some being removed and some being retained. In other words, of the notices dealt with by Shropshire Council, roughly 6 times as many have resulted in a hedgerow being removed as retained.

This ratio would appear to be at odds with national policy and direction set out in recent documents such as the Lawton Review, the Natural Environment White Paper and the National Planning Policy Framework (NPPF), as well as local policies on landscape and environmental networks.

This document appraises various aspects of the Regulations and presents a series of recommendations which if adopted could strengthen the legislation in order to protect a greater proportion of hedgerows than is currently the case.

2. The ‘relevant date’

Many of the criteria used to determine a hedgerow’s importance require reference to records made before the ‘relevant date’, this being the date the Regulations were made ie 24th March 1997. Any more recent records cannot be used, other than those made during the on-site survey of a hedgerow following receipt of a notice to remove it.

This applies to the historic and archaeological criteria covered in Paragraphs 2, 3, 4 and 5 of Part II of Schedule 1 to the Regulations and also Paragraph 6, which covers rare birds, animals and plants. Wildlife records are further restricted to the most recent record during the 5 year period (for animals and birds) or 10 year period (for plants) before the relevant date.

There appears to be no justification for these arbitrary periods. In fact ecologically speaking a record made within the last year has far more relevance than one made 15 - 25 years ago, yet it would be excluded from consideration under the present criteria.

- **Recommendation 1**: the Regulations should be amended to include any valid historic, archaeological and wildlife records made since the relevant date. In the case of wildlife records this should mean records for protected or threatened species within the 20 year period prior to the date a Hedgerow Removal Notice is submitted.

3. Sources of documentation for Paragraph 6 (wildlife value)
A hedgerow, to be considered ‘important’ for wildlife, must be shown to contain those species listed in Section 6(3) of the Regulations at the time of the site visit, or have associated a valid record at a biological record centre at the appropriate date. The species list includes all those on Part 1 of Schedule 1, Schedule 5 or Schedule 8 of the Wildlife and Countryside Act (W&CA) 1981 (as amended), those birds categorised as declining breeders from the 1990 Red Data Birds in Britain4, or endangered, extinct, rare or vulnerable vascular plants5, insects6, other invertebrates7 and stoneworts8 from the 1983, 1987, 1991 and 1992 Red Data Books respectively.

Qualifying records are thus becoming further out of date with each passing year and the Regulations offer no means of updating or refining the species lists to take account of changes to populations or status of nationally or locally protected or threatened species. Also, the Regulations currently offer no scope for reflecting the wider biodiversity value of hedgerows, over and above the protected or threatened species listed in Section 6(3) of the Regulations.

- **Recommendation 2:** there should be a regular review of species listed in Section 6(3); perhaps every 5 years or so, or at least in line with reviews of legislation such as the W&CA and current editions of the relevant Red Data Books.

- **Recommendation 3:** the Regulations should be amended to allow flexibility of the species listed, in order to take account of recognised nationally and locally threatened species (for example farmland birds) other than may be listed in the W&CA or Red Data Books.

- **Recommendation 4:** the Regulations should be amended to encompass all types of recognised biological record centres.

4. **Timing of submission**
A Hedgerow Removal Notice must be considered and either the removal agreed or a Hedgerow Retention Notice issued by the LPA within 42 days following receipt of the notice. If the LPA makes no response within 42 days then the hedgerow may be legally removed. The timing of submission is critical in evaluating a hedgerow during the site visit, both for detecting the presence of rare or protected species and observing ground flora woodland species (listed in Schedule 2 to the Regulations) that may be associated with it. Herbaceous plants with non-persistent foliage are unlikely to be detected during winter months. Surveys in winter months are also unlikely to confirm the presence (or likely absence) of bats, Great Crested Newts or Dormice in a hedge. For these species targeted, repeated surveys over a period of months is the recommended method for ensuring that the potential has been fully explored (relevant guidance is issued by Natural England and the Bat Conservation Trust among others). These issues can be addressed through the recommendations for Section 5 below.

