

## **PUBLIC CONSULTATION**

# **HIGH HEDGES FEE LEGISLATION**



**2011**



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## **Purpose of the Consultation**

The purpose of this consultation is to seek your 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 prescribe the mechanism of the 'fee-transfer' from the complainant to the 'hedge owner'.

## **How to Respond**

You are invited to respond to this consultation as soon as possible and no later than **5pm** on **20 September 2011** using the consultation response document provided (**Annex A**). There is no requirement to respond to all of the questions in this consultation but it is essential that you complete the required fields so that responses can be fully analysed.

In the interest of protecting the environment, where possible, the use of electronic means to view and respond to the public consultation is encouraged.

Responses to this consultation can be sent either:

by e-mail to [hedges@doeni.gov.uk](mailto:hedges@doeni.gov.uk)

or by post to:           Dr Jennifer Stewart  
                                  Department of the Environment  
                                  Environmental Policy Division  
                                  8<sup>th</sup> Floor, Goodwood House  
                                  44 – 58 May Street  
                                  Belfast  
                                  BT1 4NN

Should you have any enquiries please send them to [hedges@doeni.gov.uk](mailto:hedges@doeni.gov.uk) or telephone **028 9025 4822**.

## **Further Information**

This document may be made available in alternative formats; please contact us to discuss your requirements. The Department's text **phone number 028 9054 0642** has been included to assist the hearing impaired.

An electronic copy of the consultation document and an electronic copy of the response form are available on the Department's website at [http://www.doeni.gov.uk/high\\_hedges\\_2.htm](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 and they will give you guidance on the legal position about any information given by you in response to this consultation.

**The Freedom of Information Act 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.**

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very

particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner

**For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: <http://www.informationcommissioner.gov.uk/>).**

### **What happens next?**

Following the closing date of the consultation, all responses will be analysed and considered. Before any Regulations can become law the Minister and the Assembly must scrutinise and approve them.

## **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 situation.
2. A High Hedges Bill was introduced in the Assembly on 26 April 2010 to provide a much needed means of redress for people who are suffering because of a high hedge on a neighbour's land. The Bill completed its Assembly passage before dissolution, receiving Royal Assent on 3 May 2011.
3. The legislation is designed to help people who are adversely affected by high hedges bordering their domestic property, acting as a barrier to light. A hedge must be formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs; measure more than 2 metres from ground level; act as a barrier to light; affect residential property; and be growing on land owned by someone other than the person making the complaint. (N.B. it excludes single trees and deciduous hedges).
4. Both the primary (the Act) and subordinate (fee and appeals) legislation are required to provide the full operational regime so the Act cannot be commenced until the fee legislation is ready. As the proposed fee-transfer mechanism has not been consulted on, the Department is now seeking your views on the proposed Fee Regulations.

## **The need for fee legislation**

5. 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.

6. Complaining to the council should always be a last resort and neighbours would be required to have made every effort to resolve the issue through, for example, discussion or mediation. If a council investigates a complaint relating to a high hedge and determines that there is an adverse affect on a neighbouring property, a remedial notice may be issued. The notice will specify what remedial action is required and the timescale for the action to be completed. It will also specify anything that needs to be done to prevent the problem recurring. The timescale will vary from case-to-case, depending on the height of the hedge (staged reduction in height may be necessary to avoid killing the hedge) and also to avoid the bird nesting season (if any birds are nesting in the hedge).
7. Complainants and 'hedge owners'<sup>1</sup> can, in certain specified circumstances, appeal to the Northern Ireland Valuation Tribunal against a local council's decision.
8. The High Hedges Act will allow 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.
9. The Assembly and previous Environment Committee secured the following changes to the Bill:
  - The Department is required to legislate to limit the level of fee that can be charged by a council for dealing with a high hedge complaint;
  - A council will refund the fee paid by a complainant when a remedial notice takes effect; and
  - Regulations to be made to make provision for a council to then recover the fee from the 'hedge owner'.

