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The Hedgerows Regulations 1997

A Guide to the Law and Good Practice



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PREFACE

The Hedgerows Regulations 1997 were made under section 97 of the Environment Act 1995 and came into operation on 1 June 1997. They introduced new arrangements for local planning authorities in England and Wales to protect important hedgerows in the countryside, by controlling their removal through a system of notification.

THE LAW

This Guide explains, and gives advice on, the provisions of the Regulations. Anyone relying on it should bear in mind that it is advice only and has no legal force. It should always, therefore, be read alongside the 1995 Act and the Hedgerows Regulations.

GOOD PRACTICE

The Guide also suggests ways in which local planning authorities can administer the hedgerow protection system in accordance with good practice. The credibility of any system of regulation depends on the way in which it is administered. The Guide therefore incorporates, where appropriate, the business friendly enforcement procedures set out in section 5 and Schedule 1 to the Deregulation and Contracting Out Act 1994.

The overall aim of the Hedgerows Regulations – to secure retention of important countryside hedgerows – is most likely to be met by adopting a common sense approach, based on co-operation rather than confrontation.

The Guide has been written primarily for local planning authorities, but it is also a useful point of reference for others interested in, or whose interests are likely to be affected by, the Regulations.

FURTHER INFORMATION

Any queries about the Guide should be addressed in England to Alasdair Robertson at the Department of the Environment, Transport and the Regions or Simon Allday at the Ministry of Agriculture, Fisheries and Food, or in Wales to Lisa Dobbins at the Welsh Office in Cardiff. Full details of these and other useful contacts are at Annex A.

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CHAPTER 1

Hedgerow protection system – in brief

Aim: To protect important hedgerows in the countryside by controlling their removal through a system of notification.

COVERAGE

1.1 The system applies to most countryside hedgerows in England and Wales. In particular, it affects hedgerows which are 20 metres or more long, or which meet another hedgerow at each end. All these hedgerows must be on, or adjoining, land used for agriculture or forestry, the breeding or keeping of horses, ponies or donkeys; common land, village greens; Sites of Special Scientific Interest or Local Nature Reserves. Garden hedges are not affected.

REMOVAL

1.2 The system is concerned with the removal of these hedgerows, either in whole or in part. 'Removal' includes not only grubbing up, but also other acts which result in the destruction of a hedgerow.

NOTIFICATION SYSTEM

1.3 The procedure in the Regulations is triggered only when land managers (the freehold owner and, in the case of agricultural holdings or farm business tenancies, the tenant) or utility operators want to remove a hedgerow. They must first notify the local planning authority, setting out their reasons for wanting to remove the hedgerow.

1.4 Certain removals, such as to allow necessary access, do not have to be notified.

1.5 The local planning authority generally has 42 calendar days from receipt of notification in which to give or refuse consent to the notified

work, taking account not only of whether the hedgerow is important but also of the reasons given for removing it. If the authority does not respond within this period, the hedgerow may be removed.

1.6 The presumption is in favour of protecting and retaining important hedgerows, though the local planning authority cannot refuse consent if the hedgerow is not important.

IMPORTANT HEDGEROWS

1.7 The Regulations set out criteria that must be used by the local planning authority in determining which hedgerows are important. The criteria relate to the value of hedgerows from an archaeological, historical, landscape or wildlife perspective. They exclude hedgerows that are less than 30 years old. If a hedgerow is at least 30 years old and qualifies under any one of the criteria, then it is important.

APPEAL RIGHTS

1.8 Applicants who have been refused consent by the local planning authority have a right of appeal, in England, to the Secretary of State for the Environment or, in Wales, to the Secretary of State for Wales.

ENFORCEMENT

1.9 Removal of a hedgerow in contravention of the Regulations is a criminal offence, punishable in some cases in the Magistrates' Court by a fine of up to £5,000. For anyone convicted on indictment in the Crown Court, the fine is unlimited.

1.10 The local planning authority may require replacement of a hedgerow removed in contravention of the Regulations. An appeal may be made against this.

CHAPTER 2

Introduction to the Hedgerows Regulations

VALUE OF HEDGEROWS

2.1 Hedgerows are distinctive features of the countryside of England and Wales. As the most traditional type of field boundaries in many areas, hedgerows, and the field banks on which they often run, are often of considerable historic interest. Many date back to the first enclosure of the land and may incorporate other historic features such as ancient earthworks, parish or old property boundaries. They thus contribute positively to the character and interest of the landscape.

2.2 Hedgerows, particularly older hedgerows, often contain a great diversity of plant and wildlife species. Their role in conserving and enhancing biological diversity is recognised in the UK Biodiversity Action Plan,¹ which includes a costed habitat action plan for ancient and/or species rich hedgerows. The part played by hedgerows in nature conservation is also reflected in the Conservation (Natural Habitats, etc.) Regulations 1994, which acknowledge that such linear features are essential for the migration, dispersal and genetic exchange of wild species. In England, Planning Policy Guidance Note 9 (Nature Conservation, 1994), and in Wales, Technical Advice Note 5 (Nature Conservation and Planning, 1996) further encourage the development of policies for the management of hedgerows.

HEDGEROW LOSS

2.3 Loss of hedgerows from the countryside landscape has been a continuing cause for concern.

2.4 In particular, the report by the Institute of Terrestrial Ecology (ITE) on hedgerow changes in Great Britain between 1984 and 1990,² revealed that the total hedgerow length in England had fallen in the period by over 20%, and in Wales by 25%. In both England and Wales, over 9% of hedgerows had been removed or destroyed. 5% of the total hedgerow length in 1990 was the result of new planting since 1984. Between 1984 and 1990, 19% of hedgerows in England and 23% in Wales had ceased to be classified as hedgerows as a result of neglect or conversion into another form of boundary.

