

- 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

24 March 1992 and ended on 23 March 1997. In the case of plants, the period is ten years – which began on 24 March 1987 and ended on 23 March 1997. Where there is more than one record, only the record immediately preceding 23 March 1997 may be used; the criterion will not be satisfied where an earlier record indicates the presence of relevant species but the latest one does not.

#### **SOURCES OF DOCUMENTATION RELEVANT TO PARAGRAPH 8 (RIGHTS OF WAY)**

7.16 The highway authority should be consulted to establish whether a right of way is shown on the definitive map or if there are any outstanding claims that a right of way exists. The highway authority is the county council where the local planning authority is a shire district council, or the same body, except in a national park, where it is the county council or unitary authority (including metropolitan unitary authorities).

#### **CRITERIA FOR DETERMINING IMPORTANT HEDGEROWS (SCHEDULE 1 TO THE REGULATIONS)**

**PARAGRAPH 1:** The hedgerow marks the boundary, or part of the boundary, of at least one historic parish or township; and for this purpose 'historic' means existing before 1850.

7.17 1850 has been selected so as to pre-date the rationalisation of parish boundaries which created current civil parishes. The Tithe map for the parish or enclosure maps, if available, should be referred to when applying this criterion. The 1st edition 6 inch Ordnance Survey map may help in interpreting and confirming information in earlier, possibly hand-drawn, maps. Estate maps may also show parish boundaries.

**PARAGRAPH 2:** The hedgerow incorporates an archaeological feature which is:

- (a) included in the schedule of monuments compiled by the Secretary of State under section 1 (schedule of monuments) of the Ancient Monuments and Archaeological Areas Act 1979; or

- (b) recorded at the relevant date in a Sites and Monuments Record.

7.18 The hedgerow might delineate a feature eg. along the ramparts of a fort or incorporate other features, such as burial mounds, milestones. A record of an artefact found along a hedgerow would not be sufficient to qualify it under this criterion.

**PARAGRAPH 3:** The hedgerow:

- (a) is situated wholly or partly within an archaeological site included or recorded as mentioned in paragraph 2 or on land adjacent to and associated with such a site; and
- (b) is associated with any monument or feature on that site.

7.19 A hedgerow that is adjacent to a medieval moated site or deserted medieval village and the line of which can be demonstrated to be contemporaneous with the site would qualify. Conversely, an enclosure hedgerow adjacent to a medieval site would not qualify under this criterion.

**PARAGRAPH 4:** The hedgerow:

- (a) marks the boundary of a pre-1600 AD estate or manor recorded at the relevant date in a Sites and Monuments Record or in a document held at that date at a Record Office; or
- (b) is visibly related to any building or feature of such an estate or manor.

7.20 This might include an Anglo-Saxon charter boundary or the boundary of a medieval manor or ecclesiastical estate. A number of documents considered together may provide the necessary evidence.

7.21 'Visibly related' does not mean that the hedgerow is simply visible from the feature. However, a hedgerow that forms a boundary to one close (paddock) or one of a group of closes around an outlying barn or farmstead of the estate/manor might qualify. So too might a hedgerow alongside a track that once connected the manor house with the corn mill.

PARAGRAPH 5: The hedgerow:

- (a) is recorded in a document held at the relevant date at a Record Office as an integral part of a field system pre-dating the Inclosure Acts; or
- (b) is part of, or visibly related to, any building or other feature associated with such a system, and that system:
  - (i) is substantially complete; or
  - (ii) is of a pattern which is recorded in a document prepared before the relevant date by a local planning authority, within the meaning of the 1990 Town and Country Planning Act, for the purposes of development control within the authority's area, as a key landscape characteristic.

7.22 The phrase 'pre-dating the Inclosure Acts' should be taken to mean before 1845 (whether or not Inclosure Acts exists for the area in question), that being the earliest of the Acts known by the collective title given by the Short Titles Act 1896.

7.23 Any document used in support of paragraph 5(a) should identify the hedgerow in relation to the wider field pattern. Whether the hedgerow is an 'integral part' of the field system is a matter of judgement, on the basis of what the field pattern now is (rather than that recorded in the document) and whether that pattern would no longer be discernible if the hedgerow was removed.

