



Department of the
Environment

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PUBLIC CONSULTATION

ON A DRAFT HIGH HEDGES BILL

SYNOPSIS OF VIEWS EXPRESSED

AND

THE DEPARTMENT'S RESPONSE

MARCH 2010

1. Introduction

Public consultation on a draft High Hedges Bill closed on 1 March 2010. The Consultation Paper, on which views were sought, provided an outline of the Bill's provisions, a commentary on the clauses, and a Partial Regulatory Impact Assessment. Views were sought not only on the Bill's provisions but also on the accompanying partial impact assessment.

The draft Bill contains provisions which will provide a means of tackling high hedge problems affecting domestic property. It introduces a facility for persons who feel that their domestic property is adversely affected by a high hedge, after having tried unsuccessfully to resolve the matter through neighbourly discussion, to lodge a formal complaint with their local council.

The Department invited responses from a wide range of organisations and individuals including MPs, MLAs, local councils including environmental health officers, health trusts, academic and professional institutions, farming and business organisations. The consultation paper was also published on the Department's website and publicised through press notices.

2. Consultation Responses

A total of 105 responses were received to the consultation, 19 from Non-governmental organisations (NGOs), 3 from Non-departmental public bodies (NDPBs), 21 from Local Government and 62 from individuals. Of the 105 respondents, 4 simply noted the proposals or had no comment to make, leaving 101 substantive responses.

The Department would like to thank all those who responded to the public consultation; this synopsis aims at expressing the range of comments and views submitted.

2.1 Outcome

The vast majority (>95%) of the responses received were supportive of the proposed introduction of legislation to deal with problem high hedges. About

50% of the responses received from individuals expressed support for the draft Bill, while making no other specific comment. 25 % of respondents wanted the legislation enacted as quickly as possible. Other responses expressed general support for the proposals while also raising specific individual issues. One local government respondent expressed reluctance to agree to the proposed role for councils.

The main issues identified are summarised in the following tables, which also highlight the percentage of respondents from each category raising the issue.

Table 1 provides an overview of the four main issues raised by respondents:

- Scope of the Bill
- Fees (e.g. how much and who pays?)
- Guidance in relation to the Bill’s provisions
- Definitions contained within the draft Bill

A range of other miscellaneous comments were received but many of these issues have been grouped in the ‘guidance’ category rather than listing numerous single comments.

Table 1: Key Issues

Key Issue	Category of Respondent				
	% Local Government	% Individual	% NDPB	% NGO	% Total Responses
Scope	76%	29%	0%	11%	34%
Fees	90%	6%	0%	58%	32%
Guidance	100%	5%	0%	79%	37%
Definitions	81%	10%	0%	11%	23%

These key issues are assessed in further detail below.

2.2 Scope of the Bill

Several respondents drew attention to the potential for forests to be caught by the proposed legislation and that an exemption for forests should be included in the Bill.

Some respondents expressed the view that the scope of the Bill should be extended to include other hedge/tree problems such as single trees, roots of trees, dangerous trees, overhanging branches and falling leaves. Other suggested issues included hedges that obstruct views of a road, hedges bordering non-domestic property and the suggestion that hedges should be reduced below 2m.

Table 2: Issues Relating to the Proposed Scope of the Legislation

Issue	Category of Respondent				% Total Responses
	% Local Government	% Individual	% NDPB	% NGO	
Complaint relating to hedge in woodland or forest	48%	0%	0%	5%	10%
Single trees	24%	5%	0%	0%	8%
Roots of trees	10%	8%	0%	5%	8%
Falling leaves and dangerous trees	0%	6%	0%	0%	4%
Overhanging branches	0%	5%	0%	0%	3%
Hedges should be reduced to less than 2m	0%	5%	0%	0%	3%
Loss of value to property	0%	5%	0%	0%	3%
Obstructing views of roads	0%	3%	0%	0%	2%
Non-domestic property	5%	0%	0%	0%	1%

In addition to these four main issues, a number of respondents sought clarification on the meaning of 'barrier to light or access' in clause 2(1), particularly in relation to the use of the words 'or access' which caused confusion.

Department's Response

The focus of the draft Bill is clear. It is to tackle high hedge issues in neighbourhood areas. Therefore it does not address – nor is it intended to address - other issues such as single trees, dangerous trees, roots of trees, leaves, value of property or obstructing views of roads. It should be noted that obstruction of views of roads is the responsibility of the Department for Regional Development and that hedges/trees that obstruct views of roads may be cut back under existing powers.

If lines of trees bordering forests are not exempt from the legislation, there would be a significant risk that cutting back the first row of trees would destabilise the remaining trees, risking the survival of the forest. In addition, the impact of destabilisation would potentially have a significant impact on the public purse given that many forests are on land owned by the Department of Agriculture and that privately owned forests greater than 0.2 hectares are likely to have received grant funding.

The Department proposes to exempt forests greater than 0.2 hectares from the scope of the legislation.