2.5 A further survey into hedgerow changes for the years 1990 to 1993 compared the results with those obtained from the previous survey.³ It showed that the rate of hedgerow removal had more than halved from 9,500 to approximately 3,600 km per year. In addition, the rate of gains from new planting had increased from 1,900 to 4,400 km per year, more than outweighing the losses from removal in numerical terms.

2.6 A two-pronged approach has been developed to tackle the problems identified by these surveys. On the one hand, new grant schemes were introduced. In England, the Hedgerow Incentive Scheme, introduced in 1992, was designed to combat the problem of losses through neglect. It is now part of

1 Biodiversity: The UK Steering Group Report 1995. Volume 2: Action Plans. HMSO, London.

2 Barr, C; Howard, D; Bunce, B; Gillespie, M; Hallam, C. 1991. Changes in Hedgerows in Britain between 1984 and 1990. Contract report for the Department of the Environment. Institute of Terrestrial Ecology, Merlewood, Grange-over-Sands, Cumbria LA11 6JU.

3 Barr, C; Gillespie, M; Howard, D. 1994. Hedgerow Survey 1993. Contract report for the Department of the Environment. Institute of Terrestrial Ecology, Merlewood, Grange-over-Sands, Cumbria LA11 6JU.

the Countryside Stewardship Scheme, administered by the Ministry of Agriculture, Fisheries and Food, which offers grants for the planting and restoration of hedges. In Wales, the Countryside Council for Wales operates Tir Cymen and the Hedgerow Renovation Scheme.

2.7 On the other hand, section 97 of the Environment Act 1995 ('the 1995 Act') empowers Ministers to introduce regulations to protect important hedgerows from removal.

THE HEDGEROWS REGULATIONS 1997 (‘THE REGULATIONS’)

2.8 The Hedgerows Regulations 1997 (SI 1997/1160) contain the detailed arrangements for a system to protect those important hedgerows for which no amount of replanting can substitute.

2.9 The hedgerow protection system set out in the Regulations is administered by local planning authorities. For the purposes of these Regulations, the local planning authority in England is usually in county areas, the District Council or the Borough Council, or in non-county areas the unitary authority; or in Wales the unitary County Council or County Borough Council, except:

- in a National Park, it is the National Park Authority;
- in the Broads, it is the Broads Authority; and
- in the Isles of Scilly, it is the Council of the Isles of Scilly.

CHAPTER 3

Scope of the Regulations

3.1 There are a number of tests that should be undertaken to determine whether the hedgerow itself, and the works to be carried out on it, are subject to the requirement to notify the local planning authority. These tests should initially be undertaken by the person who would be submitting any notice.

3.2 However, the authority will need to check these same points, on receipt of a hedgerow removal notice, to ascertain that the matter is within their jurisdiction. In addition, early discussion with the local planning authority, before any notice is sent, may help to clear up any doubts about whether the Regulations apply. The authority should provide, if requested, a written explanation of informal advice. In particular, this should make clear what action is necessary and why.

WHAT IS A HEDGEROW

3.3 The term 'hedgerow' is not separately defined in section 97 of the Environment Act 1995 or in the Regulations. In the absence of a statutory definition, the courts are likely to give the word its ordinary, natural meaning – such as that found in a good dictionary. The Oxford English Dictionary definition (2nd edition, 1989) may therefore be used as a guide; 'a row of bushes forming a hedge, with the trees etc growing in it; a line of hedge'.

3.4 For the purposes of the Regulations, the hedgerow does not have to contain trees but, any trees growing in it form part of the hedgerow. Where a former hedgerow has not been actively managed and has grown into a line of trees, it is not covered by the Regulations. However, lines of trees may be protected under the existing licensing procedures for tree-felling or by Tree Preservation Orders (see paragraphs 5.25 to 5.26). The essential feature of a hedgerow is a row of bushes.

3.5 Stone walls are not covered by the Regulations unless, as for example is common in the south west of England and parts of Wales, land supporting the hedgerow consists of an earth and/or stone bank with the hedgerow growing along the top.

COUNTRYSIDE HEDGEROWS

3.6 The Regulations are aimed primarily at countryside hedgerows in England and Wales. Countryside hedgerows are defined as those on or adjoining, common land, village greens, Sites of Special Scientific Interest (which include National Nature Reserves, Special Protection Areas under the Birds Directive and Special Areas of Conservation under the Habitats Directive), Local Nature Reserves, or land used for agriculture, forestry or the breeding or keeping of horses, ponies or donkeys.

3.7 They do not apply, however, to garden hedges. These are defined as hedgerows within, or marking a boundary of, the curtilage of a dwelling-house. Hedgerows which mark the boundary of the curtilage of a dwelling-house are not covered by the Regulations even though the land on the other side of the hedgerow may be used for one of the purposes set out in paragraph 3.6. For example, where the hedgerow marks the boundary line between agricultural and residential land, such as on the edge of a town, the Regulation do not apply.

3.8 Although the land use descriptions in paragraph 3.6 encompass relatively few hedgerows in urban areas, this is not intended to imply that such hedgerows are not important and not worthy of protection. The main threat to urban hedgerows arises from pressures of development. Existing planning legislation provides a measure of protection for such hedgerows by allowing local planning authorities to impose conditions when granting permission to develop land, such as requiring the retention of hedgerows on the site.

LENGTH OF HEDGEROW

3.9 The Regulations apply to hedgerows of certain lengths, as follows:

- hedgerows that are 20 metres or more long; or
- hedgerows that are less than 20 metres long, if they are connected at each end to another hedgerow – thereby forming a continuous network of hedges. The length of the adjoining hedgerows is immaterial; the significant factor is the connection; and
- any stretch within one of these hedgerows.

3.10 Regulation 3 explains how to determine whether a hedgerow is or exceeds 20 metres in length. In particular, it stipulates that each hedgerow is to be regarded as starting and/or ending at the point where it forms a junction or intersection with another hedgerow.

