



Department of the
Environment

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PUBLIC CONSULTATION

ON HIGH HEDGES ACT (NORTHERN IRELAND) 2011 – DRAFT GUIDANCE

SYNOPSIS OF VIEWS EXPRESSED AND THE DEPARTMENT'S RESPONSE

NOVEMBER 2011

1. Introduction

Public consultation on the High Hedges Act (Northern Ireland) 2011 – Draft Guidance closed on 11 November 2011. The Consultation Paper sought views on 5 draft guidance documents to support the High Hedges Act (Northern Ireland) 2011:

- High Hedges Act (Northern Ireland) 2011 - Draft Guidance for Councils;
- High Hedges Act (Northern Ireland) 2011 - Technical Guidance;
- High Hedges Act (Northern Ireland) 2011 - Draft Guidance for Complainants;
- High Hedges Act (Northern Ireland) 2011 - Draft Guidance for 'Hedge Owners'; and
- High Hedges Act (Northern Ireland) 2011 - Draft Guide to Appeals.

The consultation asked the following questions:

- Q1 Do you have any comments on the draft High Hedges Act (Northern Ireland) 2011 - Guidance for Councils?
- Q2 Are there any further aspects that need to be covered in the Guidance for Councils?
- Q3 Do you have any comments on the High Hedges Act (Northern Ireland) 2011 – Technical Guidance?
- Q4 Do you have any comments on the draft High Hedges Act (Northern Ireland) 2011 - Guidance for Complainants?
- Q5 Do you have any comments on the draft High Hedges Act (Northern Ireland) 2011 – Guidance for 'Hedge Owners'?
- Q6 Do you have any comments on the draft High Hedges Act (Northern Ireland) 2011 – Guide to Appeals?
- Q7 Are there any other aspects of the High Hedges Act that could benefit from guidance being produced by the Department?

The High Hedges Act (Northern Ireland) 2011 will give district councils certain powers to deal with complaints about high hedges which are having an adverse effect on a neighbour's enjoyment of their property through acting as a barrier to light. These non-statutory guidance documents are intended to

support the operation of the High Hedges Act and to help complainants and 'hedge owners' to understand what the legislation means for them.

The High Hedges Act is intended to provide a mechanism by which a complainant can achieve resolution of a high hedge problem. However, the legislation should only be used as a last resort. Potential complainants are required to attempt to resolve the problem with their neighbour before they can ask their local council to investigate a high hedge complaint.

The guidance documents contained in the consultation package are intended to try to explain the legislation and to help people to use the High Hedges Act when it becomes operational.

The guidance is non-statutory and is not, therefore, referenced in the High Hedges Act. It provides advice to councils and the public, although the Department recommends that, for consistency, councils follow the guidance. Councils can, however, enhance or alter the guidance as they see fit to suit their specific requirements provided that this does not contradict the requirements of the High Hedges Act.

The High Hedges Act does not specify a timetable for a council to carry out its investigation since the time will vary depending on the complexity of each case and the Department does not intend to impose non-statutory timescales on local councils. The Department anticipates that councils will deal with cases in a timely manner, maintaining a focus on customer care. Complainants can, of course, complain to the Ombudsman if they feel that the council is not carrying out its functions appropriately. It should, however, be noted that there could be a large number of complaints in the initial stages of the commencement of the High Hedges Act.

This consultation only related to the guidance since public consultations on a draft High Hedges Bill and on High Hedges Fee Legislation have already taken place. Therefore comments relating to the scope of the legislation or to fee charging policies have not been considered in this synopsis.

The Department invited responses from a wide range of organisations and individuals including MPs, MLAs, local councils, health trusts, academic and professional institutions, farming and business organisations as well as members of the public who had been in contact with the Department and had asked to be kept informed of progress. The consultation paper was also published on the Department's website, NI Direct website and publicised through press notices.

2. Consultation Responses

A total of 31 responses were received to the consultation. 7 of these were from organisations who simply noted the proposals, leaving 24 substantive responses, of which 11 were from local government organisations. Most respondents welcomed the comprehensive guidance and some made comments specific to particular sections of the guidance. It was also noted that training, which the Department is already committed to providing, will be needed by local councils before the legislation becomes operational.

