



Hedges, the Law, rules and regulations

Question:

Can I trim, cut, lay or coppice a hedge at any time of year?

Answer:

All wild birds are protected. This includes their nests (whilst in use or being built) as well as any eggs the nest may contain. Under the Wildlife & Countryside Act 1981 (as amended), it is an offence to:

1. intentionally kill, injure or take any wild bird;¹
2. intentionally damage, destroy or take the nest of any wild bird while it is in use or being built (nests of golden eagle, white tailed eagle and osprey are protected all year round);
3. intentionally destroy an egg of any wild bird;
4. intentionally or recklessly disturb certain wild birds² or their dependent young while they are nesting (including disturbance of nesting young);

Although within the WCA no dates are legally stated between which hedges cannot be trimmed, cut, laid or coppiced, the main bird breeding season is recognised as being between 1 March and 31 July. Therefore the risk of committing any of the above offences is increased between these dates. It is recommended that if you undertake any work within these dates you should check the hedge for any signs of breeding activity first (such as observation from a distance using binoculars and direct searching of the hedge for nests).

If you suspect an offence is/has been committed in relation to wild birds then contact your local Police Force and report the incident to them. Ask for the case to be investigated by a Wildlife Crime Officer (WCO) if possible and ask for an incident number so you can go back to them if needed. If the offence is on-going report it to the Police on the 999 system.

¹ Any bird shown to have been bred in captivity is not classed as a 'wild bird' unless it has been lawfully released into the wild as part of a repopulation or reintroduction programme.

² The list of wild birds that you must not disturb while nesting is contained in Schedule 1 to the Wildlife and Countryside Act 1981.

In addition;

If you are entered in to the Single Payment Scheme (SPS) with the Rural Payments Agency (RPA), GAEC 15 states that you must not cut or trim any hedgerow on your farm

between 1 March and 31 July (inclusive) – the main breeding season for birds – each year unless such work is necessary because any of the following apply:

- the hedgerow overhangs a highway, road or footpath over which there is a public or private right of way and the overhanging hedgerow obstructs the passage of, or is a danger to, vehicles, pedestrians or horse riders;
- the hedgerow is dead, diseased, damaged or insecurely rooted and is likely to cause danger by falling on to a highway, road or footpath; or obstructs the view of drivers or the light from a public lamp;
- to carry out hedge-laying or coppicing during the period 1 March to 30 April (inclusive);
- to trim a newly laid hedgerow by hand, within 6 months of it being laid;

If you wish to undertake works within the dates stated above, and which are not listed above, you must apply to the RPA in writing for an exemption and wait for written permission before carrying out any work. Contact the RPA on 0845 603 7777 or e-mail: csc@rpa.gsi.gov.uk

If the hedge is entered into an agri-environment scheme (such as Entry Level Stewardship (ELS), Higher Level Stewardship (HLS), Organic Entry Level Stewardship (OELS), Uplands Entry Level Stewardship (UELS), Countryside Stewardship Scheme (CSS) or the Environmentally Sensitive Area scheme (ESA) you must not cut hedgerows during the main bird nesting season which is taken to be from 1 March to 31 July (inclusive). However, some agreements might further restrict these dates, in particular ELS agreements starting on or after 1 October 2008 where you must not cut hedgerows between 1 March and 31 August (inclusive).

Please note that under ELS hedgerow management options hedge laying and coppicing are permitted in a style customary to the local landscape, but should be completed before 1 March. However, in exceptional circumstances, work may continue up to 1 April, provided you conduct a survey to ensure there are no nesting birds present. A derogation notice (EN-DN) form needs to be completed and returned to Natural England before work can begin. However, please note this derogation does not override the legal requirements relating to the WCA (detailed above).

CSS, ESA, HLS agreement holders should refer to individual agreement documentation with regard to dates between which trimming, coppicing and laying are permitted.

In all cases you should check your agreement documentation to find out which specific dates apply to you. If you are still unsure call your local Incentive Schemes Services (ISS) team in NE (ELS, OELS and UELS queries only) or your local Land Management Team Adviser (CSS, ESA and HLS queries only).

Contact NE on 0845 600 3078 or e-mail: enquiries@naturalengland.org.uk if you are not sure which local ISS or Land Management Team Adviser you need to speak to.

Question:

What if someone is doing work on a hedgerow I am concerned about and I think they are entered in to a Scheme with Natural England (NE) or the Rural Payments Agency (RPA)?

Answer:

Ideally you should approach the person doing the work or the landowner/occupier to discuss your concerns and ask if the hedge is on land which is subject to a Scheme. If the land is entered in to a Scheme and you still have concerns about it following talking to the person doing the works or the owner/occupier, you should report your concerns to the RPA if the person has a Single Farm Payment (SFP) Scheme agreement on 0845 603 7777 or e-mail: csc@rpa.gsi.gov.uk. If the person has an Environmental Stewardship (ES) Agreement, Contact NE on 0845 600 3078 or e-mail: enquiries@naturalengland.org.uk.

If you are not sure if the land is entered in to any Scheme or you do not want to approach the person doing the works or the owner/occupier then you should contact the RPA and NE to make them aware of the works and this will be looked in to.

Question:

Do felling licences and Tree Preservation Order (TPO) consents apply to hedgerow works?

Answer:

When felling more than 5 m³ of timber in a calendar quarter, you may need a Forestry Commission (FC) Felling Licence. For further information, the FC has produced the guidance **Tree Felling – getting permission** (available at www.forestry.gov.uk). You may also need permission for work on trees that are subject to a Tree Preservation Order (TPO). Contact your local authority Tree Officer for advice.

Question:

I have heard there is a piece of legislation called the Hedgerow Regulations. What are they and what do they do?

