



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

High Hedges Bill

18 November 2010

NORTHERN IRELAND ASSEMBLY

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ENVIRONMENT**

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Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Alastair Ross
Mr Patsy McGlone
Mr George Savage
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Ms Helen Anderson)	
Mr Paul Byrne)	Department of the Environment
Ms Jennifer Stewart)	

The Chairperson (Mr Boylan):

I welcome Helen Anderson, Paul Byrne and Jennifer Stewart from the environmental policy division of the Department of the Environment (DOE). I am going to go through the clauses and highlight the issues. I will then ask you to respond, and we will seek clarification from the

Committee and its informal agreement.

Clause 1 specifies the complaints to which the Act will apply. I remind members that one council felt that the Bill's scope should be widened to include other properties affected by a hedge, as well as those described as "domestic". Another respondent wanted definitions of "reasonable enjoyment" and "detriment". Would the witnesses like to comment on what respondents said?

Mr Paul Byrne (Department of the Environment):

The primary purpose of the Bill is to deal with neighbourhood disputes, so it concerns itself with domestic properties. We do not consider problems with non-domestic properties to be a serious issue. Indeed, during consultation, only 1% of respondents raised the matter.

The Chairperson:

Do you have a comment to make on the definitions of "reasonable enjoyment" and "detriment"?

Mr Byrne:

The definition of "reasonable enjoyment" that is used in the Bill refers to a person's enjoyment of their property as a result of access to light. It is legally difficult to define "reasonable enjoyment" specifically, because each circumstance is individual. Therefore, we intend to provide councils with guidance for determining reasonable enjoyment. "Detriment" is about ensuring that the complainant is able to show that he or she is suffering due to the height of a hedge.

Mr T Clarke:

We have already strayed into dangerous waters. It comes back to definitions. Even according to the Department's explanation, it is legally difficult to provide an exhaustive definition of "reasonable". Equally, it would be just as difficult to suggest that it was unreasonable for someone to grow a hedge. Again, we would be putting councils into a difficult position, because

they would have no basis on which to defend a legal challenge.

The Chairperson:

In primary legislation, we need to make sure that legal challenges can be met and councils are afforded an opportunity to deal with them. By their very nature, domestic disputes are very difficult to deal with. Will you give us clarification on Mr Clarke's point?

Mr Byrne:

We must first establish that growing a hedge is a perfectly legal activity, and there is nothing to stop anyone growing a hedge as high as nature intended. However, we need to look at what would be regarded as reasonable. Is it reasonable to allow a hedge to have a detrimental impact on one's neighbour?

Mr T Clarke:

It is back to judgement. It is like this room. Do you find it bright or dim? I find it very bright. Others might not find it as bright. It is the same with a hedge. Deciding whether enjoyment has been lost because of loss of light calls for a very subjective judgement. There is no definition to help make that judgement. When you are called to come to look at something and to judge it, how do you get a definitive answer? Therein lies the problem. One official might look at a hedge and say that it is a reasonable height, but that person might like to live in less light than other officials. In the direction that we are going, I can see this becoming a total minefield. There must be a more definitive way to judge this.

Here is a suggestion, albeit somewhat arbitrary. Should light readings be taken and a definition established as to what is acceptable? We have the technology to do that.

Mr Byrne:

Rather than provide a definition in the Bill, we will work with the Northern Ireland Local Government Association (NILGA) and the councils to develop technical guidance. That guidance will, I hope, provide for a consistent approach and will allow councils to take an objective view as to what the impact of a hedge is as regards access to light.

Mr Savage:

There is one element missing. I am not sure how far this Bill has proceeded. I foresee a difficulty. Where there is a high hedge, that hedge is often wide. The width of a hedge has to be taken into consideration, too — especially in rural areas, and especially as so many people have the time to walk for leisure purposes these days. That presents a difficulty. Footpaths are overgrown, and, in rural areas, such hedges are at least a metre wide. They need to be cut. There needs to be some sort of legislation to make a landowner, or whoever owns a particular hedge, cut it. At this point, there is no legislation to oblige the owners of hedges to do that. Am I wrong about that?

Ms Helen Anderson (Department of the Environment):

I appreciate your point, but this legislation is not designed to remedy that. My understanding is that there is legislation for roadside hedges, which requires the owners of such hedges to cut them back and to ensure that roads and footpaths are passable. I understand your concerns on that front, but this Bill is about the enjoyment of domestic premises, and this issue is about hedges between premises.