PARAGRAPH 6: The hedgerow:

- (a) contains species:
  - (i) listed in Part I (protection at all times) of Schedule 1 (birds which are protected by special penalties), Schedule 5 (animals which are protected) or Schedule 8 (plants which are protected) to the Wildlife and Countryside Act 1981; or
  - (ii) categorised as a declining breeder (category 3) in *Red Data Birds in Britain* Batten LA, Bibby CJ, Clement P, Elliott GD and Porter RF (Eds.), published in 1990 for the Nature Conservancy Council and the Royal Society for the Protection of Birds (ISBN 0 85661 056 9); or

- (iii) categorised as 'endangered', 'extinct', 'rare' or 'vulnerable' in Britain in a document mentioned either in:

The British Red Data Books:

- (1) *'Vascular Plants'* Perring FH and Farrell L, 2nd Edition, published in 1983 for the Royal Society for Nature Conservation (ISBN 0 902484 04 4); or
- (2) *'Insects'* Shirt DB (Ed.), published in 1987 for the Nature Conservancy Council (ISBN 0 86139 380 5); or
- (3) *'Invertebrates other than insects'* Bratton JH (Ed.), published in 1991 for the Joint Nature Conservation Committee (ISBN 1 873701 00 4); or

The Red Data Books of Britain and Ireland:

- (1) *'Stoneworts'* Stewart NF and Church JM, published in 1992 for the Joint Nature Conservation Committee (ISBN 1 873701 24 1).

7.24 The Department of the Environment, Transport and the Regions, at the address given at Annex A, can supply at a reasonable cost a single list of all the relevant species where the above documentation is not readily available. A hedgerow will qualify as important if it either contains any of the above species, resident or breeding, at the time of the site visit or is referred to in a record as having contained such species (as explained in paragraphs 7.13 to 7.15 above).

PARAGRAPH 7 (part): The hedgerow includes:

- (a) at least 7 woody species listed in Schedule 3 to the Regulations; or
- (b) at least 6 woody species, and has associated with it at least 3 of the features specified at paragraph 7.27 below; or
- (c) at least 6 woody species, including either a black-poplar tree, a large-leaved lime, a small-leaved lime or a wild service-tree; or

- (d) at least 5 woody species, and has associated with it at least 4 of the features specified at paragraph 7.27 below.

7.25 Woody species not mentioned in Schedule 3 do not count for these purposes, unless they are hybrids. Where the list in Schedule 3 refers to a group of species (such as Elm, Rose, Whitebeam or Willow), different varieties of these groups only count as a single woody species. Thus a hedgerow containing Hawthorn, Dog Rose, Field Rose, Goat Willow, White Willow and Elder would be assessed, under the Regulations, as containing 4 woody species.

7.26 The qualifying number of woody species is reduced by one for the North of England. This is defined in paragraph 7(2) of Schedule 1 to the Regulations as comprising the counties (as constituted on 1 April 1997) of the City of Kingston upon Hull, Cumbria, Darlington, Durham, East Riding of Yorkshire, Hartlepool, Lancashire, Middlesbrough, North East Lincolnshire, North Lincolnshire, Northumberland, North Yorkshire, Redcar and Cleveland, Stockton-on-Tees, Tyne and Wear, West Yorkshire and York.

7.27 To calculate the number of woody species, the hedgerow must be surveyed in accordance with the instructions set out in paragraph 7(3) of Schedule 1 to the Regulations ie:

- where the length of the hedgerow does not exceed 30 metres, count the number of woody species present in the hedgerow;
- where the length of the hedgerow exceeds 30 metres, but does not exceed 100 metres, count the number of woody species present in the central stretch of 30 metres;
- where the length of the hedgerow exceeds 100 metres, but does not exceed 200 metres, count the number of woody species present in the central stretch of 30 metres within each half of the hedgerow and divide the aggregate by two;
- where the length of the hedgerow exceeds 200 metres, count the number of woody species present in the central stretch of 30 metres within each third of the hedgerow and divide the aggregate by three.

