

Petition: P-05-897 Stop developers netting hedgerows and trees

Research Briefing:

Y Pwyllgor Deisebau | 17 Medi 2019

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Petition number: P-05-897

Petition title: **Stop developers netting hedgerows and trees**

Petition text:

Make 'netting' hedgerows and trees to prevent birds from nesting a criminal offence.

Developers, and other interested parties are circumventing laws protecting birds by 'netting' hedgerows and trees to prevent birds from nesting.

This facilitates the uprooting of hedgerows and trees which aid biodiversity and provide the only remaining nesting sites for birds, whose numbers are in sharp decline.

'Netting' hedgerows and trees threatens declining species of birds, presents a danger by entrapment to wildlife, and produces large amounts of plastic waste.

The practice also falls foul of the Future Generations legislation already passed by the Senedd.

Background

The practice of netting trees and hedges, to prevent birds from nesting in vegetation which needs to be removed from development sites during the breeding season, is not illegal in the UK.

On 13 August 2019, the Minister for Housing and Local Government, Julie James, (the Minister) wrote to the Chair regarding this petition. The Minister commented on the extent of this practice in Wales:

Whilst we are aware of instances in Wales where netting has been used, we do not have hard evidence on the extent of the practice. Officials have initiated data gathering on the number of instances of netting with colleagues in Natural Resources Wales and the response rate from local authorities is very low, suggesting that the practice is not widespread.

The Minister also clarified that:

Existing legislative controls concerning the practice of netting are driven by animal welfare considerations and the use of netting itself falls outside of the definition of ‘development’ for planning purposes. If a developer is aware that wildlife is being caught in netting and has not done anything about it the Police Wildlife Crime Officer should be informed.

The UK Parliament recently debated a similar petition: [make 'netting' hedgerows to prevent birds from nesting a criminal offence](#).

Wildlife and Countryside Act 1981

Wild birds are protected under the [Wildlife and Countryside Act 1981](#) (as amended). This Act makes it illegal to knowingly damage or destroy an occupied nest – even if planning permission has been granted for development that would involve removing a hedge. The main nesting and breeding season for birds in the UK is typically between 1 March to 31 August.

Under section 16 of the *Wildlife and Countryside Act 1981*, appropriate authorities (such as Natural Resources Wales (NRW)) may grant licences to permit acts which would otherwise contravene the provisions of the 1981 Act concerning the protection of wild birds, if done for certain specified purposes.

The specified purposes for which licences may be issued under section 16 include:

- the preservation of public health and air safety;
- preventing the spread of disease; and
- preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or fisheries.

The appropriate authority (NRW in Wales) must not grant a licence for any specified purpose unless it is satisfied that there is no other satisfactory solution.

Animal Welfare Act 2006

The [Animal Welfare Act 2006](#) may also apply in cases of entrapment of animals. Under this Act a person commits an offence if—

- (a) an act of his, or a failure of his to act, causes an animal to suffer,
- (b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,
- (c) the animal is a protected animal, and

(d) the suffering is unnecessary.

An animal is a “protected animal” for the purposes of this Act if—

- (a) it is of a kind which is commonly domesticated in the British Islands,
- (b) it is under the control of man whether on a permanent or temporary basis, or
- (c) it is not living in a wild state.

Planning Policy Wales

The Welsh Government’s national planning policy is set out in [Planning Policy Wales \(Edition 10\) \(PPW\)](#). Paragraph 6.4.21 focuses on maintaining and enhancing biodiversity and sets out a ‘step-wise approach’ that Local Planning Authorities (LPAs) should follow when considering development proposals. The Minister’s letter to the Chair highlights this stating:

The stepwise policy set out in PPW (para 6.4.21) discourages the removal of trees and hedgerows in the first instance, it states, “the first priority for planning authorities is to avoid damage to biodiversity and ecosystem functioning”.

The Committee may wish to note, however, that paragraph 6.4.21 does not explicitly mention trees, hedgerows or netting.