Mr Weir:

In the past, I used that legislation to push Roads Service to take action to cut back hedges. However, with respect to the light issue, I understand Mr Trevor Clarke's concerns and I wonder whether technical guidance is not the best way. Readings on a light meter will vary according to whether it is a dull or sunny day and according to the time of year, June or December. A range of factors will affect light readings. That will be very difficult to put on the face of a Bill. However, it would be better if an assurance were given that high-level technical advice would be given. I

am concerned lest councils are left in great uncertainty as to how the legislation is to be applied.

Ms Jennifer Stewart (Department of the Environment):

We have various pieces of technical guidance. We have sent copies of it to NILGA, and some of the local councils have looked at it and are quite happy with it. It will help them in their assessments, because, obviously, the impact of hedges will vary from property to property, depending on what way they are facing, their height and their distance from the house. All those issues will be covered in the technical guidance.

The Chairperson:

I remind members that their microphones are not to be used as lecterns.

Are members happy enough? The proposals are not to widen the legislation, other than to domestic properties, is that correct? Are members happy enough with what the Department has said? Obviously the technical guidance will iron out some of the issues that Mr Clarke and Mr Weir raised.

Mr Byrne:

We intend that all the technical guidance will come out on the commencement of the Bill.

The Chairperson:

Are members content with that explanation? We will move on to clause 2, which provides a definition of a high hedge. Several respondents were concerned that the definition of a high hedge should exclude planted forest so that it would not lead to the cutting down of ancient and long-established woodland. Some noted the need for the Forest Service to be made aware of the new legislation, while others stressed the need for guidance for properties built adjacent to forests

or mature woodland. Most respondents appeared happy with the 0.2 hectare threshold, but others wanted more consideration to be given to the height difference. Would you like to comment on that? Height is the main issue.

Mr Byrne:

The minimum height of a hedge has been set at two metres. This is because, under planning legislation, walls and fences less than two metres high do not need planning permission, so it seems reasonable that that is the minimum height chosen. With regard to woodland, after the consultation, and having heard members' concerns, we have changed the Bill so that woodland areas of over 0.2 hectares in size will be excluded. Hopefully, that should protect woodland areas, ancient trees and other plantings.

Mr T Clarke:

What is the reason for the figure of 0.2 hectares?

Mr Byrne:

The reason for that is that the Forest Service considers the minimum woodland size to be 0.2 hectares for reason of providing grants. That measurement is regarded as the smallest viable woodland size.

Ms Stewart:

It also ties in with the Forestry Act (Northern Ireland) 2010.

Mr T Clarke:

I am not totally au fait with hectares, because I am not from a rural area. Could the figure not be converted into acreage, because that does not sound like a large plot? One hectare is equivalent

to two and a half acres, so what is —

Mr Weir:

I am even less of a culchie than Trevor.

Ms H Anderson:

It is about one third of the size of a football pitch.

Mr T Clarke:

That is the size of a fairly large plot that someone could live on. So, is the Bill actually going to protect all areas of land that are that size?

Mr Byrne:

No, the area of land must be covered by trees.

Mr T Clarke:

I thought that you said that it was just the plot size.

Mr Byrne:

The 0.2 hectare measurement is the plot size for an area covered by trees.

Mr T Clarke:

That is OK.

Mr Kinahan:

Trees are protected by tree preservation orders in a smaller acreage or hectareage.

Mr T Clarke:

Are you declaring an interest?

Mr Kinahan:

No. Where does that fit in?

Mr T Clarke:

Because of your forest.

Mr Byrne:

Tree preservation orders do not as such protect trees with regard to the Bill. When a council is serving a remedial notice, it should have regard for issues such as tree preservation orders or ancient trees. It also has to be said that it is very unlikely, in a coniferous hedge, that there will be a tree with a tree preservation order.

Ms H Anderson:

That is an important issue. This relates only to evergreens and semi-evergreens. Most protected trees will be deciduous. The Bill, as it stands, does not apply to single trees, or to trees other than evergreens and semi-evergreens.

The Chairperson:

I have one other point for members' benefit. There have been a lot of complaints in councils

about single trees, but there are no proposals to go down that route within the scope of the Bill. Do members have any comments to make on that?

