



Department of the
Environment

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PUBLIC CONSULTATION

ON HIGH HEDGES FEE LEGISLATION

SYNOPSIS OF VIEWS EXPRESSED
AND
THE DEPARTMENT'S RESPONSE

OCTOBER 2011

1. Introduction

Public consultation on draft High Hedges Fee legislation closed on 20 September 2011. The Consultation Paper sought views on two sets of draft High Hedges regulations:

- The draft High Hedges (Fee) Regulations (Northern Ireland) 2011 – these Regulations prescribe the maximum complaints fee that councils can charge for dealing with a high hedge complaint; and
- The draft High Hedges (Fee Transfer) Regulations (Northern Ireland) 2011 – these Regulations make provision for a ‘fee-transfer’ process, transferring the obligation to pay a fee to the council for investigating a high hedge complaint from the complainant to the ‘hedge owner’¹.

Respondents were asked specific questions related to the draft Regulations and were given the opportunity to comment on the accompanying impact assessments. A consultation response form was provided to facilitate responses.

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.

The Act allows councils the discretion to charge a fee for investigating a high hedge complaint. This fee is considered as payment for a service provided by the council in processing a complaint, investigating a complaint and making a decision on whether or not remedial action is required.

The Department is required to legislate to specify the maximum fee that councils can charge for investigating a high hedge complaint. The consultation sought views on what maximum fee should be specified in the draft High Hedges (Fee) Regulations (Northern Ireland) 2011.

¹ The term ‘hedge owner’ throughout this document means ‘every owner and every occupier of the neighbouring land’, a term used in the High Hedges Act (Northern Ireland) 2011

If a council investigates a high hedge complaint and decides that the height of the hedge should be reduced, it will issue a remedial notice specifying what action must be taken. If this remedial notice then takes effect (after any appeals have been decided), the council will refund the complainant's fee (if one has been charged). The High Hedges Act allows the Department to make Regulations allowing the council to charge the 'hedge owner' a fee when a remedial notice takes effect i.e. the person causing the problem pays to have it dealt with. The draft High Hedges (Fee Transfer) Regulations (Northern Ireland) 2011 make provision for this process.

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 88 responses were received to the consultation, 1 from a hedge owner, 48 from complainants, 3 from those who classed themselves as both hedge owner and complainant, 24 from councils (and other local government groups), 7 from other organisations and individuals who did not place themselves in any of the previous categories and 5 from organisations who simply noted the proposals, leaving 83 substantive responses. 6 of these substantive responses were received after 5pm on 20 September 2011.

The Department had provided a Response Form to focus comments on the key questions. The majority of responses received were based on this template but 13 letters were also received which generally outlined personal hedge problems and did not address the range of questions asked. Where possible, issues mentioned in these letters which related to the consultation are included in the synopsis.

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.

	Category of Respondent				
	Hedge Owner	Complainant	Hedge Owner & Complainant	Local Government	Other
Number of substantive responses	1	48	3	24	7

Question 1 – What should be the maximum level of fee? Why?

Level of Fee £	Category of Respondent					Total
	Hedge Owner	Complainant	Hedge Owner & Complainant	Local Government	Other	
There should be no fee		4				4
20		1				1
25		1				1
30		1				1
40		1				1
50		4				4
75		1				1
100		7	1		1	9
150		2				2
200		3				3
250		3		1		4
300		3				3
350				13	1	14
360		1	1	7		9
400		2		1		3
450				1		1
500		3				3
700				1		1
1000		1			1	2
Full cost to council			1			1
Fair and reasonable	1					1
Fee should not exceed costs					1	1
No idea		4				4
None specified		6			3	9
Total	1	48	3	24	7	83

Reasons

In general, those who specified a maximum fee (either low or high) justified it on the basis that the fee should deter frivolous and vexatious complaints but should not prevent legitimate complaints. Some of those who did not specify a figure for the maximum fee suggested that there should be no complaints fee associated with high hedge complaints or that charging a fee was unfair. Others had no idea what level of fee would be appropriate and some respondents just addressed the 'fee transfer' proposal without considering the level of fees.

Those who suggested a level of fee less than £100 justified it on the basis that a high fee would deter people from using the legislation and some thought that it would only take a council official 5 minutes to view the trees. Some of those who suggested a level of fee in the region of £100-200 acknowledged that the fee should cover the council's administrative costs.