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

Q1 Do you have any comments on the draft High Hedges Act (Northern Ireland) 2011 – Guidance for Councils?

3 local government respondents commented on the factors to be considered during a site visit (section 2.7, page 15). Whilst they accepted that the list provided is not in any priority order nor exhaustive, they recommended that the list is re-ordered to give primacy to the matters addressed in the legislation (i.e. light) and that it is made clear that the remaining factors do not create 'rights' and instead are to be looked at in an overall balanced judgement.

Department's response – the Department proposes to re-order this section of the guidance to address the comments.

Section 2.17 (page 29) provides guidance on 'time limits'. 1 local government respondent expressed concern about the timescale for Councils to arrive at a decision as this raises certain expectations. 2 individuals and 1 organisation felt that there should be a clearly defined timetable for a council to process and decide the outcome of a complaint.

Department's response – whilst the Department hopes that councils will process high hedge complaints in a timely manner, it will be for individual councils to decide on appropriate timescales. The High Hedges Act does not impose specific time constraints. However, it should be noted that, in the initial stages of the legislation becoming operational, there could be a significant number of complaints needing to be investigated.

Several respondents raised issues in relation to how the guidance deals with fees.

1 local government respondent requested a specific section clarifying when, and in what circumstances a fee could be refunded, if the notice has been complied with.

1 local government respondent felt that councils may wish to consider a partial refund mechanism for repayment of fees if the complaint is not formalized and that they should be given the means to determine this matter as they think best fits their local circumstances.

6 local government respondents expressed concern that section 2.19, page 30 raises certain expectations in relation to a refund if a complaint is withdrawn. They considered that councils should be able to decide their own policy on refunds and complainants should be advised to contact their local council for its individual policy. 3 of these respondents noted that there is also reference to refund, on page 74 but this is clearly labelled as an example of possible refunds while 1 respondent felt that the reference on page 74 could be misleading.

1 local government respondent queried the level of fee that should be charged in cases where a council is party to a complaint concerning its own evergreen/semi evergreen hedges within its properties. 1 individual respondent suggested that more detail should be provided for dealing with cases where a problem hedge is owned by a council.

3 local government respondents suggested that the handling of fees in uncommon cases should be included in section 2.14, page 26. For example, where multiple complaints are made against a single hedge owner it could be interpreted that the complaint fees (however many multiples are involved) are transferred to the hedge owner when the notice takes effect. This could result in a very significant cost to the hedge owner before any works are paid for and they believe this may be outside the spirit of the legislation. They suggested that the guidance to District Councils should be explicit in this regard in order to ensure consistent application and transfer of fee arrangements across NI.

7 local government respondents requested clarification on means of recovering any outstanding fee applied to the 'hedge owner' since section 3.7, page 36 appears to require the statutory charge mechanism to be used rather than recovery as a civil debt through small claims court.

Department's response – a specific fee section will be included in the guidance for councils. Section 2.19 will be re-drafted to emphasise that it will be for individual councils to set out their fee policy, within the constraints of the legislation. Section 3.7 of the guidance will be re-drafted to make it clear that whereas the High Hedges Act allows for the registration of a statutory charge in respect of unpaid fees, such registration is not required. Registration of a statutory charge will be an option available to councils to exercise at their discretion. Councils will be advised in the guidance to seek their own legal advice in respect of alternative means of fee recovery.

A number of responses related to remedial notices.

7 local government respondents sought further guidance on the compliance period (section 3.6, page 35) as there is only one enforceable date – the date for compliance with the notice. However, in the case of a very high hedge, a hedge owner may receive a notice to reduce the hedge to 2m from 30m and may be given 4 years to complete this in staged reductions. That hedge owner may decide to continue with the 30-metre hedge until just before the enforcement date and then remove the hedge. They considered that some would say that the high hedge has been dealt with but the complainant would be justly aggrieved at seeing no action in that 4 year period.

3 local government respondents requested clarification on the function and lifespan of a remedial notice (specifically in relation to section 3.1, page 34) and whether or not the notice should contain information to prevent recurrence of the problem.

1 council sought clarity over legal constraints such as covenants or planning conditions that need to be considered and raised concern about the resource implications associated with contacting Land Registry.

