



Northern Ireland  
Assembly

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**COMMITTEE FOR THE  
ENVIRONMENT**

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**OFFICIAL REPORT  
(Hansard)**

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**High Hedges Bill**

7 December 2010

**NORTHERN IRELAND ASSEMBLY**

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**COMMITTEE FOR THE  
ENVIRONMENT**

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**High Hedges Bill**

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**Members present for all or part of the proceedings:**

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Alastair Ross

**Witnesses:**

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

**The Chairperson (Mr Boylan):**

Members have been provided with a clause-by-clause analysis table, a copy of the Bill, a departmental response to the Committee's queries on clauses 2 and 3 with a covering letter, and further information on options for amending clause 3. Draft Committee amendments have also been provided. Departmental officials are available to answer any further queries that members have. I invite the officials to come forward. They are Helen Anderson, Paul Byrne and Jennifer

Stewart, who are all from the environmental policy division. We will now go through each of the clauses and the long title one by one to seek the Committee's position on each. I remind members that this will be their last opportunity to discuss the clauses of the Bill, and that their decisions will be final.

***Clause 1 (Complaints to which this Act applies)***

**The Chairperson:**

I remind members that, in response to concerns raised by stakeholders about definitions, the Department indicated that it was developing guidance with NILGA that would be available on commencement of the Bill. Officials advised the Committee that that guidance will address technical issues such as measuring light impact, and members were subsequently content with the clause.

*Clause 1 agreed to.*

***Clause 2 (High hedge)***

**The Chairperson:**

I remind members that at its meeting of 18 November, the Committee asked the Department to reconsider the inclusion of single evergreen or semi-evergreen trees. The Department's reply stated that:

“The inclusion of single tree problems would fundamentally change the scope of the Bill and would require the Department to undertake a full public consultation before making an amendment to this effect.”

After being provided with that information at last week's meeting, Committee members asked for a draft Committee amendment, which would include single evergreen or semi-evergreen trees, to be drawn up for discussion. That amendment is provided in members' packs. I invite the

witnesses to summarise the single-trees issue.

**Ms Helen Anderson (Department of the Environment):**

We were happy to take away the Committee's concerns on single trees and to look at the provision again. We responded to those concerns in the correspondence dated 3 December 2010. Single trees are fundamentally different to hedges, which are deemed as being continuous barriers. Previous consultations undertaken by the Planning Service and by the environmental policy division of the Department only considered hedges, and there was no consultation on single trees. On the basis of what was consulted on and the way in which the Bill has been drafted, the Department sought its own legal advice, which indicated that the inclusion of single trees would be outwith the scope of the current Bill as drafted. That advice also suggested that any attempt to extend the Bill to cover single trees would require extensive consultation and a major redrafting of the Bill. However, we are also conscious that the scope of any Bill is ultimately determined by the Speaker.

**The Chairperson:**

OK. Would the Clerk of Bills like to add anything before I ask members for their views?

**The Clerk of Bills:**

The proposed amendment has been provided to members. However, as Helen said, there is an issue with scope, which the Speaker must consider. The amendment is sufficient for debate, but I cannot advise the Committee on what the Speaker's ruling will be, and whether the amendment will be considered to be within the scope of the Bill.

I also point out that it is possible that, should the amendment be made during the Bill's Consideration Stage, a further raft of amendments could be required to address the divergence between hedges and single trees. For the purpose of the Bill, the amendment will treat trees as

hedges, and it indicates the Committee's wish for that to be the case. However, the detail of that may require further consideration and a raft of further amendments to be made during the Bill's Further Consideration Stage.

**Mr T Clarke:**

I am happy to stick with the amendment. The consultation showed that 8% of those who replied to it had concerns about single trees, and, although it is good that we are addressing 92% of concerns, we should not dismiss that other 8%. The people who will be affected are those who live in built-up residential areas.

**The Chairperson:**

OK. Mr Clarke feels strongly about proposing the amendment to clause 2. Do any other members have issues or points that they want to raise about the amendment?

**Mr W Clarke:**

It would be very hard to enforce. I agree that there are issues in regard to single trees. However, in my opinion, this is opening a minefield. A tree that might be someone's pride and joy may be cut down. It may open up a lot of work for councils.

**Mr T Clarke:**

We are opening up the same amount of work in relation to hedges. Someone may have tended to and looked after a hedge with more than one evergreen, should it be two, three, four or more. More work went into that. We will still have to tell the owner to cut it down if it is causing a nuisance. The Bill would not allow for the council to come and cut down a tree unless it is causing a nuisance. If the tree is not causing a nuisance, it will not be cut down.

**Ms H Anderson:**

The word “nuisance” is common parlance in public health law that councils deal with. However, this legislation does not allow for a “nuisance” situation. This is just a minor point. I understand the point that has been made. However, this Bill is to do with two individuals and their personal enjoyment of their own property.

Our understanding is that any council ruling to require a single tree to be reduced in height could be viewed as a greater interference in someone’s personal property, if there is only one tree involved. I understand what is being said. A lot of care and attention goes into growing a hedge. However, the Bill contains a new concept. It is not about wrong and right, statutory nuisance, public health protection or environmental protection. This is about a balance between the personal enjoyment of a person who owns a hedge and wants to have it for his own privacy, and someone whose garden or property is overshadowed by a hedge. That hedge may be depriving him of light and interfering, in his view, with his enjoyment of that property. Councils must address a fine balance in the outworkings of this legislation. In the legal advice that we have obtained, a single tree is viewed as more of an amenity issue than a hedge that incorporates a number of trees or bushes.