Those respondents who suggested higher fee levels justified it on the basis that it would be a good incentive for the hedge owner to take action and would encourage them to sort out the issue before the formal process was instigated.

1 respondent suggested that the hedge owner should pay double the complainant's fee and another suggested the best of 2 quotes from registered tree surgeons. Other suggestions included the possibility of reduced fees for pensioners (e.g. £50) and also payment options for those on lower incomes who are not pensioners.

Concern was expressed that the system should safeguard against difficult hedge owners who do not comply, hear about the complaint and cut down the hedge before the council investigates.

1 respondent expressed concern about the council's ability to charge a fee, irrespective of the circumstances of the tenant or owner. 1 respondent

suggested £50 per tree and another suggested a maximum fee of £250 that would be shared by both the hedge owner and the complainant.

The majority of councils felt that the maximum level of fee should be in the region of £320-360 although 1 suggested £250 and 1 suggested £700. Their views are justified on the basis of a fee that would deter frivolous complaints but not be too prohibitive. Councils welcomed the discretion to set out their own fee structures, up to the maximum limit specified by the Department. Many councils estimate that a high hedge complaint will require 12-13 hours of an officer's time in addition to the cost of registering a remedial notice as a statutory charge and the additional administrative burden associated with the 'fee-transfer' mechanism that is not in existence in England and Wales. They have indicated that this estimate was based on discussions with local authority colleagues in England and Wales. 1 council has estimated 23 hours of officer time to investigate a complaint and has also noted that there will be additional legal costs to councils if there is an appeal against the council's decision.

Department's Response

In order to ensure that councils (and ratepayers generally) do not face an additional financial burden associated with implementing the High Hedges Act (Northern Ireland) 2011, **the Department proposes to set the maximum level of complaints fee at £360.** This does not mean that all councils will automatically charge this level of fee. The High Hedges Act provides councils with the flexibility to decide on their fee structures and the discretion to set their council complaints fee up to the maximum, to offer reduced fees or not to charge a fee at all.

Question 2 – Do you agree that the fee should transfer to the 'hedge owner' when the remedial notice takes effect? Please give your reasons.

All local government respondents (24 including NILGA and CEHOG) supported the principle that the 'hedge owner' should bear the costs

associated with a high hedge complaint. 17 expressed reservations about how this would work in practice. 12 suggested that the fee should be levied against the 'hedge owner' when a remedial notice is issued rather than when it takes effect.

53 other respondents answered this question. Of these, 50 supported the principle that the 'hedge owner' should bear the cost associated with a high hedge complaint, either by agreeing with the transfer proposal or by stating that the 'hedge owner' should bear the cost.

Reasons

The reasons given by respondents in support of their position include:

- The 'hedge owner' caused the problem and should bear the financial cost
- Why should the victim pay?
- The hedge owner is more likely to behave if they know they will have to pay
- They have had the opportunity to resolve the matter
- Those who break the law should suffer financially
- The fee should always be paid by the hedge owner as it is their fault that the hedge is over the legal limit.
- No fee transfer but a refund to the complainant should be recovered from the hedge owner.
- If this entire fee is transferred to hedge owner then there seems little incentive for the hedge owner to comply earlier.
- The fee must not be transferred to the hedge owner but returned to the complainant on action taken by the council on behalf of the complainant.
- The cost should be shared by both parties.

1 council said that no other area of council work involves the imposition of a fee on the person making a justifiable complaint. The introduction of this principle would be entirely new and would appear to be unfair.

The majority of local government respondents expressed reservations about how the fee-transfer mechanism would work in practice, especially if a 'hedge owner' removed a hedge during the period between issue of a remedial notice and the notice taking effect. In addition, clarification was sought on how to deal with cases where a hedge owner quickly carries out adequate remedial works or removes the hedge during the initial investigation phase.

Department's Response

Whilst the majority of responses to the consultation were received from potential complainants, they were supportive of the proposed 'fee-transfer' process.

The proposal to 'transfer' the fee to the hedge owner on issue of a remedial notice was debated during the Bill's Assembly passage. However, due to the complexities and issues identified and acknowledged by the Assembly, the Act specifies that this transfer will take place when a remedial notice takes effect. Charging the fee when the notice takes effect allows an appeal to be considered before charging and refunding a fee unnecessarily, which would lead to additional administrative work for the council. In addition, to implement the 'fee transfer' process on issue of a remedial notice would require the Primary legislation to be amended and would further delay bringing high hedge legislation into operation.