3.11 It also includes provision for gaps in the vegetation of 20 metres or less, or those made in contravention of the Regulations, to be counted as part of the hedgerow. A gap is defined in regulation 2(1) as any opening, whether or not it is filled. It may be a hole or it may be filled by a gate or other means of access. The shrubby cover does not, therefore, have to be unbroken in order for the hedgerow to qualify. Nor is it necessary for adjoining hedgerows physically to meet.

3.12 The practical effect of these provisions is illustrated at Annex B.

CROWN LAND

3.13 Hedgerows, which satisfy the requirements of regulation 3 (described in paragraphs 3.6 to 3.11 above), and are on land which is in the ownership of the Crown are covered by the Regulations.

REMOVAL

3.14 Having established whether the hedgerow itself is one to which the Regulations apply, the next test is whether the work to be carried out to the hedgerow constitutes removal and so should be notified.

3.15 The term 'remove' is defined in section 97(8) of the 1995 Act as 'uproot or otherwise destroy'. It includes therefore not only deliberate grubbing out of hedgerows but also other acts that result in the destruction of the hedgerow. These acts may not necessarily be carried out on the hedgerow itself. They may, for instance, be undertaken on nearby land, or on a bank supporting the hedgerow, or by some other indirect means. But, if the hedgerow is thereby destroyed, it has been 'removed' for the purposes of the Regulations.

3.16 A judgement on whether the proposed work or other activity constitutes 'removal' will have to be made according to the circumstances of the individual case. However, taking out selected individual woody species may, depending on the facts of the particular case, amount to removal of a stretch of hedgerow. On the other hand, it is unlikely that insertion into the hedgerow of a pole to carry overhead electricity distribution or telecommunications lines would involve taking out or destroying a portion of the hedgerow and so should not be regarded as removal. Nor should earthworks near hedgerows, such as trenching for the installation of underground cables or pipes, usually lead to their removal or destruction – provided that care is taken not to damage roots, especially those with a diameter larger than 20 millimetres and clumps of smaller roots. See also paragraphs 4.15 to 4.17 below.

CHAPTER 4

Exemptions from the need to notify

4.1 Certain activities involving removal of a hedgerow or a portion of hedgerow, set out in regulation 6(1) and explained below, may proceed without prior notification to the local planning authority. They broadly fall into three categories:

- small-scale works;
- works approved under other procedures which ensure careful assessment and consideration of the impact on the local environment;
- works authorised under other legislation which justify the removal of a hedgerow without first establishing its importance.

4.2 The local planning authority should stand ready to offer advice at an early stage if there are any uncertainties as to whether the operation involved falls into one of these exemptions, and thus whether a proposal to remove a hedgerow needs to be notified. The authority should provide, if requested, a written explanation of informal advice. In particular, this should make clear what action is necessary and why. It should also indicate that no more of the hedgerow should be removed than is necessary for the purposes set out in regulation 6(1).

EXEMPTIONS

To make a new opening in substitution for an existing one which gives access to land

4.3 Where such a removal is undertaken, the person responsible must fill the original opening by planting a hedge, within 8 months of the making of the new opening. Failure to comply with this condition is an offence, for which a person found guilty will be liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000 in May 1997).

To obtain temporary access to any land in order to give assistance in an emergency

4.4 Access to land includes not only land on the other side of the hedgerow but also land on which it is planted. Land includes anything in, on or over it, such as cables or other utility apparatus. It also includes land covered by water, such as a ditch, pond or stream.

4.5 A judgement will need to be made as to whether an emergency exists and whether removal of a hedgerow is necessary and justifiable in the particular circumstances. For example, prior notification would not be required where the removal of a stretch of hedgerow was necessary to allow access for an ambulance, in the event of immediate medical assistance being required, or to enable rescuers to assist a person in difficulties in a stream on the far side of the hedgerow in circumstances where the nearest point of access was a considerable distance away. Removal of a hedgerow in the course of restoration of utility services might fall within this exemption. For example, where services are cut off from a whole village or settlement.

To obtain access to land where another means of access is not available or is available only at disproportionate cost

4.6 This exemption includes instances where an owner or certain utilities need access to land which is entirely enclosed by a hedgerow. For example, a farm woodland may be surrounded by a hedgerow, requiring removal of a portion in order to enter and manage the wood. It might also include instances where a farmer acquires new land to which there is no entry from the farm, or where a utility operator requires to carry out work on an underground or overhead system which necessitates the removal of a stretch of hedgerow – provided that an alternative access, at reasonable cost, was not available.

For national defence purposes

4.7 Hedgerows are an essential element of the Ministry of Defence's training areas. Whilst the Ministry endeavours to protect hedgerows on its estate, a national security plan or project could be compromised as a result of the need to obtain prior approval for the removal of one or more hedgerows.

Where development has been authorised by planning permission (or is deemed to have been granted), except development for which permission is granted by article 3 of the Town and Country Planning General Permitted Development Order 1995 in respect of development of any of the descriptions contained in Schedule 2 to that Order other than Parts 11 (development under local or private Acts or orders) and 30 (toll road facilities)

4.8 Hedgerow removal in the course of carrying out development for which planning permission has been, or is deemed to have been, granted may normally proceed without prior notification under these Regulations.

4.9 However, the exemption expressly excludes most permitted development rights. No prior notification is necessary for hedgerows removed in the course of development for which planning permission is granted under Parts 11 (development under local or private Acts or orders) and 30 (toll road facilities) of Schedule 2 to the Town and Country Planning General Permitted Development Order. However, hedgerow removal, in the course of other permitted development described in Schedule 2 to the Order, is subject to prior notification to the local planning authority – provided, of course, that the hedgerow and works are within the scope of the Regulations, and do not fall within any of the other exemptions set out in regulation 6(1).