**Mr McGlone:**

Helen has drawn us into territory on which I was seeking some clarification. The high hedges issue is about one person’s enjoyment versus another’s. I was going to use the word “amenity”. Trees can lead to blocking out light, or poor television, mobile phone or satellite signals. One person’s enjoyment of a lovely looking tree can be a big intrusion on another’s lifestyle or enjoyment. The issue has really grown from a hedge to a tree.

**Ms H Anderson:**

I understand the Committee’s point. A yew tree can be very high and wide. We are not unsympathetic to the points that the Committee makes. However, we have obtained advice on these issues and there are fundamental differences between the concept of a single tree and that of

a hedge. However, this is a decision for the Committee. All that I can do is share the information we have obtained.

**Mr T Clarke:**

I ask Helen whether a single leylandii is a hedge or a tree?

**Ms H Anderson:**

A single leylandii is defined as a tree under this Bill.

**Mr T Clarke:**

What about two leylandii? They are still trees.

**Mr W Clarke:**

They are, but the legislation relates to high hedges. A high hedge is two or more evergreens or semi-evergreens. The Bill contains a definition of a hedge. That is way the Bill is set up, and how it has been developed and brought forward. The Committee does not say that a single tree can be construed as a hedge, but that we might wish to consider the option of having a single tree included in this legislation, accepting that it is a different —

**Mr T Clarke:**

That is where I think differently. If somebody with a small backyard in a residential area plants a leylandii, especially in social housing, it will have the same effect as a hedge. Call it what you want, but it will be the same as a hedge to the neighbours, because it will block out light and grow wide and tall. It has the same effect as a hedge.

**Ms H Anderson:**

The definition of a hedge would have to be changed in the Bill, because, as drafted, a hedge is defined with the term “two or more”.

**The Chairperson:**

We are definitely getting into a minefield of issues around the issue of single trees. Where does that stop? I am not in favour of going down the route of a single-tree definition. We brought that up at the very start of the discussions, when I was talking about other trees, such as yew trees, not specifically evergreens.

If we have to go to a vote on this issue, we have to go to a vote. First, are members content with the amendment?

**Mr Kinahan:**

Chairman, could I have a quick brief on what was said around this point previously?

**The Chairperson:**

The issue is whether we accept a single-tree definition in the Bill. We have brought forward a draft amendment — you have been provided with a copy — that extends the Bill to include single evergreen trees. That is where we are. We have to decide whether to agree the amendment put forward by the Committee to include single evergreens. We had an explanation from the Department that that may change the scope of the Bill and that we may have to put it out to consultation again.

**Mr McGlone:**

I want to seek a wee bit of expansion as to why we have to mention the word “evergreen”.



**The Chairperson:**

That was Mr Clarke's suggestion at the time.

**Mr McGlone:**

I am thinking of a situation in which it could be something else causing the problem.

**The Chairperson:**

Before we get into this, we brought up the issue of single trees at the very start and looked at the social housing issue. As well as changing the scope of the Bill, it would be a minefield to include single trees.

**The Clerk of Bills:**

To clarify Mr McGlone's point about evergreen and semi-evergreen trees, the Bill as drafted deals with evergreen or semi-evergreen hedges. If we extend that to include trees, for the purposes of this amendment I assumed that the Committee was looking at evergreen or semi-evergreen trees, given that those constitute more of a problem. However, that would be for the Committee to adjust as required.

**The Committee Clerk:**

To add to that, when we discussed this matter at a previous meeting, there was some concern about the impact on single deciduous trees and the fact that those can be subject to protection orders. Therefore, there was an incentive to narrow it down.

**The Chairperson:**

Gentlemen, I have to put the amendment to the Committee. I certainly am not in favour of it, but it will have to go to a vote.

**Mr Kinahan:**

Chairman, in time, we should try to find some way of dealing with leylandii. I completely take your point that we cannot deal with single trees, given all the history and stories that go with trees. However, if we could somehow get leylandii defined —

**Mr T Clarke:**

During the consultation, 8% of people felt that single trees should be included. Given that it has taken a long time for even this piece of legislation to be brought to the House, when is that going to be revisited? Probably not for years and years. It has taken many years for this Bill to come forward. For that reason, I would prefer to see single trees going included, which would satisfy that 8% of the population.

**Mr Ross:**

If the amendment goes to the Floor of the House and is debated, the Department could, at that stage, state that it would make the Bill untenable, and the amendment would not be moved. Even if, ultimately, the amendment were not moved, at least all the issues that the Committee is now aware of could be raised and at least the Department would be aware that issues still need to be addressed.

**The Chairperson:**

Yes; that is possible. However, I could also argue the point that we might be safer not bringing it to the Floor of the House.

**Mr T Clarke:**

I hate to argue the point, but the Department is opposed to —

**The Chairperson:**

No. I am willing to put it to the vote. I do not agree with it, but I will put it to the Committee and we will take a vote on it. Are members content with the amendment to clause 2?

*The Committee divided: Ayes 4; Noes 3.*

AYES

Mr Buchanan, Mr T Clarke, Mr McGlone, Mr Ross

NOES

Mr Boylan, Mr W Clarke, Mr Kinahan

*Question accordingly agreed to.*

*Clause 2 agreed to, subject to the Committee's proposed amendment.*

***Clause 3 (Procedure for dealing with complaints)***

**The Chairperson:**

I remind members that, at its meeting on 18 November, the Committee asked the Department to explore the potential for an amendment to require councils to refund fees for upheld complaints and recoup the cost from the hedge owner.

The first reply from the Department stated that the Bill, as currently drafted, allows a council to refund the fee to a complainant if it wishes to do so. On receiving this information last week, the Committee remained concerned that such a refund, if adopted, would be at the cost of the

ratepayer and asked if a Committee amendment could be drafted for discussion.