Mr T Clarke:

If we are sticking to evergreens, why can single trees not be included? A single evergreen tree in the wrong location could still detrimentally affect a person's neighbour. There is a difference between an evergreen tree and a deciduous tree. So why not include single trees if the Bill is sticking to evergreens?

Mr Byrne:

The Bill is principally to deal with hedges.

Mr T Clarke:

What is the definition of a hedge?

Mr Byrne:

It is two or more trees.

Ms Stewart:

A single tree cannot be defined as a hedge.

Mr Weir:

If it were simply an individual tree, we could widen this to treble or quadruple the number of complaints. For the record, that might widen the scope of the legislation so far that it might become unworkable.

Ms H Anderson:

The Bill was brought forward by the Minister in response to complaints that he and others in the Assembly had received in relation, specifically, to hedges. That is why the legislation is framed in this way.

The Chairperson:

Maybe on your behalf we will get a wee bit of research done. Has research been done?

The Committee Clerk:

We have a response to research that we requested that asked individual councils how many complaints they had had in relation to hedges as compared to single trees. Although many did not record or differentiate between complaints, the majority of councils responded that most complaints related to hedges, although quite a few had received complaints relating to single trees.

The Chairperson:

We said in the announcement that there were a lot of —

Mr T Clarke:

There will always be more complaints relating to hedges. In an urban setting, an evergreen tree placed in the wrong location can cause as much trouble as a hedge. We are still talking about evergreen as opposed to normal trees here. In an urban setting, some of these trees can grow to a considerable height, width and depth, which can have the same effect. It would have been easy to tie that into this Bill. I know that the officials are talking about two or more trees, but if we are talking about evergreen trees, I think — while I sometimes look for clarity in numbers — it should not have mattered how many or how few the number of trees. A single tree can still have the same effect in an urban setting or built-up area.

Ms H Anderson:

I note the issue that the member has raised and we will take it away and consider it.

Mr T Clarke:

The text should differentiate between an evergreen and a deciduous tree.

The Chairperson:

Will you look at how that will fit into the scope of the Bill? It is a difficult issue.

Ms H Anderson:

We will certainly.

The Chairperson:

If the Committee wants to consider an amendment, the option is open to us.

Are members happy enough with that explanation?

Members indicated assent.

The Chairperson:

We move on to clause 3, which addresses the procedure for dealing with complaints.

A number of issues have been raised in relation to this clause. They are that requiring someone to pay a fee to make a complaint is against local government practice under the polluter

pays principle; if the findings go against them, complainants should not pay more than the owner of a hedge; the Department should set a maximum fee; and fees should cover the full costs involved. Those are a few of the issues that were raised by respondents. Would you like to comment on them for the benefit of members? There are nine or 10 issues.

Mr Byrne:

A council's decision to levy a fee is discretionary. The fee is charged for services that a council provides to a complainant to help to resolve a neighbourhood dispute. It is up to a council to decide whether to waive the fee for elderly or less-well-off people, and councils can vary the amount of a fee depending on whether a complaint is considered to be valid, vexatious or not serious.

The Chairperson:

Members have a list of the fees charged in England. Depending on who complains, there are concerns about who should pay and whether, if a complainant stands corrected, there is full or partial cost recovery. A few issues have been raised, and we need to tease them out.

Mr Weir:

It is perfectly fair to charge fees, because, particularly in neighbourhood disputes, you want a deterrent against vexatious complaints. I know that you said that councils would have an opportunity to vary or waive fees, but there is still a flaw because when a hedge owner is found against, he or she must bear the full costs. In those circumstances, hedge owners must, in effect, reimburse complainants' fees. That is the one thing that is not taken into account.

Generally speaking, when one takes a legal case, the successful litigant has his or her fees covered. If someone makes a legitimate complaint, maybe because they have been suffering for years, and a council determines that action should be taken, either that person is stuck with a fee or, in effect, the council has to pick up the tab because it decided to waive the fee. In that sense, the person who is found against should pay. At least then a council has the option to reimburse a

complainant's fee in the knowledge that it can obtain that amount from the person who has been found to be at fault.

Mr Byrne:

We examined that situation. First, and most importantly, a hedge owner is not at fault for allowing a hedge to grow. Growing and failing to maintain a hedge are perfectly legal. When a remedial notice is levied in response to a legitimate complaint, a hedge owner is required to pay remedial costs for ongoing maintenance, because the remedial notice continues for as long as the hedge exists. In addition, because an owner must continue to maintain a hedge, the remedial notice becomes a charge on that owner's property deeds, so he or she will have that burden in the future.

