

Annex C - Partial Regulatory Impact Assessment

Title of Proposal

1. High Hedges Bill (Northern Ireland)

Purpose and intended effect of measure

(i) The objective

2. A consultation in 2005 entitled 'Nuisance High Hedges' suggested that hundreds of people could be adversely affected by overgrown garden hedges.
3. The aim is to make disputes over the height of hedges a thing of the past by implementing a system which provides for these complaints to be determined, as a last resort, by district councils.

(ii) The background

4. The proposed legislative provisions introduce a new system designed to address high hedge problem issues between neighbours.
5. The High Hedges Bill gives local councils the powers to deal with complaints about high hedges which are having an adverse effect on a neighbour's enjoyment of their property. Similar high hedges legislation has been in force in England since 1 June 2005 and in Wales since 31 December 2004 under Part 8 of the Anti-Social Behaviour Act 2003 (ASBA). The system in England and Wales is also complaints-based and is administered by local authorities.
6. Complaining to the council would always be a last resort and neighbours would be required to have made every effort to resolve the issue amicably. If a council investigates a complaint relating to a high hedge and determines that there is an adverse affect on a

neighbouring property, a remedial notice will be issued, requiring the hedge owner to take specified action to remedy the problem and prevent it recurring, within a specified timescale.

7. The draft Bill includes rights of appeal against a local council's decision. The complainant as well as the hedge owner can exercise these.
8. Based on the 2005 scoping consultation, we estimate that there could be a backlog of 800 hedge problem cases which would be required to be determined by the councils in the first 2-3 years that the legislation is in operation. These would be spread across Northern Ireland.
9. Once the backlog of complaints has been dealt with, it is anticipated that a much smaller number of new cases will arise each year.

(iii) Risk assessment

10. Without legislation being brought forward by the Department and the consequent involvement of local councils in high hedge disputes, more people would suffer loss of amenity as the number of high hedge disputes would continue to grow. The negative impacts of such disputes can include the reduction in the value of the affected property.
11. There is evidence from the 2005 consultation and from the correspondence that the Department receives on the subject that, in cases where no resolution is in sight, disputes can escalate. Indeed the Department has been made aware of some instances of violence occurring due to high hedge disputes.
12. Without a legislative basis from which to solve high hedge problems, an increasing burden may well arise, especially for public sector organisations and advice agencies, in dealing with the consequences of disputes; even then this may not lead to their resolution.

Options

13. There are two main options:

Option 1: Do Nothing. Do not implement the High Hedges Bill. This is estimated to cost between **£823,200** and **£8,539,000**; or

Option 2: Implement the High Hedges Bill at an estimated cost of between **£377,300** and **£816,150**.

Benefits

Option 1

14. We have not been able to identify any benefits to **Option 1**. Existing procedures have failed to resolve hedge disputes and are therefore unlikely to prove any more effective in the future.

Option 2

15. **Option 2** will potentially resolve existing high hedge problem cases and any that might arise in the future by providing a clear and transparent mechanism for ending disputes. It is also anticipated that the implementation of the legislation will encourage people to maintain their hedges at a reasonable height, which preserves their amenity and that of their neighbours. Consequently the number of hedge disputes would decline.

16. A reducing number of disputes would yield economic benefits in the longer term. Dealing with such disputes through the formal complaints procedure in the legislation could be less costly than maintaining the current arrangements. There would be **environmental and social** benefits in terms of improved amenity for complainants and possibly

better neighbour relations. A clear and transparent procedure and an impartial adjudicator, in the form of the local council, would offer householders (both complainants and hedge owners) assurance and certainty that a fair resolution could be achieved. This might help to make disputes less confrontational. It is impossible to quantify such benefits.