In a second reply, the Department put forward four possible options in relation to the issue. The first is for the transfer of fee and charge to the hedge owner; the second, for an administrative charge to the hedge owner for the creation and issue of a remedial notice; three, for there to be no fee for making a complaint; and four, for retaining the existing legislative provision, namely the Bill as drafted. The Department gave the pros and cons for each option, concluding that the status quo, option 4, offers the lowest risk, as the others add new levels of complexity. The other options have not been consulted on and differ from provision elsewhere in the UK. I advise members that a draft Committee amendment is provided.

I invite the Department to summarise.

**Ms H Anderson:**

Summarising this paper will be a bit more difficult. We understood clearly the Committee's concerns. Let me reassure you that the Department is keen to ensure that complainants do not feel unduly or unjustly penalised. We need to bring forward a mechanism that is transparent and which meets the needs of parties for a satisfactory solution of the issue on the ground.

We looked at the first option. We were conscious that the Committee had asked us to look at the issue of transferring fees, but we felt that there was merit in exploring some of the other options so that the Committee would have a complete picture to make the decision. We looked in great detail at the transfer of fees. One thing that I must impress upon the Committee is that any change to the legislation in respect of transferring the fee or trying to apportion the fee across the complainant and the hedge owner is quite complex. There are knock-on effects.

I will talk you through a bit of that. It was included in the options appraisal. However, we condensed a lot of information into a few sides of paper for that. A mechanism would need to be in place to bring about the transfer of fee. If there were a simple transfer of the fee chargeable to the complainant to the hedge owner, there could be difficulties. The legislation as currently drafted allows the council discretion as to whether and how much to charge. The council would conduct an assessment, dependent on the complainant's circumstances, to determine how much it wanted to charge. However, if that fee is simply transferred over to a hedge owner who was obliged to reduce the height of his hedge, there could be a situation whereby a wealthy complainant makes a complaint, the council assesses his circumstances and decides to charge the maximum fee, and that is transferred to a financially poor hedge owner, who would then face, not only the cost of cutting down the hedge, but that of meeting the fee determined on the financial circumstances of the complainant. That is an issue. That can be got round by bringing forward a provision to allow for discretion in the alteration of fees, in view of the personal circumstances of complainant or hedge owner.

**Mr T Clarke:**

Chairman, I thought that before any debate was entered into with the council that contact had to be made by the neighbour of the hedge owner to bring their concerns to the attention of the owner. If they neglect to do so, surely they should be responsible for all fines and there should be no mechanism for them to get out of paying any money, regardless of their circumstances. At the end of the day, if contact was made in the first place, it was brought to the owner's attention that their tree was causing a nuisance, and if the person does not appropriately address that, they should be made to pay whatever fees are in order.

**Ms H Anderson:**

I apologise for the repeating myself, but, as the legislation sits, there are no innocent or guilty parties; the legislation seeks to resolve disputes between neighbours.

You raised the valid point that councils need to assure themselves that informal means have been used to try to resolve issues. If on the basis of what the complaint tells it, the council is assured that there has been appropriate informal contact, the complainant can elect to pay a fee and their financial circumstances would be taken into account in determining that fee. The council would then provide them with a service and consider whether the personal enjoyment of their property is being adversely affected by the tree. On the other hand, a hedge owner may not feel that they have been appropriately and adequately contacted by the complainant. In that case, the situation in law is that they did not elect to avail themselves of the service the council had offered, and, if it is found that their hedge needs to be cut down, they would have to pay for that action to be taken, and a fee. They would have to keep the hedge at an agreed height over subsequent years.

If the fee were based on the circumstances of the complainant, legal action could be taken against the Bill on human rights and fairness grounds. Had we consulted on that type of situation, we would be on a stronger footing, but it was never consulted on. Transferring a fee from someone who perceives that they have a sufferance, and, in trying to alleviate that, elects to buy in a service when someone else who has not elected to buy in that service is required to pay at a rate determined by their neighbour's financial circumstances presents issues that could leave the Bill open to legal action.

As it stands, the Bill takes the circumstances of the complainant into account when determining how much to charge them. If that were transferred over, it would mean applying someone else's circumstances when determining how much to charge the hedge owner. If the decision is that that fee should transfer over, our understanding is that, in legal terms, it would no longer be a fee. Instead, it would be a penalty, which would be applied to the hedge owner and could result in a greater likelihood of further action being taken. A decision must be made on whether the fee is transferred, and, if it is, there would also be an opportunity to bring in discretionary powers for councils so that they could determine the circumstances of the hedge owner and what would be a reasonable fee for them. There are options.

**The Chairperson:**

You could not bring in something simple, so that someone could be charged for cutting down a hedge. *[Laughter.]*

**Mr Ross:**

I have a similar point to Trevor. The hedge owner would have the opportunity to take the necessary action before being charged a fee. That highlights the difficulty in proving that there has been contact beforehand, which has always been a concern to me. Indeed, even if someone had contacted their neighbour verbally or by letter, the neighbour could just throw that letter away and claim that there had been no communication.

That is a bigger issue, and I agree with Trevor that, if an individual is approached and refuses to take the necessary action, they have themselves to blame for any fee that comes their way.

**Mr Paul Byrne (Department of the Environment):**

There is an additional point. If a person takes that action on instruction from the council, they are complying with its decision, but their neighbour's means is still used to determine what is effectively a penalty on the person who then has complied. That is a disproportionate response, and it could be regarded as an unfair response.

**Mr Ross:**

Can you say that again? I am not quite sure that I understood that.

**Mr Byrne:**

If the complainant were to ask the council for remedy, the council would put forward that remedy and impose it on in the hedge owner. If the hedge owner were to comply —

**Mr Ross:**

There is a stage before that, when the complainant would have to go directly to the hedge owner. The hedge owner would be looking at the same criteria as the complainant, so they would be aware of whether the council would be able to take action against them.

