



Department of the
Environment

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PUBLIC CONSULTATION

ON A DRAFT HIGH HEDGES BILL

CONTENTS	Page No.
Purpose of Consultation	2
How to Respond	2
Further Information	2
Freedom of Information Act 2000 – Confidentiality of Consultations	3
Introduction	4
Brief Description of Bill’s Provisions	4
Role of Councils	5
Impact Assessments	9
Human Rights Act	9
Equality Screening	10
Rural-proofing	10
Regulatory Impact	11

Purpose of Consultation

The purpose of this consultation is to seek your views on the draft High Hedges Bill.

How to Respond

Responses to this consultation should be received by the Department no later than 1 March 2010.

Responses may be sent either:

by e-mail to hedges@doeni.gov.uk or

by post to:

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When you are responding please state whether you are responding as an individual or are representing the views of an organisation.

Your views on any aspect of this consultation and associated impact assessments are welcome.

Further Information

This document may be made available in alternative formats; please contact us to discuss your requirements. The Department's textphone number (028 9054 0642) has been included to assist the hearing impaired. The document is published on the Department's website at: http://www.doeni.gov.uk/high_hedges_2.htm

Freedom of Information Act 2000 – Confidentiality of Consultations

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations.

The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: www.ico.gov.uk or e-mail: ni@ico.gsi.gov.uk).

For further information about this particular consultation please contact the consulting branch at: - hedges@doeni.gov.uk

Introduction

1. Problems between neighbours about high hedges have given rise to a steady stream of correspondence to public representatives, and complaints received have generally centred on the fact that very little can be done at present to resolve the position. Possibly disputes between neighbours have become more common due to increased urban density and also the availability of low-cost and often very fast-growing hedges, which have sometimes not been well maintained.
2. There is currently no legislation in Northern Ireland governing the height or maintenance of a hedge. Upon taking office, the Minister of the Environment, stated his intention to tackle the problem by bringing forward a High Hedges Bill. This Bill will provide a much needed means of redress for people who are suffering because of a high hedge on a neighbour's land.
3. A copy of the draft Bill is attached at **Annex A** and a commentary on clauses can be found at **Annex B**. A partial Regulatory Impact Assessment (RIA) is attached at **Annex C** which provides details of the potential costs and benefits arising.

Brief Description of Bill's Provisions

4. Under the proposed legislation, a person, after having taken all reasonable steps to resolve a hedge problem issue, may, as a last resort, complain to their local council that the height of a hedge is adversely affecting the reasonable enjoyment of their domestic property. In order to make a complaint, the complainant will have to provide evidence of having attempted to solve the problem through communication or mediation with the hedge owner. If there is insufficient evidence of attempts having been made to resolve the situation the council will not accept the complaint.
5. A hedge would have to meet the following criteria before a complaint could be made, i.e. it must:

- be formed wholly or predominantly by evergreen or semi-evergreen trees or shrubs;
 - consist of a line of two or more trees or shrubs;
 - measure more than 2 metres from ground level (measured on the hedge-owner's side);
 - act as a barrier to light or access;
 - affect residential property; and
 - be growing on land owned by someone other than person making the complaint.
6. The proposed legislation focuses on problems associated with hedges and does not, and is not intended to address problem issues relating to roots of trees or single trees.

Role of Councils

7. Complaints will be administered by local councils. The role of the council is to act as an independent and impartial third party. It will not negotiate or mediate between individuals but will adjudicate on whether the hedge is adversely affecting the complainant's reasonable enjoyment of their property.
8. Authorised council officers can enter the land where the hedge is situated in order to obtain information that would help them decide:
- whether the complaint is one that could be considered under the legislation;
 - whether to issue or withdraw a remedial notice;
 - whether to waive or relax the requirements of a remedial notice; or
 - whether a notice has been complied with.
9. A council would be required to give at least 24 hours notice of intended entry to all occupiers of the land. Provision would also be made for council officers entering the land to take with them other people.

10. Obstructing any person exercising these powers would be an offence punishable on summary conviction by a fine.
11. Councils will have discretionary powers to levy fees for complaints. This will allow councils to recover their costs and also have the effect of deterring frivolous or malicious complaints. The existence of a fee should not be prohibitive but should act as an encouragement for neighbours to try to resolve the dispute without involving the council. The fee charged by the council will be a payment for a service provided to the complainant, and **not** a penalty imposed on any party. As such the cost for the service provided falls to be met by the particular complainant and not by council ratepayers generally.
12. If a council investigates a complaint relating to a high hedge and concludes that there is an adverse effect 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. Even if the land on which the hedge is growing changes ownership, the remedial notice remains in force and the new owner must comply with it.
13. A remedial notice would **not** be able to require a hedge to be removed or reduced to less than 2 metres above ground level.
14. It would be possible for the complainant – or their successors – and the owner or occupier of the land where the hedge was situated, to agree different one-off works or different longer-term maintenance to that specified in the remedial notice.
15. Failure to comply with the requirements of a remedial notice would be an offence and fines could be imposed on conviction in a magistrates' court. Continued failure to comply with a subsequent court order to carry out the work would also be an offence and daily fines would apply for every day that the work remained outstanding.