See also regulation 3 and paragraphs 3.10 and 3.11, which explain how to ascertain the length of a hedgerow.

7.28 The associated features are as follows:

- a bank or wall which supports the hedgerow along at least one half of its length;
- gaps which in aggregate do not exceed 10% of the length of the hedgerow;
- where the length of the hedgerow does not exceed 50 metres, at least one standard tree. A standard tree is defined as:
  - in the case of a single-stemmed tree, one with a diameter of at least 20 centimetres measured at a point 1.3 metres above natural ground level;
  - in the case of a multi-stemmed tree, one with at least two stems whose diameters are at least 15 centimetres measured at a point 1.3 metres above natural ground level;
- where the length of the hedgerow exceeds 50 metres but does not exceed 100 metres, at least 2 standard trees;
- where the length of the hedgerow exceeds 100 metres, such number of standard trees (within any part of its length) as would when averaged over its total length amount to at least one for each 50 metres;
- at least 3 ground flora woodland species (listed in Schedule 2 to the Regulations) within one metre, in any direction, of the outermost edges of the hedgerow;
- a ditch along at least one half of the length of the hedgerow;
- connections scoring 4 or more points, where a connection to another hedgerow counts as one, and where a connection to a woodland, in which the majority of trees are broadleaved trees, or a pond counts as two;
- a parallel hedge within 15 metres of the hedgerow.

PARAGRAPH 8 (part): The hedgerow:

- (a) is adjacent to a bridleway or footpath, a road used as a public path, or a byway open to all traffic; and
- (b) includes at least 4 woody species and has associated with it at least 2 of the features specified at paragraph 7.28 below.

7.29 The associated features are as follows:

- a bank or wall which supports the hedgerow along at least one half of its length;
- gaps which in aggregate do not exceed 10% of the length of the hedgerow;
- where the length of the hedgerow does not exceed 50 metres, at least one standard tree;
- where the length of the hedgerow exceeds 50 metres but does not exceed 100 metres, at least 2 standard trees;
- where the length of the hedgerow exceeds 100 metres, such number of standard trees (within any part of its length) as would when averaged over its total length amount to at least one for each 50 metres;
- at least 3 ground flora woodland species (listed in Schedule 2 to the Regulations) within one metre, in any direction, of the outermost edges of the hedgerow;
- a ditch along at least one half of the length of the hedgerow.

7.30 The number of woody species must be counted in accordance with the instructions set out at paragraph 7.27 above (and paragraph 7(3) of Schedule 1 to the Regulations). There is no reduction of woody species for the North of England.

# CHAPTER 8

## Decisions

### POWERS AND TIME LIMITS

8.1 The local planning authority may respond to a proposal in a hedgerow removal notice by:

- issuing a written notice stating that the hedgerow may be removed – under regulation 5(1)(b)(i);
- issuing a hedgerow retention notice – under regulation 5(2). In the case of a removal notice which covers more than one hedgerow, the hedgerow retention notice must specify the work which may not be carried out.

8.2 Subject to paragraph 8.3 below, the local planning authority must respond to a hedgerow removal notice within 42 days, beginning with the date on which the removal notice was received by the authority. If they do not give a hedgerow retention notice before this period expires, the hedgerow may be removed.

8.3 The 42 day period may be extended with the agreement of the person who submitted the hedgerow removal notice.

### INTERNAL PROCEDURES

8.4 As noted in paragraph 6.6 above, because of the timescale in which the local planning authority must work, it is not advisable for the authority to be constrained by their committee cycle. The local planning authority may, therefore, wish to distinguish between classes of cases which may be decided by officers of the authority under delegated powers (such as, where the hedgerow is not important) and those to be decided by a committee or sub-committee (such as, where the hedgerow is important and a detailed case has been provided as to why its removal should nevertheless be allowed).