**Mr Byrne:**

Yes, but that places the penalty on the hedge owner, using the neighbour's means to determine what that penalty should be. In other words, the hedge owner's circumstances are not taken into consideration when the penalty is applied. That is disproportionate and unfair, and could lead to human rights problems.

**Mr T Clarke:**

It also highlights the fact that there should not have been a means-tested fee. A standard fee should have been applied regardless of one's circumstances.

**Mr Byrne:**

If that were done, the discretion of councils would be taken away, and there would be a set fee.

**Mr T Clarke:**

It sounds as though a set fee might work easier. How does a council judge how much someone can afford to pay?

**Mr Byrne:**

That is part of the problem. The council would have to do that.



**Mr T Clarke:**

If I were to complain about Tom's tree next door to me, how would the council decide on how much I should pay in relation to making that complaint?

**Ms H Anderson:**

The councils will determine that. They will set that out. Some of the English councils have already done so. There are particular benefit payments that will be taken into account in determining whether a person will be eligible for a reduction in the costs. The councils will set out people who are on income support and who are in receipt of various types of benefits.

**The Chairperson:**

Paul, that is fine, and it is OK to give people the opportunity to talk, discuss and come to some sort of arrangement. However the legislation has been introduced because, in some cases, a resolution cannot be achieved. Some payment and some action needs to be taken. We do not want the Bill to result in the claimant having to pay without being reimbursed. Mr Weir, who is not here, said that, and I agree with him. If the hedge owner is found to be at fault, it should not be ratepayers who pay for it, but the person who is responsible. They should be given a period of time to address the issue, and the Bill provides for that. You give option 4 as going with what is in the Bill, and the complainant's fee could be set or capped. We will have to reach some resolution today.

**Mr W Clarke:**

You touched on what I was going to say. The complainant has to have their money returned. I agree that there has to be a sliding scale based on people's ability to pay. The consultation end of it is fine. You can do that and take into account people's circumstances.

*[Inaudible due to mobile phone interference.]*

That certainly has to be taken into account. Anything else could not be defended, because we

could not force people to choose between feeding themselves, keeping warm or cutting down a hedge — *[Inaudible due to mobile phone interference.]*

**Ms H Anderson:**

It is likely that cutting down the hedge will cost considerably more money than the payment of a fee. If the hedge owner ends up paying a fee that is determined on the basis of the circumstances of the complainant, that will simply put much more onus on district councils to ensure that any informal contact was adequate or comprehensive. They may need to take into account not only the complainant's view but the hedge owner's view on that so that they do not get caught in a situation of a vexatious complainant just as easily as getting caught in a situation of a vexatious hedge owner.

**The Chairperson:**

*[Inaudible due to mobile phone interference.]* It is discretionary at the minute. We go out and try to mediate. It will, basically, give the council the power to say that, if a neighbour complains, they have to do something about it and pay for the complaint. We are saying that there is no way — *[Inaudible due to mobile phone interference.]*

**Ms H Anderson:**

We understand that.

**The Chairperson:**

We need to look at that. It does not matter whether it is happening in England and Wales. The person who makes the complaint — *[Inaudible due to mobile phone interference.]*

**Mr McGlone:**

*[Inaudible due to mobile phone interference.]* I do not know how convoluted that argument is at the moment. If a fence or, in this case, a high hedge has been proven to be intrusive or to impact on the — *[Inaudible due to mobile phone interference.]*

**Mr Byrne:**

We need to be very careful. This is not a judicial procedure.

**Mr McGlone:**

I did not say that it is.

**Mr Byrne:**

It is an administrative matter. The hedge owner has not done anything wrong by growing the hedge or by not trimming it. We are saying that, if a problem is identified, the Bill will give the complainant an opportunity for remedy.

**The Chairperson:**

I will put it a different way. It gives the council that power. It is all right saying that the Bill gives the complainant that opportunity, but it gives the council a way to address the issue. We are not complicating the matter; it is quite simple. We are asking that a person who grows a 20 ft hedge is asked to cut it down to 6 ft 6 in or to 2 metres, and to pay for it. If we go down the route of the complainant and we look at capping a fee, that is fine. The Committee is asking for the complainant to be reimbursed.

**Mr Byrne:**

For the complainant to be reimbursed?

**The Chairperson:**

Yes.

**Mr Byrne:**

That is already in the Bill. It is transferring the fee.

**The Chairperson:**

The reimbursement is at the discretion of the council, is it not?

**Ms H Anderson:**

That is right.

**The Chairperson:**

That is ratepayers' money.

**Mr T Clarke:**

What happens if a person does not cut the tree down?

**The Chairperson:**

Let us be honest; it is ratepayers' money.

**Ms H Anderson:**

As the Bill stands, if the council chooses to reimburse the complainant, ratepayers would pick up

the tab. That is right.

**The Chairperson:**

That is not what we —

**Ms H Anderson:**

Is that not what the Committee wants?

**The Chairperson:**

No. We want that sorted out, because there is no point in anyone paying rates for somebody in the far end of their council district to get a hedge cut down. The person who is found liable should pay. We are using a mechanism to make the complaint, which is fine, but reimbursement must not be by the ratepayer. That is what we are saying.

**Ms H Anderson:**

I understand that.

**Mr McGlone:**

This may be an area that puts me in thick form, but I am wee bit confused. The person who has grown the hedge to a certain height has done nothing wrong, yet the argument could be sustained that that person is creating a problem.

**Ms H Anderson:**

Yes; if their hedge is more than 2 metres high and continuously interferes with another person's enjoyment of their property.

