

Committee for the Environment

Report on the High Hedges Bill (NIA 15/09)

Together with the Minutes of Proceedings, Minutes of Evidence and
Written Submissions Relating to the Report

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Session 2010/2011

Third Report

Membership and Powers

The Committee for the Environment is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

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- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of the Environment

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5. The membership of the Committee since 9 May 2007 has been as follows:

Mr Cathal Boylan (Chairperson) 9
Mr Thomas Buchanan 7, 8, 13
Mr Trevor Clarke 15
Mr Willie Clarke 14
Mr John Dallat 5
Mr Danny Kinahan 3, 4
Mr Patsy McGlone (Deputy Chairperson) 6, 9, 10, 12
Mr Alastair Ross 1
Mr George Savage 2, 16
Mr Peter Weir
Mr Brian Wilson 11

- 1 On 21 January 2008, Alastair Ross was appointed as a Member and Mr Alex Maskey ceased to be a Member.
- 2 On 15 September 2008 Mr Roy Beggs replaced Mr Sam Gardiner.
- 3 On 29 September 2008 Mr David McClarty replaced Mr Billy Armstrong.
- 4 On 22 June 2009 Mr Danny Kinahan replaced Mr David McClarty.
- 5 On 29 June 2009 Mr John Dallat replaced Mr Tommy Gallagher.
- 6 On 3 July 2009 Mrs Dolores Kelly replaced Mr Patsy McGlone as Chairperson.
- 7 On 14 September 2009 Mr Adrian McQuillan replaced Mr Trevor Clarke.
- 8 On 1 February 2010 Jonathan Bell replaced Mr Adrian McQuillan.
- 9 On 12 April 2010 Mr Cathal Boylan was appointed as Chairperson and Mrs Dolores Kelly ceased to be a Member.
- 10 On 12 April 2010 Mr Dominic Bradley was appointed as Deputy Chairperson.
- 11 On 13 April 2010 Mr Brian Wilson was appointed as a Member and Mr David Ford ceased to be a Member.
- 12 On 21 May 2010 Mr Patsy McGlone replaced Mr Dominic Bradley as Deputy Chairperson
- 13 On 13th September 2010 Mr Thomas Buchanan replaced Mr Jonathan Bell
- 14 On 13th September 2010 Mr Willie Clarke replaced Mr Daithi McKay
- 15 On 13th September 2010 Mr Trevor Clarke replaced Mr Ian McCrea
- 16 On 1 November 2010 Mr George Savage replaced Mr Roy Beggs

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Executive Summary

Purpose

This report sets out the Committee for the Environment's consideration of the High Hedges Bill.

Members sought a balanced range of views as part of their deliberations on the High Hedges Bill and requested evidence from interested organisations and individuals as well as from the Department of the Environment.

The Committee made four recommendations having identified the following key issues.

Key issues

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- Delegated powers of the Bill
- Extending the Bill beyond domestic properties (Clause 1)
- Definition of 'reasonable enjoyment' (Clause 1)
- Protecting established forests and woodland and ancient trees (Clause 2)
- Assessing a problem hedge (Clause 2)
- Scope of the Bill (Clause 2)
- Fees for complaints (Clause 3)
- Requiring Departmental regulations to set a cap on fees (Clause 3)
- Mediation (Clause 3)
- Fixed penalties (Clauses 3 and 9)

- Hedge removal (Clause 4)
- Protecting biodiversity in remedial notices (Clause 4)
- Appeals process (Clause 6)
- Powers of entry (Clause 8)
- Action by council (Clause 11)
- Vacant land (General)
- Guidance (General)
- Training (General)
- Hedges owned by local authorities (General)

Delegated powers of the Bill

The Committee sought advice from the Examiner of Statutory Rules in relation to the delegated powers within the Bill. The Examiner advised that the Bill contained several powers to make subordinate legislation, all of which provided appropriate levels of scrutiny to the Assembly.

Extending the Bill beyond domestic properties (Clause 1)

The Committee considered the extension of the Bill to properties affected by a high hedge other than those described as 'domestic'. The Committee was advised that the primary focus of the Bill is to resolve disputes between neighbours over the height of an adjacent hedge. The Committee accepted the Department's rationale.

Definition of 'reasonable enjoyment' (Clause 1)

A problem high hedge is to be assessed in terms of how it affects the complainant's 'reasonable enjoyment' of their domestic property and 'reasonable enjoyment' refers to the enjoyment of a property by a person having access to light. The Department suggested that it would be legally difficult to provide an exhaustive definition that would encompass every situation and that it will be a matter of judgement for the council to strike a balance between the hedge owner, the complainant and the possible detrimental impact on the individual property.

The Committee agreed that it should stress the importance of giving councils certainty with regard to interpretation of 'reasonable enjoyment' and recommends that comprehensive technical guidance is issued on commencement of the Bill.

Protecting established forests and woodland and ancient trees (Clause 2)

Several organisations were concerned about the impact of the Bill on long-established woodland and ancient trees. The Department advised that subsection 4 of Clause 2 exempts areas of 0.2 hectares or more that are forest or woodland which is in line with the Forestry Act (Northern Ireland). Furthermore, ancient trees tend to be single and deciduous and would therefore be excluded from the Bill. The Committee was content with the Department's response.

Assessing a problem hedge (Clause 2)

Some individuals were keen for the Committee to establish what factors would be taken into account when a problem high hedge was being assessed. In particular there were concerns about the distance of a problem hedge from a complainant's house, the height differences between the affected houses and the distances between trees that form a problem hedge.

The Department stressed that the barrier to light will be the determining factor and the Committee was content with this explanation.

Scope of the Bill (Clause 2)

Several organisations were disappointed that the Bill would not be covering single trees and other problems associated with hedges and trees such as roots, overhanging branches and fallen leaves. Research and Library Service advised the Committee that even though not all councils recorded high hedge/tall tree complaints a significant proportion of complaints received by councils related to single trees rather than hedges.

Having ascertained that single ancient or deciduous trees would not be affected the Committee asked the Department to reconsider the inclusion of single evergreen/semi-evergreen trees in the Bill. The Committee considered the Department's response which indicated it was not willing to extend the scope and agreed to a Committee amendment to include single evergreen and semi-evergreen trees within the scope of the Bill.

The Committee also agreed that if this Committee amendment is subsequently ruled out of scope of the Bill, to recommend that the Department should recognise the need for legislation to be brought forward promptly to address the detrimental impact on reasonable enjoyment of properties cause by single evergreen or semi-evergreen trees.

Fees for complaints (Clause 3)

Several councils were concerned that requiring complainants to pay a fee is against local government practice and contradicts the 'polluter pays principle'.

In response the Department stated that any fee levied is entirely at the discretion of the council. The response pointed out that the payment of a complaints fee means that the cost does not fall to wider ratepayers who do not derive any benefit from the council's intervention and stressed that it is not an offence to grow a hedge and there is no innocent or guilty party. Complaints fees are also intended to deter frivolous or vexatious complaints.

Members remained convinced that it would be most appropriate for councils to be required to refund fees should a complaint be upheld. The Department stressed that the discretionary power contained within the Bill as drafted allows councils to recover their costs and also to have the effect of deterring frivolous or malicious complaints. The fee would be a payment for a service provided to the complainant and not a penalty imposed on any party. The council, if it wished could choose to waive or reduce the level of fee to take account of the circumstances of the complainant. The Bill also makes provision for the fee to be refunded at the discretion of the council.

The Committee recognised however that by simply allowing the council to make a refund to a successful complainant without recouping it from the hedge owner would result in the rate payer bearing the burden of the refund. The Committee was not content for this to be the case and agreed to recommend that the Bill should be amended to make provision for a complaint fee to be passed to the hedge owner in the event of a complaint being upheld.

Requiring Departmental regulations to set a cap on fees

The Bill includes a power for the Department to limit the level of fees but it indicated to the Committee that it was unlikely to do this unless there was a clear need to do so after the legislation had been operational for some time. The Department is hopeful that a consistent

approach between councils can be developed as it is likely that councils will administer the high hedge complaints through existing environmental health group structures.

The Committee agreed that to prevent councils putting prohibitive fees in place and avoid the wide variation seen across England, a cap should be placed on the fee charged by a council for a complaint against a high hedge. The Committee recognised it was not in a position to recommend what that upper limit should be so agreed to recommend that the Department should be required via an amendment to invoke the existing regulations to set a cap on fees.

Mediation

Mediation NI suggested to the Committee that there could be a quid pro quo arrangement among councils where trained staff mediated for one another. It was unlikely that any one council could justify the costs of training and retaining specialist mediators just for high hedge complaints. Alternatively, there could be a central service providing volunteer mediators who would be independent of the council or any agency, and supported with a service level agreement that could be core-funded.

The Department indicated that it is not its intention to fund a mediation service since both commercial and voluntary mediation services are already available. Mediation may be informal, facilitated by a 'neutral' person known to both parties. The Department also stressed that the Bill does not require mediation prior to making a complaint, it merely suggests it as a method of attempting to resolve a problem before involving the council and the Committee accepted the Department's response.

Fixed Penalties (Clauses 3 and 9)

It was suggested that councils needed a fixed penalty power to use as an enforcement tool in the event of non-compliance with a remedial notice. There was concern that courts do not deal strongly with minor environmental offences and the threat of bringing an individual to court will not be a deterrent; rather, it will act only as a drain on expenses, time and council resources.

The Department stated that it considered the possibility of using Fixed Penalty Notices but discounted this option because the hedge owner could pay the fixed penalty notice but still fail to carry out the remedial action. There would then be no mechanism available to enforce the remedial notice. To provide a suitable deterrent the fixed penalty notice would need to be set at a level greater than the cost of the remedial works. If the hedge owner does not take remedial action, the council has the option of performing the works in default and registering the costs as a statutory charge on the hedge owner's property. The Committee accepted the Department's response.

Hedge removal (Clause 4)

There was concern that there was no provision in the Bill for councils to remove a hedge. The Department replied that the legislation provides only for the height of a hedge to be reduced and that it could have an excessive impact on the entitlement to the peaceful enjoyment of a person's possessions to require complete removal of the hedge. The Committee accepted the Department's explanation.

Protecting biodiversity in remedial notices (Clause 4)

Several councils and environmental organisations, including the Council for Nature Conservation and the Countryside (CNCC), stressed the importance of councils acknowledging the need to protect biodiversity when issuing remedial notices. CNCC suggested that the Bill should include a reference to the new duty on local authorities to protect biodiversity.

The Department reassured the Committee that protection of biodiversity will be included in the guidance documents and noted that there is already legislative protection for wildlife and biodiversity. The Committee accepted the Department's response.

Appeals Process (Clause 6)

In its response to the Committee's call for evidence, the Northern Ireland Valuation Tribunal (NIVT) had concerns at the prospect of valuation members, sitting as sole members of the NIVT in this discrete jurisdictional area, being required to undertake work which is quite outside the valuation members' ambit or range of competence or area of technical expertise, skill and training.

In addition the Committee suggested that decision letters issued by councils show lack of knowledge of high hedge law which was possibly because appeal decisions are not publicised and noted that a third of appeal decisions in England resulted in a changed decision. Members were also concerned that the appeals process could become costly with people hiring lawyers to fight their case.

The Department stated that guidance is currently being drafted and that it is engaging with the Northern Ireland Courts and Tribunals Service (NICTS) and has held discussions with the NIVT and taken account of their concerns. It has been agreed that the High Hedge Appeals will normally be dealt with by 2 members of the Tribunal – the legal member and the valuation member. The draft amending Tribunal Rules are currently being considered by NICTS legal advisors and it will be the responsibility of the Department of Justice to progress this legislation with appropriate support from the Department. The Committee was content with the response.

Powers of Entry (Clause 8)

Several respondents had concerns about the proposals and felt that clarification was required in relation to the powers of entry and the requirement to give the occupier of land 24 hours notice. Councils felt that council officers should be permitted to enter any land to enable proper assessment and that notice should only have to be given where necessary. One council felt that giving 24 hours notice to all occupiers involved additional bureaucracy.

The Department replied that that, given the need for respect for privacy and family life, reasonable notice of intended entry needs to be given to an occupier of land and 24 hours is standard practice. It is not necessary to give notice to an owner who is not an occupier of the land in question and notice does not have to be given if an officer is invited onto the land. The Committee accepted this response.

Action by Council (Clause 11)

The provision that councils will not be liable for damage in respect to any hedge was welcomed by most respondents who also felt this should be extended to the situation where work specified in a remedial notice causes a hedge to die after it has been reduced in height. Most respondents also agreed that placing a charge on a property to cover costs is not usually a successful means of cost recovery but that the facility should be included in the legislation and the charge should include the cost of registering the charge on the property.

The Department's reply stated that this issue will be included in the guidance but it should be noted that councils have protection from liability for non-negligent actions in Clause 11(10).

Vacant Land (General)

Vacant land remains a problem as it is difficult to identify the owners of vacant plots and makes enforcement more difficult. Councils felt that where landowners are impossible to trace it would be much more cost effective to remove a hedge altogether, rather than have the council, and ultimately the ratepayer, bear the cost of ongoing maintenance. A major concern was that the Department will expect councils to act in default where a property is vacant and there is no traceable owner without additional resources being made available to them and little prospect of recovering costs.

The Department indicated that the removal of a hedge without the hedge-owner's permission would constitute criminal damage and stressed that the Bill does not place any obligation on councils to act in the default situation. The Committee accepted the Department's explanations in relation to this clause.

Guidance (General)

Most respondents to the Committee's call for evidence stated that guidance from the Department is essential to help those adversely affected by a neighbouring high hedge to make a complaint to their local council and for council officers investigating complaints, including clarification on what constitutes mediation prior to a complaint. It was felt that guidance was also needed on how to deal with complaints relating to vacant land or land with no identifiable owner. The Committee welcomed the Department's commitment to issuing guidance and urged the Department to have it prepared in readiness for commencement of the legislation.

Training (General)

Most respondents called for training on simple matters such as tree species, and also around the sorts of remediation that may be required and the respondents felt it was important that council officers receive training before the legislation commences. The Department stated that it intends to produce guidance in advance of the legislation coming into operation and will deliver a training seminar for council officials and the Committee accepted this.

Hedges owned by local authorities (General)

In the event of a hedge owned by the local authority being complained about, the Department advised that council officers would investigate the complaint in the normal manner but there would have to be attempts to resolve the matter in advance of a formal complaint. The Department also noted that there would still be the appeals mechanism if a complainant felt that their complaint had not been dealt with appropriately. The Committee was content with this response.

Recommendations

The need for technical guidance (Clause 1)

The Committee recommends that comprehensive technical guidance is provided to give councils certainty with regard to interpretation of 'reasonable enjoyment' and must be issued prior to, or simultaneously with, commencement of the Bill.

Extending the Bill to include single trees (evergreen or semi-evergreen) (Clause 2)

The Committee recommends that the scope of the Bill is extended to single evergreen or semi-evergreen trees. On 7 December 2010 the Committee agreed the following amendment accordingly:

Clause 2, page 2, line 28

At end insert-

'Tall trees

2A. This Act applies to single evergreen or semi-evergreen trees as it does to high hedges'

If this amendment is subsequently ruled to be out of scope of the Bill, the Committee recommends that the Department takes prompt action to introduce legislation that will address the issue of single evergreen and semi-evergreen trees that impact detrimentally on a person's reasonable enjoyment of their property.

Refund of fee / charging fee to owner of neighbouring land (Clause 3)

The Committee recommends that the Bill should be amended to make provision for a complaint fee to be passed to the hedge owner in the event of a complaint being upheld as follows:

Clause 3, page 3, line 29

Leave out from 'may' to the end of line 30 and insert 'shall be refunded where a remedial notice is issued under subsection (4) or section 7(2)(c).

Clause 3, page 3, line 30

At end insert-

'() Where a council refunds a fee to a complainant under subsection (8), the council shall charge the fee determined under subsection (1)(b) to the owner of the neighbouring land.'

Requiring Departmental regulations to set a cap on fees (Clause 3)

The Committee recommends that the Department should be required to put an upper limit on the amount a council can charge for a complaint to be made against a high hedge with the following amendment:

Clause 3, page3, line 27

Leave out subsection (7) and insert-

'(7) Regulations made by the Department shall prescribe the maximum fee that can be charged by a council under subsection (1)(b).'

Introduction

1. The High Hedges Bill was referred to the Committee for the Environment for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 11 May 2010.

2. The Minister of the Environment (the Minister) made the following statement under section 9 of the Northern Ireland Act 1998:

'In my view the High Hedges Bill would be within the legislative competence of the Northern Ireland Assembly'.

3. The Bill will introduce a system to encourage high hedge problem issues to be resolved through neighbourly discussion or mediation, and failing that, the facility for persons alleging that they are suffering detriment due to a neighbouring evergreen/semi-evergreen high hedge to lodge a formal complaint with their local council.

4. During the period covered by this Report, the Committee considered the Bill and related issues at meetings on 7 January 2010, 15 April 2010, 20 May 2010, 1 July 2010, 9 September 2010, 30 September 2010, 7 October 2010, 14 October 2010, 18 November 2010, 2 December 2010, 7 December 2010 and 9 December 2010. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1.

5. The Committee had before it the High Hedges Bill (NIA 15/09) and the Explanatory and Financial Memorandum that accompanied the Bill.

6. On referral of the Bill to the Committee after Second Stage, the Committee inserted advertisements on 25 May 2010 in the Belfast Telegraph, Belfast Telegraph North West edition, Irish News and News Letter seeking written evidence on the Bill.

7. A total of 18 organisations and individuals responded to the request for written evidence and copies of the submissions received by the Committee are included at Appendix 3.

8. The Committee was first briefed by officials about the consultation stages and policy development of the policy areas covered by the Bill on 15 April 2010. The Committee was also briefed by NILGA, Banbridge District Council, Mediation NI and Carrickfergus Borough Council.

9. The Committee began its formal clause by clause scrutiny of the Bill on 7 December 2010 and concluded this on 9 December 2010.

Extension of Committee Stage of the Bill

10. On 7 June 2010, the Assembly agreed to extend the Committee Stage of the Bill to 17 December 2010.

Report on the High Hedges Bill

11. At its meeting on 16 December 2010 the Committee agreed its report on the Bill and agreed that it should be printed.

Consideration of the Bill by the Committee

The Bill consists of 20 Clauses.

Departmental briefing on the draft High Hedges Bill, 15 April 2010

Departmental officials briefed the Committee on the consultation on the draft Bill at its meeting on 15 April 2010. The officials informed the Committee that over 100 responses had been received which were generally supportive of the Bill.

Officials considered all the points that were raised in the public consultation and recommended changes to the Minister.

The Department gave an assurance that it will work closely with councils and NILGA to develop guidance so that, between now and the time when the draft Bill comes into operation, guidance will be provided for complainants and councils and on the appeals function and any other aspect that emerge as a result of discussions.

The main areas of discussion at the meeting were vacant land, fees, the appeals mechanism and the mediation process.

NILGA briefing on the High Hedges Bill, 30 September 2010

NILGA officials briefed the Committee on the Bill at its meeting on 30 September 2010.

NILGA stated it had concerns in relation clause 2 and the limitations of the remit of the proposed legislation as it was clear that the legislation as it stands would not deal with all complaints such as problematic root systems, deciduous hedges or single trees.

The organisation also had concerns about fees and charging with the most serious local government concern being the proposed innovative approach to charging which runs contrary to existing local government practices and the wider polluter-pays principle. NILGA stated it was concerned that the system is an awkward fit with other council functions, even though it is a means of ensuring that all ratepayers do not shoulder the cost of an individual's problem.

NILGA stated it had ensured that local government is working closely with the Department to develop guidance and to ensure that the fees set are as realistic and consistent as possible. NILGA is seeking to avoid a scenario in which the complainant ends up paying more than the hedge owner in the event of a justified complaint.

Banbridge District Council briefing on the High Hedges Bill, 30 September 2010

Banbridge District Council officials briefed the Committee on the Bill at its meeting on 30 September 2010.

Council officials stated that Banbridge District Council advocates the use of fixed penalty notices as a formal enforcement tool as they can be used to avoid the need to take those who commit offences to court. In its view a fixed penalty notice would provide a deterrent and a more efficient means of dealing with non-compliance in the first instance.

In regards to mediation, Banbridge District Council stated that there is more work to be done in ensuring that mediation services are publicised, readily available, accessible, capable of dealing with the potential demand, and will operate at low or no cost.

The Council feels that the concept of levying a fee on the person who wishes to make a complaint about a high hedge is unfamiliar to council members and the public. At the consultation stage, it did not support the power to levy fees on someone who makes a complaint, on the basis that no fee is charged if a complainant wishes to bring any other matter to the attention of the council. Increasingly, however, the Council believes that there is a better understanding of the reasoning behind the power given to councils to levy fees, and the role of the council in the legislation is to act as an independent and impartial third party.

The officials also stated that, as this is a new legislative duty for councils, and in the absence of any new-burden funding, they believe that there will be an increasing realisation of the need to secure some level of cost recovery for the council, particularly where it may have to buy in specialist advice.

Mediation NI briefing on the High Hedges Bill, 7 October 2010

Mediation NI officials briefed the Committee on the Bill at its meeting on 7 October 2010.

The organisation stated that it supported the thinking and the proposed procedures to handle conflict in the Bill.

Mediation NI felt that many models could be considered in the context of the Bill. The first of these is a council or councils using in-house mediators, with each council looking after provision itself. Secondly, councils could support the development of teams of local volunteers to deliver mediation, and, thirdly, councils could signpost people to privately provided — market-driven — mediation providers.

The organisation felt that another possibility is a shared-service approach, with a regional provider that councils could use which could be an in-house approach; for example, some local government areas have staff who are trained mediators, and they could be used in another council area. There could be a quid pro quo arrangement among councils so that staff could go and mediate on situations for one other.

Alternatively, there could be a central service providing volunteer mediators who are independent of the council or any other agency, with some kind of service level agreement that could be core-funded. Councils could decide to leave it to a professional regional provider, and have a service level agreement with it, or leave it to market forces. Mediation NI's recommendation is that a structure for the use of a regional service providing volunteer mediators would probably be the most efficient and effective way of providing the resource that the legislation needs.

Carrickfergus Borough Council briefing on the High Hedges Bill, 7 October 2010

Carrickfergus Borough Council briefed the Committee on the Bill at its meeting on 7 October 2010.

The Council official stated that Carrickfergus Borough Council broadly welcomed the introduction of legislation to deal with problematic high hedges but there were a number of concerns.

The idea of making a complainant pay to make a complaint is contrary to the Council's normal environmental health practices and is something with which they are not familiar. Officers may feel uncomfortable with a situation in which the Council might be perceived to be allowing only the more affluent members of the community to make a complaint.

The Council official stated that, if at all possible, Carrickfergus Borough Council would like any financial burden to fall on hedge owners and not on the council. If fees were introduced for making a complaint, the Council would welcome the opportunity to set fees at levels that it deems appropriate.

The Council stated it also supports the introduction of a standardised high hedge complaint form which, as well as aiding enforcement and ensuring consistency across all councils, would help to reduce the number of vexatious complaints that are made.

In relation to enforcement, the Council would welcome further exploration into the possibility of providing council officers with powers to serve fixed penalty notices for non-compliance with aspects of the legislation.

In regards to mediation, Carrickfergus Borough Council experience has shown that the quality of service that is provided can vary greatly from one organisation to another. Experience has also shown that not all organisations that it has engaged have been found to be impartial, in that some have political agendas that they wish to push through.

Key Issues

During its consideration of oral and written evidence from interested individuals and organisations the Committee identified a number of key issues on which further advice was sought from the Department, the Examiner of Statutory Rules, Assembly Research and Library Service and external organisations.

Relating to several clause

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- Delegated powers of the Bill

Relating to Clause 1

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- Extending the Bill beyond domestic properties
- Definition of 'reasonable enjoyment'

Relating to Clause 2

-

- Protecting established forests and woodland and ancient trees
- Assessing a problem hedge
- Scope of the Bill

Relating to Clause 3

-

- Fees for complaints
- Requiring Departmental regulations to set a cap on fees
- Mediation
- Fixed penalties

Relating to Clause 4

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- Hedge removal
- Protecting biodiversity in remedial notices

Relating to Clause 6

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- Appeals process

Relating to Clause 8

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- Powers of entry

Relating to Clause 9

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- Fixed penalties (as for Clause 3)

Relating to Clause 11

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- Action by council

General

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- Vacant land
- Guidance
- Training
- Hedges owned by local authorities

Delegated powers of the Bill

The Committee sought advice from the Examiner of Statutory Rules in relation to the delegated powers within the Bill. The Examiner advised that the Bill contained several powers to make subordinate legislation, all of which provided appropriate levels of scrutiny to the Assembly as follows:

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- Clause 3(7) allows the Department to make regulations subject to negative resolution prescribing the maximum fee a district council may charge for complaints.
- Clause 13(7) and (8) allow the Department to make regulations subject to draft affirmative procedure amending clause 13 (service of documents in electronic form) in certain respects.
- Clause 16 allows the Department to make regulations subject to draft affirmative procedure amending clauses 1 (for the purposes of extending the scope of complaints) and 2 (amending the definition of high hedge).

- Clause 19 provides for commencement orders which according to standard practice, are not subject to any Assembly procedure.

The Committee accepted the Examiner of Statutory Rule's advice.

Extending the Bill beyond domestic properties (Clause 1)

One council suggested to the Committee that the Bill should include other properties affected by a high hedge as well as those described as 'domestic'. The Department indicated that the primary focus of the Bill is to resolve disputes between neighbours over the height of an adjacent hedge. The inclusion of non-domestic properties was raised by very few respondents to the public consultation and the aim of the Bill is to tackle high hedge issues affecting domestic areas.

The Committee accepted the Department's rationale.

Definition of 'reasonable enjoyment' (Clause 1)

The Bill indicates that a problem high hedge is to be assessed in terms of how it affects the complainant's 'reasonable enjoyment' of their domestic property. The Committee asked the Department to define 'reasonable enjoyment' and indicate how it would be measured.

The Department advised that 'reasonable enjoyment' used in the Bill refers to the enjoyment of a property by a person having access to light. The Department suggested that it would be legally difficult to provide an exhaustive definition that would encompass every situation and that it will be a matter of judgement for the council to strike a balance between the hedge owner, the complainant and the possible detrimental impact on the individual property.

The Committee was concerned that this could put councils in a difficult position and result in inconsistent decisions between and within councils. The Committee agreed that it should stress the importance of giving councils certainty with regard to interpretation of 'reasonable enjoyment' and recommends that comprehensive technical guidance is issued on commencement of the Bill.

Protecting established forests and woodland and ancient trees (Clause 2)

Several organisations were concerned that the Bill could lead to the cutting down of long-established woodland and ancient trees. The Department advised that subsection 4 of Clause 2 exempts areas of 0.2 hectares or more that are forest or woodland. This is in line with the Forestry Act (Northern Ireland) and the exemption will therefore cover ancient woodland areas greater than this area. Furthermore, ancient trees tend to be single and deciduous and would therefore be excluded from the Bill.

The Department also noted that Forestry Service has welcomed the exemption for areas of forest or woodland and the Committee was content with the Department's response.

Assessing a problem hedge (Clause 2)

Some individuals were keen for the Committee to establish what factors would be taken into account when a problem high hedge was being assessed. In particular there were concerns

about the distance of a problem hedge from a complainant's house, the height differences between the affected houses and the distances between trees that form a problem hedge.

The Department indicated that distance and height will be considered when assessing the impact of a problem hedge but stressed that the barrier to light will be the determining factor. The Committee was content with this explanation.

Scope of the Bill (Clause 2)

Several organisations were disappointed that the Bill would not be covering single trees and other problems associated with hedges and trees such as roots, overhanging branches and fallen leaves. It was suggested that this lack of scope may lead to many problems brought to councils not being resolved although councils pointed out that the cost of investigating single trees, especially to investigate the integrity of a tree, would be very expensive. One council also stated that to bring single trees or even single evergreen trees into the legislation would widely increase the number of complaints that councils would get. The Committee requested research on the number of complaints received by councils that related to single trees rather than hedges.

Research and Library Service advised the Committee that only rough estimates could be ascertained because not all complaints are consistently recorded by councils. Many councils do not differentiate between complaints relating to hedges or single trees and a number of complaints received by councils are not solely related to the impact of the tree or hedge on light. Bearing these factors in mind, it was still apparent that a significant proportion of complaints received by councils related to single trees rather than hedges (Appendix 5).

Another Assembly Research paper requested by the Committee to look at the impact of similar legislation in England and Wales found that since the law took effect in England, there have been fewer applications to councils than was envisaged. This was deemed to be in part due to growers dealing with the problem rather than getting the council involved. Also, in England no progress has been made concerning 'overhanging' branches' and, in some cases, elderly people are being expected to deal with overhang themselves. (Appendix 5).

The Committee sought reassurance that the Bill would not lead to conflict with planning provisions such as Tree Preservation Orders. The Department responded that guidance would be produced, in association with NILGA, to accompany the legislation and will specifically address the issue of Tree Preservation Orders. It was also noted that Tree Preservation Orders do not usually apply to evergreen or semi-evergreen trees.

Having ascertained that single ancient or deciduous trees would not be affected, at its meeting on 18 November 2010 the Committee asked the Department to reconsider the inclusion of single evergreen/semi-evergreen trees in the Bill.

A response from the Department dated 26 November 2010 indicated 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. The Department was also concerned about the potential Human Rights consequences of such an inclusion. (Appendix 6)

The Committee considered the Department's response which indicated it was not willing to extend the scope and agreed by majority to a Committee amendment to include single evergreen and semi-evergreen trees within the scope of the Bill as follows:

Clause 2, page 2, line 28

At end insert-

'Tall trees

2A. This Act applies to single evergreen or semi-evergreen trees as it does to high hedges'

The Committee unanimously agreed to recommend that should this Committee amendment be ruled out of scope of the Bill, the Department should recognise the need for legislation to address detrimental impact on reasonable enjoyment of properties caused by single evergreen or semi-evergreen trees.

Fees for complaints (Clause 3)

Several respondents informed the Committee that the idea of the complainant having to pay a fee is against local government practice and contradicts the 'polluter pays principle'.

Several suggestions were made to improve the fee mechanism as follows:

-

- The fee could be transferred to the hedge owner if the complaint was found to be valid
- The Complainant should not pay more than the hedge owner if the finding went against them
- Although councils are unlikely to cover the costs involved, fees should be as realistic and consistent as possible.
- Councils should receive financial support to cover the costs
- The Department should set a maximum fee and allow council discretion for concessions and refunds
- Mechanisms for dealing with, and setting fees for, communal complaints need to be established.

There were also calls for regional guidance to be issued in relation to fees.

In its reply to comments on fees, the Department stated that any fee levied is entirely at the discretion of the council. The response pointed out that the payment of a complaints fee means that the cost does not fall to wider ratepayers who do not derive any benefit from the council's intervention and stressed that it is not an offence to grow a hedge and there is no innocent or guilty party. Complaints fees are also intended to deter frivolous or vexatious complaints.

The Department noted that councils will also have the discretion to refund fees and, if a council issues a remedial notice requiring the height of a hedge to be reduced, it will be the hedge owner who will have to bear the costs associated with this work. The Department maintains that any fee levied is intended to be payment for a service provided by the council to the complainant to resolve a dispute between neighbours. It is not a penalty imposed on any party.

In relation to communal complaints, the Department indicated that while councils have the discretion to offer reduced rates for communal complaints, they will need to assess the impact of a hedge on each individual property as this will vary from property to property. Scope for reductions might therefore be limited.

Members remained convinced that it would be most appropriate for councils to be required to refund complaint fees should a complaint be upheld and at its meeting on 18 November 2010,

the Committee asked that the Department explores the potential for an amendment to refund fees for upheld complaints.

In its initial response dated 26 November 2010, the Department stressed that the discretionary power contained within the Bill as drafted allows councils to recover their costs and also to have the effect of deterring frivolous or malicious complaints. The fee would be a payment for a service provided to the complainant and not a penalty imposed on any party. The council, if it wished could choose to waive or reduce the level of fee to take account of the circumstances of the complainant. The Bill also makes provision for the fee to be refunded at the discretion of the council. (Appendix 6)

A further response from the Department on 3 December 2010 outlined 4 possible options for fee charging as follows:

1. Transfer of fee/charge to the hedge owner
2. Administrative charge to the hedge owner for the creation and issuing of the Remedial Notice
3. No fee for making a complaint
4. Retain existing legislative provisions

The Department stressed that whilst the first 3 options are legislatively possible they are a significant departure from the policy that was consulted upon and posed the risk of legal and human rights challenges (Appendix 6).

Not being content with the existing legislative provisions and recognising the importance of having a fee to prevent vexatious or malicious complaints, the Committee was not willing to accept either Option 3 or 4. The Committee was also adamant that the rate payer should not bear the burden of a refund to a successful complainant by simply allowing the council to make a refund without recouping it from the hedge owner.

The Committee therefore agreed it should recommend that the Bill should be amended to make provision for a complaint fee to be passed to the hedge owner in the event of a complaint being upheld and agreed to a Committee amendment as follows:

Clause 3, page 3, line 29

Leave out from 'may' to the end of line 30 and insert 'shall be refunded where a remedial notice is issued under subsection (4) or section 7(2)(c).

Clause 3, page 3, line 30

At end insert-

'() Where a council refunds a fee to a complainant under subsection (8), the council shall charge the fee determined under subsection (1)(b) to the owner of the neighbouring land.'

Requiring Departmental regulations to set a cap on fees

The Bill includes a power for the Department to limit the level of fees but it indicated to the Committee that it was unlikely to do this unless there was a clear need to do so after the legislation had been operational for some time. The Department is hopeful that a consistent

approach between councils can be developed as it is likely that councils will administer the high hedge complaints through existing environmental health group structures.

The Committee requested information in relation to fees for High Hedges legislation in Wales and England which indicated that fees across English councils ranged from nil (8 councils) to £650 (1 council) with the majority of councils (56.9%) charging £300-£400. 18% of those councils that charge a complaint fee have a concessionary rate but only 2 councils (0.7%) offer a part refund if a complaint is upheld. All 8 Welsh councils charge £320 to make a complaint; only one offers a concession and none a refund (Appendix 5).

On considering this information the Committee agreed that to prevent councils putting prohibitive fees in place and avoid the wide variation seen across England, a cap should be placed on the fee charged by a council for a complaint against a high hedge. The Committee recognised it was not in a position to recommend what that upper limit should be and agreed to recommend that the Department should be required to invoke the regulations to set a cap on fees with the following amendment:

Clause 3, page3, line 27

Leave out subsection (7) and insert-

'(7) Regulations made by the Department shall prescribe the maximum fee that can be charged by a council under subsection (1)(b).'

Mediation

Mediation NI suggested to the Committee that there could be a quid pro quo arrangement among councils where trained staff mediated for one another. It was unlikely that any one council could justify the costs of training and retaining specialist mediators just for high hedge complaints. Alternatively, there could be a central service providing volunteer mediators who would be independent of the council or any agency, and supported with a service level agreement that could be core-funded.

Mediations NI's recommendation was that a structure for the use of a regional service providing volunteer mediators would probably be the most efficient and effective way of providing the resource that the legislation needs. The most sustainable model would probably be a team of mediators addressing many different topics as mediators trained to deal with just high hedge disputes will not be at all sustainable. Whatever structure or guidance is given to local government, mediators need to be impartial and independent, and seen to be so

The idea of shared mediation services was welcomed by Carrickfergus Borough Council who stated that the council was too small to have that expertise in its council area. The council felt it would be preferable to have a service that could be shared out regionally among several councils. The council also had concerns about costs, availability and impartiality of mediation services.

Several respondents to the Committee's call for evidence felt that the Department needed to clarify whether or not a mediation service will be available and if so, how it will be resourced.

The Department replied that it is not its intention to fund a mediation service since both commercial and voluntary mediation services are already available. Mediation may be informal, facilitated by a 'neutral' person known to both parties. The Department also stressed that the Bill

does not require mediation prior to making a complaint, it merely suggests it as a method of attempting to resolve a problem before involving the council.

The Committee accepted the Department's response.

Fixed Penalties (Clauses 3 and 9)

One council stated that it felt strongly that councils needed a fixed penalty power to use as an enforcement tool in the event of non-compliance with a remedial notice. They maintained that based on experience, courts do not deal strongly with minor environmental offences and the threat of bringing an individual to court will not be a deterrent; rather, it will act only as a drain on expenses, time and council resources.

In response, the Department stated that it considered the possibility of using Fixed Penalty Notices but discounted this option for several reasons. The hedge owner could pay the fixed penalty notice (£200 has been suggested by some local councils) but still fail to carry out the remedial action. There would then be no mechanism available to enforce the remedial notice. To provide a suitable deterrent the fixed penalty notice would need to be set at a level greater than the cost of the remedial works. If the hedge owner does not take remedial action, the council has the option of performing the works in default and registering the costs as a statutory charge on the hedge owner's property.

The Department pointed out that failure of a hedge owner to comply with a remedial notice is an offence punishable on conviction by a level 3 fine (currently £1000) and possible additional daily fines for continued non-compliance. Councils, under the Magistrates (Costs in Criminal Cases) Rules (NI) 1988, may recover £75 costs associated with a successful prosecution; the legislation setting the level of cost recovery being the responsibility of the Department of Justice. In addition, the Department noted that the council has the power to recover costs associated with remedial work by registering a statutory charge on the property.

The Committee accepted the Department's response.

Hedge removal (Clause 4)

Some councils were concerned that there was no provision in the Bill for councils to remove a hedge.

The Department replied that the legislation provides only for the height of a hedge to be reduced and that it could have an excessive impact on the entitlement to the peaceful enjoyment of a person's possessions to require complete removal of the hedge.

The Committee accepted the Department's explanation.

Protecting biodiversity in remedial notices (Clause 4)

Several councils and environmental organisations, including the Council for Nature Conservation and the Countryside (CNCC), stressed the importance of councils acknowledging the need to protect biodiversity when issuing remedial notices. CNCC suggested that the Bill should include a reference to the new duty on local authorities to protect biodiversity.

The Department reassured the Committee that protection of biodiversity will be included in the guidance documents and noted that there is already legislative protection for wildlife and biodiversity.

The Committee accepted the Department's response.

Appeals Process (Clause 6)

In its response to the Committee's call for evidence, the Northern Ireland Valuation Tribunal (NIVT) stated that it had concerns at the prospect of valuation members, sitting as sole members of the NIVT in this discrete jurisdictional area, being required to undertake work which is quite outside the valuation members' ambit or range of competence or area of technical expertise, skill and training

Overall though, the NIVT welcomed the proposal that this new area of statutory jurisdiction might be brought within the ambit of the functions of the tribunal and the NIVT felt it would be very capable of undertaking this work.

The Committee felt that decision letters issued by councils show lack of knowledge of high hedge law which was possibly because appeal decisions are not publicised and noted that a third of appeal decisions in England resulted in a changed decision. Members were concerned that the appeals process could become costly with people hiring lawyers to fight their case.

The Department stated that guidance is currently being drafted and that it is engaging with the Northern Ireland Courts and Tribunals Service (NICTS) and has held discussions with the NIVT and taken account of their concerns. It has been agreed that the High Hedge Appeals will normally be dealt with by 2 members of the Tribunal – the legal member and the valuation member. The draft amending Tribunal Rules are currently being considered by NICTS legal advisors and it will be the responsibility of the Department of Justice to progress this legislation with appropriate support from the Department.

The Committee accepted the NIVT suggestions and the Department's explanation.

Powers of Entry (Clause 8)

This clause provides persons authorised by the councils and by NIVT to enter the land on which a high hedge is situated in order to carry out their functions under the Bill. Several respondents had concerns about the proposals and felt that clarification was required in relation to the powers of entry and the requirement to give the occupier of land 24 hours notice. Councils felt that council officers should be permitted to enter any land to enable proper assessment and that notice should only have to be given where necessary. One council felt that giving 24 hours notice to all occupiers involved additional bureaucracy.

In reply the Department stated that, given the need for respect for privacy and family life, reasonable notice of intended entry needs to be given to an occupier of land and 24 hours is standard practice. It is not necessary to give notice to an owner who is not an occupier of the land in question. Notice does not have to be given if an officer is invited onto the land.

The Committee accepted the Department's response.

Action by Council (Clause 11)

The provision that councils will not be liable for damage in respect to any hedge was welcomed by most respondents who also felt this should be extended to the situation where work specified in a remedial notice causes a hedge to die after it has been reduced in height. One council also stated that where a council exercises its powers to deal with a high hedge, the legislation should ensure that no continuing duty is imposed on the Council

Most respondents also agreed that placing a charge on a property to cover costs is not usually a successful means of cost recovery but that the facility should be included in the legislation and the charge should include the cost of registering the charge on the property.

The Department's reply stated that this issue will be included in the guidance but it should be noted that councils have protection from liability for non-negligent actions in Clause 11(10).

The Committee accepted the Department's explanations in relation to this clause.

Vacant Land (General)

The Committee was told by several respondents that vacant land remained a problem as it was difficult to identify the owners of vacant plots which made enforcement more difficult. Councils felt that where landowners are impossible to trace it would be much more cost effective to remove a hedge altogether rather than the council bear the cost of ongoing maintenance. The Department indicated that the removal of a hedge without the hedge-owner's permission would constitute criminal damage.

Another major concern was that the Department will expect councils to act in default where a property is vacant and there is no traceable owner without additional resources being made available to them and little prospect of recovering costs. In response the Department stressed that the Bill does not place any obligation on councils to act in the default situation.

Committee members agreed that vacant land was a major concern which was behind a whole mass of problems for local councils and was an issue that needed urgent attention. Committee members felt that a way needed to be found to identify the owners of vacant plots. The Department acknowledged that councils have problems with vacant land. However, it stated that the problem of high hedges on vacant land was not identified as a widespread problem in the consultation process and as such the High Hedges legislation was not developed to deal with the vacant plot issues.

The Committee accepted this explanation.

Guidance (General)

Most respondents to the Committee's call for evidence stated that guidance from the Department is essential to help those adversely affected by a neighbouring high hedge to make a complaint to their local council and for council officers investigating complaints, including clarification on what constitutes mediation prior to a complaint. It was felt that guidance was also needed on how to deal with complaints relating to vacant land or land with no identifiable owner.

The Department stated that it intends to produce guidance in advance of the legislation coming into operation and will deliver a training seminar for council officials. The Committee welcomed this commitment and urged the Department to have guidance prepared in readiness for commencement of the legislation.

Training (General)

Most respondents called for training on simple matters such as tree species, and also around the sorts of remediation that may be required and the respondents felt it was important that council officers receive training before the legislation commences.

The Department stated that it intends to produce guidance in advance of the legislation coming into operation and will deliver a training seminar for council officials and the Committee accepted this.

Hedges owned by local authorities (General)

In the event of a hedge owned by the local authority being complained about, the Department advised that council officers would investigate the complaint in the normal manner but there would have to be attempts to resolve the matter in advance of a formal complaint. The Department also noted that there would still be the appeals mechanism if a complainant felt that their complaint had not been dealt with appropriately.

The Committee was content with this response.

Clause by Clause Consideration of the Bill

The Committee conducted its clause by clause scrutiny of the Bill on 7 and 9 December 2010—see Appendix 2. The Committee recommended several amendments which are outlined below.

Clause 1 - Complaints to which this Act applies

At the meeting on 7 December 2010 the Committee was content with the Clause as drafted. In addition the Committee agreed that it should stress the importance of giving councils certainty with regard to interpretation of 'reasonable enjoyment' and recommend that comprehensive technical guidance is issued on commencement of the Bill.

Clause 2 - High hedges

At the meeting on 7 December 2010 the Committee, by majority, was content with Clause 2 subject to the amendment proposed by the Committee to include single evergreen and semi-evergreen trees as follows:

Clause 2, page 2, line 28

At end insert-

'Tall trees

2A. This Act applies to single evergreen or semi-evergreen trees as it does to high hedges'

Clause 3 - Procedure for dealing with complaints

At the meeting on 7 December 2010 the Committee was 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 and 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 a council can charge for a complaint against a high hedge to be made as follows:

Clause 3, page 3, line 29

Leave out from 'may' to the end of line 30 and insert 'shall be refunded where a remedial notice is issued under subsection (4) or section 7(2)(c).'

Clause 3, page 3, line 30

At end insert-

'() Where a council refunds a fee to a complainant under subsection (8), the council shall charge the fee determined under subsection (1)(b) to the owner of the neighbouring land.'

Clause 3, page 3, line 27

Leave out subsection (7) and insert-

'(7) Regulations made by the Department shall prescribe the maximum fee that can be charged by a council under subsection (1)(b).'

Clause 4 - Remedial notices

At the meeting on 7 December 2010 the Committee was content with the Clause as drafted.

Clause 5 - Withdrawal or relaxation of requirements of remedial notice

At the meeting on 7 December 2010 the Committee was content with the Clause as drafted.

Clause 6 - Appeals against remedial notices and other decisions of councils

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 7 - Determination or withdrawal of appeals

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 8 - Powers of entry

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 9 – Offences

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 10 - Power to require occupier to permit action to be taken by owner

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 11 - Action by council

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 12 - Offences committed by a body corporate

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 13 - Service of documents in electronic form

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 14 - Statutory charges

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 15 - Interpretation

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 16 - Power to amend sections 1 and 2

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 17 - Application to the Crown

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 18 - Regulations and orders

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 19 - Commencement

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Clause 20 - Short title

At the meeting on 9 December 2010 the Committee was content with the Clause as drafted.

Long Title

At the meeting on 9 December 2010 the Committee was content with the Long Title as drafted.

Appendix 1

Minutes of Proceedings

**Thursday 7 January 2010,
Room 144, Parliament Buildings**

Present: Mr Roy Beggs
Mr John Dallat
Mr David Ford
Mrs Dolores Kelly (Chairperson)
Mr Danny Kinahan
Mr Ian McCrea
Mr Daithi McKay
Mr Alastair Ross
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Cathal Boylan
Mr Adrian McQuillan

Draft High Hedges Bill – public consultation:

Agreed: That a synopsis of responses to the consultation is requested and that a pre legislative briefing from Departmental officials is requested for a future meeting.

Dolores Kelly

Chairperson, Committee for the Environment
14 January 2010

[EXTRACT]

**Thursday 15 April 2010,
Room 144, Parliament Buildings**

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Jonathan Bell
Mr John Dallat
Mr Ian McCrea

Mr Daithi McKay
Mr Danny Kinahan
Mr Dominic Bradley

10.20a.m. The meeting began in public session.

Apologies

Apologies are listed above.

1. Departmental briefing on draft High Hedges Bill – synopsis of responses

The Committee agreed that agenda item 4 would be considered next.

The following members declared an interest:

Mr Beggs – member of Carrickfergus Borough Council

Mr Weir – member of North Down Borough Council

Departmental representatives briefed the Committee and answered members' questions on the draft High Hedges Bill – synopsis of responses.

The main areas of discussion were fees, an appeals mechanism, the definition of a hedge and unidentified land.

Members commissioned information on research on lower and upper fees in similar legislation in other UK jurisdictions and also for information on the appeals mechanisms in other UK jurisdictions and how this works.

Cathal Boylan

Chairperson, Committee for the Environment
22 April 2010

[EXTRACT]

Thursday 20 May 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Jonathan Bell
Mr Cathal Boylan (Chairperson)
Mr John Dallat
Mr Danny Kinahan
Mr Ian McCrea
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Dominic Bradley
Mr Daithi McKay

7. High Hedges Bill

The Chairperson informed members they had been provided with a draft motion to extend the Bill, a draft stakeholder list, a draft public notice and a research paper on High Hedges legislation in other UK jurisdictions

Agreed: That the motion to extend is lodged with the Business Office.

Agreed: That letters asking for submissions are sent to all organisations on the stakeholder list.

Agreed: That the public notice is issued in the 3 main newspapers on 25 May.