Mr Weir:

I understand that, but there is a logical limitation to that. You said that even though a hedge owner is not at fault, he or she will have to bear an ongoing financial burden. He or she may not be at fault criminally, but that is the same in almost any civil law case. It will not just be a case of someone deciding that they dislike a hedge out the back and going straight to the council; people will have to show that there has been an attempt at some degree of mediation and remedial action. If a case goes against a hedge owner who knows, frankly, that he or she should cut back their hedge but they do not do so, a financial burden will be placed on that owner to maintain the hedge. In those circumstances, I see no logical reason why he or she, rather than the person with the legitimate complaint, should not also have to cover the cost of the complaint.

Mr Byrne:

The purpose of the Bill is to resolve disputes between neighbours, and the fee is for that.

Mr Weir:

If it is clearly found that one neighbour is at fault, why should that person not pick up the cost? If, for example, someone makes a wrong and vexatious complaint, they will be left with the bill and the hedge owner who has done nothing wrong will pay nothing. However, the reverse is not the case. If someone makes a legitimate complaint and it is found that a hedge owner is at fault, the person making the complaint still picks up the tab. You have to think a bit more logically.

Ms Stewart:

As well as giving councils the opportunity to recover some of their costs, at least they will be getting some money upfront without having the additional administrative burden of trying to recover costs from a hedge owner who is not keen to pay up. They would have to go into a lengthy legal process to try to recover a small amount of money.

Mr Weir:

If you make a provision that all costs are recoverable, and someone keeps defying that and not paying the costs, the bill will stack up for that person. There may be some administrative costs or other problems, but that still does not stop the injustice of that situation. That is exactly the way that civil law largely works, and in many cases, that is not a question of any degree of criminal fault. We are saying that, when it is found that there is fault on behalf of a hedge owner, and, after mediation, they still refuse to take action, it is not unreasonable that that person should pick up the tab, rather than the person who has made a legitimate complaint. It may well be someone who has suffered the problem. At the very least, you need to look at alternatives and bring back another draft of clause 3.

Ms H Anderson:

We are content to look at that again.

Mr Weir:

It is something that the Committee might be minded to include as an amendment.

The Chairperson:

I want to remind members about some of the issues, such as people on low incomes making a complaint — bearing in mind what has just been said — the limits available to councils to recover costs and, as a consequence, the need for regional guidance on a fee band and fixed penalty power remedy for non-compliance with a remedial notice. Those are issues that were raised. Have you any comments in relation to any of that?

Mr Byrne:

The fee is discretionary for councils. Councils can make provision for people on low incomes and give relief in that sense. With respect to fixed penalty notices, we took the issue on board and have examined it quite closely. The reason why we have decided against using a fixed penalty approach to recover costs, or as an alternative to going to the courts, is that there is a general principle that the basic element of any fixed penalty system is that a person who pays the fixed penalty within the stipulated period cannot then be prosecuted for the offence. The fixed penalty system would not work if the possibility of prosecution was not removed by paying the penalty. Prosecution and the issue of a fixed penalty are, therefore, mutually exclusive options for the enforcing authority.

The problem is that, if a remedial notice is served on a person and they refuse to carry out the work, by using a fixed penalty notice, you have fined them, and they have, therefore, discharged their obligation. However, the problem remains that the hedge in question will still need to be maintained.

However, if we impose a fixed penalty notice, we cannot go to court. The courts can impose a

fine, and a daily continuing fine, until the issue is resolved. It is thought that going through the courts is the best way and the greater deterrent. With a fixed penalty notice, we can normally impose a fixed penalty that is only —

Ms Stewart:

The fine can only be up to 25% of the maximum fine that would be levied on prosecution. Currently, we propose a level 3 fine, which is up to £1,000. Therefore, we could only levy a fixed penalty notice fine of £250.

Mr Byrne:

Given the ongoing costs of the maintenance of a hedge and the remedial work, paying a fine would be the cheaper option.

Mr T Clarke:

Given that some hedges will be expensive to remove, will £1,000 be enough? If a person is brought to court, refuses to provide a remedy and is fined £1,000, that person will still have the hedge.

Mr Byrne:

Yes. As I said, if you go to court, you can be made to pay a daily continuing fine until the matter is resolved.

Ms H Anderson:

Yes. You must pay the fine until the height of the hedge is reduced. None of this is about removing hedges. It is about reducing their height.

