

HIGH HEDGE FEE LEGISLATION – Consultation Response

The Department is unable to consider any views submitted anonymously. We would therefore be grateful if the following details could be completed.

***Name** **Belfast City Council**

***To enable responses to be analysed please indicate which category you fall in to:**

Hedge Owner	
Complainant	
Council	Belfast City Council Parks & Leisure Department
Other (Please specify)	

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LIST OF CONSULTATION QUESTIONS

Q1 – What should be the maximum level of fee? Why?

Local government is facing a number of new burdens in a time of economic pressure and the principle of full cost recovery for any request for service is seen as desirable. To maintain simplicity in charging schemes the concept of a maximum fee that would discourage frivolous complaints whilst not discouraging justified complaints would appear reasonable.

A maximum fee of £350 would appear appropriate. This is calculated on the basis of 12 – 13 hours of staff resource, two statutory charges (@ £25 each + admin) and further administration in the transfer / refund of fees. The process in Northern Ireland will be more complex than in England and Wales where Wales have set £320 as the maximum fee and fees in England varied widely around an apparent mean.

The provision in Section 3 (1) (b) that allows councils discretion to waive the fee or determine other fees up to the prescribed maximum is supported.

Q2 – Do you agree that the fee should transfer to the ‘hedge owner’ when the remedial notice takes effect? Please give your reasons.

The principle that the ‘polluter pays’ has been long adopted as a principle. The existence of this legislation will provide an incentive to any hedge owner to ensure their hedges do not cause nuisance to their neighbours. Where that duty is neglected despite the existence of the legislation and despite reasonable attempts by the complainant to resolve the matter by negotiation, it is entirely appropriate that the hedge owner should bear the costs incurred.

There are some reservations about fee transfer in practice. For the fee to transfer Section 4 (3) has to apply in that the fee is first paid by the complainant, a remedial notice is issued by the council and the remedial notice takes effect after a period of at least 28 days. However where a notice is issued following investigation by local government, the owner may remove the hedge before the notice takes effect. In that situation the council will have incurred costs in investigation and issue of the notice, but the costs cannot be passed to the “polluter”, leaving the complainant to bear whatever costs are seen as appropriate. It is recommended that the fee should transfer to the hedge owner upon issue of the notice with appropriate safeguards for refund should appeal be successful.

In cases where a complaint is quickly settled and at minimal cost to the local authority, the discretion to refund all or part of the fee provided under Section 4 (2) (b) would be appropriate.

Q3 – What circumstances should the Department prescribe for a refund of the ‘transferred fee’?

Although Section 4 (5) (c) allows for regulations to be made for the refund of ‘transferred fees’, unless the fee transfer comes into effect (as recommended above) on service of the notice rather than when the notice comes into effect and could therefore be overturned on appeal, there would not appear to be a reason for refund of a transferred fee.

Q4 – Are there any other comments which you would like to make on the proposals contained in this consultation document?

It is noted that a council may waive charges, or charge a complainant a reduced fee in accordance with adopted policy, but may then transfer a fee of an amount up to the prescribed maximum to cover costs. This may be the correct course of action where the council wishes to take note of complainants’ own circumstances, but is likely to create dissent if the possibility is not made clear to hedge owners.

Outside the scope of the legislation there appears to be merit in instituting informal advisory processes (with appropriate fees as determined by the council) that commence before a formal complaint procedure is initiated. This may filter out those situations in which no formal action will be possible and thereby eliminate unnecessary administration issues for councils and complainants.

If notice is to be served on, or sent to, every owner and every occupier of the neighbouring land, (section 3.(4).b), that duty cannot be fulfilled unless the council has the ability to require information from an owner or occupier as to the names and addresses of those having an interest in the land. As an example of necessary powers, GB legislation contains provision for local authorities to serve a Requisition for Information under S.16 Local Government (Miscellaneous Provisions) Act 1976 prior to service of statutory notice in such cases. This power is not apparently available in Northern Ireland and the absence may frustrate the purposes of a council seeking to enforce the High Hedges Act.

A media awareness campaign to educate owners and landlords, including social landlords such as NIHE and Housing Associations of this new legislation and of obligations there under would appear indicated.

Charges for works carried out in default (S.12) may be recovered as a statutory charge, but there is no specific provision for recovery of transferred fees. Is it intended that this should be recovered as a civil charge?

A concern for councils in relation to this (and all enforcement) is the limitation in costs awarded to councils in Magistrate Court cases as laid out in Schedule 1 of the Magistrates' Courts (Costs in Criminal Cases) Rules (Northern Ireland) 1988 which limit costs to an amount not exceeding £75. Excess costs can therefore be a major burden for councils and cannot be recovered within the charging regime described in this consultation.

The legislation should make it clear that any fees charged under this section shall constitute a statutory charge. The primary legislation only refers to expenses and the remedial notice itself going on the Statutory Charges register.

It should be an offence not to pay any fees charged under the legislation.