

Draft Regulations laid before Parliament under section 97(7) of the Environment Act 1995 and section 62(3)(b) of the Regulatory Enforcement and Sanctions Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No.0000

COUNTRYSIDE

The Management of Hedgerows (England) Regulations 2024

*Made - - - - - ****
Coming into force in accordance with regulation 1(1)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 97 of the Environment Act 1995(1) (“the 1995 Act”) and section 62 of the Regulatory Enforcement and Sanctions Act 2008(2) (“the 2008 Act”).

In accordance with section 97(6) of the 1995 Act, the Secretary of State has consulted such bodies referred to within paragraphs (a), (b), (c) and (e) of that section which the Secretary of State considers appropriate.

In accordance with section 60 of the 2008 Act, the Secretary of State has also consulted such organisations as appear to the Secretary of State to be representative of persons substantially affected by this instrument and such other persons as the Secretary of State considers appropriate.

The Secretary of State is satisfied as to the matters referred to in section 66 of the 2008 Act.

A draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 97(7) of the 1995 Act and section 62(3) of the 2008 Act.

PART 1

Introduction

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Management of Hedgerows (England) Regulations 2024 and come into force on the day after the day on which they are made.

(1) 1995 c. 25. Subsection (6A) was inserted by paragraph 12 of Schedule 22 to the Deregulation Act 2015 (c. 20). See the definition of “the appropriate Ministers” in section 97(8). The functions of the Minister of Agriculture, Fisheries and Food which were exercisable jointly with the Secretary of State in respect of England became exercisable by the Secretary of State alone by virtue of S.I. 2002/794.

(2) 2008 c. 13.

- (2) These Regulations extend to England and Wales but apply in relation to England only.

Interpretation

2. In these Regulations—

“agriculture” includes—

- (a) horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including horses, ponies and any creature kept for the production of food, wool, skins or fur, or for the purposes of its use in the farming of land);
- (b) the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds;
- (c) the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes,

and “agricultural” is to be construed accordingly;

“agricultural holding” has the meaning given in section 1(1) of the Agricultural Holdings Act 1986⁽³⁾ (principal definitions);

“civil sanction” means—

- (a) a compliance notice;
- (b) a restoration notice;
- (c) a stop notice;
- (d) a variable monetary penalty;

“compliance notice” has the meaning given in paragraph 1(1)(b) of Schedule 2;

“enforcement cost recovery notice” has the meaning given in regulation 12;

“farm business tenancy” has the meaning given in section 1 of the Agricultural Tenancies Act 1995⁽⁴⁾ (meaning of “farm business tenancy”);

“fertilisers” includes any material, organic or inorganic, natural or synthetic, which supplies nutrients required for plant growth, including but not limited to organic manures, lime, slurry, sewage sludge, anaerobic digestate, slag, trace elements, calcified seaweed and human waste;

“final notice” has the meaning given in paragraph 4(3) of Schedule 2;

“important hedgerow” has the meaning given in regulation 4;

“non-compliance penalty” has the meaning given in regulation 11(1);

“notice” means notice in writing;

“owner”, in relation to a hedgerow, means—

- (a) to the extent that the hedgerow is growing on any land which comprises part of an agricultural holding or which is subject to a farm business tenancy, the person who owns the freehold of the land or the tenant of that land; or
- (b) to the extent that the hedgerow is growing on any other land, the person who owns the freehold of the land,

and, for these purposes, a person who “owns the freehold” of land means a person who is entitled, otherwise than as a mortgagee not in possession, to dispose of the fee simple;

“pesticides” means anything used for destroying pests and includes herbicides, fungicides, insecticides and other biocides;

(3) 1986 c. 5.

(4) 1995 c. 8.

- “Regulator” means the Secretary of State;
- “restoration notice” has the meaning given in paragraph 1(1)(c) of Schedule 2;
- “stop notice” has the meaning given in paragraph 1(2) of Schedule 1;
- “variable monetary penalty” has the meaning given in paragraph 1(1)(a) of Schedule 2.

PART 2

Management of hedgerows

Hedgerows to which these Regulations apply

3.—(1) These Regulations apply to any hedgerow growing on land used for agriculture if that hedgerow has—

- (a) a continuous length of 20 metres or more; or
- (b) a continuous length of less than 20 metres and, at each end, meets (whether by intersection or junction) another hedgerow,

except where the hedgerow is a hedgerow of a kind described in paragraph (2).

(2) A hedgerow described in this paragraph is any hedgerow within the curtilage of, or marking a boundary of the curtilage of, a dwelling house.

(3) These Regulations also apply to a stretch of hedgerow forming part of a hedgerow described in paragraph (1).