The Department, therefore, proposes to bring forward the High Hedges (Fee Transfer) Regulations (Northern Ireland) 2011 without amendment to the draft provisions.

Question 3 – What circumstances should the Department prescribe for a refund of the ‘transferred fee’?

Circumstance	Category of Respondent					Total
	Hedge Owner	Complainant	Hedge Owner & Complainant	Local Government	Other	
None		10	2	19	2	33
Extenuating circumstances (socio-economic, health)		2		2	1	5
Compliance within specific time		1			1	2
Acknowledgement where a problem exists		1				1
If corresponding saving to council			1			1
Prescriptive approach not helpful				1		1
Anyone in possession of a remedial notice should qualify to have fee refunded		1				1
Hedge owner has not taken issue seriously		1				1
All circumstances		4				4
Where action by the hedge owner is necessary		1				1
Only where an appeal has been overturned		1				1
Did not address the issue	1	26		2	3	32
Total	1	48	3	24	7	83

The vast majority of respondents who answered the question felt that there were no circumstances that should be prescribed for a refund of the ‘transferred’ fee since the ‘hedge owner’ will have had ample opportunity to reach agreement with the complainant and the opportunity to appeal to the Northern Ireland Valuation Tribunal.

In addition, the councils that suggested that the fee should transfer when a remedial notice was issued felt that a successful appeal would be the only situation that would justify a refund of the transferred fee.

Department's Response

The Department has the option of prescribing circumstances in which a council may refund the fee that has been levied on the hedge owner.

No circumstances have been strongly supported in the consultation responses and the Department does not propose to prescribe any such circumstances.

The proposal to 'transfer' the fee to the hedge owner on issue of a remedial notice was debated during the Bill's Assembly passage. However, due to the complexities and issues identified and acknowledged by the Assembly, the Act therefore specifies that this transfer will take place when a remedial notice takes effect. Any amendment to transfer the fee on issue of a remedial notice would require the High Hedges Act to be amended by primary legislation which would delay the commencement of the legislation.

Question 4 – Are there any other comments which you would like to make on the proposals contained in this consultation document?

Several miscellaneous comments were received. Many related to individual personal circumstances but only those relating to the proposals in the fee legislation consultation document have been considered. Some of these comments are listed below:

- Complainant should pay a token, larger sum levied against owner;
- There was an acknowledgement that a fee is necessary but should be paid by the hedge owner who has caused the problem which, in many cases, has been ongoing for a number of years, and not by the complainant or the ratepayers.
- Do rates not cover this?
- Failure to comply promptly should entail a fine
- If fee transfer arrangement looks like taking an excessive time would favour partial commencement of the Act
- The process could be a simple 2-step system with a first step being a council representative advising the hedge owner to comply within

2 weeks (perhaps with a fee of £15). Then a final step would be a full complaint with £500 fee if the hedge owner failed to comply on first notice – this would minimise the need for big investigations and speed up the process

- Complainant should not have to pay any fee until their complaint is going to be acted upon by the council. Complainant's money should not sit in the council's bank account.
- If complainant pays the fee and the council considers that the hedge is not a problem then the complainant will lose their money. Suggests fee of £50 for council to investigate. Council then contact owner who is also charged £50 and given 6 weeks to cut the hedge and if they don't they are fined £1000. If they don't pay they will then go to court. If work not done within further 4 weeks council would do the work and charge the owner. Reminders should be sent out to high hedge owners on an annual basis.
- Fact sheet issued by a council to complainants would reduce initial costs to all parties.
- Clarification required on the transfer or refund of the fee if there was compliance during the intervening period between inspection and the issuing of a remedial notice.
- Was the proposed legislation subject to an EQIA?
- 4 respondents asked about 'group complaints' and 1 said that the hedge owner should only pay the one transferred fee
- Concerned about planning applications being used as a delaying tactic; wants foliage litter and blocked drains to be covered.
- "Not reasonable to charge a complainant a fee if they have a dispute/questions that a government body cannot answer."

Council concerns:

- The complainant may fall into the vulnerable group of our society and a reduced fee would be appropriate for this group.
- Expressed reservations about how the High Hedges legislation will work in practice.