The Hedgerow Regulations 1997 came in to force in March 1997. They protect “important hedges” from removal. Important hedges are defined in the regulations.

The regulations apply to any hedgerow growing in, or adjacent to, any common land, protected land (local nature reserves and SSSI's), or land used for agriculture, forestry or the breeding or keeping of horses, ponies or donkeys, if it: (a) has a continuous length of, or exceeding 20 metres; or (b) it has a continuous length of less than 20 metres and, at each end, meets another hedgerow. The regulations **do not** apply to hedgerows within the curtilage of, or marking a boundary of the curtilage of, a dwelling house.

The definition of a Hedgerow is curiously omitted from the Regulations and the enabling act (Environment Act 1995). It is taken however, to be a "line of bushes forming a hedge". Removal is defined as "uproot or otherwise destroy". Otherwise destroy has not been tested in the courts but could include repeated coppicing on a short time scale in an attempt to destroy the hedgerow for example.

Anybody wishing to remove or destroy a hedge must apply to their Local Planning Authority (LPA) for consent (or if in the National Parks or Broads Authority areas to their offices). The LPA has six weeks to determine the application and can either issue a Hedgerow Removal Notice (if the hedge is not considered "important" or if there are grounds for allowing the removal of an "important" hedge), or a Hedgerow Retention Notice (issued if the hedge is important and should be retained). Hedgerow Removal Notices are only normally valid for two years after their issue. There is a presumption against hedgerow removal in the legislation.

The Regulations make provision for the protection of important hedgerows in England and Wales. To facilitate the protection of those hedgerows, the Regulations apply to a wider class of hedgerows, which are described in regulation 3 (in particular to hedgerows which are 20 metres or more long or which meet another hedgerow at each end and which , in each case, are on or adjacent to land used for certain specified purposes).

Before removing any hedgerow, the owner (or in certain cases a relevant utility operator) must notify the local planning authority. The hedgerow may then not be removed if the local planning authority serves a hedgerow retention notice, which may be done only if the hedgerow is important according to the criteria set out in regulation 4 and Schedules 1 to 3. The requirement for the owner (or utility operator) to notify the local planning authority does not apply to the permitted work described in regulation 6.

There are provisions for criminal offences (regulation 7), replacement of hedgerows removed in contravention of the regulations (regulation 8), appeals against hedgerow retention and other notices (regulation 9), record-keeping by the local planning authority (regulation 10), enforcement by injunction (regulation 11) and rights of entry (regulation 12 to 14). There are also provisions for hedgerows owned by the local planning authority (regulation 15) and ecclesiastical property (regulations 16(1)). Some of these further provisions apply provisions of planning legislation and others make provision comparable to that to be found in the planning legislation in connection with appeals or with the preservation of trees.

Breaches of the Hedgerow Regulations are enforced by local planning authorities.

Question:

What about land within a Special Protection Area (SPA)?

Answer:

For land classed as a Special Protection Area (SPA):

You must

1. notify Natural England in writing of any proposal to carry out, cause or permit any specified operation¹ or where a special nature conservation order applies (unless

- covered by the terms of a management agreement, scheme or notice) **and** obtain consent before starting that operation;
2. comply with all management notices served by Natural England or the terms of any restoration order served by a court.²

If you are claiming Single Farm Payment (SFP) from the Rural Payments Agency (RPA) failure to do the above may place you in breach of the rules of the Scheme.

You must not

1. intentionally or recklessly destroy or damage the special interest features of the area³ or disturb any fauna that are a special interest feature or, cause or permit the act. (This requirement can apply to actions that take place other than on the SPA itself but which have the same consequences.)

If you are claiming Single Farm Payment (SFP) from the Rural Payments Agency (RPA) failure to do the above may place you in breach of the rules of the Scheme.

If you are claiming Single Farm Payment (SFP) from the Rural Payments Agency (RPA), you will not be in breach of the rules for a Special Protection Area (B1, B2 and C1) if you have reasonable excuse.⁴

¹ A specified operation means one which has been identified as likely to damage the special interest features of the area. This information forms part of the notification package for Sites of Special Scientific Interest.

² Where the purpose of the notice or restoration order is the protection or restoration of the special interest features of the area or otherwise restore the land to its former condition as may be so specified.

³ 'Special interest features' of an area are interpreted as the notified interest features of the Site of Special Scientific Interest that are also relevant to the Special Protection Area.

⁴ Reasonable excuse may include the following: you have planning permission to carry out the work; you have consent from a public body or statutory authority that has complied with its duty to consult Natural England before giving the consent; it was an emergency operation (provided that Natural England is notified as soon as possible after the emergency).

Question:

What about land within a Site of Special Scientific Interest (SSSI)?

Answer:

You must not intentionally or recklessly destroy or damage the special interest features of the area¹ or disturb any fauna that are a special interest feature or, cause or permit the act. (This requirement can apply to actions that take place other than on the SSSI itself but which have the same consequences.)

¹'Special interest features' of an area are interpreted as the notified interest features of the Site of Special Scientific Interest. The above applies unless you have written consent from Natural England (NE) to carry out the works. Contact your local SSSI Adviser in NE or contact NE on 0845 600 3078 or e-mail: enquiries@naturalengland.org.uk if you are not sure who your local Adviser is.

Question:

Are Hedgerows protected by any other legislation?

Answer:

Some hedges are protected by old Inclosure Acts. These may require that hedges are retained and managed forever more.

People wishing to remove hedgerows should therefore seek professional legal advice before doing so to determine whether the hedgerow might be protected by an Inclosure Act. Many Inclosure Acts are deposited in Local Records Offices.

Some planning permissions may require the retention of hedgerows on development sites and their removal would be a breach of that planning consent. Breaches of planning consent are enforced by local planning authorities.

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