Mr T Clarke:

What concerns me is that this is getting a bit like the fixed penalty notice. It would be an acceptance that a person had paid a fixed penalty notice, as opposed to having fixed the problem.

Ms H Anderson:

We would be relying on the court to impose a daily fine if the offence continues.

Mr T Clarke:

An offender could take the punishment of the £1,000 maximum fine and still not cut his hedge. In some cases, it could cost more than £1,000 to bring a hedge down to an acceptable height.

Mr Byrne:

There is an additional element. If a hedge owner does not carry out remedial works, the council has the option of carrying out the works and recovering the cost.

The Chairperson:

Are members content with the explanation?

Members indicated assent.

The Chairperson:

Let us move on to mediation. The issues are the availability and resourcing of mediation services; whether a person who has paid for mediation should also have to pay a fee to complain; whether mediation should be provided as a single, centralised service or whether each council should make its own arrangements for mediation or shared mediation; the role of volunteers; the

sustainability of having mediators trained just for high hedge disputes; the cost of training, as training council officials for mediation would cost in the region of £6,000 for 16 people; consistency in the quality of mediation; the initial cost of ensuring professional standardisation, which will cost in the region of £10,000; the need for impartiality and independence; and protecting the confidentiality of the mediation process in the event of a Freedom of Information request. Those were some of the comments made to us, and we have had presentations made to us, too. Would you like to comment on those for the benefit of members?

Mr Byrne:

A complainant does not have to use mediation. It is one of the options. Complainants have to show that they have made a reasonable effort to resolve the matter, and that will validate their complaints. Writing and speaking to their neighbours, and showing proof that they have done so, will go some way to show that they have tried to resolve the matter. Using a mutual friend or acquaintance is also acceptable. It is not a requirement for complainants to go to a mediation service before they can put forward their complaints, though it might be best practice and something that, as a part of our guidance, we might suggest that they should do. It is up to complainants to decide whether they want to avail themselves of that service.

The Chairperson:

So, it is about including the option, as opposed to having a mediator in every council, which would cost more. Nevertheless, in some cases, that might be needed.

Ms H Anderson:

The intention is to encourage neighbours to make some effort to resolve their disputes. Having illustrated that they have made some effort, on payment of a fee, their council will become involved in bringing about a resolution.

Mr Ross:

Could that not prove to be very difficult? A particularly difficult neighbour could deny that a person ever spoke to them or receipt of a letter, even if the complainant can provide a copy of it. Cases involving an unreasonable neighbour are difficult because relations are not very good anyway. I know a case in my constituency in which that is the situation. Indeed, if the people involved had to speak to each other, they would come to blows. A third person, perhaps a mutual acquaintance, would not want to go anywhere near that case, because they would not want to get dragged into it. Is that not a real difficulty in the complaints procedure?

Mr Byrne:

It is, but we suggest — and we will put this in the guidance — that people keep a diary of contact, which will show that they have made a reasonable effort, as will producing copies of letters that have been sent, although they should be sent by recorded delivery.

Ms H Anderson:

We are conscious that additional work will be imposed on district council officers, so the intention of the Bill is to ensure that the only cases in which local government have to become involved are those that require it to do so. The Bill and the guidance will be worded in such a way as to encourage people. Therefore, on a practical level, if Paul's hedge impinges on my property, I can say that legislation and guidance stating that we should talk about it are now in place. It will provide a format to encourage discussion whenever possible. Nevertheless, we appreciate that there will be instances in which local resolution will not be possible.

Mr Ross:

It will probably not be practical to have a mediator in each council. In areas such as the Housing Executive, mediation services are provided centrally. Will it be up to councils to get together to do that, or will the Department provide its own service or work with an outside body to provide mediation when required to do so?

Ms H Anderson:

It will certainly not fall to the Department. However, through groups set up by local environmental health units and through working with NILGA and district councils, the intention, as with many other pieces of legislation — I was recently involved in dealing with issues with the Waste and Contaminated Land (Amendment) Bill — will be to ensure parity of approach. The intention and hope is to resolve such issues at local government level using common approaches and by pooling resources.

The Chairperson:

Are members content with that explanation?

Members indicated assent.

The Chairperson:

Clause 3(4)(a)(ii) requires copies of remedial notifications to be sent to:

“every owner and every occupier of the neighbouring land”.

Given that concerns have been raised, will you clarify that point?

