

*These notes refer to the High Hedges Act (Northern Ireland)
2011 (c.21) which received Royal Assent on 3 May 2011*

High Hedges Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Comments are not given where the wording is self explanatory.

Section 1 - Complaints to which this Act applies

This section sets out the circumstances in which a complaint could be made - a complaint must be made by the owner or occupier of a domestic property, on the grounds that their reasonable enjoyment of that property is being adversely affected, due to loss of light, by the height of a high hedge situated on land owned or occupied by another person. Complaints about the effects of roots are specifically excluded (subsection (4)).

Section 2 - High Hedge

This section defines a "high hedge" for the purposes of this Act as a barrier to light formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs which rise to a height of more than two metres above ground level. Where the existence of gaps in a hedge above two metres significantly impacts on its overall effect as such a barrier, complaints will not be eligible for consideration by the council.

The definition of high hedge excludes any trees contained within a forest or woodland (of size greater than 0.2 hectares). Therefore complaints cannot be made under this Act in relation to the negative effect of any such trees on domestic property.

Section 3 - Procedure for dealing with complaints

This section sets out the procedure by which councils will process complaints. A complaint must be made to the local council whose area contains the land on which the hedge is situated. Complaints must also be accompanied by a fee if a fee has been set by the council.

A council may reject the complaint if it considers that the complainant has not taken all reasonable steps to resolve the matter without involving it, or if it considers that the complaint is frivolous or vexatious. If the council decides, on this basis, not to proceed with the complaint, it must inform the complainant as soon as is reasonably practicable and must explain the reasons for its decision.

Where the council proceeds with the complaint, it must decide in the first place whether the height of the high hedge is adversely affecting the complainant's reasonable enjoyment of their property. If so, the council must then consider what, if any, action is required to be taken in relation to the hedge in order to remedy the adverse effect and to prevent it recurring.

The council must, as soon as is reasonably practicable, inform the parties of its decision and the reasons for it. If the council decides that action should be taken, it must also issue a remedial notice.

Section 4 – Fees

Section 4 requires the Department to legislate to limit the level of fee that can be levied by a council for dealing with a high hedge complaint. It requires a council to refund any complaints fee when a remedial notice takes effect. Section 4 also provides for legislation to be introduced to detail the mechanism by which a council can then recover a fee from the hedge owner.

Section 5 - Remedial Notices

Section 5 specifies what detail may be contained in a Remedial Notice issued by a council. The remedial notice must specify the hedge it relates to; that the council has decided that the height of the hedge is adversely affecting the complainant's enjoyment of their property; what action is required to be taken in relation to the hedge in order to remedy the adverse effect and by when; what further action, if any, is required to prevent recurrence of the adverse effect; what date the notice takes effect; and the consequences of failure to comply with the requirements of the notice.

The action specified in a remedial notice may not involve reducing the height of the hedge below 2 metres, or its removal. A remedial notice will take effect from its operative date which will be specified in the notice and will be within 28 days of the issuing of the notice.

The operative date and compliance period of a remedial notice will cease to have their normal effect under circumstances where an appeal has been made or a remedial notice has been withdrawn or been relaxed with regard to certain requirements.

While the remedial notice is in force, the council will register it as a statutory charge on the property on which the hedge is situated. In addition, the notice is binding not only on whoever is the owner or occupier of the land at the time it is issued but also on their successors.

Section 6 - Withdrawal or relaxation of requirements of remedial notice

This section provides a council with the power to withdraw a remedial notice or waive or relax its requirements. This can be done either before or after a remedial notice has taken effect. If it does, subsection (3) requires that the council must notify every complainant and the owner/occupier of the

neighbouring land. The withdrawal of a remedial notice does not prevent the council from issuing a further remedial notice in respect of the same hedge.

Section 7 - Appeals against remedial notices and other decisions of councils

This section provides the power for a complainant or the owner/occupier of neighbouring land to appeal against the issuing, withdrawal or relaxation of the requirements of a remedial notice. Appeals should be made to the Northern Ireland Valuation Tribunal and an appeal can be made by every person who is a complainant in relation to the notice and every person who is the owner or occupier of the neighbouring land.

A complainant may appeal against the decision of a council, where the council has decided that the height of a hedge is not adversely affecting the complainant's reasonable enjoyment of their domestic property or that no action should be taken to remedy the adverse effect. Appeals must be made within 28 days of the relevant date or a later time as allowed by the Northern Ireland Valuation Tribunal. The effect of a remedial notice or withdrawing or relaxing of a remedial notice will be postponed pending the outcome of an appeal.

This section also provides a power for the Northern Ireland Valuation Tribunal Rules of Procedure to be amended with respect to the procedures required to be put in place to enable the Tribunal to process High Hedge appeals, and appeal fees to be set and other ancillary matters.

Section 8 - Determination or withdrawal of appeals

This section provides the Northern Ireland Valuation Tribunal with the power to allow or dismiss an appeal, either in total or in part. The Tribunal can also correct any defect, error or misdescription in the original remedial notice if it is considered this will not cause injustice.

Notification of any decision made regarding appeals should be provided to the complainants, owner/occupier of neighbouring land and the relevant council and, where appropriate, should be accompanied by copies of any remedial notice it issues, varies or corrects.

Where an appeal is withdrawn the operative date will be the date on which the appeal is withdrawn.

Section 9 - Powers of entry (for the purpose of complaints or appeals)

This section provides persons authorised by the councils and by the Northern Ireland Valuation Tribunal to enter the land on which a high hedge is situated in order to carry out their functions under the Act. The council will have to determine whether a complaint is justified, and subsequently whether to issue, withdraw or waive a requirement of such a notice and to ensure compliance. The Northern Ireland Valuation Tribunal in determining appeals will have to gather information on which to base its decision.