**Mr McGlone:**

Correct, so we need to be a bit clearer on that. It is not that they have done anything wrong, but at what point does their creation of a problem for a neighbour become something wrong in the perception of that neighbour? That is why the complaint is made.

**Ms H Anderson:**

It is just the way in which the Bill is drafted at the moment, and it was drafted that way on the basis of the completed consultation. At present, the Bill deals with an administrative fee for the delivery of a service, a bit like paying for a planning application before the council will come out and look at it. We understand entirely that the Committee's view is that that payment should transfer to the person who grew the hedge. I understand that the current discussion is around whether that should transfer at the rate determined by the complainant's ability to pay or be decided on the basis of the amount that a council judged a hedge owner was personally able to pay.

**Mr McGlone:**

You are really getting into means-testing everybody all round the place.

**Ms Jennifer Stewart (Department of the Environment):**

If we have a poor, financially disadvantaged complainant who pays maybe half the standard fee, is that the amount that we transfer to the wealthy hedge owner?

**Mr McGlone:**

We are entering into class politics over hedges, here. *[Laughter.]*

**Mr T Clarke:**

We have established that this is an administrative matter and that someone can grow a tree to

whatever height they want, so long as nobody complains. Given that, what happens if somebody then decides that that your tree is too high and you do not want to cut it down? It sounds like we have councils acting as arbiters by coming and suggesting cutting a tree down to 2 metres. What happens if you do not want to cut it down?

**Ms H Anderson:**

The council acts in default. There is a difference between the service —

**Mr T Clarke:**

So, it is unlawful then.

**Mr Byrne:**

It becomes unlawful not to comply with the council's required action. In other words, that can be enforced through the courts.

**Mr T Clarke:**

So is it a legal requirement to have it 2 metres or lower if the council says that should be cut to that height?

**Mr Byrne:**

Only if the council states so.

**Mr T Clarke:**

That is what I said: if the council says that it must be cut to 2 metres.

**Mr Byrne:**

Yes, and there is a set appeals mechanism by which the hedge owner can have that order examined.

**Ms H Anderson:**

This is complex and unusual legislation. We understand the points that the Committee is trying to make. In our view, it is a matter of achieving balance. A major concern for us is also the fact that the transferring of fees and the associated additional burden on district councils were not consulted on.

**The Chairperson:**

It would not be the first time that issues were not consulted on, Helen, so do not worry too much about that.

**Ms H Anderson:**

I need to point out the facts.

**The Chairperson:**

Well, look, Mr Weir is not here, but I agree with the amendment. The hedge owner should pay if found guilty. I will put that to members.

**Mr W Clarke:**

Chairperson, we are back to the question of the ability to pay. If you say that —

**The Chairperson:**

No, we are also looking at putting a cap on it.



**Mr W Clarke:**

If someone has no money, what is the cap?

**The Chairperson:**

But we are talking about the complainant.

**Mr W Clarke:**

I understand, but may I get some clarification before you move on, Chairperson?

**The Chairperson:**

OK.

**Mr W Clarke:**

There is, again, a question over the complainant's ability to pay. We could have somebody with very little disposable income whose whole life, their human rights, are being ruined by a 30 ft or 40 ft hedge, and they are unable to take action, get the council involved or instigate mediation because they have not got the fee in the first place. So that fee must be means-tested.

**Ms H Anderson:**

That is how it is set up in the legislation at the minute: it is means-tested for the complainant.

**The Chairperson:**

Thanks very much for that clarification.

**Mr W Clarke:**

Dead on. That deals with that first part.

**The Chairperson:**

Far be it for me to argue with my colleague.

**Mr W Clarke:**

I am trying to get clarity, because we are all round the place here.

**Mr McGlone:**

We cannot see the woods for the hedge.

**Mr W Clarke:**

The mediation process will take place, and that will be followed by a recommendation by the council on what action should be taken. It will recommend whether the hedge should be taken down, for instance. At that stage, it could be part of the leverage. The hedge owner would be informed that if they do not take immediate action, they will take on the fee of the complainant.

**Ms H Anderson:**

The fee would have already been paid by the complainant. If it were deemed that the hedge owner needed to take down the hedge, the hedge owner would have to pay.

**Mr Byrne:**

The complainant would pay the fee for the service. Effectively, it is means-tested. There is a discretionary element to the fee that they would have to pay. That is for a service. It is proposed

that if the hedge owner has found that they are required to carry out the work, the fee that the complainant paid would be refunded, and the cost would be transferred to the hedge owner.

**Mr T Clarke:**

Hopefully, this amendment will be included in the Bill. Clear guidance would be useful when the Bill gets rolled out. For instance, the person with the problem hedge should be aware when approached that they could be in default and might have to pay the money back. Therefore, it is not as if there would be any misunderstanding. Everyone should take action when the informal process starts. If people were responsible, we would never get into a formal process. The council should give guidance to the person who wants to make the complaint, and that person must ensure that they follow the guidance and the proper steps before councils get involved. If everybody steps up and does their bit, we should never be at the formal stage. Those who want to continue to fight and twist deserve to get whatever fines come down the road for them.

**Mr W Clarke:**

I agree with Trevor in that regard. In cases that I have been dealing with, the person making the complaint is willing to cut the trees down and take them away. That would not be an issue.

**Mr Byrne:**

May I pose a question?

**The Chairperson:**

Very quickly, because the members will be out cutting down trees soon.

**Mr Byrne:**

Who determines whether the hedge owner has been co-operative?

**Mr T Clarke:**

That is what I was getting at. Clear guidance should be provided by the councils to the complainant on what steps they should follow before they engage the council. One of those steps will, obviously, be a recorded delivery letter. If they can clearly demonstrate to the council that they followed the clear guidelines before the council takes it on, that is fair enough.