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<sup>1</sup> 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



10. High Hedge legislation has been operating in England and Wales for several years. Fees in England for dealing with high hedge complaints can be as high as £650. The legislation was amended during its Assembly passage to require the Department to set a maximum level for any complaints fee.

**What should be the maximum level of fee? Why? (See questionnaire/response form)**

11. The Bill was also amended to allow legislation to be put in place to facilitate transfer of the fee to the 'hedge owner'. This means that the 'hedge owner' will bear the financial costs of the investigation in cases where the hedge was found to be causing a problem – in effect the person causing the problem bears the costs of alleviating the problem especially since they have had a chance to solve the problem before their neighbour made the formal complaint to the council.

**Do you agree that the fee should transfer to the 'hedge owner' when the remedial notice takes effect? Please give your reasons. (See questionnaire/response form)**

12. The section of the High Hedges Act (Northern Ireland) 2011 that deals with fees has been replicated below. The full legislation can be viewed at:

<http://www.legislation.gov.uk/nia/2011/21/contents/enacted>

#### **Fees**

4.—(1) The Department shall by regulations prescribe the maximum fee which may be determined by a council under section 3(1)(b).

(2) A fee received by a council under section 3(1)(b)—

(a) must be refunded by it where subsection (3) applies; and

(b) may be refunded by it in such other circumstances and to such extent as it may determine.

(3) This subsection applies where—

(a) a fee is paid to the council under section 3(1)(b) in connection with the making of a complaint to which this Act applies;

(b) a remedial notice is issued by, or on behalf of, the council in respect of the complaint; and

(c) the remedial notice takes effect.

(4) Regulations may make provision, in relation to a case where subsection (3) applies, for the payment to the council by any person who is an occupier or owner of the neighbouring land of a fee of such amount (if any) as the council may determine.

(5) Regulations under subsection (4) may in particular—

(a) provide for the fee not to exceed such amount as may be prescribed by the regulations;

(b) provide that, where two or more persons are liable to pay the fee, those persons are jointly and severally liable;

(c) provide for the fee to be refunded in such circumstances or to such extent as may be prescribed by, or determined in accordance with, the regulations.

13. Section 4(5)(c) of the Act allows the Department to prescribe circumstances in which a ‘hedge owner’s’ fee may be refunded.

**What circumstances should the Department prescribe for a refund of the ‘transferred fee’? (See questionnaire/response form)**

14. This consultation seeks your views on the draft High Hedges (Fee) Regulations (Northern Ireland) 2011 (attached at **Annex B**); the draft High Hedges (Fee Transfer) Regulations (Northern Ireland) 2011 (attached at **Annex C**) and the Impact Assessments, particularly the Regulatory Impact Assessment (attached at **Annex D**).
15. A list of consultees is attached at **Annex E**.

## **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 High Hedges Act, 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 1<sup>st</sup> Protocol). Nevertheless, on balance, the Department believes that the Act and associated proposed Fee Regulations are 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 proportional. 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 as given effect by the Human Rights Act 1998.

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 Fee Regulations 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.

<b>Question</b>	<b>Is there any evidence of higher or lower participation or uptake by different groups?</b>
Answer	No.
<b>Question</b>	<b>Is there any evidence that different groups have different needs, experiences, issues and priorities in relation to the particular policy?</b>
Answer	No.
<b>Question</b>	<b>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?</b>
Answer	No.
<b>Question</b>	<b>Have consultations with relevant groups, organisations or individuals indicated that particular policies create problems that are specific to them?</b>
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.

Approximately 35% of the population of Northern Ireland live in rural areas. The Northern Ireland Statistics and Research Agency have defined such areas as settlements with a population of less than 4,500 (according to the 2001 census).

The Department has considered the draft Fee Regulations in relation to the rural community and has found no potential differential impacts. Based on the evidence from the 2005 and 2010 consultations and the correspondence the Department receives, high hedge problems primarily exist in urban areas.

