

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 therefore to develop draft legislation creating a means whereby disputes about the height of hedges can be resolved. As a last resort, a complaint about a high hedge may be lodged formally with a district council, which will have responsibility for determining what action, if any, is appropriate.

(ii) The background

4. The 2005 consultation indicated that neighbour disputes over problems caused by overgrown hedges were widespread throughout Northern Ireland.
5. The Department of the Environment and elected representatives have also received a steady stream of correspondence for a number of years on the issue of high hedge disputes.
6. The most common concerns relate to light obstruction and loss of visual amenity. Existing procedures have been found to be ineffective in settling these disputes. Common law rights entitle people only to cut overhanging branches; they do not allow them to reduce the height of a neighbouring hedge. Existing regulatory controls, such as those relating to statutory nuisance, are unlikely to be appropriate and people

are reluctant to pursue action through the civil courts, not only because of the time and cost but also because the outcome is uncertain.

7. The majority of respondents to the 2005 consultation favoured legislation to allow local councils, as a last resort, to determine hedge complaints. Provisions were accordingly included in a draft Bill which will introduce a new system designed to address high hedge problem issues between neighbours and public consultation on the draft Bill took place between December 2009 and March 2010.
8. 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 operating successfully 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.
9. Complaining to the council would always be a last resort and neighbours would be required to have made every effort to resolve the issue through discussion or mediation. 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 within a specified timescale to take specified action to remedy the problem and prevent it recurring.
10. The draft Bill includes rights of appeal against a local council's decision. The complainant as well as the hedge owner can exercise these.
11. 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.

12. 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

13. 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.

14. There is evidence from both the 2005 scoping consultation and 2010 consultation on the draft Bill, 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.

15. 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

16. Due to the nature of high hedge problems, there are only two options to consider:

Either -

Option 1: Do Nothing. Do not implement the High Hedges Bill;

or -

Option 2: Implement the High Hedges Bill

Benefits

Option 1

17. We have not been able to identify any benefits to **Option 1**. As indicated in the volume of responses to the scoping consultation, existing procedures have failed to resolve hedge disputes and are therefore unlikely to prove any more effective in the future.

Option 2

18. **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. This has proven to be the experience in England since the implementation of Part 8 of the Anti-Social behaviour Act 2003.

19. 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 improved relationships amongst neighbours. 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

20. 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.
- The Northern Ireland Valuation Tribunal- would deal with appeals against local council decisions on hedge complaints.
- 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.

Costs

21. It is anticipated that the estimated caseload of 800 outstanding cases will be resolved in the first three years that the legislation is in operation. The total costs have, therefore, been divided by three to derive an annual estimated cost. Once the backlog has been resolved, however, fewer new hedge complaints should arise. The annual cost is, therefore, expected to be lower in future years.

22. It must be stressed that the costs outlined below are uncertain, given that they are based on assumptions about both the volume of outstanding complaints and future events.

Option 1- Do Nothing

Complainants

23. 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 England¹). Assuming only 5 people were driven to such drastic action this would give a total cost of between £10,000 and £500,000. The annual cost would be between £3,500 and £165,000.

24. 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. For these reasons, the figures have not been included in Table 3 which summarises costs and benefits.

Hedge Owners

25. 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,

¹ Stanton v. Jones Birmingham County Court - no 9177276

hence there are no direct costs for owners associated with maintaining their hedges.

26. 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. Assuming it was necessary to repeat this action every three years, the annual cost would be around £1,750 to £10,000.

Local Councils

27. 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.

The Courts

28. As suggested in paragraphs 23 and 26 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. However, the cost of action in the civil courts is met by the parties and, in particular, the losing party.

Summary of annual costs: Option 1

Table 1: Summary of costs for Option 1

	Costs
Complainants	£3,500 to £165,000
Hedge Owners	£1,750 to £10,000
Local Councils	£8,000 to £9,000
TOTALS	£13,250 to £184,000

29. These costs might continue beyond the initial three year period as outstanding cases would remain unresolved under this Option. The above estimates could, therefore, represent an annual recurring cost.

Option 2 – Implement the High Hedges Bill

Complainants

30. 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 provided to a specific person or persons, **not** a penalty imposed on any party, and not a cost which should be borne by all ratepayers.

31. 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. This would give an annual estimated cost for complainants of £nil to £96,000.

32. 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

33. 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. This would represent an annual cost for hedge owners of between £27,000 and £160,000.

34. 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.

35. 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.

36. 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.

Local Councils

37. 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.
38. 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. This represents an annual cost in the region of £85,000 to £96,000.
39. 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 40 cases over 3 years, this suggests total costs ranging from £4,800 to £7,200. This represents an annual cost of £1,600 to £2,400.
40. Councils may incur some administrative costs in implementing the system (e.g. guidance leaflets, publicity) but these are estimated to be small. The main guidance documents will be produced by the

Department of the Environment and made available online. Costs associated with publishing these are estimated to be around £2,500.

41. 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 itself.

42. 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.

43. 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. The annual costs could therefore be in the range of £1,075 to £2,400.

44. 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

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

46. 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 the local government budget.

47. 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.

The Courts

48. 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.

49. 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.

50. 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.

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

52. 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.