**Mr Byrne:**

The onus on ensuring that non-co-operation took place becomes paramount in moving forward with this, because, otherwise, you could be seen to be treating one party unfairly.

**The Chairperson:**

We are getting into mud. We are going round in circles again, but we understand.

Are members content with the Committee amendment to require councils to refund a fee to the complainant where a remedial notice is issued and to charge that fee to the hedge owner?

*Members indicated assent.*

**The Chairperson:**

I remind members that a second issue on this clause was the introduction of an upper limit or a cap —

**Mr W Clarke:**

I am not content, because it comes back to the hedge owner's ability to pay. You are saying that they have to pay it, no matter what. Am I right in that regard?

**Mr Byrne:**

Yes.

**Mr T Clarke:**

What do you want? Do you want everyone to be able to do whatever they want?

**Mr W Clarke:**

Are you chairing the meeting?

**Mr T Clarke:**

I am asking you a question.

**Mr W Clark:**

Are you chairing the meeting?

**Mr T Clarke:**

No. Are you?

**The Bill Clerk:**

I am happy to explore this with the member separately and see whether there is a possibility of creating an amendment to enable the council to exercise discretion in respect of the transferred fee.

**Mr T Clarke:**

How would they judge that? That is another minefield.

**The Bill Clerk:**

I am prepared to discuss that with the member anyway.

**Mr T Clarke:**

The member could put down a separate amendment of his own.

**The Chairperson:**

I do not have any issues with what you are bringing up, Willie. I would support that, but we do not have time now to amend this amendment, or reword it in any way.

**Mr W Clarke:**

I am happy that the Committee went away and — *[Inaudible due to mobile phone interference.]*

**The Chairperson:**

The second issue under this clause was the introduction of an upper limit or cap on the level of fee charged by councils for a citizen to make a complaint about a high hedge. The Bill provides the power for the Department to do that through regulation, but it indicated to the Committee that it is unlikely to exercise that power unless there is a clear need to do so after the legislation has been operational for some time.

Members were concerned about the level of fees charged by some councils in England, and asked that a draft Committee amendment be drawn up that requires the Department to put in place

a maximum fee. The Committee amendment, which is in members' information packs, sets a cap on complaint fees. In England, the fee is between zero and £650. If you had to pay £650, you would not be making a complaint, to be honest. I find it ridiculous that you would pay £650 to make a complaint. What do members think of the idea of putting a cap on the fee?

**Mr T Clarke:**

Why should there be a variation in the fee? A complaint is a complaint. A council has to take the same action regardless. I do not agree that we should set it at £600. The fee was for the council to assess the situation. We are really asking for a recovery of the council's costs. The council assesses the situation, and arbitrates between itself, the landowner and the complainant. Why should it ever cost £600 to start with? It should be a reasonable fee to start with.

**Ms H Anderson:**

Some of that additional cost may be in a circumstance where you needed to bring in a tree specialist to give advice. For example, a very high hedge may need to be brought down in stages at particular times of the year.

**The Chairperson:**

We asked for the cap because we want a reasonable fee. We did not want to see £600. Have you had any ideas about that?

**Ms Stewart:**

Wales set the limit at £320.

**Mr T Clarke:**

We are in Northern Ireland.

**The Chairperson:**

That is £320 to make a complaint, Jennifer. That is a lot of money.

**Mr McGlone:**

To pick up on what Helen said, if you are going down the route of bringing in arboriculturists and all that, £600 would not start to cover it.

**The Chairperson:**

I do not disagree, but the whole element of this —

**Mr McGlone:**

I am sorry, Chairperson, just to clarify: I am not making that as a case for upping the fee. I am saying that the fee is prohibitive as it is.

**The Chairperson:**

I would say that complaints in England and Wales, especially in England at £600, reduced dramatically by 70% or 80%, but do not quote me on that.

**Ms Stewart:**

I think that the average fee is £340.

**The Chairperson:**

We have to be realistic here. Even £300 —



**Mr T Clarke:**

If a council needed to engage someone, that would probably be only in the defence of the landowner refusing to bring a hedge down to a suitable height. Again, if the person who has to get the hedge cut down wants to make the defence, it is up to them to provide the defence that they will bring their hedge down over time, so they should have to pay to forward that evidence to suggest that they will bring the hedge down to that height in that given time. Other than that, the council can suggest to bring the hedge down to 2 metres.

**Ms H Anderson:**

The way that it is currently envisaged, and my understanding of the way that it happens in England, is that the remediation notice will indicate exactly how the hedge is to be brought down, and that could involve staging. There is a desire not to kill off anybody's hedge by requiring them to reduce the height of it too much at one time, or at an inappropriate time of the year. That is not always the case. It will very much depend on the circumstances. The discretionary element allows councils to charge whatever they deem reasonable in the circumstances.

**The Chairperson:**

Where are all the councillors? How many members here are still on councils? Let us get a view on this.

**Mr Kinahan:**

If trees end up being involved, there needs to be discretion for a higher figure because a whole different world of costs and expenses will be involved.

**Mr T Clarke:**

It is not all trees, Danny; it is evergreens.

**Mr Kinahan:**

It is all the same thing if they are big.

**Mr T Clarke:**

What about a leylandii?

**Mr Kinahan:**

A huge leylandii hedge would be very expensive to cut and trim. It is not an easy job.

**The Chairperson:**

Jennifer, you made some indication of fees. Was it £200 or £300?

**Mr Byrne:**

The average fee that was quoted in the public consultation was £320.

**Mr T Clarke:**

Given that local government will administer this part of the legislation, was NILGA asked for its opinion on a fee?

**The Chairperson:**

NILGA responded. Do you recollect what it said?