## **Environmental Impact**

The High Hedges fee legislation is not considered likely to have a significant environmental impact.

## **Regulatory Impact**

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

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

## 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**

\_\_\_\_\_

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

<b>Hedge Owner</b>	
<b>Complainant</b>	
<b>Council</b>	
<b>Other (Please specify)</b>	

**Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**\*Postcode**

\_\_\_\_\_

**Telephone No.**

\_\_\_\_\_

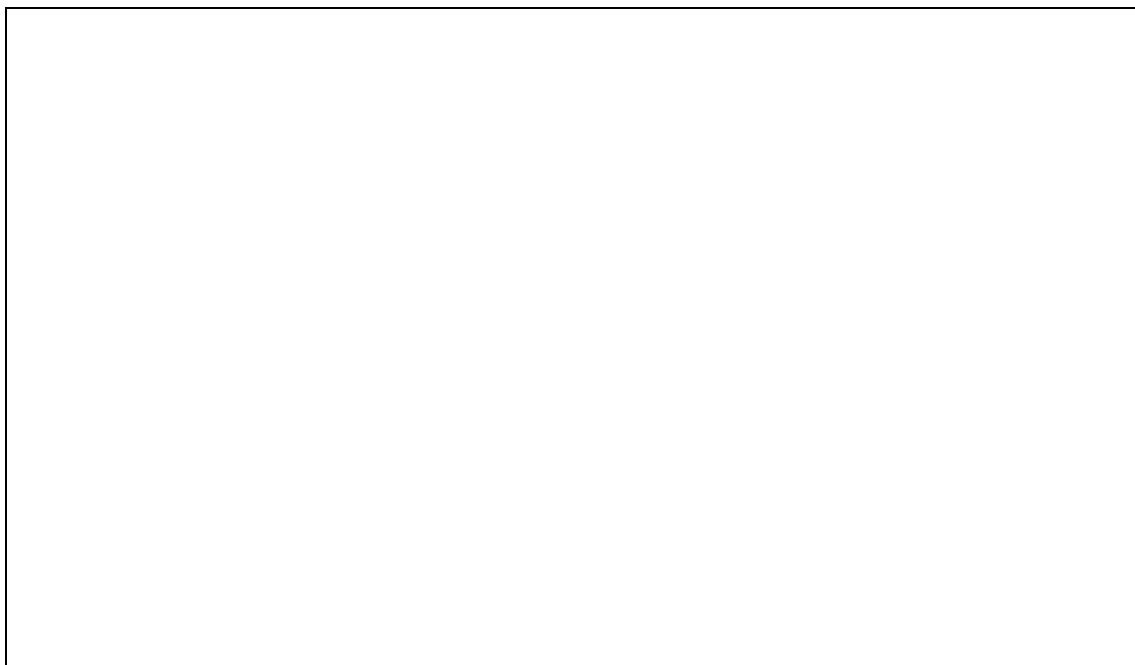
**Email address**

\_\_\_\_\_

**\* Required fields**

## LIST OF CONSULTATION QUESTIONS

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



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



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



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





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[ D R A F T ] S T A T U T O R Y R U L E S O F N O R T H E R N  
I R E L A N D

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**2011 No. [       ]**

**ENVIRONMENT**

**HIGH HEDGES**

**The High Hedges (Fee) Regulations (Northern Ireland) 2011**

*Made* - - - - - [       ]

*Coming into operation* - - - - - [       ]

The Department of the Environment makes the following Regulations in exercise of the powers conferred by section 4(1) of the High Hedges Act (Northern Ireland) 2011<sup>(1)</sup>.

**Citation and commencement**

**1.** These Regulations may be cited as the High Hedges (Fee) Regulations (Northern Ireland) 2011 and come into operation on [       ].

**Maximum fee**

**2.** The maximum fee which may be determined by a council under section 3(1)(b) of the High Hedges Act (Northern Ireland) Act 2011 is £[       ].