The words 'or access' in clause 2(1) of the draft Bill, which defines a "high hedge" for the purposes of the legislation, have given rise to a number of queries from respondents to the consultation. The Department has considered this point and feels the inclusion of these words does not really add anything of great significance to the definition as set out in clause 2(1). In fact rather than adding anything, the inclusion of these words has tended to generate some confusion and uncertainty about the definition of a high hedge.

The Department proposes therefore to omit the words "or access" from the definition of a high hedge in clause 2(1) and (2).

2.3 Fees

The majority of local government responses suggested that the complainant should not pay a fee since this was contrary to their normal methods of

dealing with environmental issues. They felt that the hedge owner should have to pay to cover the council costs. Some respondents also had concerns about the ability of people from lower socio-economic groups to pay a fee for complaints or to pay the costs of specialist tree surgeons if required.

Table 3: Issues Relating to Fees

Issue	Category of Respondent				% Total Responses
	% Local Government	% Individual	% NDPB	% NGO	
Ability to pay	67%	3%	0%	53%	25%
Hedge owner should pay	57%	3%	0%	0%	13%
Limit level of fee	10%	0%	0%	11%	4%
No fee for complaints	5%	0%	0%	0%	1%
No fee for appeals	0%	0%	0%	5%	1%

Department's Response

The level of fee to be paid by a complainant will be determined by each council, at its discretion, and it will be the council's decision as to whether to introduce a fee at all, and as to whether to reduce fees for pensioners or people in lower socio-economic groups. The power to levy fees for complaints should enable councils to recover the vast majority of costs for administering the system.

The fee for complaints is designed to be a payment for a service and is intended to enable councils to recover their costs for administering the system thus not placing a financial burden on other ratepayers who would not benefit from any action taken by the council. It should also act as a deterrent to prevent frivolous or vexatious complaints.

It is not illegal to grow a hedge and the legislation does not identify a guilty or innocent party. The problems arise due to poor maintenance of a hedge. The Bill is designed to deal with disputes between neighbours and the fee to

accompany the complaint is considered fair since the hedge owner will be required to bear the costs associated with performing the required remedial action. It would not be fair to require the owner of the hedge, which has been grown perhaps too high but not unlawfully, to bear both the cost of reducing its height and the cost of the fee made by the person receiving the benefit of the service provided by the council.

The Department has a discretionary power in the draft Bill to introduce Regulations to limit the level of complaint fees.

The fee for appeals will help cover the cost of implementing the appeals system and will be paid by the person making the appeal. It is normal practice for fees to be paid when appeals are lodged e.g. Planning Appeals.

For the reasons outlined above, the Department does not propose to amend the Bill in relation to fees.

2.4 Guidance

Several respondents requested clarity and guidance on various aspects of the proposed system. While individual responses focused on specific, predominantly operational, issues, they can be broadly grouped into 2 main areas of guidance - guidance for complainants and guidance for councils. Many of the single issues raised by individuals can be addressed in the guidance documents.

Table 4: Issues Relating to Guidance

Key Issue	Category of Respondent				% Total Responses
	% Local Government	% Individual	% NDPB	% NGO	
Guidance for Complainants	81%	5%	0%	68%	31%
Guidance for Councils	100%	0%	0%	74%	33%

Department's Response

The Department intends to produce guidance to help those adversely affected by a neighbouring high hedge to make a complaint to their local council. The Department also intends, in association with councils, to produce detailed guidance to assist council officials in assessing a complaint and to determine what, if any, remedial action should be taken. In addition, the Department intends to produce guidance on the appeals process.

2.5 Definitions

Respondents suggested that further terms such as 'reasonable steps to resolve a problem' and 'reasonable enjoyment' should be defined within the legislation. In addition, other comments related to various terms and suggested definitions – for the purpose of this analysis, these have been grouped under 'other general definitions'.

Table 5: Issues Relating to Definitions in the Draft Bill

Key Issue	Category of Respondent				% Total Responses
	% Local Government	% Individual	% NDPB	% NGO	
Reasonable steps to resolve a problem	74%	2%	0%	5%	15%
Reasonable Enjoyment	0%	6%	0%	0%	4%
Other general definitions	10%	10%	0%	11%	10%

Department's Response

Evidence of "reasonable steps" to resolve a problem will take a variety of forms and will depend on the specific circumstances of each case but may take the form of records of discussions or attempts at discussion between the parties, copies of letters sent to the hedge owner by a complainant in which they have explained the issues and problems the hedge causes for them or, if applicable, records of meetings attended by the parties and facilitated by mediation service providers.

The term “reasonable enjoyment” used in the Bill refers to the enjoyment of a property by a person through having access to light. While it does not specifically refer to issues such as enjoyment being affected by costs associated with maintaining neighbouring hedges or by the reduction in the value of property due to neighbouring hedges, the reduction of such hedges for the purposes of improving light will greatly reduce its impact in such ways. It would be legally difficult to provide an exhaustive definition of ‘reasonable enjoyment’ that would encompass every situation. It will be a matter of judgement for the council to strike a balance between the hedge owner and the complainant and the impact on the individual property.