(4) Where a hedgerow meets (whether by intersection or junction) another hedgerow, it is to be treated as ending at the point of intersection or junction.

(5) When ascertaining the length of a hedgerow for the purposes of these Regulations, any gap—

- (a) resulting from a contravention of the Hedgerows Regulations 1997(5); or
- (b) not exceeding 20 metres,

is to be treated as part of the hedgerow.

(6) For the purposes of this regulation—

“a hedgerow growing on land used for agriculture” includes any hedgerow growing on land adjacent to land used for agriculture which is owned by the owner of the hedgerow; and

“gap”, in relation to a hedgerow, means any opening (whether or not it is filled).

Prescribed criteria for “important” hedgerows

4. For the purposes of section 97 of the Environment Act 1995 (hedgerows) and of these Regulations, an “important” hedgerow is one to which, by virtue of regulation 3, these Regulations apply.

General maintenance requirements for important hedgerows

5.—(1) An owner of an important hedgerow or any person employed or engaged by an owner or otherwise acting on an owner’s behalf must, in relation to an important hedgerow or the owner’s agricultural land, comply with the general maintenance requirements set out in paragraphs (2) and (3).

(5) *S.I. 1997/1160*; as amended by the Countryside Rights of Way Act 2000 (c. 37) and by *S.I. 2003/2155, 2006/1177, 2009/1307, 2013/755* and *2015/377*.

(2) The requirements set out in this paragraph are to take all reasonable steps to establish and thereafter maintain green cover on land within two metres of the centre of an important hedgerow.

(3) The requirements set out in this paragraph are to not cultivate or apply fertilisers or pesticides to land within two metres of the centre of an important hedgerow unless—

(a) using pesticides, by way of spot application, to control the spread of any of the following weeds—

- (i) broad-leaved dock (*Rumex obtusifolius*);
- (ii) creeping or field thistle (*Cirsium arvense*);
- (iii) curled dock (*Rumex crispus*);
- (iv) giant hogweed (*Heracleum mantegazzianum*);
- (v) Himalayan balsam (*Impatiens glandulifera*);
- (vi) Japanese knotweed (*Reynoutria japonica*);
- (vii) ragwort (*Senecio jacobaea*);
- (viii) rhododendron (*Rhododendron ponticum*);
- (ix) spear thistle (*Cirsium vulgare*); and

(b) the land is being cultivated for one or more of the reasons specified in paragraph (4).

(4) The reasons specified in this paragraph are that—

- (a) the land is being cultivated to establish a green cover where a green cover does not exist;
- (b) written permission from the Regulator has been given to cultivate the land in order to—
 - (i) enhance the environment;
 - (ii) improve public or agricultural access; or
 - (iii) for reasons relating to livestock or crop production;
- (c) the land is being cultivated because there is otherwise a risk to human or animal health and safety;
- (d) the land is being cultivated or, as the case may be, fertilisers are being applied or pesticides are being used to—
 - (i) enable the treatment of a serious cause of harm to plant health or a serious infestation of any pest or weed; or
 - (ii) to permit measures to be taken to prevent the development of any such cause of harm or infestation.

(5) The requirements of this regulation do not apply to—

- (a) land either side of an important hedgerow where it can be demonstrated that the hedgerow is less than five years old;
- (b) land forming part of a parcel of two hectares or less, as measured within permanent boundary features;
- (c) the casting up of a traditional hedgerow bank during the period beginning 1st September in any year and ending on 28th or, as the case may be, 29th February in the following year, inclusive of those dates;
- (d) land on the side of an important hedgerow which is facing a dwelling house where the hedgerow marks a boundary of the curtilage of the dwelling house;
- (e) land used for an allotment within the meaning given by section 1 of the Allotments Act 1925⁽⁶⁾ (interpretation).

(6) 1925 c. 61. Section 1 was amended by the Statute Law Repeals Act 1993 (c. 50), Schedule 1, Part 3.

(6) In paragraph (5)(c), a “traditional hedgerow bank” means an earth bank faced with turf or stone and topped with hedge plants.

(7) This regulation applies—

- (a) as regards agricultural land next to an important hedgerow that is not used for crop production, from 1st July 2024; or
- (b) as regards agricultural land next to an important hedgerow that is used for crop production, from the end of the first harvest of that crop that takes place after 1st July 2024.

Cutting and trimming of important hedgerows

6.—(1) The cutting and trimming of an important hedgerow is prohibited during the period beginning with 1st March in any year and ending on 31st August in that year, inclusive of those dates, except in the circumstances described in paragraphs (2) and (3).