Sealed with the Official Seal of the Department of the Environment on [       ]

A senior officer of the Department of the Environment

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<sup>(1)</sup> 2011 c.21 (N.I.)

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The High Hedges Act (Northern Ireland) 2011 gives local councils the power to deal with complaints about high hedges which are having an adverse impact on a neighbour's reasonable enjoyment of their property due to loss of light.

A complaint may be made by the owner or occupier of a domestic property if that person's reasonable enjoyment of the property is being adversely affected by the height of a hedge situated on land owned or occupied by another person.

A complaint must be made to the council in whose area the land on which the hedge is situated lies and must be accompanied by a fee determined by the local council (subject to a maximum amount prescribed in Regulations made by the Department of the Environment).

These Regulations prescribe that maximum amount.

*Draft Regulations laid before the Assembly under the High Hedges Act (Northern Ireland) 2011, and subject to affirmative resolution of the Assembly.*

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[ D R A F T ] S T A T U T O R Y R U L E S O F N O R T H E R N  
I R E L A N D

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**2011 No. [       ]**

**ENVIRONMENT**

**HIGH HEDGES**

**The High Hedges (Fee Transfer) Regulations (Northern Ireland)  
2011**

*Made* - - - - [   ]

*Coming into operation* - [   ]

The Department of the Environment makes the following Regulations in exercise of the powers conferred by section 4(4) of the High Hedges Act (Northern Ireland) 2011<sup>(1)</sup>.

**Citation and commencement**

3. These Regulations may be cited as the High Hedges (Fee Transfer) Regulations (Northern Ireland) 2011 and come into operation on [       ].

**Payment of fee**

2.—(1) In relation to a case where section 4(3) of the High Hedges Act (Northern Ireland) 2011 applies, any person who is an occupier or owner of the neighbouring land shall pay to the council a fee of such amount (if any) as the council may determine.

(2) Where two or more persons are liable to pay the fee, those persons are jointly and severally liable.

**Level of fee**

3. The fee determined by the council in accordance with regulation 2 must not exceed the maximum amount specified in regulation 2 (maximum fee) of the High Hedges (Fee) Regulations (Northern Ireland) 2011<sup>(2)</sup>.

Sealed with the Official Seal of the Department of the Environment on \*\*\*

A senior officer of the Department of the Environment

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<sup>(1)</sup> 2011 c.21 (N.I.)

<sup>(2)</sup> S.R. 2011 No. [   ]

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The High Hedges Act (Northern Ireland) 2011 gives local councils the power to deal with complaints about high hedges which are having an adverse impact on a neighbour's reasonable enjoyment of their property by acting as a barrier to light.

A complaint may be made by the owner or occupier of a domestic property if that person's reasonable enjoyment of the property is being adversely affected by the height of a hedge situated on land owned or occupied by another person.

A complaint must be made to the council in whose area the land on which the hedge is situated lies and must be accompanied by a fee determined by the local council (subject to a maximum amount prescribed in Regulations made by the Department of the Environment).

The local council will investigate the complaint and if it decides that the height of the hedge should be reduced, the council will issue a Remedial Notice specifying the action required to alleviate the problem and prevent its reoccurrence.

Once the remedial notice takes effect, after processing of any appeals, the council will refund the complainant's fee (if any has been charged) and will then levy a fee on the owner/occupier of the neighbouring land.

These Regulations make provision for this 'fee-transfer' process.