To carry out work, under certain Acts of Parliament, for the purposes of flood defence or land drainage

4.10 The relevant Acts, the Land Drainage Act 1991, the Water Resources Act 1991 and the Environment Act 1995, empower operating authorities (Internal Drainage Boards, local authorities and the Environment Agency) to carry out flood defence and land drainage work. The bodies concerned are required to have regard to their statutory environmental duties when

undertaking any work affecting hedgerows. Such work may include the removal of trees or shrubs to prevent the possibility of obstructing or impeding water flow leading to flooding.

To prevent the spread of, or to ensure the eradication of, a plant or tree pest

4.11 Under articles 22 and 23 of the Plant Health (Great Britain) Order 1993, and articles 21 and 22 of the Plant Health (Forestry) (Great Britain) Order 1993, authorised inspectors can require, and can themselves take, specified measures to prevent the spread of, or to eradicate, certain plant or tree pests. The measures may include the removal of specified plants or trees from hedgerows and to dispose of or treat them in the same way.

For work undertaken by the Secretary of State in respect of any highway for which he is the highway authority or in relation to which he has the same powers as the local highway authority

4.12 This exemption covers the functions carried out in England by the Highways Agency, or in Wales by the Secretary of State as the highway authority, such as building new trunk roads and motorways, where an environmental assessment is a standard procedure.

In respect of any felling, lopping or cutting back to prevent obstruction of, or interference with, electric lines and plant, or to prevent danger under the Electricity Act 1989

4.13 Paragraph 9 of Schedule 4 to the Electricity Act 1989 (Felling and lopping of trees etc) enables a relevant licence holder to give notice to an occupier of land requiring him to fell, or lop a tree, or cut back its roots in order to prevent obstruction of, or interference with, electric lines and plant or to prevent danger. Hedgerow removal undertaken in compliance with such a notice is not subject to the prior notification procedure. If the owner or occupier does not comply with the paragraph 9 order and does not serve a counter-notice (see paragraph 4.14 below), the licence holder may enter the land and carry out the works itself. Once again, in such a case any hedgerow removal would not be subject to notification under the Regulations.

4.14 A notice under paragraph 9 may be referred to the Secretary of State for Trade and Industry if the owner or occupier objects to the works covered by the notice and, within 21 days of the giving of the notice, serves a counter-notice. In such instances the Secretary of State for Trade and Industry may in due course make an order empowering the licence holder to carry out the works notwithstanding the objection. Works carried out under such an order are also exempt.

For the proper management of a hedgerow

4.15 Cutting back a hedgerow, in a manner that does not result in its destruction, is unlikely to constitute 'removal', in the terms given in paragraphs 3.14 to 3.16 above. Such works are, therefore, outside the scope of the Regulations and do not need to be notified to the local planning authority.

4.16 However, this provision has been included to make clear that appropriate hedgerow management techniques, which may necessitate the hedgerow being cut back to ground level (such as coppicing) and which may sometimes be viewed by members of the public as removal, are exempt. Repeated coppicing, at too frequent intervals, or the deliberate cutting down of a hedgerow to ground level where such cutting has never formed a traditional technique of hedgerow management in an area, would not be covered under this exemption. This provision also allows, if necessary, the removal of dead or diseased shrubs or trees from a hedgerow, or of elder bushes as part of restoration works (eg. coppicing and gapping), without prior notification.

4.17 Acceptable management activities are intended to revitalise hedges and should reflect local practices. A number of organisations publish information on good practice in hedge management. A free leaflet 'Hedgerow Management' (Nov 93) is available from ADAS, Chequers Court, Huntingdon, Cambs PE18 6LT; a free Farming and Wildlife and Advisory Group booklet 'Hedges and Field Boundaries' is available from FWAG, National Agricultural Centre, Stoneleigh, Kenilworth, Warwickshire CV8 2RX. Advice on hedgerow maintenance, focusing on important regional/local styles is also obtainable from the Countryside Council for Wales and the voluntary sector (eg. the Royal Society for the Protection of Birds, the British Trust for Conservation Volunteers, the Wildlife Trusts). Addresses can be found at Annex A.

CHAPTER 5

Notification of intended hedgerow removal

5.1 A person who wishes to remove, either entirely or in part, one or several hedgerows, which fulfil the description set out in regulation 3, must first notify the local planning authority. Any such person is subsequently referred to in this guidance as 'the applicant'. There is no fee for submitting a hedgerow removal notice to the local planning authority.

PRE-NOTIFICATION

5.2 Before submitting a formal notice, it may be advisable for the applicant to discuss his proposal informally with the local planning authority. Early discussion and possibly a visit to the site may save time later.

5.3 In particular:

- it will help the local planning authority to form a clearer picture of the operations proposed and the hedgerows affected;
- this will enable it to explain whether the hedgerow and the work are covered by the Regulations and if so whether there is a need to submit a formal removal notice;
- the local planning authority may be able to advise on whether other consents are required, such as a felling licence from the Forestry Authority or whether an application should be made under a Tree Preservation Order;
- the authority can also guide the applicant generally through the hedgerow notification procedure.

5.4 The local planning authority should provide, if requested, a written explanation of informal

advice. In particular, this should make clear what action is necessary and why.

HEDGEROW REMOVAL NOTICE

5.5 The prescribed form of hedgerow removal notice is set out in Schedule 4 to the Regulations. Regulation 5(1)(a) makes clear that the notice does not have to follow this precisely, provided that it is in a form substantially to the same effect.

5.6 Presentation of information in a consistent way will help the local planning authority to adopt a consistent approach to every notice that they receive and to reach consistent decisions. The local planning authority may well have their own forms of notice printed, on their usual headed paper, for this purpose. The authority should not, however, automatically reject a hedgerow removal notice because its own form of notice has not been used or because the notice is not in the form set out in Schedule 4. In such a case, the authority should accept the notice, provided that the substance of what is supplied satisfies the requirements of regulation 5(1)(a).

