



**NILGA DRAFT response to the
Assembly Environment Committee Call for Evidence
on the draft High Hedges Bill
July 2010**

The following is the NILGA response to the Environment Committee call for evidence. This paper is based on a previous paper, drafted in liaison with SOLACE and the Chief Environmental Health Officers Group, following a consultation event held in Cookstown on 23rd February 2010 and submitted to the DOENI on 1st March 2010.

The consultation considers proposals for new legislation to deal with the ongoing and escalating problem of High Hedges. It makes proposals for inspection and enforcement, including a novel charging mechanism for provision of council services.

For further information or to discuss any of the issues highlighted, please contact Karen Smyth at the NILGA Offices:

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INTRODUCTION

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties. Councils are frequently contacted regarding high hedges disputes between neighbours, which can remain unresolved for extremely long periods of time.

NILGA is pleased to be able to have an opportunity to comment on the proposals for a High Hedges Bill, and we trust that our comments will be taken into account when developing the final proposals. This response was developed in liaison with the Chief Environmental Health Officers Group and SOLACE.

BACKGROUND

There is no available legislation governing the height or maintenance of a hedge, which can adversely impact the availability of light to neighbouring properties. Problems of this kind are often referred to council Environmental Health departments, but there is little that can be done if the owner of the hedge is reluctant to address the issue. It is the view of local government that disputes may have increased due to greater urban density and increased availability of low cost rapid-growing evergreen hedging.

NILGA would be of the view that for new dwellings, planning conditions should be imposed to prevent the planting of hedges which may be problematic in the future, coupled with effective enforcement of planning conditions. 'Future-proofing' of this nature should particularly prevent escalation of the problem.

NILGA would be of the view that high hedges legislation is necessary, but would have a number of concerns regarding the current proposals.

GENERAL CONCERNS

Impact on the ratepayer

As councils do not currently investigate complaints of this nature, the potential number received is as yet unquantified. A very few councils have kept records and have a list of ongoing incidents, but largely, evidence across councils is a rough estimate at best. It is therefore difficult to predict the impact the introduction of such legislation will have on council services. Local government experience would suggest that there may be an initial 'rush' of enquiries, followed by a more regular low level of complaints, but there is a high degree of uncertainty in this regard. There is a widespread belief that levels of this type of complaint have, and will continue to increase. The cost implications are potentially massive.

Development of Guidance

NILGA is pleased that the Department has been working with local government from the outset in the development of prescriptive guidance and 'pro forma's for councils in Northern Ireland, and is hopeful this work will come to a successful conclusion. The quality of the accompanying guidance and a consistent approach will be key to ensuring the success of this legislation.

NILGA is hopeful that The Department will ensure that they provide adequate and appropriate training to council officers to explain the legislation and associated guidance. Appropriate information must also be provided to educate and advise the public on the relevant issues.

CLAUSE SPECIFIC CONCERNS

Limitations of the remit of the proposed legislation - *Clause 2*

It is clear that the proposed legislation won't deal with all complaints. It is not designed to cover problematic root systems or deciduous hedges, and it may be that a complaint is not resolved due to an inability to cut far enough. There is still no legislative cover for single trees which are a barrier to light, which can be a problem in urban areas.

It will be necessary for the DOENI to have discussions with the Forestry Service, to ensure that they are aware of the new legislation and are sensitive to its requirements.

Fees and Charging - Clause 3 (1)(b)

The most serious local government concern is the innovative approach to charging being proposed. At first sight, this system looks as if the complainant is being charged, which runs contrary both to existing local government practices, and the wider 'polluter pays' principle.

Whilst NILGA is supportive of the need to cover costs, and recognises the proposed system as a means of attempting to do this, we are concerned that this system is an 'awkward fit' with other council functions even though it is a means of ensuring that all ratepayers do not shoulder the costs of an individual's problem. We are also of the view that it is highly unlikely that the fee will cover the costs involved. NILGA has ensured that local government is working closely with the Department to develop guidance and to ensure the fees set are as realistic and as consistent as possible. We would seek to avoid a scenario where the complainant ended up paying more than the hedge owner in the event of a justified complaint.

It might be appropriate, if the proposed payment principles are to be carried forward, that the investigation is framed as an arbitration service rather than a complaint investigation, and that this differentiation is made to the individual reporting the problem.

Another potential way forward is that the fee and charges could be transferred to the hedge owner if the complaint is seen to be genuine, which would be an incentive for the hedge owner to resolve the issue at an early stage. There is also potential for the process to be framed in stages, with stage one carrying a front-end administration charge.

NILGA is encouraging the department to examine a mechanism for dealing with a communal complaint, and whether this should incur one or a multiple fee payment.

Clause 3 (7)

It is the NILGA view that the Department should set a maximum fee with council discretion regarding concessionary fees and refunds. The Department also needs to develop a charging and fees system for appeals. Local government will be keen to liaise with the Department to inform the setting of a maximum fee.

Suggested inclusions re cost recovery - Clauses 2 and 3

There is a concern regarding potential damage arising to hedges e.g. as a result of cutting too far. There may be a need for local government to access specialist advisory services or training which will incur costs, although there is a potential for this to be provided on a shared basis. There should be a mechanism for recovery of such costs. In addition, some form of accreditation may be necessary for specialist service providers.

There is also potential for cost arising from insurance or civil claims. NILGA would therefore be of the view that the department may wish to investigate the potential for indemnification of councils, for example, in the event that a hedge dies.

NILGA would encourage the Department to explore the potential for creation of or use of an existing mediation service, and to investigate concerns raised in England and Wales regarding the use of similar services.

Remedial Action - *Clause 4*

There is no provision for removal of a hedge. Also, maintenance of hedges will be a key issue, necessitating appropriate drafting of any notices served.

Councils would also be grateful for guidance in relation to cutting hedges during the nesting season, and the potential for liability if land is damaged by council equipment.

Powers of Entry - *Clause 8*

NILGA is of the view that council officers should be permitted to enter any land to enable proper assessment, and that notice should only have to be given where necessary. There is additional bureaucracy involved in giving 24 hours notice to all occupiers, and it may be appropriate to also be able to give the owner notice, and to have a waiver where entry is by invitation.

Suggested inclusions re vacant property issues and working in default - *Clause 11*

Although it may be relatively easy to arrange for a council to do works in default using internal liaison between council departments, there is a substantial cost implication to this. Vacant premises pose a particular problem as it is often difficult, if not impossible to trace landowners, even using Land Registry. In cases like this it would be much more cost effective to remove a hedge altogether, rather than have the council bear the cost of ongoing maintenance. NILGA believes it would be unfair for the ratepayer to shoulder a financial burden of this nature. It is our belief that the Department has seriously underestimated the scale of this particular problem, and has made an assumption that councils will automatically act in default.

It is also our experience that placing a charge on a property to cover costs is not usually a successful means of cost recovery, although we would agree that this facility needs to be included in the legislation. This charge should also include the cost of registering the charge on the property.

Definition of 'Access' - *Clause 15*

The determination of a hedge as being a 'barrier to light' is relatively straightforward', however, NILGA would request that the Department gives a more detailed guide as to what it means by 'access' in the context of determining whether or not a hedge is the subject of a justified complaint. Guidance is also required regarding the potential creation of 'peepholes' in the hedge, and what should be deemed acceptable.