**Ms Stewart:**

NILGA hoped that councils would work within the existing structures and that they would try to agree and — *[Inaudible due to mobile phone interference.]*

**The Chairperson:**

For clarification, before I let you in, Paul, NILGA stated:

“DOE should set a maximum fee and allow council discretion for concessions and refunds”.

**Mr T Clarke:**

Did it suggest what the maximum fee should be?

**The Chairperson:**

No.

**Mr Kinahan:**

The discretion, surely, is the key to the whole matter.

**The Chairperson:**

We are content with the amendment. There is a suggestion that the fee should be capped. You mentioned £320; is that an average?

**Mr Byrne:**

Yes; £300 or £320 seems to be reasonable given the average across England and Wales.

**Ms H Anderson:**

We should point out that the figures that we are talking about have not been put to the Minister because the intention was to bring forward the legislation and work with the NILGA set-up to see whether councils could work out a figure among themselves and, if necessary, bring forward subordinate legislation to set that fee in future. The Minister has not been involved in this

discussion.

**The Chairperson:**

Obviously, it is through secondary legislation, which we would have a look at. It would go to consultation to see exactly what that fee would be. Is that correct?

**Ms H Anderson:**

Yes. As it stands currently, it is not mandatory for us to consult. However, in light of the strong views in that regard, the Department would likely opt to. If there is a consultation, that will take a longer period of time. I am conscious that the Assembly has had issues in ensuring that bits of subordinate legislation that are necessary for the commencement are in place in the same time frame. We do not have to consult on that, but if the Committee feels strongly that there should be consultation before any figure is set in those regulations, that would elongate the timeline.

**The Chairperson:**

Why can the Department not cap it?

**Ms H Anderson:**

It could, but we have not yet had the conversation about capping the fee with the Minister. I think that it was only last night that we received the notification from the Committee about that issue.

**Mr McGlone:**

I do not see any particular need to consult. That would delay things again. I am trying to distil everything in my mind. We either support the amendment or we do not. We can make a suggestion for the capping level.

**The Chairperson:**

We would like the Department to cap it. It is talking about £320. I will ask for the views of the Committee, but I would prefer an amount less than £320. We are asking the Department to set a cap on it. Whatever that fee may be, we can make suggestions.

**Mr McGlone:**

Although it has not been bounced across to the Minister, we have probably got a flavour of the thinking that is going on. It is down to us to ask for a cap to be set on fees.

**The Chairperson:**

That is basically what the amendment says. Are members happy?

**Mr T Clarke:**

But we would like less —

**The Chairperson:**

OK, well, that will come. We are agreed here. We have agreed the transfer and the cap. Is the Committee content with clause 3 subject to the amendments proposed by the Committee to require councils to refund a fee to the complainant where a remedial notice is issued; to charge that fee to the hedge owner; and to require the Department to put in place, by regulation, an upper limit on the level of fee that councils can charge for complaints against a high hedge to be made?

*Members indicated assent.*

*Clause 3 agreed to, subject to the Committee's suggested amendments.*

*Clause 4 (Remedial notices)*

**The Chairperson:**

I remind members that in response to concerns raised on this clause, the Department stated that, to ensure proper maintenance of the hedge for the future, the remedial notice will specify the remedial action required; the timescale within which that should be carried out; and any ongoing maintenance requirements. If a hedge is extremely high, the remedial notice may also state that the height of the hedge should be reduced in stages over a specific period of time. The Department considered the possibility of using fixed-penalty notices for non-compliance, and has obviously discounted that option.

Members, we were previously content with the clause. Unless there are any comments, I will put the question. Is the Committee content with clause 4 as drafted?

*Members indicated assent.*

*Clause 4 agreed to.*

**Mr T Clarke:**

Chair, just to go back to staged dropping of the tree: how will that be ascertained?

**Mr Byrne:**

The staging will be ascertained through the council's employing an expert or making the determination itself. It is important to remember that no remedial action can result in the deliberate killing off of the hedge; that is the reason for the staging. A very high hedge would have to be reduced in stages, because if too much foliage was taken away at any one time, the hedge is likely to be killed off.

**Mr T Clarke:**

Would the council still be covered for recovering that?

**Mr Byrne:**

No, there is no mechanism for the council to recover the fee for the determination.

**Mr T Clarke:**

You said that they could bring in an expert.

**Mr Byrne:**

There will be a set administrative fee for bringing in the expert. The amendment will mean that that set fee can be recovered from the hedge owner.

*Clause 5 (Withdrawal or relaxation of requirements of remedial notice)*

**The Chairperson:**

No issues were raised with this clause. Is the Committee content with clause 5 as drafted?

*Members indicated assent.*

*Clause 5 agreed to.*

**The Chairperson:**

Thank you, gentlemen. Please speak up for the benefit of Hansard; “content” or “agreed” will do.

**Mr T Clarke:**

Does clause 5 give the council the power to withdraw the notice?

**Mr Byrne:**

Yes.

**Mr T Clarke:**

So, who pays there? If we go back to where we were earlier, the complainant pays on receipt of the notice to do something about it, then the complainant gets their money back and now we are going to withdraw the notice after it has been served. What happens about fees?

**Mr Byrne:**

That was one of the reasons why we rejected the first option, which was the transferral of the fees, because it introduces so many complications. The transfer of the fee would have to be made when the remedial notice became effective after any appeal would have taken place, so there are added complications with transferring a fee.

**Mr T Clarke:**

I understand that, but why would we ever have the withdrawal or relaxation of a notice once it has been served? What is the purpose of that?

**Mr Byrne:**

If the two neighbours decide that they have a different solution, the serving of the remedial notice places a legal obligation on the hedge owner.



