

To:  
Chief Planning Officers in England

23 May 2002

*Dear Sir/Madam*

**GUIDANCE ON THE APPLICATION OF THE HEDGEROWS REGULATIONS 1997:  
CRITERIA FOR DETERMINING "IMPORTANT" HEDGEROWS**

You may be aware of the Judicial Review case Flintshire County Council –v- NAW & Mr J T Morris. The case concerned the meaning of Schedule 1, Part II, paragraph 5 of the Hedgerows Regulations 1997. That paragraph lays down criteria for determining the importance of hedgerows that form part of, or are associated with, field systems pre-dating the Inclosure Acts.

The case has now been concluded. The outcome confirms that paragraph 5(a) may determine that a hedgerow is important regardless of the current completeness of the historic field system.

Based on the outcome of the case, our opinion on the provisions of paragraph 5 may be summarized as follows:

- ◆ Regulation 4 provides that a hedgerow is "important" if it has existed for 30 years or more and satisfies at least one of the criteria in Part II of Schedule 1.
- ◆ Paragraph 5(a) in Part II of Schedule 1 reads: "The hedgerow 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". "Relevant date" means the date when the Hedgerows Regulations were made (24<sup>th</sup> March 1997: see Part I of Schedule 1). The earliest Inclosure Act mentioned in the Short Titles Act 1896 was made in 1845.
- ◆ Paragraph 5(a) looks at the field system as recorded in the Record Office document, and not at existing field patterns. A hedgerow for which such historic records exist is "important" if the record shows it was integral to the field system. The completeness of the field pattern at the present date is irrelevant. A hedgerow recorded in such a document as an integral part of a pre-1845 field system would still be important if it is now the only remaining part of the pre-1845 field system.



- ♦ The requirement for a pre-1845 field system to be substantially complete – meaning still discernible – relates only to paragraph 5(b)(i) in Part II of Schedule 1. Under that criterion, a hedgerow would be “important” if it is part of, or visibly related to, any building or other feature associated with the substantially complete field system.

The above does not accord with the current\* version of the Hedgerows Regulations 1997: A Guide to the Law and Good Practice. Since we expect to be consulting shortly on proposals to amend the 1997 Regulations, and on a draft Guide which reflects our proposals, we do not propose to revise the full Guide to reflect the outcome of the Judicial Review case. But we have re-written the section on paragraph 5 in chapter 7 of the Guide (page 27). Our revised section is enclosed.

We would be grateful if you could ensure that your staff are made aware of the change to the Guide as quickly as possible. We have written in similar terms to the Planning Inspectorate so that their decisions reflect the change. A copy is also being sent to Brian Beasley at the Local Government Association.

Simon Allday (020 7238 5662) or I would be happy to answer any queries.

*Yours faithfully,*

**Stephen Cane**

Conservation Management Division

\* the current version (the amended reprint dated August 1998) contains one extensive change, in its chapter 7 paragraph 5, to the original (May 1997) edition of the Guide

**Amendment to the Hedgerows Regulations 1997: A guide to the Law and Good Practice (page 27)**

**PARAGRAPH 5: The hedgerow:**

- (a) is recorded in a document held at the relevant date (24<sup>th</sup> March 1997) 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 (24<sup>th</sup> March 1997) by a local planning authority, within the meaning of the Town and Country Planning Act 1990, 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 exist 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 Under paragraph 5(a) a hedgerow is "important" if it was recorded as of 24<sup>th</sup> March 1997 in a Record Office document as forming an integral part of the pre-1845 field system. The completeness of the field pattern at the present date is irrelevant. A hedgerow so recorded would still be important if it is now the only remaining part of the pre-1845 field system.

7.23a Under paragraph 5(b)(i), a hedgerow is "important" only if it is part of, or visibly related to, an existing building or feature associated with a pre-1845 field system, and that system remains substantially complete. This means the field system must be still discernible.

7.23b Under paragraph 5(b)(ii), a hedgerow is "important" only if it is part of, or visibly related to, an existing building or feature associated with a pre-1845 field system that was recorded by the local planning authority before 24<sup>th</sup> March 1997 as 'a key landscape characteristic' for the purposes of the 1990 Act.