(2) The circumstances described in this paragraph are where the cutting or trimming is of an important hedgerow which—

- (a) 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 users;
- (b) obstructs the view of such users or the light from a public lamp; or
- (c) is dead, diseased, damaged or insecurely rooted and, because of its condition, the hedgerow, or part of it, is likely to cause danger by falling on to a highway, road or footpath.

(3) The circumstances described in this paragraph are where—

- (a) the cutting or trimming—
 - (i) takes place during the period beginning with 1st March in any year and ending on 30th April in that year, inclusive of those dates, and is for the purposes of carrying out hedge-laying or coppicing;
 - (ii) is in order to trim a newly laid hedgerow by hand, within six months of it being laid;
 - (iii) takes place during the month of August and is for the purposes of sowing oilseed rape or temporary grassland during that month, and the owner has notified the Regulator in writing before any cutting or trimming is undertaken; or
 - (iv) is in the interests of human or animal health and safety;
- (b) the cutting or trimming is to—
 - (i) enable the treatment of a serious cause of harm to plant health or a serious infestation of any pest or weed; or
 - (ii) permit measures to be taken to prevent the development of any such cause of harm or infestation;
- (c) the cutting or trimming is carried out on land by virtue of, or in connection with, any statutory activity and is reasonably necessary for that purpose;
- (d) written permission from the Regulator has been given to cut or trim the hedgerow—
 - (i) for the purposes of enhancing the environment;
 - (ii) for the purposes of improving public or agricultural access; or
 - (iii) for reasons relating to livestock or crop production.

(4) In paragraph (3)(c), “statutory activity” means an activity undertaken under or by virtue of any enactment (including any authorisation granted under any enactment).

PART 3

Offences

Offences

7.—(1) Any person to whom the general maintenance requirements in regulation 5 apply who fails to comply with those requirements commits an offence.

(2) Any person who cuts or trims an important hedgerow or who causes or permits another person to cut or trim an important hedgerow in contravention of regulation 6 commits an offence.

(3) A person who commits an offence under paragraph (1) or (2) is liable, on summary conviction, to a fine.

(4) In determining the amount of any fine to be imposed on a person convicted of an offence under paragraph (1) or (2), the court must, in particular, have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

(5) Section 331 of the Town and Country Planning Act 1990(7) (offences by corporations) applies in relation to offences under paragraph (1) or (2) committed by a body corporate as it applies in relation to offences under that Act committed by a body corporate.

(6) Where the commission of an offence under paragraph (1) or (2) is due to the act or default of another person, that other person commits the offence and—

- (a) may be charged with and convicted of the offence, whether or not proceedings are taken against the first mentioned person; and
- (b) is liable, on summary conviction, to a fine under paragraph (3) which is to be determined by the court in accordance with paragraph (4).

(7) In these Regulations, a reference to an offence under paragraph (1) or (2) of this regulation is to be read as including an offence committed in circumstances to which paragraph (5) or (6) apply.

Defence

8.—(1) In any proceedings for an offence under regulation 7(1) or (2) it is, subject to paragraph (3), a defence for a person to prove that—

- (a) the commission of the offence was due to—
 - (i) a mistake,
 - (ii) reliance on information supplied to that person;
 - (iii) the act or default of another person; or
 - (iv) an accident or some other cause beyond the control of that person; and
- (b) the person took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by themselves or by any person under their control.

(2) A person may not, without leave of the court, seek to rely on a defence under paragraph (1) (a)(ii) or (iii) unless that person has served on the Regulator a notice giving the Regulator any information that the person may have to identify or assist in identifying that other person—

- (a) at least seven clear days before the hearing; and
- (b) where the accused has previously appeared before the court in connection with the alleged offence, within one month of the first such appearance.

(7) 1990 c. 8.

PART 4

Enforcement

Enforcement

9. The Regulator must enforce the requirements of regulations 5 and 6.

Civil sanctions

10.—(1) The Regulator may impose one or more civil sanctions if, in any case, the Regulator considers that an offence has been committed under regulation 7(1) or (2).

(2) Schedule 1 makes provision relating to the issue by the Regulator of stop notices in connection with an offence.

(3) Schedule 2 makes provision for—

- (a) the imposition by the Regulator of variable monetary penalties; and
- (b) the issue by the Regulator of compliance notices and restoration notices,

in connection with an offence.

Non-compliance penalty

11.—(1) If a person fails to comply with the requirements of a compliance notice or a restoration notice the Regulator may serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”) in respect of the same offence.

(2) The Regulator may impose a non-compliance penalty in respect of an offence irrespective of whether a variable monetary penalty was also imposed in respect of that offence.

(3) The amount of the non-compliance penalty must be determined by the Regulator and must be a percentage of the estimated costs of fulfilling the remaining requirements of the compliance notice or restoration notice, as the case may be.