The Environment (Wales) Act 2016 and Well-being of Future Generations (Wales) Act 2015

Section 6 of the [Environment \(Wales\) Act 2016](#) includes a biodiversity and resilience of ecosystems duty. Under this duty a public authority must seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.

The [Well-being of Future Generations Act 2015](#) requires public bodies to carry out sustainable development. Sustainable development is defined in the Act as:

... the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle ... , aimed at achieving the well-being goals

“A resilient Wales” well-being goal is described in the Act as:

A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).

Hedgerows and biodiversity

The petition suggests a risk to biodiversity of netting and uprooting hedgerows, particularly for birds; it also refers to declines in bird populations.

The Welsh Government’s [Woodland for Wales strategy](#) includes ambitions for hedgerow management and creation in Wales. It states:

Hedgerow trees can often be overlooked, poorly managed and at risk of damage by livestock, yet they are distinctive features in the landscape and provide breeding sites, food and shelter for many species.

The [State of Birds in Wales \(2018\) report](#) was produced jointly by the [Royal Society for Protection of Birds \(RSPB\)](#), [British Trust for Ornithology \(BTO\)](#), Natural Resource Wales (NRW) and the [Welsh Ornithological Society \(WOS\)](#). This report highlighted that:

Long-term monitoring shows that the numbers and distributions of almost a third of Welsh birds are declining significantly.

Permission may be required under the [Hedgerow Regulations 1997](#) if trees in a hedgerow need to be felled in order to remove the hedgerow.

Netting and plastic

The petition also refers to plastic waste produced from netting. The use of plastic in netting practices has been highlighted in [media coverage](#) of this topic, as have [reports of animal entrapment](#) in netting.

On 16 July 2019, the Deputy Minister for Housing and Local Government, Hannah Blythyn, published a [written statement](#) on plastic waste. This statement reiterated an ambition for Wales to become a zero waste nation by 2050.

Welsh Government action

On 6 June 2019, the Minister published a [guidance letter](#) to LPAs and others, on the netting of trees and hedgerows during construction. In the letter the Minister states that she does not support the use of netting as a routine practice. She goes on to say:

It is my view 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.

The letter also refers to the step-wise approach out in PPW:

Through early engagement developers should avoid circumstances that require netting to be used. Planning Policy Wales 10 sets out a step-wise approach to maintaining and enhancing biodiversity through ensuring that adverse environmental impacts are firstly avoided (i.e. existing trees and hedgerow features should be retained in the project design), then minimised, mitigated and as a last resort compensated for.

The letter refers to [further guidance](#) produced by the [Chartered Institute of Ecology and Environmental Management \(CIEEM\)](#) and the [RSPB](#).

In her letter to the Chair, the Minister rules out new legislation in this area:

The introduction of a new legislative framework at this time to control the practice is not recommended but will be kept under review. The supporting mechanisms required to implement the legislation would be excessive and resource intensive and indeed there will be limited circumstances where the use of netting will be necessary (for example, control of Gull nuisance in certain locations or there could be instances where it is genuinely needed to prevent birds from nesting during development, so they do

not come to harm). Through policy and engagement with the industry and stakeholders, I am confident that we can avoid the use of netting.

National Assembly for Wales action

Netting trees and hedgerows has been raised in Plenary by several AMs. In response to [concerns](#) raised on 30 April 2019, the Minister for Finance and Trefnydd, Rebecca Evans, said:

... We have received some reports of netting. We're not yet aware of how widespread it is, but clearly any incident is of real concern to us. Joyce Watson referred to the petition, which has just opened at the National Assembly for Wales. There's also one in Parliament with 330,000 signatures. So, I think that this is a real concern to members of the public. There might be occasions when the netting of trees would be legitimate, but that is only when it is absolutely genuinely needed to protect birds and prevent them from nesting during developments so that they don't come to harm, and that kind of circumstance would be extremely rare indeed. So, on the whole, I think that our policy certainly is moving away from mitigating harm and damage to integrating biodiversity and ecosystem resilience into the very earliest stages of due development control.

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.