

EXPLANATORY MEMORANDUM TO

The High Hedges (Fee Transfer) Regulations (Northern Ireland) 2012

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 4(4) of the High Hedges Act (Northern Ireland) 2011 and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1. This Statutory Rule sets out the mechanism by which a council can charge a fee for investigating a high hedge complaint to every owner and every occupier of the neighbouring land i.e. the owner/occupier of the land where a problem hedge is growing, once a remedial notice issued by the council takes effect.

3. Background

- 3.1. The High Hedges Act (Northern Ireland) 2011 provides a means of dealing with high hedges that are having an adverse impact on the reasonable enjoyment of a neighbouring domestic property due to acting as a barrier to light. As a last resort, a person may complain to their local council about a neighbouring high hedge but will be required to demonstrate that they have taken all reasonable steps to resolve the problem before making a formal complaint. Councils have the discretion to levy a fee for investigating a complaint. If a council issues a remedial notice requiring the height of the hedge to be reduced, it will refund the complainant's fee when the notice takes effect (after any appeals have been processed). The council can then charge a fee to the owner/occupier of the land where the hedge is growing in order to recoup the investigative costs.

4. Consultation

- 4.1. Public consultation on draft fee legislation took place between 29 June and 20 September 2011. 88 responses to the consultation were received and of these, 83 were substantive. A synopsis of responses is available on the Department's website.

5. Equality Impact

- 5.1. The Department considers that this legislation is in compliance with section 75 of the Northern Ireland Act 1998. A screening exercise was carried out prior to the public consultation on draft fee legislation and on the draft High Hedges Bill and an equality impact assessment was not deemed necessary. No substantive responses to the consultations were received from any section 75 groups.

6. Regulatory Impact

- 6.1. A partial Regulatory Impact Assessment formed part of the public consultation on draft fee legislation. No responses were received in relation to the content of the partial Regulatory Impact Assessment.
- 6.2. The Statutory Rule will only impact on business, charities, social economy enterprises or voluntary bodies if they own or occupy land on which a problem hedge is growing. The number of businesses neighbouring domestic properties, and thus the impact on these businesses, is expected to be low. Assuming that 75% of high hedge complaints result in a remedial notice taking effect, the estimated cost to complainants is £21,000-£24,000; to 'hedge owners' £64,000 – £72,000 (in addition to the costs associated with any remedial and preventative action) and to councils £10,000 (administering the fee transfer mechanism).

7. Financial Implications

- 7.1. Costs and benefits are outlined in the Regulatory Impact Assessment, which is available on the Department's website.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department considers that the proposed Statutory Rule will be compliant with section 24 of the Northern Ireland Act 1998, including European Union law and Convention Rights as defined in the Human Rights Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. High Hedge complaints are dealt with in England and Wales under Part 8 of the Anti-social Behaviour Act 2003. This Act does not provide any 'fee transfer' mechanism and does not require a council to refund a complainant's fee when a remedial notice takes effect.

11. Additional Information

- 11.1. Not applicable.