The Northern Ireland Valuation Tribunal

53. The Northern Ireland Valuation Tribunal will administer the appeals functions of the Bill.

54. Based on statistics from the first three years of operation of the system in England and Wales it is estimated that there may be around 40 appeals in the initial 3 year period. Based on this number of appeals and taking into consideration the costs associated with the Tribunal determining an appeal it is estimated that the total cost for appeals in the initial 3 year period will be around £22,500 (£7,500 per annum). These costs will be borne by the Department of the Environment. After 3 years, the number of new cases, and thus appeals, is expected to drop.

Summary of annual costs: Option 2

Table 2: Summary of costs for Option 2

	Costs
Complainants	nil to £96,000(council fees)* £700 to £1050 (appeal fees)
Hedge Owners	£27,700 to £161,050
Local Councils	£87,675 to £100,800
NIVT	£7,500**
DOE	£10,000***
Courts	£700 to £1050
TOTALS	£126,775 to £273,950

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

**not included in total as these costs will be borne by the Department of Environment

***includes contribution to the Northern Ireland Valuation Tribunal for appeals and a one off cost for the production of guidance

55. Once the backlog of cases has been dealt with the costs of regulation should fall significantly. In future years only the newly arising disputes will have to be settled. The total number of new disputes per year can be expected to be significantly lower than the 800 outstanding cases.

Impact on Small Business

56. 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. It is anticipated that there will be minimal impact on small legal businesses since there is currently no legal mechanism to deal effectively with high hedge problems and the proposed system will not routinely require legal input.

Enforcement and Sanctions

57. Implementing the High Hedges (Northern Ireland) Bill would send out a strong message that people should not grow hedges that unreasonably impact on neighbours, and so might help to alter assumptions about acceptable neighbourly behaviour. People might also be more inclined to negotiate a solution to these problems rather than face the prospect of the local council deciding the matter. Just bringing the legislation into force should, therefore, help to minimise the number of unresolved hedge disputes.

58. Where negotiation does not work and people refer their complaint to the local council, the council would be able – if they considered the circumstances justified it – to order the owner to cut back the hedge by issuing a remedial notice. Given their close interest in the matter, the complainant is likely to monitor compliance closely and to inform the local council of any breach. The high media interest in neighbourhood disputes also means that any failure to comply with a remedial notice could lead to the hedge owner being named and shamed in the local press. These would be strong inducements to secure compliance.

59. These self-policing measures would be supported by criminal offences and fines. As noted earlier, conviction in the magistrates' court of failure to comply with a remedial notice would carry a level 3 fine (currently up to £1,000).

60. Those who continued to defy the local council's order could face the prospect of a court order and daily fines. Such strong penalties were considered essential to ensure that the necessary works to the hedge were carried out and so provide relief to the complainant.

61. For this reason, local councils also have discretionary powers to go in and do the work themselves, recovering their costs from the hedge owner. They would be able to use these powers whether or not the criminal offence was pursued. The costs of the work would be recovered from the owner or occupier of the land. Any unpaid expenses would (until recovered) be registered as a statutory charge.

Environmental Impact

62. The High Hedges Bill is not considered likely to have a significant environmental impact. Any remedial notice issued by a council will take account of bird nesting seasons, tree preservation orders and other environmental issues. In addition, a remedial notice cannot require the removal of a hedge.

Monitoring and Review

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

Consultation

64. Over 100 responses were received during the 2010 public consultation on the draft High Hedges Bill. The vast majority were supportive of the policies proposed. Responses were received from local government,

non-departmental public bodies, non-governmental organisations and individuals. A synopsis of responses is available on the Department's website at www.doeni.gov.uk/high_hedges_2.htm.

65. Following the consultation some changes were made to the draft Bill.

66. A provision has now been included in the final Bill which excludes complaints being made about the impact of trees contained in forests on domestic property. Reducing the height of trees on a forest boundary can affect the stability and health of forests. There would be implications of a financial nature and on the public purse given that grants have been paid to private forest owners and of course the Department runs DARD forests on a commercial basis. Therefore the inclusion of this provision potentially reduces the cost and impact of implementing Option 2 on the public purse.

67. A provision was also included to provide a council with protection against non-negligent liability when a council carries out remedial action in default. Again this reduces the potential cost and impact for councils in implementing Option 2.

68. It is difficult to quantify the benefit of these two amendments in real terms as no data is available to help estimate how often either situation could occur. Therefore no figures have been included or associated with these amendments to the Bill in this Assessment.

Summary and Recommendation

69. The costs and benefits of the options identified in paragraph 13 are summarised in Table 3.

Table 3: Summary of costs and benefits

Option	Annual Cost	Benefits
1. Do Nothing	£13,250 to £184,000*	None Identified
2. Implement the High Hedge Bill	£126,775 to £273,950	Transparent process to resolve outstanding hedge disputes. Role of

		<p>local council, plus appeals procedure, provide certainty of fair and impartial resolution.</p> <p>Improved amenity for complainants.</p> <p>Better neighbour relations</p> <p>Better managed hedges.</p> <p>Fewer new hedge disputes</p>
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*These may be an underestimate because of the possible effect on house prices

70. 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 

Date...31 March 2010.....

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