Agreed: That the Research paper is incorporated into the final Committee report.

Cathal Boylan

Chairperson, Committee for the Environment
27 May 2010

[EXTRACT]

Thursday 1 July 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Jonathan Bell
Mr Cathal Boylan (Chairperson)
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Ian McCrea
Mr Daithi McKay
Mr Alastair Ross
Mr Peter Weir

9. High Hedges Bill

The Chairperson informed members that they had been provided with copies of the submissions received to date on the Bill.

Agreed: That Committee staff contact organisations over the summer recess with a view to briefing the Committee in October.

Cathal Boylan

Chairperson, Committee for the Environment
2 September 2010

[EXTRACT]

Thursday 9 September 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Jonathan Bell
Mr Cathal Boylan (Chairperson)
Mr John Dallat
Mr Danny Kinahan
Mr Ian McCrea
Mr Patsy McGlone
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

9. High Hedges Bill

The Chairperson informed members they had been provided with an Assembly Research paper on the High Hedges Bill.

Agreed: That a copy of the paper is published on the Assembly website.

Members noted submissions on the Bill from Ballymena and Omagh councils.

The Chairperson informed members that oral evidence sessions are being arranged with Banbridge District Council, NILGA, CNCC, Mediation NI and Carrickfergus Borough Council and that the Valuation Tribunal declined an invitation to give oral evidence.

Cathal Boylan

Chairperson, Committee for the Environment
23 September 2010

[EXTRACT]

Thursday 30 September 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Willie Clarke
Mr Alastair Ross

5. Banbridge District Council briefing on High Hedges Bill

Mr Beggs declared an interest as a member of Carrickfergus Borough Council.

Representatives from Banbridge District Council briefed the Committee and answered members' questions on the High Hedges Bill.

10.54a.m Mr Kinahan joined the meeting.

The main areas of discussion were complaints made to the councils, fees, fixed penalty notices and single trees being included in the Bill.

Agreed: That Assembly Research is asked to check if the review of the English High Hedges scheme has taken place yet and what lessons have been learnt from it.

The Chairperson informed members they had been provided with a response from the Examiner of Statutory Rules on the delegated powers of the High Hedges Bill.

Agreed: That the Committee is content to accept the Examiner's report.

11.15a.m Mr McGlone left the meeting.

11.16a.m Mr Buchannan left the meeting.

6. NILGA briefing on High Hedges Bill

The following members declared an interest:

Mr Weir –Member of NILGA Executive.

Mr Clarke –Member of Antrim Borough Council.

Mr Beggs –Member of Carrickfergus Borough Council.

Mr Wilson – Member of North Down Borough Council

Representatives from NILGA briefed the Committee and answered members' questions on the High Hedges Bill.

Mr McGlone rejoined the meeting.

The main areas of discussion were fees and charging, cost recovery and single trees being included in the Bill.

11.34a.m Mr Dallat left the meeting.

Agreed: That a letter is sent to the Department asking for clarification as to the types of trees that are included in the Bill.

Agreed: That Assembly Research is asked to establish how many complaints have been made to local councils about high hedges and how many complaints have been made about single trees.

Agreed: That NILGA provides information on mechanisms for recouping costs.

11.53a.m Mr Wilson left the meeting.

11.54a.m Mr Dallat rejoined the meeting.

11.54a.m Mr Trevor Clarke left the meeting.

Cathal Boylan
Chairperson, Committee for the Environment
7 October 2010

[EXTRACT]

Thursday 07 October 2010, Carrickfergus Castle

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan
Mr Willie Clarke
Mr John Dallat
Mr Patsy McGlone
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Trevor Clarke
Mr Danny Kinahan
Mr Alastair Ross

10.10 a.m. The meeting began in public session.

4. Council for Nature Conservation and the Countryside (CNCC) briefing on High Hedges Bill

The Chairperson informed members that the briefing by CNCC had been cancelled and that they had provided further written evidence

Agreed: That the written evidence is incorporated into the final Committee report.

5. Mediation NI briefing on High Hedges Bill

10.40a.m. Mr Buchanan joined the meeting.

Mr Beggs declared an interest as member of Carrickfergus Borough Council.

Representatives from Mediation NI briefed the Committee and answered members' questions on the High Hedges Bill.

The main areas of discussion were access to mediation, models for delivery, training for mediation and the potential cost of professional mediation.

6. Carrickfergus Borough Council briefing on High Hedges Bill

Mr Willie Clarke declared an interest as a member of Down District Council.

Mr Beggs declared an interest as member of Carrickfergus Borough Council.

A representative from Carrickfergus Borough Council briefed the Committee and answered members' questions on the High Hedges Bill.

The main areas of discussion were fees, the complaints process, enforcement and the potential costs for complainants and councils.

Agreed: That a letter is sent to the Department asking for a copy of the standardised complaint form.

Cathal Boylan, Chairperson, Committee for the Environment
14 October 2010

[EXTRACT]

**Thursday 14 October 2010,
Room 144, Parliament Buildings**

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr Danny Kinahan
Mr Patsy McGlone
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mrs Shauna Mageean (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Willie Clarke
Mr John Dallat

9. High Hedges Bill

The Chairperson informed members that they had been provided with an Assembly Research paper on a review of High Hedges legislation.

Agreed: That the Assembly Research paper is incorporated into the Committee's final report on the Bill.

Cathal Boylan

Chairperson, Committee for the Environment
21 October 2010

[EXTRACT]

Thursday 18 November 2010, Senate Chamber, Parliament Buildings

Present: 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

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Willie Clarke

5. High Hedges Bill – informal clause by clause consideration

The Committee conducted informal clause by clause consideration of the High Hedges Bill.

Agreed: That a letter is sent to the Department asking that the Department reconsiders the inclusion of single evergreen/semi-evergreen trees in the Bill.

Agreed: That a letter is sent to the Department asking that the Department explores the potential for an amendment to refund fees for upheld complaints.

Cathal Boylan
Chairperson, Committee for the Environment
25 November 2010

[EXTRACT]

Thursday 2 December 2010, Room 144, Parliament Buildings

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

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies:

7. High Hedges Bill

12.53p.m Mr McGlone rejoined the meeting.

The Chairperson informed members that they had been provided with a Departmental reply to Committee queries on Clauses 2 and 3.

12.55p.m Mr Willie Clarke left the meeting.

Agreed: That the Bill Office prepares a draft Committee amendment on Clause 2 to include single evergreen/semi evergreen trees in the Bill.

Agreed: That the Bill Office prepares a draft Committee amendment on Clause 3 to allow a complainant's fee to be transferred to the hedge owner in the event of a complaint being upheld.

Agreed: That the Bill Office prepares a draft Committee amendment on Clause 3 to require the Department to introduce by regulation an upper limit on the amount a council can charge for a complaint to be made

Cathal Boylan
Chairperson, Committee for the Environment
9 December 2010

[EXTRACT]

Tuesday 07 December 2010, Room 29, Parliament Buildings

Present: Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr Willie Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr George Savage
Mr Peter Weir

12.47p.m The meeting began in public session.

3. High Hedges Bill – formal clause by clause consideration

The Chairperson informed members that they now needed to formally consider each clause of the Bill.

Clause 1 - Complaints to which this Act applies

Agreed: That the Committee is content with the Clause as drafted.

Clause 2 - High hedge

12.59p.m Mr Kinahan joined the meeting.

The Chairperson asked members if they were content to agree the Clause subject to the Committee amendment to include single evergreen and semi-evergreen trees.

The Committee divided.

AYES NOES

Mr Buchanan Mr Boylan
Mr Trevor Clarke Mr Willie Clarke
Mr Ross Mr Kinahan
Mr McGlone

Agreed: That the Committee is content with Clause 2 subject to the amendment proposed by the Committee to include single evergreen and semi-evergreen trees.

1.17p.m Mr Dallat joined the meeting.

Clause 3 - Procedure for dealing with complaints

1.30p.m Mr Dallat left the meeting.

Agreed: That the Committee is 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 and 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 a council can charge for a complaint against a high hedge to be made.

Mr Willie Clarke wished for it to be noted that he was not in favour of the Committee amendment.

1.41p.m Mr Ross left the meeting.

Clause 4 - Remedial notices

Agreed: That the Committee is content with the Clause as drafted.

Clause 5 - Withdrawal or relaxation of requirements of remedial notice

Agreed: That the Committee is content with the Clause as drafted.

Clause 6 - Appeals against remedial notices and other decisions of councils

There was discussion with the Departmental officials around the purpose of this Clause.

1.50p.m Mr Kinahan left the meeting.

1.51p.m Mr Ross rejoined the meeting.

1.53p.m Mr Willie Clarke left the meeting.

Agreed: That the Departmental officials attend the Committee meeting on 9 December to provide a full explanation of the clause and to conclude formal clause by clause consideration.

Cathal Boylan
Chairperson, Committee for the Environment
09 December 2010

[EXTRACT]

Thursday 9 December 2010, Radisson Blu Roe Hotel, Limavady

Present: Mr Cathal Boylan (Chairperson)
Mr Trevor Clarke
Mr Willie Clarke
Mr John Dallat
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Thomas Buchanan
Mr Danny Kinahan
Mr Patsy McGlone
Mr Alastair Ross
Mr George Savage
Mr Brian Wilson

5. High Hedges Bill – continuation of formal clause by clause scrutiny – Clauses 5-20

The Chairperson informed members that, due to a lack of quorum, the Committee could not make final decisions on the Clauses of the Bill but that a discussion with the Departmental officials could take place and that the Bill would be discussed at the end of the meeting when a quorum was in place.

Departmental officials briefed the Committee and answered members' questions on Clause 5 – 20.

8. High Hedges Bill – continuation of formal clause by clause scrutiny – Clauses 5-20

The Chairperson informed a member that, as quorum was in place, he would now ask members to make a formal decision on each Clause.

Clause 6 - Appeals against remedial notices and other decisions of councils

Agreed: That the Committee was content with the Clause as drafted.

Clause 7 - Determination or withdrawal of appeals

Agreed: That the Committee was content with the Clause as drafted.

Clause 8 - Powers of entry

Agreed: That the Committee was content with the Clause as drafted.

Clause 9 – Offences

Agreed: That the Committee was content with the Clause as drafted.

Clause 10 - Power to require occupier to permit action to be taken by owner

Agreed: That the Committee was content with the Clause as drafted.

Clause 11 - Action by council

Agreed: That the Committee was content with the Clause as drafted.

Clause 12 - Offences committed by a body corporate

Agreed: That the Committee was content with the Clause as drafted.

Clause 13 - Service of documents in electronic form

Agreed: That the Committee was content with the Clause as drafted.

Clause 14 - Statutory charges

Agreed: That the Committee was content with the Clause as drafted.

Clause 15 – Interpretation

Agreed: That the Committee was content with the Clause as drafted.

Clause 16 - Power to amend sections 1 and 2

Agreed: That the Committee was content with the Clause as drafted.

Clause 17 - Application to the Crown

Agreed: That the Committee was content with the Clause as drafted.

Clause 18 - Regulations and orders

Agreed: That the Committee was content with the Clause as drafted.

Clause 19 – Commencement

Agreed: That the Committee was content with the Clause as drafted.

Clause 20 - Short title

Agreed: That the Committee was content with the Clause as drafted.

The Chairperson asked members to ratify all previous decisions of the Committee at the meeting.

Agreed: That all previous decisions of the Committee are ratified.

Cathal Boylan
Chairperson, Committee for the Environment
16 December 2010

[EXTRACT]

Appendix 2

Minutes of Evidence

15 April 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Roy Beggs
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Mr William Caldwell
Ms Jennifer Stewart Department of the Environment
Mr Anthony Courtney

1. The Chairperson (Mr Boylan): I welcome William Caldwell, Jennifer Stewart and Anthony Courtney to the meeting.

2. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council, which the legislation would impact on eventually.

3. Mr Weir: Ditto for North Down Borough Council.

4. The Chairperson: I invite the officials to brief the Committee for five or 10 minutes, after which members may want to ask questions.

5. Mr William Caldwell (Department of the Environment): Congratulations on your new appointment, Chairman, and congratulations to any new members on the Committee.

6. My name is William Caldwell, and my colleagues Jennifer Stewart and Anthony Courtney and I work in the Department of the Environment's planning and environmental group. Our responsibility is the processing and taking forward of all the operational aspects related to the draft high hedges Bill. We would like to give members a general synopsis of how the public consultation on the draft Bill went. If members are content, I will summarise how that transpired.

7. The public consultation began in December 2009 and ended 1 March 2010. It received over 100 responses, which were generally supportive of the content of the draft Bill. Of the people

who responded, around 60% were private individuals, who were generally supportive of the draft Bill. Around 20% were local government representatives, from local authorities, councils and so on, and 18% were from non-governmental organisations, with some from non-departmental public bodies.

8. The main issues raised during the consultation were around the fees charged for making complaints about high hedges; guidance that the Department might issue; and terms and definitions used in the draft Bill. A small number of people suggested that the draft Bill should be extended to deal with other problems such as single trees, roots of trees, dangerous trees, falling leaves and branches and so on. However, the draft Bill is specifically and narrowly focused to deal with high hedges relating to problems between neighbours; it does not extend to encompass a wider variety of issues such as those that I have mentioned. It emerged from the consultation exercise in 2005 that high hedges and resulting problems between neighbours was the major issue to be addressed.

9. A view was expressed that the fee for a high hedge complaint should not be paid by the person making the complaint but by the owner of the land on which the high hedge is situated. The Department's response is that it is reasonable for the person who suffers the detriment and makes the complaint to pay a fee for a service that the council provides by way of looking at the problem, coming out to investigate it and, hopefully, providing a solution. The cost is not something that should be spread across ratepayers generally because it is a particular person who benefits, as opposed to a wide range of ratepayers. The person who owns the land and the hedge will face a financial cost in reducing the height of the hedge, if that is the outcome of the council investigation. Essentially, the fee that is paid for a complaint is a fee for a service provided by the council to address a particular problem.

10. On the issue of guidance, it was asked how councils can have the knowledge and expertise to deal with high hedge complaints. The Department gave an assurance that it will be working closely with councils and NILGA to develop guidance so that, between now and the time when the draft Bill comes into operation, guidance will be provided for complainants and councils and on the appeals function and any other aspect that emerges as a result of discussions.

11. Points were raised about terms that are used in the draft Bill, such as "reasonable enjoyment". What does it mean for a person to have "reasonable enjoyment" of their property? Some of the terms can only be defined more clearly through guidance. Some subjective judgement must be made by council officials when they go out and look at each particular situation. They will decide what is reasonable and whether a high hedge is depriving a neighbour of the "reasonable enjoyment" of his property.

12. The draft Bill states that a person who feels that he is suffering detriment as a result of a high hedge must provide evidence that he has tried to speak to his neighbour or made some attempt to arrive at a solution. That brings about the question of what evidence a person needs to produce to show that he has made such attempts. Our response to that is that if they first try to discuss the matter with their neighbour, they should keep a record of those meetings and what was said. If they involve a third party in a mediation role, a record should be kept of who that person was and what was said. To deal with the complaint, the council will want to have that evidence. It can then accept that an attempt has been made to discuss the issue with the neighbour but that it has become impossible and the complainant faces a dead end situation. There must be evidence of the complainant's having made some attempt. It cannot be the case that an individual can ignore the person next door, complain about the hedge but make no attempt to resolve the issue.

13. Councils expressed concern about a high hedge growing on land of which the ownership is unclear. They wanted to know how to deal with a situation in which they cannot find an owner

of land to discuss a high hedge growing on it. We investigated and found that Land and Property Services (LPS) would be able to trace the owner of land in most cases. In the event of a default situation in which no owner is identified, vacant land would eventually revert to the Crown and become government property. We hope that that will not be a major issue.

14. Officials considered all the points that were raised in the public consultation, which ran from December to March, and recommended changes to the Minister. One of those changes related to situations in which domestic property borders forest land. If anyone construes that the first line of trees in a forest could be viewed as a hedge, there would obviously be implications if, in any circumstances, that first line of trees were reduced to any extent. That is because in Northern Ireland and the UK generally, given the strong winds that can arise from time to time, any reduction of that first line of trees could have dramatic implications for the rest of the stand of trees. Wind can sweep through a forest and knock down a whole raft of trees. In essence, the possibility of a line of trees that border the forest being construed as a hedge has been taken out of the draft Bill.

15. A hedge was defined as a row of trees acting as a barrier to light, and the words "or access" were included in the draft Bill. However, there was some confusion about the meaning of the term "or access". There was a lot of internal debate, and the view was taken that the words "or access" did not add a great deal to the draft Bill and, indeed, caused a little bit of confusion. People wondered what "or access" meant; did it mean access through the hedge to someone's garden, for example? It did not mean that, nor was it intended to mean that. The general view was that that phrase did not really add anything and that nothing would be lost by removing it. Therefore, it was decided to remove the term "or access" to avoid confusion.

16. Councils had concerns about default situations in which they issue a remedial notice but the person involved does not act on the terms of that notice by reducing the hedge. A council may take the view that, if a person will not take the necessary action, they will go in and reduce the hedge. However, what happens if the council does that and, by some unhappy circumstance, the hedge dies? Will the council potentially be subject to civil action from the owner of the hedge? A change was made to the draft Bill to protect councils from any civil action being taken against them when they have acted in a default situation.

17. It became apparent during the consultation exercise that the draft Bill set up a mechanism through which persons appointed by the Department would provide an appeal function. That is relevant in cases in which someone feels that the remedial notice is too stringent or when a person who feels that they are suffering detriment queries why a remedial notice has not been issued. There are mechanisms for those people to appeal.

18. The draft Bill states that the Department will appoint persons to act as an appeals body. It became apparent during the consultation exercise that a body with the capacity and expertise to take on the appeals function exists, and the draft Bill has been amended to apply the appeal function to the existing valuation tribunal, which is under the auspices of the Department of Finance and Personnel. That Department has given an assurance that it is content that that body has the capacity, expertise and willingness to undertake the appeals function. It is more cost-effective to use an existing tribunal than to go through the mechanics, expense and so on of setting up and appointing new people to act as an appeals body. Another advantage is that it provides independence from the Department of the Environment, which is the Department that is taking forward the legislation. There are many advantages in it.

19. To summarise, over 100 responses to the public consultation were received, and they were generally supportive. Some changes have been made to the draft Bill to take account of the points that have been raised. I am happy to answer members' questions.

20. The Chairperson: Thank you for your presentation.

21. Some social housing backs on to private ground. People will look at the draft Bill and will think of the likes of leylandii and other quick-growth plants that have caused major problems in neighbourhoods. I know of areas where there are one or more problematic trees that back on to social housing developments, in which, for example, people on benefits and the elderly live. Will you clarify who will bear the cost of the fees incurred in taking care of such a situation?

22. Mr Caldwell: The person who makes the complaint is the party who feels that he or she is suffering detriment by virtue of the high hedge. Therefore, in the example that you have given, the person who lives in social housing should try to discuss the situation with the owner of the hedge. He or she should tell the hedge owner that the hedge is causing him or her some grief, because, for instance, it is too high and is affecting his or her domestic property. The person who lives in social housing should then ask whether the hedge could be reduced to a more reasonable height. As I said earlier, records of those discussions should be kept. I am hopeful that the fact that this legislation is coming forward will mean that a lot of people will not want to get involved in a formal process. They will want to speak civilly with their neighbour and get things sorted out amicably.

23. In your example, the onus would be on the person in social housing to discuss the situation with the owner of the private land on which the hedge is planted. In the event of there being no accommodation between those two parties, the person in social housing, having kept a record of the evidence, would have to make a complaint to the local council. He or she would have to pay a fee, but councils can use their discretion as to whether they charge a fee in all circumstances. A council might take the view that it would not be right for individuals such as pensioners, low-income groups or disadvantaged people to have to pay a fee. In those circumstances, councils can reduce the fee or waive it. Councils have the discretion to take a view in each circumstance.

24. The Chairperson: You said that single trees are not included. There has been a lot of talk about including single trees throughout the process, but that has been ruled out.

25. The process by which Land and Property Services identifies the owner of a piece of land is a long one. Is there anything that we can do to fast-track that process? Any dealings that I have had with LPS have taken a long time. Will the draft Bill be able to address that, or is the time frame down to LPS?

26. Mr Caldwell: I am not sure how big an issue unidentified land is. In most instances, the problems will be between neighbours. There may be some problems with unidentified land, but it should not be a major issue. We will be looking at and discussing with LPS how the mechanism would work and finding out a little more about it. I am not sure that the draft Bill will be able to make any inroads with issues that concern a different Department or another piece of legislation.

27. Mr Weir: Thank you for the presentation. I agree that the Bill is a useful tool. However, there are some details that we must get right. I agree with the idea of providing a degree of protection for councils when they take the required action. However, if there were a situation in which a council sent someone to do something and that person acted in a negligent fashion, what would happen? I presume that the council would still be responsible.

28. Mr Caldwell: You are right; the council would be required to act with due diligence and take professional advice. In the absence of doing so, the council would not be protected. Councils must make sure that everything that they do is done in a professional manner.

29. Mr Weir: The main concerns that exist are about fee setting; I am not sure that that has been got right. I understand the idea of providing a degree of discretion. However, I can see

problems arising in situations in which councils have complete discretion, because there will be some council areas where everybody pays a fee and neighbouring areas where, for example, pensioners are exempt. We will end up with a hotchpotch situation.

30. It seems from the proposals that the levels of fees are completely at the discretion of councils. That could easily lead to a situation in which one council could charge £30 to lodge a complaint and a neighbouring one could charge £300. While allowing for a degree of discretion, is there any indication of the levels of fees, to give some guidance as to what a reasonable figure for a fee would be?

31. Mr Caldwell: We looked at the levels of fees in England and Wales where similar legislation has been in operation since 2005. Those fees vary considerably. In his statement to the Assembly, the Minister said that he was minded to include a power in the draft legislation to impose a cap on fees.

32. Mr Weir: I can see the sense in that. The Department and the Assembly could run into great difficulty if they received complaints that the fee in Strabane is £150 but only £45 in Omagh. People from some areas would be asking why they were paying much more to put in a complaint than people in neighbouring areas.

33. Mr Ross: You said that the levels of fees in England and Wales vary considerably. What would be the upper end of the scale?

34. Mr Caldwell: In one instance, a fee of £600 was charged. That was probably one of the things that influenced the Minister to say that he may introduce a cap. In Northern Ireland, the fees ought to be considerably less, and the scale will be less. I do not know the particular circumstances of the £600 fee; it may have been for a large estate.

35. Mr Weir: There could be a person who is potentially transgressing by having a high hedge that boundaries a few properties. In that situation, half a dozen neighbours may want to complain. Would that entail half a dozen separate complaints, or could those neighbours enter a joint complaint and share the cost among them?

36. Mr Caldwell: As I understand it, each individual who has a complaint would need to make a separate complaint, because each person could be suffering a different degree of detriment. Therefore, the council would have to judge each case and each complaint on its merits.

37. Mr Weir: I understand that there is a need to have some form of charge for someone who is putting in a complaint. Logically, there is a need to get a certain amount of money up front. One concern will be that we are likely to get into a scenario where relations have broken down between neighbours. That is the premise of the draft Bill. We are also aware of situations in which those relations break down, leading to vexatious complaints. It is right that someone entering a complaint of that nature should have to pay for it. Similarly, if somebody puts in a complaint and is then told that no action is to be taken or that something could have been agreed, again, it is right that the complainant should pay.

38. The concern would be around circumstances in which someone complains because they feel that they have been wronged. They are effectively paying for that wrong to be righted. The general rule of thumb with any court case is that costs follow the event. To some extent, the council is acting as arbiter but also as judge between two neighbours. To boil it down, and I know that you do not want to use these terms, but the question is who is right and who is wrong; who needs to take action and who does not.

39. Would a sensible approach to fees be to make the provision that costs follow the event? If there is a situation in which somebody is in breach of what is considered to be a reasonable situation with regard to their hedge and they are compelled to take action, the complainant who is having the situation remedied should not have a financial burden placed on them to action that. The person who has to take remedial action should also have to cover the cost of the complaint itself. Is there not a sense that, as with any other civil tort, cost should follow the event?

40. Mr Caldwell: I see your point, but the *raison d'être* behind the draft Bill is that there is not a right and a wrong. There is no criminal offence being created by virtue of growing a hedge to any height.

41. Mr Weir: I understand that, but right and wrong do not have to necessarily mean criminal. If someone took a civil action against their neighbour and was successful, nine times out of 10 the person who is on the losing side of that court case picks up the tab; the costs follow the event. There may be no inference of any criminal act whatsoever. I am not sure why this situation should be any different.

42. It is true that there is a fundamental difference between rights and wrongs, but what if someone knows that the legislation is there and has refused to take any degree of remedial action? They may refuse anything by way of neighbourhood discussion and allow their hedge to grow, and the council may rule that part of it needs to be cut back or changed. Take the example of a pensioner putting in such a complaint: they should not be left with a £150 bill, for example, for complaining when their neighbour is in the wrong. That seems to be a matter of natural justice.

43. Mr Caldwell: It is a view, but the draft Bill takes the view that there is an even playing field. If it is the case that someone has a hedge that makes someone else feel that they are in detriment, the individual must first discuss the matter with his neighbour. The council might then get involved and say that a judgement has to be made as to whether it is reasonable that the height of the hedge be reduced, perhaps not all the way to two metres but by a certain amount. The person who has to reduce the height of the hedge will have to bear the cost of doing it. The complainant will get the benefit of the reduction. It is not a —

44. Mr Weir: The way that this is being proposed does not necessarily create a level playing field. Clearly, if no action needs to be taken, the worst that the hedge owner suffers is a degree of inconvenience, but the complainant, whose complaint is not seen to be justified, has to pick up the tab. In that circumstance it is fair. However, when it is deemed that action needs to be taken, the hedge owner has the cost of cutting the thing, but the complainant, who has been vindicated, has to pick up the tab for it. It is not a —

45. Mr Caldwell: But the complainant gets the benefit of the reduction.

46. Mr Weir: If the complainant's neighbour had been perfectly neighbourly and done what he should have done, there would have been no need to complain in the first place. The complainant is being penalised because the neighbour is not prepared to take action. If Mr Bloggs down the road is a responsible neighbour and cuts his hedge, his neighbour is not suffering just to get to the same position.

47. Mr Caldwell: That is the way in which the draft Bill is constructed. It mirrors the —

48. Mr Weir: It may not necessarily be the way that it will end up.

49. Mr Caldwell: It may not be; that is the democratic process. However, that is the way that the equivalent legislation works in England and Wales at the moment.

50. The Chairperson: We were in the courtroom there for a moment. [Laughter.]

51. Mr Weir: Do not worry. Unlike others, I will not be putting in a fee.

52. Mr Beggs: I have some sympathy with Peter's latter points. I can see instances in which it would be a subjective judgement as to whether a hedge is too high, and perhaps somebody should have to put a fee in. However, I know of one leylandii hedge in my constituency that is 25 feet high but only six feet from someone's back door. That is clearly unreasonable. In my opinion it affects the light in the house, etc. If a neighbour is unreasonable and does not agree, through the mediation process, to cut it down, the penalty should be that the full costs be borne by that person. Perhaps, in more subjective situations, it would be reasonable to bear the risk and have to pay a fee in order to realise the benefit. That would probably stop spurious applications, which take up the council's time and increase its costs. We have to be appreciative of that.

53. It might be useful for the Committee to do some research into the range of fees that are paid, both at the upper and lower limits, and how social housing authorities get involved on behalf of tenants with limited means.

54. The Court Service proposes to use the Northern Ireland Valuation Tribunal as an appeals mechanism. I cannot remember having any involvement with it, and I am not aware of that particular tribunal, although I have heard of it. However, in other tribunals that I have engaged with — industrial employment tribunals, etc — significant legal costs can start to kick in at that level. Will this tribunal be such a body where there will be solicitors and barristers appearing? Will there be the potential for someone to access legal aid, with a council having correspondently to instruct solicitors and barristers? That could mean that, instead of the case costing hundreds of pounds in officers' time, it could potentially cost tens of thousands of pounds in barristers' time. Could this body open up that route that could lead to ridiculous fees for the legal profession?

55. Mr Caldwell: There may well be a flurry of appeals if and when this legislation becomes operational. I expect that, as time goes by, the number of appeals will diminish rapidly. I do not envisage a situation akin to fair employment or industrial tribunals, where barristers are involved. The Valuation Tribunal has people with surveying expertise. In instances where an appeal is made, the issue will be fairly straightforward.

56. Mr Beggs: I do not envisage it either, but I recently had the experience of an anti-social behaviour order case — as a witness, I might add. [Laughter.] It struck me that there was strong evidence that the person in the dock was unreasonable. The legal expenses associated with the case were considerable, and the sitting had to be put off for several months and re-run because the defendant dismissed his barrister. He did not care about the expense because everything was paid for by legal aid. What you envisage may not come to pass, but I want clarity as to whether huge amounts of legal aid will kick in here because there will have to be a corresponding amount of expenditure of taxpayers' money by local councils.

57. Mr Weir: We have all been involved in planning appeals, which are slightly different. However, the same thing can happen if someone has a complaint against a developer. Someone who has vast wealth and wants to defend his position can get in the top people — barristers and experts — and there may not be a level playing field. If Sir Tufton Bufton is threatened with having his trees cut down, he may get a QC to represent him in the appeal. This is related to Roy's point. If we are researching the cost, we might look at that. I understand that there have

been some problems in England with high hedges. I suppose that the Department is introducing this in a particular way to try to learn from some of the mistakes made there. As part of the research, can we find out precisely how the appeals mechanism works in England: if there is an appeals mechanism, how it works and so on?

58. Mr Caldwell: There is indeed an appeals mechanism in England and Wales; it is through the Planning Inspectorate.

59. Mr Beggs: My point is that, if there is an appeals mechanism, we must ensure that it will not cost ridiculous amounts. We want appropriate decision-making and independence without undue cost. That is in the interests of everyone but the barristers and solicitors.

60. The second issue that I want to put to you is this: it is not envisaged that this will encompass single trees. Coincidentally, last night I was in a constituent's house where the roots of a sizeable single tree had spread under the patio, which was starting to come up. How are instances like that to be dealt with if they are not to be included in this type of legislation?

61. Mr Caldwell: As far as I know, that would involve taking a civil action against the person on whose ground the tree is planted. I do not claim to be an expert on how that mechanism works. It cannot possibly be appropriate to this draft Bill, which is narrowly focused to deal with the main issue, identified in the earlier scoping exercise, which is that of high hedges. The mechanism whereby a hedge can be reduced to two metres cannot be applied to single trees. The notion of reducing a tree to two metres is ludicrous. The mechanism does not fit single trees.

62. Mr Ross: With respect to fees, I agree that, where an individual has been approached and the mediation process has been gone through yet he still refuses to take the action, it is perfectly justifiable that the costs be passed on to him.

63. I know that if an individual wants to make a complaint about a hedge, he or she must go through the mediation process or try to approach their neighbour about the problem before any action can be taken. However, some elderly individuals who have had run-ins with their neighbours in the past might not feel comfortable about doing that. Is it up to the discretion of local councils to decide whether or not they will help in the mediation process? Or is it the case that if individuals do not make an effort to try to talk to their neighbour, they can forget about it? I am thinking about elderly individuals, in particular, who may be nervous about approaching their neighbours.

64. Mr Caldwell: The legislation, as currently designed, requires individuals to make some attempt to discuss the problem with the person who owns the offending hedge. I suppose that elderly people or those who are a little bit shy about approaching a neighbour can ask a local advisor to help them.

65. Mr Beggs: Perhaps a local councillor or MLA?

66. Mr Caldwell: They cannot ask councillors, who are meant to be independent. It would not be right for a councillor to be seen to be associating with one particular party when the council must then make a judgement between the two parties and decide on a remedial notice. However, there are other organisations, such as voluntary bodies and various advisors.

67. Mr Beggs: Presumably, a councillor could get involved, but he would have to exclude himself from the council's decision, because he would have an interest in it.

68. Mr Caldwell: He or she would have to.

69. Mr Ross: If an individual phoned the council to try to complain, but he or she had not been through the mediation process, would the council be able to provide some sort of departmental guidance or the addresses of certain bodies that could help in the mediation process?

70. Mr Caldwell: I think so, yes.

71. The Chairperson: There are two trees in my back garden; I had better go home and get the tape measure out. [Laughter.] I will check my neighbour's patio, too.

72. Thank you for your presentation. In light of some of the questions that you were asked today, you should bring a crystal ball with you the next time. I do not think that you could have envisaged all of this. No doubt that you will be before the Committee again over the coming months.

30 September 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)

Mr Patsy McGlone (Deputy Chairperson)

Mr Roy Beggs

Mr Thomas Buchanan

Mr Trevor Clarke

Mr John Dallat

Mr Danny Kinahan

Mr Peter Weir

Mr Brian Wilson

Witnesses:

Mr David Lindsay
Mrs Gillian Topping Banbridge District Council

73. The Chairperson (Mr Boylan): We now move to today's first briefing on the High Hedges Bill, which will come from Banbridge District Council. I welcome David Lindsay, who is the council's director of environmental services, and Gillian Topping, who is the council's head of environmental health. I invite you to make a presentation of between five and 10 minutes, after which Committee members will questions. I remind members that we have four briefings to get through, so I ask that you try to make your questions as specific as possible.

74. Mr David Lindsay (Banbridge District Council): By way of introduction, the council is very supportive of the Assembly's move to push forward the issue of high hedges. It is a significant issue for a number of residents and ratepayers in the district, so the legislation will be very useful.

75. We want to address several significant issues. I will outline those issues and then hand over to Gillian, who will put some flesh on the bones of our particular concerns. The issues are: the remedy for non-compliance with a remedial notice; a complaint being made to the council in the first instance, and what measures need to be demonstrated by complainants before they can legitimately make a complaint; and the fees that the council may charge.

76. Mrs Gillian Topping (Banbridge District Council): Good morning. As Committee members will know, the council's environmental health department already receives contact and complaints from the public or from community and elected representatives about the problem of high hedges. The number of those enquiries increased significantly during the consultation period, and we continue to receive requests from those who believe that the legislation is already in place. Many of the disputes over high hedges have been ongoing for several years and appear unlikely to be resolved by the parties themselves. Many people also enquire about large, overgrowing trees that will not fall into the definition of a high hedge, and they will, no doubt, be disappointed that the Bill will not assist them.

77. Given the level of interest from the public and the long-running nature of many of the disputes, it is reasonable to predict that, certainly in the initial period, a substantial number of the complaints could proceed to formal action and the issuing of a remedial notice, as set out in the legislation. In turn, that increases the prospect of non-compliance with the notice by the hedge owner, or the occupier of the land, and leads to our first point regarding enforcement. As a council, we advocate the use of fixed penalty notices as a formal enforcement tool. Fixed penalty notices can be used to avoid the need to take those who commit offences to court. It is our experience that pursuing matters of non-compliance, with whatever piece of legislation, can be time-consuming, resource-intensive and expensive, and the outcome can, on occasion, be less than the deterrent against future offences. If the matter of paying a fee to make a complaint about high hedges is about cost recovery or minimising the burden on the general ratepayer, no reasonable fee could ever help to contribute towards the cost of court proceedings.

78. In the submissions that we made during the Bill's consultation phase and for Committee Stage, we proposed the use of a fixed penalty notice. We suggest that that could be used as an enforcement tool in the event of non-compliance with a remedial notice. Given that the Bill envisages every person who does not comply with a remedial notice as being guilty of an offence, the fixed penalty options of, say, £200 would provide a deterrent and a more efficient means of dealing with non-compliance in the first instance. In the case of continuing non-compliance with a remedial notice, the council could apply to the courts for an enforcement order, and that provision already exists in clause 9 of the Bill. The council notes that the Department has amended the Bill since the consultation stage to protect councils from liability where they have acted in default and carried out remedial works to a hedge, provided that they have acted reasonably and taken professional advice. We request that that provision be extended to situations in which work is specified in the remedial notice and after work is completed by the hedge owner; for example, when a coniferous hedge dies back or dies altogether.

79. As we said, the council continues to be contacted by a number of people. The advice that is given to them is in line with the legislation: the party troubled by the neighbouring hedge must be able to demonstrate that he or she has made efforts to discuss the matter with the neighbour to reach a solution. People often tell us that they do not get along with, are in dispute with or do not want to approach their neighbour, or that they do not want to trouble an elderly person who owns the hedge in question.

80. Here, the option of mediation or the role of a community advice body becomes important. We have some concern about that. Generally, the public do not know to whom to turn for mediation and, although we know that such a service exists, we do not believe it to be widely available. We are concerned that people may not have access to a mediation service to the degree that the Department might envisage. We believe that there is more work to be done in ensuring that mediation services are publicised, readily available, accessible, capable of dealing with the potential demand, and will operate at low or no cost.

81. Our final point concerns fees. The concept of levying a fee on the person who wishes to make a complaint about a high hedge is unfamiliar to council members and the public. At the consultation stage, Banbridge District Council did not support the power to levy fees on someone who makes a complaint, on the basis that no fee is charged if a complainant wishes to bring any other matter to the attention of the council. Increasingly, however, we believe that there is a better understanding of the reasoning behind the power given to councils to levy fees, and the role of the council in the legislation is to act as an independent and impartial third party. We will adjudicate on whether the hedge is adversely affecting the reasonable enjoyment of the complainant's property rather than identify a wrongdoer, as we do in our traditional work.

82. A fee can be considered normal when that service benefits one person rather than the community in general; for example, councils are used to dealing with fees for building control applications, licence applications or an inspection of a house under the Private Tenancies (Northern Ireland) Order 2006. As this is a new legislative duty for councils, and in the absence of any new-burden funding, we believe that there will be an increasing realisation of the need to secure some level of cost recovery for the council, particularly where it may have to buy in specialist advice.

83. That concludes our presentation and the main points that we wish to make. We are happy to take comments or questions from members.

84. The Chairperson: Thank you for your presentation. The legislation is to address the issue of topping hedges. Currently, if a hedge is overgrown and has gone into a person's ground, that person is welcome to cut it down; that is their responsibility. Do you feel that each council should be able to set its own fee?

85. Mrs Topping: In the environmental health community, which is where the legislation may end up being enforced, we operate on a regional level. We therefore believe that there should be some level of regional guidance that we could operate within. Perhaps common systems could be used to find a band of fees. Individual councils, depending on the priority that they attach to the issue and the level of problem that they perceive to be, should have some discretion to work out individually what they believe to be a suitable fee within that broad band

86. Mr Lindsay: I have one other point to make on fees. In England, where similar legislation has been in force for some time, the guidance advocates that, where there is any doubt or concern about the remedy that is to be specified in the notice served, the council should take an expert arboriculturist's advice. The English guidance is quite emphatic about that. I suppose that that is because of the possibility of the hedge dying or something happening to it for which the council could be held liable.

87. If the fee is designed to cover all the councils' costs, we would caution that careful consideration needs to be given to the range of fees that could be charged. If a council were in a position in which it felt that, because it did not have any in-house expertise, it had to get an expert's advice on the remedy that was specified in the notice, that would have to be paid for and logically recovered in the cost of the fee paid up front by the complainant.

88. One of the issues is, therefore, how we set the range of fees. We feel that that needs to be given consideration.

89. The Chairperson: You mentioned trees. The legislation does not cover single trees. Local councils receive a serious number of complaints about single trees, because they are the first body that people will go to about such problems. Does Banbridge District Council, therefore, wish to see that issue teased out? The proposal indicates that the legislation will apply to two

trees or more. Does the council wish to see the issue of single trees revisited, because those trees can be a serious nuisance in some cases?

90. Mrs Topping: A single tree will have less impact on someone's reasonable enjoyment than a range of trees in a very tall hedge. We must look at the guidance that we believe will come in and determine the impact. Every case will probably be different. However, to bring single trees or even single evergreen trees into the legislation would widely increase the number of complaints that councils would get.

91. A number of people have contacted us about non-evergreen trees, such as chestnut or sycamore trees, to which the legislation simply does not apply. We therefore believe that there still are issues to be addressed.

92. The Chairperson: I know about some cases involving individual trees, especially where social housing backs on to farmland. However, you are right: if we spread it out too much, we could be looking at complaints about every tree in the country. I just wanted your views on that.

93. Mr T Clarke: On that point, given the example that you just gave, are you saying that you are in favour of including a provision on single trees in the legislation? At the moment, if someone living in a more urban setting has a neighbour, such as an irresponsible farmer, who will not cut back a tree, there is nothing that that individual can do to protect his or her house. I know one householder who feels that a tree is endangering his home, but nothing can be done about it. Do you accept that councils should also have the power to look at single trees in such cases?

94. Mrs Topping: The issue is then about whether it is a single evergreen tree or a single ordinary tree?

95. Mr T Clarke: One that is planted in the ground and has roots. I do not care what it is called. One that grows very tall.

96. Mrs Topping: We are talking about evergreen trees, because that is the definition in the Bill as it stands.

97. Mr T Clarke: That is my point. Does the council wish to see that extended to all trees?

98. Mr Lindsay: Our experience is that a lot of people think that single trees will be covered by the Bill.

99. Mr T Clarke: They will not.

100. Mr Lindsay: We are telling people that single trees will not be covered in the Bill as it stands. We cannot deny that many people have a genuine problem, because a very tree large that is growing in a relatively confined area is blocking out a lot of light from the front of their house or wherever. Therefore, we cannot deny that people can be denied enjoyment of their property by single trees as well as, but perhaps not as much as, a high hedge. If the definition is opened up, the scale of the complaints may just become too much.

101. Mr T Clarke: What is more important to the council: loss of light caused by a high hedge or damage caused to a property by dangerous branches from a tree?

102. Mrs Topping: There are other remedies that an individual can use if a tree is causing damage to a property.

103. Mr T Clarke: That is why I am asking that question. If we are not that far through the legislative process, we should make provision for such things in the Bill, because the onus is being put back on the person whose property is in danger or at risk, rather than on the person who owns the tree.

104. You touched on the issue when you asked that question, and I can picture the settings that you are talking about. The responsibility is on the owner of the house as opposed to the person who owns the tree. As it stands, nobody is really interested in protecting the homeowner whose house is vulnerable to damage caused by a tree. I know of one farmer who told a homeowner, "If you want the tree to be cut down, do it yourself." That is not fair either. You are talking about the cost of bringing in experts to give opinions on trees. However, that would be nothing compared with what it would cost to bring in a tree surgeon to cut a tree down.

105. Mr Lindsay: In the past, if people complained about neighbouring trees being a danger to their properties — whether because of the tree's roots or because it was unstable — we advised them to consult their solicitor. People have sent a solicitor's letter to say that trees are causing damage. Therefore, as Gillian said, there is a remedy for such instances, whereas, in the circumstance covered in the Bill, the remedy is less clear at present. That is where the value of the Bill lies.

106. The Chairperson: I was going to mention indigenous trees, but someone told me that Castlewellan Gold falls into that category, so I had better be very careful about what I say.

107. I want to ask about making a complaint. You used the example people who do not want to complain to their elderly neighbour. If people have already aired their views to their neighbour without success, they will have to go down the complaint route.

108. The Bill states that if someone who makes a complaint must pay a fee. Is the fee returned once the work is carried out?

109. Mr Lindsay: Our understanding is that the fee is for the council's independent adjudication service. The complainant pays for that, and it covers the cost of the council intervening and means that the general ratepayer does not have to pay for it. There is no recoupment of costs, so even if a council finds that a person's complaint is legitimate and that the neighbour has to take action, the person is not refunded. The best that the person can hope for is that the matter is resolved, but he or she will still be out of pocket for the paid.

110. Mr Weir: I appreciate the logic behind the existence of the fee. We are all aware of many genuine cases in which action is needed and those in which there has been a problem for years. We are also pretty aware of situations in which neighbourhood disputes can easily lead to the complaints process being used vexatiously. Therefore, there is a need to charge a fee.

111. You said that the fee is essentially used to trigger an adjudication system. An analogy could be drawn between this and the court process. If a person wants to sue someone, generally, that person must pay a certain amount of money in order to get the case to court. However, it is also the general rule of thumb in courts that costs follow the event.

112. I perfectly understand that a complainant should be stuck with the fee in cases in which the situation is sorted out through arbitration or in which the complaint is deemed not to be legitimate. However, you mentioned a scenario in which someone who for years has tried unsuccessfully to get his or her neighbour to do something has used the service and is still stuck with the fee, even though the neighbour is completely in the wrong and knows what he or she should have done.

113. Costs often follow the event in courts. Should there be a provision to enable a council to recoup the cost of the fee from the party that has been ruled against in the judgement? Therefore, if someone is instructed to take certain action, he or she should have to cover the cost of the fee from a legitimate complaint.

114. Mr Lindsay: There is much validity in that argument, for instances in which someone who is not at fault and has brought a genuine case has to stump up the money. There are two answers to your question. First, imposing a cost or fee on the guilty party could get quite messy. If we find that the complaint is genuine and that the guilty party must carry out works to put rectify his or her actions, the mechanism for recouping that money could get quite messy.

115. Mr Weir: Earlier, you told us that there would be a fixed penalty notice for non-compliance. None of us knows at what level the fixed penalty should be set. Let us say that it is £50. Why not then at least have the power to impose that additional fixed penalty notice to recover the costs? If you are going to allow a fixed penalty for one set of circumstances, why not simply extend that?

116. We are all aware of situations in which, for example, a little old lady's garden hedge has overgrown, but there are also situations in which an elderly person may feel intimidated by the people who live next door and who constantly ignore what that elderly person has said about the height of their hedge. It seems unfair that, when a person makes a legitimate complaint, even though the adjudication is legitimate and the need to take action is recognised, to enforce it and compel the neighbour to do something that they should have done anyway ends up costing the complainant what could be a considerable amount of money.

117. Mrs Topping: We have looked at how some councils in England deal with the splitting of fees by charging a two-stage fee. There is an overall fee in such instances, and, in England, those fees are commonly around £300. There is an overall fee of, say, £300. The stage one investigation fee for the complainant is, say, £150. At that point, the council decides whether there is a problem and what the issues are. If the council has to move to the enforcement stage, it asks the complainant for an additional £150.

118. Mr Weir: That seems completely ludicrous. It suggests that people who make genuine complaints are to be charged more than those who are regarded as having made frivolous complaints.

119. Mrs Topping: In actual fact —

120. Mr Weir: We have had discussions with the Department on this matter in the past. One of the complaints that people have made is that, for instance, the legislation was enacted in England before it was introduced here and that progress was slow. I was told that when the legislation came into force in England there were elements of it that did not work very well. We should perhaps learn from the mistakes that were made in England.

121. The Chairperson: I would not like to be on benefits and have to deal with such matters.

122. Mrs Topping: There are various schemes and discretionary powers to charge different percentage levels of fees. I am aware that the English high hedges legislation was due for a review in 2010, but I do not know whether that review has been completed or whether there are lessons to be learned from it.

123. Mr Weir: It would be useful for the Committee to know whether that review has been completed. I was informed that the English legislation had a lot of teething problems. It would

be useful, when we come to put similar legislation in place here, to know what lessons have been learnt.

124. Mr T Clarke: If it is true, Peter has redeemed himself by suggesting that the person who makes the application should get his or her money back. I can understand that, in principle, the number of spurious complaints would be reduced, but a person who makes a valid complaint should not pay. If there is a mechanism to recoup that money, Peter, you are OK, and I agree with you.

125. Mr Lindsay: From the council's perspective, if that were to be the case, we would have to have a method for recouping the fee from the other party.

126. The Chairperson: Obviously, there will be no complaints about high hedges that will result in both parties agreeing to cut the hedge between them.

127. Mr T Clarke: The danger is that so many of these cases involve elderly people who cannot afford the high cost of making a complaint. Making a complaint becomes the least of their worries when they are trying to find the money to fill their oil tank. To charge elderly people or anyone else in fuel poverty an onerous amount of money is to ask them to decide between heating their house or complaining about trees that are causing them nuisance.