1 organisation suggested that section 2.11 be replaced with ““Other factors that councils must take into account, where relevant, include whether the hedge is part of - or within - the boundaries of a listed building, registered park or garden, or other site of archaeological or historic importance and the effect that any removal may have on the said site;”

Department’s response – chapter 3 deals with remedial notices. This chapter will be re-ordered and will clarify that a remedial notice remains in existence for as long as the hedge remains on the land. In addition, the remedial notice will contain details of the initial action required as well as preventative action to prevent recurrence of the problem. The Department also proposes to include a new section dealing with ‘legal protections’ that councils need to consider when deciding on the contents of a remedial notice such as covenants, planning conditions, tree preservation orders, wildlife protection, built heritage and farm hedges.

Other local government comments related to ‘typographical and minor drafting errors’:

7 noted that on page 70 criteria 2.4 there is a reference to ‘view’ that cannot be a consideration for this legislation.

2 suggested that the sample letter notifying the occupier of the land of the complaint (page 88) should be amended to remove the reference to ‘*your*’ complaint.

2 recommended that the sample letter to the land owner of the land (page 90) is extended to include information similar to that provided to the occupier of the land. As the land owner may be held liable, particularly where the occupier/tenant fails to take action, he should be afforded the same information and detail of response as the occupier.

1 recommended that the sample Decision letter, page 95, is amended to remove the reference to the shedding of needles.

Department’s response – the Department welcomes identification of these typographical and minor drafting errors and the guidance will be amended to correct them although the sample letter on page 90 does not require amendment as the letter to the occupier is to be included with it.

Section 2.3.4 provides guidance on where the height of the hedge should be measured, i.e. the natural ground level where the hedge is growing. 2 respondents sought clarification about cases where there is a difference in height between the complainant’s property and the ‘hedge owner’s property. 1 of these respondents also felt that the height should be measured on the complainant’s side.

Department’s response – the height of the hedge should be measured on the natural level where it is growing – this would be in line with planning requirements for a wall. This clarification will be added to the guidance.

Section 2.3.9 provides guidance on 'reasonable enjoyment of property' and attempts to outline ancillary issues that will not normally be considered as grounds for complaint, since the main issue is loss of light due to the height of a neighbouring hedge. 3 respondents expressed concern that the impact on a greenhouse or garden may not be considered as grounds for complaint.

Department's response – the examples in this section were intended to show circumstances that would not normally be considered as the main justification for a complaint. However, the Department proposes to amend the wording of this section to avoid confusion.

Section 2.3.10 provides guidance on 'reasonable steps to resolve the dispute amicably' and suggests sending a letter by 'recorded delivery' as one possible course of action. 1 individual has encountered problems with traceability when using 'recorded delivery'.

Department's response – The Guidance suggests methods of demonstrating that reasonable attempts have been made to resolve the problem amicably. The use of 'Recorded Delivery' is just one example of evidence that could be produced but this suggestion will be removed from the guidance.

1 respondent wished to see greater emphasis on the need to protect all birds, nests and eggs during the bird nesting season and wished to ensure that hedge trimming would not take place during this 6-month period and any remedial actions will not affect breeding birds.

Department's response – the chapter relating to remedial notices will be re-drafted and will include a section on legal issues to be considered by councils when deciding on the content of a remedial notice. This will include protection of birds and other wildlife.

1 respondent expressed concern about the subjectivity of the issues and the need to ensure that the problem is fairly assessed for both parties and another individual felt that the guidance appears to favour the hedge owner.

Department's response – the guidance is intended to provide detailed support for council officers who will be trying to resolve a dispute between neighbours. It is intended to support the operation of the legislation, identifying whether a complainant is suffering loss of light and balancing the 'hedge owner's right to privacy. It should be noted that the 'hedge owner' has not broken the law by growing a hedge and only commits an offence by failing to comply with a remedial notice or obstructing an officer carrying out their role under the High Hedges Act. The impacts of a hedge on a neighbouring property will vary from case to case and councils must remain neutral in their investigation.

Q2 Are there any further aspects that need to be covered in the Guidance for Councils?