Mr Byrne:

When a number of individuals are involved, singling out one of them to become a responsible person could cause inadvertent discrimination. To ensure fairness, everyone must be treated equally, so it has to be clear to all parties involved that no individual will be singled out.

The Chairperson:

There are a few other issues. Obviously, guidance is needed to deal with all issues and

complaints. For instance, the issue of how to identify vacant land was raised. Will that be put in the guidance for councils?

Mr Byrne:

The issue of vacant land causes the council a lot of grief and, with regard to high hedges, information will be included in the guidance.

The Chairperson:

Are members content?

Members indicated assent.

The Chairperson:

I remind members that the Examiner of Statutory Rules is content that the powers in this clause to make regulations prescribing the maximum fee a district council may charge for complaints is subject to negative resolution. Are members content?

Members indicated assent.

The Chairperson:

Clause 4 relates to remedial notices. Several issues were raised about this, including the lack of provision for the complete removal of a hedge; the cost to councils of ongoing maintenance of hedges; the need for guidance to councils with respect to cutting hedges during the nesting season, and reflection of that in remedial notices; the potential for council liability if land is damaged by council equipment; the impact of remedial notices on people with lower incomes, which we may have touched on before; the availability of financial assistance for people on lower incomes; and avoiding the need for expert advice by issuing public health notices stating that the nuisance needs to be abated, instead of remedial notices specifying what work needs to be done.

Would the Department like to comment on those issues?

Mr Byrne:

With regard to the removal of a hedge, as we have stated, growing a hedge is a perfectly legal activity. To force someone to remove a hedge as a part of remedial action would be regarded, under human rights legislation, as an excessive impact on that person's entitlement to enjoy his property.

Ms Stewart:

It could be that a hedge owner may decide to remove a hedge rather than reduce its height, but it would be up to that owner to decide to go beyond the requirements of the remedial notice.

The Chairperson:

On cost, am I correct in saying that it is not intended that central Government will supply a funding package for this, and that it is to be dealt with by councils?

Mr Byrne:

The intention is to deal with it at council level.

The Chairperson:

Will you comment on the effect of remedial notices on people with lower incomes? Will there be financial assistance for them?

Mr Byrne:

There is no provision for financial assistance. The remedial notice will stipulate the actions that need to be carried out, but it will not stipulate how those actions should be carried out. It is very much up to hedge owners as to how they go about it. As long as they carry out the actions, the council will be content.

The Chairperson:

It is something that we need to keep in mind. Older established housing estates have a lot of high hedging. It is something we need to look at, bearing in mind the lower incomes.

Are there any questions? Are members content with the Department's explanations?

Members indicated assent.

The Chairperson:

Clause 5 relates to the withdrawal or relaxation of the requirements of a remedial notice. Thankfully, no issues have been raised.

Clause 6 relates to appeals against remedial notices and other decisions of councils. I remind members that several issues have been raised about this. They are the need for guidance on the appeals process; whether there should be a charge for appeals; the use of the valuation tribunal in the appeals process, and its capacity for dealing with work areas that are outside its remit and members' range of competence; the constitution of the Valuation Tribunal and statute provisions; the quality of justice that might be afforded, the impact of this role; the function of the valuation tribunal and the role of its president; the lack of appeals decisions being publicised that would perpetuate lack of knowledge of high hedge law within councils; and the fact that one third of appeals decisions in England result in changed decisions. I would like the Department to

comment on those issues please.

Mr Byrne:

The first thing to say is that we will be drafting and producing specific guidance for appellants under the High Hedges Bill.

The Northern Ireland Valuation Tribunal (NIVT) is used to dealing with land-type appeals. We have been in discussion with that organisation, and it has proposed the formation of an appeal panel, including a legal member to chair the panel and an evaluation member to carry out site visits and to examine technical issues. It is felt that the makeup of the panel should allow it to provide reasonable and balanced judgement in accepting or rejecting an appeal.

A fee, which will be based on the standard planning appeals mechanism, will be required for an appeal. We feel that that is reasonable, because it sets a level playing field across the whole of the appeal mechanism.

The Chairperson:

If members have no other questions, we will move to clause 7. There are no issues with that clause. Clause 8 deals with powers of entry. I remind members that the issues raised about clause 8 concerned the requirement to give occupiers of a piece of land 24 hours' notice. Respondents have suggested that notice should only have to be given where necessary, and that a waiver should be used whereby entry would be by invitation.