128. Mr McGlone: I want to follow up on that point. The issue passed me by while I was not a member of the Committee, but I am intrigued by aspects of it. The first is that, if a complainant chooses to take further action, he or she has to pay more money. Am I picking that up right? The second aspect is to do with the involvement of arboriculturists. I have dealt with them in connection with planning applications, and they do not come cheap. Far from it.

129. I am intrigued by the next stage of enforcement. How does it happen? Who deals with it? Is it potentially similar to the removal of litter or to noise abatement, in that environmental health, which you said is the area in which you work, Gillian, is involved?

130. If an arboriculturist is involved, as one may be, he or she could say, for example, that a tree is a lovely beech tree and, therefore, nothing can be done. However, the other person's argument could be, for example, that the lovely beech tree has tilted 5 cm in the past 10 years, is moving towards their house and has unstable roots. In that situation, who bears the cost of the arboriculturist, particularly, as Mr Weir said, in contentious cases? Given the experience that you have of local government, I am sure that you have been involved in the odd dispute between neighbours. Indeed, someone came to me yesterday with a complaint about a neighbour's rooster. It is easy to be sucked into something that is very contentious: that tree has moved a wee bit and is dangerous; no, that tree has not moved. At what point do you bring in the arboriculturist, and who pays for that?

131. Mrs Topping: Under the guidance that has been set out in England, it is the council that carries out the investigation and goes through the decision-making process as to the loss of reasonable enjoyment on the complainant's property. There are many factors involved in that decision, including loss of light, amenity, and so on, and the council works its way through the various issues. If, at the end of the process, the council decides that remedial work to the hedge is needed, the guidance in England — I guess that it will largely frame the Department's guidance — states that, to protect the council from liability, at the point of writing a remedial notice, councils should seek the expertise of, for example, an arboriculturist on how to trim back the hedge. The advice is not on the issues that surround the hedge, but on how much to take off the hedge and when, so that the hedge can be protected. Those experts are involved not in the decision-making process but in setting out the specialist work that is needed for the hedge.

132. Mr McGlone: That is helping you in your decision-making. However, I am trying to cut through the hedges — if I can call it that. Who pays the arboriculturist?

133. Mr Lindsay: We made a point earlier about the fee that is charged up front. It is not simply a matter of deciding what scale the fee should be or whether it should be enough to cover, for example, five hours of an enforcement officer's time. The formula is not as simple as that, because the situation may involve the council having to engage specialist advice, which may cost money. Arguably, that cost should be borne by the fee that the council recoups. I would caution the Committee about that.

134. Mr McGlone: I am not entirely happy with that. That would incur additional costs.

135. The Chairperson: I agree. It is all right to say that councils need expert advice. However, creating another job for the sake of creating another job is not good.

136. Mr Beggs: Who do we want to pay for it? That is the interesting question.

137. The Chairperson: It has to be addressed through the Bill.

138. Mr Lindsay: The Bill, as it stands, gives protection for the councils. If a council carries out work in default, the Bill protects that council against any claims if anything happens to or goes wrong with the hedge. However, you could decide that, when a remedial notice is served, the council would not be held liable for any subsequent damage or for the hedge dying.

139. The Chairperson: Someone could also be trained to give expert advice.

140. Mr Weir: If councils have to have a tree expert, surely that expert would be brought in only in exceptional circumstances. I am worried that, every time a remedial notice is served and a hedge needs cut, we are drifting towards an expert being brought in.

141. Mr T Clarke: Somebody needs to get a tape measure out. If a hedge is over a certain height, cut it.

142. Mr McGlone: In many cases, if experts are brought in, that becomes the pattern. People who do not profess to have any knowledge of a field, in order to cover their backs, will bring in experts. At another level, the Civil Service might call them consultants. I am concerned about that. I thank my colleague and you, Chairperson, for your patience.

143. Mr Dallat: It seems that we are discussing a deep-rooted problem. [Laughter.] I appreciate very much what Gillian and David are doing today. While I waited patiently for my colleague to come to a conclusion, I thought of two live examples of situations in which the Bill will not help. The first case is of a constituent who has a conifer at the side of his house that is more reminiscent of American redwood. If a south wind comes, his house will be gone. He has no protection. The other case is where my former council planted a line of poplar trees for screening purposes. The poplars shot up, the roots shot out, and all the neighbours' drains, sewerage and foundations were uprooted. That problem was solved because the council was spending public money. However, I suspect that, in private cases, people will do anything to avoid spending a lot of money to resolve the issue.

144. Therefore, in real terms, what else will the Bill address apart from high hedges and loss of light? We need much more discussion on it. We made a major mistake by focusing so much on what has happened in England for the past eight years rather than focusing on our own

situation, which is quite different. I would love to hear your views on that, particularly from Gillian, because she seems to be an expert on it.

145. Mrs Topping: Far from it. I appreciate that point, because, like Mr Dallat, I get those types of complaints in the office. They are real examples and are happening to real people. As I mentioned earlier, people can pursue other remedies for specific issues, perhaps through civil action. The High Hedges Bill was introduced to deal with what was perceived to be a wide-ranging problem and to help a wide number of people. The council should be the vehicle for that.

146. The Chairperson: I take Mr Dallat's point. We may need to seriously look at that. It is important.

147. Mr Beggs: I declare an interest as a councillor on Carrickfergus Borough Council. In my experience, the fixed penalty is a very good mechanism. Even if the council reaches a decision to issue remedial notices, considerable man-hours will be involved. Therefore, it is much better to provide an incentive to get the situation resolved and for the individuals to do the work themselves and make it their responsibility. I express my support for that thought.

148. In your knowledge of the subject area, have you come across any mechanism to penalise those who are being unreasonable? It would be much better if those who are unreasonable or are the source of the problem addressed it at a very early stage, and without the involvement of statutory agencies. In my constituency, there is a complete line of, I think, Castlewellaan Gold that is about 40 ft high in a residential area. It is quite an intimidating sight. It is overgrown and is affecting some neighbours' quality of life. What will happen if there is a discussion between neighbours, but the owner of the land that the trees are on will not do anything? It is obvious to any reasonable person that there is a problem. Rather than make the adjacent neighbour who is suffering bear the brunt, the introduction of some mechanism to put a fee on to the unreasonable people might send a signal that makes people solve the problem themselves before incurring a fee. That might cut the council and statutory services out of the loop. Are you aware of a mechanism anywhere else to encourage that?

149. Mrs Topping: I cannot think of anything that the council would initially use for making adjudication on the motives of individuals and then determining who should pay the fee.

150. Mr Beggs: Are you aware of how that has been enacted anywhere else, and whether a fee structure has allowed the very unreasonable person to bear some of the costs? I can see that there will be a lot of grey areas. It would be inappropriate to charge someone a fee in a situation in which no one knew who was at fault. However, there may be a stark case in which it is obvious that someone is being unreasonable and is affecting a neighbour's quality of life, and there should be a financial incentive to encourage that person to take responsibility for resolving the issue at an early stage.

151. Mrs Topping: The legislation is framed in such a way as to encourage people to discuss the matter before it is brought to the council's attention. Complainants are motivated to try to make some effort to discuss the matter with their neighbours, either by speaking to them, in writing or by using mediation. If that were done, that should rule out a number of issues that would otherwise come to the council. However, we know that there are long-running disputes that will create problems for councils.

152. I take the point that what is happening in England does not necessarily mean that the legislation is perfect. I have not come across any individual case in which the things that you mentioned have been looked at. Some councils in England state their fees and the process that they go through. Other councils have tinkered with it a little bit and charge in two stages,

depending on the validity of the complaint and how much needs to be done. However, I have not come across anything where councils feel that, because of the particular circumstances of the case, the hedge owner will automatically be charged.

153. Mr Buchanan: I am concerned that the Bill will not cater for many of my constituents. People in my constituency who have problems with their hedges are looking forward to the Bill resolving those problems. From what I hear today, I do not think that that will be the case, because of all the bureaucracy involved. You have talked about mediation. Who will mediate? Will the council perform the mediation between the two parties? Mediation between the two parties has already taken place in the cases in my constituency, and, obviously, the person who owns the tree wants to know nothing about it. Why is there a need to bring into the equation consultants and tree specialists? Why can we not have a simple Bill that will cater for the problem without involving such people? It seems to be such a simple issue, yet we appear to be involving so much bureaucracy, which should be cut out completely.

154. Mr Lindsay: A simple way in which to provide expert advice would be to serve a public health notice. Case law has shown that, in many instances in the past, we do not need to specify the ABCs of what specific work needs to be done; rather, we just state that the nuisance needed to be abated. You could say the same in this situation. Following an investigation, we could be satisfied that someone's enjoyment of their property is being affected or their light is being reduced, or whatever, and a remedial notice would be served requiring the owner of the hedge to "abate the nuisance". We should not be specific. It would be up to people to take their own expert advice on how to remediate the problem without killing the hedge.

155. England seems to have adopted a relatively convoluted and complex way of tackling the issue. We do not necessarily agree with the methods there, but we are looking at the English situation and making an assumption that the Department here will bring it in here, as has happened in the past.

156. Mr T Clarke: Do you have blue recycling bins in Banbridge?

157. Mr Lindsay: No, we have a kerbside box scheme.

158. Mr T Clarke: I suggest that you put the English legislation in one of your recycling boxes. We need a model that suits Northern Ireland, and we should forget about England.

159. The Chairperson: That is a valid point. We have to get to a point in the legislation at which we can do, as opposed to cannot do. Mr Dallat, among others, raised some key points about the roots of trees. Perhaps that issue can be dealt with in separate legislation.

160. Mr Lindsay: One of the fundamental issues that we wanted to raise with the Committee was the remedy for people not complying with remedial notices. We feel strongly that we need to have a fixed penalty power, because, from experience, we know how the Magistrate's Court in Northern Ireland treats more minor environmental offences. The threat of bringing an individual to court will not be a deterrent; rather, it will act only as a drain on expenses, time and council resources. There needs to be a fixed penalty remedy.

161. The Chairperson: There needs to be a deterrent, and it could be a fixed penalty. Members have no more questions. Thank you for attending today's Committee meeting.

30 September 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)

Mr Patsy McGlone (Deputy Chairperson)

Mr Roy Beggs

Mr Trevor Clarke

Mr John Dallat

Mr Danny Kinahan

Mr Peter Weir

Mr Brian Wilson

Witnesses:

Mr Donal McLaughlin

Ms Claire O'Neill Northern Ireland Local Government Association

Ms Nora Winder

162. The Chairperson: I welcome Donal McLaughlin, who is the environmental health manager in Lisburn City Council; Claire O'Neill, who is the principal environmental health officer in Belfast City Council; and Nora Winder, who is the acting chief executive of the Northern Ireland Local Government Association (NILGA). You are welcome today's Committee meeting. You may begin with a five- or 10-minute presentation, and that will be followed by Committee members' questions. Nora, you are very welcome back. Before we continue, I invite members to make declarations of interest.

163. Mr Weir: I declare an interest as a member of NILGA.

164. Mr B Wilson: I declare an interest as a local councillor.

165. Mr Beggs: I am a local councillor.

166. Mr T Clarke: I am a local councillor.

167. The Chairperson: You are on the gravy train.

168. Ms Nora Winder (Northern Ireland Local Government Association): Thank you for inviting us to the Committee meeting. Before I begin, may I apologise on behalf of our president, Councillor Evelynne Robinson, and the chairperson of our health and environment committee, Councillor Jenny Palmer, both of whom, owing to prior engagements, are unable to attend the meeting.

169. The local government sector broadly welcomes the legislation to deal with the issues that are raised in council, as you were discussing earlier. NILGA has been working closely with the Department of the Environment (DOE) on the development of policy and guidance on high hedges. A joint DOE/local government event was held in Cookstown on 23 February 2010 to discuss the initial departmental consultation. There have been subsequent officer meetings to explore key issues and proposed guidance documents. The work is ongoing. It was hoped that a meeting would be held to address fees and charges prior to this Committee meeting. However, owing to other work commitments, that has not been possible. We are seeking an early date for that meeting and will report back to the Committee on progress made.

170. Although NILGA is aware that a number of issues of concern to local government have been resolved through the process, as I have outlined, a number of issues remain. We wish to focus on those issues today.

171. You will be aware that I am not an expert in this area, but we have two experts with us today: Claire O'Neill, the principal environmental health officer in public health and housing in Belfast City Council; and Donal McLaughlin, the environmental health manager in Lisburn City Council. Claire will take you through the key issues.

172. Ms Claire O'Neill (Northern Ireland Local Government Association): Our first concern relates to clause 2 and the limitations of the remit of the proposed legislation. It is clear that the legislation as it stands will not deal with all complaints. It is not designed to cover problematic root systems, deciduous hedges or single trees, and it may be that a complaint is not resolved owing to an inability to cut far enough. There is still no legislative cover for single trees that are a barrier to light, and that can be a problem in urban areas. It will be necessary for the Department to have discussions with the Forest Service to ensure that it is aware of the new legislation and is sensitive to its requirements.

173. There are also concerns about fees and charging. The most serious local government concern is the proposed innovative approach to charging. At first sight, it looks as if the complainant is being charged, and that runs contrary to existing local government practices and the wider polluter-pays principle. Although NILGA is supportive of the need to cover costs and recognises the proposed system as a means of attempting to do that, we are concerned that the system is an awkward fit with other council functions, even though it is a means of ensuring that all ratepayers do not shoulder the cost of an individual's problem. We are also of the view that it is highly unlikely that the fee will cover the costs involved.

174. NILGA has ensured that local government is working closely with the Department to develop guidance and to ensure that the fees set are as realistic and consistent as possible. We seek to avoid a scenario in which the complainant ends up paying more than the hedge owner in the event of a justified complaint. It is the view of local government practitioners that there is a potential for the development of prescribed fees regulations, such as those developed recently by the housing unit in the Department for Social Development (DSD) under the Private Tenancies (Northern Ireland) Order 2006. Early discussions have taken place with the Department in that regard, and we encourage the Committee to investigate the possibility of prescribed fees regulations. Local government is keen to liaise with the Department to inform the setting of a maximum fee, and NILGA will be arranging a meeting in the near future to discuss fees and charges specifically. There is a chief environmental health officers' group, which represents all 26 councils. Its purpose is to provide consistency across all council areas.

175. On clause 3, it is NILGA's view that the Department should set a maximum fee, with council discretion regarding ...

[The next 10 minutes of proceedings were not recorded due to technical difficulties.]

176. Mr Weir: ... Given the number of problems that a single tree may cause, will the volume of complaints be as manageable? What are your views on the scope of the problem?

177. Mr Donal McLaughlin (Northern Ireland Local Government Association): Many of the complaints about deciduous trees at this time of the year concern leaf litter. The tree may not belong to a property, yet the owner of that property may have to live with a lot of slippery leaf litter. It may be a dangerous situation. There are very many of those complaints, and we hear a lot about such situations. At this stage, we can do nothing about it. As you say, the cost of investigating, especially to investigate the integrity of the tree, will be very expensive.

178. Mr Weir: If you could supply some information, it would be useful. The broad idea is that the polluter pays and that the costs follow the event. However, you have given us a separate example within government of a methodology that could be used.

179. You spoke of the experience in England. If it is ready, we may receive some report of the process. I wonder, perhaps through NILGA, if I were to ask Ms "Winter", as she is called on her nameplate, whether she can find out any information and supply it to us from the experience of English councils, as to what problems they have faced. It is said that a wise person learns from his mistakes, but an even wiser person learns from someone else's mistakes. If we can get this right, it will be helpful.

180. You have highlighted that there is a major problem with in tracing the person responsible for vacant land. Presumably, where you have genuinely vacant land and vacant properties, there is a boundary hedge. In those circumstances, presumably the prospect of someone cutting the hedge voluntarily is very limited. That land may be very heavily overgrown in many cases. Are you concerned that, unless there is some provision that allows a council to recover costs for rectifying the problem from the person who has created it, we will be left with a situation in which we will have to have an astronomical fee structure initially or, alternatively, councils will habitually be left with a large bill to pick up. The only way in which to square that circle is to be able to pass at least some of that cost on to the person or persons who have arguably been responsible for the case in the first place.

181. Ms C O'Neill: We said that, if the council has the vires to go in and remove the hedge completely, there will not be an ongoing maintenance issue, which is not provided for in legislation at the moment. Where councils are able to put a statutory charge on the land, if the land is ever sold again, they have a prospect of getting back costs incurred. Those are the only two ways of doing that.

182. Mr Weir: You referred to the 2006 Order. The opportunity at least to allow costs to follow the event, as one would say in court, seems to be a reasonably sensible approach.

183. There would, however, be a major problem if the land of a little old lady, or a big young lady, were polluted by way of a large hedge. What might be said is that the person who is already suffering as a result is the only person who is picking up a tab, while the person who has created the problem seems to be getting off, apart from having to take remedial action. The person who has created the problem is not in any way financially sanctioned by that side of the reading. Clearly, there is potential for unfairness there.

184. Ms C O'Neill: That is why, if there were a cost on the service of notice of any further specialist fees or anything else, that would be left to the hedge owner.

185. Mr Weir: That would allow for some recovery of costs.

186. Ms C O'Neill: That would negate, and lower, the cost of complaining, because the complainant knows that costs will be recouped later.

187. Mr Weir: Should there be, for example, as a part of that, a slight variation to the system? Might we call it a deposit rather than a fee? A complainant may submit that money and, in the event that a person is successful with the claim and a particular order is made against the other landowner, the deposit is returned. If the case were dismissed or thrown out some other way, the deposit would not be returned. It is a question of expression, apart from anything else.

188. Mr Kinahan: I welcome the advice on the civil costs. It is good to hear that.

189. I have raised the matter of vacant properties with the Minister on other matters. We need to find a way forward for identifying the owners of vacant plots. It is behind a whole mass of problems for councils. I want to return to the single tree issue. My feeling is that this is becoming too complicated and that we need to have a good definition of a hedge. I want some

advice from you on the tree side of things. There have been many instances in which houses have been built around trees that are protected for historical reasons, their age or because they look good. Subsequently, the tree is deemed to be dangerous. All trees are dangerous, depending on how they are graded. I would like some advice on how we would deal with the protection, because I am worried that we will have no trees or hedges, if we go down the road that we are going. All of them will be at risk, so we will have to be careful and keep the legislation simplified. Can you train someone in councils to have the required knowledge on hedges and trees in time for the commencement of the legislation?

190. Mr D McLaughlin: I think that our grounds maintenance people have the required expertise. As we develop over the next few years, it is hoped that, the next time around, we will be able to apply the same rules and regulations to Castlewellan Gold, one of our indigenous trees, as you referred to them. Trees that are protected under a tree preservation order and trees that are being screened for planning will be outside the remit.

191. Ms C O'Neill: The safety issue is not covered in the legislation. Single trees will be considered only if they are a barrier to light. They have to act as a barrier to light to the complainant's property or have overhanging branches, and there is a full matrix [Inaudible.] for that.

192. The Chairperson: To follow on from Mr Kinahan's point, I know what you said about vacant properties, but we need to look seriously at the power around whether to remove the tree. We will need to be careful about that element as well.

193. Mr Beggs: Some people have suggested widening the scope of the Bill to deal with individual trees. Are you fearful that if that were done, the number of complaints would be astronomical, and our town and cities might end up with no trees?

194. Mr D McLaughlin: I tend to agree with that; that could be the case. We have no idea how many complaints there will be.

195. Mr Beggs: I am concerned about widening it to that extent. If my reading of the Bill is correct, it relates solely to evergreen hedges. I planted a beech hedge around 10 years ago. It is green for most of the year, has brown leaves for almost the remainder of the year and, for a short period, is leafless. You can have a thick, effective hedge, and if it is appropriately located, it can be a successful hedge. However, it appears to me that a hedge such as that would not be governed by the legislation. We top and trim our hedge regularly, but if it were allowed to grow completely out of control, we could create the problem of affecting a neighbour's light. Do you agree that that type of hedge should be included in the Bill?

196. Mr D McLaughlin: Beech and horse chestnut are mentioned in the Bill. They are excluded from the legislation, because there is also a semi-evergreen definition, which has not been clarified.

197. Mr Beggs: Can we have clarification on whether that could be included in the Bill? Is clarity required on any other types of hedge? If a type of tree is being used as hedge and is causing a problem for neighbours, it would be unfortunate to miss it and not have it included in the Bill.

198. Mr D McLaughlin: I am not an expert on evergreen trees, but horticulturists in the council have told me about thuyas, which will die if they are thinned out at all, yet they are like Castlewellan Gold or green leylandii. We need experts in instances to ensure that we are dealing with the right kind of hedging or trees.

199. Mr T Clarke: I am not as green as some of these other guys, but there should be a definition of size; otherwise, the issue is very subjective. However, if the hedge that you are talking about is causing a nuisance, surely it should be included, whether or not it dies.

200. Mr Beggs: It should not have been planted.

201. Mr T Clarke: It should not have been planted in that location. It should have been planted away from houses.

202. Mr D McLaughlin: It is included. What I am saying is that if we demand that it be brought down to 2 m, that will automatically kill the hedge. There is no way around that. That has to be borne in mind. By serving notice on it, we are condemning that tree or that hedge.

203. Mr T Clarke: That is fair enough.

204. Mr D McLaughlin: Yes.

205. Mr T Clarke: Whoever planted that —

206. Mr D McLaughlin: There is a liability on the council.

207. The Chairperson: Obviously, that is a valid point, and you may be right, Mr Clarke. If it is regarded as a nuisance, it has to be removed. That is something that we need to look at in the Bill. What you are concerned about, however, is the cost of all that.

208. Mr D McLaughlin: And the liability for damage.

209. The Chairperson: Yes.

210. Mr T Clarke: If you are outside the legislation, surely the liability should lie with the owner, as opposed to the authority that is enforcing the legislation.

211. Mr D McLaughlin: We would like to think that, but —

212. Mr T Clarke: Is that not clear in your reading of the Bill?

213. Mr D McLaughlin: The English legislation talked about councils bringing in arboriculturists to protect themselves against any liability for hedges being killed by being brought down to a certain level. The expertise would say at the minute that a hedge of 40 ft should be reduced by one third in the first year, and then in stages. If it is brought down by any more than that, the hedge will be killed automatically without any further intervention.

214. Mr T Clarke: The danger with that is that if with a 40 ft hedge, "Special Branch" will be out every other year.

215. Mr D McLaughlin: Every other year, yes.

216. Mr T Clarke: Therefore, that means that the people who initially pay a fee will have initiated a complaint that could take three or four years before they get the outcome that they require.

217. Mr D McLaughlin: Yes.

218. Mr T Clarke: That is not fair either.

219. The Chairperson: We are not including "Special Branch" in the legislation, by the way.

220. Mr B Wilson: I was extremely concerned that you were trying to incorporate the idea of a single tree into the legislation. Those are two totally different cases. I have been very supportive of high hedges legislation. In fact, to Rooker's consultation around five years ago, I got half a dozen people to put in objections.

221. We need this legislation, and it is disappointing that it has not yet come into effect. However, trying to incorporate single trees into it is totally unacceptable. Very often, a requirement of planning applications is that trees must be retained. The trees are often there from before the house is ever built. The character of many urban areas is defined by trees, and their absence would totally transform those areas. As for the idea that we suffer loss of life from a tree, most trees — for example, a 150-year-old oak — is in leaf for only half the year. Unfortunately, perhaps, for that half a year, light will be lost.

222. However, high hedges are an absolute curse for many in urban areas. As a councillor, I have been trying to do something about them for years. We should be getting on with doing that, and not bothering about single trees, because totally different legislation would be required.

223. The Chairperson: That is an issue that we are only teasing out. We are not saying that we are going down that road at all. I know of examples in my constituency of single trees causing a nuisance. There is no doubt about that.

224. Mr T Clarke: Your forest is OK, Danny. Do not worry: we are not saying that we are going to cut it down.

225. Mr Kinahan: Should I declare an interest?

226. The Chairperson: None of these people will be invited to the Edinburgh Festival. The standard of jokes is just not up to it.

227. Mr Weir: Not even to the Fringe.

228. The Chairperson: Perhaps we can look at the figures to see how many complaints are made about single trees and get the Assembly Research and Library Service to look at that. Thank you very much for your presentation.

229. Mr Kinahan: I believe that the Assembly in its first mandate did a great deal of work on a Bill to protect single trees. We should keep that issue separate. I know that it is sitting on a shelf somewhere.

230. Mr D McLaughlin: As regards our taking court action, we are limited by the Magistrate's Court in that we can recover costs up to £75 only. Perhaps you could look into what costs can be recovered through the courts.

231. The Chairperson: OK. We will look at that.

232. Gentlemen, are you content for the issues that have been raised to be incorporated into the clause-by-clause summary paper?

Members indicated assent.

7 October 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)

Mr Patsy McGlone (Deputy Chairperson)

Mr Roy Beggs

Mr Thomas Buchanan

Mr Willie Clarke

Mr John Dallat

Mr Peter Weir

Mr Brian Wilson

Witnesses:

Mr Robert Colwell
Mr Peter O'Reilly Mediation Northern Ireland

Ms Claire Duddy Carrickfergus Borough Council

233. The Chairperson (Mr Boylan): We shall now receive a briefing from Mediation NI on the High Hedges Bill. I welcome Peter O'Reilly and Robert Colwell. I ask the witnesses to present to the Committee for five to 10 minutes, and I will then open the meeting up to questions from Committee members.

234. Mr Peter O'Reilly (Mediation Northern Ireland): Thank you for the invitation to appear before the Committee to follow up on the submission that we made on the High Hedges Bill. All that I intend to do is to expand on some of the points that we made in the submission and take questions from Committee members.

235. For those members who do not know about our organisation, Mediation Northern Ireland is a mediation development agency that has operated in NI for the past 20 years. We have somehow managed to remain independent. It is a not-for-profit social enterprise, with a volunteer board of trustees; 12 staff; 25 associates, who are trained and experienced mediators employed on a sessional basis; and a team of volunteer mediators. By saying that we are a mediation development agency, we understand ourselves to be promoters and developers of the practice of mediation, and we support those who wish to develop mediation in their own sectors or agencies.

236. I shall speak to some contemporary thinking on handling conflict, and what I believe is a fairly reasonable capacity in Northern Ireland to deliver on what is planned at present through the Bill. I will also look at structures for delivery and mention confidentiality and impartiality as important principles underlying mediation.

237. We support the thinking and the proposed procedures to handle conflict in the Bill. I understand that I am speaking to what is guidance rather than legislation and that mediation will no longer be written into legislation but will instead be in the guidance on the procedures around its implementation.

238. At source, resolution as an idea has developed strongly throughout Europe and the Western World. European directive 2008/52/EC on certain aspects of mediation in civil and commercial matters promoted the use of, and access to, mediation. Lord Woolf previously considered how mediation should be promoted and used, and our own access to justice review is currently considering that. In its review of procedures for handling workplace disputes, the Department for Employment and Learning (DEL) also looked at the use of alternative dispute-resolution

procedures, including mediation as early as possible and, again, at source. Members may be aware that the proposed public assemblies Bill also included the use of mediation, and that legislation may be introduced at some stage.

239. The mediation field can deliver, and that is something that we stated in our submission. There is a broad swathe of mediation practitioners throughout Northern Ireland, with varying degrees of experience. However, there are fairly high standards of training and accreditation of that training, and we have a system that can ensure quality of practice and the delivery of competent mediation services. There are various models of mediation delivery that the Committee could usefully consider recommending. Mediation is also becoming well known, and people have a growing understanding of what it can and cannot do for them throughout our society.

240. The 2008 European directive states:

"mediation can provide a cost-effective and quick extrajudicial resolution of disputes".

241. However, it would be foolish to insist on mediation being used without paying attention to how the resource might be provided to allow people to use mediation. Many models could be considered in the context of the Bill. First, council or councils could use in-house mediators, with each council looking after provision itself. Secondly, councils could support the development of teams of local volunteers to deliver mediation, and, thirdly, councils could signpost people to privately provided — market-driven — mediation providers.

242. Another possibility is a shared-service approach, with a regional provider that councils could use. That could be an in-house approach; for example, some local government areas have staff who are trained mediators, and they could be used in another council area. There could be a quid pro quo arrangement among councils so that staff could go and mediate on situations for one other.

243. Alternatively, there could be a central service providing volunteer mediators who are independent of the council or any other agency, with some kind of service level agreement that could be core-funded. Councils could decide to leave it to a professional regional provider, and have a service level agreement with it, or leave it to market forces. Our recommendation is that a structure for the use of a regional service providing volunteer mediators would probably be the most efficient and effective way of providing the resource that the legislation needs.

244. Finally, I will make a point about confidentiality, impartiality and independence. Structuring legislation is always difficult. If arbitration is going to be used later, what is the relationship between an earlier mediation process and a later arbitration, and can the arbitration take into account what has happened in the earlier mediation attempt? We argue strongly that mediation will work best if people know that what they are saying and doing during that mediation will not be used later on. The European directive expresses the strong view that Governments should protect the confidentiality of mediation, and that anything that happens in that process should be without prejudice to any later processes.

245. Underlying that is the fact that mediation can provide a shift in people's understanding of how they want the problem sorted out. The mediator's task is to get people to move into a collaborative, problem-solving mode as opposed to an adversarial, juridical approach to dealing with each other. Finally, we advise that, whatever structure or guidance is given to local government, mediators need to be impartial and independent, and seen to be so. The rest of our handout gives information about what mediation is and how it might work.

246. The Chairperson: Thank you. Obviously, there is a role for councils and council staff. Do you envisage a role for your organisation in training those staff, and will you touch on some of the costs involved?

247. Mr O'Reilly: The training of council officials costs something in the region of £1,000 a day to provide training for a group of 16 people. The standard practice is that people receive at least six days training before they are considered as approaching having the skills to implement mediations. That model has been used in different local government areas, particularly in England, to provide, for example, mediation in housing management. Councils train mediators and then share them around. The model has its pros and cons.

248. Mr Weir: To follow on from the Chairperson's question, I appreciate that what I am about to ask you may be very difficult, if not impossible, to answer. You mentioned the cost of training people and suggested various training models. Have you any idea how much they would cost overall — even a ballpark figure — to implement? You said that there should be some form of shared service, and you referred to volunteers. The question may be premature, but do you have any idea how much it would cost?

249. Mr O'Reilly: The model that I recommend would aim to achieve the quality assurance standards that are beginning to be recognised throughout these islands. The Mediators' Institute of Ireland, based in Dublin, and the College of Mediators in the UK have developed similar standards. The initial cost of ensuring professional standardisation would be, and this is very much a ballpark figure, in the region of £10,000. That would leave us with a team and a sustainable system.

250. Mr Weir: Do you mean £10,000 a council?

251. Mr O'Reilly: I think that £10,000 would cover the region. For sustainability, we should avoid the council team approach. The number of cases to do with high hedges is not that many. We have not marketed ourselves for it, but we had an average of two such cases a year over the past number of years. Sustaining a team for that in each council area would not be efficient.

252. Mr Weir: I appreciate that, and it was not what I was suggesting. However, I suspect that, when legislation comes into effect, there will be considerably more than two such cases a year. All of us are aware of quite a number of cases in our constituencies. Cases are not pursued at present because people know that, legally, nothing can be enforced, and so there is only complaining and shrugging of shoulders.

253. I agree with what you said about confidentiality, because it is important that what occurs in mediation be kept separate from the arbitration process.

254. You referred to the national bodies, such as the Mediators' Institute of Ireland.

255. Mr O'Reilly: They are basically the professional standards bodies.

256. Mr Weir: If there is a dispute within those bodies, to whom do they go? [Laughter.]

257. Mr Beggs: Thank you, Mr O'Reilly, for giving the Committee your insight into this issue. You have mentioned possible routes forward. We could use professional or volunteer mediators. Do you accept that, even given the prices you cited earlier, it would be very expensive to have a professional role for an outside mediator in each individual case? I declare an interest as a member of Carrickfergus Borough Council.

258. The Chairperson: You are on your home patch now, Mr Beggs.

259. Mr Beggs: Indeed. Professional mediation would be an expensive route to go down. Presumably, it would cost £500 or £1,000 a day to use a professional mediator.

260. Mr O'Reilly: I was referring to the training at that stage.

261. Mr Beggs: How much a day does a professional mediator cost?

262. The Chairperson: Personal questions. [Laughter.]

263. Mr O'Reilly: It depends on the quality and experience of the mediator.

264. Mr Beggs: You are not giving your hand away there. I suspect that it would be an expensive route to go down. If volunteer mediation is specified as essential in the guidance, there will be difficulties if one cannot get volunteers in a particular area, or if demand for them peaked at certain times and volunteer mediators became unavailable. Do you accept that there might be problems there? There would be no harm in recommending volunteer mediators if they were available, but I would be concerned about making it a statutory requirement.

265. Do you accept that the best way forward might be for the council officers who are assessing a particular case to undergo that training so that they will have training and experience in the area when it comes to reaching a decision and arbitrating?

266. Mr O'Reilly: There are pros to that model, one being cost efficiency, and there are difficulties with that as well. For example, some people would view council-employed mediators as not necessarily being impartial and may have difficulty trusting the confidentiality process if council employees are the mediators, and then, later on, the council is making an arbitration.

267. The model was developed in the Housing Executive, which has moved away from using officials trained in-house officials to using volunteer practitioners. The benefits of the volunteer model are that it is cheap in the long run. There is core funding for management and training, but providing the service is relatively free, with just the cost of mileage and expenses to be covered.

268. I am not making a political point, but the model also fits in with the Big Society idea. In our experience, when people are in dispute with their neighbours, they have a fairly positive attitude to volunteers, who are not in it as professionals or doing it as part of the job. Mediators are more trusted if they are working voluntarily.

269. Mr McGlone: There is no one-size-fits-all in mediation, in particular when a council could wind up being the arbitration body, yet someone from the council is seen as being the mediator. The clear answer in that case is to involve someone from outside the council. In other instances, a volunteer could weigh in, perhaps even a local MLA or councillor.

270. Although we all accept the principles of mediation, I am sure that there are different models that we could talk about all day. As I said, there is no one-size-fits-all. I can see situations in which mediation is useful, but I still do not see there being so many cases that fully trained mediators will be needed in every council. Your idea, Peter, that there should be a group approach —

271. Mr Weir: To be fair, that was their idea.

272. Mr McGlone: Sorry, I thought that it was your idea.

273. Mr Weir: I am not decrying it, but I am not taking credit for their thoughts. [Laughter.]

274. Mr McGlone: You would hope that it would not come to that, unless people —

275. Mr O'Reilly: What will be sustainable will probably be a team of mediators addressing many different topics. Mediators trained to deal with just high hedge disputes will not be all that sustainable.

276. As I said, we are at the very early stages of conversation with the Department for Employment and Learning about a network of mediators that would provide services in the early stages of certain types of workplace dispute. My colleague is working in Carrickfergus helping to develop mediators to work on cohesion issues. Therefore, a team that provides services to different Departments, and perhaps local government, may be the more efficiently sustainable approach to take.

277. Mr McGlone: However, given that the issues are more or less the same, you have answered your question. It could be a housing problem or a hedge problem. What is important is your approach and methodology, and the independence and professionalism of the mediators. Therefore, it is a service per se.

278. Mr O'Reilly: Yes, and the investment that I mentioned is about ensuring that the contemporary quality assurance and competencies are there and recognised. Regardless of whether they are volunteers or professionals, they need to be competent and they need to work to quality standards.

279. Mr W Clarke: Thanks for your presentation. I agree that training council enforcement officers could create difficulties where independence is concerned. Generally, council workers are seen as coming from the Government and as having made up their minds already. You touched on this from a community perspective, and I will approach it in the same way by looking at models of good practice, such as the community restorative justice schemes that are being rolled out across the island of Ireland and, indeed, throughout Europe.

280. Staff in restorative justice schemes come from the community and are largely voluntary, although their expenses are met. I am aware of their expertise, and the PSNI, Housing Executive and social services recognise that expertise, and they acknowledge that staff in those organisations do a very good job. They are respected and have personal knowledge of various local families because they come from their own communities. What would you think about putting such staff on more of a statutory footing so that they could deal with particular matters? That could then lead us to look at sharing resources, perhaps through the transitional committees and the system that would have emerged from the review of public administration (RPA). Dealing with enforcement officers at that level could be a job for transitional committees.

281. Mr O'Reilly: I am aware of the work that Community Restorative Justice Ireland (CRJI) does on alternative measures, the services that it provides and the progress that is being made in the recognition and standardisation of practice. You are right to say that the community based nature of such schemes is important and would be a benefit. People who are involved in those schemes have local knowledge, local cultural understanding and so on. What someone gets away with in a village in Tyrone and what they get away with in an estate in north Belfast might be different.

282. The question would be about managing and delivering that model and about whether a structure could be created that covers all the need that exists for those provisional services

everywhere. The management and supervision of the work would have to be acceptable throughout communities in Northern Ireland. Therefore, you are right. I said earlier that the skills and experience exist for that, but it is a matter of organising, structuring and delivering the service in a way that is acceptable to everybody.

283. Mr Dallat: I am sure that members will not need arbitration or mediation for the Committee to reach its conclusions. It seems to me that mediation is very useful, and I think that most elected representatives would be glad to have the opportunity to get involved in it rather than to get caught up in a brawl between people on opposing sides. How do you ensure that mediation is time limited? Are you certain that mediation would not end up being some other kind of arbitration later?

284. Mr O'Reilly: In answer to your first question, we use a process that involves meeting each of the parties, agreeing the focus and boundaries of the mediation and getting to agree to a timescale. We use different models for differing contexts, but the process may involve two separate meetings lasting one hour or an hour and a half with each of the parties. Those may be followed by a mediation session lasting three to four hours, and that would usually bring us to a place where we know either that extending the process will lead to success or that the mediation will get no further.

285. Mr Dallat: Do you have an answer to my second question? Are you sure that your work does not somehow in law become the focus of arbitration somewhere else, such as in court?

286. Mr O'Reilly: Do you mean a complaint about the mediation process, or a complaint about how it was used?

287. Mr Dallat: No, I mean if the material used could be obtained under the Freedom of Information Act 2000, for example, for a full-scale blitz in a court.

288. Mr O'Reilly: Disclosure law is very strong here. We have had a number of cases where solicitors have sent us letters after we had done mediation work, and our response has been that there was an agreement to confidentiality. Only on one occasion was that correspondence followed up with a second letter, to which we responded again saying that mediation was confidential. That response was not followed up. The advice that we receive from the judiciary is that, although the confidentiality of mediation is not protected in law, the judicial system is interested in supporting its development. Any judge would be slow to undermine that confidentiality. Although there would not be a legal protection, the direction in which things are moving suggests that we would not expect judges to undermine mediation any time soon.

289. Mr Dallat: Those remarks are very useful. We may need to bear that in mind when the Bill goes through its various stages. We should not take it for granted that that might be the case and that things might be tied up.

290. Mr McGlone: You made a useful point, but the issue hinges entirely on the integrity, professionalism and bona fides established by those involved in the mediation. That probably brings us back to the original point about confidentiality, professionalism and integrity being established from the outset. I am not a legal person, but if there were any semblance of jiggery-pokery going on, I could see legal action being justified. However, I could see why someone would want to have a case reopened. That brings us back to the need for professional training to ensure that those who are involved are not working to any other agenda, other than to the integrity of the mediation process and to bringing professionalism to it.

291. Mr O'Reilly: That is true, no matter what model is used and who is involved, be they a council official, a professional mediator or a volunteer mediator. That is why we need investment

to ensure that we fit in with what is developing on the islands where good professional standards and complaints procedures are concerned. All that is important.

292. The Chairperson: Thank you for your contribution. We will take your views on board.

293. I now welcome Claire Duddy from Carrickfergus Borough Council, who will brief us on the High Hedges Bill.

294. You will have five to 10 minutes to speak, and then I will invite questions. If you hear voices outside, I reassure you that it is not ghosts; people are visiting the castle.

295. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council.

296. Ms Claire Duddy (Carrickfergus Borough Council): Thank you for inviting me today. I am the deputy director of environmental services at Carrickfergus Borough Council. This is a good opportunity for me to put across the views of the smaller district councils, which will, no doubt, be tasked with enforcing the legislation.

297. Carrickfergus Borough Council broadly welcomes the introduction of legislation to deal with problematic high hedges. If I may provide a context, we receive about 10 complaints about high hedges each year, some of which could not necessarily be dealt with under the current legislation. We get complaints about large trees, dangerous trees, leaf fall, needle fall and damage to lawns. We get other complaints about root structures. That subject will be covered by the legislation. Given all that, it is hard to say how many of the complaints or enquiries that we receive would be caught by the legislation.

298. Aside from that, there is no doubt that there is a need for the legislation. If anyone were to type the words "high hedges" into any search engine, they would find loads of information about disputes in England and Wales. Recently, there was an item on the BBC news website about a 35 ft high hedge. There have been stories about hedge rage and about people setting fire to trees and hedges. In a dispute in the East Midlands, a person was even murdered, and there was a subsequent suicide. Therefore, for some people, high hedges can be a serious problem. Thankfully, things have not yet got to that stage in Carrickfergus, but we welcome any legislation that would help prevent such things from happening.

299. Although we welcome the legislation, we have a number of concerns, which I would like to raise with the Committee. I know that they have been discussed in previous evidence sessions, but, as far as we in Carrickfergus are concerned, the idea of making a complainant pay to make a complaint is contrary to our normal environmental health practices and is something with which we are not familiar. I believe that our officers would feel uncomfortable with a situation in which we might be perceived to be allowing only the more affluent members of our community to make a complaint. That is not to say that the intention of the legislation is to enable a fee to be applied, but that might be our ratepayers' perception of it. In addition, I believe that setting anything other than a minimal fee has the potential to damage our relationship with the community and residential groups. Over the years, we have built up a level of trust with those people. They would definitely not welcome the proposal, so our relationship with them could be damaged.

300. Like any local authority, we do not want an additional financial burden to fall on us, particularly given the difficult financial circumstances that we face. Furthermore, other new pieces of legislation are due to come in, such as the Clean Neighbourhoods and Environment Bill, the Dogs (Amendment) Bill and the Welfare of Animals Bill, all of which will create a massive burden for a small department such as ours in Carrickfergus. Therefore, if at all possible, we would like any financial burden to fall on hedge owners and not on the council.

301. Not only would we have the burden of legal fees, the cost of which is all that we are used to receiving after a successful prosecution, but we seek recompense for officer investigation time, which could be quite substantial in such cases. Ultimately, it will be up to the elected members of Carrickfergus Borough Council to decide whether to introduce a fee for making a high hedge complaint or, indeed, to set the level of fee and the discounts for disabled, elderly and unemployed people. If necessary, we would welcome the opportunity to set fees at levels that we deem appropriate.

302. We also support the introduction of a standardised high hedge complaint form, such as that provided at the Northern Ireland Local Government Association (NILGA) training earlier this year. Unfortunately, I was unable to attend the training, but I received a copy of the material from my colleague. As well as aiding enforcement and ensuring consistency across all councils, such a form would help to reduce the number of vexatious complaints that are made. In our experience, a number of people who had made, say, a noise complaint, withdrew it when they heard that they would have to fill in noise log sheets or they heard that the procedures to resolve their complaint would be lengthy. The requirement to complete a seven-page complaint form such as that with which we have been provided would help to reduce the number of frivolous complaints that are likely to come our way.

303. As far as enforcement is concerned, Carrickfergus Borough Council would welcome further exploration into the possibility of providing council officers with powers to serve fixed penalty notices for non-compliance with aspects of the legislation. We would welcome any enforcement powers other than those that involve court proceedings. Court proceedings can be very expensive for taxpayers, can involve lengthy processes and, nine times out of 10, can result in fines that are both far from suitable and inadequate, particularly given the amount of time and effort involved in getting to that point.

304. In line with members' earlier discussion, we have raised concerns about mediation. We regularly encounter neighbour disputes. In the past, we have availed ourselves of mediation services to help resolve noise and housing complaints. Our experience has shown that the quality of service that is provided can vary greatly from one organisation to another. Experience has also shown that not all organisations that we have engaged have been found to be impartial, in that some have political agendas that they wish to push through.

305. In the standard complaint form, which I have seen, there is a suggestion that the complainant may have to go down the route of mediation before contacting a council. If that were to be the case, I feel that it is yet another reason for councils not to introduce a fee if they are expected to possibly have to shell out for some sort of mediation before complaining to us. That is too much of a burden on the complainant, and we should either not set a fee or keep the fee to a minimum.

306. Obviously, as with any new legislation, officers require training, and we would welcome any guidance and training from the Department on the subject. It is fairly unfamiliar territory for environmental health officers to look at issues such as high hedges, and we would welcome any training that could be provided in good time ahead of the enactment of the legislation. In addition, we request that guidance documents be provided by way of a small leaflet to residents in our boroughs in good time ahead of the enactment of legislation to advise them about what constitutes a complaint and how they can go about making a complaint to their district council.

307. In conclusion, Carrickfergus Borough Council welcomes the legislation. We also welcome the opportunity to set our own fees as we see fit. We request that the option of a fixed penalty for enforcement tool be explored further, and we have concerns about the quality, availability and potential expense of the mediation services that are currently available.

308. The Chairperson: Ladies and gentlemen in the gallery, somebody's mobile phone is on, and it is interfering with the system. We can all clearly hear that.

309. Thank you very much for your presentation. I have a few points to make. It is clear that you believe that Carrickfergus Borough Council should be able to set its own fees. Should there be one fee across all council areas, or should councils set that themselves? You also mentioned that the hedge owner might pay. Would that involve a lengthy process that would defeat the purpose? The Bill leans towards the complainant paying. Last week, we discussed whether the fee would be returned if the case is found in the complainant's favour. There is concern that, if we go down the route of asking the hedge owner to pay and are not able to acquire the fee, the ratepayers in that district council area will pay for it. When I was a councillor, I had a lot of complaints about single trees. As a council, would you support provision to deal with single trees? At the minute, the Bill refers to two trees or hedges.

310. Ms Duddy: I will first address the issue of the single fee across all councils. I do not think that it would be fair to set a single fee across all councils; each council should decide its own fees. However, all councils work in a group basis, and we do so through the chief environmental health officers' group. Before we would agree on any figure in our own council, we would liaise with our colleagues in other district councils to ascertain their feeling. That would help to inform the process.

311. The Chairperson asked whether the hedge owner should pay. That is a very difficult issue, and I understand that there will be occasions where the hedge owner might be elderly or from a lower socio-economic group and therefore unable to pay. It will, no doubt, end up falling to district councils to carry out work by default. However, the legislation has made provision for that in that a charge can be set against a property at some point so that the cost can be recovered eventually. I think that that would be sufficient to deal with that matter.

312. Most of our complaints are to do with single trees. Indeed, in May or June, we had spate of complaints about single trees that people felt were dangerous. We also have to consider how far the legislation should go. Although a single tree can be annoying, can lead to a loss of amenity and can even be dangerous, it is hard to say whether that should be included in legislation as an issue. I certainly would not want our officers to have to investigate dangerous trees, because we have no expertise in that. At what point is a tree assessed as dangerous? That crosses in to the territory of health and safety where public safety is concerned. Public safety is not really in our remit; our role is to enforce health and safety in commercial premises. Therefore, I am reluctant to go down that road.

313. The Chairperson: I know that most councils would prefer not to go down that road. From your experience in this district council area, can you say whether vacant land is a major issue? Do you foresee problems in trying to attain moneys for any such issues?

314. Ms Duddy: We have encountered difficulties in finding owner details, and we have even gone through Land and Property Services (LPS) and done property checks. Even when a property appears to be occupied, it is difficult to find out who the owner is. Quite often, land is unregistered, and we have a concern that we would end up paying for it. Most of those properties are out in the open, and there is less chance of hedges in those places being a problem and causing any sort of nuisance or loss of amenity to the public.