# Partial Regulatory Impact Assessment

## Title of Proposal

1. High Hedges Fee Legislation

## Purpose and intended effect of measure

### (i) The objective

2. To accommodate the wishes of the Northern Ireland Assembly in relation to fees associated with High Hedge complaints.

### (ii) The background

3. A High Hedges Bill was introduced in the Assembly on 26 April 2010 and completed its Assembly passage before dissolution, receiving Royal Assent on 3 May 2011.
4. 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. High Hedge legislation has been operating in England and Wales for several years.
5. Complaining to the council should always be a last resort and neighbours would be required to have made every effort to resolve the issue through, for example, discussion or mediation. If a council investigates a complaint relating to a high hedge and determines that there is an adverse affect on a neighbouring property, a remedial notice may be issued. The remedial notice will specify what remedial action is required and the timescale for the action to be completed. It will also specify anything that needs to be done to prevent the problem recurring. The timescale will vary from case-to-case, depending on the height of the hedge (staged reduction in height may be necessary to avoid killing the hedge) and also to avoid the bird nesting season (if any birds are nesting in the hedge).

6. A person wishing to make a formal complaint to their local council will be required to demonstrate that they have made reasonable attempts to resolve the problem with their neighbour before asking the council to investigate.
7. The High Hedges Act will allow 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.
8. The Assembly and previous Environment Committee brought forward the following changes to the Bill:
  - The Department is required to legislate to limit the level of fee that can be charged by a council for dealing with a high hedge complaint;
  - A council will refund the fee paid by a complainant when a remedial notice takes effect; and
  - Regulations to be made to make provision for a council to then recover the fee from the 'hedge owner'<sup>1</sup>.
9. High Hedge legislation has been operating in England and Wales for several years. Fees in England for dealing with high hedge complaints can be as high as £650. The legislation was amended during its Assembly passage to require the Department to set a maximum level for any complaints fee. This maximum fee will be set at a level to cover the council's investigative costs and issuing of a remedial notice, if necessary, and will be determined after public consultation and discussion with councils.

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<sup>1</sup> 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

10. Complainants and 'hedge owners' can, in certain specified circumstances, appeal to the Northern Ireland Valuation Tribunal against a local council's decision.
11. Based on the 2005 scoping consultation, we estimate that there could be a backlog of 800 hedge problem cases which would be required to be determined by the councils in the first 2-3 years that the legislation is in operation. These would be spread across Northern Ireland.
12. Once the backlog of complaints has been dealt with, it is anticipated that a much smaller number of new cases will arise each year.

**(iii) Risk assessment**

13. Without legislation being brought forward by the Department and the consequent involvement of local councils in high hedge disputes, more people would suffer loss of amenity as the number of high hedge disputes would continue to grow. The negative impacts of such disputes can include the reduction in the value of the affected property.
14. There is evidence from both the 2005 scoping consultation and 2010 consultation on the draft Bill, and from the correspondence that the Department receives on the subject (approximately 20 enquiries per month) that, in cases where no resolution is in sight, disputes can escalate. Recent correspondence indicates that people are becoming frustrated at the lack of a solution to their problems.
15. Without a legislative basis from which to solve high hedge problems, an increasing burden may well arise, especially for public sector organisations and advice agencies, in dealing with the consequences of disputes; even then this may not lead to their resolution.
16. MLAs expressed their concern that there could be significant variation in the level of discretionary complaints fee levied by local councils. For this reason the High Hedges Bill was amended to require a legislative

maximum for this discretionary fee. The risk of not implementing this legislation is that fees, if levied, could be excessively high in some council areas. In addition, only partial commencement of the Act could take place since section 4(1) requires the Department to introduce this legislation.

17. MLAs also expressed concern that the complainant would still have to pay the complaints fee (if levied by the council) rather than the ‘hedge owner’, even if their complaint was upheld. They amended the Bill to refund the fee to the complainant and to allow subordinate legislation to be put in place to allow any such fee to be ‘transferred’ to the ‘hedge owner’, in cases where a remedial notice takes effect. The risk of not fully implementing this legislation is that the wishes of the Assembly would not be implemented and that the council would have to bear the costs of dealing with high hedge complaints in cases where a remedial notice takes effect.