Business sectors affected

17. Groups affected by proposals to deal with hedge disputes are:

- Householders – that is owner/occupiers and tenants on both sides of the hedge.
- Landlords – including local councils, housing associations, co-operatives and private letting agencies.
- Mediation services – can help to solve some hedge disputes.
- The Courts – may currently be asked to settle some hedge disputes and would deal with prosecutions under the High Hedges Bill for failure to carry out works to remedy hedge problems.
- Local councils – people tend to look first to their council for help in solving their hedge disputes. Responsibility for administering complaints about high hedges under the High Hedges Bill will lie with district councils in Northern Ireland.
- Tree surgeons and arboricultural advisers – complainants and hedge owners might engage experts to advise them on a complaint or need to employ professional help to reduce the size of a large hedge.
- Growers, retailers and landscapers – might need to be prepared to offer alternative plants and advice on suitable hedges if demand for, and sales of, evergreen or semi evergreen hedging declined.

Other Impact Assessments

18. An Equality Impact Screening exercise has been conducted and the need for a full equality impact assessment ruled out.

Costs

(i) Compliance costs

Complainants

Option 1

19. **Option 1:** Should the situation be left unchanged, there is the possibility that those people affected by high hedges could be tempted to cut down the offending hedge themselves which could lead to them being sued in the civil courts. As a result of this, people could be forced to pay their legal costs and the hedge owner's legal costs as well as compensation. The final bill could range from £2,000 to over £100,000 (based on the Stanton v Jones case in England). Assuming only 5 people were driven to such drastic action this would give a total cost of between £10,000 and £500,000.

20. There is some anecdotal evidence that the presence of a neighbouring high hedge could detract from a property's value and make it difficult to sell. In the 2005 consultation, 81 per cent of people who had concerns about a neighbour's high hedge felt that the presence of the hedge had reduced the value of their property. Certainly, the existence of a hedge dispute would have to be declared to potential purchasers. Assuming this led to a price reduction from £1,000 to £10,000 for the estimated 800 people caught up in these problems, the 'do nothing' option could leave them between £800,000 and £8 million worse off. This is a notional rather than actual cost. In reality, not everyone will want to sell. In addition, not all 800 homes will be privately owned.

Option 2

21. **Option 2:** If the High Hedges Bill is implemented, owners or occupiers of a property affected by a high hedge would pay a fee to their local council to deal with the complaint. The purpose of the fee is for the local councils to recover their costs and also have the effect of deterring frivolous or malicious complaints. The payment of a fee should act as encouragement for neighbours to try to resolve the dispute without involving the council. The fee charged by the council is deemed to be payment for a service, **not** a penalty imposed on any party. The level of the maximum fee that the local councils can charge for this service is the subject of consultation.

22. Within this maximum, it will be for each local council to determine whether to charge a fee; whether to set different rates for different groups of people; and whether any refund should be allowed. Depending on the charging policies of their council, therefore, the cost of making a complaint could range from nil to over £500. The average fee charged in England and Wales is £320-£360. This figure gives a total compliance cost for complainants of £nil to £288,000.

23. A complainant not content with the outcome following a complaint may lodge an appeal with associated costs. An appeal cost is likely to be in the region of £100-£150. With an estimated 7 appeals per year originating from complainants, the total cost could range from £700 to £1,050.

Hedge Owners

Option 1

24. It is currently the responsibility of owners of properties to maintain any hedges growing on their property. Disputes usually arise whenever hedges are not properly maintained by the owners. If the current

situation is left unchanged under option 1, then this position will remain, hence there are no direct costs for owners associated with maintaining their hedges.

25. However, we could find that neighbours take steps to manage their side of the hedge so that it has less impact on their property and then reclaim their costs from the owner, through the small claims court if necessary. This could include employing professional help or hiring special equipment. The costs would vary depending on the size and condition of the hedge. Assuming a range of £100 to £600 for the cost of the remedial action and £30 to £150 in court fees, if 40 people pursue this route, the total costs for hedge owners would range from £5,200 to £30,000. This might not be a one-off cost; it could recur every few years.

Option 2

26. **Option 2:** Hedge owners will be responsible for meeting the costs of any remedial action that might be required under the legislation. The costs involved will vary considerably, depending on the extent of the works and the size and condition of the hedge. Assuming that the hedge has not been actively managed, they could run from £100 up to £600 should specialist equipment and professional help be needed to get a long, tall hedge back into shape. This would be a one-off cost. Assuming remedial action was ordered in all estimated 800 problem cases, this would give a total compliance cost of between £80,000 and £480,000.