(4) The percentage referred to in paragraph (3) must be determined by the Regulator having regard to all the circumstances of the case and may be up to 100%.

(5) A notice served under paragraph (1) must include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) the amount to be paid to the Regulator;
- (c) how payment must be made;
- (d) the period in which payment must be made, which must not be less than 28 days;
- (e) the right of appeal;
- (f) the consequences of failure to make payment in the specified period;
- (g) any circumstances in which the Regulator may reduce the amount of the penalty.

(6) The person on whom the notice imposing the non-compliance penalty is served may appeal against it in writing before the end of the period specified by the Regulator in the notice which must not be less than 28 days.

(7) The grounds of appeal are—

- (a) that the decision to serve the notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unfair or unreasonable for any reason;

- (d) that the amount of the penalty was unreasonable;
- (e) any other reason.

Enforcement cost recovery notices

12.—(1) The Regulator may serve a notice (“an enforcement cost recovery notice”) on a person on whom a variable monetary penalty notice, compliance notice, restoration notice or stop notice has been served requiring that person to pay the costs incurred by the Regulator in relation to the notice up to—

- (a) in the case of a variable monetary penalty notice, compliance notice or restoration notice, the time of its imposition; or
- (b) in the case of a stop notice, the time of service.

(2) In this regulation “costs” include in particular—

- (a) investigation costs;
- (b) administration costs;
- (c) costs of obtaining expert advice, including legal advice.

(3) The enforcement cost recovery notice must specify—

- (a) the grounds for serving the notice;
- (b) the amount to be paid;
- (c) how payment must be made;
- (d) the period in which payment must be made, which must not be less than 28 days;
- (e) the right of appeal;
- (f) the consequences of failure to make payment in the specified period.

(4) The person on whom the notice is served may request that the Regulator provide a detailed breakdown of the amount to be paid.

(5) The Regulator must comply with a request made under paragraph (4).

(6) The person on whom the notice is served is not liable to pay any costs shown by that person to have been incurred unnecessarily.

(7) The person on whom the notice is served may appeal against it in writing before the end of the period specified by the Regulator in the notice which must not be less than 28 days.

(8) The grounds of appeal are—

- (a) that the decision of the Regulator to impose the requirement to pay costs is unfair or unreasonable;
- (b) that the decision of the Regulator as to the amount of those costs is unfair or unreasonable;
- (c) any other reason.

(9) Where a person on whom the notice is served fails to pay the full amount to be paid as specified in the notice before the end of the period for payment specified in the notice, the Regulator may recover the amount outstanding as a debt, together with interest on that amount, calculated in accordance with paragraph (10).

(10) Where the Regulator exercises the power conferred under paragraph (9), interest may be charged to the amount to be paid for each day from the end of the period for payment specified in the notice to the date on which payment of that amount, and of any associated costs, is made in full.

(11) For the purposes of paragraphs (9) and (10), the rate of interest applicable on any day is one percentage point above the Bank of England base rate.

- (12) In paragraph (11) “Bank of England base rate” means—
- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
 - (b) if an order under section 19 of the Bank of England Act 1998⁽⁸⁾ (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

Recovery of payments

13. The Regulator may recover any variable monetary penalty or non-compliance penalty, or any costs specified in an enforcement cost recovery notice, on the order of a court, as if payable under a court order.

Withdrawing or amending a notice

- 14.—(1) The Regulator may at any time in writing—
- (a) withdraw a variable monetary penalty notice, a non-compliance penalty notice or an enforcement cost recovery notice or reduce the amount specified in the notice;
 - (b) withdraw a compliance notice, restoration notice or stop notice or amend the steps so as to reduce the amount of work necessary to comply with the notice.
- (2) Paragraph (1) does not prevent the Regulator from withdrawing a notice and issuing a replacement notice.

Appeals

- 15.—(1) Any appeal under these Regulations is to the First-tier Tribunal.
- (2) In any appeal, except in relation to a stop notice, where the commission of an offence is an issue requiring determination, the Regulator must prove that offence according to the same burden and standard of proof as in a criminal prosecution.
- (3) In any other case the Tribunal must determine the standard of proof.
- (4) All notices (other than stop notices) are suspended pending appeal.
- (5) The Tribunal may suspend or vary a stop notice.
- (6) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
- (a) withdraw the requirement or notice;
 - (b) confirm the requirement or notice;
 - (c) vary the requirement or notice;
 - (d) take such steps as the Regulator could take in relation to the act or omission giving rise to the requirement or notice;
 - (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Regulator.
- (7) The Tribunal may, in the case of an appeal under paragraph 5(2) of Schedule 1, decide any issue relating to compensation.

⁽⁸⁾ 1998 c. 11.