If the neighbours agree a different solution and go to the council, the council has to have the power to be able to withdraw that notice because it is no longer a neighbours' dispute because they have agreed a different solution. It could be to leave the hedge, to totally remove the hedge, or something in between.

**Ms Stewart:**

While the remedial notice is effective it remains a statutory charge on the hedge owner's property.

**The Chairperson:**

Bear in mind, members, that we have gone through this and did not have any issue with it. We had a clear explanation the last time, but thanks for the clarification again.

**Mr McGlone:**

I was looking for a bit of clarity on that myself. If, for example, a case goes for an appeal, does that clause empower the withdrawal of the remedial notice, or is the appeal itself empowered to neutralise, emasculate, reduce or whatever? This is separate, is it?

**Mr Byrne:**

It is separate. The appeal can alter the remedial notice, withdraw it or strengthen it. That is a separate matter. This clause will actually give the council the power to change, withdraw or relax the remedial notice.

***Clause 6 (Appeals against remedial notices and other decisions of councils)***

**The Chairperson:**

Guidance is currently being drafted in relation to the clause. The Department is engaging with

the NI Courts and Tribunals Service and has held discussions with the NI Valuation Tribunal and taken account of all the concerns. Before I put the question, do members wish to seek clarification?

**Mr McGlone:**

To return to the appeals issue, I see that clause 6 states:

“Where the council —

(a) issues a remedial notice,

(b) withdraws such a notice, or

(c) waives or relaxes the requirements of such a notice,”

You have just outlined the circumstances under which a council might withdraw, waive or relax the requirements of such a notice. Built into that is some sort of compatibility, compromise or agreement that both parties who could be subject to either the pursuant of that notice or compliance of that notice would be, if you like, empowered or covered by that withdrawal or relaxation of the requirements of the remedial notice. I am just intrigued about the circumstances under which there might be an appeal of the withdrawal, waiving or relaxing of such a notice.

**Ms H Anderson:**

The complainant.

**Mr McGlone:**

What I picked up earlier — perhaps I picked it up wrongly — was that, if the withdrawal or relaxation of the remedial notice had been done, one would presume that there would either be mediation, co-operation or collaboration between both parties. If you built in the appeal scenario to appeal against the withdrawal, waiving or relaxation of those requirements, you do not have much faith in what has preceded that.

**Mr Byrne:**

We do have faith in what has preceded it, but it is allowing the —

**Mr McGlone:**

Just if?

**Mr Byrne:**

Just if, yes. It really is allowing for the “just if”. It is most likely that the appeals will be against the issue of the remedial notice or non-issue of the remedial notice, where both parties are not in agreement. If both parties are in agreement, it is unlikely that there will be an appeal, but we have to allow it, just in case they fall out again.

**Mr T Clarke:**

I still have a problem with that, because when I asked the question, it was about circumstances where there had been consent by the two parties. Like Patsy, I cannot understand why it is in there. Surely there should be something in clause 5 about how the withdrawal or relaxation can come about.

**Ms H Anderson:**

There might potentially be a situation in which the council becomes aware of other information. Again, it is a hedge.

**Mr T Clarke:**

If that is the case, it means that the council did not discharge its duty when it made the first notice. We are actually giving a get-out clause to the council. When I asked the question on that issue, I was told that it would occur when some deal had been done between the landowner and

the complainant. It now seems that that is not the case, because you have also built in an appeal mechanism for someone to appeal against a withdrawal.

I am a wee bit concerned. Either it is done by the mutual consent of the complainant and landowner, or it is not, and that should be the only reason for a withdrawal. Before serving a notice, a council should have followed all paths open to it. Councils should not have a get-out clause either.

**Ms H Anderson:**

I appreciate that the Committee is very keen to wrap this up today. If you let us consider that point this afternoon, we will come back to you tomorrow morning with clarification.

**The Chairperson:**

We were hoping to get through this today. I have to say, gentlemen, that none of those points were raised last time. We had no issue with it, but now we have established an issue with it. We need to report by 17 December. Is there any chance of you coming up to Limavady?

**Ms H Anderson:**

We are checking the guidance to see if we can clarify the matter before we leave.

**The Chairperson:**

OK. Time is running out for us to report. We will pause for a while.

**Ms H Anderson:**

We have checked the guidance. It is where there is a correction of an error. If a council has

made a mistake in a remedial notice, it should withdraw it and issue a new one as soon as the error comes to its attention. Any alteration to the contents of a notice will usually require consequential changes to the operative date. So that is what that is about —

**Mr T Clarke:**

I am not a happy bunny. I asked a question, which will be in the Hansard report, and the answer I got was not a reflection of that. How much is the Department up to speed on its own Bill? The question was about clause 5: I was wondering why we have withdrawal notices? If Patsy McGlone had not seen that there is a mechanism for an appeal against a withdrawal, we would not have had that answer. What is the purpose of us scrutinising a Bill if the Department is not even up to speed on it? We seem to be rushing this stage in order to meet a deadline, but we are not giving the Bill the due care and attention that it needs.

**Ms H Anderson:**

I apologise, and I take your point.

**The Chairperson:**

That is fine, and I am not making apologies for anybody, but I will say that this is the formal clause-by-clause scrutiny process. I cannot even put it down to an oversight, because a clear explanation was given the last day you were here, and obviously members did not pick up on it. However, that is not the point. We have a date by which we need to report, but, unfortunately, we cannot go on today. It is now 2.00 pm. We need you to come to Limavady.

**Ms H Anderson:**

On Thursday?

**The Chairperson:**

Yes, on Thursday. We need to go through this again, so we need a proper explanation in response to the questions asked.

**Ms H Anderson:**

Again, I apologise on behalf of the Department.

**The Chairperson:**

We will stop now and revisit the matter on Thursday. Thank you very much.