

## Devon hedges: the law and other protection

There are numerous rules and pieces of legislation that affect hedges, with the overall aim of protecting this habitat and its wildlife. This section summarises the main ones, but is for guidance only; you should check legal documents and associated guidance before taking any action.

The two most important provisions affording protection to Devon's rural hedges are The Hedgerows Regulations and Cross Compliance, and these are covered first. You should note, however, that Cross Compliance rules are likely to change over time. Other particularly important legal considerations for the managers of Devon hedges are protected species legislation and felling licences.



Since *The Hedgerows Regulations 1997* came into force, the removal of hedges in Devon across agricultural land is now rare. Here a hedgebank in the foreground has been bulldozed up against the one in the background. ©Robert Wolton (Normandy, 2010)

### The Hedgerows Regulations 1997

These regulations are designed to secure effective protection for hedgerows of significant historic, wildlife or landscape value. All hedgerows are covered other than garden hedges, those on golf courses or on land not used for agriculture, forestry or grazing horses, and those which are less than 20 metres long.

Landowners or managers wishing to remove any length of hedge must notify their local planning authority of their intent to do so. There are a few exceptions to this, the two main ones being that a new gateway can be created but only if an existing one is filled, or the removal is covered by planning permission. After receiving a notice of intent to remove a hedge, the local planning authority has six weeks to assess the value of the hedge and to give or refuse consent.

Consent will normally only be given if the hedgerow is either less than 30 years old or deemed not to be 'important'. To determine whether or not a hedgerow is 'important', the local authority must consider a number of criteria set out in the Regulations relating to its historic, wildlife or landscape value. The local planning authority will also consider the reason for wishing to remove the hedge, and can give permission for a hedge to be removed, even if it is important, if the reason for removal is considered to be of overriding public interest.

In Devon the great majority of rural hedges are important as defined by the Regulations, by virtue either of being ancient (i.e. in existence before 1845) or species-rich (i.e. with 7 or more woody species in a 30 m stretch). Further information is available on Government and Hedgelink websites, including *The Hedgerows Regulations 1997: Guide to the Law and Good Practice*.



*Felling mature hedgerow trees such as this beech will normally require a felling licence unless the tree is dead or poses an imminent safety risk.*

©Robert Wolton

## Cross Compliance

Claimants in England of agricultural and environmental support schemes set up under European and UK legislation must comply with a set of rules known as Cross Compliance. Such schemes include the Basic Payment Scheme and Countryside Stewardship, and their successors. From 2015, under Good Agricultural and Environmental Condition (GAEC) 7A, farmers must not:

- Remove any part of a hedgerow without following the requirements of The Hedgerows Regulations 1997, or any earth bank, stone bank or stone wall.
- Cultivate or apply fertilisers or pesticides within 2 m of the centre of a hedgerow and take steps to maintain green cover on these 2 m strips, known as Hedgerow Protection Zones.
- Cut or trim hedgerows, or cast-up banks, between 1 March and 31 August inclusive (the breeding season for birds) unless the work is necessary because the hedge obstructs a right of way or is a danger to vehicles, pedestrians or horse riders, or the hedge is dead, diseased or damaged and likely to cause danger to the users of rights of way or drivers. Under GAEC 7C this ban on cutting extends to trees. Hedge laying or coppicing is, however, permitted up to the end of April, and newly-laid hedges can be trimmed by hand within 6 months of them being laid.

## Felling Licences

These are required from the Forestry Commission before trees, including those in hedges, can be felled. A licence is not needed if the trees are within a garden, orchard, churchyard or designated public open space, or are 8 cm or less in diameter at breast height (increased to 10 cm for thinnings and 15 cm for coppice). A licence is also not required for pruning or pollarding, where trees are dangerous or cause a nuisance, or where less than 5 cubic metres are felled in a calendar quarter (provided no more than 2 cubic metres of the wood is to be sold). 5 cubic metres equates roughly to 20 to 40 larger stems (15-20 cm diameter, 6-7 m high) in a hedge of optimal coppice size, or to one mature oak tree (diameter 60 cm, 15 metres high).

Everyone involved in felling trees, whether contractor, adviser, owner or tenant, must ensure either that a felling licence has been granted or one of the exemptions applies. Applications must specify how any trees lost are to be replaced. If a hedge is to be removed, then permission will also be required under The Hedgerows Regulations. For further information see the Forestry Commission website.

## Tree Preservation Orders

These are orders made by a local planning authority which prohibit the cutting down, uprooting, topping, lopping or wilful damage or destruction of trees without the authority's consent. They can be applied to woodlands as well as to individual trees - there is no minimum size. However, a TPO can only be used to protect trees and cannot be applied to bushes and shrubs, so whole hedges which are kept short by regular cutting could not have a TPO placed on them, only individual trees or lines of trees. TPOs are used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. Important wildlife features would not be sufficient on their own.



To find out whether a TPO has been placed on a particular tree or woodland, consult your local council. For further information see the guidance *Tree Preservation Orders and trees in conservation areas*, available from Government web sites.

## Public highways

It is normally the responsibility of farmers and landowners to maintain hedges and trees growing beside public highways, including roads, footpaths and other public rights of way. Under The Highways Act 1980, they must ensure that growth does not obstruct visibility, road signs or street lights, easy passage or user safety. Users include drivers (including of high-sided vehicles), horse riders, cyclists or pedestrians. Farmers and landowners must also remove any branches and other growth that has fallen across the highway, including debris left from cutting work. Failure to do so can result in the local authority doing the necessary work and charging the landowner.