Guidance as to use of civil sanctions and enforcement of relevant offences

16.—(1) As regards each power to issue civil sanctions in relation to an offence under these Regulations, the Regulator must publish guidance—

- (a) about the intended use of the sanction;
 - (b) about how the offence is to be enforced.
- (2) Guidance under paragraph (1)(a) must include the information set out in paragraph (4)
- (3) Guidance under paragraph (1)(b) must include the information set out in paragraph (5).
- (4) The information referred to in paragraph (2) is information as to—
- (a) the circumstances in which the civil sanction is likely to be imposed;
 - (b) the circumstances in which the civil sanction may not be imposed;
 - (c) rights of appeal;
 - (d) as regards the power to issue a variable monetary penalty, a compliance notice or a restoration notice only, the rights to make representations and objections;
 - (e) as regards the power to issue a variable monetary penalty only, the matters likely to be taken into account by the Regulator in determining the amount of the penalty, which must include the voluntary reporting by any person of their own non-compliance.
- (5) The information referred to in paragraph (3) is information as to—
- (a) the sanctions (including criminal sanctions) to which a person who commits an offence may be liable;
 - (b) the action which the regulator may take to enforce the offence;
 - (c) the circumstances in which the Regulator is likely to take any such action.
- (6) The Regulator must revise the guidance issued under paragraph (1)(a) and (b) where appropriate from time to time, subject to regulation 18.
- (7) The Regulator must have regard to the current guidance under paragraph (1)(a) when exercising the power to issue a civil sanction to which it relates.

Guidance as to use of non-compliance penalties

17.—(1) The Regulator must publish guidance about the intended use of non-compliance penalties and enforcement cost recovery notices, which must include the information set out in paragraph (2).

- (2) The information referred to in paragraph (1) is information as to—
- (a) the circumstances in which they are likely to be imposed;
 - (b) the circumstances in which they may not be imposed;
 - (c) rights of appeal;
 - (d) matters to be taken into account by the Regulator in determining amounts.

Consultation on guidance

18. The Regulator—

- (a) may consult such persons as the Regulator considers appropriate before publishing any guidance or revised guidance in relation to the intended use of enforcement cost recovery notices under these Regulations; and
- (b) must consult such persons as the Regulator considers appropriate before publishing any other guidance or revised guidance under these Regulations,

Publication of enforcement action

19.—(1) As regards each power to issue civil sanctions in relation to an offence under these Regulations, the Regulator must, from time to time, publish a document in respect of the relevant period which sets out—

- (a) the cases in which the civil sanction has been imposed;
- (b) as regards the power to issue a variable monetary penalty, restoration notice or compliance notice only, the cases in which an undertaking offered under paragraph 3(b) of Schedule 2 has been accepted by the Regulator under paragraph 4(2) of Schedule 2.

(2) In paragraph (1)(a) the reference to cases in which the civil sanction has been imposed does not include cases to the extent that a sanction has been imposed but is overturned on appeal.

(3) This regulation does not apply in cases where the Regulator considers that publication would be inappropriate.

Right to enter and inspect

20.—(1) Any person authorised in writing by the Regulator may, on producing the authorisation if required, at any reasonable hour enter any land or premises (other than premises used exclusively as domestic purposes) to undertake an inspection—

- (a) to ascertain or verify whether there is or has been any breach of the requirements set out in regulation 5 or 6;
- (b) to determine whether any of the powers conferred on the Regulator by these Regulations should be exercised in relation to the land or premises or any other land or premises;
- (c) to determine how any such power should be exercised in relation to the land or premises or any other land or premises;
- (d) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or premises or any other land or premises.

(2) Subject to paragraph (3), the authorised person must—

- (a) inform the owner of the land or premises of the purpose of the proposed inspection and, where possible, agree a suitable date and time for that inspection;
- (b) if it is not possible to agree a suitable date and time, notify the owner of the land or premises in writing of the purpose of the inspection and the date and time at least 48 hours in advance of that inspection.

(3) The requirement in paragraph (2) does not apply where, in any case, the authorised person has reason to suspect that an offence under regulation 7(1) or (2) is being committed on the land or premises.

Right to enter and inspect: supplementary provisions

21.—(1) A person authorised to enter and inspect any land or premises in pursuance of a right of entry and inspection conferred under or by virtue of regulation 20 (referred to in this regulation as “a right of entry”)—

- (a) on request, must produce evidence of that authority and state the purpose of entry before entering;
- (b) may be accompanied by such other persons as considered necessary;
- (c) on leaving the land must, if the owner or occupier is not then present, leave it as effectively secured as it was at the time of entry.

(2) Any person who wilfully obstructs a person acting in the exercise of 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.

Powers of entry and examination etc.