### NOTICE THAT THE HEDGEROW MAY BE REMOVED

8.5 If a hedgerow is not important, according to the definition in regulation 4, the local planning authority may not prevent its removal. As soon as it is apparent that the hedgerow is not an important one, the local planning authority should inform the applicant in writing that the proposed removal may proceed. The authority should not wait for the 42 day period (or such longer period as may have been agreed) to expire.

8.6 Where the hedgerow removal notice covers more than one hedgerow, the local planning authority should ensure that it is clear what is being authorised and what works of removal remain to be determined. The local planning authority should also 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).

8.7 The hedgerow removal must be carried out in accordance with the proposal specified in the removal notice submitted to the local planning authority and within a period of two years, beginning with the date on which the removal notice was received by the authority. If, for example, it is intended to remove a larger portion of the hedgerow than that proposed in the original removal notice, a fresh hedgerow removal notice must be given to the local planning authority. Equally, a new notice will be required if the removal is not carried out before the two year period expires.

### HEDGEROW RETENTION NOTICE

8.8 Under regulation 5(5)(a), the local planning authority may not issue a hedgerow retention notice in respect of a hedgerow which is not important. The authority must issue a retention notice in respect of an important hedgerow unless,

having regard in particular to the reasons given for the proposal, there are circumstances which justify its removal.

8.9 A retention notice should be sent as soon as a decision has been made and must be given before the expiry of 42 days (or such longer period as may have been agreed), beginning with the date on which the removal notice was received by the authority. In the context of the Regulations, the term 'given' includes the process of getting the hedgerow retention notice to the applicant. This means that it should be received by the applicant before the 42 days (or such longer period as may have been agreed) expires. The methods that the local planning authority should use in giving a hedgerow retention notice are discussed in paragraphs 8.23 to 8.25 below.

8.10 A hedgerow retention notice should state specifically that removal of the hedgerow consisting of, or including, work specified in the removal notice in relation to that hedgerow, is prohibited.

8.11 It should also make clear that the hedgerow retention notice, and thus the prohibition, are not time limited. They last until such time as:

- the hedgerow retention notice is withdrawn, under regulation 5(8);
- the hedgerow retention notice is quashed, under regulation 9(3)(b), as a result of a successful appeal;
- a fresh removal notice is submitted, in response to which a retention notice is not issued. A fresh removal notice may be given at any time, but the outcome is likely to be the same unless there has been some change in circumstances since the local planning authority last considered the matter.

8.12 Except where the hedgerow was planted in place of an illegally removed hedgerow and regulation 8(4) applies, the retention notice must, under regulation 5(7), specify each of the criteria defining important hedgerows, set out in Schedule 1 to the Regulations, which applies to the hedgerow. In addition, the authority are advised to include in their decision notice:

- a statement that the authority has taken into account the reasons for the hedgerow removal put forward by the applicant but is not satisfied that there are circumstances which justify the hedgerow's removal;
- an explanation of the applicant's right of appeal to the Secretary of State. Information should be provided on how, where and within what period an appeal may be made (see Chapter 9). It should be made clear that the hedgerow retention notice stands while any appeal is being considered;
- details of where advice on hedgerow management, and availability of grants, may be obtained.

8.13 Where the hedgerow evaluation reveals that at least one of the criteria listed in Schedule 1 to the Regulations is satisfied, the local planning authority should, if time allows, inform the applicant of the outcome – before the authority make a final decision on whether to give a hedgerow retention notice.

## **IMPORTANT HEDGEROWS AND REASONS FOR REMOVAL**

8.14 In deciding whether to issue a hedgerow retention notice, the presumption is in favour of protecting and retaining important hedgerows. This is made clear by regulation 5(5)(b) which places a requirement on the local planning authority to issue a hedgerow retention notice unless satisfied that the circumstances justify removal of an important hedgerow.

8.15 Although this strong presumption is clear, nevertheless the Regulations require the local planning authority, in each case, to make a judgement whether – even though it is an important hedgerow – its removal is justified, bearing in mind the reasons given on the form of notice and taking account of any comments made by the parish or community council during the consultation. The authority is not required to consult other parties, but there is nothing to prevent the views of other parties being taken into account. The authority may also take account of their own development plan objectives and policies for countryside protection or enhancing countryside character.