Any person exercising the powers conferred by this section must give 24 hours' notice of their intended entry and, if requested at any stage, to produce evidence of their authority. Such persons may bring with them any equipment or persons as required to gather information and to take samples of the hedge involved in the case. If the land is unoccupied, authorised persons must leave it as effectively secured as they found it. Intentionally obstructing a person exercising these powers is an offence, punishable on summary conviction by a fine not exceeding level 3 on the standard scale.

Section 10 - Offences

Section 10 makes provision for any failure to comply with a remedial notice within the compliance period or the period specified for any preventative action to be undertaken, to be a criminal offence punishable on summary conviction by a fine not exceeding level 3 (currently £1,000) on the standard scale. Every owner or occupier of the neighbouring land will be guilty of the offence.

Possible defences for those guilty of an offence under subsection (1) will exist where such a person can demonstrate that they did everything that could be reasonably expected of them to comply with a notice. Furthermore subsection (4) provides another defence if the person can show that they were not sent a copy of the remedial notice and did not have knowledge of the notice.

If a person is the owner of the neighbouring land on which the hedge is situated and the remedial notice is registered as a statutory charge they will be assumed to have had knowledge of it.

Powers are also provided for the courts, in situations where non compliance with a remedial notice is continuing, with powers to order the person to take the necessary action to ensure compliance with the notice. This order may be in addition to any other punishment and will set a fixed period in which the steps should be taken. A person, without reasonable excuse, who fails to comply with the order, will be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. Daily fines may be imposed (not exceeding one-twentieth of level 3 fine) if the requisite work continues to remain outstanding following the offence committed under subsection (8).

Section 11 - Power to require occupier to permit action to be taken by owner

This section allows a court, in cases where it appears that the occupier is preventing the owner carrying out remedial work, to order the occupier to permit the owner of the land to comply with and take action in respect of a remedial notice.

Section 12 - Action by council

This section gives the council power to enter the neighbouring land and carry out the works specified in the remedial notice, if the owner or occupier of the land fails to comply with its requirements. It will be open to the council to exercise these powers whether or not criminal proceedings are brought under section 11.

Subsections (2) and (3) provide the council with the power to carry out the required work and then recover the costs of this work from the owner or occupier of the land. Any unpaid expenses would (until recovered) be registered as a statutory charge on the land on which the hedge is situated.

Under subsection (4), should the expenses be recoverable from two or more people, those people will be equally liable.

Any persons exercising the powers conferred by this section must give 7 days notice of their intended entry and, if requested at any stage, must produce evidence of their authority. Such persons are also authorised to bring with them any equipment, vehicle or persons as required to gather information and to take samples of the hedge involved in the case. If the land is unoccupied, subsection (8) requires such persons to leave it as effectively secured as they found it. Intentionally obstructing a person exercising these powers is an offence, under subsection (9), punishable on summary conviction by a fine not exceeding level 3 on the standard scale.

This section also provides a council with protection against liability in situations where it has performed remedial action in default and, despite it having taken due care and taken expert advice, a hedge subsequently dies.

Section 13 - Offences committed by a body corporate

Where offences are committed by bodies corporate, proceedings may, in certain circumstances, be taken against individual officers as well as against the body corporate.

Section 14 - Service of documents in electronic form

This deals with delivery of documents in electronic form. In particular, subsection (1) prevents the use of electronic communications for sending copies of a remedial notice (issued under section 4).

Other documents under this Act may be delivered electronically if the recipient has agreed to an electronic address and the electronic form for the document. In such circumstances subsection (4) specifies that such documents will be considered to have been delivered at 9 am on the working day following the day on which it is transmitted.

Documents can be made available on a website if the recipient has agreed to this, and is notified when the document is on a website and given details of the address and place on the website at which it can be obtained. As is the case with documents transmitted electronically and by virtue of subsection (6) the document will be treated as delivered at 9 am on the working day immediately following the day on which the recipient is notified of the presence of the document on the specified website.

Subsections (7), (8) and (9) give the Department the power to make Regulations amending the provisions about the delivery of documents in electronic form.

Section 15 - Statutory charges

This section amends Schedule 11 to the Land Registration Act (Northern Ireland) 1970.

Section 16 - Interpretation

This section provides definitions for specific terms used throughout the Act.

Section 17 - Power to amend sections 1 and 2

This section gives the Department the power to extend the scope of complaints covered by this Act (under section 1) and to alter the definition of 'high hedge' (in section 2) through Regulations. Such Regulations, under section 19(2) would have to be laid before and approved by resolution of the Assembly.

Section 18 - Application to the Crown

This section applies the provisions to the Crown. Crown employees (but not the Crown itself) will be liable to prosecution for a criminal offence under this Part. A council will be able to investigate and determine complaints about high hedges on Crown land, for example a hedge on land owned by a Government Department may be affecting neighbouring domestic property.

Section 19 - Regulations and orders

This section sets out the procedure by which Regulations may be made under this Act. Subsection (1) establishes that Regulations made under this Act will be subject to negative resolution except for those identified in subsection (2) (i.e. those relating to electronic document delivery, extending the scope of complaints or amending the definition of a 'high hedge' and fees) which must be laid before and approved by resolution of the Assembly.

Section 20 - Commencement

This section specifies that the Act will come into operation on the day appointed by the Department through a commencement order.

Section 21 - Short Title

This section specifies the name of the Act.