5.7 The form of notice in the Regulations is intended to provide the local planning authority with sufficient information to enable it to consider the proposed hedgerow removal, without placing an unreasonable burden on the applicant. The local planning authority may not ask for more information than the form in Schedule 4 requires the applicant to give.

5.8 In particular, the form of notice in Schedule 4 indicates that:

- any notification must be made in writing;

- the hedgerow(s) in question should be clearly identified, preferably on a large scale (1:2,500) plan. As part of the evaluation process, the local planning authority will need to visit the site and to survey the hedgerow(s). It is important, therefore, that there is no confusion over where they should go and which hedgerow(s) they should be looking at. The plan should be sufficient to enable an officer of the authority easily to locate the site and the specific hedgerow(s) on the ground;
- the applicant must state what reasons there are for removing the hedgerow(s). It is up to the applicant to decide what details should be provided to support the case being made. It is, however, in an applicant's interests to submit full details at the outset, and thus to help the local planning authority reach an informed decision;
- evidence must be provided to back up any claim that a hedgerow has existed for less than 30 years and so is not important, according to the definition in regulation 4(a) (but see paragraph 11.2);
- the status of the applicant must be made clear.

5.9 Receipt by the local planning authority of a hedgerow removal notice is the trigger to starting the 42 day period (or such longer period as may be agreed between the authority and the applicant), in which the authority must decide the matter. If the notice is incomplete, and does not contain the information identified above and in Schedule 4 to the Regulations, the notice is invalid. In these circumstances, the local planning authority should advise the applicant what further information is required – and that the 42 days will not start until it is supplied.

5.10 As noted above, the local planning authority is not entitled to ask for more information than is set out in the prescribed form of notice in Schedule 4 to the Regulations. Nor should it ask for multiple copies of notices to be provided. A single notice may be submitted even if it is proposed to remove more than one hedgerow, though the applicant should bear in mind the points made above about the importance of clarity. Separate notices for different sites may be more appropriate than one notice covering all proposed hedgerow removal on a single land holding.

5.11 As noted in paragraph 5.8 above, the applicant must provide evidence to support any claim that a hedgerow is less than 30 years old. Evidence which should usually be accepted by the local planning authority includes:

- if the hedgerow was planted with financial assistance from central or local Government or its Agencies, a copy of the relevant grant approval. The approval would need to make clear that new planting was involved, rather than repairs to an existing hedgerow which may be 30 years old or more;
- a copy of a bill for planting a new hedgerow, which identifies its location;
- a photograph of the area taken within the last 29 years. The location where the hedgerow now stands would need to be clear, as would the age of the photograph. This may mean relying on aerial photographs of the area held by local authorities;
- a sworn affidavit or statutory declaration from a third party, with no interest in the retention or removal of the hedgerow.

5.12 This list is illustrative rather than exhaustive. Early discussion with the local planning authority will help to establish what other evidence might be acceptable and what aerial photographs or maps of the area might be available.

5.13 If the evidence supplied does not, on the balance of probabilities, show that the hedgerow is less than 30 years old, the authority should inform the applicant accordingly and advise that the importance of the hedgerow will be assessed against the criteria in Schedule 1 to the Regulations. If it is apparent that the applicant intends to claim that the hedgerow is less than 30 years old but has offered no proof, the local planning authority should advise what further information is required and that the 42 days will not start until it is supplied (see paragraph 5.9 above).

WHO CAN NOTIFY

5.14 Regulation 5(1)(a) and (10) specify who can submit a hedgerow removal notice. They are:

- the owner of the freehold of the land; or
- the tenant if the land is part of an agricultural holding; or
- the tenant if the land is subject to a farm business tenancy; or
- certain utility operators, who need to remove a hedgerow in order to carry out their functions. These are electricity, public gas transporters, telecommunications, water and sewerage operators.

5.15 The form of notice in Schedule 4 requires the applicant to indicate into which of these categories they fall and so to confirm that they are authorised to submit a hedgerow removal notice.

5.16 Where the applicant is not also the owner of the land, it is good practice for that person to inform, or attempt to inform, the owner of the intended removal. There may also be an existing legal obligation to seek the owner's consent (eg. under a tenancy agreement). However, the notice does not have to be accompanied by any certificate to that effect and the local planning authority cannot be held responsible for the actions of any person who carries out work which they are not legally entitled to do, even though they may do so in accordance with a proposal approved by the authority (see regulation 6(3)).

WHO THE HEDGEROW REMOVAL NOTICE SHOULD BE SENT TO

5.17 Hedgerow removal notices should be sent to the local planning authority in whose area the hedgerow, which is the subject of the notice, is situated. If the hedgerow crosses the boundary of two local planning authority areas, the notice should go to the authority in which the greater part of the hedgerow is situated. Where the centre of the hedgerow marks the boundary of the areas of two local planning authorities (so that it cannot be said that the greater part of the hedgerow is situated within the area of one of them – see regulation 5(1)(a)), the authorities will wish to consider making arrangements under section 101 of the Local Government Act 1972 for the discharge of their functions under the Regulations either jointly or by one of them.

5.18 Paragraph 2.9 explains which councils are local planning authorities.

SERVING THE NOTICE

5.19 Regulation 16(2) applies certain provisions of section 329 of the Town and Country Planning Act 1990, which stipulate how notices should be given or served. This relates to all notices under the Regulations, including hedgerow removal notices.

5.20 The methods to be used are:

- by delivering the documents to the local planning authority. This may be through the normal post;
- by leaving them at the usual address or principal office of the authority;
- by pre-paid registered letter or recorded delivery to that address.

5.21 As noted in paragraph 5.9 above, it is not sending but receipt of a (properly completed) notice by the local planning authority that triggers the start of the 42 day period (or such longer period as may be agreed) in which the authority must decide the matter. It cannot necessarily be assumed, therefore, that the 42 days will begin a couple of days after posting.