- 22.** When entering any premises or land under regulation 20 the Regulator may—
- (a) bring any equipment or materials required for the authorised purpose in question;
 - (b) make such examination and investigation as may be necessary which includes but is not limited to the power to—
 - (i) observe and view;
 - (ii) require explanations;
 - (iii) seek or require information or records;
 - (iv) take copies of documents;
 - (v) direct other public bodies and local authorities, to exercise such functions as they may have to investigate as appropriate;
 - (vi) take possession of and detain substances or articles found;
 - (c) make such measurements, take such samples and photographs and make such recordings as the Regulator considers necessary for the purpose of any such examination or investigation.

PART 5

Review

Review

- 23.**—(1) The Secretary of State must—
- (a) as soon as reasonably practicable after the end of the period of three years from the date on which these Regulations come into force carry out a review of the operation of Part 4 and Schedules 1 and 2 (which relate to enforcement and civil sanctions);
 - (b) from time to time carry out a review of the regulatory provision contained in these Regulations;
 - (c) publish a report setting out the conclusions of any review.
- (2) In the case of a review under paragraph (1)(a)—
- (a) section 67 of the Regulatory Enforcement and Sanctions Act 2008⁽⁹⁾ (review) requires that the review must in particular consider whether the provision has implemented its objectives efficiently and effectively;
 - (b) the Secretary of State, in conducting the review, must consult such persons as the Secretary of State considers appropriate; and
 - (c) the Secretary of State must lay a copy of the report under paragraph (1)(c) before Parliament.
- (3) In the case of a review under paragraph (1)(b)—
- (a) the first report must be published before the expiry of the period of five years from the date on which these Regulations come into force;

(9) 2008 c. 13.

- (b) subsequent reports must be published at intervals not exceeding five years; and
 - (c) section 30(4) of the Small Business, Enterprise and Employment Act 2015⁽¹⁰⁾ (section 28(2)(a): provision for review) requires that a report published under this regulation must, in particular—
 - (i) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(b);
 - (ii) assess the extent to which those objectives are met;
 - (iii) assess whether those objectives remain appropriate; and
 - (iv) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which achieves less onerous regulatory provision.
- (4) In this regulation, “regulatory provision” has the meaning given in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Address
Date

Minister of State
Department for Environment, Food and Rural
Affairs

⁽¹⁰⁾ 2015 c. 26. Sections 28 to 30 were amended by the Enterprise Act 2016 (c. 12), sections 19(a) and (b) and 44(5) and article 3(b) of S.I. 2016/695; the European Union (Withdrawal) Act 2018 (c. 16), section 25(4) and Schedule 8, paragraph 36(a); the Advanced Research and Invention Agency Act 2022 (c. 4), Schedule 3, paragraph 11; and the Retained EU Law (Revocation and Reform) Act 2023 (c. 28), sections 18(3) and 22(2).

SCHEDULES

SCHEDULE 1

Regulation 10

Stop notices

Stop notices

1.—(1) The Regulator may serve a stop notice on any person in accordance with this Schedule in relation to the offence set out in regulation 7(1) or (2).

(2) A “stop notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(3) A stop notice may only be served in a case falling within sub-paragraph (4).

(4) A case falling within this sub-paragraph is a case where—

- (a) the person is carrying on the activity,
- (b) the Regulator reasonably believes that the activity as carried on by that person is causing, or presents a significant risk of causing, serious damage to “important” hedgerows in breach of regulations 5 and 6, and
- (c) the Regulator reasonably believes that the activity as carried on by that person involves or is likely to involve the commission of an offence under regulation 7(1) or (2) by that person.

(5) The steps referred to in sub-paragraph (2) must be steps to remove or reduce the damage or risk of damage referred to in sub-paragraph (4)(b).

Contents of a stop notice

2. A stop notice must include information as to—

- (a) the grounds for serving the stop notice;
- (b) the steps the person must take to comply with the stop notice;
- (c) rights of appeal;
- (d) the consequences of non-compliance.

Appeals

3.—(1) The person on whom a stop notice is served may appeal to the First-tier Tribunal against the decision to serve it in writing before the end of the period specified by the Regulator in the notice which must not be less than 28 days.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) that any step specified in the notice is unreasonable;

- (e) that the person has not committed the offence and would not have committed it had the stop notice not been served;
- (f) that the person would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been served;
- (g) any other reason.

Completion certificates

4.—(1) Where, after service of a stop notice, the Regulator is satisfied that the person has taken the steps specified in the notice, the Regulator must issue a certificate to that effect (a “completion certificate”).

(2) The stop notice ceases to have effect on the issue of a completion certificate.

(3) The person on whom the stop notice is served may at any time apply to the Regulator in writing for a completion certificate.