8.16 The circumstances in which removal of an important hedgerow is allowed to proceed are likely to be exceptional. But a local planning authority might consider that the wider public interest was best served by removal of the hedgerow.

8.17 For instance, there may be overriding arguments of public safety why an important hedgerow should go, such as to make way for essential improvements to a local road which is an accident black spot and where there is no other solution to the problem.

8.18 The wider environmental impact of alternatives to the proposed works might also justify removal of a portion of an important hedgerow. Utilities might have strong grounds for needing to remove a small section of a hedgerow rather than re-route a planned cable or pipeline. For example, to lay underground electricity lines in attractive villages, or to avoid crossing an even more environmentally sensitive area. Equally, an alternative route might give rise to far greater environmental impact during construction (for instance, undulating terrain may require deeper trenching) or in the longer term.

8.19 Cases involving personal financial loss are unlikely to be sufficient to justify the grubbing out of an important hedgerow. The impact on the business would have to be extremely serious before a local authority should allow removal of an important hedgerow.

8.20 Similarly, change of ownership of land, and subsequent rationalisation of holdings, would usually not be enough to justify removal of an important hedgerow. The register of retention notices held by the local authority serves to inform potential buyers of any existing restrictions. Or, if none has been issued, the criteria are so framed as to enable owners to undertake their own evaluation and to reach broadly the same conclusion as the local planning authority.

## **WITHDRAWING A HEDGEROW RETENTION NOTICE**

8.21 Under regulation 5(8) a hedgerow retention notice may be withdrawn at any time by the local planning authority, by giving notice in writing to the person to whom the original retention notice was given.

8.22 The circumstances in which an authority might consider withdrawing a hedgerow retention notice include where new evidence comes to light soon after the notice has been issued, the result of which is that the hedgerow is not regarded as important according to the definition in regulation 4. Before taking such action, the local planning authority are advised to inform the person, to whom the hedgerow retention notice was given, of any significant factors that come to light. Depending on the time that has lapsed since the original retention notice was issued, and on the nature of the new evidence, it may be more appropriate for a new hedgerow removal notice to be given so that the local planning authority may consider the matter anew.

## **SERVING NOTICES**

8.23 Regulation 16(2) applies certain provisions of section 329 of the Town and Country Planning Act 1990 to notices under the Hedgerows Regulations. They set out how the local planning authority should serve either a notice that the proposed removal may proceed or a hedgerow retention notice. The methods to be used are:

- by delivering the documents into the hands of the applicant;
- by leaving them at the address given in the hedgerow removal notice;
- by pre-paid registered letter or recorded delivery to that address.

8.24 Where a notice is sent by post, it is assumed – unless the contrary is proved – that it will have been given at the time at which it would be delivered in the normal course of the post.

8.25 As noted in paragraph 8.9 above, the process of getting the notice to the person who submitted the hedgerow removal notice must be completed before the expiry of the 42 day period (or such longer period as may have been agreed).

## **LOCAL AUTHORITY APPLICATIONS**

8.26 Under regulation 15, if a local planning authority wish to remove a hedgerow that they

own (either alone or jointly with others) and that is covered by the Regulations, the removal notice is decided by the authority. It is not referred to another body.

8.27 The hedgerow removal notice may not be considered by:

- the committee or sub-committee of the local planning authority responsible for the management of the land on which the hedgerow in question is situated;
- an officer whose responsibilities include any aspect of the management of such land.

8.28 The relevant parish or community council should be consulted on the hedgerow removal notice, as required by regulation 5(3).

8.29 The provisions of regulation 8 in respect of replacement of hedgerows and the rights of appeal in regulation 9 do not apply.

8.30 Regulation 15 applies only where the local planning authority is the owner or joint owner of the land. Where the local highway authority owns the land on which the hedgerow is situated, and it is not also the local planning authority for the area, the local highway authority must submit a hedgerow removal notice to the local planning authority, in accordance with regulation 5(1)(a). In such cases, the rights of appeal to the Secretary of State apply, as do all other provisions of the Regulations.