Mr Byrne:

It is standard practice to give 24 hours' notice in order to ensure respect for privacy and family life under human rights legislation. When entering someone's property, one is not pursuing

criminal activity. Therefore, it is reasonable to give an occupier prior notice before entry. Obviously, if an occupier issues an invitation to enter, there is no need to give that notice. The provision is aimed at the occupier of the property, as the owner may not be present. The occupier's privacy must be fully respected.

The Chairperson:

If members are happy, we will move on.

Members indicated assent.

The Chairperson:

Clause 9 deals with offences. There were two issues, which were dealt with earlier. There were no issues with clause 10.

There were several issues with clause 11. They are the need for legislation to ensure that there is no continuing duty on councils to exercise their powers to deal with high hedges; that councils will not be liable for damage where work specified in a remedial notice causes a hedge to die after it has been reduced in height; the cost implications of councils having to do works in default; the possibility of the total removal of a hedge where an owner cannot be identified rather than ratepayers bearing the cost of ongoing maintenance; the success or otherwise of placing a charge on a property to recover costs and the inclusion of the cost of registering the charge on the property; the Department's expectation that councils will act in default where there is no traceable owner and little prospect of recovering costs; and the use of staged reductions over several years for very high hedges.

There are six or seven issues there, Mr Byrne, and you have commented on some of them.

Mr Byrne:

For a council to carry out the work is a discretionary power. It is for a council to decide whether it wishes to do so. When it does so, it is able to recover the cost of the work. Those costs can then be registered as a burden on the statutory charges, so a council will always be able to recover them, albeit maybe not in the short term. The fee for statutory charges is set at £25, so it is not regarded as particularly onerous on a council to go through the statutory charges process.

With regard to the full removal of a hedge when an owner cannot be identified, land is owned, and even though someone has not been identified to remove that hedge, it would constitute a loss of reasonable enjoyment of that person's property. The Bill ensures that councils will not have any liability when they carry out those works on a person's land, provided that they have not been negligent.

The Chairperson:

Someone raised the issue of a hedge being cut and dying as a result.

Mr Byrne:

A council is covered for liability as long as it acted reasonably.

The Chairperson:

Are members content?

Members indicated assent.

The Chairperson:

No issues were raised about clause 12. No issues were raised about clause 13. The Examiner of Statutory Rules was content that the secondary legislation-raising powers in that clause to amend

the serving of documents in electronic form would be subject to draft affirmative procedure. So, are we happy with that?

Members indicated assent.

The Chairperson:

No issues were raised about clause 14. Respondents called for more guidance on clause 15. Obviously, you will be happy to provide guidance.

Mr Byrne:

We see that as something for which a range of guidance would be provided.

The Chairperson:

No issues were raised about clause 16. However, the Examiner of Statutory Rules was content with the secondary legislation-raising powers in the clause to make regulations to extend the scope of complaints, and the definition of a high hedge will also be subject to draft affirmative procedure. I think that members were content with that.

Members indicated assent.

The Chairperson:

No issues were raised about clauses 17 and 18. Clause 19 is entitled “Commencement”. Again, the Examiner of Statutory Rules was content that the commencement orders provided for in the clause will not be subject to Assembly procedure, which is standard practice. There were no issues about clause 20.

General issues were raised that cannot be directly related to specific clauses. They are a need for the public to be informed of the new powers and resources provided; the Bill should include a reference to the new duty on local authorities to protect biodiversity, and not have priority over urgent legislative works such as the marine Bill; the Bill should be brought forward urgently — we would like to see all Bills brought forward urgently; the new powers will impact on councils' front line services; the provision of a prescribed application from the DOE is welcome, and members have in their information packs a response from the Department on a standard complaint form, and a sample form.

Other issues were that conditions should be placed on all new planning approvals to prevent the planting of high hedges that may be problematic in the future, and who will adjudicate if a high hedge is owned by a local authority? Some of those issues were dealt with, but perhaps the Department would like to comment on the others.

Mr Byrne:

Indeed. We have been in discussion with NILGA about the need for the public to be informed of the new powers, and we will issue press releases. We are also looking at using council magazines to inform ratepayers.

The Chairperson:

I know that you responded to some of those issues in writing, which members have, but it is just to keep us informed. Thank you, gentlemen. That concludes our informal clause-by-clause consideration. Do not all cheer at once.