315. Mr Weir: Thank you, Claire, for your presentation. I will pick up on the point about the number of complaints that are made. It will be difficult to ascertain how many complaints will be made when the legislation is enacted. On the one hand, you mentioned that around 10 complaints a year are made, but you said that not all of them are relevant to the legislation. On the other hand, people will know that there is a service that can be used. At present, I suspect

that one of the reasons that stops people from complaining is that they know that nothing can really be done. In the short term at least, I suspect that a glut of complaints will be made fairly quickly and that that will then level off.

316. I have two or three other points to make, and it might be easiest if I fire them all out at once. The issue of vacant land has been raised with us before, and, although it may not happen in massive numbers of cases, clearly, there will be occasions when the council is left to deal with properties where the owner is difficult to trace or for which enforcement is difficult. Would one possible solution be that whatever fee structure that is put in place bears the extra cost to cover the occasional case where vacant land is concerned? As you said, although vacant land is more difficult to trace, its nature means that is less likely to lead to a problem. I would like to hear your views on that.

317. My second point is about the fees. I believe that the costs should follow the event, and someone who has a high hedge should pick up the tab if something is ruled against them. However, from a fairness point of view, other than trying to make a few hurdles for people to overcome, how do you deal with vexatious complaints? Some of the complaints will be genuine, but we have all come across occasions where neighbours have fallen out. They may not have fallen out over the hedge; something else may have been the reason for that. The relationship breaks down to the extent that everything loses proportion. Someone may make a totally spurious complaint that may be genuine in their eyes, but, objectively, no one would back it. Is it not the case that, if there is no fee at all for a complaint, those who have a grudge against their neighbour, particularly a heavy grudge, will fill out the forms at no real cost?

318. The third point is that there seems to be a lot of sense in having a standardised form. I am not overly convinced by the idea that making the form as long as possible will put people off, because a person who has a massive grudge will fill out screeds of paper. For a range of reasons, a lot of people tend to get put off by forms. Perhaps they have a bit of a phobia against them, perhaps they have literacy problems and, because of age or disability, they might be reluctant to go down the road of filling out forms.

319. I would have thought that it was a good idea to have standardised forms, but surely they should also be as simple and straightforward as possible. Will you comment on those three points, please?

320. Ms Duddy: Will you clarify your point about vacant land?

321. Mr Weir: There is clearly a problem with vacant land, as others have identified. If there are high hedges on vacant land, it may be possible to get some money off the complainant to address that. However, if we take the general philosophy that whoever is at fault should pay, the council may be faced with a reasonable bill for dealing with vacant land, because it cannot find the person responsible for the land to recover the costs from. Although incidents involving vacant land will probably be relatively rare, there is one possible way round the problem. I think that something should be worked in to the general fee structure to subsidise any cases involving vacant land — be it one in 10 cases or whatever it happens to be — should the council have to take action but have no one to recover costs from. That is one possible way forward.

322. Ms Duddy: I take your point. I will no doubt have to produce a document on that when the time comes. I hope that our elected representatives will bear that in mind when making a decision about the fees that we introduce. Rather than having no fee at all, some sort of minimal fee could be introduced. However, I would hate to go to the lengths of introducing the suggested fee of £300 or £350, which is the amount that some district councils in England charge. Certainly, if a smaller fee were introduced, some money could be set aside for such eventualities.

323. With regard to vexatious complaints and the length of forms, the forms that we have seen are seven pages long, but they are fairly straightforward, and guidance will be provided. However, I am not sure whether anybody else has seen them at this point.

324. Mr Weir: I know that this probably is more about the implementation and the wording of the legislation, but it might be helpful if you or somebody else were to send us a copy of the form so that we can see what it will look like in practice. That would be quite useful.

325. Ms Duddy: I can go through some of the areas that are covered in the form. The questions cover, for example, asking what approach has been taken so far to try to resolve the dispute. Have the neighbours tried mediation? Does the neighbour of the hedge owner have any intention of complaining to the council? Are there any other matters that the person wants to raise? The criteria for making a complaint are very straightforward and set out what actually constitutes a high hedge complaint. For example, does it constitute a line of two or more trees or shrubs? The form goes into quite a lot of detail, but its completion is a simple and straightforward tick-box exercise.

326. A member of the public came to our department, and we were able to assist them in completing the form. I do not know about anybody else's environmental health division, but we are quite a helpful lot, so if someone indicated that they needed our help, we would provide it. Another interesting point was about the potential need to supply a photograph, site plans and that sort of thing. The form is not difficult to complete, but a number of steps are required to do so.

327. Mr Weir: Just to clarify, I know that the form is a sample, but is it similar to those that are used in England?

328. Ms Duddy: I believe so. I believe that this form has been developed from some of the forms that local authorities on the mainland produce.

329. Mr Weir: Apart from the layout of the form, what else would deter someone with a grudge making a vexatious complaint if there were no fee at all?

330. Ms Duddy: Once a person has completed the form and followed all the requested steps, it would not take too long for a professional officer to judge whether the complaint was genuine or vexatious. After spending five minutes looking at the form and making a quick visit to the person's property, the officer would be able to make a speedy determination about whether the complaint was genuine.

331. The Chairperson: You seem very civil in this part of the country.

332. Mr W Clarke: Thanks for your presentation. I have a couple of questions to ask. To date, how successful has the council been at resolving disputes about issues that are raised in the Bill by using council officers to mediate? Are many cases resolved?

333. My other question is about a community based approach to mediation. Are there groups in the Carrickfergus area that carry out that type of role? Another member made a point about vacant land and houses. I declare an interest as a councillor in Down District Council.

334. I am aware of cases in which the owner just will not own up to owning the land in question. There were a number of issues, concerning not just high hedges but vermin, as well as arson attacks on that property. It can be very difficult to trace people if they do not want to be traced.

In one particular case, the person's relationship had broken up and he did not want the wife to get any money. [Laughter.]

335. The Chairperson: That is a different piece of legislation.

336. Mr W Clarke: He rescinded his responsibility for the house. Do you have many such cases in Carrickfergus? Would you be inclined to share mediation services with other councils?

337. Ms Duddy: In response to your point on the success of any previous mediation, to date, we have really only used the mediation service for such matters as housing disputes, unlawful evictions, disagreements between landlords and tenants, and a couple of noise complaints. We used local mediation services, at least one of which is no longer available. I do not think that we would care to use that service in future if it were to return.

338. In answer to your question, we have not used mediation or resolved any issues around trees or high hedges, because it is not a statutory function and we have to prioritise the work that we do. However, we try to provide advice to complainants where possible, and advise them to go down the civil action or any alternative route. We advise them to speak to the neighbours and try to resolve it themselves. We try to do as much as we can, but there is only so much that we can do without having powers behind us.

339. I have already covered the groups that are available for mediation locally. However, we have a community forum here in Carrickfergus, and I think that one of its key members may have been trained in mediation. That may be something that we could draw on in future, but I fully support the idea of shared mediation services. Personally, I would not want a mediator to be working in the council, because there is an element of trust involved, and the public would be suspicious if the mediator were. We are too small to have that expertise just in our council. It would be preferable to have a service that could be shared out regionally among several councils, even on a group basis as it exists at the moment. For example, there is one for the Larne area and one each for the southern, eastern, western and Belfast areas. I would support that.

340. I am not so familiar with people trying to hide ownership of land, but I am aware of some cases in which it has been difficult to trace owners. However, we are still working in a very small local council, so local knowledge is a very powerful tool. We will usually find out who the person is over time, but I appreciate that if the reform of public administration were to happen, and we were to start working in larger authorities, that would diminish.

341. The Chairperson;

342. Therefore, you have not dealt with any of the worst cases?

343. Ms Duddy: No; not yet.

344. Mr McGlone: Thank you for your presentation. I have two observations to make, the first of which picks up on what Mr Weir said about the extent of detail that is put down on the form. You should make the form as simple as possible. I am sure that many of us have had seven-, eight-, nine- or 10-page letters that are usually a result of someone's absolute fixation with an issue, potentially a dispute with a neighbour. Theirs can become utterly obsessive-type behaviour. You need to make the form as simple as possible, not just for your peace of mind but for that of anyone else.

345. I sound one wee word of caution about when a member of staff at the council fills in or helps to fill in a form that someone then puts their signature to. Ultimately, that could lead to a possible conflict of interest. Let us say that the case did, unfortunately, have to go to mediation because it had not been resolved, during mediation, complainants could say that they filled in the form in the manner that the person at the council told them to. That would lead slap bang to the council being stuck in a situation in which it would not necessarily want to be. That is my wee word of caution on that issue.

346. The Chairperson: It is a fair point, particularly if councillors mediate or even help someone to fill in a form.

347. Ms Duddy: I take the point, Chairperson, but it may be an issue that we could refer to our local community forum or some other organisation, rather than deal with it in-house.

348. Mr Beggs: When it comes to councils charging fees to hedge owners who have been unreasonable, do you agree that such a message would be a financial incentive to those people to come to an earlier resolution with their neighbours, act reasonably and minimise costs by avoiding such fees?

349. Ms Duddy: I agree that financial implications are a great deterrent. They are probably more of a deterrent than the cost of legal proceedings, more so than the cost of recovering officer time. We would welcome that.

350. Mr Beggs: On that point, have you any knowledge from discussions with environmental officers who already operate similar policies or from reading information about it elsewhere, how much officer time and costs could be expected in an average case, or, indeed, whether there is such a thing as an average case?

351. Ms Duddy: I do not have any specific information on that issue. We have one colleague who has worked on such issues. The legislation came in some time ago, but in that case, the legislation was enforced by the planning department, which he did not work for. I am not sure about the amount of officer-time spend, but I believe that it would be very significant indeed, especially at a time when resources are tight and more legislation is due to be commenced, particularly the Clean Neighbourhoods and Environment Bill, which will have a significant impact on council departments when it comes to reviewing policies, practices and procedures.

352. Mr Beggs: On the issue of whether a complainant should pay a fee, do you accept what Mr Weir said, which is that there is a danger of being swamped by vexatious complaints? If, at least, a fee were left as an option to local councils to determine, councils could adjust fees accordingly and charge no fee, a nominal fee or a slightly higher fee if they became flooded with complaints and could not afford expensive officers' time to deal with them? Should that option be left open to councils to determine?

353. Ms Duddy: I welcome that suggestion. The council would need the opportunity to review its fees over time. We would support the inclusion of such a provision in the Bill.

354. The Chairperson: There is a wee bit of favouritism there. [Laughter.]

355. Mr Beggs: I am curious about cases that you may have been aware of to date. Have any of those cases involved permitted new developments that have been built adjacent to existing high hedges? Do you have any ideas about that? In my mind, I would have a little bit more sympathy for the owner of an existing hedge where a new development has been built right beside the hedge. The people who built the new development would have known that it was there. However, where a hedge is allowed to grow out of control on an existing property, my sympathy

would lie with the neighbours. Have you had any experience of conflicts having arisen from new developments being built adjacent to existing hedges?

356. Ms Duddy: I am not familiar with any such instances, but that is not to say that they do not exist. As one of the members rightly pointed out earlier, because of the lack of legislation at present, not all people bring a complaint to their local council. I spoke to building control colleagues this morning who told me that some enquiries about the legislation come through to them because of their capacity to deal with dangerous structures. We are not getting the full picture at present. It is possible that there are more enquiries or complaints that we do not hear about in the environmental health department.

357. Mr Dallat: Thank you for your presentation, Claire. It is obvious that you take your high hedges very seriously in Carrickfergus. Have you come across cases in which the problem was not so much the hedge going up but the roots going out, which can cause neighbours to complain about their sewerage systems and drains being blocked? If so, is that something that should appear in the legislation?

358. Ms Duddy: There have been a few complaints over the years regarding the destruction of pavements by roots, and so on. However, it is not for the legislation to tackle those issues, personally speaking.

359. Mr Dallat: Thanks for that. [Laughter.]

360. The Chairperson: It is recorded, Mr Dallat. It is recorded.

361. Mr Dallat: I know. That is the problem.

362. The Chairperson: I have one final point. Obviously, it is very important to have guidelines in advance. Can you comment on that?

363. Ms Duddy: Given that officers in local councils are being stretched further and further as more and more legislation is enacted, it is important that we are all suitably trained to enforce the legislation that is given to us. We have only two pollution/environmental protection officers, and those officers may not know their deciduous from their evergreen. On simple matters such as tree species, and also around the sorts of remediation that may be required, there is a need for training. It is important that officers receive that training before the legislation commences. Quite often, training comes three or four months after the commencement of legislation.

364. The Chairperson: Is that an appeal to central government for more resources?

365. Ms Duddy: Absolutely.

366. The Chairperson: Thank you very much for your presentation and contribution.

18 November 2010

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

367. 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.

368. 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?

369. 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.

370. The Chairperson: Do you have a comment to make on the definitions of "reasonable enjoyment" and "detriment"?

371. 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.

372. 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.

373. 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?

374. 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?

375. 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.

376. 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.

377. 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.

378. 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?

379. 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.

380. 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.

381. 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.

382. The Chairperson: I remind members that their microphones are not to be used as lecterns.

383. 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.

384. Mr Byrne: We intend that all the technical guidance will come out on the commencement of the Bill.

385. 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.

386. 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.

387. Mr T Clarke: What is the reason for the figure of 0.2 hectares?

388. 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.

389. Ms Stewart: It also ties in with the Forestry Act (Northern Ireland) 2010.

390. 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 —

391. Mr Weir: I am even less of a culchie than Trevor.

392. Ms H Anderson: It is about one third of the size of a football pitch.

393. 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?

394. Mr Byrne: No, the area of land must be covered by trees.

395. Mr T Clarke: I thought that you said that it was just the plot size.

396. Mr Byrne: The 0.2 hectare measurement is the plot size for an area covered by trees.

397. Mr T Clarke: That is OK.

398. Mr Kinahan: Trees are protected by tree preservation orders in a smaller acreage or hectareage.

399. Mr T Clarke: Are you declaring an interest?

400. Mr Kinahan: No. Where does that fit in?

401. Mr T Clarke: Because of your forest.

402. 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.

403. 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.

404. 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?

405. 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?

406. Mr Byrne: The Bill is principally to deal with hedges.

407. Mr T Clarke: What is the definition of a hedge?

408. Mr Byrne: It is two or more trees.

409. Ms Stewart: A single tree cannot be defined as a hedge.

410. 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.

411. 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.

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

413. 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.

414. The Chairperson: We said in the announcement that there were a lot of —

415. 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.

416. Ms H Anderson: I note the issue that the member has raised and we will take it away and consider it.

417. Mr T Clarke: The text should differentiate between an evergreen and a deciduous tree.

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

419. Ms H Anderson: We will certainly.

420. The Chairperson: If the Committee wants to consider an amendment, the option is open to us.

421. Are members happy enough with that explanation?

Members indicated assent.

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

423. 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.

424. 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.

425. 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.

426. 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.

427. 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.

428. 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.

429. 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.

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

431. 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.

432. 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.

433. 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.

434. Ms H Anderson: We are content to look at that again.

435. Mr Weir: It is something that the Committee might be minded to include as an amendment.

436. 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?

437. 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.

438. 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.

439. 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 —

440. 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.

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

442. 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.

443. 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.

444. 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.

445. 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.

446. Ms H Anderson: We would be relying on the court to impose a daily fine if the offence continues.

447. 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.

448. 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.

449. The Chairperson: Are members content with the explanation?

Members indicated assent.

450. 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?

451. 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.

452. 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.

453. 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.

454. 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?

455. 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.

456. 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.

457. 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?

458. 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.

459. The Chairperson: Are members content with that explanation?

Members indicated assent.

460. 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?

461. 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.

462. 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?

463. 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.

464. The Chairperson: Are members content?

Members indicated assent.

465. 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.

466. 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.

467. Would the Department like to comment on those issues?

468. 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.

469. 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.

470. 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?

471. Mr Byrne: The intention is to deal with it at council level.

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

473. 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.

474. 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.

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

Members indicated assent.

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

477. 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.

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

479. 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.

480. 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.

481. 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.

482. 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.

483. The Chairperson: If members are happy, we will move on.

Members indicated assent.

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

485. 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.

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

487. 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.

488. 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.

489. The Chairperson: Someone raised the issue of a hedge being cut and dying as a result.

490. Mr Byrne: A council is covered for liability as long as it acted reasonably.

491. The Chairperson: Are members content?

Members indicated assent.

492. 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.

493. 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.

494. Mr Byrne: We see that as something for which a range of guidance would be provided.

495. 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.

496. 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.

497. 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.

498. 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.

499. 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.

500. 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.

7 December 2010

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

501. 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)

502. 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)

503. 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."

504. 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.

505. 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.

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

507. 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.

508. 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.

509. 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.

510. 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?

511. 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.

512. 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.

513. 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.

514. 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.

515. 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.

516. 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.

517. Mr T Clarke: I ask Helen whether a single leylandii is a hedge or a tree?

518. Ms H Anderson: A single leylandii is defined as a tree under this Bill.

519. Mr T Clarke: What about two leylandii? They are still trees.

520. 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 —

521. 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.

522. 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".

523. 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.

524. 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?

525. Mr Kinahan: Chairman, could I have a quick brief on what was said around this point previously?

526. 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.

527. Mr McGlone: I want to seek a wee bit of expansion as to why we have to mention the word "evergreen".

528. The Chairperson: That was Mr Clarke's suggestion at the time.

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

530. 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.

531. 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.

532. 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.

533. 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.

534. 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 —

535. 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.

536. 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.

537. 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.

538. Mr T Clarke: I hate to argue the point, but the Department is opposed to —

539. 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)

540. 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.

541. 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.

542. 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.

543. I invite the Department to summarise.

544. 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.

545. 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.

546. 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.

547. 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.

548. 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.

549. You raised the valid point that councils needs 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.

550. 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.

551. 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.

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

553. 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.

554. 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.

555. 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.

556. Mr Ross: Can you say that again? I am not quite sure that I understood that.

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

558. 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.

559. 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.

560. 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.

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

562. 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?

563. Mr Byrne: That is part of the problem. The council would have to do that.

564. 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?

565. 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.

566. 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.

567. 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.]

568. 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.]

569. 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.

570. 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.]

571. Ms H Anderson: We understand that.

572. 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.]

573. 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.]

574. Mr Byrne: We need to be very careful. This is not a judicial procedure.

575. Mr McGlone: I did not say that it is.

576. 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.

577. 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.

578. Mr Byrne: For the complainant to be reimbursed?

579. The Chairperson: Yes.

580. Mr Byrne: That is already in the Bill. It is transferring the fee.

581. The Chairperson: The reimbursement is at the discretion of the council, is it not?

582. Ms H Anderson: That is right.

583. The Chairperson: That is ratepayers' money.

584. Mr T Clarke: What happens if a person does not cut the tree down?

585. The Chairperson: Let us be honest; it is ratepayers' money.

586. Ms H Anderson: As the Bill stands, if the council chooses to reimburse the complainant, ratepayers would pick up the tab. That is right.

587. The Chairperson: That is not what we —

588. Ms H Anderson: Is that not what the Committee wants?

589. 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.

590. Ms H Anderson: I understand that.

591. 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.

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

593. 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.

594. 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.

595. Mr McGlone: You are really getting into means-testing everybody all round the place.

596. 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?

597. Mr McGlone: We are entering into class politics over hedges, here. [Laughter.]

598. 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?

599. Ms H Anderson: The council acts in default. There is a difference between the service —

600. Mr T Clarke: So, it is unlawful then.

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

602. 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?

603. Mr Byrne: Only if the council states so.

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

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

606. 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.

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

608. Ms H Anderson: I need to point out the facts.

609. 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.

610. Mr W Clarke: Chairperson, we are back to the question of the ability to pay. If you say that —

611. The Chairperson: No, we are also looking at putting a cap on it.

612. Mr W Clarke: If someone has no money, what is the cap?

613. The Chairperson: But we are talking about the complainant.

614. Mr W Clarke: I understand, but may I get some clarification before you move on, Chairperson?

615. The Chairperson: OK.

616. 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.

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

618. The Chairperson: Thanks very much for that clarification.

619. Mr W Clarke: Dead on. That deals with that first part.

620. The Chairperson: Far be it for me to argue with my colleague.

621. Mr W Clarke: I am trying to get clarity, because we are all round the place here.

622. Mr McGlone: We cannot see the woods for the hedge.

623. 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.

624. 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.

625. 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.

626. 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.

627. 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.

628. Mr Byrne: May I pose a question?

629. The Chairperson: Very quickly, because the members will be out cutting down trees soon.

630. Mr Byrne: Who determines whether the hedge owner has been co-operative?

631. 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.

632. 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.

633. The Chairperson: We are getting into mud. We are going round in circles again, but we understand.

634. 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.

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

636. 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?

637. Mr Byrne: Yes.

638. Mr T Clarke: What do you want? Do you want everyone to be able to do whatever they want?

639. Mr W Clarke: Are you chairing the meeting?

640. Mr T Clarke: I am asking you a question.

641. Mr W Clark: Are you chairing the meeting?

642. Mr T Clarke: No. Are you?

643. 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.

644. Mr T Clarke: How would they judge that? That is another minefield.

645. The Bill Clerk: I am prepared to discuss that with the member anyway.

646. Mr T Clarke: The member could put down a separate amendment of his own.

647. 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.

648. Mr W Clarke: I am happy that the Committee went away and — [Inaudible due to mobile phone interference.]

649. 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.

650. 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?

651. 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.

652. 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.

653. 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?

654. Ms Stewart: Wales set the limit at £320.

655. Mr T Clarke: We are in Northern Ireland.

656. The Chairperson: That is £320 to make a complaint, Jennifer. That is a lot of money.

657. 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.

658. The Chairperson: I do not disagree, but the whole element of this —

659. 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.

660. 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.

661. Ms Stewart: I think that the average fee is £340.

662. The Chairperson: We have to be realistic here. Even £300 —

663. 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.

664. 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.

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

666. 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.

667. Mr T Clarke: It is not all trees, Danny; it is evergreens.

668. Mr Kinahan: It is all the same thing if they are big.

669. Mr T Clarke: What about a leylandii?

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

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

672. Mr Byrne: The average fee that was quoted in the public consultation was £320.

673. Mr T Clarke: Given that local government will administer this part of the legislation, was NILGA asked for its opinion on a fee?

674. The Chairperson: NILGA responded. Do you recollect what it said?

675. 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.]

676. 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".

677. Mr T Clarke: Did it suggest what the maximum fee should be?

678. The Chairperson: No.

679. Mr Kinahan: The discretion, surely, is the key to the whole matter.

680. 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?

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

682. 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.

683. 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?

684. 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.

685. The Chairperson: Why can the Department not cap it?

686. 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.

687. 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.

688. 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.

689. 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.

690. The Chairperson: That is basically what the amendment says. Are members happy?

691. Mr T Clarke: But we would like less —

692. 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)

693. 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.

694. 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.

695. Mr T Clarke: Chair, just to go back to staged dropping of the tree: how will that be ascertained?

696. 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.

697. Mr T Clarke: Would the council still be covered for recovering that?

698. Mr Byrne: No, there is no mechanism for the council to recover the fee for the determination.

699. Mr T Clarke: You said that they could bring in an expert.

700. 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)

701. 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.

702. The Chairperson: Thank you, gentlemen. Please speak up for the benefit of Hansard; "content" or "agreed" will do.

703. Mr T Clarke: Does clause 5 gives the council the power to withdraw the notice?

704. Mr Byrne: Yes.

705. 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?

706. 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.

707. 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?

708. 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.

709. 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.

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

711. 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.

712. 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?

713. 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)

714. 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?

715. 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,"

716. 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.

717. Ms H Anderson: The complainant.

718. 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.

719. Mr Byrne: We do have faith in what has preceded it, but it is allowing the —

720. Mr McGlone: Just if?

721. 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.

722. 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.

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

724. 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.

725. 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.

726. 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.

727. 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?

728. Ms H Anderson: We are checking the guidance to see if we can clarify the matter before we leave.

729. The Chairperson: OK. Time is running out for us to report. We will pause for a while.

730. 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 —

731. 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.

732. Ms H Anderson: I apologise, and I take your point.

733. 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.

734. Ms H Anderson: On Thursday?

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

736. Ms H Anderson: Again, I apologise on behalf of the Department.

737. The Chairperson: We will stop now and revisit the matter on Thursday. Thank you very much.

9 December 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Trevor Clarke
Mr Willie Clarke
Mr John Dallat
Mr Peter Weir

Witnesses:

Ms Helen Anderson
Ms Hazel Bleeks
Mr Paul Byrne
Mr Jackie Lambe

Department of the Environment

Mr Denis McMahon
Ms Jennifer Stewart

738. The Chairperson (Mr Boylan): We welcome Denis McMahon, Paul Byrne, Helen Anderson and Jennifer Stewart from the Department of the Environment (DOE). They are with us to discuss the High Hedges Bill.

739. We previously got to clause 5, so we will start at clause 6. A few questions were asked about that. We will go through each clause and get a response from you. Hopefully, Mr Weir will be back by that time, so we can try to get agreement on the clauses. [Inaudible due to mobile phone interference.] We will revisit clause 6 and the issue of appeals against remedial notices and other decisions of councils. I remind members that guidance on that clause is being drafted. The Department is engaging with the NI Courts and Tribunals Service and has held discussions with the Valuation Tribunal and taken account of its concerns. Trevor Clarke had asked a question about that.

740. Mr T Clarke: Although we formally accepted clause 5, as we discovered later, the information on it may not have been accurate. Perhaps that is the best way to put it. I would prefer that we revisit clause 5 before going to clause 6 so that we can clear up any issues with that information.

741. The Chairperson: We would like clarification on clause 5.

742. Mr Denis McMahon (Department of the Environment): The key thing about clause 5 is that it is a normal provision for the purposes of providing flexibility in the event that circumstances change between the time that a notice is issued and when it takes effect. For example, if a complainant moves house and the subsequent owner decides that they do not mind the height of the hedge or they would like it to be higher because they want a bit of privacy, the flexibility in that situation would be allowed.

743. Mr T Clarke: I do not want to prolong this issue any longer than necessary. I do not want to rehearse what was said at the previous meeting, but, given what was said then, we could probably understand it and reach an agreement. However, we did not actually explore it, because a lot of what we talked about before we got to clause 5 was about who pays and at what stage someone does not pay. When I study it further, I find a problem with it. If there is an agreement, the complainant has paid the council to take action after following all the council's informal guidance. The council then serves notice and takes money off the person with the high hedge. If an agreement is then reached, even with a withdrawal notice, does the complainant still get their money back at that stage? Can you clarify that? Where are we with fees if there is a withdrawal notice?

744. Mr McMahon: That would depend on the specific circumstances. One of the problems is that any of those notices will apply over the longer term. Therefore, the issue is not just about cutting down the hedge; it is about the maintenance of the hedge. For example, someone may get a notice because that is the only way to resolve the dispute, and the hedge is cut down accordingly and is maintained to that level. Someone else may move in a year later and say that they do not mind the hedge or want it higher. The point is to allow such flexibility in those situations. In that case, if it was a year later, would it be appropriate to pay the complainant? The complainant got what they wanted and got the issue resolved while they were there.

745. Mr T Clarke: They got it resolved, but at that stage, they have paid already. Is there still a provision for the complainant to get their money back?

746. Mr McMahon: There is a provision for the complainant to get their money back anyway at the discretion of the council, if the circumstances provide for it. However, I stand to be corrected on that. The point that I am making is that it would not necessarily be automatically linked with the change in the notice, if you know what I mean.

747. Mr T Clarke: OK; I am content with clause 5.

748. The Chairperson: We agreed clause 5 at the previous meeting, but we wanted an explanation of it. Mr McGlone is not here, but both he and Trevor Clarke raised an issue about clause 6, which deals with appeals against remedial notices. Unfortunately, we cannot agree it, but I want clarification on the point that was raised. Can you remember back to that issue, Mr Clarke?

749. Mr T Clarke: It was because there was confusion about clause 5. Even though I am satisfied with the explanation that I got today, I wonder why there would be an appeal against a decision, when, under the provisions that clause 5 will introduce, everybody should be content with the relaxation or withdrawal of the notice. Why would anybody appeal against that?

750. Mr McMahon: Without having been at the previous meeting, and I apologise for that, my understanding is that the concern is that someone may make a mistake and put something incorrect on the remedial notice. Why should that be allowed to happen, with the result that there would be a lead-in to a big appeal process? The concern was that the explanation that had been given previously was to do with mistakes potentially happening with the notice. I will perhaps take this back a step: what I am trying to say is that, no matter how tightly we define it, there will have to be an element of judgement. We can, and will, give a lot of guidance, and we will work with councils on that. Ultimately, however, judgements will have to be made about the issues on a case-by-case basis. It all means that, if a council makes a judgement, a notice will need to be issued. The clause really just allows an appeal against that judgement, because people may disagree and say that the guidance has been applied incorrectly.

751. The Chairperson: It is an appeals mechanism.

752. Mr McMahon: It is a normal appeals mechanism, absolutely.

753. The Chairperson: The person is entitled to appeal against it, and that is what we are putting in.

754. Mr McMahon: Yes.

755. Mr T Clarke: I understand the appeal against the remedial notice, but I cannot understand the appeal against the withdrawal.

756. Mr McMahon: That goes back to the example that you gave earlier. For example, a complainant may have gone through the whole process and got to a certain point. The council may suddenly say that something has changed and that it is going to remove the remedial notice. The complainant might ask why the council suddenly changed its mind, especially after they went through the whole process and got where they needed to get to. At that point, if the complainant was not satisfied, they could challenge that decision.

757. Mr Paul Byrne (Department of the Environment): The Bill is an attempt to cover all circumstances. For instance, if the complainant sells up to a commercial concern, which puts in a car park and asks the council to alter the remedial notice, the hedge owner can say that the remedial notice no longer applies and that they wish to withdraw it. The problem is that, for

planning purposes, the commercial concern may wish the hedge to be maintained for the car park. There is therefore a need to allow an appeal against that decision.

758. Mr McMahon: The key point to get across is that we do not expect that provision to be used. It is a normal catch-all in the event that a complainant makes a complaint, which goes through to remedial notice, and, for some reason, the council decides that, according to its guidance, the remedial notice should no longer apply. However, the complainant might say that it should still apply. The point is really just to allow the complainant or the hedge owner to say that that notice should or should not apply.

759. The Chairperson: It is a difficult one to explain, to be fair.

760. Mr T Clarke: Given what is in clause 5, if a mistake with the withdrawal is made under that clause, people need to be given the entitlement to appeal what they have determined is a wrong decision.

761. Mr Byrne: That is exactly it.

762. Mr T Clarke: My difficulty is that I cannot understand how people would ever withdraw. I am not trying to revisit the clause, but once people have gone through the whole process and served notice, I cannot see why they would ever want to appeal.

763. Mr McMahon: One of the challenges is to understand that, with any of the notices, the issue is not just the initial cutting down of the hedge. The point is that notices could be in place for a number of years, so there has to be a certain amount of flexibility, because a lot could change. As I said, the hedge owner could move, and someone else could say that they think that there is now a different set of circumstances.

764. The council could review its policy and say that, in the light of the most recent guidance, a notice that it issued a year ago does not apply any more. In that case, the council could decide that the notice no longer applied and the complainant who was still living at the same address could protest. The point is to allow that degree of flexibility.

765. Mr T Clarke: It gives a degree of cover, I suppose. If a council makes a wrong decision, I can see that the complainant has protection against the council as well.

766. Mr McMahon: That is exactly it.

767. Ms Helen Anderson (Department of the Environment): That is particularly the case, given, as you will recall that the Bill deals with people's personal enjoyment of their property, which includes hedges. It provides a degree of cover to ensure that everyone's human rights are provided for in any eventuality.

768. The Chairperson: You have seen examples of the complaints that people make and the situations that they can get into. People will go by the letter of the law when they make complaints, and we have to have those mechanisms in place for challenges and for protection. Are you happy enough with that explanation, Mr Clarke?

769. Mr T Clarke: Yes.

770. The Chairperson: I will go through the clauses, and, hopefully, Mr Weir will be back. I just want clarification on some points. Clause 7 deals with the determination or withdrawal of appeals. Thankfully, no issues were raised in the previous meeting about that clause. Clause 8

concerns powers of entry. I remind members that, where calls are concerned, council officers should be permitted to enter any land to enable proper assessment and that notice should have to be given only where necessary. The Department has indicated that, given the need for respect for privacy and family life, reasonable notice of intended entry needs to be given to an occupier of land. The standard practice is to give 24 hours' notice. The Department also noted that it is not necessary to give notice to an owner who is not an occupier of the land in question. Notice does not have to be given if an officer is invited on to land. That seems pretty clear. Do members have any comments to make about the powers of entry?

771. Mr W Clarke: Will a code of conduct be drawn up that sets out guiding principles?

772. Mr Byrne: That will be in the guidance. This issue is to do with human rights, so there will be a code of conduct.

773. The Chairperson: Clause 9 concerns offences. I remind members that concerns were expressed that problems will arise in determining which owner/occupier should be taken through the courts. It would be burdensome to take everyone concerned to court. The Department replied that it would not be appropriate to single out one individual, as the identification of an individual where several people may be involved could lead to unintentional discrimination. The clause ensures equal treatment of all. Several respondents called for the use of a fixed penalty notice option as an enforcement tool in the event of non-compliance with a remedial notice. The Department has, obviously, discounted that option, as there is a risk that hedge owners could pay the fixed penalty and not address the problem of the hedge, which is possibly the costlier element, and after that, there would be no comeback for councils.

774. Mr McMahon: Again, the latter point refers to the fact that such issues take place over a long period. If I go back to the former point, I should say that we would not necessarily see taking action against multiple owners happening all the time. Not many of those disputes happen between groups of people, but, in the event that there is a dispute about the location and ownership of a hedge, the Bill provides enough cover to ensure that we are not missing anybody who should be included. We have a concern that picking on an individual in such circumstances could create challenges. It would bring us back to the appeals process.

775. The Chairperson: Clause 10 deals with the power to require the occupier to permit action to be taken by the owner. No issues were raised about that. Clause 11 is "Action by council". I remind members that concerns were expressed about the fact that the Department will expect councils to act in default where a property is vacant. However, the Department indicated that there would be no obligation on councils to act in a default situation, as it is a discretionary power. In response to suggestions that it would be cheaper to remove a hedge where landowners could not be traced, the Department stated that the removal of a hedge without the hedge owner's permission would constitute criminal damage.

776. We have concerns about circumstances in which no one is available to be held to account for the condition of a hedge. I am happy enough with the explanation that has been given. Do members have any comments to make on that?

777. Hopefully, we will also be able to deal with the vacant property issue. Most owners of those properties should have been identified through Land and Property Services by now. However, there is a gap and, hopefully, through this piece of legislation, we will try to get to —

778. Mr T Clarke: Chairman, will the part of the clause that refers to "neighbouring land" give councils the power to go on to the land of someone who is not the hedge owner? Am I reading that right?

779. Mr McMahon: It would be a hedge owner. However, it would be a vacant property, and councils would be able to go on to that property. The issue is about removing hedges; councils can cut down hedges —

780. The Chairperson: Yes; it would be criminal damage if a hedge was removed without consent.

781. Mr T Clarke: It says in the clause that councils will have the power to "enter the neighbouring land".

782. Mr McMahon: That is right. I stand to be corrected, but as I understand it, this clause will give councils the power to cut a hedge down to a height of 2 m. However, they will not be able to remove hedges.

783. Mr Byrne: In the Bill, the term "neighbouring land" means the land in which hedges are situated.

784. Mr T Clarke: "Neighbouring" makes it sound as though it is —

785. Mr Byrne: Yes; it makes it sound like it is the next property. In the Bill, the term "neighbouring land" is defined as the land that contains the hedge.

786. The Chairperson: Thank you. Clauses 12, 13 and 14 deal with offences committed by a corporate body, the service of documents in electronic form, and statutory charges. No issues were raised about them.

787. Clause 15 deals with interpretation. I remind members that NILGA expressed a view that the Department should give more detailed guidance as to what it means by "access" in the context of determining whether a hedge is the subject of a justified complaint. The Department stated that the words "or access" had been removed from the Bill following the public consultation, as the use of those words had caused confusion and uncertainty about the definition of a high hedge. Of course, the jury is still out on what a high hedge is and whether a single leylandii tree should be included. However, we will not debate that.

788. NILGA also called for guidance on the potential creation of peepholes in hedges and what would be deemed acceptable. The Department stated that guidance will include the issue of gaps in hedges. Do you have any comments to make on that?

789. Ms Jennifer Stewart (Department of the Environment): We will be preparing detailed guidance for councils to help them through the process. There will also be guidance for the complainant and the hedge owner so that they know what to expect. All the issues that were raised will be covered in the guidance, which should be available before the legislation comes into effect.

790. The Chairperson: No issues were raised about clauses 16 to 20, which deal with power to amend sections 1 and 2, application to the Crown, regulations and orders, and commencement. No issues were raised about the long title. We will ratify all that when Peter Weir comes back.

791. Those were all the questions that we have on the outstanding clauses of the High Hedges Bill. Thank you for clarifying Mr Clarke's point. We all had a difficult time getting up here in the snow, and I appreciate your taking the time to come up. Could you please stay so that we can ratify things when Mr Weir comes back?

792. Mr Byrne: I am here for the next session anyway.

793. The Chairperson: OK. We now move to our informal clause-by-clause consideration of the Clean Neighbourhoods and Environment Bill. We will go through Parts 4, 5, 6 and 7 now. Members have a copy of the Department's response on the level of Assembly scrutiny that is afforded to powers to change the level of fixed penalties in the Bill. There is also a response from the Committee for Social Development on the Bill. Are members content to note those documents?

Members indicated assent.

794. The Chairperson:

795. I welcome Hazel Bleeks and Jackie Lambe from the environmental policy division of the Department of the Environment. Denis McMahon and Helen Anderson are still with us.

796. I remind members that this informal stage is the time to ask questions and seek clarification on the Bill. We will then discuss those points at the formal clause-by-clause scrutiny.

797. We will start with Part 4 of the Bill, which generally covers graffiti and other defacement. Clause 26 concerns penalty notices for graffiti and fly-posting. I remind members that, although the clause was generally welcomed, several issues were raised. Those included the lack of consultation with small and medium sized enterprises (SME), the cost impacts that the proposals will have on them, the provision of alternative sites by councils, and the issuing of penalty notices to juveniles.

798. Ms Hazel Bleeks (Department of the Environment): As part of the formal consultation process, we consulted the Federation of Small Businesses and the Northern Ireland Chamber of Commerce. Neither organisation raised any issue on the cost for small businesses.

799. The Department has acknowledged that a different approach to the issuing of fixed penalties to children and young people is necessary, and we have undertaken to produce guidance for district councils on the issue.

800. The Department feels that council provision of legal poster sites is a matter for individual councils. There is a difference of opinion as to whether sites should be provided for informal posters. Different councils have different views on that. In some cases, that is an issue for a particular council area. Therefore, we feel that it is a matter for councils to determine, rather than the Department having to require that those sites be provided.

801. Mr T Clarke: I agree entirely that we should not be forcing councils to provide such sites. In fact, I disagree with there being any such sites.

802. Mr W Clarke: Obviously, I disagree with Trevor, but that is par for the course. I think that there is an obligation in the legislation that clearly states that councils must provide an alternative site. For this legislation to mean anything, it should be compulsory for councils to provide such sites. We need to table an amendment to clause 26 to that effect.

803. The Chairperson: If we are going down the route of preventing fly-posting, how can that be enforced? If the council does not provide an alternative site, how can the prevention of fly-posting be enforced? That is a problem that raised its head in evidence to the Committee.

804. Mr T Clarke: If there is no fly-posting whatsoever, a ban on it might be easier to enforce. There are other methods by which businesses can advertise and that other enterprises can gain from. Fly-posting is a cheap and tacky method of advertising that people have been abusing for many years. We should not be promoting it at all.

805. Mr W Clarke: What we are trying to do is regulate fly-posting in a controlled manner. On a designated site, someone could pay an income to the council to display their posters or product.

806. The Chairperson: I think that having the option to do that is fine. That would provide a funding source as well, and it would give the councils the power to allow it if they so wished.

807. Ms Bleeks: There is absolutely nothing to prevent councils from providing sites in those circumstances, if appropriate. We are saying that we do not think that it should be a requirement.

808. Mr W Clarke: I think that this point is fundamental. The Department is telling a business owner that it is not allowed to fly-post, but, at the same time, the council says that it will not provide a display unit for the business. I think that that is unfair.

809. Mr McMahon: We were trying not to give a view one way or the other through the legislation. We felt that, by including that as a compulsory requirement, we might be overriding individual council's wishes. The whole Bill is framed around the perspective that councils are the best people to make these decisions because they know what the local circumstances are. For example, Belfast City Council looked at the issue and had some concerns about providing alternative sites, as that might encourage more illegal fly-posting. Therefore, the point is to try to get a balance. We were not saying that individual councils should or should not take a particular stand, but we were concerned that, if we put that into legislation, it might be overly rigid and would not allow councils the flexibility that they need. That is where we were coming from.

810. The Chairperson: This does not apply completely, but, to be fair, I think that an element of how this came about is also connected to the advertisements such as one sees on big trucks on the edge of the motorways on the way into town. I know that there is difficulty with planning and even with getting signage itself through planning and so forth, and we are trying to take the burden of responsibility of enforcement in those cases. I am not saying that someone should take a massive 40 ft poster and put it on an alternative site somewhere; I am saying that part of the whole process of going through the Bill is to try to alleviate the pressures that the enforcement section of planning has in dealing with that. Do not get me wrong; I am not saying that it is right or wrong, but that is also part of the problem.

811. Mr T Clarke: Unfortunately, I am recording that I agree with the Department today. I think that the direction that it is taking is right. You might find that we would criticise it if officials came with a big stick and said that councils must do this, because some councils might choose not to do it and would not want to be told by the Department that they must put up these billboards. Not every village or town in the Province has fly-posting, but if this provision is in the Bill, the Department is saying that councils must provide for fly-posters, whether they want them or not. The way that the Bill has been framed is that the councils have the opportunity, if they want to apply for the site and go through the proper planning process, to do so, and if they choose not to and the people in the area do not want it either, they do not have to do it. I think that we are going down a very dangerous road by asking councils to enforce that provision.

812. The Chairperson: I am just teasing it out. I am not sending you down one road or the other. Mr Dallat, did you have an opinion on this?

813. Mr Dallat: I am sufficiently confused. I sympathise to a large degree with what Willie is saying, but at the same time, Trevor also has a point. I think that councils should be encouraged to provide sites. Some of them do so on a voluntary basis, so it is perhaps best left like that.

814. The Chairperson: We will have a final explanation of that point, and then we will move on.

815. Mr W Clarke: The difficulty I see is that a particular council could have a great moral issue to consider; perhaps it could be anti-drink. At the same time, a business such as a nightclub may want to advertise. The council could take it upon itself to tell the business that it is not allowed to advertise and that it is not going to put a display unit up. I am not talking about fly-posting; I am talking about a tasteful display unit. The council could regulate what scale that would be, where it would be and whether it would be on council property or wherever. It could have complete control of what it did. I am not saying that there should be big billboards all over the place; I am talking about tasteful units to display or advertise a business. We will tease that out.

816. The Chairperson: I thought that sufficient explanation had been given at the informal clause-by-clause scrutiny, but I can see that this man will have to come back to us. Thank you for the explanation. Is the Committee content with the explanation?

Members indicated assent.

817. The Chairperson: Clause 27 deals with the amount of penalty. I remind members that the main concern about this clause is the impact —

818. Mr W Clarke: Can we go back to the question of whether we are happy with the explanation of clause 26? I am not happy with it.

819. The Chairperson: I will put the Question on the clause when Mr Weir gets back. I was asking whether we are content with the explanation or whether we want to change it. The Department has explained the issues. If we, as a Committee, want to look at amendments, we can do that. At the minute, we are just going through what the respondents said and getting explanations and clarification.

820. Mr W Clarke: OK.

821. The Chairperson: The main concern about the amount of penalty is the impact that it would have on children and young people. I invite the departmental officials to comment and ask them to confirm that they will include an amendment to make the power in clause 27(5) to change the amount of fixed penalty subject to draft affirmative procedure.

822. Ms Bleeks: We covered the issue of fixed penalties for children by saying that we will deal with it in guidance, and we appreciate that a different approach is needed. The Department also undertakes to take forward the amendment for the amount of the fixed penalty to be subject to affirmative resolution.

823. The Chairperson: Thank you very much for that clarification. You clarified the point about the impact of penalty notices on children and young people. I do not think that there are any other real issues with that clause.

824. Clauses 29 and 30 —

825. Mr W Clarke: What is the age that children can be given a fixed penalty?

826. Ms Bleeks: Do you mean the minimum age?

827. Mr W Clarke: Yes.

828. Ms Bleeks: The minimum age is 10.

829. Mr W Clarke: Does that mean that you will criminalise children at the age of 10? Does the Committee not have an issue with that, Chairperson? I certainly have an issue with it.

830. The Chairperson: You are asking a different question. I am going only by what is in the document and on what we have looked at. However, members are entitled to ask any questions that they want to. The explanation about the age was specific, but you are entitled to seek further clarification, Mr Clarke.

831. Mr W Clarke: All I am saying is that it is unacceptable to criminalise children at the age of 10. In my opinion, even 16 years of age is borderline, but I suggest that the Department look at a minimum age of 16 rather than 10.

832. Mr T Clarke: Surprise, surprise: I totally disagree. If we have a problem with litter, regardless of whether the person is aged 10, 16, 13 or whatever —

833. Mr W Clarke: We are dealing with graffiti.

834. Mr T Clarke: OK, graffiti — it is still the defacement of someone else's property. I am not trying to stray from the subject, but, over the past number of months, young people have been used to orchestrate violence on the streets of our Province. Why should those young people be treated any differently from someone who has turned 18? If they have been involved in certain behaviour, which, in this case, concerns graffiti, they should be punished. I have children of my own. If any of them came home with a fixed penalty because they had been involved in something like that, I, as a parent, should be responsible and pay it. Why should we wrap them up in cotton wool? If they are guilty of committing a crime, they have to be penalised.

835. Mr W Clarke: Fair enough. If you are going to go down that line, make the fixed penalty out to the parent rather than to the child.

836. Mr T Clarke: That is fine. I would probably accept that.

837. The Chairperson: I completely understand. I remind members that we are going through the clause-by-clause analysis document. No comments have been made on some of the clauses. Members are entitled to ask any question on any clause, and this is the place to do that. For clarification, does the age issue tie in with this Bill or other legislation?

838. Mr McMahon: We have worked closely with the Department of Justice and have based these elements of the Bill on the wider approach that is taken on the age of criminal responsibility and so on. However, if the Committee has specific concerns with that approach, we are obviously happy to look at them. We have sought to base this aspect of the Bill on the wider approach to criminal justice; we have not tried to introduce a new approach.

839. The Chairperson: That is a valid point. Can we look at the question of who the fixed penalty is issued to?

840. Ms Bleeks: That could be looked at in the guidance.

841. The Chairperson: That would be a better idea, and I think that the Committee would agree with that. Obviously, someone has to take responsibility, but, as Trevor Clarke said, there is a problem. Some of the behaviour involves young children; indeed, I have seen some throwing snowballs, which they get warnings for. They might be throwing snowballs at cars, but it does not matter what the behaviour is; it is antisocial behaviour, and it is happening at the minute. We should look at the element of who receives a fixed penalty and who is responsible for it. Can you bring something back on that? We might be happy to go down the route of having that in the guidance.

842. Mr McMahon: Yes.

843. Mr W Clarke: I agree with you and with Trevor that some sort of deterrent is needed. A better option for the age group between 10 and 16 would be some sort of course on, for example, litter or graffiti. They could go to a workshop or something similar with their parents.

844. Ms Bleeks: That will be looked at in the guidance. We are not suggesting that issuing a fixed penalty to a child is our first option. However, it is there, and it can be used in certain circumstances. That said, there are other steps that we would want to take prior to issuing a fixed penalty.