## Options

18. The ‘**Do Nothing**’ option was considered in the Regulatory Impact Assessment<sup>2</sup> to accompany the High Hedges Bill when it was introduced to the Assembly. Therefore this option will not be repeated here as the proposed changes to the fee mechanism do not alter the original decision to proceed with the primary legislation. The following two options, focusing on the proposed High Hedges Fee Legislation, will be considered as part of this regulatory impact assessment:

### Option 1: Partial commencement of the High Hedges Act

19. This would involve commencing the Act without sections 4(4) and 4(5). In effect, this would mean commencing the legislation without the ‘fee transfer’ legislation but legislation would be put in place to limit the level of discretionary complaints fee that councils can levy. Councils would also

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<sup>2</sup> Available on the DOE website at [http://www.doeni.gov.uk/high\\_hedges\\_bill\\_as\\_introduced\\_to\\_the\\_assembly\\_-\\_regulatory\\_impact\\_assessment.pdf](http://www.doeni.gov.uk/high_hedges_bill_as_introduced_to_the_assembly_-_regulatory_impact_assessment.pdf)



be required to refund any such fee in cases where a remedial notice takes effect.

### **Option 2: Commence the High Hedges Act in full**

20. This would involve commencing all of the High Hedges Act and would require the Department to put in place legislation to limit the level of discretionary complaints fee that councils can levy as well as legislation to allow this fee to be transferred to the 'hedge owner' in cases where a remedial notice takes effect.

### **Benefits**

21. Both options will provide a means of resolving existing high hedge problem cases and any that might arise in the future. The council will have the discretionary power to levy a fee to investigate a high hedge complaint. This fee would be to cover the costs of providing a service to the complainant and providing the benefit of a solution to a high hedge dispute.

22. The difference between the two options relates to fees and who pays the council's costs associated with investigating a high hedge complaint. Legislation will limit the level of fee that can be levied by a council to investigate a complaint – the benefit of this is that high hedge fees will not be excessive.

23. It is anticipated that the implementation of the legislation will encourage people to maintain their hedges at a reasonable height, which preserves their amenity and that of their neighbours. Consequently the number of hedge disputes should decline. This has proven to be the experience in England and Wales since the implementation of high hedge legislation.

24. A reducing number of disputes would yield economic benefits in the longer term. Dealing with such disputes through the formal complaints procedure in the legislation could be less costly than maintaining the current

arrangements. There would be **environmental and social** benefits in terms of improved amenity for complainants and possibly improved relationships amongst neighbours. A clear and transparent procedure and an impartial adjudicator, in the form of the local council, would offer householders (both complainants and 'hedge owners') assurance and certainty that a fair resolution could be achieved. This might help to make disputes less confrontational. It is impossible to quantify such benefits.

### **Option 1**

25. The complainant would have the complaints fee (if any has been levied) refunded if a remedial notice issued by the council takes effect.

### **Option 2**

26. The main benefit of this option is that a council would be able to recover a fee from the 'hedge owner' for investigating a high hedge complaint in cases where a remedial notice has taken effect and the complainant had their fee refunded. This would mean that the council is less likely to be 'out-of-pocket'.

27. A further benefit is that the possibility of the 'hedge owner' having to pay a fee to the council, in addition to the costs associated with performing any required remedial action, may act as motivation to try to resolve the problem with the complainant before a formal complaint is made to the local council.

### **Business sectors affected**

28. Groups affected by the new high hedge fee proposals are:

- Householders/landowners – that is owner/occupiers and tenants on both sides of the hedge, including any business on whose land a problem hedge, bordering a domestic property, is growing.
- Landlords – including local councils, housing associations, co-operatives and private letting agencies.

- Local councils – responsibility for administering complaints about high hedges under the High Hedges Act will lie with district councils in Northern Ireland.

## **Costs**

29. It is anticipated that the estimated caseload of 800 outstanding cases will be resolved in the first three years that the high hedges legislation is in operation. The total costs have, therefore, been divided by three to derive an initial annual estimated cost. Once the backlog has been resolved, however, fewer new hedge complaints should arise. The annual cost is, therefore, expected to be lower in future years.