5. **Conflict with other wildlife and habitat legislation**
Under the Natural Environment and Rural Communities Act 2006 ‘every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise
of those functions, to the purpose of conserving biodiversity’. This duty is reinforced by the Conservation of Species and Habitats Regulations 2010 (as amended) which require a competent authority, such as an LPA, in exercising its functions to have regard to the requirements of the European Council Habitats Directive 1992 (on the Conservation of Natural Habitats and of Wild Fauna and Flora).

However, the Hedgerows Regulations state that an LPA may not ask for more information to accompany a Removal Notice than the form in Schedule 4 requires the applicant to give. This information is only: name of applicant, address, reasons for requested removal, information to support any claim that a hedge is under 30 years of age and confirmation that the applicant is the owner/tenant of the land or otherwise eligible to apply for a removal.

There is no scope within the Regulations for an LPA to request or require ecological surveys from the applicant (as an LPA would do for a planning application under government guidance and recent case law), or little scope for an LPA to gain an extension of time until an appropriate time of year for ecological surveys to be undertaken (under the Regulations the applicant is under no obligation to grant such a request for extension of the 42 day notice period). This appears to be at odds with national and European legislation relating to the conservation and protection of species and habitats.

- **Recommendation 5**: the Regulations should be amended such that a Removal Notice must be accompanied by a valid ecological assessment carried out at the appropriate time(s) by a suitably licensed and competent ecologist; or

- **Recommendation 6**: where insufficient ecological information is submitted with a Hedgerow Removal Notice to allow the LPA to properly assess the potential impact on rare or protected species and habitats, the LPA may issue a Retention Notice until such time as suitable ecological surveys have been obtained.

- **Recommendation 7**: the form in Schedule 4 of the Regulations should be amended to reflect the requirement for relevant ecological surveys to take due account of European and other protected species and habitats in accordance with the Conservation of habitats and Species Regulations 2010 (as amended) and other relevant legislation.

### 6. Species Diversity and Associated Features

Paragraphs 7 and 8 of the Regulations deal with species diversity within a hedgerow (woody hedgerow species are listed in Schedule 3). They also incorporate associated features which include the ‘connectivity’ of the hedgerow to other hedgerows, ponds and broadleaved woodland, the presence of standard trees, banks, walls, ditches, woodland ground flora species and nearby parallel hedgerows and the absence of gaps. Paragraph 8 relates to hedgerows which are adjacent to a statutory public right of way. Hedgerows containing at least 7 woody species or certain minimum numbers of species and associated features are deemed to be important.

Under the Regulations associated features only become relevant if a hedgerow contains a certain (arbitrary) number of woody species. This downplays the importance, notably to
landscape and wildlife, of a strong network of hedgerows, interconnecting with each other and linking valuable habitats.

- **Recommendation 8:** the Regulations should be amended so as to uncouple species diversity from the ‘connections scoring 4 or more points’ associated feature. This feature should become a criterion for an important hedgerow in its own right, to give due recognition to the value of an interlinked network of hedgerows.

- **Recommendation 9:** the list of connected habitats that contribute towards the necessary points score for the ‘connectivity’ associated feature should be expanded from ponds and broadleaved woodland to include any nationally or locally designated priority habitat.

- **Recommendation 10:** whilst all badger setts are protected under the Badgers Act 1992, main setts should be included within the list of associated features.

The Regulations stipulate exactly which 30m sections of a hedgerow must be surveyed in order to assess its species composition. Species present but found outside the relevant 30m sections do not count. Furthermore, where a hedge is surveyed in a number of plots, it is the average number of species across all plots that count. Both these factors serve to restrict the number of hedgerows meeting the criteria for importance.

- **Recommendation 11:** the Regulations should be amended to remove the restriction specifying particular 30m sections of hedgerow to be surveyed for woody species. The entire length of hedgerow should be taken into account when assessing the species composition, as is the case with associated features.