(4) The Regulator must make a decision as to whether to issue a completion certificate within 14 days from the date on which the application was received.

(5) The person on whom the stop notice was served may appeal against a decision not to issue a completion certificate in writing before the end of the period specified by the Regulator in the notice, which must not be less than 28 days, on the grounds that the decision was—

- (a) based on an error of fact;
- (b) wrong in law;
- (c) unfair or unreasonable;
- (d) wrong for any other reason.

Compensation

5.—(1) The Regulator must compensate a person for loss suffered as the result of the service of the stop notice if that person has suffered loss as a result of the notice and—

- (a) a stop notice is subsequently withdrawn or amended by the Regulator because the decision to serve it was unreasonable or any step specified in the notice was unreasonable;
- (b) that person successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable; or
- (c) that person successfully appeals against the refusal of a completion certificate and the Tribunal finds that the refusal was unreasonable.

(2) A person may appeal against a decision not to award compensation or the amount of compensation in writing before the end of the period of 28 days from the date of that decision—

- (a) on the grounds that the Regulator’s decision was unreasonable;
- (b) on the grounds that the amount offered was based on an error of fact;
- (c) for any other reason.

Offences

6. Where a person on whom a stop notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and is liable, on summary conviction, to a fine.

SCHEDULE 2

Regulation 10

Variable monetary penalties, compliance notices and restoration notices

Imposition of a variable monetary penalty, compliance notice or restoration notice

1.—(1) The Regulator may by notice impose—

- (a) a requirement to pay a monetary penalty of such amount as the Regulator may determine (“a variable monetary penalty”);
- (b) a requirement to take such steps as the Regulator may specify, before the end of such period as the Regulator may specify, to secure that the offence does not continue or recur (“a compliance notice”);
- (c) a requirement to take such steps as the Regulator may specify, before the end of such period as the Regulator may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed (“a restoration notice”).

(2) Before exercising the power in sub-paragraph (1) the Regulator must be satisfied beyond reasonable doubt that—

- (a) the person on whom the notice is to be served has committed an offence under these Regulations; and
- (b) notwithstanding any defence raised, the person would be liable to be convicted of that offence.

(3) A requirement under this paragraph may not be imposed on a person on more than one occasion in relation to the same act or omission but requirements under paragraph (a), (b) or (c) of sub-paragraph (1) may be imposed on a person in relation to the same act or omission.

(4) Where a variable monetary penalty is issued, the amount must not exceed £250,000.

Notice of intent

2.—(1) Where the Regulator proposes to serve a notice under this Schedule on a person, the Regulator must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposed notice;
- (b) as regards a proposed restoration notice or compliance notice, the requirement of the notice;
- (c) as regards a proposed variable monetary penalty, the amount of the penalty;
- (d) information as to—
 - (i) the right to make representations and objections before the end of the period of 28 days beginning with the day on which the notice of intent was received;
 - (ii) the circumstances in which the Regulator may not impose the proposed notice (including any defences relating to the offence in relation to which the notice is served).

Notice of intent: representations, objections and undertakings

3. A person on whom a notice of intent is served may, before the end of the period of 28 days beginning with the day on which the notice was received—

- (a) make written representations and objections to the Regulator in relation to the proposed imposition of a variable monetary penalty, restoration notice or compliance notice; and

- (b) offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any person affected by the offence.

Final notice

4.—(1) After the end of the period referred to in paragraph 3, the Regulator must decide whether to—

- (a) impose the requirements proposed in the notice of intent, with or without modifications; or
- (b) impose any other requirement that the Regulator has power to impose.

(2) The Regulator must—

- (a) decide whether to accept any undertaking offered under paragraph 3(b); and
- (b) take any accepted undertaking into account in making a decision under paragraph (1).

(3) Where the Regulator decides to impose a requirement proposed in the notice of intent, the notice imposing it (the “final notice”) must comply with paragraph 5.

Content of final notice

5. A final notice must include information as to—

- (a) the grounds for imposing the requirement;
- (b) as regards a variable monetary penalty—
 - (i) the amount to be paid;
 - (ii) how payment may be made;
 - (iii) the period within which payment must be made which must be not less than 28 days;
 - (iv) any early payment discounts or late payment penalties;
- (c) as regards a compliance notice or restoration notice—
 - (i) what action is required;
 - (ii) the period within which that action must be taken;
- (d) rights of appeal;
- (e) the consequences of failing to comply with the notice.

Appeals against a final notice

6.—(1) The person receiving a final notice may appeal to the First-tier Tribunal against it in writing before the end of the period specified by the Regulator in the notice which must not be less than 28 days.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
- (d) in the case of a compliance notice or restoration notice, that the nature of the requirement is unreasonable;
- (e) that the decision was unreasonable for any other reason;
- (f) any other reason.