6 local government respondents sought clarification in relation to a situation where an initial complaint is rejected but in later years the complainant extends their house towards the hedge - does this initiate a new complaint and assessment or is there an onus on relevant authorities to assess this e.g. Planning (or in some cases no planning permission may be required for small extension)?

Department's response – this scenario will be added to the section dealing with 'change in circumstances'. The scenario outlined would result in a new complaint to deal with the impact of the hedge on a neighbouring property.

5 local government respondents sought further information on how to deal with the 'fee transfer' mechanism, in cases of a single complainant and multiple 'hedge owners'.

Department's response – a new fee section is proposed (see response to question 1)

1 local government respondent asked for clarification about the legal standing of the guidance notes and whether or not councils can change the wording or format of these documents. In addition, information about how the documents may be revised was requested.

Department's response – further detail will be added to the introductory paragraphs of the guidance to clarify that the guidance is non-statutory and that councils can amend it to suit their own specific needs provided that it reflects the requirements of the High Hedges Act.

1 local government respondent requested inclusion of a sample letter to deal with situations where a council is approached informally about a possible complaint and is encouraged to offer only factual information at this stage.

Department's response – a sample letter will be included in the council guidance to outline factual information that should be provided in the case of an informal enquiry, emphasising the need to try to resolve the problem before involving the council and highlighting the implications for both parties should a formal complaint be instigated.

Q3 Do you have any comments on the High Hedges Act (Northern Ireland) 2011 – Technical Guidance?

1 individual respondent stated that Annex 1 of the Technical Guidance does not specify which side to measure but the diagrams (page 12) suggest that the hedge is measured on the complainant's side rather than the 'hedge owner's' and 1 respondent noted that there could be a difference in height between the complainant's side and the hedge owner's side.

Department's response - when a council is investigating a high hedge complaint, it will need to measure the height of the hedge on the

complainant's side to assess the impact on the complainant's property. It will also need to confirm that the height of the hedge is more than 2-metres which may necessitate measurements on the hedge owner's side, depending on the specific circumstances. No change is required to the Technical Guide although further clarification will be added to the council guidance.

1 respondent suggested adding further information to the introduction to clarify that ancient or species-rich hedgerows are unlikely to fall under the legislation and that authorities should ensure that such hedgerows are not affected when implementing this legislation.

Department's response – since the legislation relates to any evergreen or semi-evergreen hedge, no amendment to the technical guide is required.

1 respondent was concerned that a long hedge could exceed 0.2 hectares and could not be the subject of a high hedge complaint.

Department's response – the scenario outlined is a line of trees and does not constitute woodland so no amendment is required to the technical guide. The Department will, however, reinforce the significance of 0.2 hectares in that it only relates to areas of woodland by amending the council guidance and guidance for complainants and hedge owners.

1 respondent asked if councils should arrange for an external person to deal with complaints against councils to avoid a conflict of interest.

Department's response – this aspect will be dealt with in the guidance for councils.

1 respondent felt that more clarification is needed on what effect a tree preservation order (TPO) will have if the hedge concerned has trees which

are covered by such an existing order and asked if there should be a system of notifying the planning authorities if a request is made for a TPO on trees which may be considered as part of a hedge.

Department's response – this has been covered in response to comments made on the council guidance and will also be included in the guidance for complainants and hedge owners.

1 respondent asked if councils will have a procedure in place to deal with complaints related to the High Hedges Act not being properly considered.

Department's response – the existing appeals process provides a mechanism to deal with this and it is also possible to complain to the NI Ombudsman so no change is required to the technical guidance.

Q4 Do you have any comments on the draft High Hedges Act (Northern Ireland) 2011 – Guidance for Complainants?

1 local government respondent recommended that a clear statement is included, for example, on page 12 'Making a formal complaint' to advise complainants to contact their local Council regarding Council policy on fees and refunds.

Department's response – the guidance will be amended to emphasise the need to contact the local council for information about its policy on fees.

1 local government respondent recommended that the need for the complainant to take reasonable steps to resolve the problem before resorting to a formal complaint should be emphasised in this guidance. However, in order to effectively do this it will be necessary for the complainant to identify the hedge owner/occupier. It can however on occasions be difficult to identify the owner/occupier i.e. where the hedge is on derelict land, land under development etc, and therefore additional detail should be provided in the

guidance to assist the complainant identify the right person. The complaints form should also be amended to include information as to what steps the complainant has taken to identify the hedge owner/occupier.