5.22 It is recommended in paragraphs 6.3 and 6.4 that the local planning authority should acknowledge receipt of hedgerow removal notices, making it clear when the 42 day period (or such longer period as has been agreed) begins and ends. An applicant may, however, wish to consider using one of the means listed in the last two indents of paragraph 5.20, which ensures the notice gets to the local planning authority safely and which provides them with some proof of receipt.

INTERACTION WITH EXISTING CONSENT REGIMES

5.23 There are requirements, under other legislation, to notify or obtain the consent of certain bodies before removing a hedgerow, or a hedgerow tree. These may overlap with the

requirements to notify under the Hedgerows Regulations, but should be viewed as entirely separate. Different considerations are taken into account, and different timescales apply. In the circumstances listed below, therefore, the requirements to notify or obtain consent should be observed, as well as the requirement to notify and obtain consent under these Regulations.

Sites of Special Scientific Interest

5.24 Under section 28 of the Wildlife and Countryside Act 1981, when designating an area as a Site of Special Scientific Interest, English Nature or the Countryside Council for Wales are required to provide any landowner or occupier with a list of operations likely to damage the special interest of the site, which may include the destruction, removal or pruning of a hedgerow. Owners or occupiers must give the appropriate body 4 months' written notice if they intend to carry out any such operation.

Felling Consent

5.25 An overlap with the requirements of the Forestry Act 1967 may occur where it is intended to remove (uproot/fell), either individual trees or a stretch of hedgerow that contains trees above the licensable limits. In such circumstances, an application for a felling licence must be made to the Forestry Authority, and a separate notification to the local planning authority be made under these Regulations.

Tree Preservation Orders

5.26 If permission is granted under these Regulations to remove a hedgerow, the local planning authority's consent may also be required before cutting down, topping or lopping any tree contained in the hedgerow which is protected by a Tree Preservation Order made under section 198 of the Town and Country Planning Act 1990. Furthermore, if a hedgerow tree is not protected by a Tree Preservation Order but is located in a conservation area, designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990, 6 weeks' notice of any cutting down, topping or lopping must generally be given to the local planning authority.

Scheduled Monument Consent

5.27 In accordance with section 2 of the Ancient Monuments and Archaeological Areas Act 1979, all works affecting scheduled ancient monuments require the prior written consent of the Secretary of State for National Heritage in England and in Wales the Secretary of State for Wales. This would include ground disturbance caused by the uprooting of hedgerows on the site of archaeological remains which are protected as scheduled ancient monuments. The Secretary of State can only consider the archaeological implications of an application for consent, and cannot take into account the merits or otherwise of uprooting a hedgerow. There is no provision for retrospective consent to be granted. Application forms are available from the Department of National Heritage (Buildings, Monuments and Sites), 2-4 Cockspur Street, London SW1Y 5DH (Tel: 0171 211 2072). In Wales, contact CADW (details at Annex A).

Listed Building Consent

5.28 Under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990, listed building consent is required for any works which affect the historic character of a listed building. Applications for listed building consent are made to the local planning authority. Listed building controls might apply, for example, where there are protected milestones or boundary markers within a hedgerow, for which consent would be required if they were going to be moved as a result of the hedgerow removal.

OTHER OBLIGATIONS

5.29 The Regulations do not override legal obligations under private agreements or other statutory provisions. For example, consent given under the Regulations to remove a hedgerow would not override any obligations arising under Inclosure Acts and Awards which may still be enforceable, nor would it override any contractual obligations, such as between landlord and tenant (see paragraph 5.16) or under grant schemes where there may be a requirement to retain all hedges on a farm.

CHAPTER 6

Considering a hedgerow removal notice

CHECKING THE NOTICE

6.1 On receipt of a hedgerow removal notice, the local planning authority should check that the hedgerow itself, and the works to be carried out on it, are covered by the terms of the Regulations and thus should be notified to the authority. If not, the applicant should be informed immediately. In doing so, the local planning authority should explain that requirements to notify or obtain consent, under other legislation or private agreements, must still be observed (see paragraphs 5.23 to 5.29 above).

6.2 The authority should also establish whether the notice contains the information required by regulation 5(1)(a) of and Schedule 4 to the Regulations (as indicated in paragraphs 5.5 to 5.13 above). If not, the local planning authority should seek clarification from the applicant. In particular, the authority should advise them what further information is required, and that the 42 day period (or any such longer period as may be agreed) will not start until it is supplied.

ACKNOWLEDGING RECEIPT

6.3 The local planning authority are not required to acknowledge receipt of hedgerow removal notices but are advised to do so in writing. Given that the proposed removal can go ahead if the authority does not respond within the specified period, it is important that all parties are clear when this expires.

6.4 The acknowledgement should, therefore, specify the dates when the 42 day period begins and ends. The latter may need to be qualified to indicate that it will be subject to change in the event of any extension being agreed. It should be noted this is 42 calendar days – not 42 working days. The letter should also contain the name and

telephone number of the officer dealing with the notice. If possible, it might give an indication of when the officer is likely to visit the site in order to survey the hedgerow, as part of the evaluation process.

CONSULTATION

6.5 Under regulation 5(3), the local planning authority are required to consult the relevant parish council in England or community council in Wales on hedgerow removal notices. The consultation must be completed within the 42 day period, or such longer period as may be agreed between the local planning authority and the person giving the notice.

6.6 Although the time available to parish and community councils to comment on proposals will be limited because of the timescale within which the local planning authority must work, sufficient time for consultation must be allowed. What is sufficient will depend on the circumstances, but time must be allowed for the parish or community council to consider the proposal and make its views known, and for the local planning authority to consider those views. Parish or community councils should, therefore, be consulted at the earliest opportunity, to give them maximum time to comment. However, parish and community councils cannot expect the consultation to fit neatly within their regular cycle of meetings. Nor is it advisable for the local planning authority to be constrained by their committee cycles.