845. Mr W Clarke: I am happy with that explanation. You would get more out of it, the child would get more out of it, and the parents would obviously get more out of it.

846. The Chairperson: The legal question of issuing a penalty to a parent would need to be looked at.

847. Are members content with that clarification?

Members indicated assent.

848. The Chairperson: Clauses 29 and 30 deal with penalty receipts and guidance respectively. No issues were raised on those matters. Members can ask for points of clarification on those clauses. I see that no members want to ask any questions, so are you content with those clauses?

Members indicated assent.

849. The Chairperson: Clause 31 deals with defacement removal notices, and some concerns were raised about those. For example, concerns were raised that the proposed timescale of 28 days for removal is too long. There were also concerns about the need for a power to prosecute the owner of defaced street furniture, as well as on the differences between the Bill's proposals and article 18 of the Local Government (Miscellaneous Provisions) Order 1985, which gives councils the power to remove graffiti and fly-posting.

850. Ms Bleeks: I will talk about the comments that were made about the 28-day period being too long. It is important to make a distinction in that. There is already provision in legislation that allows councils to remove graffiti and fly-posting from property. In certain circumstances in those cases, councils can act immediately. The purpose of the defacement removal notice provisions is fairly specific. They aim to encourage the owners of street furniture, that is, statutory undertakers and so forth, to work with the councils to remove defacement from their property. In those circumstances, we think that 28 days is appropriate to give them notice asking them to remove that defacement. They will be told that if they do not remove it, the council will come in and remove it.

851. Mr T Clarke: I may have missed something, not necessarily on that point, but on wider issues. Are you saying that, if I owned a redundant property and someone put a advertisement for a nightclub on it, as the owner, I would be responsible?

852. Ms Bleeks: No. Privately owned property will not be affected. It refers only to —

853. Mr McMahon: Electricity boxes, for example, would be covered.

854. Mr T Clarke: In that example, would the utility company be responsible?

855. Ms Bleeks: Yes. We are trying to —

856. Mr T Clarke: Surely that is unfair. Should it not be the responsibility of the person who fly-posted illegally on the utility's property?

857. Ms Bleeks: It is also in the utility's best interest to make sure that their property is kept free of that defacement.

858. Mr T Clarke: I am concerned that we are putting an onus on a utility company, if we are using them as an example, to keep their property free of that defacement, even though the person who put it there is the one who committed the offence.

859. Ms Bleeks: Yes, and that will not affect that person's being prosecuted for the offence. The two things will work in tandem. It will not detract from taking action against the person who committed the offence.

860. Mr McMahon: It is not an either/or situation.

861. Mr T Clarke: I am not against nightclubs, but the other problem that I have with this 28 days' provision is that, although many people defend fly-posting, most of it is for events or concerts or whatever is coming up. Most posters are up, and the events are over before the 28 days are up anyway, so the impact of allowing the fly-posting to continue has not been lost. There should be no time limit at all. Fly-posting penalties should be immediate.

862. Ms Bleeks: You are right, and, in those circumstances, when new fly-posting goes up, the existing legislation, which allows councils to act immediately, will come into play. A defacement removal notice under the 28-day notice regime is specifically targeted at the removal of the remnants of old posters and stickers that have built up over time, and the aim is to encourage the utilities to work with councils to remove them. However, new fly-posters will still be targeted immediately under the existing legislation.

863. Mr T Clarke: I am confused too, sorry. I apologise for that.

864. The Chairperson: The power to prosecute the owner is needed. What is the difference between the Bill and the Local Government (Miscellaneous Provisions) Order 1985?

865. Ms Bleeks: That Order is the other piece of legislation that I was referring to; it is the existing legislation that allows councils to act immediately.

866. The Chairperson: Are there any other questions? Are members content with that explanation? I apologise; will you clarify the need for a power to prosecute the owner of defaced street furniture?

867. Ms Bleeks: That would fall under the defacement removal notice procedures, and, in those circumstances, we do not feel that it would be appropriate to have the power to prosecute the owner. Coming back to what Trevor Clarke said, that person is a victim to some extent, and we do not think that they should be prosecuted.

868. The Chairperson: No problem. I just sought clarification on that. Thank you. Are members content?

Members indicated assent.

869. The Chairperson: Clause 32 deals with the recovery of expenditure. I remind members that concerns were raised that the clause would reduce the councils' powers to deal with fly-posting. Are there any comments on that?

870. Ms Bleeks: I am not sure how that clause can be seen as reducing the powers of councils to deal with fly-posting.

871. The Chairperson: On clause 32, NILGA commented:

"The recovery of costs for the removal of the notices is not an appropriate substitute for powers of prosecution, which would act as a better deterrent and allows a more robust control measure to deal with the problem of fly-posting."

872. Ms Bleeks: Those powers are not an appropriate substitute, nor are they intended to be a substitute. There is no reason why the council cannot remove the defacement and recover the costs. Both approaches can be followed. We are seeking to give councils the power to take prosecutions for fly-posting. They do not currently have such powers, but we are seeking to provide them.

873. The Chairperson: Thank you. These are issues that were raised and on which we are seeking clarification.

874. Mr T Clarke: I welcome councils' being given more powers, but I am nervous that it may be a bit like the on-street drinking regulations. Sometimes, the problem is in giving councils the power to enforce those regulations. We would need to consider the level of fines that are available, because, if we look at the cases of on-street drinking in any of our boroughs, it costs the councils almost four times more to take a person to court to get them fined than is returned in that fine. I do not know how that conversation will be had, but I am concerned that another burden may be created for councils by encouraging them to prosecute at a cost that, compared with the fine that is levelled, is prohibitive.

875. Ms Bleeks: It is already an offence to fly-post, so we will not be creating a new offence. We will really only be giving the council the power to take prosecutions for that offence. Therefore, the levels of fine and so on are already in legislation; they are not in the Clean Neighbourhoods and Environment Bill. That is provided for in planning legislation. Councils have asked for, and are very keen to get, those powers.

876. The Chairperson: Are members content with that explanation?

Members indicated assent.

877. The Chairperson: Clauses 33 to 35 deal with guidance, appeals and exemption from liability where defacement removal notices are concerned. No issues were raised about those clauses. Are members content?

Members indicated assent.

878. The Chairperson: Clause 36 deals with the sale of aerosol paint to children. I remind members that there was general support for this clause. However, some respondents wanted the age restriction raised to 18, and some had concerns about enforcement. Youth groups were also concerned about the impact of the regulation on children. Do you wish comment on that?

879. Ms Bleeks: I will just reiterate what is stated in the analysis table, which is that there has been some debate about whether 18 or 16 is the more appropriate age. Having looked at the issue, the Department feels that 16 is the more appropriate age. People of that age may be homeowners or vehicle owners, and they may have a legitimate need to buy those aerosol paints, so they should not be excluded from doing so.

880. I know that the children's organisations had some issues, and they said that we were making an assumption that children under 16 were the main perpetrators of graffiti. Although we do not have any local evidence that we are able to draw on, evidence from elsewhere certainly suggests that the vast majority of graffiti is actually done by young males aged between 11 and 16. Therefore, we think that the ban on under-16s is appropriate.

881. Mr T Clarke: My views on the issue are probably more in line with NILGA's. I think that 18 is an appropriate age. Young people are still juvenile at 16. We want to remove the temptation, so I believe it would be better if those aged 18 and under were banned from buying aerosols.

882. Ms Bleeks: We thought that that would be unduly restrictive. People can legally own a home or a vehicle at 17, yet they would not be able to buy aerosol paint for a legitimate purpose.

883. Mr T Clarke: If you took a sample of the number of people who are homeowners at 17, you would find that it is very small. That is a weak argument for not banning under-18s from buying aerosol paint. Most people do not fly the nest until long after they are 18, 20 or whatever.

884. The Chairperson: Some fly it earlier. If someone needed to fix their car, they would not be able to buy an aerosol to spray it. However, I understand where Mr Clarke is coming from. Are there any other comments on that?

885. Mr W Clarke: I agree with Trevor. I think that the age should be 18. That is a first: Trevor and I agreeing on something. You said that there are no local data, but you drew on a reference to a report that the London Assembly produced. Across the water, the age is 18. That seems like a bit of contradiction.

886. Ms Bleeks: Across the water in England and Wales, the legal age to buy aerosol spray paints is 16.

887. Mr W Clarke: What about in Scotland?

888. Ms Bleeks: I do not know.

889. The Chairperson: It does not matter what is done elsewhere. We need to find out what we want to do here.

890. Mr W Clarke: There are no local data, so we are drawing on evidence from across the water. I am sorry; I thought that the age was 18. You are targeting 16 and 17-year-olds by saying that they are causing the graffiti, so we are going to ban them from having aerosols.

891. The Chairperson: We do not have enough members present to make a decision. We could, however, consider proposing an amendment to that clause at some point.

892. Mr T Clarke: We would not necessarily need an amendment if we could get the Department to agree to change the clause. I just know by looking at the officials today that the Department would be flexible.

893. The Chairperson: That is very considerate of you, Mr Clarke. I do not know whether that is the impression I get. Do you want to comment on that?

894. Mr McMahon: We will happily look at it. From a pragmatic point of view, I certainly hear what members are saying. As a parent of a 17-year-old, I could probably go either way on the argument. However, our view is that it might seem odd if people who are old enough to have a driving licence cannot buy an aerosol can.

895. Mr T Clarke: They might be old enough to drive, but they still cannot get into some nightclubs until they are 21.

896. Mr McMahon: I accept the point. There is a range of age restrictions, and we understand that. We are happy to have a look at that and to come back with recommendations.

897. The Chairperson: You need to consider prospective young artists and everyone else.

898. Mr McMahon: That is a really good point.

899. The Chairperson: Can you come back to us with more data on that?

900. Mr McMahon: Yes.

901. Mr W Clarke: If a person attends a technical college or a school, there may be a licence for them to obtain as part of their coursework or something. That is a safeguard.

902. Mr McMahon: We could have a look at what mechanisms might work. Speaking off the top of my head, I could not say whether a licence would work, but there must be some way of —

903. Mr T Clarke: The offence is to sell, not to possess.

904. Ms Bleeks: That is right. There is nothing to stop an adult buying —

905. Mr T Clarke: A college could give an aerosol to a 15, 14 or 13-year-old for whatever activity they are doing, but we are trying to prevent retailers from selling the paint. The chances are that someone who is under the age of 18, which is what I would like to see, will use it lawfully because they have been given it for a purpose, instead of having been sold it for misuse.

906. Ms Bleeks: That is right. There is absolutely nothing to prevent an adult from purchasing aerosol paint and giving it to —

907. The Chairperson: There are no more budding Banksys — is that his name? — or graffiti artists out there any more. We are doing away with all that. Thank you for that explanation.

908. Clause 37 deals with the unlawful display of advertisements. Some concerns were raised about this issue, including the comparison with approaches that are taken in England, a lack of enforcement by Planning Service and prosecution powers for councils. I mentioned the issue of enforcement. There is no doubt that it is a big problem.

909. Ms Bleeks: We agree that enforcement is a big problem. As I said, councils are keen to be able to tackle it. That is why the Department wants to bring forward legislation that will give councils the power to take prosecutions. Unfortunately, that is not currently happening, but our intention is that councils will have those powers and will be able to take prosecutions for fly-posting.

910. The Chairperson: Regardless of whether somebody agrees with the advertising, we are bringing in laws for people to adhere to, and then other people —

911. Mr T Clarke: That is not so much to do with fly-posting.

912. The Chairperson: I know. All that I am saying is that we raised the issue of people getting away with advertising. I want to be clear that everybody is on a level playing field. You are right: enforcement is definitely an issue, but the point is about how we nail that down in legislation.

913. Ms Bleeks: Are we talking about wider advertising as opposed to fly-posting?

914. The Chairperson: It was raised about this clause in particular. I am only raising it. If I adhered to the law, but somebody else was advertising, no matter what way they were advertising, it could still be illegal. Therefore, it is something that we certainly need to look at.

915. Ms Bleeks: We are looking specifically at fly-posting and trying to disentangle it from wider types of advertising. There are a couple of reasons why we are not looking at the wider types of advertising, but the main one is that, very often, advertising other than fly-posting is linked to planning permission. It would not be workable to give councils enforcement powers on wider advertising without their having the responsibility for the control of advertising and of planning permission. The intention is that councils will eventually get the full remit of the control of advertising.

916. The Chairperson: When Trevor Clarke deals with the 248 clauses of the Planning Bill when we are all off at Christmas, perhaps planning will be moved to councils —

917. Mr W Clarke: Perhaps that should not have been brought up.

918. The Chairperson: Councils would then have the power to deal with that.

919. Mr T Clarke: I think that we need to put down a marker. We can blame councils as well, but the Planning Service has the power at the moment and has not used it. It is OK to say that things will be fixed when planning powers go to councils, but we cannot ignore the fact that the Planning Service has not used its power.

920. The Chairperson: That is the issue that was specifically raised. I am only asking for clarification.

921. Mr T Clarke: The Department and the Planning Service need to have a conversation about how they could tighten up the existing legislation, because it needs to be tweaked. What we are really talking about is the unlawful display of advertisements. I imagine that that refers to temporary posters, or what we would deem illegal billboards.

922. The Chairperson: That is the point with this matter.

923. Mr McMahon: We certainly agree that there is an issue to be looked at. Our concern was that, if we tangle this provision with planning legislation, it would not necessarily meet any of the objectives. We did not think that it could be resolved through the Bill.

924. Mr T Clarke: Perhaps you could communicate our concern that the Planning Service could do more about that, because it is not playing its full part.

925. The Chairperson: We can make that a recommendation. We need to learn from the best practice of the approaches that are taken elsewhere. I am sure that you are looking at how it is being done elsewhere.

926. I remind members that a series of general issues about graffiti was raised. I will go through the points, and, if you wish to respond, please do so. The issues are: failure of fixed penalty fines to recover costs; the age of criminal responsibility, which we have dealt with; guidance to councils, which is key to it all; and children's access to the appeals process. Those were the further comments that were made. Would anybody like to comment on any of those specific issues?

927. Ms Bleeks: As far as the fixed penalty notices and the income that they will generate are concerned, we made the point about similar clauses that we are not imposing a duty on councils to act. Councils will have to take decisions as to whether it is appropriate for them to act in the circumstances. We would imagine that they will do so only where there is a net benefit in the local context in their doing that. The only appeals process that is referred to in Part 4 relates to defacement removal notices. Those would never be issued to children, so the appeals process is not really relevant.

928. The Chairperson: Would you like to comment on the age of criminal responsibility?

929. Ms Bleeks: That is not really a matter for the DOE; it is a matter for the Department of Justice.

930. The Chairperson: OK; obviously we want you to liaise about the issue that we discussed earlier. Thank you very much.

931. That concludes our discussion on Part 4 of the Bill, so we will now move to Part 5, which relates to dogs. Clause 38 provides the power to make dog control orders. Most respondents welcome the introduction of powers for councils to make such orders. However, there were concerns about the maximum number of dogs that can be walked by one person; the power for a council to draw up what is termed "fouling of land by dogs" for the entire council area; regulations in conjunction with dog control orders; and the proposed level of fines. Those were the four issues that were raised. Would you like to comment on them?

932. Ms Bleeks: The Department is seeking to streamline the system to enable councils to deal more effectively with environment-related dog issues. We have a very cumbersome by-law system, and a lot of the councils have complained about it being difficult to use. We are trying to streamline the system and bring the dog fouling offence from the Litter (Northern Ireland) Order 1994 under the same regime, so that all environment-related dog control legislation is contained in the one place. The other point was about councils making a fouling-of-land-by-dogs order. That could be a one-off exercise. Councils could do that and deem that it covers their entire areas. The Department still sees that as being less cumbersome than the existing system.

933. One person walking a maximum number of dogs on leads has been highlighted as a problem, and I know that the Kennel Club had some reservations about that practice. We are trying to get councils to take a balanced approach and take into account the needs of dog owners as well as the needs of those people who use the same land, by making sure that dogs are adequately controlled for the benefit of other users of the land, particularly children.

934. We are trying to control situations whereby someone would go out with several dogs on leads and be unable to control them because there were too many of them. The Bill will allow councils to make a dog control order to restrict, if necessary, the number of dogs that can be taken out by one person.

935. The Chairperson: Is there a maximum number? I know that the Kennel Club brought this issue to us. What would be a maximum number?

936. Ms Bleeks: There is no maximum number set in the Bill. That would be a matter for a council to determine in individual circumstances.

937. Mr T Clarke: That would leave scope. I think that a council would have to question why somebody would need to walk a whole lot of dogs on leads, but in the case of beaglers, or whatever they are called, and other such dog-walkers, a council would have the discretion to grant permission. Is that what you are saying?

938. Ms Bleeks: Yes.

939. Mr T Clarke: That seems fair.

940. Mr W Clarke: Just to clarify: the flexibility would apply to professional dog-walkers, such as those who walk greyhounds and could walk four at a time.

941. Ms Bleeks: There could still be a restriction, even for professional dog-walkers.

942. Mr W Clarke: There would be a restriction?

943. Mr McMahon: There could be a restriction, but whether it was applied would be on a case-by-case basis. There would have to be a judgement.

944. Mr W Clarke: That is people's livelihoods.

945. Mr McMahon: Absolutely.

946. Mr W Clarke: I know a number of people who walk greyhounds. That is their occupation.

947. Mr McMahon: The Bill refers to grooming and dog-walking businesses as well. I take your point, but the judgement allows councils the power of —

948. Ms Bleeks: It will be for the council to determine.

949. The Chairperson: Do you want to comment on the proposed level of fines?

950. Ms Bleeks: We are proposing a level 3 fine for the breach of a dog control order. We took the same offence in England and Wales as our starting point, and we put that out to consultation. Generally, it has been accepted as being appropriate, and the Department feels that it is proportionate to the severity of the offence.

951. The Chairperson: OK, gentlemen. I am content with that explanation. Are there any more questions? No. OK.

952. Clause 39 is supplementary to dog control orders. Concerns raised on this clause included the applicability of dog control orders and the risk of confusion with existing legislation. Would anyone like to comment on that?

953. Ms Bleeks: As far as applicability is concerned, and to go back to what was said previously, the main concern was in relation to dog fouling. We are saying that district councils will be able to draw up a fouling-of-land-by-dog order that could apply to its entire district, if that is what it decides to do. There was also some concern that places such as private sports grounds would be excluded under the terms of the legislation. We have taken legal advice on that and they would not be excluded. So basically, if a council draws up a fouling-of-land-by-dogs order for its entire district, private sports grounds would be included.

954. The Chairperson: And, just to risk confusion with existing legislation; does this complement what is there already, just to give more powers?

955. Ms Bleeks: We already have the dog-fouling offence in the Litter (Northern Ireland) Order 1994 and we have the dog by-law system, which as I said earlier can be very cumbersome. So, we are putting those together. They would essentially be replaced.

956. The Chairperson: That is great: a change to the by-laws. OK; gentlemen, are there any questions? No.

957. Clause 40 is about lands to which this part applies. I remind members that the Kennel Club and Countryside Alliance were opposed to the use of dog exclusion orders except where absolutely necessary. They also suggested amendments to require councils to specify the land to which dog exclusion orders shall apply; consult on proposed exclusion orders to a variety of relevant channels; introduce a right to appeal following consultation; and provide details of dog exclusion orders to allow the Department to record and monitor them.

958. On the other hand, councils want reassurance that the Department would not unduly restrict the options available to them by prescribing exceptions. There is a right wee bit on that section; would the witnesses like to comment?

959. Ms Bleeks: The vast majority of issues raised are not directly relevant to what is in the Bill. They get down to a finer level of detail that will be dealt with in the subordinate legislation and the guidance that we will consult on. We made that point during our discussions with the Kennel Club, and it was happy as long as we assured it that it will be included in that consultation process.

960. The Chairperson: OK. So you reassured the Kennel Club and it is happy as long as it is consulted. It is for the Committee to decide whether the Kennel Club needs to come back to look at amendments, but as long as you keep it informed that should be fine. Are members content with clause 40?

Members indicated assent.

961. The Chairperson: Clause 41 deals with fixed penalty notices for the contravention of dog control orders. I remind Committee members that councils welcomed the option for officers to authorize fixed penalties and recognised the potential for off-setting costs. No concerns were raised about that clause. Are members content with clause 41?

Members indicated assent.

962. The Chairperson: Clause 42 deals with the amount of fixed penalties. I remind members that the discretion for councils to set a fixed penalty of up to £75 was generally welcomed, but councils were concerned that it may require replacement signage, which would be at a cost to councils. Councils were also concerned that under Magistrate's Court rules in the North, charges are limited to £75 and any costs in excess of that would have to be borne by councils. In addition, the Examiner of Statutory Rules suggested that the power in clause 42(6) for councils to substitute a different amount for that in 42(1)(b) should be subject to a higher level or scrutiny such as draft affirmative procedure, and members and officials will certainly remember that term. Would officials like to comment on any of that?

963. Mr McMahon: There is a concern among councils about the Bill as a whole and the potential for costs, and the concerns raised are part of that. We have argued that the Bill is cost-neutral overall. Perhaps Hazel would like to say something specifically about the £75 limit.

964. Ms Bleeks: It will be up to the councils whether they want to increase the current fixed penalty. They can keep it at £50 if they want, but if they choose to raise it to £75 they will get more income, which will offset the cost of replacing signs.

965. Mr McMahon: They will need to do a business case.

966. The Chairperson: OK. Are members content with clause 43 and the possible need to use draft affirmative resolution?

Members indicated assent.

967. The Chairperson: Clause 43 deals with the power to require name and address. No comments were made about clause 43. Are members content with clause 43?

Members indicated assent.

968. The Chairperson: Clause 44 deals with by-laws. I remind members that councils were concerned about the removal of by-laws to make dog control orders, and that they urged the Department to enable councils to retain that flexibility. I think that the officials responded to this earlier, but can they provide some clarification on that?

969. Ms Bleeks: To be honest, I was quite surprised that councils wanted to retain by-laws.

970. The Chairperson: So was I.

971. Ms Bleeks: The overwhelming response that we got from councils is that they find by-laws cumbersome, and we know from our experience that that is the case. By-laws that are in force will remain so. They will not be repealed automatically and will continue to operate until such times as the councils choose to make the new dog control orders.

972. The Chairperson: I suggest that they do that fairly quickly. Are members content with clause 44?

Members indicated assent.

973. The Chairperson: Before we finish with Part 5 of the Bill there are two other general comments that I need to make; including the need for officers working on dog-related issues to

be adequately trained, and the integration and amalgamation of all dog-related legislation. Do you wish to comment on those issues?

974. Ms Bleeks: Authorised officers will need to be trained, but that is a matter for councils to consider. We have been liaising with DARD on dog-related legislation. It deals with two distinct areas of dog control. Although we deal with environmental issues, DARD is concerned with the control of dangerous dogs, the promotion and support of responsible dog ownership and changes to the licensing system. We do not necessarily feel that it is desirable for those functions to sit in one piece of legislation, but we acknowledge that the two regimes need to work together. We have been working with DARD to make sure that there is no overlap and that councils understand where the legislation applies.

975. The Chairperson: OK. We are moving on rightly, so bear with us. We will move on to Part 6, which deals with noise. Clause 45 deals with the designation of alarm notification areas. I remind members that although the clause was generally welcomed, several issues were raised, such as the inclusion of all alarm types, the difficulties of getting named keyholders for shared housing, flats and houses of multiple occupancy, the differentiation between intruder and smoke alarms, the impact of the direction on permitted levels under the Noise Act 1996 and the extension of that Act to include licensed premises. Where would you like to start?

976. Mr Jackie Lambe (Department of the Environment): I will begin with the first point about the differentiation between audible intruder alarms and other types of alarms. The councils already have powers under the Pollution Control and Local Government (Northern Ireland) Order 1978 to take action against all types of alarms. The new provision is targeted specifically at audible intruder alarms in particular areas where there have been proven problems in the past. It is targeted specifically at audible intruder alarms because those alarms generally tend to cause the most annoyance.

977. There were comments about extending the provision to all types of alarms. The Department's view on that is that extending the provision in that way would automatically include household smoke alarms or carbon monoxide alarms and would place a duty on virtually every householder who has a smoke alarm fitted in a designated area to have to register with the council and provide his or her name and address. That would be completely unworkable.

978. There were comments on the extension of the Noise Act 1996 to include licensed premises. In many people's minds, the phrase "licensed premises" is a rather restrictive description. What was envisaged was an extension of the 1996 Act to include all places that are subject to an entertainments or liquor licence. That includes social clubs, restaurants that sell hot food take-outs and are open until late at night and a wide range of premises that would tend to be open late at night and which have the potential to cause noise that will affect nearby residents. The provision extends the existing 1996 Act provisions to that broader range of premises so that councils can take action, not just against noisy dwellings, which is currently the case, but a wider range of noisy premises.

979. The Chairperson: OK. Do members wish to make any comments? I think that we have covered most of the points raised.

980. Clause 46 concerns withdrawal of designation. I remind members that main concerns about this clause were the consultation and administrative processes. I invite the Department to comment on that.

981. Mr Lambe: This relates to clause 45 and clause 46. A number of concerns were expressed by councils that the whole designation process might be overly cumbersome. The Department has taken advice on that, and will include it in the guidance it issues to councils, to clarify that

the inclusion of a flyer in the likes of a council news-sheet, or council magazine, that issues regularly throughout the year, of a proposed designation area is sufficient to cover the notification and withdrawal process. It is not necessary for councils to notify every individual householder, because such magazines are issued to all premises in council areas.

982. The Chairperson: Do members have any comments to make? Are members happy enough?

Members indicated assent.

983. The Chairperson: Clause 47 is about the notification of nominated key-holders. Here, the main concern was the nomination of key-holders. Jackie, would you like to comment?

984. Mr Lambe: I want to clarify that, in relation to notification of nominated key-holders, the onus is not on the council to go out seeking nominations from individual businesses or premises owners. If an alarm is sounding and a council is called out to deal with it, if the owner or occupier of that property has not registered with the council and provided the name and address of a nominated key holder, that person is guilty of an offence and can be dealt with in that way. There is no onus on the council to go out with an over-the-top administrative process and seek nominations from individual properties in a designated area.

985. The Chairperson: Clause 48 is about nomination of key-holders. No issue was raised in respect of clause 48. Clause 49 relates to offences under section 47 and fixed penalty notices. Again this is the issue of the key-holders. Has the Department any comment to make?

986. Mr Lambe: I wish to make it clear that, in the guidance that the Department proposes to issue, it will include an option for owners of properties to provide more than one. The statutory requirement is for one, but there is nothing to prevent owners from providing additional names and addresses of key-holders, as is the case currently with the voluntary code that operates with councils.

987. The Chairperson: Are members happy enough with that? We will move on.

988. The Chairperson: Clause 50 is about the amount of fixed penalty.

989. I remind members that although the discretion of councils to set their own fixed penalties was welcome, there were concerns about the administrative burden, the level of the default penalty which is £75 and flexibility in councils for different penalty levels.

990. I remind the Department to comment on key or additional issues and confirm that it will provide an amendment of clause 50 during the Committee Stage.

991. Mr Lambe: This is the same issue that has come up across a number of areas. Councils will have discretion to set the size of the fixed penalty locally, within a range prescribed in the regulations. Where they do not decide to set a penalty, a default penalty of £75 applies. The Department has accepted the point about the draft affirmative resolution.

992. The Chairperson: We will move on to clauses 51 and 52, which deal with the use of fixed-penalty receipts and the power to require a name and address with regard to fixed-penalty notices. No issues were raised in respect of those clauses.

993. Clause 53 deals with the power of entry. I remind members that stakeholders sought clarity on the need for a warrant to enter property boundaries and premises and on extending the types of alarm to which the Bill applies.

994. Mr Lambe: The Department has sought legal advice and agrees that a warrant is not required to enter a property boundary to silence an alarm. So, if an alarm is mounted on the exterior of a building and silencing it requires a council official to enter the courtyard or the garden, a warrant is not required.

995. Mr T Clarke: I appreciate what you are saying, but what happens in cases where a council silences the alarm and there is damage to it? Theoretically, you cannot silence an external bell box without damaging it.

996. Mr McMahon: We might need to look into that issue to see what the liability would be and how that would work.

997. Mr T Clarke: As long as we do not leave councils unsure.

998. Mr McMahon: That is a fair point.

999. Mr Lambe: That is dealt with in clause 55(9) through an indemnity for council officials for anything done by them in good faith while exercising their duty.

1000. Mr T Clarke: That is fine. Has that been tested?

1001. Mr Lambe: It is no different from the current position with councils.

1002. Mr T Clarke: Councils do not silence alarms at present, generally speaking.

1003. Mr Lambe: From Belfast, my understanding is that it is a fairly regular occurrence.

1004. Mr T Clarke: I should have declared an interest as a member of Antrim Borough Council. We have heard of nuisance alarms, but I have never known our council to silence alarms, but maybe it is not very active on the issue.

1005. Mr McMahon: We are happy to look into that and satisfy the Committee. We will seek to confirm that it is being used elsewhere.

1006. The Chairperson: Clause 54 is entitled, "Warrant to enter premises by force". We are seeking clarity on how that would operate in practice.

1007. Mr Lambe: The Department acknowledges that there will, on occasion, be difficulties in getting a warrant, particularly late at night or outside normal hours. However, those problems are no different to the problems faced by councils under the existing powers in obtaining a warrant to enter premises by force. So, there is nothing new in this clause; it is simply a replication of an existing power for the new proposal.

1008. The Chairperson: No issues were raised in respect of clauses 55, 56 and 57. Clause 58 is entitled, "Noise offences: fixed penalty notices". I remind members that councils were concerned about resources in relation to this clause, including the level of the default fine at £100. I ask the departmental officials to comment on the key issues and confirm its contentment with the amendment.

1009. Mr Lambe: As previously stated, the Department is content with the amendment.

1010. The £100 fixed-penalty notice is the same as it is under the Noise Act 1996. To date, only Belfast City Council has resolved to apply the Noise Act to its area. As far as I know, Belfast City

Council is the only council in Northern Ireland that applies the Noise Act. The fixed penalty notice will be no different from the current position. However, there will be a range of fixed penalty notices, and if a council decides that it wants to impose a slightly higher fixed penalty, it will have the discretion to do so.

1011. Mr Weir: You say that the level of fixed penalty notice fines will be the same as they are currently. Is perhaps one reason why councils outside Belfast do not apply the Noise Act because they would have to go through all the hassle and the most that the person will be fined will be a public fine anyway? It is a wee bit of a chicken-and-egg situation.

1012. Mr Lambe: Possibly one reason why other councils have decided not to use that power is because when a council decides to adopt the Noise Act, it is under a statutory duty to provide an out-of-hours noise service. Only Belfast City Council has decided that it wanted to do that, and it provides a night-time noise service that runs through until about 4.00 am. It can, potentially, be expensive for councils to do that. From experience, that provision has the greatest effect in urban areas. To date, only Belfast City Council has adopted the Noise Act.

1013. The Chairperson: Are members content with that explanation?

Members indicated assent.

1014. The Chairperson: Clause 59 is entitled, "Extension of Noise Act 1996 to licensed premises etc." Although members generally welcomed the clause, the following concerns were raised: the technical requirements for indoor entertainment licensing; a review, and incorporation into the Bill, of closing orders; and the need for a regular review of the £500 fixed penalty. The Committee for Social Development asked for an opportunity to comment on the clause, but, on reflection, decided to make no comment. [Laughter.] If I had seen the end of that sentence, I would not have started it. Does the Department want to comment on those three issues?

1015. Mr Lambe: In extending the Noise Act to licensed premises, the fixed penalty has been increased to £500 to reflect the more serious impact that noisy premises can have on adjacent residents.

1016. The clause is essentially the extension to commercial-type premises of the provisions that apply to domestic dwellings, but with a higher fine to reflect the more serious impact that those premises can have on local communities.

1017. The Chairperson: Is regular review an option?

1018. Mr Lambe: The Department intends regularly to review the level of all fixed penalties in the Bill.

1019. The Chairperson: Thank you. Perhaps you would like to comment on a few general issues: phased implementation; guidance to councils, which we talked about; informal action; and resources.

1020. Mr Lambe: With regard to phased implementation, councils generally asked the Department to ensure that there will be a sufficient lead-in period to allow for adequate training in all the Bill's new provisions. Therefore, the Department proposes to consult with councils on the guidance, and on the new statutory subordinate legislation that will need to come into effect to give the Bill the teeth that it needs to be operational. Most councils have asked for a minimum lead-in period of three months, and we see no difficulty with that.

1021. The Department accepts that, if many councils decide to operate the new provision, there will be an additional resource commitment. Currently, 25 out of the 26 councils simply do not bother exercising the night noise provisions in the Noise Act. If they decide that they wish to operate that, there will be an additional cost to them. That is no different to a decision taken by a council to operate the existing Noise Act, so, again, the decision on whether they wish to take on board that additional duty rests with the council.

1022. The Chairperson: There are only eight clauses and the schedules left, so we will try to get through those. We move to Part 7, which is on statutory nuisance. Clause 60 was generally welcomed, but some concerns were raised. A response spoke of the need for a catch-all clause, and a concern was raised about the applicability of a best practicable means defence to smoke nuisance. The need for greater scope for councils and for the extension of the Bill's powers to cover pigeons was raised. Concern was raised about the exclusion of agricultural land from the meaning of: "relevant industrial, trade or business premises".

1023. There is food for thought in those responses.

1024. Mr Lambe: By way of context, the new statutory nuisance provisions consolidate existing statutory nuisance law, most of which dates back to the old Public Health (Ireland) Act 1878. That Act has been amended and tweaked over the years. Many of the statutory nuisance provisions in this Bill are simply a consolidation of that existing statutory nuisance law. There are one or two new areas, such as the statutory nuisance of artificial lighting and statutory nuisance in relation to insects. A few tweaks of the wording are required to bring us more into line with the position that exists in England and Wales.

1025. As I said, statutory nuisance legislation has evolved over the past 130-odd years. To date, the Department has had no requests from environmental health practitioners for a catch-all provision, and we have no evidence for any need for that. We are not aware of any deficiencies in the existing statutory nuisance regime that call for a catch-all provision.

1026. The comment on the best practicable means defence to smoke nuisance was about the statutory nuisance of smoke emitted from premises and the statutory nuisance of fumes and gases emitted from premises. One of the provisions in the Bill is a specific exemption of the provision relating to fumes and gases from premises so that it applies only to dwellings, not to commercial, industrial or other premises. The best practicable means defence is available only in relation to commercial and business premises. It is not generally available to domestic premises. There is a different starting point in relation to those two statutory nuisance provisions.

1027. Pigeons is a trickier issue. There have been calls from district councils for additional powers to deal with pigeons. The Department has looked very closely at the matter and concluded that existing statutory nuisance powers are consolidated in the new clause 60(1)(a), which would apply to:

"any premises in such a state as to be prejudicial to health",

1028. or in clause 60(1)(e):

"any accumulation or deposit which is prejudicial to health".

1029. Both would enable councils to deal with pigeon droppings and so on. Councils also have powers under their existing good law and government —

1030. Mr Weir: In light of the existence of such provisions, a change in the law may not be necessary. Is it just a question of the Department sending out some sort of memo? Sometimes, interpretation of regulations can be narrow and it would be helpful to point out a possible wider interpretation.

1031. Mr Lambe: Yes, the Department is happy to do that.

1032. The Chairperson: The Committee will make a recommendation on the importance of doing that.

1033. Mr T Clarke: There is a lot in clause 60. Is noise anywhere in there?

1034. Mr Lambe: There are two categories of noise. Noise emitted from premises is provided for in clause 60(1)(i). Separately, clause 60(1)(j) relates to:

"noise that is prejudicial to health...and is emitted from or caused by a vehicle, machinery or equipment in a street".

1035. That tweaks existing noise provisions to separate them into two separate categories.

1036. Mr T Clarke: At the risk of being parochial, noise from motorsport facilities has been a problem in my area. Will that clause be a useful tool for the council?

1037. Mr McMahon: Are you talking about jet skis?

1038. Ms H Anderson: No, it is motocross.

1039. Mr T Clarke: Ones without planning permission. Noise travels into the streets from scrambling tracks —

1040. Mr W Clarke: That is an issue for planning enforcement.

1041. Mr T Clarke: No, there is a noise pollution issue. It is a nuisance.

1042. Ms H Anderson: That may still be caught under the Control of Pollution Act? I think that the legal definition of "street" implies that it is a street as a Roads Service, DRD responsibility.

1043. Mr T Clarke: Yes, but would the Bill not present an opportunity to capture that as well? At the end of the day, it is a nuisance.

1044. Ms H Anderson: I appreciate that, but I am not sure that clause 60(1)(j) will capture it. Perhaps we should check.

1045. Mr Lambe: May we check and come back to the Committee on that matter?

1046. The Chairperson: Please come back, if necessary with an amendment to the clause.

1047. Mr T Clarke: I also want to ask about clause 60(1)(l), which deals with watercourses. That intrigues me.

1048. Mr Lambe: That specific provision exists as a statutory nuisance provision in the Public Health (Ireland) Act 1878. Councils asked us to retain that provision in the new statutory nuisance regime. Their primary concern was that councils should be allowed to take action in

respect of watercourses, the normal drainage of which had been interfered with by man so that the normal flow had been stopped or adjusted.

1049. Mr T Clarke: The relevant paragraph states "choked or silted up", which is natural in bogland watercourses.

1050. Ms H Anderson: Much of the old public health legislation dating back to the 1800s related to stagnant water. If that is the case, I assume that one of the issues that might be caught relates to silting occurring to the extent that water ceases to move, becomes stagnant and potentially creates associated problems with insects or odours. However, we will check the detail on that.

1051. Mr T Clarke: Does that give the council the power to make the landowner clear that?

1052. Ms H Anderson: They would have had that provision already under the old Public Health (Ireland) Act. It is only where it is prejudicial to health or a nuisance; that is the crucial bit. It is not just where it occurs; it is where it occurs to the extent that a statutory nuisance is created.

1053. Mr Lambe: To clarify, there is specific case law that states that, if the water becomes choked or silted as a result of natural activity, the statutory nuisance provision does not apply. It is only where it applies in relation to a man-made activity.

1054. Mr T Clarke: That is not what is says there.

1055. Mr McMahon: I think that it is the definition of the term "choked". It would not be referring just to a natural occurrence.

1056. Mr T Clarke: It states:

"which is so choked or silted up as to obstruct".

1057. That is natural in some types of watercourse anyway.

1058. The Chairperson: That is a valid point.

1059. Mr Lambe: I will look again at that, and come back to the Committee.

1060. Mr T Clarke: I am pleased that it can be there and that it can be used as a tool, but I am just curious. In looking at the opposite side of that, watercourses rise. That normally happens on peatlands, and the natural occurrence is that it is going to choke and silt up. We are putting an onus on someone to clean out something that is going through its natural environmental process.

1061. Mr McMahon: I think what you are saying, Jackie, is that the case law would not —

1062. Mr T Clarke: If that is the proposal, I would welcome that, but I think it will be an interesting one.

1063. Mr McMahon: We will come back on that.

1064. Mr T Clarke: Can I ask your colleagues in the Environment Agency what their view is on that?

1065. The Chairperson: Finally on that clause, there is reference to the exclusion of agricultural land.

1066. Mr Lambe: The Department intends to clarify the definition of "agricultural land" specifically in the guidance.

1067. The Chairperson: OK. Thank you.

1068. Clause 61 concerns the duty of district councils to inspect for statutory nuisance. One issue was the inclusion of pigeons, but you have dealt with that.

1069. Mr T Clarke: Sorry, I missed that.

1070. The Chairperson: There is already legislation on that.

1071. Mr T Clarke: That is weak as well.

1072. The Chairperson: You mentioned clause 61(a)?

1073. Mr Lambe: Councils currently have powers under the statutory nuisance regime to deal with premises in such a state as to prejudice health or a nuisance, or accumulations, which can be anywhere, or deposits that are prejudicial to health. Councils also have the power to make by-laws under the good rule in government legislation to control pigeons. Final provision is made in article 71 of the Pollution Control Order that allows councils to take any steps for the purpose of abating or mitigating any nuisance, annoyance or damage caused by the congregation in any built-up area of feral pigeons. The Department's view was that there is a range of powers already available to councils to deal with pigeons, and there was not in our view a need for a specific statutory nuisance provision.

1074. Mr McMahon: One important point to add to that is that, obviously, as part of producing the guidance, we would want to, where relevant, draw attention to existing powers to make sure that they are used. I think that that is the point.

1075. The Chairperson: I accept the explanation, but what I am saying is that a lot of people have made a response on that, so it must not be working properly.

1076. Mr McMahon: Yes, I think that is fair.

1077. The Chairperson: Are we saying there is enough in legislation at the minute, or do we need to shore it up?

1078. Mr McMahon: The Department's view is that the powers are there, but clearly people are not applying them or may not be aware of them, and we need to make sure that that is built into the guidance so that people are fully aware of the powers at their disposal.

1079. Mr T Clarke: Are the powers — [Inaudible due to mobile phone interference.]

1080. The Chairperson: If the existing powers are properly applied, it is fine.

1081. Mr McMahon: If the power was not there and we were building it in, I suppose —

1082. Mr Lambe: There are, as I said, two existing statutory nuisance provisions dealing with deposits and accumulations and dealing with premises and such estates. The other two powers relate to a by-law-making power for councils.

1083. Mr T Clarke: No disrespect to Jackie, but most of us think that by-laws are weak. If there is another mechanism, why was it not included in the Bill?

1084. The Chairperson: That is a valid point, and it is one that NILGA raised. However, as bodies, councils should know what is applied in councils. We discussed by-laws earlier.

1085. Mr McMahon: When I heard by-laws again, I must say that I —

1086. The Chairperson: Yes; let's not go there. If there is an opportunity to implement something in the Bill and incorporate it, we should do so.

1087. Mr McMahon: We are happy to look at it.

1088. The Chairperson: Thank you.

1089. Clause 62 deals with summary proceedings for statutory nuisances. The following concerns were raised about clause 62: the issue of abatement notices in relation to appeals; the exclusion of the power for a court to make an order on conviction requiring the nuisance to be abated; the definition of an "owner"; and the introduction of daily fines. Jackie, would you like to comment on those points?

1090. Mr Lambe: The Bill already makes provision for the introduction of daily fines under clause 62(10). There is another provision in clause 62 under which a council, if it is of the opinion that the fine that is likely to be imposed by a court is not sufficient to deal with the offence, may take proceedings in the High Court, where there is no limit to the amount of fine that can be imposed. Therefore, the Department feels that there is sufficient provision to deal with most circumstances.

1091. From knowledge, only two of the councils expressed a preference for the old system to remain in place, while the rest of the 26 councils welcomed the new streamlined procedure of issuing an abatement notice and launching court proceedings if a person fails to comply with that. That is regarded as a much speedier process, and it will enable councils to deal with particular problems that arise at an earlier opportunity.

1092. A comment was made on the need for regulations to be introduced for appeals. The Department will consult on the appropriate regulations before the appeal provision is brought into operation.

1093. As the Committee will be aware from previous meetings, the Department's remit in the Bill was to bring Northern Ireland's statutory nuisance law and other environmental law into line with England and Wales. In that jurisdiction, the statutory nuisance provision is used in a slightly different way than it is used by many of the councils in Northern Ireland. A number of councils have told me that because Northern Ireland's housing legislation is not up to date with housing legislation elsewhere in the UK, they must resort to using statutory nuisance legislation to deal with many housing defects in privately rented houses. They have a particular problem with absentee landlords and those who live overseas, which is why they called for a broader definition of "owner." The Department is looking at that, and, subject to ministerial approval, would be minded to bring that into being, so that our statutory nuisance legislation is not weakened from

its current position. If we moved in line with the rest of the UK in that respect, we would, in effect, weaken those provisions.

1094. The Chairperson: No issues were raised on clause 63, concerning abatement notice in respect of noise in the street.

1095. Clause 64 concerns supplementary provisions. Stakeholders sought more clarity on the interpretation of clause 64 and an indication of the new procedures that will be required to deal with noise in the street.

1096. Mr Lambe: The Department will bring forward detailed guidance on the new provisions that deal with noise in the street. Clause 65 allows councils to recoup expenses that are reasonably incurred in abating the statutory nuisance. A cost recovery mechanism will be introduced as part of the new provisions.

1097. The Chairperson: Are we content with that explanation?

Members indicated assent.

1098. The Chairperson: Clause 65 concerns expenses recoverable from owner to be a charge on premises. Among a range of comments on clause 65, stakeholders sought the extension to the rest of the Bill of the definition of "owner" in this clause. Obviously, you are considering that.

1099. Mr Lambe: Apologies, Chairperson. I jumped the gun slightly in my previous comment. The recovery of costs relates to clause 65, and not clause 64.

1100. The Chairperson: Do members have any questions on that? Are members content?

Members indicated assent.

1101. The Chairperson: No concerns were raised about clause 66 on payment of expenses by instalments. The clause was welcomed by councils and others, and there were no comments on it. Does any member want to ask a question on clause 66? Are members content?

Members indicated assent.

1102. The Chairperson: Clause 67 concerns summary proceedings by persons aggrieved by statutory nuisances, and clause 68 concerns application of Part 7 to the Crown. No comments were made on clauses 67 and 68. Unless members have any comments, I propose that we move on. Are members content?

Members indicated assent.

1103. The Chairperson: A series of general issues were raised about statutory nuisance that cannot be related directly to specific clauses. I would like the Department to respond to two general issues: overcrowding, and legislating for unsightly and unkempt gardens.

1104. Mr Lambe: The issue of a statutory definition of overcrowding has been brought to the attention of the Department for Social Development, which has policy responsibility for housing legislation, including overcrowding. I referred earlier to the fact that Northern Ireland's housing law lags behind the rest of the UK. The Department for Social Development is aware of the issue. Whether it brings forward legislation is a matter of its departmental priorities.

1105. The Department of the Environment's view is that unsightly and unkempt gardens will be addressed through the new litter-clearing notice provisions that will be introduced in clause 17. If there are unsightly or untidy gardens, even at derelict premises, a council can issue a litter-clearing notice as security for the clean-up.

1106. The Chairperson: That concludes the informal scrutiny of Part 7. We now have Part 8, miscellaneous and supplementary provisions. Clause 69 concerns use of penalty receipts; clause 70 concerns offences relating to pollution, etc: penalties on conviction; clause 71 concerns offences by bodies corporate; clause 72 concerns regulations and orders; clause 73 concerns interpretation; clause 74 concerns minor and consequential amendments and repeals; clause 75 concerns commencement; and clause 76 is the short title. No issues were raised in respect of those clauses. Are members content to move on?

Members indicated assent.

1107. The Chairperson: We move on to schedules 1 to 4. The only issue that was raised in relation to the schedules was the suggestion that regulations should be made under schedule 2 to prescribe the cases in which an abatement notice is or is not to be suspended.

1108. Mr Lambe: As I said previously, the Department will consult on the draft regulations prior to the coming into operation of Part 7 of the Bill. It is absolutely essential that the appeal mechanisms are in place before councils can operate under the new statutory nuisance procedure. That will all be consulted on well in advance of the provisions coming into operation.

1109. The Chairperson: Thank you very much. That concludes the informal scrutiny of the Clean Neighbourhoods and Environment Bill. When the Committee receives all of the information that it has requested, it will commence formal clause-by-clause scrutiny. There are a few issues on which the Department has to come back to us. Are members content with the explanations that were given throughout the process?

Members indicated assent.

1110. The Chairperson: We now move back to the formal clause-by-clause scrutiny of the High Hedges Bill.

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

1111. The Chairperson: We received further clarification on this clause. Mr Clarke, are you happy enough with that clarification?

1112. Mr T Clarke: Yes.

Question, That the Committee is content with the clause, put and agreed to.

Clause 6 agreed to.