Department's response – the guidance will be amended to reinforce the importance of only making a formal complaint as a last resort and the need to take steps to try to resolve the problem amicably. Advice on tracing land owners will also be incorporated – this is already included in the council guidance. The Department does not propose to amend the sample complaints form as section 1.4 of the form can be used to provide evidence of attempts to identify the land owner.

1 individual sought information about who should measure the height of the hedge since it should be measured on the 'hedge owner's' side and asks if the Department is advocating trespass, requiring the complainant to go on to the hedge owner's land before they would be able to make a formal complaint. He noted that the Guidance for Complainants does not specify where the height of the hedge should be measured and also complained that there is no mention in the Act about which side to measure from.

Department's response – the guidance will be amended to clarify that an estimate of the height of the hedge on the complainant's side should be sufficient to determine whether or not the hedge falls under the scope of the Act. Neither the legislation nor the guidance suggests that the complainant should enter a neighbour's land to take any measurements – this will be the responsibility of the council if a formal complaint is made.

1 individual suggested that the Guidance for Complainants should include examples of what would be grounds for a complaint.

Department's response – the Department does not propose to amend the guidance as the grounds for complaint are covered under 'What can

be done before resorting to a formal complaint?’ and ‘What is a high hedge?’

1 individual felt that the section ‘Who can make a complaint’ implies that complainants are unreasonable people and also complained about the scope of the legislation.

Department’s response – this section of the guidance will be amended to reflect the proposed changes to the guidance for councils in this area.

Q5 Do you have any comments on the draft High Hedges Act (Northern Ireland) 2011 – Guidance for ‘Hedge Owners’?

2 local government respondents recommended that the question on page 4 regarding the roots of the hedge damaging a neighbour’s path, garage or home is removed to avoid misunderstanding about the purpose and limitations of the legislation.

Department’s response – the guidance will be amended to reflect the proposed changes to the guidance for councils and will focus only on issues that can be considered under the legislation.

1 respondent suggested that the guidance (page 4, paragraph 1) should highlight the hedge owner’s responsibility to protect birds and wildlife that occupy their hedge and that any damage or disturbance to nests of protected species or any species during the breeding season is a breach of the Wildlife (NI) Order and that the need to check a hedge for protected species should be reinforced in paragraph 4, page 8.

Department’s response – the Department proposes to include a new section in the guidance for councils dealing with legal considerations such as wildlife protection, planning conditions, tree preservation

orders etc and this will be incorporated into the guidance for ‘hedge owners’.

1 respondent expressed concern that the legislation only deals with a hedge that acts as a barrier to light and also stated that the section ‘wrong hedge and what to do about it’ only contains one issue that is covered by the legislation.

Department’s response – as the legislation only relates to hedges adversely affecting a neighbour’s property through acting as a barrier to light, the references to issues other than this will be removed.

Q6 Do you have any comments on the draft High Hedges Act (Northern Ireland) 2011 – Guide to Appeals?

1 individual believes that the British Standards referred to in the Guidance for Councils should also be listed in the Guide to Appeals.

Department’s response – the Department proposes to amend the guidance for councils in respect of references to the British Standard and therefore no change is proposed to the guide to appeals.

Q7 Are there any other aspects of the High Hedges Act that could benefit from guidance being produced by the Department?

3 local government respondents suggested that the specific arrangements that apply in Northern Ireland in relation to the refund and transfer of fees will have to be incorporated into various guidance documents.

Department’s response – the Department proposes to include a specific section on fees in the guidance for councils. This will be incorporated into the guidance for complainants and guidance for hedge owners.

1 individual suggested that there should be pro-forma documents for making a formal complaint and that there should be a system of feedback with a timescale put into place to keep all informed of what is happening.

Department's response – there is a sample complaints form in the guidance for councils and potential complainants should contact their local council to obtain a complaints form.

General Comments

2 individuals expressed concern that the guidance appears to favour the 'hedge owner' and that complainants are expected to 'jump through hoops' and 1 of these felt that the complainant's case should automatically be upheld if the 'hedge owner' fails to respond in a reasonable manner.