6.7 Parish and community councils may have important local knowledge which may help the local planning authority in considering hedgerow removal notices. These local councils may have views on the merits of a particular proposal, and they may be able to refer the local planning authority to local research to assist in the evaluation of the importance of hedgerows.

6.8 In addition, parish and community councils have a role in helping the local planning authority to enforce the Regulations. On the basis of their knowledge of hedgerow removal proposals being considered by the local planning authority, they are well placed to alert the authority to any unauthorised removal taking place in their area.

6.9 The local planning authority are required to keep a register available for public inspection, containing a copy of all hedgerow removal notices amongst other items. This provides a means of publicising proposals, with a view to stimulating consultation. It is not, however, a replacement for proper consultation with local councils. Although there is no express provision for third party comment, the authority may seek the views of other parties and take these into account.

SITE SURVEY

6.10 The local planning authority may visit the site and survey the hedgerow, as part of the evaluation to establish whether it is an important hedgerow according to the criteria in Schedule 1 to the Regulations. The authority will also need to instigate searches of the relevant documentary records. The individual criteria are discussed in detail in paragraphs 7.17 below onwards.

6.11 The site visit and survey should be undertaken by suitably qualified individuals. For example, identification of woody species should normally be carried out by an individual with suitable botanical knowledge.

6.12 If it appears to the officer who visits the site that the hedgerow itself is one to which the Regulations do not apply, or the works proposed are ones which do not need to be notified to the local planning authority, the position should be confirmed on returning to the office. The officer should also promptly inform, in writing, the applicant that the proposed hedgerow removal is outside the scope of the Regulations and so does not need to be notified to the authority. In doing so, the local planning authority should explain that requirements to notify or obtain consent, under other legislation or private agreements, must still be observed (as in paragraph 6.1 above).

6.13 If the hedgerow is covered by the Regulations and the works are not exempt, the local planning authority should carry out a survey of the hedgerow. This will involve examination of the hedgerow and associated features from land on either side of the hedgerow, which may require access to adjoining land, in different ownership (see paragraph 6.17 below).

6.14 During the survey, the following information should be collected:

- total hedgerow length;
- number and location of 30 metre hedgerow sections to be surveyed for woody species, using the formula set out in paragraph 7(3) of Schedule 1 to the Regulations and in paragraph 7.26 below;
- number of different woody species present within the 30 metre sections, using the list in Schedule 3 to the Regulations;
- presence of any of the four woody species listed in paragraph 7(1)(c) of Schedule 1 to the Regulations;
- presence of a bank or wall which meets the specification set out in paragraph 7(4)(a) of Schedule 1 to the Regulations;
- total length of all gaps in the hedgerow, usually the distance between the two closest woody stems on either side of the gap;
- number of standard trees, as defined in Part I of Schedule 1 to the Regulations;
- number of different woodland species present within one metre of the outermost edges of the hedgerow, using the list in Schedule 2 to the Regulations;
- presence of a ditch along at least one half of the length of the hedgerow;
- number of connected hedgerows, ponds or areas of woodland in which the majority of trees are broadleaved trees, bearing in mind that, under paragraph 7(5) of Schedule 1 to the Regulations, the points of connection should be within 10 metres of each other but do not have to meet physically;

- presence of a parallel hedge within 15 metres of the hedgerow;
- whether the hedgerow is adjacent to a bridleway, footpath, road used as a public path or byway open to all traffic (see also paragraph 7.16 below);
- presence of any of the species of animals, birds or plants described in paragraph 6(3) of Schedule 1 to the Regulations.

6.15 If there are problems in identifying woody species, in particular, samples of hedgerow material may be taken away for further investigation (see paragraph 6.23 below).

ENTRY TO LAND

6.16 Under regulation 12, any person duly authorised in writing by the local planning authority may enter any land at a reasonable hour for the purpose of surveying it in connection with a hedgerow removal notice, if there are reasonable grounds for entering for that purpose.

6.17 The local planning authority must give at least 24 hours' notice of intended entry to:

- the occupier of land which adjoins that on which the hedgerow is situated and which is in different ownership;
- where the hedgerow removal notice has been submitted by a utility operator, the occupier of the land to which the notice relates.

6.18 There is no requirement for the local planning authority to give the person who submitted the hedgerow removal notice advance warning of their visit and of their intended entry to land. It is, nevertheless, good practice to give 24 hours' notice wherever possible. If the applicant or occupier is available at the time fixed by the authority for a site visit and wishes to be present, this should be permitted.

6.19 These requirements apply whether it is an officer of the local planning authority visiting the site or another person, with the necessary written authority. For example, specialists, such as ecologists, may survey the hedgerow to assist in evaluating its importance.

6.20 Where trunk road or motorway land is concerned, notice of intended entry should be directed to the local Highways Agency office in England or the Welsh Office Highways Directorate in Wales, or the managing agent responsible. The officer of the local planning authority conducting the survey should comply with any reasonable safety requirements, especially when entering trunk road and motorway land or land owned by Railtrack.

6.21 Under regulation 13, a magistrate can issue a warrant enabling a person duly authorised by the local planning authority to enter land if it is shown to his satisfaction, on sworn information in writing, that:

- there are reasonable grounds for entering the land, for any of the purposes mentioned in regulation 12(1); and
- admission to the land has been refused, or no reply is received to a request for admission within a reasonable period, or a refusal is apprehended; or
- the case is one of urgency.

6.22 A warrant authorises entry once at a reasonable hour (unless the case is one of urgency). The inspection must be completed within one calendar month of the issue of the warrant.

6.23 The site visit and survey may involve more than a visual inspection. Under regulation 14, any person exercising a right of entry may take with him other persons as may be necessary, and may take away hedgerow and soil samples.

6.24 Any person who wilfully obstructs a person exercising a right of entry is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000 in May 1997).