Criminal proceedings

7.—(1) If a variable monetary penalty, compliance notice or restoration notice is imposed on any person, or an undertaking offered by a person is accepted by the Regulator under paragraph 4(2), that person may not at any time be convicted of the offence under regulation 7(1) or (2) in respect of the act or omission giving rise to the variable monetary penalty, compliance notice, restoration notice except in a case referred to in sub-paragraph (2).

(2) The case referred to in sub-paragraph (1) is a case where—

- (a) a restoration notice or compliance notice is imposed on a person or an undertaking is accepted by the Regulator under paragraph 4(2);
- (b) no variable monetary penalty is imposed on that person; and
- (c) that person fails to comply with the restoration notice, compliance notice or undertaking.

(3) Criminal proceedings for offences triable summarily in connection with a case to which a notice in sub-paragraph (2) relates may be instituted at any time up to six months from the date when the Regulator notifies the person that such person has failed to comply with that notice or undertaking.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the protection of hedgerows on agricultural land.

Regulation 3 sets out the class of hedgerows to which the Regulations apply. Regulation 4 designates those hedgerows as “important” under section 97 of the Environment Act 1995 (c. 25).

Regulation 5 imposes a general maintenance requirement in respect of important hedgerows. This is a duty on owners to take all reasonable steps to create and thereafter maintain green cover on land which is within two metres from the centre of the hedgerow and to not cultivate or apply fertilisers or pesticides on any such land except in the circumstances set out in, and for the reasons permitted by, that regulation. There are limited exceptions including for hedgerows on parcels of land of less than two hectares and in relation to land which is either side of an important hedgerow that marks the boundary of a dwelling house. Provision is also made for the staggered application, from 1st July 2024, of the maintenance requirements in regulation 5 depending on whether or not the agricultural land next to the important hedgerow in question is being used for crop production.

Regulation 6 prohibits the cutting or trimming of an important hedgerow during the period beginning with 1st March in any year and ending on 31st August in that same year, inclusive of those dates, except in the limited circumstances described in that regulation.

Regulation 7 makes it an offence for any person to contravene the requirements of regulations 5 and 6 and any person doing so is liable to a fine on summary conviction in England and Wales. Regulation 8 provides for defences including where an offence has been committed due to the act or default of another person. Regulation 9 requires the Secretary of State, as Regulator, to enforce the requirements of regulations 5 and 6.

Regulation 10, and the Schedules, provide for civil sanctions (including the issue of various notices) in respect of offences under regulation 7. Regulation 11 enables the Regulator to impose a monetary penalty for a failure to comply with a compliance notice or restoration notice. Regulation 12 enables

the Regulator to recover the costs associated with the imposition a variable monetary penalty notice, a compliance notice, a restoration notice or a stop notice subject to a right of appeal on specified grounds. Regulation 13 enables the Regulator to recover by court order any amount by way of a variable monetary penalty, non-compliance penalty or enforcement costs. Regulation 14 enables the Regulator to withdraw or amend any notice issued at any time in writing. Regulation 15 provides a right of appeal to the First-tier Tribunal against any notice issued by the Regulator under these Regulations. The time limit which applies for these purposes, by virtue of provision in regulations 11(6) (non-compliance penalty notices) and 12(7) (enforcement cost recovery notices) of the Regulations and in paragraphs 3(1) (stop notices) and 6(1) (final notices) of Schedule 1 to the Regulations, is before the end of the period specified in the notice concerned which must not be less than 28 days. All notices, except stop notices, are suspended pending the determination of the appeal. The Tribunal may on appeal withdraw, confirm or vary any requirement of a notice or remit a matter to the Regulator for a decision.

Regulations 16 and 17 require the Regulator to issue guidance, or revised guidance, in respect of the use of civil sanctions, including non-compliance penalties and cost recovery notices, and enforcement. Regulation 18 sets out the applicable consultation requirements. Regulation 19 requires the Regulator to publish a document regarding the use of civil sanction where a civil sanction has been accepted.

Regulations 20 to 22 provide a right of entry and inspection of land or premises by an authorised person providing evidence of authority on request in connection with breaches of the requirements in regulations 5 and 6 or other non-compliance. Any person who wilfully obstructs an authorised person commits an offence and is liable, on summary conviction, to a fine. The Regulator may bring equipment or materials required for the inspection and the authorised person may make any necessary examination including searching and seizing items, requiring explanations, information or records and taking copies of documents.

Regulation 23 contains a review provision.

An impact assessment has not been produced for this instrument as no, or no significant impact, on the private or voluntary sector is foreseen.