Department's response – the range of guidance documents are intended to help councils to investigate high hedge complaints and to take account of the needs of both parties.

1 organisation said that the council must provide guidelines on the balance between the height, the density and the proximity of high hedges to the complainant's main living quarters and that a table of heights/density should be included to illustrate the severity of the effects suffered through high hedges. This organisation, whilst acknowledging that it is reasonable to expect a complainant to provide evidence of attempts to resolve the matter before approaching the council, feels that excessive evidence should not be required and that it should be sufficient to inform the hedge owner of the detrimental effect the trees are having.

Department's response – the Technical Guidance outlines distances and orientations to be considered when a council is assessing a complaint. This Guidance will also be helpful to complainants and hedge owners who wish to carry out an approximate assessment before resorting to a formal complaint. It is important that a complainant provides evidence

of reasonable attempts to resolve the problem since the instigation of a formal complaint can have significant implications for the hedge owner – remedial work, statutory charge to ensure ongoing maintenance, transferred fee. In addition, the payment of a complaints fee (which will be refunded if a remedial notice takes effect) will help to deter frivolous or vexatious complaints.

1 organisation asked that consideration be given to the occupants of a farm who receive a single farm payment from DARD and may not cut hedges on their land at all during the bird breeding season.

Department's response – this issue will be included in the proposed new section dealing with legal issues to be considered with regard to remedial notices.

Comments/Complaints about the scope/content of the legislation

3 respondents made comments about the scope of the legislation.

Department's response – the legislation has already completed its Assembly passage and this public consultation relates only to the guidance documents intended to support the operation of the legislation.

2 individual respondents raised the issue of a pre-existing hedge which may then impact on a new development or a pre-existing greenhouse that may be impacted by a new hedge.

Department's response – the hedges in these scenarios are not exempt from the High Hedges Act. Councils will take into account all relevant factors in assessing high hedge complaints – each case will be treated on its own merits.

1 organisation felt that fees should only be charged in cases where a complainant has made a frivolous complaint and pensioners and those on low incomes should never have to pay - the required revenue can be achieved through the fining system.

Department's response - There is no fining system associated with the High Hedges Act, unless a hedge owner fails to comply with a remedial notice or obstructs an officer performing their duties and a subsequent fine is imposed by the Magistrate's Court. Local councils will decide on their own fee structures, up to the maximum specified by the Department.

3. Conclusion

As a result of the responses to the public consultation, the Department proposes to amend the guidance for councils, guidance for complainants and guidance for 'hedge owners' by including a specific section dealing with fees and a new section dealing with legal considerations that councils should take into account when considering the content of a remedial notice. In addition, the Department proposes to amend various sections, as outlined above, to correct 'typographical and minor drafting errors' and to address individual comments.

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

The Department received 31 responses to the public consultation. The groups and organisations who responded are listed below. The names of individuals who responded are not listed.

Ards Borough Council (S)

Armagh City and District Council (S)

Ballymena Borough Council (S)

Banbridge District Council (S)

Belfast City Council (S)

Cookstown District Council (S)

Craigavon Borough Council (S)

Department of Enterprise, Trade and Investment (N)

Disability Action (N)

Deramore Residents' Association and the South Belfast Residents Group (on behalf of Deramore Residents' Association; Lagan Valley Residents' Association; Lower Malone Residents' Association; Adelaide/Cadogan Residents' Association; Marlborough Residents' Association; Ulidia Residents' Association; Lower Ballynafeigh Residents' Association; Hampton Park Residents' Association; Stranmillis Residents' Association; and Park Road and District Residents' Association) (S).

Fermanagh District Council (S)

Hedgeline (S)

Lagan Valley Group Resident's Association (S)

Lisburn City Council (S)

Newtownabbey Borough Council (S)

NI Chief Environmental Health Officers' Group (S)

NI Ombudsman (N)

Northern Ireland Environment Agency (Natural Heritage Directorate) (N)

Northern Ireland Environment Agency (Built heritage Directorate) (S)

Northern Ireland Judicial Appointments Commission (N)

Police Service of Northern Ireland (N)

Roads Service (N)

Royal Town Planning Institute (S)

RSPB (S)