Clause 7 agreed to.

Clause 8 (Powers of entry)

1113. The Chairperson: The Committee sought clarification from the Department, and we were satisfied with the explanation.

Question, That the Committee is content with the clause, put and agreed to.

Clause 8 agreed to.

Clause 9 (Offences)

1114. The Chairperson: The Committee sought clarification in relation to this clause, and we were content with that clarification.

Question, That the Committee is content with the clause, put and agreed to.

Clause 9 agreed to.

Clause 10 agreed to.

Clause 11 (Action by council)

1115. The Chairperson: The Committee sought some clarification in relation to this clause. I think that we are happy enough with the explanation.

Question, That the Committee is content with the clause, put and agreed to.

Clause 11 agreed to.

Clauses 12 to 14 agreed to.

Clause 15 (Interpretation)

1116. The Chairperson: We expressed some concerns about this clause and sought some clarification from the Department, and we are happy enough with that clarification.

Question, That the Committee is content with the clause, put and agreed to.

Clause 15 agreed to.

Clauses 16 to 20 agreed to.

Long title agreed to.

1117. The Chairperson: That concludes the Committee's formal clause-by-clause consideration of the High Hedges Bill. A report will be brought back to the Committee in the next couple of weeks. Thank you very much.

Appendix 3

Written Submissions Relating to the Report

Ards Borough Council Submission to the High Hedges Bill

From: Richard.Brittain@ards-council.gov.uk
Sent: 01 July 2010 08:20
To: +Comm. Environment Public Email
Subject: High Hedges Bill

Dear Mr McCann

I can confirm that after careful consideration Ards Borough Council at its meeting held on the 30th June 2010 agreed that the High Hedges Bill should be extended to include other properties affected by a hedge and not just those described as domestic.

I trust that due cognisance will be given to the views' of the Council.

Should you require any further information then please do not hesitate to contact me at 02891 824040.

Yours sincerely

Richard Brittain
Borough Inspector

**Ballymena Borough Council Submission to the
High Hedges Bill**



Your Ref:
Our Ref: NMCC/L
Being dealt with by: Mrs Nicola McCall, Tel:- 028 25660 375

Date: 22 July 2010

BALLYMENA BOROUGH COUNCIL

Council Offices, "Ardreavin",
80 Galgorm Road, Ballymena, BT42 1AB

Mr Sean McCann
Assistant Clerk
Environment Committee
Room 247
Stormont Estate
BELEFAST
BT4 3XX

Telephone 028 2566 0300
Facsimile 028 2566 0400
Local Rate Telephone 084 5658 1581
www.ballymena.gov.uk

Dear Sir

Re: Consultation Response on Draft High Hedges Bill

Ballymena Borough Council would like to thank you for this opportunity to comment on the document, Public Consultation on a Draft High Hedges Bill.

Ballymena Borough Council is aware that there is currently no legislation in Northern Ireland governing the height or maintenance of a hedge and as a result, disputes between neighbours regarding high hedges can remain unresolved for years. Problems of this type are often referred to the Council but, to date, there was little that could be done if the owner of the hedge was reluctant to address the issue.

It is likely that disputes of this type may have increased due to greater urban density and also due to the availability of low-cost and often very fast-growing hedges which need to be regularly trimmed to prevent them becoming a nuisance. Currently the only legal redress a householder can seek is through civil action, the costs of which can be prohibitive.

Ballymena Borough Council therefore welcomes the introduction of a High Hedges Bill by the Department. The Council does, however, have a number of specific concerns and queries regarding some of the proposals contained within the consultation document and draft Bill.

Issues of concern

- The Department will need to provide guidance to Councils in relation to those circumstances that would constitute a complainant *"taking all reasonable steps to resolve the matter complained of"*, including how a complainant would need to demonstrate this.
- Where the property is vacant and there is no traceable owner, the Council is concerned that there is an assumption by the Department that the Council would automatically act in default, without additional resources being made available to it.

- The Department needs to clarify whether or not a mediation service would be available. This is a service that the Council would call for and one which is available in England and Wales. However it would need to be effectively resourced to ensure that it is readily available to those that need this service. This is currently not always the case in England and Wales.
- Resources will be required to educate and advise the public with regard to the new legislation and on how to plant and maintain hedges in order to avoid a problem.
- The Council would welcome a prescribed application form which would clearly indicate to the complainant what information is required and would capture any previous communication and/or mediation. A standard form would also ensure consistency of approach from Councils across Northern Ireland.
- The Council would welcome clarification on liability regarding hedges on land where there is no known owner.
- The Council would be concerned about the potential for hedge owners cutting hedges during the bird nesting season and would appreciate guidance in relation to this matter.
- The Council would be concerned about the liability implications in the situation where it ordered a hedge owner to reduce the height of a hedge and the hedge subsequently died. It would be helpful if the legislation could limit the potential for such claims in some way, provided that the Council has acted in good faith and has taken appropriate professional advice regarding the proposed remedy.
- Those from lower-socio-economic groups may find the cost of employing a specialist tree surgeon prohibitively expensive if a notice is served on them. Financial assistance may be necessary.
- The Department should consider allowing reduced fees for those on means tested benefit or the elderly. However Councils would need to receive financial support to cover costs.
- The Council would welcome clarification in relation to Powers of Entry and the requirement to give the occupier of land 24 hours notice and would suggest that this should also apply to the owner of the land.
- The Council would seek clarification on how to deal with complaints relating to land which is vacant or where there is no identifiable occupier.
- The Council would welcome confirmation that the registered charge placed on a property following works in default will include the cost of registering a charge on the property.
- The Council would be concerned about carrying out works in default on premises with no known owners as there would be little prospect of recovering costs. Therefore some funding may be required.

I would like to thank you the Department for affording the Council this opportunity to respond. If you require any clarification, please do not hesitate to contact us.

Yours faithfully

PP for 
Nicola McCall
Deputy Chief Environmental Health Officer

Banbridge District Council Submission to the High Hedges Bill

By email to doecommittee@niassembly.gov.uk by 2 July 2010
Environment Committee
Room 247
Parliament Buildings

Stormont Estate
Belfast, BT4 3XX

Dear Sirs

Re: High Hedges Bill

Thank you for the opportunity to provide the views of Banbridge District Council to the Committee on the above matter as requested in your correspondence of 25 May.

The Council would wish to take this opportunity to comment on the provisions of the Bill as follows:-

1. Article 3 (4) and Article 9 (1)

Council would comment that having a requirement to serve a Remedial Notice on every person who is an owner or occupier of neighbouring land where the hedge in question is situated, has the potential to create enforcement problems. Identifying one responsible person on whom the Remedial Notice would be served, would make enforcement in the event of non compliance, simpler and more efficient. It is anticipated that problems would arise in determining which owner or occupier should be taken before the courts and to take "every person" (Article 9 (1)) is likely to be prove burdensome.

2. Article 9

Council would further reiterate its desire to see a fixed penalty notice option included in the Bill.

It suggests that this could be an enforcement tool used in the event of non compliance with a Remedial Notice. Given that the proposed Bill envisages every person who did not comply with a remedial notice is guilty of an offence; the fixed penalty notice option at a level of say £200 would provide both a deterrent to non compliance and a more efficient means of dealing in the first instance with non compliance. In cases of continuing non-compliance with a Remedial notice, the Council at that stage could apply to the Courts for an Order (as set out in Article 9 (6) (b)).

3. Article 11 Action by Council

Where Council does exercise discretionary powers to deal with a high hedge, the legislation should ensure that no continuing duty is imposed on the Council eg. to periodically cut back hedge regrowth. The Council is pleased to note that where the Council acts in default, the Bill does include the provision that the Council is not liable for damage in respect to any hedge. The Council would again request that this provision is extended to the situation where work specified in a remedial notice causes, for example, a coniferous hedge to die after it has been reduced in height.

I trust the Committee will find these comments helpful in its deliberations.

Yours faithfully

Gillian Topping (Mrs)
Head of Environmental Health

Carrickfergus Borough Council Submission to the High Hedges Bill

The following comments are provided on behalf of Carrickfergus Borough Council in response to the public consultation on the draft High Hedges Bill. Comments are provided in light of the Department's responses following the publication of the synopsis of responses following the initial public consultation. (www.doeni.gov.uk/synopsis-of-responses.pdf).

Comments/concerns are outlined under a range of headings as follows.

Scope of the Proposed Legislation

Carrickfergus Borough Council (CBC) welcomes the Department's proposal to exempt forests greater than 0.2 hectares from the scope of the legislation. In addition, the Council welcomes the proposal to omit the words "or access" from the definition of a high hedge in clause 2(1) and (2).

Fees

As with many of the local authorities who responded to the initial public consultation, CBC would be unwilling to require the complainant to pay a fee as this goes against our normal practice when dealing with environmental issues. Also, we would be concerned about people of low income's ability to either make a complaint or carry out remedial works required as a result of a complaint.

CBC believes that it should be up to the hedge owner to meet Council costs if findings go against them.

However, CBC welcomes the opportunity to set the level of fee and decide whether there should be reduced fees (e.g. for those in receipt of benefits etc.) For your information, at present there are approximately 6 complaints of this type received per year by CBC.

Guidance

CBC would welcome guidance from the Department to help these adversely affected by a neighbouring high hedge to make a complaint to their local council.

CBC would also welcome guidance for officers responsible for investigating complaints made under this legislation and also for the appeals process. However, we would seek assurances that all guidance will be provided in good time ahead of the commencement of the legislation along with necessary training events for officers.

Other Concerns

Mediation services

Costs, availability, impartiality.

Vacant land

Whilst CBC accepts that many landowners can be traced through Land and Property Services, in practice Environmental Health staff have found that not all lands are registered, which can lead to difficulties in completing investigations.

Application forms

CBC welcomes the proposal that the Department will provide councils with a prescribed application form.

Liability of Councils

CBC welcomes the proposal to amend the Bill to protect councils from liability when the council has acted in default and carried out remedial works.

Castlereagh Borough Council Submission to the High Hedges Bill

CASTLEREAGH BOROUGH COUNCIL

REPORT OF THE ACTING ENVIRONMENTAL HEALTH MANAGER

TO THE CHAIRMAN AND MEMBERS OF THE TECHNICAL AND ENVIRONMENTAL
SERVICES COMMITTEE MEETING TO BE HELD ON TUESDAY 19 JANUARY 2010

6.0 DRAFT HIGH HEDGES BILL

I wish to advise Members that this Service Unit has received the public consultation on the Draft Bill. The closing date for the consultation is 1 March 2010.

As Members will be aware through their constituents the issue of high hedges and perceived reduction of and loss of light remains very controversial and the pending Bill will have a significant impact on Councils who have been charged with its enforcement.

On receipt of a complaint the Council will act as an independent and impartial third party and adjudicate whether the hedge is adversely affecting the complainants reasonable enjoyment of their property.

The proposed Bill gives the following powers to authorized officers.

- Powers to enter land.
- Powers of obstruction to officers.
- Powers to serve/withdraw and amend remedial notices.
- Powers to levy fees for complaints – this is to recover associated costs and is not a penalty.

The service of a Notice will remain in affect even if the ownership of the land where the hedge is located changes. A Notice can only be served where a line of 2 or more evergreens greater than 2 metres above ground level reasonably affects the enjoyment of property. Failure to comply with a Notice would result in legal action and a fine being imposed on conviction.

Council also has the option of doing the works be default and placing a charge on the property to ensure costs are recovered.

It should also be noted that both parties have Rights of Appeal under the Bill.

Recommendation

It is recommended that Members note the above and whilst the Environmental Health Service Unit welcome additional powers to assist the ratepayers of the Borough, I am sure Members would agree that this is likely to be a significant imposition on an already busy frontline service.

Council for Nature Conservation and the Countryside (CNCC) Submission to the High Hedges Bill

An Advisory Council to the Department of the Environment

1st Floor,
Calvert House,
23 Castle Place,
Belfast,
BT1 1FY

Tel: (028) 90254835
Fax: (028) 90254856
secretariat-hillst@doeni.gov.uk

3 March 2010

Anthony Courtney
High Hedges Team
Department of the Environment (NI)
Planning and Natural Resources Division
Calvert House
23 Castle Place
Belfast
BT1 1FY

Via Email

Dear Mr Courtney

Draft High Hedges Bill

CNCC welcomes the opportunity to comment on this proposed legislation. We are a Statutory Advisory Council to the Department of the Environment, with the remit of providing advice on matters relating to Nature Conservation and the Countryside. This Bill covers urban gardens and as such is largely outside of our remit. However we have a few general points to make which are outlined below.

The Introduction to the Bill states in Para 2 that there is currently no legislation in Northern Ireland governing the height or maintenance of a hedge. There are however clear rules set out by the Department of Agriculture and Rural Development on the maintenance of rural hedges, covering the times of year when these may be cut. This is in order to avoid disturbance to birds and other wildlife breeding in hedges and the destruction of nests during the spring and summer months. We believe that the same considerations and guidelines should be introduced with respect to remedial notices under this legislation. This is particularly important in view of the increasing importance of gardens as a reservoir of biodiversity, reflected by recent findings that suggest that many gardens are supporting a wider diversity of wildlife than much of our farmland.

Given that the Department of the Environment is currently introducing the Wildlife and Environment Bill, which introduces as Clause 1(1) the duty to conserve biodiversity, it would seem obvious that there should be some reference to that duty within this Bill.

CNCC is also concerned that this legislation has been given priority over other extremely urgent legislative work that was underway at the Department of the Environment, particularly the Marine Bill and the revision of PPS2 Planning and Nature Conservation. The Marine Bill should have been available for consultation at this point, but shows no sign of emerging, in spite of being months behind equivalent legislation in Great Britain, and the fact that it transposes important European legislation into Northern Ireland law. It seems extremely odd that domestic hedges should take precedence over regulation of all our marine affairs.

Yours sincerely



Patrick Casement
Chairman

Down District Council Submission to the High Hedges Bill

From: Liam.McLernon@downdc.gov.uk
Sent: 24 June 2010 15:58
To: +Comm. Environment Public Email
Subject: High Hedges Bill

Sean,

Down District Councils External Affairs Committee, at its meeting on 14 June 2010, considered the proposed High Hedges Bill. Members support the detail contained in the proposed Bill and the 4 amendments put forward by the Department of the Environment.

Regards,

Liam McLernon
Down District Council Policy & Equality Officer

24 Strangford Road, Co Down BT30 6SR
Tele: 4461 0807
Fax: 4461 0801
Mobile: 07977 016984

Ed Kilgore Submission to the High Hedges Bill

From: EdKilgoreMBE@aol.com
Sent: 28 May 2010 09:29

To: +Comm. Environment Public Email

Subject: High Hedges

I wish to make comment on the bill.

1. I cannot find a section which relates to the hedges being owned by a council and if this is the case who adjudicates?
2. I would like to see a reference to distances between trees to make them form a hedge rather than a small forest.

3. If a stand of trees is being used as a break along a boundary when does this cease to be a hedge. The trees also in a case I am thinking of then adjoin a small forest does this take it outside this bill?

4. Are certain trees exempt I cannot find any references.

5. If the trees are in a large area which meets the size reference but the trees only form a small part of that area can it still be treated as a hedge? (the trees would form the boundary of the area)

I look forward to hearing from you.

Regards

Ed Kilgore
MBE

Labour Party NI Submission to the High Hedges Bill

Submission by the Labour Party in Northern Ireland to the High Hedges Bill Consultation. 2 July 2010.

The Labour Party in Northern Ireland supports the main principles in the High Hedges Bill 2010.

The Party urges that the legislation be brought in urgently, as protection for the public on this issue is long overdue.

It commends the efforts in the Bill to encourage mediation in disputes between neighbours, before resorting to the use of the legislation.

Mark Henderson Submission to the High Hedges Bill

From: Mark Henderson [markhenderson1@btinternet.com]

Sent: 26 May 2010 15:47

To: +Comm. Environment Public Email

Subject: High Hedge Bill

With regards to the announcement on the stage of the High Hedge Bill I wish to submit the following

-

- Definition is required for "reasonable enjoyment"
- Definition is required for "detriment"
- Consideration needs to be given to the maintenance of a border hedge, has it been well maintained, is the owner prepared to pay for this maintenance
- Consideration needs to be given to the distance the hedge is from the complainants house

- Consideration needs to be given to the difference in the height of the neighbours foundations to the owner of the hedge IE if the complainant foundations are 8 feet higher than the hedge owner, the hedge will require to be higher to provide privacy to the owner
- People in bungalows have bought bungalows to have privacy, nobody looking out of bedroom windows etc, the building of upstairs on a neighbouring bungalow may give reason to grow hedges higher and not complain over this building change, this needs to be taken into consideration in a complaint.
- If a house backs onto a bungalow the occupants should be allowed to grow and maintain a hedge which provides privacy to some extent
- All cases must be investigated on own merit, not a general height requirement of so many feet

Submitted for consideration in the next phase of the Bill

Mark Henderson

Council for Nature Conservation and the Countryside Submission to the High Hedges Bill

Council for Nature Conservation and the Countryside

An Advisory Council to the Department of the Environment

1st Floor,
Calvert House,
23 Castle Place,
Belfast,
BT1 1FY

Tel: (028) 90254835
Fax: (028) 90254856
secretariat-hillst@doeni.gov.uk

28th May 2010

Sean McCann
Assistant Clerk
Environment Committee
Room 247
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Dear Sean,

High Hedges Bill

Thank you for your letter dated 25th May 2010 requesting CNCC's review on the proposed High Hedges Bill.

Please find attached a copy of the CNCC response to the DOE consultation on the proposed Bill submitted on the 3rd March 2010. CNCC have no further comments to make.

Yours sincerely



Patrick Casement
Chairman

Attachment

Mediation Northern Ireland Submission to the High Hedges Bill

25 February 2010

Anthony Courtney
Department of the Environment
Planning and Natural Resources Division
3rd Floor
Calvert House
23 Castle Place
Belfast
BT1 1FY

Dear Mr. Courtney

Response on behalf of Mediation Northern Ireland to the Public Consultation on a Draft High Hedges Bill

Mediation Northern Ireland was founded as a charity in 1991 to promote the use of mediation. We provide mediation services and training for new practitioners. We also support the development of mediation delivery by community groups and public service organisations. For example, we have assisted the Housing Executive in the development of its

Neighbour – Neighbour Mediation Service.

1. We welcome the approach outlined in the Draft High Hedges Bill. It is inline with contemporary thinking on conflict resolution in that problems should preferably be solved at source by the parties involved in the dispute. Then, that parties use mediation to seek help in achieving agreement amongst themselves. If this fails, there is a clear legal path to make a complaint.

2. We believe that mediation is strongly enough developed and provided in Northern Ireland to provide for the services envisaged in the Bill. Mediation Northern Ireland has perhaps the most developed structure for delivery of such services.

3. We believe that consideration should be given to structures for the delivery of quality mediation support for implementation of the Bill. We suggest that there are two potential approaches:

a.) Shared Service Delivery: where inline with contemporary trends, a single centralised service could be provided to councils.

b.) Council Arranged Delivery: where each council makes its own arrangements for mediation service delivery. This might include council training local mediators, either independent or in house.

4. We propose that guidance be given to council on the nature of "evidence of having attempted to solve the problem through communication or mediation with the hedge owner" (Brief Description of Bill's Provisions pg. 4 as it refers to 3.2). This recommendation arises from the fact that the effectiveness of mediation is founded on the safety of a confidential process which is conducted "without prejudice". Parties can more easily be facilitated in developing a collaborative, problem solving mindset. Therefore, if confidentiality of the process is not protected, it will lose its potential to stop complaints coming to council. We would be willing to consult further on this matter.

5. We have a concern that the mediator's impartiality and independence needs to be protected. Therefore, the nature and level of evidence required by councils to determine that a complainant has provided "evidence of having attempted to solve the problem through communication or mediation with the hedge owner" (Brief Description of Bill's Provisions pg. 4 as it refers to 3.2) may also need guidance. Again we would be willing to discuss this matter further.

If you require any further information with regards to the above or if you wish to discuss MNI's response, I would be happy to meet with you. Please contact Máire Patton using the contact details provided below.

Yours sincerely,

Peter O'Reilly
Director
Mediation Northern Ireland

Northern Ireland Local Government Association (NILGA) Submission to the High Hedges Bill

Assembly Environment Committee Call for Evidence on the draft High Hedges Bill July 2010

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

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

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

Email: k.smyth@nilga.org

Tel: 028 9079 8972

Introduction

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

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

Background

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

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

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

General Concerns

Impact on the ratepayer

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

Development of Guidance

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

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

Clause Specific Concerns

Limitations of the remit of the proposed legislation - Clause 2

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

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

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

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

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

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

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

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

Clause 3 (7)

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

Suggested inclusions re cost recovery - Clauses 2 and 3

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

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

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

Remedial Action - Clause 4

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

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

Powers of Entry - Clause 8

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

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

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

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

Definition of 'Access' - Clause 15

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

Northern Ireland Valuation Tribunal Submission to the High Hedges Bill

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25 June 2010

Northern Ireland Assembly Bill 15/09, the "High Hedges Bill"

I refer to our recent discussions and it might perhaps be of value to have some thoughts on my part concerning the matter.

As you will know, the Northern Ireland Valuation Tribunal ("Valuation Tribunal") came into being under the provisions of the Rates (Northern Ireland) Order 1977 ("1977 Order") as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("2006 Order") (see Article 29 of the 2006 Order, inserting Article 36A, and Schedule 1 of the 2006 Order, inserting Schedule 9B of the 1977 Order). The Valuation Tribunal rules of procedure are contained in the Valuation Tribunal Rules (Northern Ireland) 2007, and these latter rules have been subsequently amended to take account of, for example, the lone pensioner allowance scheme or the respective energy efficiency homes and the low-carbon homes schemes.

The provisions contained within the 1977 Order, as amended by the 2006 Order, prescribe to the Valuation Tribunal a statutory structure that is composed of a President who is the judicial head of the tribunal, and three separate categories of members of the tribunal. These latter are, firstly, the legal members, secondly, members who have had experience in the valuation of land, and thirdly, ordinary members (see Schedule 9B 2. (2) of the 1977 Order for the statutory basis for appointments).

Rules of procedure for the Valuation Tribunal are made by virtue of Schedule 9B 7. of the 1977 Order and Schedule 9B 8. (b) of the 1977 Order provides that rules may include provision providing that the chairman of any such tribunal must be the President or a legal member.

In the Valuation Tribunal rules of procedure, as amended, made accordingly under these provisions ("the Rules"), it is provided that the tribunal as properly constituted shall comprise three members, which members shall include, firstly, the President or a legal member, secondly, a member who has had experience in the valuation of land ("valuation member"), and, thirdly, an ordinary member. It is provided that the chairman of a tribunal shall be the President or a legal member. However, it is possible, with the consent of the parties, for any proceedings to be determined by a tribunal in the absence of any one member other than the chairman, or indeed by the chairman alone. From this, it can be observed that the proceedings of any properly constituted Valuation Tribunal must, at the very least, be conducted by a chairman who can be either the President or a legal member.

Thus the constitution of the Valuation Tribunal, as prescribed by statute, presupposes that the technical knowledge, skills and experience brought to bear in the Valuation Tribunal's decision making by the specific contributions that are to be made on the part of the valuation member and of the ordinary member shall normally form a core element in the process of decision making of the Valuation Tribunal. There is however a facility to dispense with these specific contributions by agreement of the parties. It is also possible to do so in preliminary or interlocutory determinations of the Valuation Tribunal were it is provided by the Rules that the legal chairman may act alone.

Materially, that latter dispensation does not apply to the specific contribution of the legal chairman. The reason for this is that the conduct of judicial proceedings and the technical management and control of any court or tribunal forming a component part of our judicial system is very properly entrusted to a qualified and experienced judicial officer. The composition of most tribunals in our judicial system of courts and tribunals thus, whilst recognising the technical expertise of the specialist or expert members, nonetheless places a fundamental emphasis upon there existing, at the very core of the judicial process, a suitably qualified and experienced judge or tribunal chairman. It is for that reason that the Rules, as amended, are structured in the manner in which they presently exist.

Any judicial tribunal properly exercising its function, and the Valuation Tribunal is no exception, can of course be called upon at any time to make a rapid and authoritative determination upon a point of law, for example, bearing upon the tribunal's legal and technical jurisdiction or upon an issue of compliance with rights and obligations under the European Convention and domestic law such as the Human Rights Act 1998, or the Northern Ireland Act 1998. Many and varied legal and technical issues underpin the day-to-day operation of tribunal proceedings. The conduct of tribunal proceedings by the President or legal member, in the role of tribunal chairman, is executed in a manner where the chairman is at all times acutely conscious of a broad range of technical and legal issues which might affect the fairness, propriety, and the proper judicial conduct of any hearing or other judicial process before the Valuation Tribunal.

The chairman of the tribunal is tasked with the general management of proceedings as prescribed by the Rules, including, for example, determining preliminary or interlocutory matters such as the making of interim orders, extending of time limits, requiring the attendance of parties, requiring the written answers to questions, ordering the joinder of parties and, indeed, when merited, the exercise of the ultimate sanction of dismissal or striking out of proceedings or defence where there is material and significant default. The chairman is thus responsible for the judicial control and management of any hearing in compliance with the law and for the preparation and promulgation of the Valuation Tribunal's decision or other determination. Further to that, the Valuation Tribunal chairman bears responsibility for conducting any legal

review of the tribunal's decision under the Rules and for dealing with any appeal procedures. All of these many and varied judicial functions must be properly and competently discharged on the basis of a comprehensive and sound knowledge and grasp of the principles of jurisprudence and of the law generally.

Bearing all of the foregoing observations in mind, I have scrutinised the Northern Ireland Assembly Bill 15/09, the "High Hedges Bill". I note that the provisions of the Bill provide for an appeal to the Valuation Tribunal upon a number of statutory bases. The Valuation Tribunal is defined in the interpretation section of the Bill as being, " the Northern Ireland Valuation Tribunal, established by Article 36A of the Rates (Northern Ireland) Order 1977 (NI 28)". Thus, as defined, the Valuation Tribunal to which any appeal would be made under the terms of the Bill would be a Valuation Tribunal as it is constituted, as mentioned above.

It has been mooted that the appeal mechanism to the Valuation Tribunal to be provided for by the Bill might perhaps be conducted by an appeal to a Valuation Tribunal which, under this particular statutory jurisdiction, might consist of the valuation member sitting alone; that is to say in the absence of either the President or a legal member (or indeed in the absence of the ordinary member). As can be observed from what has been said above, that would not be possible. This is so for the reason that the President or the legal member do constitute an integral and an indispensable component of the Valuation Tribunal as it is presently prescribed under the statutory provisions.

If the aim were sought to be achieved in this discrete jurisdictional area of the valuation member sitting alone as a Valuation Tribunal, the constitutional provisions grounding the Valuation Tribunal would need to be fundamentally altered. I would respectfully urge caution in regard of that possible course of action for what I trust will be viewed as being a number of good reasons. Firstly, as is mentioned above, it is generally and for good cause recognised that judicial proceedings in our legal system of courts and tribunals are properly to be managed and conducted by a suitably qualified judicial officer. Certain of the reasons for this are mentioned above; these do not require repetition, nor do the considerable range and number of judicial tasks and functions which are required to be performed and attended to by the Valuation Tribunal's legal members require elaboration.

The legal members of the Valuation Tribunal are lawyers of considerable experience and competence and are judicial officers who have been selected consequent upon a rigorous judicial selection process conducted by the Northern Ireland Judicial Appointments Commission. These judicial officers have undergone dedicated judicial training and it is recognised that these are persons whose training, skills and experience make them suitably and properly qualified to engage in the fair and proper conduct and management of judicial proceedings.

Whilst in no way decrying the very valuable and the very high level of skill and experience brought to bear in Valuation Tribunal proceedings on the part of the valuation members, the task of the valuation members has properly to be seen as quite a different and distinct task to that of the legal members; thus the respective contributions are currently (and indeed very properly) recognised by the Rules of the Valuation Tribunal as being quite distinct and different.

I am thus rather concerned at the prospect of valuation members, sitting as sole members of the Valuation Tribunal in this discrete jurisdictional area, being required to undertake work which is quite outside the valuation members' ambit or range of competence or area of technical expertise, skill and training.

I am also concerned at the manner in which the valuation members, if they were to be required to engage in sitting alone as members of the Valuation Tribunal, might be expected to interface with the prescribed function of the President of the Valuation Tribunal, who bears ultimate

responsibility as the legal head of the tribunal. That function of the President encompasses, amongst other matters, setting and maintaining the standard of judicial decision making of the tribunal, ensuring consistency of decisions and the proper and appropriate conduct of the judicial function, whilst affording judicial independence to each properly constituted tribunal. The mooted proposal would appear in effect to suggest a fracturing of the primary function of the Valuation Tribunal as it is presently constituted, countenancing the prospect of a "two tier" system of justice being afforded to stakeholders by the Valuation Tribunal, dependent upon the specific jurisdictional area that is to be administered in the tribunal's function. I have additional concerns about how this suggestion might sit comfortably within the structure as envisaged by Sir Andrew Leggatt in his report and the subsequent process of tribunals reform as this might affect Northern Ireland in due course.

Having made these observations, I do believe that it might well be possible to address specific concerns surrounding cost in the administration of justice and efficiency of operation of the Valuation Tribunal in this discrete area, whilst also addressing the concerns that have been expressed above. In this regard, my suggestion is that the Valuation Tribunal shall continue to be constituted as it currently exists under the foregoing statutory provisions. Thus, all tribunal business should continue to be conducted by a legal member as chairman. That shall, I think, safeguard the judicial integrity of the process. However, the contribution of the valuation member to the assessment of technical evidence in this new jurisdictional area might well be catered for and recognised in the proper implementation of that part of the Rules providing for the general and quite wide-ranging power ascribed to the Valuation Tribunal to manage proceedings.

In addition to that, there is express provision made in the Bill for procedural rules to be made. Amended rules, for example, might permit the function of the valuation member in the assessment of technical evidence to be more practically and rationally prescribed without affecting the fundamental constitutional makeup of the Valuation Tribunal. By this means, any such additional or amended rules of procedure might be fashioned to sit comfortably with the function of the legal member in the continuance of the statutory role as prescribed and in the maintenance and protection of judicial integrity in the process.

Having said all of that, it is certainly the case that the proper and rational function of the ordinary member and the ordinary member's place in this additional jurisdiction might be subject to further close scrutiny in this exercise, with an eye to matters of cost, and attention may be directed to the proper and effective contribution of that component to the decision-making process. It occurs that if arrangements might be envisaged for a two member tribunal (the legal and the valuation member) to sit in this discrete jurisdictional area, a mechanism might readily be put into place for dealing with a "casting vote". I would certainly be very happy to assist in further discussions or scrutiny concerning any proposals for amendment to the Rules.

I do harbour substantial concern, on account of the nature of what has been mooted, at the quality of justice which might be afforded by a Valuation Tribunal that is to be constituted by a valuation member only, and, furthermore, at the potential prospect of the effective fracturing of the function of the Valuation Tribunal into separate tiers, not to say the doubts and uncertainties concerning the precise role and function of the President of the Valuation Tribunal in all of this, as mooted.

Leaving aside for the moment all of the foregoing, I would say that in general terms the Valuation Tribunal would be well placed to deal with any anticipated business in this new jurisdiction area. As President of the Valuation Tribunal, I would certainly welcome the proposal that this new area of statutory jurisdiction might be brought within the ambit of the functions of the tribunal. I believe that the Valuation Tribunal would be very capable of undertaking this work and would be efficient and effective, both in regard to the conduct of business and also in terms

of cost, in making a significant contribution towards the dispensing of justice and the resolution of disputes within this new area of jurisdiction and in providing an independent, coherent and user-friendly service.

James V Leonard
President
Northern Ireland Valuation Tribunal

North Down Borough Council Submission to the High Hedges Bill

North Down Borough Council Comments

Council welcomes the introduction of a High Hedges Bill by the Department. Council does, however, have a number of specific concerns and queries regarding some of the proposals contained within the consultation document and draft Bill. These were highlighted in a report to the Councillors, which are as follows: -

-

- The Department will need to provide guidance to district councils in relation to those circumstances that would constitute a complainant "taking all reasonable steps to resolve the matter complained of," including how a complainant would need to demonstrate this.
- Where the property is vacant and there is no traceable owner, the Council is concerned that there is an assumption by the Department that the Council would automatically act in default, without additional resources being made available to it.
- The Department needs to clarify whether or not a mediation service would be available. This is a service that the Council would call for and one that is already available in England and Wales. However it would need to be effectively resourced to ensure that it is readily available to those that need it. This is currently not always the case in England and Wales.
- Resources will be required to educate and advise the public with regard to the new legislation and on how to plant and maintain hedges in order to avoid a problem.
- Council would welcome a prescribed application form, which would clearly indicate to the complainant what information is required and would capture any previous communication and/or mediation. A standard form would also ensure consistency of approach from Councils across Northern Ireland.
- Council would welcome clarification on liability regarding hedges on land where there is no known owner.
- Council would be concerned about the potential for hedge owners cutting hedges during the bird-nesting season.
- Council would be concerned about the liability implications in the situation where it ordered a hedge owner to reduce the height of a hedge and the hedge subsequently died. It would be helpful if the legislation could limit the potential for such claims in some way, provided that the Council has acted in good faith.
- Those on lower incomes may find the cost of employing a specialist tree surgeon prohibitively expensive if a notice is served on them. Financial assistance may be necessary.
- The Department should consider allowing reduced fees for those on means tested benefit or the elderly. However Councils would need to receive financial support to cover costs.

- Council would welcome clarification in relation to Powers of Entry and the requirement to give the occupier of land 24 hours notice and would suggest that this should also apply to the owner of the land.
- Council would seek clarification on how to deal with complaints relating to land which is vacant or where there is no identifiable occupier.
- Council would welcome confirmation that the registered charge placed on a property following works in default will include the cost of registering a charge on the property.
- Council would be concerned about carrying out works in default on premises with no known owners as there would be little prospect of recovering costs. Therefore some funding may be required.

During debate on the matter, Council expressed further concern about the cost implications on the elderly and those on low incomes who wish to make a complaint. They agreed that reduced costs to complainants should apply in these instances but stressed that Councils should receive financial support for subsidising complaints of this type.

Omagh District Council Submission to the High Hedges Bill



DANIEL MCCORLEY Chief Executive



Your Ref:

Our Ref:

28th July 2010

Date:

Environmental Health Department

Being dealt with by:

Email:

Sean McCann
Assistant Clerk Environment Committee
Environment Committee Office
Room 247
Parliament Buildings
Stormont
BT4 3XX

Dear Sir

HIGH HEDGES BILL

Please find attached an extract from the Environmental Health Department's Report to the Environmental Services Committee (February 2010) of Omagh District Council and relevant appendix in relation to the public consultation on a draft high hedges bill.

Yours faithfully

DAVID GILLIS
Senior Environmental Health Officer

Encs.

6.0 RESPONSE TO THE PUBLIC CONSULTATION ON A DRAFT HIGH HEDGES BILL

There is currently no legislation in Northern Ireland governing the height or maintenance of a hedge. Disputes between neighbours regarding high hedges have often arisen and can remain unresolved for years. Problems of this type are often referred to Environmental Health Departments but as there is currently no legislation in Northern Ireland governing the height or maintenance of a hedge there is often little that can be done if the owner of the hedge is reluctant to address the issue. The only legal redress available at present for a householder is by pursuing a civil action which can be costly and prohibitive.

The Environmental Health Department (EHD) largely welcomes the introduction of a High Hedges Bill by the Department of the Environment as it offers a more effective mechanism to deal with this sometimes difficult issue. Disputes of this type may have increased due to greater urban density and also due to the availability of low-cost and often very fast-growing hedges which need to be regularly trimmed to prevent them becoming a problem.

Under the proposed legislation a person who after having taken reasonable steps to resolve a high hedge problem, can refer the matter to their local council. Such a hedge should meet the following criteria before a complaint is made:

- Be formed wholly/predominantly by evergreen/semi-evergreen trees
- Consist of a line of two or more trees
- Measure more than 2m from ground level (on hedge owners side)
- Act as a barrier to light
- Affect residential property and
- Be growing on land owned by someone other than the person making the complaint.

The role of the council will be to act as an independent and impartial third party when investigating complaints subject to the above criteria. It is not intended that the council will negotiate or mediate between the individuals involved, but adjudicate on whether the hedge is adversely affecting the complainant's reasonable enjoyment of their property.

Where it is deemed that this is the case, the council will have power to serve a legal notice requiring the hedge owner to take remedial action to remedy the problem and prevent it recurring. Failure to comply with such notice may result in formal action being instigated to ensure compliance.

The EHD however has a number of concerns regarding some of the specific points raised in the consultation document and proposed High Hedges Bill. Appendix 4 outlines the areas which the EHD would seek further clarification.

RECOMMENDATION: The Environmental Health Department is of the view that the proposed legislation offers opportunity for the local council to deal more effectively with this issue and that Members agree to a response being forwarded to the Department of the

Environment based on the issues highlighted in Appendix 4, prior to the end of the consultation period.

PUBLIC CONSULTATION ON A DRAFT HIGH HEDGES BILL

The following matters of concern are raised by the Environmental Health Department in response to the current consultation document on a proposed High Hedges Bill.

Issues of concern

- In the first instance making the complainant pay is contrary to normal Environmental Health principles. Consideration should be given to the return of the application fee but obviously no local authority wants the financial burden to fall on them; the offender should be liable.
- The Department will need to provide guidance to District Councils in relation to those circumstances that would constitute a complainant *"taking all reasonable steps to resolve the matter complained of"*. For example, it is not clear if written statements would be required where prior communication had been oral.
- The EHD would seek clarification on how to deal with complaints relating to land which is vacant or where there is no identifiable occupier. We are concerned that there is an assumption by the Department that a District Council would automatically act in default.
- The Department needs to clarify whether or not a mediation service would be available. Despite such a service being available in England and Wales concerns have been raised by its users regarding its availability and cost.
- Resources would be required to educate and advise the public with regard to the new legislation and on how to plant and maintain hedges in order to avoid a problem.
- The EHD would welcome a prescribed application form which would clearly indicate to the complainant what information is required and would capture any previous communication and/or mediation. A standard form would also ensure consistency of approach from Councils across the province.
- We would welcome clarification on liability regarding hedges on land where there is no known owner.
- We would be concerned about the potential for hedge owners cutting hedges during the nesting season and would appreciate guidance in relation to this matter.
- The EHD would be concerned about the liability implication in the situation where it ordered a hedge owner to reduce the height of a hedge and it subsequently died. It would be helpful if the legislation could limit such claims, provided a District Council had acted in good faith and had taken appropriate professional advice regarding the proposed remedy.
- Those from lower socio-economic groups may find the cost of employing a specialist tree surgeon prohibitively expensive if a notice is served on them.
- The EHD would welcome clarification in relation to Powers of Entry and the requirement to give the occupier of land 24 hours notice and would suggest that this should also apply to the owner of the land. In addition we believe that it should be possible to waive this stipulation if entry was by invitation.

- We would welcome confirmation that the registered charge placed on a property following works in default will include the cost of registering a charge on the property.
- The EHD would be concerned about carrying out works in default on premises with no known owners as there would be little prospect of recovering costs.
- We would have concerns regarding potential conflict between the suggested legislative provisions and existing planning provisions. Two instances come to mind, tree preservation orders and conservation areas. Guidance may be necessary.
- Similarly Guidance may be necessary for those cases that involve property built adjacent to a forest or mature woodland. Guidance on the definition of a high hedge may be necessary to exclude planted forests.

Solace NI Submission to the High Hedges Bill

Sean McCann
Assistant Clerk
Environment Committee
Room 247
Parliament Buildings
Stormont Estate

Belfast
BT4 3XX

Dear Sean

High Hedges Bill

Recently the Environment Committee invited SOLACE views on the High Hedges Bill which has commenced Committee Stage.

After consideration the Branch members have indicated that they are content that each individual council will respond on their own behalf on this issue.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'D McCammick', with a stylized flourish at the end.

David McCammick
Chair
SOLACE NI

**Mr G. Thompson Submission to the
High Hedges Bill**

26/5/2010

133 Erskine Park
Ballyclare
BT39 9DB

Dear Sir,

On High Hedges I would make the following that should be included in this bill which I understand, at the moment is not included.

1. The Right to Light Act.
2. The spacing between trees act. There is an Oak tree in the garden behind us, according to the rules it is too near the houses and too high. They say the tree should only be the height of the eaves of the houses, it also blocks out the light and sun. There is also two Fur trees that according to a tree expert are unstable and should be cut down to hedge height, also there is a mixture of a fruit tree bushes cut at a gauge of about 10/12 feet at level of fence. We have spoke to the owner but all he did was to have more. Where these two unstable tress are they block out the light also if they come down two garages would be wrecked, I therefore [think] this bill should include single trees and bushes of all types cut.

The Right to Light Act 1961 – I got a copy of this and found it very complicated and inconclusive to act upon. It should be simplified and easy to implement. Also an A.S.B.O should be included in this bill as in the U.K.

Yours faithfully

G. Thompson (Mr)

P.S. When will this bill come into force?

Woodland Trust Submission to the High Hedges Bill



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Mr Cathal Boylan MLA
Chair of the Environment Committee
Room 245
Parliament Buildings
Upper Newtownards Road
Stormont
Belfast
BT4 3XX

21 June 2010

Dear Mr Boylan,

RE: NIA Bill 15/09 High Hedges Bill

Thank you for the invitation to submit evidence on the High Hedges Bill. The Woodland Trust welcomes the bringing forward of legislation to control high hedges in Northern Ireland. The Bill should be administered by District Councils and empower them to impose controls on the height of hedges in particular evergreens such as Leyland Cypress and Castlewella Gold.

The High Hedges Bill should however clearly define what we mean by hedge and seek to avoid the possibility of the legislation being used as a means of including for the cutting of ancient and long-established woodland and ancient trees. Ancient and long-established woodland covers a mere 10,000 hectares in Northern Ireland, 0.08 per cent of the landscape, and once lost its cultural and ecological features cannot be recreated. An exemption for any site on the Ancient Woodland Inventory or any tree on the Ancient Tree Hunt would help ensure that the legislation is not enforced inappropriately. The Forestry Bill NI recognises the 'desirability to maintain' the 'special character' of ancient woodland, and this duty must not be undermined by any other legislation being passed by the Assembly.

I look forward to working with you and your Committee should you wish us to assist the process.

Yours sincerely,

Patrick Clegg

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Appendix 4

List of Witnesses

List of witnesses who gave Evidence to the Committee

Mr William Caldwell, Department of the Environment

Ms Jennifer Stewart, Department of the Environment

Mr Anthony Courtney, Department of the Environment

Ms Helen Anderson, Department of the Environment

Mr Paul Byrne, Department of the Environment

Mr Donal McLaughlin, NILGA

Ms Claire O'Neill, NILGA

Ms Nora Winder, NILGA

Mr David Lindsay, Banbridge District Council

Mrs Gillian Topping, Banbridge District Council

Mr Peter O'Reilly, Mediation NI

Mr Robert Caldwell, Mediation NI

Ms Claire Duddy, Carrickfergus Borough Council

Appendix 5

Research Papers Requested by the Committee



11 June 2010

Suzie Cave

High Hedges

This Paper considers the new High Hedges Bill for Northern Ireland. It gives background on the need for such legislation in Northern Ireland, a brief overview of the provisions within the Bill, making comparisons, where possible, to legislation in England and Wales. The rest of the paper looks at the areas of issue in relation to responses to the consultation, the Department's reply to

these and any relevant opinions from Members of the Assembly. Finally, it considers any useful lessons that can be learnt from England and Wales.

Paper 000/00 NIAR 000-00

Key Points

- Currently in Northern Ireland, there is no legislation governing the height or maintenance of a hedge
- The introduction of this Bill will bring Northern Ireland into line with other parts of Great Britain. In England and Wales, legislation is already in place to deal with the issues of high hedges under Part 8 of the Anti-social Behaviour Act 2003
- The Bill was designed to provide a much needed means of redress for people who are suffering because of a high hedge on a neighbour's land.
- Councils will be responsible for making decisions on complaints and whether to issue a remedial notice to reduce the hedge size.
- Legislation only applies to hedges, and issues were expressed during the consultation as to why roots and single trees are not included.
- Councils can charge a complaint fee to be paid by the complainant, for which a limit is still to be determined. Some respondents to the consultation felt that the owner of the land the hedge is on should pay the fee instead.
- Appeals can be made against the issue (or non-issue) of a remedial notice and the relaxation of its requirements, which are dealt with by a Department Official.
- In general responses to the proposed Bill were positive as it encourages neighbours to solve their disputes informally.
- Issues were raised in relation to: the scope of the Bill, fees, the need for further guidance, the need for clarity on some of the terms used, the need for a time frame for decisions on complaints, and the appropriate establishment of an appeals body.

Executive Summary

The High Hedges Bill will help people adversely affected by nuisance high hedges bordering their domestic property. The legislation will apply to evergreen or semi-evergreen hedges that consist of a line of two or more trees or shrubs that are more than two meters high, which affect the residential property and access to light. The scope of the Bill does not cover complaints about hedge roots or single trees.

Complaints will be able to be made by the owner/occupier of an affected property. Councils will consider and evaluate the merits of each complaint and before a complaint can be made, complainants will have to provide the council with evidence of an attempt to resolve the problem through discussion or mediation with the relevant neighbour.

Once this has been established, and taking an independent and impartial role, a council officer will visit and assess the extent of the problem in relation to access to light, and consider what, if any, action should be taken. A remedial notice may be issued to the owner requiring them to reduce the height of the hedge (which will not suggest a reduction to below two metres or the removal of the hedge). The notice will also include maintenance measures to ensure the problem does not recur. Should the action specified in the remedial notice not be carried out, the owner

will be liable to a fine, and the councils will have the power to enter the property and carry out the required work.

The complainant and hedge owner will be able to appeal against the issue (or non-issue) of a remedial notice and the relaxation of its requirements. Officials will consider the case files and will have the same powers of entry to the property as council officials. Decisions can be made to issue, withdraw, or relax elements of a remedial notice. Councils will have the discretionary power to levy fees for complaints, allowing for cost recovery and prevention of malicious complaints. However, councils will have discretion not to levy a fee and consider individual circumstances, such as when complainants are financially disadvantaged. These issues along with setting fees their limit will be put in place through secondary legislation.

Legislation under the High Hedges Bill for Northern Ireland closely mirrors provisions currently in place in England and Wales under the Anti-social Behaviour Act 2003. The aim of the legislation is to encourage neighbours to reach an amicable solution rather than resorting to formal complaints.

After consultation which ended in March 2010, the general consensus of the responses (95%) received in relation to the provisions of the Bill was positive. While receiving a positive response in general, there were a few areas which appeared to cause concern, these included:

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- The scope of the Bill in relation to the fact that the provisions were not made to deal with nuisance roots and singe trees;
- The fact that the complainant has to pay the complaint fee. It was suggested that the owner should be made to contribute or pay the entire fee, especially if they refused to solve the problem informally and amicably.
- That guidance should be offered for clarity reasons in relation to complainants making a complaint, and councils making decisions on complaints.
- Some of the terms used in the Bill were unclear and needed further explanation such as what constitutes 'reasonable steps to resolve a problem'.
- The need for a timeframe for dealing with complaints
- Rather than fit the expense of setting up a new appeals body, it would make sense economically to utilise an already established one.

The Bill is currently at committee stage until December 2010. As experienced in England and Wales, it is expected that once the legislation is in force there will be a surge of complaints for the first two to three years due to a backlog of cases. Once these are dealt with the number should decrease and level out, as it is hoped by the Minister of the Environment that with the introduction of this Bill, people will be discouraged from making formal complaints.