30. Based on the telephone calls received by the Department, describing specific high hedge problems, it is estimated that 75% of complaints could result in a remedial notice taking effect.

31. It must be stressed that the costs outlined below are uncertain, given that they are based on assumptions about both the volume of outstanding complaints and future events. These costs do not take account of reduced fees that councils may decide to offer.

## **Option 1 – Partial commencement of the High Hedges Act**

### **Complainants**

32. If the High Hedges Act is partially commenced (requiring the Department to limit the level of complaints fee and requiring councils to refund any such fee to the complainant when a remedial notice takes effect), owners or occupiers of a property affected by a high hedge would pay a fee to their local council to deal with the complaint. The purpose of the fee is for the local councils to recover their costs and also have the effect of deterring frivolous or malicious complaints.

33. Within the limit set by the Department, it will be for each local council to determine whether to charge a fee; whether to set different rates for

different groups of people; and whether any refund should be allowed. Since MLAs expressed concern that fees in England can be as high as £650, it is likely that the limit in Northern Ireland will be closer to the average fee charged in England and Wales (£320-£360) but the limit will have to be set at a level to enable councils to recover the costs of dealing with a high hedge complaint.

34. The complainant will have any fee refunded if a remedial notice issued by the council takes effect (*i.e.* after any appeals have been processed).

### **'Hedge Owners'**

35. No additional cost beyond meeting the costs of any remedial action that might be required under the legislation<sup>2</sup>.

### **Local Councils**

36. The average cost of investigating a high hedge complaint was estimated to be around £320 to £360<sup>2</sup>.
37. If a remedial notice issued by a council takes effect, with this option, the council would have to refund the fee paid by the complainant and would not be able to recover any costs associated with the investigation. The council (and ratepayers generally) will bear the cost of dealing with high hedge complaints.
38. Local councils are expected to have to deal with around 800 cases in the first 3 years that the legislation is in operation. Once these are settled, however, the continuing caseload should be much smaller. On this basis, the total cost to local councils of administering these complaints would be between £256,000 and £288,000 over 3 years. This represents an annual cost in the region of £85,000 to £96,000. Councils will be able to recoup some of these costs since the complaints fee is not required to be refunded in cases where a remedial notice has not taken effect (in an estimated 25% of cases).

## **Option 2 – Commencement the High Hedges Act in full**

### **Complainants**

39. If the High Hedges Act is commenced in full (requiring the Department to limit the level of complaints fee, requiring councils to refund any such fee to the complainant when a remedial notice takes effect and giving the councils a mechanism to levy a fee on the 'hedge owner'), owners or occupiers of a property affected by a high hedge would pay a fee to their local council to deal with the complaint. The purpose of the fee is for the local councils to recover their costs and also have the effect of deterring frivolous or malicious complaints.

40. Within this maximum, it will be for each local council to determine whether to charge a fee; whether to set different rates for different groups of people; and whether any refund should be allowed. Since MLAs expressed concern that fees in England can be as high as £650, it is likely that the limit in Northern Ireland will be closer to the average fee charged in England and Wales (£320-£360) but the limit will have to be set at a level to enable councils to recover the costs of dealing with a high hedge complaint.

41. The complainant will have any fee refunded if a remedial notice issued by the council takes effect (*i.e.* after any appeals have been processed).

### **'Hedge Owners'**

42. In addition to meeting the costs of any remedial action that might be required under the legislation<sup>2</sup>, the council may charge a fee to the 'hedge owner' when a remedial notice takes effect. This fee would be to cover the council's costs associated with investigating the complaint.