16. If the owner or occupier of the land fails to comply with a remedial notice, council officers will be able to enter the land where the hedge was situated and carry out the necessary works. Obstruction of a council officer from doing this would be an offence for which a fine on conviction in the magistrates' court (currently up to £1000) would be payable.
17. A council officer would be required to give 7 days notice of intention to enter the land and carry out the necessary work. Provision would also be made for officers entering the land to be able to take with them other people, equipment or materials as necessary.
18. The council would be able to recover the costs of this work from the owner or occupier of the land. Any unpaid expenses would (until recovered) be registered as a charge on the property.

Appeals

19. A complainant or the owner or occupier of the land where the hedge is situated would be able to appeal against:
 - the issue of a remedial notice;
 - the withdrawal of a remedial notice; or
 - the waiver or relaxation of its requirements.
20. An appeal must be made in writing within 28 days to a person appointed by the Department to determine appeals. The Department may introduce Regulations to prescribe a fee for an appeal. It is anticipated that fees for appeals under the High Hedges Bill would be similar to those levied for planning appeals. On appeal, a remedial notice may be confirmed, varied or quashed. The person appointed to handle the appeal may decide to visit the site as part of the determination and will have the same powers of entry as an authorised council officer. The person appointed to handle the appeal may issue a remedial notice in those cases where the local council had decided not to do so in response to the original complaint.

21. In addition, the **complainant** would also be able to appeal against:
- a decision by the local council that the height of the hedge was not adversely affecting their reasonable enjoyment of the property; or
 - a decision by the local council not to require remedial action.
22. The Department intends to produce guidance for councils to use in assessing complaints.

We welcome your comments on any aspect of the Bill

Impact Assessments

Human Rights Act

The Human Rights Act 1998 (“the 1998 Act”) gives further effect to rights and freedoms guaranteed under the European Convention on Human Rights. The 1998 Act makes it unlawful for a public authority, including the Department, to act in a way that is incompatible with these rights.

Under the proposed High Hedges Bill, provisions will allow persons in certain circumstances to enter private property both to examine high hedges and if needs be to carry out remedial works to high hedges. These “powers of entry” have implications for human rights i.e. the right to respect for private and family life (Article 8) and protection of property (Article 1 of the 1st Protocol). Nevertheless, on balance, the Department believes that the proposed Bill is compatible with the Convention rights. The powers of entry and enforcement are considered necessary for the purposes of the high hedges legislation; are there for specific purposes; and are considered to be not out of proportion. The encroachment on human rights in the circumstances covered by the provisions is therefore considered to be justified.

The Department therefore considers that its proposals are compatible with the European Convention on Human Rights.

The Human Rights Commission will receive copies of this document as part of this consultation. Any comments that the Commission might have will be carefully considered.

Equality Screening

Section 75 of the Northern Ireland Act 1998 requires that public authorities have due regard to equality issues in carrying out functions relating to Northern Ireland. An equality impact screening of the High Hedges Bill has been carried out; it has been concluded that there is no adverse impact for

any of the 9 categories listed under section 75. A full equality impact assessment has not therefore been considered necessary.

Question	Is there any evidence of higher or lower participation or uptake by different groups?
Answer	No.
Question	Is there any evidence that different groups have different needs, experiences, issues and priorities in relation to the particular policy?
Answer	No.
Question	Is there an opportunity to better promote equality of opportunity or better community relations by altering the policy or working with others in government of the community at large?
Answer	No.
Question	Have consultations with relevant groups, organisations or individuals indicated that particular policies create problems that are specific to them.
Answer	No.

The Equality Commission will receive copies of this consultation document as part of the consultation exercise. We will take into account any comments that the Commission might have.

Rural-proofing

Rural Proofing is a process to ensure that all relevant Government policies are examined carefully and objectively to determine whether or not they have a differential impact in rural areas from that elsewhere, because of the particular characteristics of rural areas. Where necessary the process should also examine what policy adjustments might be made to reflect rural needs and in particular to ensure that, as far as possible, public services are accessible on a fair basis to the rural community.

The Department has considered this draft Bill in relation to the rural community and has found no potential differential impacts. Based on the

evidence from the 2005 consultation and the correspondence the Department receives high hedge problems primarily exist in urban areas.

Regulatory Impact

A partial Regulatory Impact Assessment (RIA) is attached at **Annex C**.

We welcome your comments on any aspect of the impact assessments.