CHAPTER 7

Important hedgerows

7.1 Subject to regulation 8(4), hedgerows are important for the purposes of the Regulations if:

- they have been in existence for 30 years or more; and
- they satisfy at least one of the criteria set out in Part II of Schedule 1 to the Regulations.

7.2 Paragraphs 5.11 to 5.13 discuss the evidence to support a claim that the hedgerow is less than 30 years old. As noted there, if the evidence supplied is not acceptable to the local planning authority, they will assess the hedgerow against the criteria in Schedule 1 to the Regulations.

7.3 The criteria in Part II of Schedule 1 identify hedgerows of significant archaeological, historical, wildlife or landscape value, for which new planting is no substitute.

7.4 Although a hedgerow may be considered important if it qualifies under any one of the criteria, the local planning authority should evaluate the hedgerow against all the criteria and must specify in the hedgerow retention notice which of the criteria are met (see paragraph 8.12 below).

7.5 Evaluation consists of both an on-site survey, largely to establish the wildlife and landscape value of the hedgerow, and reference to appropriate documentation, largely to establish its historical value.

DOCUMENTATION (GENERAL)

7.6 Paragraphs 1 to 5 of Part II of Schedule 1 to the Regulations, which broadly identify hedgerows of archaeological and historical significance, depend primarily on reference to published and publicly available records. Paragraph 6, which recognises the importance of rare birds, animals or plants,

may also require reference to documentary evidence where the presence of such species has not been established at the time of the on-site survey.

7.7 Many of the criteria refer to records made before 'the relevant date', that is before the Regulations were made on 24 March 1997.

SOURCES OF DOCUMENTATION RELEVANT TO PARAGRAPHS 1 TO 5 (HISTORICAL VALUE)

7.8 The historical records to be used in establishing whether a hedgerow is important are:

- the schedule of monuments compiled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979;
- the Sites and Monuments Records (SMRs), which often incorporate records of Scheduled Ancient Monuments and details of other archaeological fields and sites. They are usually maintained by all shire counties in England; by English Heritage in London; jointly by Metropolitan Boroughs in ex-Metropolitan county areas; and by the Archaeological Trusts in Wales;
- other documents held at a Record Office, as defined in Part I of Schedule 1. The periodic publication 'Record Repositories in Great Britain' (details from the Royal Commission on Historical Manuscripts, or its Internet web site <http://www.hmc.gov.uk>) provides useful reference information on these offices. They include the Public Record Office, the British Library (Manuscript Collections), the National Library of Wales (Department of Manuscripts and Records), and other national and local record offices and libraries.

7.9 The most fruitful and accessible source of information is likely to be County Record Offices. As with the SMRs, records relating specifically to hedgerows, apart from maps, are likely to be few and scattered. However, there are likely to be more references to features such as manor or other estate boundaries within the parish records.

7.10 Relevant documents may include:

- **Estate Maps:** large scale estate maps are rare before the last 20 years of the sixteenth century, but from then onwards they become more common and form a useful source of information on field boundaries and hedges. Some counties are richer in these than others eg. where an Oxbridge college or the church is or was a major landowner. Many such maps have been given to, or deposited in, the County Record Offices and are readily accessible but others remain in private hands. The latter are unlikely to satisfy the definition of a Record Office and so cannot be taken into account for the purposes of hedgerow evaluation under these Regulations.
- **Tithe Maps and Awards:** mostly made in the 1840s, the tithe map shows historical parish boundaries, although not all parishes will have such maps. The Tithe Commutation Act of 1836 converted the obligation of tithe in kind into a money charge – where Parliamentary enclosure occurred before 1836, tithes were extinguished as part of the enclosure process so tithe maps and awards were unnecessary. Tithe maps and awards are, therefore, more common in areas where Parliamentary enclosure did not occur because the land had not been in the open field system, or enclosure had occurred late ie. after 1836.
- **Enclosure Maps:** Parliamentary enclosure of open fields was usually on a whole parish basis so the pre-1850 enclosure maps will provide useful evidence of the historic parish boundary. Maps of pre-1836 enclosure will be particularly useful, as parishes where this occurred will not have tithe awards and maps.
- **Charters:** these can provide the earliest written evidence on the location of hedgerows. They are legal conveyances of land, some of which have 'perambulations' appended that define

the land by describing the boundaries. The distribution of charters is very uneven, as is the mention of hedges.

- **Manorial Records:** as with charters, these, while having useful information, may require translation into modern language. Personnel undertaking hedgerow evaluation are not expected to have the necessary skills or time to undertake this. However, some documents may already have been researched and translated.

7.11 The County Record Offices may also contain useful published research into the history of hedgerows or parishes.

7.12 Ordnance Survey Maps may also be useful. The first edition of the 6 inch Ordnance Survey maps were produced between 1853 and 1893 for the whole of England and Wales. The first edition of the OS 1 inch maps was not of a scale to show field boundaries, but the surveyors recorded field boundaries on a larger scale in their field-books which are now held in the British Museum. The survey was carried out between 1795 and 1873. Pre-1830 maps and survey books, covering approximately one third of England and Wales, may be less reliable than those produced subsequently.

SOURCES OF DOCUMENTATION RELEVANT TO PARAGRAPH 6 (WILDLIFE VALUE)

7.13 In terms of where research material may be found, this criterion refers to biological record centres run by or on behalf of local authorities. Such centres are maintained by some local authorities and some Wildlife Trusts, but coverage is not universal.

7.14 Any record will be treated as authentic if the form of record is recognised by English Nature (the Nature Conservancy Council for England), the Countryside Council for Wales, or the Joint Nature Conservation Committee.

7.15 A further requirement is that the record must indicate the presence of the appropriate species listed in the relevant schedules to the Wildlife and Countryside Act 1981 and the British Red Data Books within a specified period. In the case of animals and birds, the period is five years – which began on