### 7. Landscape Value

The European Landscape Convention, which as a Treaty came into effect in the UK in March 2007, is the first international agreement on landscape devoted to the protection, management and planning of all landscapes in Europe. It places this important resource alongside biodiversity and cultural heritage.

Paragraphs 6 - 8 are titled in the Hedgerows Regulations as ‘Wildlife and Landscape’, yet landscape is not mentioned at all in these sections. Paragraph 5(b)(iii) deals with the historic value of field systems and does refer to landscape, in so much as a hedgerow is important if ‘it is part of, or visibly related to, an existing building or feature associated with a pre-1845 field system that was recorded by the LPA before the relevant date as a key landscape characteristic for the purposes of development control’.

This sole reference to landscape character within the criteria, which furthermore is time-limited to before the relevant date (24th March 1997), underrepresents the role of hedgerows as key determinants of field pattern and the significant contribution they can thus make to landscape character and appearance.
• **Recommendation 12**: the criteria defining important hedgerows should be expanded to include a hedgerow which forms a key component of high significance within a recognised landscape character assessment, where the aim is to conserve, restore or enhance the landscape character type to which the hedgerow contributes.

Paragraph 6 of the Regulations relates to records held at a biological record centre run ‘by or on behalf of’ local authorities. Many record centres are now run independently, although they may have a service level type agreement with the local authority.

• **Recommendation 13**: the Regulations should be amended to remove the reference to the ‘relevant date’ in respect of Paragraph 5(b)(ii), such that any currently adopted LPA development control document may be used, irrespective of the date it was prepared.

8. Environmental / Ecological Networks
Chapter 117 of the NPPF highlights the role of planning policy in identifying, mapping, preserving, restoring and recreating ecological networks.

The government White Paper ‘The Natural Choice’ also recognises the importance of ecological networks. Chapter 2 ‘Protecting and Improving our Natural Environment’ contains a text box reproduced in italics below:

**Natural networks**
The natural environment is sometimes seen as a series of disconnected places: gardens, parks, farmland, forests, coastland, wetlands, rivers and seas. We should be thinking not of isolated spots of green on a map of England but of a thriving green network linking wildlife sites with farmland, forestry and urban parks and gardens across the country.

• **Recommendation 14**: the criteria defining important hedgerows should be expanded to include a hedgerow which forms an integral element of an Environmental / Natural / Ecological Network, linking areas of high biodiversity value, as identified within an adopted LPA development control document.

9. Underlying Approach of the Regulations
In addition to the specific issues with the criteria highlighted above, there is a more fundamental problem with the whole removal notice premise, in that it does not encourage landowners to manage their hedgerows in an environmentally acceptable or beneficial manner. Cross-compliance requires farmers to keep their land in Good Agricultural and Environmental Condition in order to qualify for Single Farm Payment. However, providing a farmer has complied with the requirement to submit a notice under the Regulations, removing hedgerows does not necessarily impact on their ability to claim payments, even if the land is under an agri-environment scheme.

Over time a hedgerow can decline and individual component shrubs and trees may die, causing a hedgerow to become ‘gappy’. This may be exacerbated for example by excessively frequent or severe flailing, or inappropriate use of pesticides. Under the
Regulations gaps over 20m are considered to constitute a break, perhaps turning one hedgerow into two. This may result in a hedgerow being downgraded in terms of the criteria for determining importance, thus facilitating future removal. This applies equally to important hedgerows and others that do not meet the criteria.

- **Recommendation 15**: as an alternative approach to amending the Regulations as suggested in recommendations 1 – 14 above; the basic principle underlying the Regulations should be reversed, such that all hedgerows should be deemed important and retained and maintained in a satisfactory condition. Permission should be sought from the LPA to remove a hedgerow rather than notice be given. The onus should be upon the applicant to demonstrate that a hedge is not important and provide the supporting evidence, including an ecological survey carried out by an independent, competent ecologist, where necessary.

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