- Default charges may only be covered by statutory charge but what about the transferred fee?
- In addition, several councils suggested that an informal advisory inspection could be carried out (if a council so wishes) before any formal complaint procedure (with fee payment appropriate to that council) is initiated. This may filter out the need for a substantial fee to be paid in circumstances where no formal action will be possible and thereby creating issues for councils and complainants.
- Any initial inspection will involve costs for councils, so, in order to facilitate early application and investigation that would include cost recovery for the councils can a dual payment scheme be adopted by councils? An example of this would be where a proportion of the max fee can be charged (similar to Street trading Application process used by many councils) for the initial stage of the process. This should be a proportion of the total fee (e.g. £50) with the balance required up to the maximum charge to take the process to the second stage. This may provide a more moral system of charging in cases where the hedge owner acts before the notice is operational and the transfer/refund process is invoked.

Department's Response

It is intended that many of the questions and concerns can be addressed in the range of guidance documents drafted to support the operation of the legislation.

The level of fee to be paid by a complainant will be determined by each council, at its discretion up to the maximum specified by the Department, and it will be the council's decision as to whether to introduce a fee at all, or 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 Act is designed to deal with disputes between neighbours.

If a council investigates a high hedge complaint and decides to issue a remedial notice, it will refund the complainant's fee when this notice takes effect. It may then charge a fee to the 'hedge owner' to cover the investigative costs associated with processing the complaint. If the hedge owner fails to pay this fee, the Act allows this fee to be recovered as a Statutory Charge although this method of fee-recovery is not mandatory.

Some councils suggested the possibility of offering an initial informal visit. The High Hedges Act (Northern Ireland) 2011 does not prevent councils from carrying out such a visit but councils should be aware that this could jeopardise their perceived impartiality and be seen as supporting one party over another. In addition, the Act does not provide a mechanism for charging a fee for an informal visit or a staged approach to the complaint investigation.

Some respondents suggested that there should be the option of making a 'group' complaint in situations where several properties are affected by a single hedge. However, the council must consider separately and individually the impact of the hedge of each property that is affected since this can vary. Councils could, however, decide to use their discretionary power to refund part of the complainant's fees in such cases. The Act allows councils, once the remedial notice takes effect, to levy multiple fee transfers on the 'hedge owner' as a result of investigating multiple complaints but also allows discretion to charge a reduced fee to the 'hedge owner' depending on their circumstances.

In cases where a 'hedge owner' reduces the height of a hedge (or removes the hedge) before a remedial notice is issued, the council will have the

discretion to refund all/part/none of the complainant's fee but will not be able to recover any costs from the 'hedge owner'. If the 'hedge owner' removes the hedge between the issue of the remedial notice and the notice taking effect, the council will have the discretion to refund all/part/none of the complainant's fee but will not be able to recover any costs from the 'hedge owner'. If the 'hedge owner' reduces the height of the hedge after a remedial notice is issued but before it takes effect, the council should allow the remedial notice to take effect as the notice will also specify the preventative action i.e. ongoing maintenance to prevent ongoing problems.

The equality impact screening of the High Hedges Fee Regulations was carried out as part of the development of the consultation document. It was concluded that there is no adverse impact for any of the 9 categories listed under section 75 and a full equality impact assessment is not considered necessary. No comments were received in response to the consultation to alter the Department's view on this issue.

3. Conclusion

As a result of the responses to the public consultation, the Department proposes to:

- i. set the maximum complaints fee at £360; and
- ii. make the High Hedges (Fee Transfer) Regulations (Northern Ireland) 2011 without specifying any circumstances in which a hedge owner's fee should be refunded.

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

In total, the Department received 88 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)
Antrim 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)
Department of Agriculture and Rural Development (N)
Department of Enterprise, Trade and Investment (N)
Derry City Council (S)
Diocese of Down and Connor (S)
Disability Action (N)
Down District Council (S)
Dungannon and South Tyrone Borough Council (S)
Fermanagh District Council (S)
*Larne Borough Council (S)
Limavady Borough Council (S)
Lisburn City Council (S)
Newry & Mourne District Council (S)
Newtownabbey Borough Council (S)
NI Ombudsman (N)
North Down Borough Council (S)
Northern Ireland Housing Council (S)
*Northern Ireland Local Government Association (S)

* Omagh District Council (S)
Police Service of Northern Ireland (N)
Railway Court (Management) Company (S)
Royal Town Planning Institute (S)
Woodland Trust (S)

* denotes responses received after 5pm on 20 September 2011.