### **Local Councils**

43. The average cost of investigating a high hedge complaint was estimated to be around £320 to £360<sup>2</sup>.

44. If a remedial notice issued by a council takes effect, with this option, the council would have to refund the fee paid by the complainant and would then be able to recover a fee from the 'hedge owner'.
45. Local councils are expected to have to deal with around 800 cases in the first 3 years that the legislation is in operation. Once these are settled, however, the continuing caseload should be much smaller. On this basis, the total cost to local councils of administering these complaints would be between £256,000 and £288,000 over 3 years. This represents an annual cost in the region of £85,000 to £96,000. Councils will be able to recoup some of these costs by charging a fee to the 'hedge owner' when a remedial notice takes effect and in cases where a remedial notice does not take effect, the complainant will pay the fee (paid at the time of making the complaint).
46. The council will face the additional cost of administering the fee transfer mechanism – receive an initial complaints fee from the complainant, refund this fee if a remedial notice takes effect and then charge a fee to the 'hedge owner', registering this as a Statutory Charge, if necessary. It is estimated that this administrative work could cost in the region of £50 per case.

### **Fees**

47. Local councils will be able to charge complainants a fee for determining these complaints.
48. Local councils' total costs in administering complaints (currently estimated to be £256,000 to £288,000 in the first 3 years) would be unchanged. But who would foot the bill would vary. For example, if the maximum fee is set to cover half these costs, the remaining £128,000 to £144,000 would be met by the local government budget.
49. It is for each local council to decide what, up to the maximum, they charge for this service. Under the example above, therefore, they could choose

whether to pass on the full £128,000 to £144,000 cost to complainants or whether council taxpayers should fund a portion.

### **Summary of annual costs, assuming 75% of complaints result in an effective remedial notice**

	<b>Option 1</b>	<b>Option 2</b>
<b>Complainants</b>	£21,000 to £24,000	£21,000 to £24,000
<b>Hedge Owners</b>	No additional costs beyond the costs associated with any remedial and preventative action	£64,000 to £72,000 (in addition to the costs associated with any remedial and preventative action)
<b>Local Councils</b>	£64,000 to £72,000	£10,000 (administering the fee transfer mechanism)
<b>TOTALS</b>	<b>£85,000 to £96,000</b>	<b>£95,000 to £106,000</b>

### **Impact on Small Business**

50. A high hedge must be causing an adverse impact on the reasonable enjoyment of a domestic property. Whilst a small business could own the land on which the problem hedge is growing, it is likely that the impact on small businesses will be minimal as the number of businesses neighbouring domestic properties is expected to be low.

### **Enforcement and Sanctions**

51. If a 'hedge owner' fails to pay any fee required by the council, the council may decide to register this as a Statutory Charge.

### **Monitoring and Review**

52. After two years of operation it is proposed to seek the views of councils as to how the legislation is operating.

## Consultation

53. Over 100 responses were received during the 2010 public consultation on the draft High Hedges Bill. The vast majority were supportive of the policies proposed. The fee transfer legislation was not included in this consultation and will be the subject of public consultation prior to commencement of the High Hedges Act. This partial Regulatory Impact Assessment will form part of the public consultation on High Hedges Fee legislation.

## Summary and Recommendation

54. The costs and benefits of the options are summarised below:

### Summary of costs and benefits

Option	Annual Cost	Benefits
1. Partial commencement of the High Hedges Act	£85,000 to £96,000	Method of resolving high hedge disputes
2. Commence the High Hedges Act	£95,000 to £106,000	Method of resolving high hedge disputes Council can recover fee from the 'hedge owner' in cases where a remedial notice takes effect.

55. Option 2 is recommended as offering the most effective means of minimising hedge disputes and reducing the financial burden placed on local councils and the public purse.



## **Declaration**

**“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.”**

***Signed***

***Date.....***

***Minister for the Department of the Environment***

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## **List of Consultees**

The following is not an exhaustive list, but is indicative of the types of organisations consulted.

Environment Committee

Department's statutory list of consultees

Section 75 Consultees

District Councils

Government Departments

Other Statutory Agencies & Bodies

Education

Health and Social Services

Environment Groups

Respondents to the 2010 consultation on a draft High Hedges Bill

Members of the public who have asked to be kept informed.