It is not proposed that any definitions in the draft Bill will be amended; further elucidation on terms such as “reasonable enjoyment” will be available in Departmental guidance documents.

2.6 Other Local Government Issues

In addition to the main issues already noted, many local government respondents expressed concern about vacant land, provision of a mediation service, public awareness, potential conflict with tree preservation orders and resources.

The Department understands that land owners can be traced through Land and Property Services and that in extreme circumstances, land can become Crown Property. The Department does not propose to provide a specialist mediation service since there is existing providers of a mediation service in Northern Ireland. The guidance, which the Department proposes to produce, will provide more detail on many of the issues raised, including existing statutory provisions that councils will need to consider before issuing a remedial notice.

The Department will of course update the media when the legislation received Royal Assent.

2.7 Miscellaneous Comments

A range of other comments were made, generally by individuals and mainly relating to operational details and issues that will be covered in the guidance. These included requests for provision of a prescribed application form, which the Department proposes to prepare for use by councils. In addition, some respondents commented on figures in the Partial Regulatory Impact Assessment (RIA). These comments will be considered when the full RIA is prepared to accompany the Bill on its introduction to the Assembly.

The NI Court Service has suggested that the Northern Ireland Valuation Tribunal (NIVT) may well be a suitable High Hedges appellate body, rather than another appeals body having to be established. It was established on 1st April 2007 under the Rates (Amendment) (NI) Order 2006 to handle property valuation appeals. It is made up of a panel of 3 persons – a legal member; a valuation member (usually surveyors) and a lay person.

To utilise an existing Tribunal which has capacity to undertake the High Hedges Appeal function, rather than begin the costly and time consuming process of identifying and appointing persons to handle appeals related to high hedges is considered a much more cost-effective way of handling this issue.

Moreover, the Valuation Tribunal provides an appeal which is independent from DOENI and is an appellate body which includes surveyors, with obviously relevant skills and experience, aptly suited for the proposed tasks.

The Department proposes to explore the possibility of designating NIVT as the appellate body, rather than setting up a completely new appeals process.

Concern was expressed that councils could be held liable if remedial action subsequently resulted in a hedge dying.

The Department proposes to amend the Bill to protect councils from liability when the council has acted in default and carried out remedial action, provided that all reasonable steps have been taken in assessing the remedial action and appropriate professional advice has been sought where appropriate.

3. Next Steps

The Department intends to finalise the Bill, prepare a full Regulatory Impact Assessment and, subject to Executive approval, to introduce the High Hedges (Northern Ireland) Bill into the Assembly as soon as practicable.

4. Conclusion

As a result of the responses to the public consultation, the Department proposes to make 4 amendments to the draft High Hedges Bill:

1. Exclusion of Forests (greater than 0.2 hectares) from the definition of high hedge.
2. Conferring of appeals functions on the Northern Ireland Valuation Tribunal.
3. Remove council liability in cases where a hedge has died following remedial action carried out by the council in default, provided that appropriate advice has been sought before carrying out the remedial action.
4. Removal of words “or access” from the definition of high hedge (clause 2(1) and (2)).

5. List of Respondents (S = Substantive, N = Noted/No Comment)

In total, the Department received 105 responses to the public consultation. The groups and organisations who responded are listed below. In addition, 62 responses were received from individuals whose names are not listed.

NGO

- Adelaide/Cadogan Residents' Association (S)
- Council for Nature Conservation and the Countryside (S)
- Deramore Residents Association (S)
- Hampton Park Residents' Association (S)
- Hedgeline (S)
- Hillsborough Horticultural Society (S)
- Lagan Valley Group Residents Association (S)
- Lower Ballynafeigh Residents' Association (S)
- Lower Malone Residents' Association (S)
- Marlborough Residents' Association (S)
- Mediation Northern Ireland (S)
- Park Road and District Residents' Association (S)
- Royal Institution of Chartered Surveyors (S)
- Royal Society for the Protection of Birds (RSPB) (S)
- Royal Town Planning Institute (S)
- Stranmillis Residents' Association (S)
- Training for Women Network (N)
- Ulidia Residents' Association (S)
- Ulster Society for the Protection of the Countryside (N)

NDPB

- Northern Ireland Court Service (S)
- Northern Ireland Judicial Appointments Commission (N)
- Northern Ireland Tourist Board (N)

Local Government

- Alliance Party (S)
- Antrim Borough Council (S)
- Ards Borough Council (S)
- Armagh City and District Council (S)
- Ballymena Borough Council (S)
- Ballymoney Borough Council (S)
- Banbridge District Council (S)
- Belfast City Council (S)
- Castlereagh Borough Council (S)
- Chief Environmental Health Officers Group (S)
- Coleraine Borough Council (S)
- Cookstown District Council (S)
- Craigavon Borough Council (S)
- Derry City Council (S)
- Down District Council (S)
- Fermanagh District Council (S)
- Larne Borough Council (S)
- Lisburn City Council (S)
- Northern Ireland Local Government Association (S)
- Omagh District Council (S)
- Councillor Ken Robinson MLA (S)