When carrying out any work, remember to be aware of overhead power cables and that a felling licence or other consent may be needed. Normally trees overhanging footpaths should have no branches lower than 2.1 m, and over roads no lower than 5.2 m, although this will vary with users. For further information see Devon County Council's *Roadside Hedge & Tree Management* leaflet (2009), which can be read or downloaded from the Devon Hedge Group web pages.

## Places with special protection

**Conservation Areas** are areas of special architectural and historic interest normally designated by local planning authorities. Anyone within these areas wishing to cut down, top or lop a tree must notify the authority, which then has 6 weeks within which to decide whether or not to make a Tree Preservation Order. To find out where Conservation Areas are, consult your local council.



*Farmers and landowners have a responsibility to ensure easy access along public rights of way such as this green lane. ©Robert Wolton*

## Sites of Special Scientific Interest (SSSIs)

are areas of national importance for the conservation of wildlife or geology. Within these consent is required from Natural England before specified operations are undertaken. Such specified operations normally include the felling, removal or damage to trees and bushes.

**Scheduled Monuments** are places of national importance for the conservation of monuments and archaeological features. They can include ancient field systems as well as banks associated with forts and dwellings, and as such frequently encompass Devon hedges. Not all scheduled monuments are ancient. English Heritage is the responsible authority, and consent must be received from them before any work is undertaken within or on a Scheduled Monument. Guidance can be found on the English Heritage website.

## Protected species

Many species that occur in Devon hedges are protected by the Wildlife and Countryside Act 1981 (as amended). This includes all wild birds, their nests (being built or in use), eggs and chicks, although a few species may be hunted or controlled by certain methods, usually outside a defined closed season. For this reason, management work should normally be carried out outside the bird breeding season, which is usually taken as 1 March to 31 August, but can start earlier and can continue into September for a few species.

Some birds are afforded special protection, with additional penalties if an offence is committed. These include the curlew, a bird that breeds in Devon hedges. Its breeding season extends into early September, so hedges in areas where this bird is known to occur should not be cut or otherwise disturbed until after 15 September.

Apart from birds, many other animals are also specially protected, including the places they use for shelter and protection. It is illegal even to disturb these species at such places. Species which use Devon hedges which are protected in this way include great-crested newt, all bats, hazel dormouse and water vole. Slow worm, adder and grass snake are also protected, but only against killing or injury.

Some lichens which occur on hedgerow trees in Devon are protected, including orange-fruited elm lichen, golden-hair lichen and southern grey physcia. The only flowering plant with special protection known to have a particular association with Devon hedges is the Plymouth pear, which is found in a few hedges in Plymouth. However, it is illegal to uproot or destroy any wild plant without the landowner's permission.



*All British bats, including brown long-eared and pipistrelle bats shown here, are specially protected and hedge work must not damage any roosts or breeding sites except under licence.*

Photo: Hugh Clark/www.bats.org.uk

Badgers have their own legislation (Protection of Badgers Act 1992), under which it is illegal to damage or destroy their setts, or disturb occupied setts, except under licence.

Some animals and plants are recognised as being threatened across the European Union and these are given additional protection within the UK under The Conservation of Habitats and Species Regulations 2010. These *European Protected Species* include all bats, dormouse and great-crested newt, species which frequently occupy Devon hedges. It is an offence to damage or destroy a breeding or resting place of any such animal. Note that deliberate is taken to mean both intentionally and recklessly.

Detailed information on hedge management for dormice, and how to ensure compliance with law, is given in section 7, *Devon hedges and wildlife 3: dormice*.



*Dunnock (hedge sparrow) nest. The nests of all wild birds are protected by law and it is illegal, with a few exceptions, to damage or destroy them whilst being built or in use. ©Robert Wolton*

## Habitats and species of principal importance

Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 places a duty on all public bodies, including local authorities, to have regard to the conservation of biodiversity when carrying out their normal functions. To guide them in this duty a list of habitats and species in England which are of principal importance for the conservation of biodiversity has been published by Government under Section 41 of the NERC Act. These *Section 41 habitats and species* were carried forward from those recognised as priorities for conservation action within the UK Biodiversity Action Plan.

Listed habitats include hedgerows, defined as all hedgerows with 80% or more cover of native shrub or tree species. Consequently very nearly all rural hedges in Devon are Priority Habitat, garden hedges being the only significant exception. Furthermore, forty nine Section 41 species are significantly

associated with Devon hedges (excluding widespread moths). The county's hedges are of particular significance for bastard balm, Plymouth pear, brown and white-letter hairstreak butterflies, cirl bunting, greater and lesser horseshoe bats and hazel dormouse.

## Planning controls

Planning consent may be required for new banked hedges. Although the construction of new Devon hedges might be considered to be *permitted development*, it is wise to consult your local planning authority before starting such work. Where materials are to be imported on to your land for this purpose, it is necessary to seek a waste management licence exemption from the Environment Agency.

## Anti-Social Behaviour Act 2003

This Act has a section on high hedges, defined as those containing wholly or predominantly evergreens (such as *leylandii*) over 2 m high. Under the Act, owners or occupiers of domestic properties can complain to their local council if they believe their reasonable enjoyment of that property is being adversely affected by the height of a high hedge on neighbouring land. If the local authority decides the complaint is reasonable, they can issue a remedial notice to the owner of the neighbouring property requiring them to reduce the height of the hedge (after any active bird nests have been vacated).

## Tenants

Tenants of let agricultural land are reminded that they must comply with the terms of their tenancy agreement and the Rules of Good Husbandry contained within the Agricultural Holdings legislation. Failure to do so may result in action being taken by the landlord.