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1 Introduction

In the past, problems between neighbours regarding high hedges have given rise to a steady stream of correspondence to public representatives, and complaints received tend to be based on the fact that at present, very little can be offered to alleviate the problem. Disputes between neighbours may have become more common due to increased urban density and availability of low-cost, and often fast growing hedges specifically designed to provide full coverage as quickly as possible. Such factors may not only make maintenance difficult, but people may neglect to keep up with their maintenance duties.

Currently in Northern Ireland, there is no legislation governing the height or maintenance of a hedge. The Minister of the Environment, Edwin Poots, stated his intention to bring forward a High Hedges Bill upon taking up office. Accordingly the Bill was designed to provide a much needed means of redress for people who are suffering because of a high hedge on a neighbour's land.

The introduction of this Bill will bring Northern Ireland into line with other parts of Great Britain. In England and Wales, legislation is already in place to deal with the issues of high hedges under Part 8 of the Anti-social Behaviour Act 2003^[1]. The system in England and Wales is also complaints based and is administered by local authorities.

A High Hedges Bill has not taken effect in Scotland, although attempts have been made in the past to introduce one. MSP Scott Barrie lodged an unsuccessful proposal in May 2002 for a High Hedges (Scotland) Bill. In September 2003 Mr. Barrie lodged another proposal which fell in November 2004 due to a change in the Parliament's Standing Orders. Trying for a third and final time in November 2006 Mr. Barrie's proposal failed once again due to incomplete parliamentary processes prior to the elections in 2007. Subsequently he was not re-elected in 2007, and since then no MSP has proposed a bill until a 'Consultation on High Hedges and other nuisance vegetation' began in 2009^[2].

Public consultation on a draft Northern Ireland High Hedges Bill ended on 1 March 2010, and the Bill was introduced to the Assembly on 26 April 2010 by the Environment Minister, Edwin Poots.

The Bill was scheduled for Second Stage on 10 May, and Committee stage has been extended from 22 May 2010 to December 2010.

2 The need for legislation

Based on a 2005 scoping consultation by the Department^[3], the average number of complaints, regarding High Hedges, recorded in each council area in Northern Ireland was 21, with the highest number coming from North Down, Ards and Lisburn Council areas. The lowest number coming from Limavady and Moyle suggests that problems are concentrated predominantly in urban areas and the Greater Belfast area.

The consultation found that:

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- 97% of those who completed the questionnaire had concerns about a neighbour's high hedge
- 99% of those who had concerns about a neighbour's high hedge indicated that the hedge was more than 2 metres above ground level. The findings suggest that the average height of a nuisance hedge or trees is 9 metres (30ft), with several respondents citing figures in excess of 20 metres (65ft).
- 81% of those who had concerns about a neighbour's high hedge considered that the presence of the hedge had reduced the value of their property.
- The most common reason cited for the perceived reduction in the value of the property was the loss of a cherished view.
- Other respondents referred to the lack of daylight and sunlight reaching the property, rendering both the garden and the house 'dark', 'cold' and 'unappealing' to potential purchasers.
- A significant number also complained that the untidy appearance of the hedge, combined with excessive maintenance requirements and the need to disclose an ongoing dispute with the hedge owner, would deter anyone with an interest in purchasing the property.
- 65% of those who had concerns about a neighbour's high hedge reported that they had made an (unsuccessful) attempt to resolve the problem with their neighbour. Many respondents claimed that the owner of the hedge had refused to listen to their concerns, or was unwilling to allow the hedge to be reduced in height under any circumstances (even where the respondent was prepared to pay for the work to be undertaken). In other cases, the hedge owner had promised to reduce the height of the nuisance hedge but had then failed to take any action or had trimmed the hedge by an inadequate amount.

In relation to the introduction of new legislation, the consultation found that:

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- Many respondents commented on the legislation that has recently been introduced in England and Wales and called for similar legislation to apply here.
- Several people argued that it is inconsistent that there are no rules governing the height of hedges, when permission is required to erect a boundary fence or wall measuring more than 2 metres from ground level.
- Others pointed out that legislation would have a preventative effect, encouraging people to think carefully about the potential consequences when planting a hedge or trees.

- Many respondents also commented that the absence of legislation to address the problem was one of the main reasons why they were reluctant to get involved in a dispute with the owner of the nuisance hedge or trees.
- Only 0.9% of respondents were against any form of government intervention to address problems with nuisance high hedges. A very small number of respondents argued that the introduction of high hedges legislation would lead to the removal of hedges and the potential loss of wildlife habitats in both urban and rural areas. Others were of the view that any legislation to control the height of hedges would deny property owners their right to privacy

Comments on the need for high hedges legislation (or on the prospect of such legislation being introduced) were received from 13 local councils. While many councils indicated that they supported the introduction of this legislation in principle, a number of issues were raised concerning aspects of the high hedges complaints system that operates in England and Wales. These issues ranged from the ability of people in lower socio-economic groups to pay fees, to the relationship between high hedges legislation and existing planning laws. Several councils also highlighted the need to provide guidance on hedge planting and maintenance to accompany any new legislation.

3 Overview of the Bill

Clauses 1-2

Under the proposed legislation^[4], an individual who has taken all possible steps to resolve the issue regarding a high hedge in an informal and amicable manner may issue, as a last resort, a complaint to their local council that their 'reasonable enjoyment' of their property is being 'adversely affected' by the height of a high hedge on an adjoining property. The complainant will have to provide evidence of their attempt to solve the problem informally with the hedge owner. If there is insufficient evidence, the council will not accept the complaint.

To be eligible to make a complaint, a hedge must:

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- be formed wholly or predominantly by evergreen or semi-green trees or shrubs;
- consist of a line of two or more trees or shrubs;
- measure more than 2 metres from ground level (measured on the
- hedge-owner's side);
- act as a barrier to light or access;
- affect residential property; and
- be growing on land owned by someone other than person making the complaint

The legislation does not apply to roots, roots of trees or single trees.

Clause 3-5: Role of Councils

Complaints will be administered by local councils, who will act as an independent objective third party to judge whether the hedge is adversely affecting the complainant.

Authorised council officers can enter the land where the hedge is located to obtain information to decide:

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- whether the complaint is one that could be considered under the legislation;
- whether to issue or withdraw a remedial notice;
- whether to waive or relax the requirements of a remedial notice; or
- whether a notice has been complied with.

A council must give 24 hours notice to all occupiers of the land; any obstruction to a councillor performing their duty is liable to a fine.

Should the complainant want an investigation to be carried out by the local council, they must pay a fee which is usually non-refundable. The amount is left to the discretion of the council which is free to charge for this service; councils can offer different rates for different groups (such as those from a low-economic group and pensioners).

Comparison with fees in England and Wales

England:

In England, information supplied by the UK Parliament Research (Dealing with Nuisance trees and Hedges^[5]), suggests that fees in England can range from £300 to £650, according to Baroness Andrews (p.5). With no specification in the regulations to a maximum amount a council can charge, fees tend to vary greatly between councils, and in general appear higher than those in Wales.

In the information supplied, Sarah Hinchcliffe; a spokeswoman for Hedgeline, voiced her objection to the high fees charged by councils to make a complaint. This includes the £550 fee which Cotswold District Council is planning on introducing.

In relation to concessions, a spokeswoman for the Cotswold District Council stated that people with low incomes and those on benefits would pay only £100 to have their complaints investigated.

According to Hedgeline^[6]:

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- Sevenoaks District Council charges £650 (the highest fee);
- Seven councils do not charge complaint fees;
- Kirklees Metropolitan Council charges £100 which is refundable if the complaint is upheld;
- Councils not in the list have yet to give Hedgeline any details despite two requests;
- 3 of the councils charge nothing for those eligible for concessions. Only four councils offer concessions to pensioners;
- The Government did not set maximum/minimum complaint fees or recommend any fee levels;
- Many are being deterred by high fees from making complaints; and
- The average fee is just under £345 in England and £320 in Wales

For a detailed list of Councils and their fees, see Hedgeline's Tables showing figures so far known – English Councils then Welsh Councils^[7]

Wales:

In 2004, Wales introduced regulations under the 'High Hedges (Fees) (Wales) Legislation 2004, stating that the maximum amount that any local authority can charge for a complaint to be made is £320.^[8]

Information received from the Welsh Assembly suggests that a reduced fee of £160 is charged to those in receipt of Housing Benefit or Council Tax benefits.

After investigation, a council will be able to serve a 'remedial notice' which states what the hedge owner must do to remedy the problem and prevent it from recurring. The authority can then reject the complaint if it feels it is frivolous or vexatious. The legislation does not allow for a hedge to be removed or reduced to less than 2 metres. Failure to comply with the requirements specified in a remedial notice would be an offence and subject to fines imposed on conviction in a magistrate's court. Daily fines will apply for every day work remains outstanding. Council officers have the right to enter the land and carry out the necessary works. Any obstruction to a councilor will face a fine of up to £1000 issued by the magistrate's court. The council will be eligible to recover the costs of carrying out such work from the owner/occupier of the land, and any unpaid expenses can be registered as a charge on the property.

Clauses 6-9: Appeals, and Powers of Entry

A complainant or owner/occupier of the land where the hedge is located would be able to appeal against:

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- the issue of a remedial notice;
- the withdrawal of a remedial notice; or
- the waiver or relaxation of its requirements.

An appeal must be made in writing within 28 days to a person appointed by the Department to determine appeals. The Department may introduce Regulations to prescribe a fee for an appeal. On appeal, a remedial notice issued for the original complaint may be confirmed, quashed and altered.

The appointed person handling the appeal may decide to visit the site as part of the decision process, and will have the same powers of entry as an authorised council officer. The appeal officer may issue a remedial notice even if the local council decided not to in response to the original complaint.

Under the new legislation, the complainant will also appeal against:

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- a decision by the local council that the height of the hedge was not adversely affecting their reasonable enjoyment of the property; or
- a decision by the local council not to require remedial action.

Clauses 10-13: Enforcement Powers

Fines of up to £1000 will be issued for non compliance with a remedial notice, unless the party can otherwise demonstrate they attempted to carry out all the stipulations in the remedial notice even though they were unsuccessful. The courts would be given the power to order:

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- the person to take the necessary actions by a particular date; and
- the occupier to allow the owner to carry out the actions in the remedial notice, should it appear that the occupier is causing difficulty.

The local council would be given the power to enter the land and carryout the necessary work, should the owner/ occupier fail to do so. Any costs can be recovered from the owner/occupier.

Comparison with England and Wales

Legislation in England and Wales falls under section 71 of the Anti-social Behaviour Act 2003 (the Act). Appeals are made to the 'First Secretary of State' (who has delegated all appeal functions to the Planning Inspectorate 'PINS'), as opposed to an appointed person from the Department.

The regulations for England (The High Hedges (Appeals) (England) Regulations 2005^[9]) came into force 1 June 2005. The regulations for Wales (The High Hedges (Appeals) (Wales) Regulations 2004^[10]) came into force on the 31 December 2004. The legislation between England and Wales varies slightly, with the main differences being that:

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- In Wales, an appeal must be made to the National Assembly, where the 2005 High Hedges (Appeals) (Wales) Regulations corresponds with Section 71 of the Act, giving the National Assembly the power to make regulations in relation to appeals; and
- All appeals in England and Wales require site visits, however in Wales the Planning Inspectorate may also arrange for a hearing, where all parties who were involved in the original decision are invited to participate^[11].

A number of documents have been produced offering guidance on making an appeal, for example:

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- 'A Guide for Appellants (High Hedges)^[12]' produced by PINS in 2005
- The Welsh Assembly issued similar guidance in 2005- High Hedges Complaints System: Guidance^[13]
- 'High Hedges Complaints – Prevention and Cure'^[14], produced by Communities and Local Government (CLG). According to PINS, the CLG guidance is used by councils when making a decision.

(For more detail on each of the clauses, refer to the Explanatory Financial Memorandum^[15])

4 Areas of Issue

According to the consultation^[16], more than 95% of the responses received were supportive of the proposed introduction of legislation dealing with problem high hedges. In total 105 responses were received, of which 19% were from Non governmental organisations (NGOs), 3

from Non-departmental public bodies (NDPB), 21 from Local Government and 62 from individuals

While the general consensus was support for the Bill, there were 4 main areas which appeared to raise issues, these included:

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- Scope of the Bill
- Fees (e.g. how much and who pays?)
- Guidance in relation to the Bill's provisions
- Definitions contained within the draft Bill

The following table highlights the areas of the Bill which raised concern from the respondents to the consultation, and includes responses to these issues from the Department. It also considers the comments made by MLA's during the plenary sessions for the introduction of the Bill to the Assembly 19 January 2010, and Second Stage of the Bill 10 May 2010.

Area of Issue	The Issue	Department's Response
Scope of the Bill	Respondents expressed their concern on the potential harm caused to forests under the legislation, and suggested that forests should be exempt from the Bill. Others felt that in relation to clause 2, the Bill should be extended to include other hedge/tree problems i.e. single trees, roots of trees, dangerous trees, overhanging branches and falling leaves. Other suggestions included hedges: that obstruct views of a road; that border non-domestic property; and should be less than 2m. This issue in relation to the exemption of roots and single trees etc is also brought up by members during the introduction of the Bill to Second Stage. ¹⁷ Some respondents requested explanation of 'barrier to light or access', and felt that the term 'or access' was a cause of confusion.	The Department agrees with this suggestion, and proposes to exempt forests larger than 0.2 hectares from the legislation. Their reason being that if forests remain on the legislation, the risk of cutting back the first row of trees could jeopardise the remaining trees. This could financially impact the public as many forests are owned by the Department of Agriculture, and privately owned forests greater than 0.2 hectares are usually grant funded. The Department highlights that the focus of the Bill is to tackle high hedge issues, and not those in relation to single trees, dangerous trees, roots etc. According to the Department, the obstruction of views of roads is dealt with by the Department for Regional Development, for which existing legislation addresses this issue. The Department proposes to omit the words "or access" from the definition of a high hedge in clause 2, as it feels these words do not contribute anything to the definition given, and agree that they create confusion.

[17]

Area of Issue	The Issue	Department's Response
Fees	The majority of local government responses felt that paying a fee does not fall in line with their usual practices of addressing environmental issues. They felt that the	In the Department' opinion, the charging of fees, the amount, and offering reduced rates for pensioners and those of lower socio-economic groups etc is left up to each

hedge owner should have to pay the council fee and not the complainant. They stressed that people from lower socio-economic groups may lack the financial ability to pay fees or the cost of specialist tree surgeons should they be required. This concern was brought up repeatedly by members during the introduction of the Bill to Second Stage. Members expressed the importance of setting limits to a level that will not discourage pensioners and low-income families from making complaints about nuisance hedges. Ms. Lo MLA suggested that there may be a need to provide financial assistance in circumstances where people find it financially difficult to employ a tree surgeon if needed, especially at short notice.¹⁸ The provision of leaving each council to determine the amount of a fee appears to be a recurring issue. In January 2010, the Chairperson of the Environment Committee then, Ms. Kelly MLA, expressed her concern and stated the importance of guidance to ensure councils adopt a uniform approach¹⁹. At the introduction of the Bill to Second Stage, the new Chairperson, Mr. Boylan MLA suggested that more controls should be added to the legislation to avoid large discrepancies between councils²⁰. It was also suggested by Committee member Mr. Beggs MLA, that there should be a charge on the property with the hedge, so as to alleviate disputes over whether the issue can be dealt with, and who should pay.

council to decide. The purpose of fees is cost recovery for councils and is intended not to place a financial burden on other ratepayers, who would not benefit from the action taken by the council. It is hoped that fees will act as a deterrent, preventing frivolous or vexatious complaints. The hedge owner will have to bear the cost to remedy the situation. According to the Department it would be unfair to expect the owner, who has perhaps grown a hedge too high, but not unlawfully (as it is not illegal to grow a hedge) to pay the fee plus the remedial costs. It is worth noting that this may not be the situation with every case, and that the delegation of costs should be allocated according to the situation of each individual case. In fact, Mr. Weir MLA touches upon this subject and suggests that a variation of fees depending on the case, may need to be further investigated²¹. The Department has the power to limit the level of complaint fees through regulations. This makes it difficult for respondents to form an opinion on the level of fees, when there is no indication of the limit. Further disputes could result between councils and the Department when agreeing on a limit. The Department feels that charging for making an appeal is fair as it is normal practice to charge for such a service i.e. Planning Appeal fees. Therefore for all the above reasons, the Department does not propose to amend the Bill in relation to fees.

[18][19][20][21]

Area of Issue	The Issue	Department's Response
Guidance	Several respondents requested clarity and guidance on different aspects of the proposed system: guidance for complainants- for example, the Welsh Assembly issued similar guidance in 2005- High Hedges Complaints System: Guidance for councils- for example, in England 'High Hedges Complaints – Prevention and Cure', produced by Communities and Local Government (CLG). According to PINS, the CLG guidance is used by councils when making a decision. The Bill provides that individuals must initially try to find a resolution on their own. One of the members, Mr. Ross MLA,	The Department intends: to produce guidance on making a complaint to the local council about a problem high hedge. with councils, to produce guidance to assist council officials in assessing a complaint and to determine whether remedial action should be taken. There are also plans to produce guidance on the appeals process, similar to those produced in England 'A Guide for Appellants (High Hedges)' produced by PINS in 2005.

stresses that it is important that councils are given direction from the Department on how to help individuals who are nervous about approaching their neighbours. Under the legislation, councils are to be impartial and independent third parties in the complaints procedure, making it hard for councils or councillors to provide guidance. Mr. Ross MLA suggests that in many constituencies, mediation groups and services are available, and perhaps councils could work with those groups and direct complainants to them.²²

[22]

Area of Issue	The Issue	Department's Response
Definitions	Some respondents were concerned with the use of terms throughout the Bill, such as 'reasonable steps to resolve a problem' and 'reasonable enjoyment'. They felt that these should be defined within the legislation as they are very inconclusive terms and do not give an indication of the level required. According to Mr. Beggs MLA, the term 'evergreen' in the Bill refers to "an evergreen tree or shrub or a semi-evergreen tree or shrub." This contradicts the focus of the Bill which is for high hedge issues only. He continues to suggest that the definition should be widened as heavy foliage from other trees and hedges can cause problems in terms of height and access to light. ⁷	According to the Department, 'reasonable steps' to resolve a problem will take a variety of forms depending on the case, but may include: Records of discussions or attempts at discussion between parties; Copies of letters sent to the hedge owner by a complainant; or Records of meetings attended by the parties. The Department refers to the term "reasonable enjoyment" in relation to the enjoyment of a property by a person through having access to light. While the Bill does not make direct reference to 'enjoyment' in relation to other issues, it is understood that the reduction of hedges to improve the availability of light should greatly reduce its impact in terms of costs associated with maintenance, and the reduction in the value of property, thus increasing 'enjoyment'. Therefore the Department feels that it would be difficult to provide a definition of 'reasonable enjoyment' that would be flexible enough to cover every situation. It will be left to the judgement of the council to find a balance between the hedge owner, the complainant, and the impact on property. The Department does not propose to amend any definitions, and for terms such as 'reasonable enjoyment', guidance documents will be produced.

[23]

Area of Issue	The Issue	Department's Response
Other Issues	Many local government respondents expressed concern about: Vacant land; Provision of a mediation service; Public	The Department states that land owners can be traced through Land and Property Services, and that in extreme circumstances

awareness; and Potential conflict with tree preservation orders and resources. Respondents were concerned that councils could be held liable if remedial action resulted in the death of a hedge. Ms. Lo MLA expressed that there is a need for the Department to decide on a time frame for dealing with each complaint, so that problems are not dragged out and people are not faced with unnecessary delays. Prolonged disputes can lead to increased stress and anxiety which can be detrimental to a person's health.²⁴

land can become Crown Property. A specialist mediation service will not be provided due to existing providers of such a service in NI. In relation to this, it may be useful for the Department to provide more detail on existing services in order to satisfy those who made queries on the issue. According to the Department, more detail on many of the issues raised (including the issuing of a remedial notice by councils) will be provided in future guidance. This means that people and councils etc will have to wait to get a detailed explanation of any issues/questions they have, which may in turn prolong the process if they are not happy with the detail provided in the guidance. The Department proposes to amend the Bill to protect councils from liability when they have acted in default and carried out remedial action, provided they carry out their duty responsibly and seek appropriate professional advice.

Appeals
body

In England and Wales, the duty to deal with Appeals was appointed to the Planning Inspectorate Service (PINS) from the First Secretary of State. The Bill mentions that the appeals are dealt with by a delegated person in the Department. According to the NI Courts, it makes sense to utilise the service of an already established tribunal body, rather than fit the expense of creating a new one. For this reason, NI Courts suggest the Northern Ireland Valuation Tribunal (NIVT)²⁵ On 10 May 2010, Mr. Boylan MLA presented the Environment Committee's concern that the presence of solicitors and barristers from the NITV, on the appeals body, could give rise to legal costs, especially if disputes become hostile and end up in costly tribunals.²⁶

The Department proposes to consider the possibility of designating NIVT as the appellate body, rather than begin the costly and time consuming process of identifying and appointing persons to handle the appeals. It appreciates that the Tribunal is independent from DOENI, and is an appellate body with surveyors and has the skills and experience needed.

[\[24\]](#)[\[25\]](#)[\[26\]](#)

5 Lessons from England and Wales

Similar legislation has been in operation in England and Wales under Part 8 of the Anti-social Behaviour Act (2003) which came into force in 2005 after certain procedures, such as appeals, were clarified through the High Hedges (Appeals) (England) Regulations 2005 and the High Hedges (Appeals) (Wales) Regulations. As soon as the legislation took effect, there was an initial influx of complaints which eventually eased off and levelled out. According to the Minister of the Environment, Mr. Poots MLA, it appears that with the legislation in place, people are more prepared to compromise and co-operate due to the fear of the council imposing something on them at a later point^[27].

In relation to NI, the Partial Regulatory Impact Assessment states that based on the DOE's 2005 scoping consultation, there could be a backlog of 800 hedge problem cases requiring to be determined by the councils in the first 2-3 years the legislation is in operation. Similar to the situation in England and Wales, it is anticipated that once the back log of complaints is dealt with, a smaller number of cases will occur each year.[28]

[1][Anti-social Behaviour Act 2003](#)

[2][Consultation on High Hedges and other nuisance vegetation](#)

[3][Nuisance High Hedges Consultation – Summary of Findings 2005](#)

[4][The proposed Northern Ireland High Hedges Bill](#)

[5][UK Parliament Research Paper \(2010\): Dealing with Nuisance Trees and Hedges by Edward White](#)

[6] Hedgeline, an organisation that campaigned for high hedge legislation, has prepared the following web page which they say lists the fees charged by those local authorities that have made announcements: <http://freespace.virgin.net/clare.h/JHdgFees.htm>

[7] to view visit <http://freespace.virgin.net/clare.h/JHdgFees.htm>

[8][High Hedges \(Fees\) \(Wales\) Legislation 2004](#)

[9][High Hedges \(Appeals\) \(England\) Regulations 2005](#)

[10][High Hedges \(Appeals\) \(Wales\) Regulations 2004](#)

[11] Welsh Assembly - [High Hedges Complaints System: Guidance](#)

[12]
http://www.planninginspectorate.gov.uk/pins/environment/high_hedges/guide_appellants_high_hedgev3.doc

[13]
http://www.webarchive.org.uk/wayback/archive/20060329120000/http://www.wales.gov.uk/subi_planning/content/highhedges/highhedges-guide-final-e.pdf

[14] <http://www.communities.gov.uk/documents/planningandbuilding/doc/613948.doc>

[15] http://archive.niassembly.gov.uk/legislation/primary/2009/niabill15_09_efm.htm

[16] Synopsis of Responses to the consultation on the High Hedges Bill

[17] See Ms Lo's speech [Official Assembly Report 10/05/10](#)

[18][Official Assembly Report 10/05/10](#)

[19] Official Assembly Report 19/01/10

[20] Official Assembly Report 10/05/10

[21] Official Assembly Report 10/05/10

[22] Official Assembly Report 10/05/10

[23] Official Assembly Report 10/05/10

[24] Official Assembly Report 10/05/10

[25] Established on 1st April 2007 under the Rates (Amendment) (NI) Order 2006 to handle property valuation appeals. It is made up of a panel of 3 persons – a legal member; a valuation member (usually surveyors) and a lay person. <http://www.nivaluationtribunal.org/>

[26] Official Assembly Report 10/05/10

[27] Official Assembly Report 10/05/10

[28] DoE, Partial Regulatory Impact Assessment



xx xxxxxx 2010

Suzie Cave

High Hedges Fees And Appeals Process

Paper xxxx/xx NIAR xxx-xx

Background

Legislation addressing the issues of high hedges in England and Wales falls under Part 8 of the Anti-social Behaviour Act 2003^[1] (the Act). This Act allows the owner or occupier of a domestic property to complain to the local authority that their 'reasonable enjoyment' of that property is being 'adversely affected' by the height of a high hedge on an adjoining property.

A high hedge is defined in Part 8 of the Anti-social Behaviour Act 2003 as "so much of a barrier to light or access as is formed wholly or predominantly by the line of two or more evergreen or

semi-evergreen trees or shrubs and rises to a height of more than two metres above ground level"

Following a complaint, the local authority must decide whether the hedge in question is a "high hedge" as per the above definition, and if so, whether its height is adversely affecting the complainant's 'reasonable enjoyment' of their property. Should the complainant want an investigation to be carried out by the local authority, they must pay a usually non-refundable fee. The amount is left to the discretion of the council who is free to charge for this service; councils can offer different rates for different groups.

The complainant must produce evidence that they have tried to resolve the problem informally and amicably with their neighbour. Based on this, the local authority decides what path to take and can serve a 'remedial notice' which states what the hedge owner must do to remedy the problem. The authority can reject the complaint if it feels it is frivolous or vexatious.

To date there is no evidence of the effectiveness of this legislation, but according to the Scottish Parliament, a formal evaluation is to be carried out by the UK Government this year.

Fees

England

Enquiries suggest that there are no limits set on the amount a council can charge. It is up to the council to decide what an appropriate fee is, and in fact, it can decide not to charge any fee. Some councils have been giving discounts to those on low incomes, while others have not.

DEFRA will review the charges as part of the review of the Anti-social Behaviour Act 2003.

Information supplied by the UK Parliament Research (Dealing with Nuisance trees and Hedges^[2]), suggests that fees in England can range from £300 to £650, according to Baroness Andrews (p.5). With no specification in the regulations to a maximum amount a council can charge, fees tend to vary greatly between councils, and in general appear higher than those in Wales. For example:

In the information supplied, Sarah Hinchcliffe; a spokeswoman for Hedgeline, voiced her objection to the high fees charged by councils to make a complaint. This includes the £550 fee which Cotswold District Council is planning on introducing.

In relation to concessions, a spokeswoman for the Cotswold District Council stated that people with low incomes and those on benefits would pay only £100 to have their complaints investigated.

According to information on the Hedgeline^[3] website:

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- Sevenoaks District Council charges £650 (the highest fee);
- Seven councils do not charge complaint fees;
- Kirklees Metropolitan Council charges £100 which is refundable if the complaint is upheld;
- Councils not in the list have yet to give Hedgeline any details despite two requests;

- 3 of the councils charge nothing for those eligible for concessions. Only four councils offer concessions to pensioners;
- Most councils have no concessions whatsoever;
- The Government did not set maximum/minimum complaint fees or recommend any fee levels;
- Many victims are being deterred by high fees from making complaints; and
- The average fee is just under £345 in England and £320 in Wales

For a detailed list of Councils and their fees, see Hedgeline's [Tables showing figures so far known – English Councils then Welsh Councils](#)

Wales

In 2004, Wales introduced regulations under the 'High Hedges (Fees) (Wales) Legislation 2004, stating that the maximum amount that any local authority can charge for a complaint to be made is £320.^[4]

Information received from the Welsh Assembly suggests that a reduced fee of £160 is charged to those in receipt of Housing Benefit or Council Tax benefits.

Scotland

A High Hedges Bill has not taken effect in Scotland. Scot Barry put forward proposals for a Bill in 2006, but subsequently lost his seat in the 2007 elections. Proposals were dropped until a '[Consultation on High Hedges and other nuisance vegetation](#)' began in 2009. One of the options in the consultation was to replicate legislation in England and Wales^[5], giving the councils the power to decide on a fee for complaints, but as yet, no decision has been made as the consultation has only recently come to an end.

Appeals

Section 71 of the Anti-social Behaviour Act 2003 (the Act), sets out the various rights of appeal complainants and hedge owners can make to the 'First Secretary of State' (who has delegated all appeal functions to the Planning Inspectorate 'PINS'), against a local authority's decision.

The regulations for England (The High Hedges (Appeals) (England) Regulations 2005^[6]) came into force 1 June 2005. The regulations for Wales (The High Hedges (Appeals) (Wales) Regulations 2004^[7]) came into force on the 31 December 2004. The legislation between England and Wales varies slightly, with the main differences being that:

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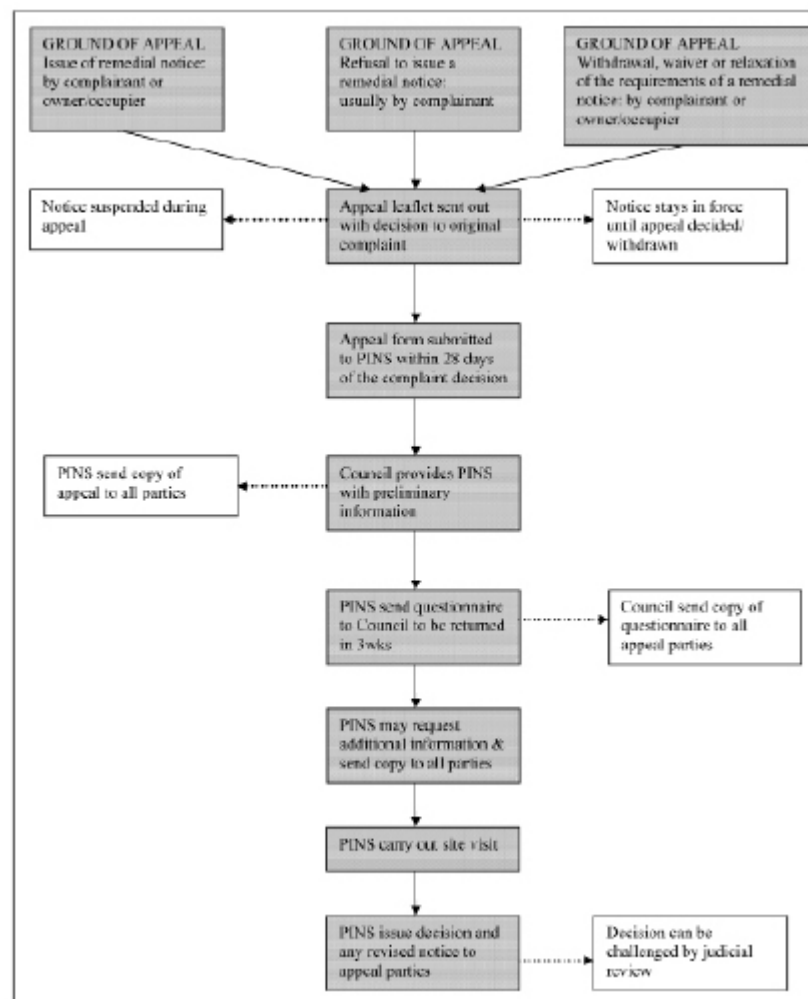
- In Wales, an appeal must be made to the National Assembly, where the 2005 High Hedges (Appeals) (Wales) Regulations corresponds with Section 71 of the Act, giving the National Assembly the power to make regulations in relation to appeals; and
- All appeals in England and Wales require site visits, however in Wales the Planning Inspectorate may also arrange for a hearing, where all parties who were involved in the original decision are invited to participate^[8].

A number of documents offering guidance on making an appeal have been issued, for example:

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- 'A Guide for Appellants (High Hedges)' produced by PINS in 2005
- The Welsh Assembly issued similar guidance in 2005- [High Hedges Complaints System: Guidance](#)
- 'High Hedges Complaints – Prevention and Cure', produced by Communities and Local Government (CLG). According to PINS, the CLG guidance is used by councils when making a decision.

When sending out the final decision on the original complaint to all the parties, the Council must enclose copies of the explanatory leaflet - '[High Hedges: appealing against the Council's decision](#)', to ensure all parties are aware of their rights to appeal.



The Process

Source: [High Hedges Complaints: Prevention and Cure](#) (Chapter 8 Figure 5)

Grounds of Appeal

The Act gives the complainant and the owner and occupier of the land where the hedge is located, the right to appeal against:

- a) The issue of a remedial notice:

-

- the complainant may appeal against the actions stated in the remedial notice, based on the grounds that the actions are not satisfactory to address the problem or prevent it happening again.
- the complainant may complain against the refusal to issue a remedial notice on the grounds that the Council underestimated the problem.
- the owner/occupier may make an appeal if they feel that: the Council over estimated the problems; the actions specified in the notice exceed what is necessary or appropriate to remedy the problem (i.e. causing death of the hedge); or that not enough time has been allowed to carry out the stated actions.

b) The withdrawal of a remedial notice:

Provided the complainant did not agree to the withdrawal of a notice, or the Council has not issued a new notice on the same hedge (e.g. to correct an error):

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- The complainant may appeal on the grounds that there has been no change in circumstances since the original notice was issued.

The decision to withdraw the notice is suspended while the appeal is being determined, and the original notice remains in effect until a decision is made.

c) The waiver or relaxation of its requirements:

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- The complainant may issue an appeal if they feel the new relaxed actions do not address the scale of the problem.
- An appeal may be submitted on the grounds that there have been no changes in the circumstances to warrant relaxing the notice's requirements.
- The owner/occupier may feel that the requirements exceed what is needed to rectify the problem or prevent it recurring.

Submission of an appeal:[9]

-

- Appeals should be submitted using the official form provided by the Planning Inspectorate.
- The appeal form must include the full grounds of appeal (explaining why they disagree with the reasons given by the Council, or any remedial actions specified in the notice), and should be accompanied by all relevant documents including: a copy of the Council's decision letter and any remedial notice in question.
- The completed appeal form and relevant documents should be sent or emailed to the Planning Inspectorate.
- The appellant must also send a copy of the completed appeals form and all enclosures to the Council who made the decision in question.

Time Limits

The completed appeals form and other documents must be received by the Planning Inspectorate (PINS) within 28 days, starting from:

-
- The date the remedial notice is issued;
- The date of the Council's notification to the main parties that it has decided to take no action in relation to the hedge; or
- The date that the Council notifies the main parties it has decided to withdraw a remedial notice or to waive or relax its requirements.

The parties to an appeal are:

-
- The appellant;
- The Council;
- A complainant – or anyone who has succeeded them as owner or occupier of the domestic property that is affected by the high hedge; or
- An owner or occupier of the land where the hedge is situated.

All parties play an equal part in the process, see all relevant papers and must be notified of the appeal decision.

Preliminary Information

On their receipt of the appeal form and documents, the Council must provide PINS with the contact details of all the appeal party (except the appellant).

Once PINS have received the completed appeals form, accompanying documents and the preliminary information stated above, they notify the appeal parties of the appeal and send them a copy of the completed form, along with the name and contact details of the officer handling the case.

Questionnaire

PINS issue a questionnaire to the Council to obtain background papers to the appeal. The Council has 3 weeks to return the completed questionnaire along with the relevant papers, which may include:

The Council's decision letter; comments from any organisation that the local authority consulted; the hedge owner's representations and supporting information, and any other information provided by neighbours etc (see '[High Hedges Complaints – Prevention and Cure](#)' for a full list)

Additional Information

PINS may request further information that they consider relevant to the appeal:

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- Such as representations submitted at the complaint stage that have evidently not been disclosed to the main parties.
- If they feel that the appeal raises new points, or includes fresh information which has not been considered by the Council.

PINS will copy relevant papers to all the appeal parties for comment to be returned within the deadline set by PINS

Site Visit

Once all the necessary written evidence has been collected, the Planning Inspectorate arrange for an impartial Planning Inspector to visit the site of the hedge. The Inspector's visit is crucial for determining the appeal. In most cases, the Inspector is accompanied by the appeal parties (the complainant, the occupier of the hedge site, and the Council), to ensure the visit is conducted in a fair and impartial manner.

The Decision

The appointed Inspector may allow or dismiss an appeal, in total or in part.

The Planning Inspectorate/Inspector is required to notify the Council, the complainant and the owner/occupier of the site of the hedge of the decision as soon as possible. The Inspector must supply all the parties with the reasons for the decision. (For further information see '[High Hedges Complaints – Prevention and Cure](#)')

Withdrawal and Review of an Appeal

The appellant has the right to withdraw their appeal at any stage. In this case the original decision by the Council will stand. The remedial notice, or any waiver or relaxation of its requirements takes effect from the date that the appeal is withdrawn.

There is no separate right of appeal against an appeal decision. An application must be sent to the High Court to challenge the decision by judicial review. The review can only be used to challenge the way the decision was made, i.e. to ensure that the powers offered in the Act and the Appeal Regulations have been used properly.

The applicant must suffice the court that they have an arguable case, in order to obtain permission to bring the application for judicial review.

[1][Anti-social Behaviour Act 2003](#)

[2][UK Parliament Research Paper \(2010\): Dealing with Nuisance Trees and Hedges by Edward White](#)

[3] Hedgeline, an organisation that campaigned for high hedge legislation, has prepared the following web page which they say lists the fees charged by those local authorities that have made announcements: <http://freespace.virgin.net/clare.h/JHdgFees.htm>

[4][High Hedges \(Fees\) \(Wales\) Legislation 2004](#)

[5][Consultation on High Hedges and other nuisance vegetation](#) (p.26)

[6][High Hedges \(Appeals\) \(England\) Regulations 2005](#)

[7][High Hedges \(Appeals\) \(Wales\) Regulations 2004](#)

[8] Welsh Assembly - [High Hedges Complaints System: Guidance](#)



Research and Library Service Briefing Note

6 October 2010

Suzie Cave

High Hedges Legislation Review

Paper 000/00 NIAR 000-00

It is apparent that currently there has not been a government review conducted on the High Hedge legislation which came into force in 2005 under Part 8 of the Anti social and Behaviour Act (2003). This is evident as:

Communities and Local Government (CLG)^[1]

Information received from the Planning, Building and Environment Division stated:

A review of the high hedges legislation, Part 8 of the Anti-social Behaviour Act 2003 and associated regulations, has not yet been carried out. We are looking at the full range of our responsibilities for regulation, which includes high hedges. The scope and timing of any review has yet to be agreed.

Also, in their paper 'Matters Relating to High Hedges – Notes to local authorities (2008)'^[2] CLG advised councils to maintain records of complaints and their outcome, to inform future review of the process. They inform that they have a commitment to carry out a 5 year review in 2010. For each year of operation, the following information was suggested as being appropriate:

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- numbers of enquiries about the legislation
- numbers of formal complaints received
- number determined
- number of remedial notices issued
- number of complaints about failure to comply with the requirements of a remedial notice (enforcement cases)

- number resolved informally
- number of prosecutions and outcome
- number of occasions that the authority used its default powers to carry out works to the hedge.

Hedgeline, the national lobby and support group for the victims of high hedges.

1) have stated on their website:

"The council is at present doing most of the initial advice work. We are helping with tricky appeals. We are still resting after the effort of the campaign for the High Hedges Law but our workers are waiting in readiness for the next vital stage of the campaign, which is most a likely to be a government review of how this legislation is working (August 2010)"^[3]

2) have written in their review on 15th January 2008 'Where are we now'^[4] that:

There have been fewer applications to councils to invoke the law than was originally envisaged – partly due to growers dealing with the problem rather than have the council involved. Satisfactory settlements are being dealt with 'out of court'. Some of these settlements include hedges which have caused problems for years, where the owners have cut the hedge themselves to avoid involving the council.

Points to consider in relation to the implementation of the 'High Hedges Law' are as follows:

-

- Decision letters issued by local authorities show a lack of knowledge of the 'High Hedges Law' – this is being attributed to the fact that appeal decisions are not published and councils are not getting the feedback on appeal decisions.
- A third of appeal decisions result in a changed decision, so there is a one in three chance of overturning the council's decision on appeal
- Staging^[5] is used now when dealing with very high hedges, where care is taken by appeal inspectors to give a balance between the privacy requirements of the owner against the harm caused to the complainant by the hedge.
- No progress has been made concerning 'overhanging branches'. According to Hedgeline, elderly victims (80 plus years) are being expected to deal with overhang themselves.
- Hedgeline hopes to address these issues at the review of the legislation in 2010

^[1] Communities and Local Government has responsibility for developing planning policy and wider planning legislation that affect the environment, including trees and high hedges. They work closely with colleagues across Communities and Local Government, other government departments and external partners in delivering these policies. For more information see: <http://communities.gov.uk/planningandbuilding/planningenvironment/>

^[2] CLG (2008) Matters Relating to High Hedges- Notes to local authorities
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/highhedgesnotes.pdf>

^[3] Hedgeline [online] <http://freespace.virgin.net/clare.h/index.htm#MAIN> (accessed 05/10/2010)

[4] Hedgeline [online] The High Hedges Law – Where we are now (January 2008)
<http://freespace.virgin.net/clare.h/hdg1Campn.htm> (accessed 05/10/2010)

[5] This is an expedient brought in, in an attempt to deal with situations where a hedge might be killed by cutting to the height recommended on the council remedial notice. The hedge is reduced by a certain proportion each year and is given a chance to recover before further reduction.

High Hedges: Fees and Appeals Process

Background

Legislation addressing the issues of high hedges in England and Wales falls under Part 8 of the Anti-social Behaviour Act 2003^[1] (the Act). This Act allows the owner or occupier of a domestic property to complain to the local authority that their 'reasonable enjoyment' of that property is being 'adversely affected' by the height of a high hedge on an adjoining property.

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Information received from the Welsh Assembly suggests that a reduced fee of £160 is charged to those in receipt of Housing Benefit or Council Tax benefits.

Scotland

A High Hedges Bill has not taken effect in Scotland. Scot Barry put forward proposals for a Bill in 2006, but subsequently lost his seat in the 2007 elections. Proposals were dropped until a '[Consultation on High Hedges and other nuisance vegetation](#)' began in 2009. One of the options in the consultation was to replicate legislation in England and Wales[\[5\]](#), giving the councils the power to decide on a fee for complaints, but as yet, no decision has been made as the consultation has only recently come to an end.

Appeals

Section 71 of the Anti-social Behaviour Act 2003 (the Act), sets out the various rights of appeal complainants and hedge owners can make to the 'First Secretary of State' (who has delegated all appeal functions to the Planning Inspectorate 'PINS'), against a local authority's decision.

The regulations for England (The High Hedges (Appeals) (England) Regulations 2005^[6]) came into force 1 June 2005. The regulations for Wales (The High Hedges (Appeals) (Wales) Regulations 2004^[7]) came into force on the 31 December 2004. The legislation between England and Wales varies slightly, with the main differences being that:

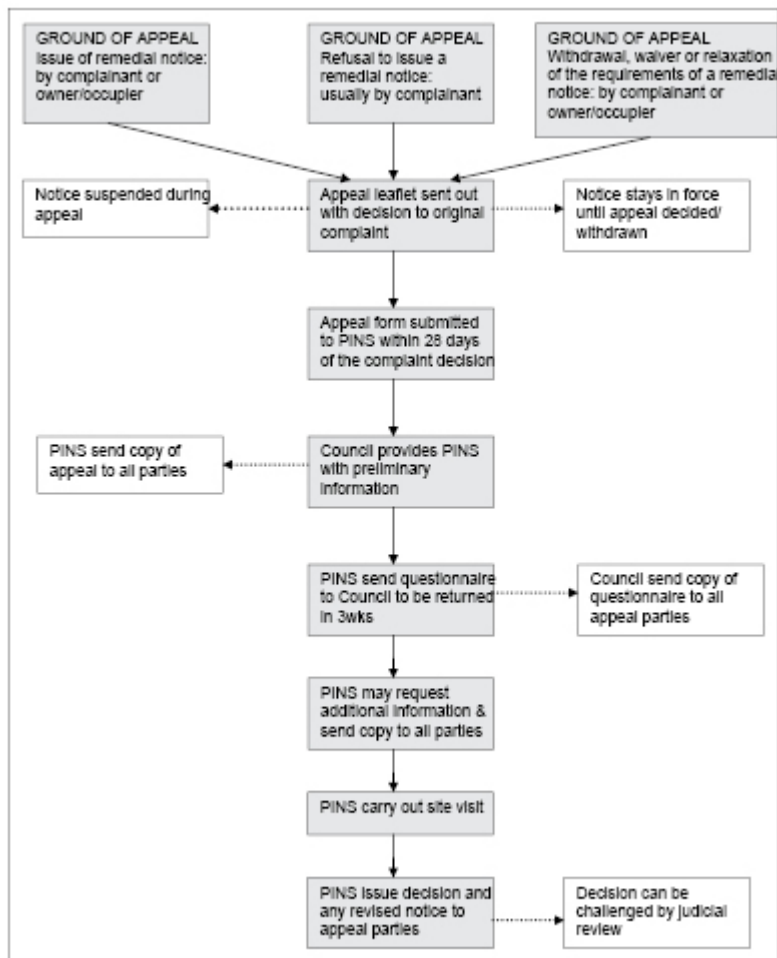
-
- In Wales, an appeal must be made to the National Assembly, where the 2005 High Hedges (Appeals) (Wales) Regulations corresponds with Section 71 of the Act, giving the National Assembly the power to make regulations in relation to appeals; and
- All appeals in England and Wales require site visits, however in Wales the Planning Inspectorate may also arrange for a hearing, where all parties who were involved in the original decision are invited to participate^[8].

A number of documents offering guidance on making an appeal have been issued, for example:

-
- '[A Guide for Appellants \(High Hedges\)](#)' produced by PINS in 2005
- The Welsh Assembly issued similar guidance in 2005- [High Hedges Complaints System: Guidance](#)
- '[High Hedges Complaints – Prevention and Cure](#)', produced by Communities and Local Government (CLG). According to PINS, the CLG guidance is used by councils when making a decision.

When sending out the final decision on the original complaint to all the parties, the Council must enclose copies of the explanatory leaflet - '[High Hedges: appealing against the Council's decision](#)', to ensure all parties are aware of their rights to appeal.

The Process



Source: [High Hedges Complaints: Prevention and Cure](#) (Chapter 8 Figure 5)

Grounds of Appeal

The Act gives the complainant and the owner and occupier of the land where the hedge is located, the right to appeal against:

a) The issue of a remedial notice:

-

- the complainant may appeal against the actions stated in the remedial notice, based on the grounds that the actions are not satisfactory to address the problem or prevent it happening again.
- the complainant may complain against the refusal to issue a remedial notice on the grounds that the Council underestimated the problem.
- the owner/occupier may make an appeal if they feel that: the Council over estimated the problems; the actions specified in the notice exceed what is necessary or appropriate to remedy the problem (i.e. causing death of the hedge); or that not enough time has been allowed to carry out the stated actions.

b) The withdrawal of a remedial notice:

Provided the complainant did not agree to the withdrawal of a notice, or the Council has not issued a new notice on the same hedge (e.g. to correct an error):

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- The complainant may appeal on the grounds that there has been no change in circumstances since the original notice was issued.

The decision to withdraw the notice is suspended while the appeal is being determined, and the original notice remains in effect until a decision is made.

c) The waiver or relaxation of its requirements:

-

- The complainant may issue an appeal if they feel the new relaxed actions do not address the scale of the problem.
- An appeal may be submitted on the grounds that there have been no changes in the circumstances to warrant relaxing the notice's requirements.
- The owner/occupier may feel that the requirements exceed what is needed to rectify the problem or prevent it recurring.