27. A hedge owner not content with the outcome following a complaint may lodge an appeal with associated costs. An appeal cost is likely to be in the region of £100-£150. With an estimated 7 appeals per year originating from hedge owners, the total cost could range from £700 to £1,050.

28. Such costs will fall mainly on householders – that is owner/occupiers and tenants. Depending on the nature of the individual tenancy agreement or contract, however, landlords in the private rented sector and charities such as housing associations and co-operatives could be liable.
29. Other businesses, charities and voluntary organisations will be affected by the Bill only if they own property that adjoins a residential area and that has a high hedge. The correspondence that we receive suggests such cases are rare. Over 90 per cent of the respondents to the 2005 consultation indicated that the problem hedges were growing on residential properties as opposed to commercial/industrial or agricultural land. The overall impact of the legislation on these sectors is likely, therefore, to be minimal.

Impact on Small Business

30. The impact on small businesses will be minimal. However there may be small business opportunities arising for persons who could engage in hedge trimming or hedge consultancy activities. As explained above the main costs will be borne by local councils and owners or occupiers of property involved in high hedge disputes. Based on the 2005 consultation it is estimated that a very small proportion of high hedge disputes involve properties owned by private landlords or housing associations, therefore the impact on such bodies will be minimal.

Enforcement and Sanctions

31. Complaints about high hedges will be administered by local councils. Under the legislation both complainants and hedge owners will have the right to appeal against decisions of local councils. The legislation also has implications for the courts as it will create offences for failure

to comply with remedial notices or court orders or the obstruction of an authorised officer.

Implications for local councils

Option 1

32. Option 1 is not without economic costs for local councils. People involved in high hedge disputes would still approach their council for help and advice, even though they have no formal role in these matters. Therefore there would be an associated cost for the time spent by officers in dealing with such queries. Assuming, on average, council officers spend 15 minutes talking to each of the estimated 800 complainants; this would give a total cost (estimating an hourly rate of £40-45) across all local councils of about £8,000 to £9,000. Such costs would be annual and recurring.

Option 2

33. Local councils will incur costs when determining complaints and enforcing remedial action. Taking into consideration the system in England and Wales it is estimated that it will take around 8 hours to investigate a complaint and decide whether to require the owner to carry out remedial works. Using an estimated rate for officer's time of £40 -£45 it is estimated that the average cost per case will be around £320 to £360.

34. Local councils are expected to have to deal with around 800 cases in the first 3 years that the legislation is in operation. Once these are settled, however, the continuing caseload should be much smaller. On this basis, the total cost to local councils of administering these complaints would be some £256,000 to £288,000 over 3 years although councils would be able to recoup costs by charging a fee.

35. Local councils will also be involved in appeals against their decisions, submitting statements and commenting on representations from the parties. As they will largely draw on existing material, we assume they will spend no more than 3 to 4 hours on each case. Based on an estimated appeal rate of 30 cases over 3 years, this suggests total costs ranging from £3,600 to £5,400.
36. Councils may incur some administrative costs in implementing the system (e.g. guidance leaflets, publicity) but these are estimated to be small.
37. If a hedge owner does not comply with a local council's remedial notice, the council will be able to enforce remedial action by prosecuting the hedge owner and/or by carrying out the work themselves.
38. We expect that complainants will inform local councils if a hedge owner has failed to comply with the requirements of a remedial notice so that the legislation will be enforced largely through self-policing. The Department also plans to produce guidance for councils and will advise them to employ a light touch when enforcing the legislation, using informal discussions and warning letters to secure compliance before resorting to the courts.
39. This might take 1 to 2 hours of an officer's time. Assuming 80 cases require some intervention by the council (10 times the number of cases ending in prosecution), this would give a total cost of £3,200 to £7,200.
40. Where the local council decides to prosecute or if they carry out the necessary works themselves, they can recover their costs. Any unpaid expenses arising from the local council using its default powers to carry out the work specified in the remedial notice would (until recovered) be registered as a statutory charge.

Fees

41. Local councils will be able to charge complainants a fee for determining these complaints.

42. Local councils' total costs in administering complaints (currently estimated to be £256,000 to £288,000 in the first 3 years) would be unchanged. But who would foot the bill would vary. For example, if the maximum fee is set to cover half these costs, the remaining £128,000 to £144,000 would be met by central Government, through a transfer of resources into the local government budget.

43. It is for each local council to decide what, up to the maximum, they charge for this service. Under the example above, therefore, they could choose whether to pass on the full £128,000 to £144,000 cost to complainants or whether council taxpayers should fund a portion.

Implications for persons appointed by the Department to determine appeals

Option 1

44. This option does not involve the issue of remedial notices and therefore has no cost implication for persons appointed by the Department to administer appeals.

Option 2

45. Persons appointed by the Department will administer the appeals functions.

46. Based on statistics from the first three years of operation of the system in England and Wales and an average estimated cost of £1,080 per appeal, it is estimated that there may be around 30 appeals in the initial

3 year period, giving a total cost of around £32,400. After 3 years, the number of new cases, and thus appeals, is expected to drop.

47. There may be some costs associated with appointing persons to hear appeals and providing them with suitable guidance, training and remuneration. Details on how this will be administered are not yet available.

Implications for the courts

Option 1

48. As suggested in paragraphs 19 and 25 above, if nothing is done to help resolve hedge disputes, the people affected might face a claim for damages if they cut down a hedge. In addition, hedge owners might be taken to the small claims court to repay the costs of managing the spread of the hedge. Both would have workload implications for the courts.

49. However, the cost of action in the civil courts is met by the parties and, in particular, the losing party.

Option 2

50. Failure to comply with a remedial notice is an offence under the legislation liable, on conviction in the magistrates' court, to a level 3 fine (currently up to £1,000). The court might then – in addition to, or in place of, a fine – issue an order for the offender to carry out the required work within a set period of time. There would be a further offence of failure to comply with the court order, liable to a level 3 fine. At this point, the court would also be able to set a daily fine of up to one twentieth of a level 3 fine for every day that the work remains outstanding thereafter.

51. If the courts use the full range of penalties at their disposal, this should act as a powerful deterrent to others. Only the most intractable cases are likely, therefore, to result in prosecution.

52. If 1% of the backlog of 800 cases resulted in court proceedings, this would result in a total of 8 prosecutions over the initial 3 year period – or, on average, about 2 to 3 cases a year. This estimate assumes, of course, that remedial notices would be issued in 100% of cases, which is most unlikely.

53. At an estimated cost of £350 per case, this would give a total cost in the region of £700 to £1,050 per year.

54. The Courts will also be involved in dealing with applications for judicial review of decisions made by the appointed person but these are expected to be extremely rare occurrences.

Monitoring and Review

55. After two years of operation it is proposed to seek the views of councils as to how the legislation is operating.

Consultation

56. This partial RIA is an annex to the consultation on the High Hedges Bill. The list of consultees is also an annex to the consultation.

Summary and Recommendation

	Option 1- do nothing	
	Costs	Benefits
Complainants	£810,000 to £8.5 million	None identified
Hedge Owners	£5,200 to £30,000	

Local Councils	£8,000 to £9,000	
Persons appointed to administer appeals	Nil	
Courts	Nil	
TOTALS	£823,200 to £8,539,000	

	Option 2- Implement the High Hedges Bill	
	Costs	Benefits
Complainants	nil to £288,000(council fees)* £700 to £1050 (appeal fees)	Potential to make hedge disputes a thing of the past
Hedge Owners	£80,700 to £481,050	
Local Councils	£262,800 to £300,600	
Persons appointed to administer appeals	£32,400	
Courts	£700 to £1050	
TOTALS	£377,300 to £816,150	

*not included in total as this represents a source of funding council costs, not additional to them

57. Option 2 is recommended as offering the most effective means of minimising hedge disputes with a light regulatory touch.

Declaration

“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.”

Signed (This remains blank until the legislation is to be sent to the Assembly. It then becomes a final RIA)

Date.....

***Edwin Poots MLA,
Minister for the Department of the Environment***

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