Submission of an appeal:[\[9\]](#)

-

- Appeals should be submitted using the official [form](#) provided by the Planning Inspectorate.
- The appeal form must include the full grounds of appeal (explaining why they disagree with the reasons given by the Council, or any remedial actions specified in the notice), and should be accompanied by all relevant documents including: a copy of the Council's decision letter and any remedial notice in question.
- The completed appeal form and relevant documents should be sent or emailed to the Planning Inspectorate.
- The appellant must also send a copy of the completed appeals form and all enclosures to the Council who made the decision in question.

Time Limits

The completed appeals form and other documents must be received by the Planning Inspectorate (PINS) within 28 days, starting from:

-

- The date the remedial notice is issued;
- The date of the Council's notification to the main parties that it has decided to take no action in relation to the hedge; or
- The date that the Council notifies the main parties it has decided to withdraw a remedial notice or to waive or relax its requirements.

The parties to an appeal are:

-

- The appellant;
- The Council;

- A complainant – or anyone who has succeeded them as owner or occupier of the domestic property that is affected by the high hedge; or
- An owner or occupier of the land where the hedge is situated.

All parties play an equal part in the process, see all relevant papers and must be notified of the appeal decision.

Preliminary Information

On their receipt of the appeal form and documents, the Council must provide PINS with the contact details of all the appeal party (except the appellant).

Once PINS have received the completed appeals form, accompanying documents and the preliminary information stated above, they notify the appeal parties of the appeal and send them a copy of the completed form, along with the name and contact details of the officer handling the case.

Questionnaire

PINS issue a questionnaire to the Council to obtain background papers to the appeal. The Council has 3 weeks to return the completed questionnaire along with the relevant papers, which may include:

The Council's decision letter; comments from any organisation that the local authority consulted; the hedge owner's representations and supporting information, and any other information provided by neighbours etc (see '[High Hedges Complaints – Prevention and Cure](#)' for a full list)

Additional Information

PINS may request further information that they consider relevant to the appeal:

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- Such as representations submitted at the complaint stage that have evidently not been disclosed to the main parties.
- If they feel that the appeal raises new points, or includes fresh information which has not been considered by the Council.

PINS will copy relevant papers to all the appeal parties for comment to be returned within the deadline set by PINS

Site Visit

Once all the necessary written evidence has been collected, the Planning Inspectorate arrange for an impartial Planning Inspector to visit the site of the hedge. The Inspector's visit is crucial for determining the appeal. In most cases, the Inspector is accompanied by the appeal parties (the complainant, the occupier of the hedge site, and the Council), to ensure the visit is conducted in a fair and impartial manner.

The Decision

The appointed Inspector may allow or dismiss an appeal, in total or in part.

The Planning Inspectorate/Inspector is required to notify the Council, the complainant and the owner/occupier of the site of the hedge of the decision as soon as possible. The Inspector must supply all the parties with the reasons for the decision. (For further information see '[High Hedges Complaints – Prevention and Cure](#)')

Withdrawal and Review of an Appeal

The appellant has the right to withdraw their appeal at any stage. In this case the original decision by the Council will stand. The remedial notice, or any waiver or relaxation of its requirements takes effect from the date that the appeal is withdrawn.

There is no separate right of appeal against an appeal decision. An application must be sent to the High Court to challenge the decision by judicial review. The review can only be used to challenge the way the decision was made, i.e. to ensure that the powers offered in the Act and the Appeal Regulations have been used properly.

The applicant must suffice the court that they have an arguable case, in order to obtain permission to bring the application for judicial review.

[1][Anti-social Behaviour Act 2003](#)

[2][UK Parliament Research Paper \(2010\): Dealing with Nuisance Trees and Hedges by Edward White](#)

[3] Hedgeline, an organisation that campaigned for high hedge legislation, has prepared the following web page which they say lists the fees charged by those local authorities that have made announcements: <http://freespace.virgin.net/clare.h/JHdgFees.htm>

[4][High Hedges \(Fees\) \(Wales\) Legislation 2004](#)

[5][Consultation on High Hedges and other nuisance vegetation](#) (p.26)

[6][High Hedges \(Appeals\) \(England\) Regulations 2005](#)

[7][High Hedges \(Appeals\) \(Wales\) Regulations 2004](#)

[8] Welsh Assembly - [High Hedges Complaints System: Guidance](#)

[9][High Hedges Complaints – Prevention and Cure by CLG](#)



Research and Library Service
Bill Paper

Suzie Cave

High Hedge and Single Tree Complaints

The following summarises information received from each of the councils in relation to the number of high hedge complaints and single tree complaints received. The time frame varies from council to council, as some have only just started recording the complaints recently. Some of the councils were unable to provide numbers as they do not keep any record of high hedge and single tree complaints in their database. The main reason for this being that they have no statutory requirement to do so, and such issues are considered to be a civil matter that the councils will not get involved in. The councils will offer advice, but not necessarily record the complaint.

It is worth noting that for those councils who were able to provide numbers:

- They are rough estimates, as not all complaints regarding high hedges and single trees are consistently recorded as there is no requirement for this.
- Some councils could not give separate data for single tree complaints as their records did not differentiate between high hedge complaints and single trees. In such circumstances, tree complaints and anything else similar, may be recorded under 'hedges'.
- Some councils commented that while they receive a certain number of complaints about hedges, they are not all solely related to their impact on light, other issues may include site lines, access, responsibility for facing etc.
- Some of the councils have noted a slight increase in the number of complaints since the High Hedged consultation commenced. One of the main reasons for this, mentioned by some of the councils, is that the consultation made people aware that they could contact their local council in relation to these issues, even though councils can only provide an advisory role at this stage.

Council	High Hedge and Single Tree Complaints
Antrim	Environmental Health and the Parks department both receive complaints. Unfortunately there are no records kept. In general, enquiries/complaints are on the increase. Roughly from April 2010 to now they have received 12. These include tree complaints as well.
Ards	Currently no legislation in force, therefore it is a civil matter that the Council does not deal with, nor do they take note of complaints. They will do once the legislation is passed.
Armagh	No legislation, considered to be a civil matter, therefore the Council does not get involved, nor keep any record.
Ballymena	Don't keep record as it is a civil matter.
Ballymoney	Between January 2008 and September 2010 the Council has recorded 5 complaints in total- 2 related to single trees, 2 referred to rows of trees, and 1 was a hedgerow.
Banbridge	Environmental Health informed that they have no record of such complaints, they only offer advice, but roughly they would receive more complaints about trees than hedges. Since the High Hedge consultation they have received an increase to around 6 to 8 queries about trees.
Belfast	According to the Environmental Health Manager, the Council receives complaints about both, but does not have a code for them on their database,

Council	<p>High Hedge and Single Tree Complaints</p> <p>therefore cannot provide statistics. He has advised that having spoken with the Principal EHO and the appropriate officer from Business Administration; they receive around 4 enquiries a month. This is a ball park figure due to the absence of recorded statistics. However, the Council aims to amend their systems for the introduction of the legislation when complaints will be coded and reported on monthly.</p>
Carrickfergus	<p>9 received from 1/3/10 to 30/9/10 (the only period that such enquires have been recorded from). Unfortunately the Council was unable to differentiate between high hedges and single tree enquiries.</p>
Castlereagh	<p>No legislation therefore the Council does not deal with such complaints – not recorded in database.</p>
Coleraine	<p>From the start of 2010 to present the Council has received a total of 14 complaints regarding 'high hedges'. These can be broken down as follows: 5 related to hedges 9 related to trees</p>
Cookstown	<p>Have received 15 high hedge complaints this year. More enquiries this year so far compared to others. Can't differentiate between high hedge complaints and single trees complaints from their records.</p>
Craigavon	<p>Have received 14 complaints about high hedges this year and 8 last year Complaints are mostly for hedges, but received 1 last week about a single tree.</p>
Derry	<p>Have recorded 25 complaints in the last 4 years: 5 related to single trees and 20 related to hedges. There is a possibility that the Council has received twice this number, but because there is no statutory requirement to record such complaints, some are either not recorded at all, or have been lost as there is no code for them as yet. This will change when legislation is enforced.</p>
Down	<p>No legislation-seen as a civil matter that the Council does not get involved with, therefore no records.</p>
Dungannon and South Tyrone	<p>Do receive complaints in relation to hedges and trees but do not keep a record of complaints of this nature. Offer advice only as it is a civil matter. Also receive queries in relation to the facing of hedges and who is responsible, and single trees in relation to the potential danger of falling.</p>
Fermanagh	<p>Don't deal with such complaints – civil matter and unfortunately don't have records</p>
Larne	<p>No records, but Environmental Health Officers estimate they receive around 6-12 complaints a year in relation to high hedges and single trees.</p>
Limavady	<p>Have received 6 complaints about high/overgrown hedges since 2007- 4 of them in the last financial year. 0 complaints about single trees.</p>
Lisburn	<p>Have no official record, but receive around 2/3 per week in the last year. Not able to differentiate between hedge complaints and single tree complaints. Also receive complaints at their landscape depot, but have no records from this.</p>
Magherafelt	<p>For 2010 received 3 high hedge complaints. This may be under represented as at times advice is given and the complaint not recorded due to there not being a statutory requirement.</p>
Moyle	<p>Received 1 in 2010. Generally receive very few in past years.</p>
Newry and Mourne	<p>No legislation at present, a civil matter therefore does not deal with them and have no records.</p>

Council	High Hedge and Single Tree Complaints
Newtownabbey	Have not received any, hasn't been an issue in the past. Councillors may receive complaints but have not brought them to the Council as they do not deal with them, more of a civil matter. Did receive enquiries during the consultation, but in relation to the legislation, not complaints as such.
North Down	The council does get a number of inquiries regarding high hedges and single trees during the year, being most prevalent when legislation-Part 8 of the Anti-social Behaviour Act 2003- was introduced in England and Wales in 2005, when a consultation was issued for NI 2005, and when the recent consultation on the High Hedges Bill was released in 2010. The Council does not currently have a statutory remit to deal with high hedges and no statutory remit for individual trees has, so far, been suggested. Therefore, inquiries relating to these issues have been dealt with by offering advice on the removal of branches and roots which traverse land boundaries, and the ability of the complainant to seek redress through civil action. No records are kept of inquiries, but the Council's principle Environmental Health Officer estimated at least 20-30 enquires a year relating to trees and hedges. Many of these inquiries relate to single trees and or deciduous hedges that are not covered by the remit of the proposed legislation.
Omagh	Do receive a number of complaints on High Hedged and Trees, but unfortunately have not got a record of them.
Strabane	Since January 2008 to present, the council has received 6 complaints. Unfortunately the Council can't differentiate between high hedge complaints and single trees, as all recorded under same category.

Appendix 6

Other Papers Submitted to the Committee

Scrutiny of Delegated Powers

Advice to the Committee for the Environment from the Examiner of Statutory Rules on High Hedges Bill

1. I have considered this Bill, in conjunction with the Delegated Powers Memorandum submitted by the Department of the Environment, in relation to powers to make subordinate legislation.

2. The Bill contains several powers to make subordinate legislation.

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- Clause 3(7) allows the Department to make regulations subject to negative resolution prescribing the maximum fee a district council may charge for complaints.
- Clause 13(7) and (8) allow the department to make regulations subject to draft affirmative procedure amending clause 13 (service of documents in electronic form) in certain respects.
- Clause 16 allows the Department to make regulations subject to draft affirmative procedure amending clauses 1 (for the purposes of extending the scope of complaints) and 2 (amending the definition of high hedge).

- Clause 19 provides for commencement orders: as is the standard practice, commencement orders are not subject any Assembly procedure.

3. All the powers to make subordinate legislation seem to be appropriate.

4. There are no other matters to which I draw the attention of the Committee for the Environment in this regard.

Gordon Nabney
Examiner of Statutory Rules

August 2010

High Hedges Fees in England and Wales

Tables showing figures so far known - English Councils, then Welsh Councils (brief notes for hedge victims at end of tables)

Concessions are for recipients of means tested benefit unless followed by *. Starred concessions are also extended to all pensioners.

English Councils	Fee	Concession see above Note	Refunds for Hedge Victims
Coventry City Council	0		No Complaint Fee is Charged
Newham London Borough Council	0		No Complaint Fee is Charged
Nuneaton and Bedworth Borough Council	0		No Complaint Fee is Charged
South Derbyshire District Council	0		No Complaint Fee is Charged
South Tyneside Council	0		No Complaint Fee is Charged
Staffordshire Moorlands District Council	0		No Complaint Fee is Charged
Stoke-on-Trent City Council	0		No Complaint Fee is Charged
Wolverhampton City Council	0		No Complaint Fee is Charged
Kirklees Metropolitan Council	100	20	Refundable if Complaint Upheld
Malvern Hills District Council	50		
Teignbridge District Council	99		
East Lindsey District Council	100		
Hartlepool Borough Council	100		
Kensington and Chelsea, Royal Borough of	100		
Leicester City Council	100	50	
Allerdale Borough Council	135		Complaint fee provisional (September)
Bexley London Borough Council	135		
Blyth Valley Borough Council	135		
Carlisle City Council	135		
Chichester District Council	135		

English Councils	Fee	Concession see above Note	Refunds for Hedge Victims
Fareham Borough Council	135	10*	
Greenwich London Borough Council	135		
Halton Borough Council	135		
Hambleton District Council	135		
Hull City Council	135	50	
Lincolnshire County Council	135		
Maldon District Council	135		
Richmondshire District Council	135	75	
Sedgefield Borough Council	135	75	
Shepway District Council	135		
Dartford Borough Council	150		
East Staffordshire Borough Council	150		
Kings Lynn and West Norfolk Borough Council	150		
Penwith District Council	150		
Amber Valley Borough Council	200		
Barrow-in-Furness Borough Council	200		
Bath and North East Somerset Council	200		
Cannock Chase District Council	200		
Ellesmere Port and Neston Borough Council	200		
Enfield London Borough Council	200	100	
Haringey London Borough Council	200		
Norwich City Council	200		
Sandwell Metropolitan Borough Council	200		
Tamworth Borough Council	212		
Ealing London Borough Council	250		
Lancaster City Council	250		
Newcastle City Council	250		
Chester-le-Street District Council	265		
Craven District Council	265		
Derby City Council	265	25	
Epping Forest District Council	265		
Exeter City Council	265	135	
Rushmoor Borough Council	265	150*	
Ryedale District Council	265		
Uttlesford District Council	265	100	
Selby District Council	265		
Havant Borough Council	270		
Hastings Borough Council	275	50	
Dacorum Borough Council	280	140	
Tonbridge and Malling Borough Council	290		

English Councils	Fee	Concession see above Note	Refunds for Hedge Victims
Great Yarmouth Borough Council	295	147.5	
Adur District Council	300		
Babergh District Council	300		
Barnsley Metropolitan Borough Council	300		
Blaby District Council	300	250	
Brentwood Borough Council	300	150*	
Bridgnorth District Council	300		
Brighton and Hove City Council	300		
Castlepoint Borough Council	300		
Chelmsford Borough Council	300		
Chester City Council	300		
Colchester Borough Council	300		
Crewe and Nantwich Borough Council	300		
Croydon London Borough Council	300		
Derwentside District Council	300		
Easington District Council	300		
Forest Heath District Council	300	150	
Gedling Borough Council	300		
Gloucester City Council	300	50	
Harborough District Council	300	150	
Havering London Borough Council	300	0	
Herefordshire Council	300	150	
Hounslow London Borough Council	300		
Ipswich Borough Council	300	150	
Kennet District Council	300		
Merton London Borough Council	300		
Newcastle under Lyme Borough Council	300		
North Cornwall District Council	300		
North East Lincolnshire Council	300		
North Kesteven District Council	300		
North Norfolk District Council	300		
Oadby and Wigston Borough Council	300	175	
Portsmouth City Council	300		
Reading Borough Council	300		
Richmond upon Thames London Borough Council	300	250	
Rotherham Metropolitan Borough Council	300		
Rugby Borough Council	300		
Rushcliffe Borough Council	300	50	
Solihull Metropolitan Borough Council	300		
St. Edmundsbury Borough Council	300	150	

English Councils	Fee	Concession see above Note	Refunds for Hedge Victims
Stratford-on-Avon District Council	300		
Stroud District Council	300		
Suffolk Coastal District Council	300		
Swale Borough Council	300		
Tameside Metropolitan Borough Council	300		
Test Valley Borough Council	300		
Tunbridge Wells Borough Council	300		
Wakefield Metropolitan District Council	300		
Wandsworth London Borough Council	300		
Waveney District Council	300	150	
West Devon Borough Council	300		
West Lindsey District Council	300		
Worcester City Council	300		
Worthing Borough Council	300		
Wyre Forest District Council	300		
Alnwick District Council	320	100	
Brent London Borough Council	320		
Bristol City Council	320		
Bromley London Borough	320		
Calderdale Council	320		
Castle Morpeth Borough Council	320		
Cherwell District Council	320		
Chesterfield Borough Council	320		
City of York Council	320		
Daventry District Council	320	160	
East Riding of Yorkshire Council	320		
Erewash Borough Council	320		
Gateshead Council	320		
Gravesham Borough Council	320		
Harrogate Borough Council	320		
Luton Borough Council	320		
Mansfield District Council	320		
Newark and Sherwood District Council	320	160	
North East Derbyshire District Council	320	50	
North Shropshire District Council	320		
Restormel Borough Council	320		
Rochford District Council	320	100	
Salford City Council	320	0	
Sheffield City Council	320	50	
Shrewsbury and Atcham Borough Council	320		
South Gloucestershire Council	320	160	

English Councils	Fee	Concession see above Note	Refunds for Hedge Victims
South Hams District Council	320		
Sunderland City Council	320		
Vale Royal Borough Council	320	160	
Wychavon District Council	320		
Nottingham City Council	325	50	
North Tyneside Council	340		50% refund if claim upheld
Camden London Borough Council	340	170	
Eden District Council	340		
Macclesfield Borough Council	340	170	
Poole Borough Council	340		
Waverley Borough Council	340		
Wear Valley District Council	340		
Westminster City Council	340		
West Wiltshire District Council	345		
Ashfield District Council	350		
Ashford Borough Council	350		
Aylesbury Vale District Council	350		
Birmingham City Council	350		
Bury Metropolitan Borough Council	350		
Canterbury City Council	350	175	
Christchurch Borough Council	350		
Corby Borough Council	350		
Darlington Borough Council	350		
Dover District Council	350		
East Cambridgeshire District Council	350		
East Devon District Council	350		
East Dorset District Council	350		
Hinckley and Bosworth Borough Council	350	50	
Lewes District Council	350	175	
Melton Borough Council	350		
Mid Beds District Council	350		
Mid Suffolk District Council	350		
Mole Valley District Council	350		
North Devon District Council	350		
North Warwickshire Borough Council	350		
North Wiltshire District Council	350		
Redcar and Cleveland Borough Council	350		
Rutland County Council	350		
South Lakeland District Council	350		
South Norfolk District Council	350	175	
South Shropshire City Council	350		

English Councils	Fee	Concession see above Note	Refunds for Hedge Victims
South Somerset District Council	350		
Stockton-on-Tees Borough Council	350		
Teesdale District Council	350		
Thanet District Council	350		
Tynedale Council	350		
Warwick District Council	350		
West Dorset District Council	350		
Wirral Metropolitan Borough Council	350		
Mid Devon District Council	360		
Scarborough Borough Council	360		
South Kesteven District Council	360		
Stevenage Borough Council	360		
Surrey Heath Borough Council	368		
Reigate and Banstead Borough Council	370	185	
Caradon District Council	375		
East Northamptonshire Council	375		
Swindon Borough Council	375	200	
South Staffordshire Council	385		
West Lancashire District Council	389	194.5	
Bolsover District Council	390		
Three Rivers District Council	395		
Basingstoke and Deane Borough Council	400		
Bolton Metropolitan Borough Council	400		
Braintree District Council	400		
Broadland District Council	400	0	
Cheltenham Borough Council	400	100	
Chiltern District Council	400		
Dudley Metropolitan Borough Council	400		Fee is 300 to end August 2005
Guildford Borough Council	400		
Harlow Council	400		
Hertsmere Borough Council	400		
Kettering Borough Council	400		No fee for disabled people
Lichfield District Council	400		
Liverpool City Council	400		
Mendip District Council	400		
North Somerset Council	400		
North West Leicestershire District Council	400		
Plymouth City Council	400		
Rochdale Metropolitan Borough Council	400		

English Councils	Fee	Concession see above Note	Refunds for Hedge Victims
Royal Borough of Kingston upon Thames Council	400		
Runnymede Borough Council	400		
Sedgemoor District Council	400		
Sefton Council	400		
South Bedfordshire District Council	400		
South Holland District Council	400		£265 returned if no action or no appeal
South Oxfordshire District Council	400		
Taunton Deane Borough Council	400		
Tendring District Council	400		
Torbay Council	400		
Torridge District Council	400		
Wansbeck District Council	400		
West Somerset District Council	400		
North Dorset District Council	405		
Peterborough City Council	410	205	
Medway Council	420	210	
Milton Keynes Borough Council	420	210*	
South Bucks District Council	420		
Leeds City Council	425	211.5	
Arun District Council	450		
Barnet London Borough Council	450		
Bedford Borough Council	450		
Blackpool Council	450		
Bracknell Forest Borough Council	450		
Cambridge City Council	450		
Congleton Borough Council	450		
Derbyshire Dales District Council	450		
Eastbourne Borough Council	450	90	
Eastleigh Borough Council	450	100	
Fenland District Council	450		
Fylde Borough Council	450		
Huntingdonshire District Council	450		
Hyndburn Borough Council	450		
New Forest District Council	450		
Oxford City Council	450	90	
Purbeck District Council	450		
Sefton Metropolitan Borough Council	450		
South Cambridgeshire District Council	450		
South Northamptonshire Council	450		
Spelthorn Borough Council	450		

English Councils	Fee	Concession see above Note	Refunds for Hedge Victims
Thurrock Council	450	225	
Vale of White Horse District Council	450		
Winchester City Council	450		
Windsor and Maidenhead Royal Borough Council	450		
Woking Borough Council	450		
Wyre Borough Council	450		
Northampton Borough Council	457	228.5	
Wycombe District Council	490		
Blackburn with Darwen Borough Council	500		
Bournemouth Borough Council	500		
Bromsgrove District Council	500	200	
Burnley Borough Council	500		
Chorley Borough Council	500		
Basildon District Council	500		
East Hampshire District Council	500		
East Hertfordshire District Council	500		
Elmbridge Borough Council	500		
Forest of Dean District Council	500	250	
Gosport Borough Council	500		
High Peak Borough District Council	500		
Hillingdon London Borough Council	500		
Mid Sussex District Council	500	250	
North Hertfordshire District Council	500	250	
Redbridge London Borough Council	500		
Ribble Valley Borough Council	500		
Rossendale Borough Council	500		
Salisbury District Council	500		
Southampton City Council	500		
South Ribble Borough Council	500		
Stafford Borough Council	500	250	
Stockport Metropolitan Borough Council	500		
Tandridge District Council	500	250	
Telford and Wrekin Borough Council	500		
Tewkesbury Borough Council	500		
Trafford Borough Council	500		
Wigan Council	500	100	
Wealden District Council	500		
West Berkshire Council	500		
Cotswold District Council	550	100	
West Oxfordshire District Council	550		
Rother District Council	600		

English Councils	Fee	Concession see above Note	Refunds for Hedge Victims
Wokingham District Council	600		
Sevenoaks District Council	650	100	
Average Fee (14 October 2005)	£344.41		304 English Councils

Concessions are for recipients of means tested benefit unless followed by *. Starred concessions are also extended to all pensioners.

Welsh Councils	Fee	Concession see above Note	Refunds for Hedge Victims
Bridgend County Borough Council	320		
Cardiff County Council	320		
City and County of Swansea Council	320		
Isle of Anglesey County Council	320		
Monmouthshire County Council	320		
Newport County Borough Council	320		
Vale of Glamorgan Council	320		
Wrexham County Borough Council	320	160	
Average Fee (5 July 2005)	£320		8 Welsh Councils

Concessions are for recipients of means tested benefit unless followed by *. Starred concessions are also extended to all pensioners.

Fees

Frequently Asked Questions

Q. Do councils have to charge a fee?

A. No. Section 68 of the Anti-social behaviour Act 2003 says that when submitting a complaint, it must be accompanied by such fee (if any) as the local authority determines.

Q. Has the government set minimum or maximum fees?

A. No. Fees are entirely at local authority discretion. The Government explicitly left Councils to decide.

Please see section 12 of the Regulatory Impact Assessment, which states,

'whether and at what level it is appropriate to charge for this service should rest with local authorities, so that they can take account of local circumstances and local taxpayers' wishes. This would also be in line with the Government's general policy of allowing such decisions to be made at the local level. We will, not therefore, be prescribing a maximum fee'.

Departmental reply re Types of Trees included in High Hedges Bill

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast
BT4 3XX

DOE Private Office Assembly Unit
Clarence Court
10-18 Adelaide Street
BELFAST
BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 41169
Email: una.downey@doeni.gov.uk
Your reference: CQ 147/10
Our reference:

Date: 13 October 2010

Dear Alex

High Hedges Bill

I refer to your request for further information in relation to the high Hedges Bill.

Background

At its meeting on 30 September 2010 the Environment Committee sought clarification as to the types of trees that are included in the Bill.

Current Position

The High Hedges Bill (as introduced) specifies that a hedge must be formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs.

Therefore, the High Hedges Bill includes trees that are evergreen or semi-evergreen. Deciduous trees are excluded from the High Hedges Bill.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey
DALO

Departmental Letter re High Hedges Complaint Form

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly

DOE Private Office Assembly Unit
Clarence Court
10-18 Adelaide Street

Parliament Buildings
Stormont
Belfast
BT4 3XX

BELFAST
BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 41169
Email: una.downey@doeni.gov.uk
Your reference:
Our reference: CQ 157/10

Date: 22 October 2010

Dear Alex

High Hedges Bill

I refer to your request for further information in relation to the High Hedges Bill.

Background

At its meeting on 7 October 2010, the Environment Committee requested a copy of the standardised complaint form that is being developed for the purposes of the High Hedges Bill.

Current Position

A sample complaint form is being developed in conjunction with NILGA and local councils. It is broadly similar to the forms used by local authorities in England. It will be for councils to decide how to use the sample form and to amend it to suit their individual needs. Discussions are currently ongoing and the form has not yet been agreed with NILGA. There are two possible versions of draft form, depending on whether or not a council intends to offer reduced fees to certain groups. Copies of these draft forms are attached.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey
DALO

DRAFT COMPLAINTS FORM – WITHOUT FEE EXEMPTION OR
GUIDANCE NOTES

HIGH HEDGES: Complaint Form

Use this form to submit a complaint to the Council about a high hedge, under the High Hedges (Northern Ireland) Act 2011. It should be completed by the person making the complaint or their representative.

Before completing this form, please read the guidance notes sent with it and the leaflet 'High Hedges: complaining to the Council'. Please use BLOCK CAPITALS and black ink.

YOU MUST PAY A FEE WHEN YOU SEND IN THIS FORM. The current fee is [£].

The Council will rely on the information you provide so please make sure it is clear and accurate.

1. Attempts to resolve the complaint

Please describe what you have done to try to settle this matter. Give dates and say what the result was. Please provide copies of any letters that you mention.

1.1 Approached neighbour/hedge owner and asked to discuss problem

1.2 Asked neighbour/hedge owner to try mediation

1.3 Informed neighbour/hedge owner of intention to complain to Council

If you have not tried all the above steps, the Council might not proceed with your complaint.

1.4 Anything else

High Hedges Complaint Form

DRAFT COMPLAINTS FORM – WITHOUT FEE EXEMPTION OR
GUIDANCE NOTES

About the hedge

2.1 Is the hedge - or the portion that is causing problems –
made up of a line of 2 or more trees or shrubs? Yes ☐ No ☐

2.2 Is it mostly evergreen or semi-evergreen? Yes ☐ No ☐

2.3 Is it more than 2 metres above ground level? Yes ☐ No ☐

2.4 Even though there are gaps in the foliage or between
the trees, is the hedge still capable of obstructing light or
views? Yes ☐ No ☐

2.5 Is it growing on land owned by someone else? Yes ☐ No ☐

Who can complain
2.6 Is the complainant the owner or occupier (eg tenant)
of the property affected by the hedge? Yes ☐ No ☐

Please delete whichever does not apply

Owner/Occupier

Is the property residential? Yes ☐ No ☐

If you answered 'No' to any of the questions in this section, the criteria have not been met and so
the Council cannot consider your complaint.

3. Grounds of complaint

Please describe the problems actually experienced as a result of the hedge being too tall, and say how
serious they are. It will save time and help your case if you stick to the facts and provide all relevant
information to back up the points you are making.

To help the Council understand your situation, please provide a photo of the hedge and a plan or sketch of
both the site where the hedge is growing and the property it is affecting, with the hedge clearly marked on
it.

DRAFT COMPLAINTS FORM – WITHOUT FEE EXEMPTION OR
GUIDANCE NOTES

4. Previous complaints to the Council

4.1 Has a formal complaint been made to the Council before about this hedge? Yes ☐ No ☐

4.2 If you have ticked 'Yes', do you know the date and/or reference number of the Council's decision letter?

Date: Ref. No.

4.3 What has changed since the Council last looked at this?

If nothing has altered, the Council might not proceed with your complaint.

5. The Parties

5.1 Complainant's contact details

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Telephone Number	<input type="text"/>		
Mobile Telephone Number	<input type="text"/>		
Email Address	<input type="text"/>		

Is the complainant content for us to contact them by email, at the address provided? Yes ☐ No ☐

5.2 Address of the property affected by the hedge and name of the person living there, if different to 5.1

DRAFT COMPLAINTS FORM – WITHOUT FEE EXEMPTION OR
GUIDANCE NOTES

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Telephone Number	<input type="text"/>		
Mobile Telephone Number	<input type="text"/>		
Email Address	<input type="text"/>		

5.3 Contact details of Agent or other person acting on behalf of the complainant (if any)

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Telephone Number	<input type="text"/>		
Mobile Telephone Number	<input type="text"/>		
Email Address	<input type="text"/>		

Is the Agent content for us to contact them by email, at the address provided? Yes ☐ No ☐

5.4 Address of the site where the hedge is growing and name of person living there, if known

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Telephone Number	<input type="text"/>		
Mobile Telephone Number	<input type="text"/>		
Email Address	<input type="text"/>		

5.5 Name and address of the person who owns the property where the hedge is situated, if different to 5.4 and if known

DRAFT COMPLAINTS FORM – WITHOUT FEE EXEMPTION OR
GUIDANCE NOTES

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Telephone Number	<input type="text"/>		
Mobile Telephone Number	<input type="text"/>		
Email Address	<input type="text"/>		

6. Supporting documents

6.1 Have you enclosed the following (please tick box)

- | | |
|---|--------------------------|
| A photo of the hedge | <input type="checkbox"/> |
| A location plan of the hedge and surrounding properties | <input type="checkbox"/> |
| Copies of correspondence with your neighbour about the hedge | <input type="checkbox"/> |
| Copies of any other documents that you mention (please list separately) | <input type="checkbox"/> |

7. Sending the complaint

7.1 I confirm that I have completed as much of this form as I can and that, to the best of my knowledge, the information provided is accurate.

☐

7.2 I enclose the fee of [£].

☐

7.3 Post or Email this form and all enclosures to:

High Hedge Complaints
XXXXXXX Borough Council
XXXXXX Division
XXXXXXXXXX
XXXXXXXXXX

Or email it to:

7.4 Please also send a copy of this form to the people identified in Section 5.4 and 5.5

Tick the box to show you have done this

☐

DRAFT COMPLAINTS FORM – WITH FEE REDUCTIONS

HIGH HEDGES: Complaint Form

Use this form to submit a complaint to the Council about a high hedge, under the High Hedges (Northern Ireland) Act 2011. It should be completed by the person making the complaint or their representative.

Before completing this form, please read the guidance notes sent with it and the leaflet '*High Hedges: complaining to the Council*'. Please use BLOCK CAPITALS and black ink.

YOU MUST PAY A FEE WHEN YOU SEND IN THIS FORM. The current fee is [£].

No application fee is payable for those on one or more means tested benefits, which for this purpose are defined as follows:

- Income based Job Seeker's Allowance
- Housing benefit
- Income Support or guarantee credit

or any means tested benefit which replaces any of these.

Refunds:

- 75% of fee paid to be refunded if the complaint is withdrawn before any letters have been sent by the Council.
- 25% of fee to be refunded if the complaint is withdrawn within 28 days of despatch of initial letters by the Council.
- 10% of fee to be refunded if the complaint is withdrawn at any time after 28 days from despatch of initial letters and before any decision letter is sent.
- No refunds are offered after the decision letter has been sent.

The Council will rely on the information you provide so please make sure it is clear and accurate.

1. Attempts to resolve the complaint

Please describe what you have done to try to settle this matter. Give dates and say what the result was. Please provide copies of any letters that you mention.

1.1 Approached neighbour/hedge owner and asked to discuss problem

1.2 Asked neighbour/hedge owner to try mediation

High Hedges Complaints Form with Fee Reductions

DRAFT COMPLAINTS FORM – WITH FEE REDUCTIONS

1.3 Informed neighbour/hedge owner of intention to complain to Council

If you have not tried all the above steps, the Council might not proceed with your complaint.

1.4 Anything else

2. Criteria for making a complaint

About the hedge

2.1 Is the hedge - or the portion that is causing problems – made up of a line of 2 or more trees or shrubs? Yes ☐ No ☐

2.2 Is it mostly evergreen or semi-evergreen? Yes ☐ No ☐

2.3 Is it more than 2 metres above ground level? Yes ☐ No ☐

2.4 Even though there are gaps in the foliage or between the trees, is the hedge still capable of obstructing light or views? Yes ☐ No ☐

2.5 Is it growing on land owned by someone else? Yes ☐ No ☐

Who can complain
2.6 Is the complainant the owner or occupier (eg tenant) of the property affected by the hedge? Yes ☐ No ☐

Please delete whichever does not apply

Owner/Occupier

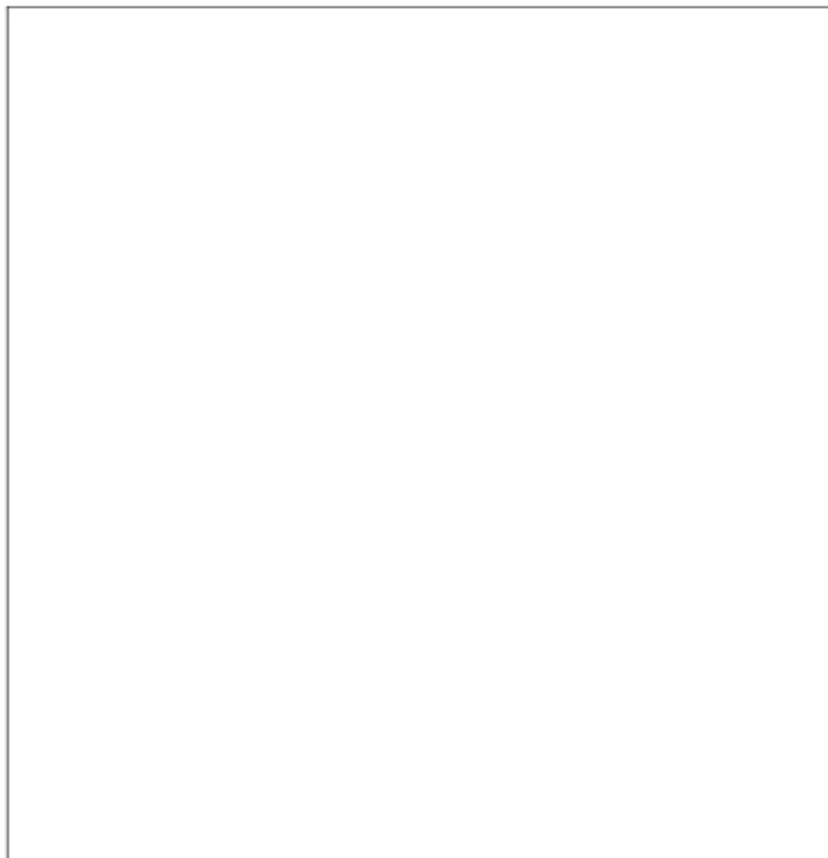
Is the property residential? Yes ☐ No ☐

If you answered 'No' to any of the questions in this section, the criteria have not been met and so the Council cannot consider your complaint.

DRAFT COMPLAINTS FORM – WITH FEE REDUCTIONS

3. Grounds of complaint

Please describe the problems actually experienced as a result of the hedge being too tall, and say how serious they are. It will save time and help your case if you stick to the facts and provide all relevant information to back up the points you are making.



To help the Council understand your situation, please provide a photo of the hedge and a plan or sketch of both the site where the hedge is growing and the property it is affecting, with the hedge clearly marked on it.

DRAFT COMPLAINTS FORM – WITH FEE REDUCTIONS

4. Previous complaints to the Council

4.1 Has a formal complaint been made to the Council before about this hedge? Yes ☐ No ☐

4.2 If you have ticked 'Yes', do you know the date and/or reference number of the Council's decision letter?

Date: Ref. No.

4.3 What has changed since the Council last looked at this?

If nothing has altered, the Council might not proceed with your complaint.

5. The Parties

5.1 Complainant's contact details

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Telephone Number	<input type="text"/>		
Mobile Telephone Number	<input type="text"/>		
Email Address	<input type="text"/>		

Is the complainant content for us to contact them by email, at the address provided? Yes ☐ No ☐

DRAFT COMPLAINTS FORM – WITH FEE REDUCTIONS

5.2 Address of the property affected by the hedge and name of the person living there, if different to 5.1

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Telephone Number	<input type="text"/>		
Mobile Telephone Number	<input type="text"/>		
Email Address	<input type="text"/>		

5.3 Contact details of Agent or other person acting on behalf of the complainant (if any)

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Telephone Number	<input type="text"/>		
Mobile Telephone Number	<input type="text"/>		
Email Address	<input type="text"/>		

Is the Agent content for us to contact them by email, at the address provided? Yes ☐ No ☐

5.4 Address of the site where the hedge is growing and name of person living there, if known

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Telephone Number	<input type="text"/>		
Mobile Telephone Number	<input type="text"/>		
Email Address	<input type="text"/>		

DRAFT COMPLAINTS FORM – WITH FEE REDUCTIONS

5.5 Name and address of the person who owns the property where the hedge is situated, if different to 5.4 and if known

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Telephone Number	<input type="text"/>		
Mobile Telephone Number	<input type="text"/>		
Email Address	<input type="text"/>		

6. Supporting documents

6.1 Have you enclosed the following (please tick box)

A photo of the hedge	<input type="checkbox"/>
A location plan of the hedge and surrounding properties	<input type="checkbox"/>
Copies of correspondence with your neighbour about the hedge	<input type="checkbox"/>
Copies of any other documents that you mention (please list separately)	<input type="checkbox"/>

7. Sending the complaint

7.1 I confirm that I have completed as much of this form as I can and that, to the best of my knowledge, the information provided is accurate.

☐

7.2 I enclose the fee of [£]: or

☐

I claim exemption from paying a fee

☐

Are you prepared to authorise the Council to use information it holds to verify your claim? Yes ☐ No ☐

If No, please attach documentary evidence that you receive one or more of the benefits specified on Page 1

Name

Date:

DRAFT COMPLAINTS FORM – WITH FEE REDUCTIONS

7.3 Post or Email this form and all enclosures to:

High Hedge Complaints
XXXXXXX Borough Council
XXXXXX Division
XXXXXXXXXXXX
XXXXXXXXXXXX

Or email it to:

7.4 Please also send a copy of this form to the people identified in Section 5.4 and 5.5

Tick the box to show you have done this

☐

DRAFT

DRAFT COMPLAINTS FORM – WITH FEE REDUCTIONS

HIGH HEDGES: GUIDANCE NOTES ON COMPLETING THE COMPLAINT FORM

General notes

These guidance notes are to help you fill in the form to make a complaint about a neighbouring high hedge. You should also read the leaflet 'High hedges: complaining to the Council'.

Consideration of your complaint will be delayed if you do not complete the form properly or do not provide the information requested.

If you are still unsure how to answer any of the questions, please contact High Hedge Enquiries on (028 9X) XXXXXX or email xxx@xxxxxxxxx.gov.uk.

You can obtain translations and large print versions of this guidance and the form through the Council.

1. Attempts to resolve the complaint

Please keep the descriptions brief but say how you made the approach (eg. face to face, phone, letter) and what the result was.

Example 1

- 12 March 2011 – phoned to ask if we could discuss hedge. Met on 19 March but we couldn't agree a solution;
- 15 April – mediators visited;
- 29 April – met neighbours and mediators. But still couldn't find an answer we were both happy with;
- 14 May – wrote to inform neighbour would be complaining to Council.

Example 2

- 12 March 2011 – wrote to ask if we could discuss hedge, 2 weeks later still no reply.
- 9 April – wrote to ask if would speak to mediator. 2 weeks later still no reply.
- 7 May – wrote to inform neighbour would be complaining to Council.

Example 3

- 12 March 2011 – saw neighbour in their garden and asked if we could discuss hedge. Neighbour came round on 19 March. Saw the effect of the hedge for themselves. Sympathetic but unwilling to reduce the hedge as much as we wanted;
- neighbours willing to try mediation but discovered that neighbour mediation not available in our area. We live too far from the nearest service;
- 23 April – saw neighbour again and told them that, if we couldn't agree a solution, we would make a formal complaint to Council. Left it for a couple of weeks then confirmed in writing that we would be going ahead with the complaint.

It is not necessary to send copies of all correspondence with your neighbour about the hedge- especially if the dispute is a long running one. You need only provide evidence of your latest attempts to settle it.

2. Criteria for making a complaint

Who can complain

Q2.6 You must be the owner or occupier of the property affected by a high hedge in order to make a formal complaint to the Council.

DRAFT COMPLAINTS FORM – WITH FEE REDUCTIONS

If you do not own the property (eg. because you are a tenant or a leaseholder), you can still make a complaint. But you should let the owner (eg. landlord or management company) know what you are doing.

Q2.7 The property does not have to be wholly residential but must include some living accommodation otherwise we cannot consider the complaint.

3. Grounds of complaint

It will help if you provide as much information as you can but keep it factual. Remember that a copy of this form will be sent to the person who owns the property where the hedge is growing, and to the person living there if they are different people.

Concentrate on the hedge and the disadvantages you experience because of its height.

We cannot consider problems that are not connected with the height of the hedge. For example, if the roots of the hedge are pushing up a path. Nor can we consider things that are not directly about the hedge in question. For example, that other people keep their hedges trimmed to a lower height; or that the worry is making you ill.

Please also provide a photo of the hedge and a plan showing the location of the hedge and surrounding properties.

When drawing your plan please make sure that you:

- Mark and name surrounding roads
- Sketch in buildings, including adjoining properties. Add house numbers or names.
- Mark clearly the position of the hedge and how far it extends.

If you are complaining about the hedge blocking light, please also show on your plan:

- Which way is north.
- The position of windows that are affected by the hedge (eg whether they are located on the front, side or rear of the house).
- Relevant measurements (eg size of garden, distance between the hedge and any windows affected).

All measurements must be in metres (m).

Please include copies of any professional reports that you may have had prepared and of any other documents that you want the Council to take into account.

4. Previous complaints to the Council

We only need to know about formal complaints, made under the High Hedges (Northern Ireland) Act 2010. You don't need to tell us about telephone calls or other informal contact with the Council about your hedge problems.

5. The parties

We need all these names and addresses because there are some documents that we are required, by law, to send to the owner and occupier of the land on which the hedge grows. These include our decision on the complaint.

Q5.1 Even if someone else is submitting the complaint on your behalf, it is important that we have the complainant's contact details.

DRAFT COMPLAINTS FORM – WITH FEE REDUCTIONS

Tick the 'Yes' box if you prefer to be contacted by e-mail. We cannot send documents to you electronically unless you agree.

Q5.2 You need to complete this section only if the complainant does not live in the property affected by the hedge. We need this information because we will have to get in touch with this person to arrange to visit the property so that we can see for ourselves the effect of the hedge.

Q5.3 Complete this section if you are a professional adviser, relative, friend or other representative.

You will be our main contact on all matters relating to this complaint. We will direct all queries and correspondence to you. Please bear this in mind.

If you tick the 'Yes' box, we will conduct all business relating to this complaint by e-mail. But we cannot send documents to you electronically unless you agree.

Q5.4 This will normally be the person you have talked to when you tried to agree a solution to your hedge problems.

If the site where the hedge is growing does not have a postal address, use the box to describe as clearly as possible where it is, eg. 'Land to rear of 12 to 18 High Street' or 'Park adjoining Main Road'.

We need this information because we will have to contact these people for their comments, and to arrange to visit the site where the hedge is growing.

Q5.5 If you are in any doubt about who owns the property where the hedge is situated, you can check with the Land Registers of Northern Ireland.

6. Supporting documents

Please make sure you have ticked all the relevant boxes.

If you have ticked the last box, please list these documents by date and title (eg. January 2011 – surveyor's report). This will help us to check that we have got everything.

If you are submitting this form by email but will be posting supporting documents to us separately, put a reference number or title on them (eg. hedge complaint, Joe Bloggs, 12 High Street, Anytown) so that we can match them up with your complaint.

7. Sending the complaint

You should make out your cheque to XXXXX Borough Council

NILGA Supplementary Evidence re High Hedges Bill

Evidence to the Environment Committee on the High Hedges Bill

DRAFT Supplementary information

Further to the local government oral evidence session on 30th September, the Environment Committee requested that NILGA provide supplementary evidence on the following:

- A. Information on Fees structure and civil cost recovery in the Private Tenancy Order
- B. Methodology which could be used in any fee structure
- C. Information from England on the review they were to carry out this year (2010 on the high hedges legislation)
- D. Indication of the volume of complaints Councils may receive in relation to this Bill

A. Private Tenancies Order

The Private Tenancies Order and subordinate legislation allows for mechanisms for councils to charge for services. (See Appendix 1 for background information)

-

- Article 26 of the order enables councils to charge for enforcement action as follows:

Power to require payment for enforcement action

26.—(1) The appropriate district council may require a person upon whom a notice of unfitness or a notice of disrepair has been served to make such reasonable payment as it considers appropriate in respect of the administrative and other expenses incurred by it in connection with serving the notice.

(2) The expenses are those incurred in—

- (a) determining whether to serve the notice,
- (b) identifying the works to be specified in the notice, and
- (c) serving the notice.

(3) The amount of the payment shall not exceed such amount as the Department may specify by order made subject to negative resolution. No maximum level is currently set.

(4) Where a court allows an appeal against a notice of unfitness or notice of disrepair, it may make such order as it thinks fit reducing, quashing or requiring reimbursement of any payment under this Article in respect of the notice.

(5) Nothing in Article 25 shall prejudice the power of a district council to require a payment under this Article.

As an example, the current charge made for service of a notice by Belfast City Council is £150, but this is currently under review.

-

- Articles 33 and 35 cover the submission of applications for inspections by landlords (Art 33) or tenants (Art 35). Under Article 36, the council is permitted to charge a fee, as set out in the Prescribed Fees and Charges Regulations (See Appendix 2), Fees are non-refundable

- The ability of councils to work in default, recoup expenses and to issue a property charge is covered in Article 25 of the Order, as follows:

Enforcement of notice of unfitness or notice of disrepair

25.—(1) If a notice of unfitness or notice of disrepair is not complied with within the appropriate period, the appropriate district council may itself do the work required to be done by the notice or, where the notice has been varied by the court on appeal, by the notice as so varied.

(2) In paragraph (1), "the appropriate period" has the meaning given in Article 24(2).

(3) Where the appropriate district council proposes to exercise its powers under paragraph (1), it may authorise a person to enter the dwelling-house in accordance with Article 27(2).

(4) Subject to paragraph (5), any expenses incurred by the appropriate district council under this Article, together with interest at the prescribed rate from the date when a demand for the expenses is served until payment, may be recovered by the council summarily as a civil debt from the person upon whom the notice was served.

(5) Where the appropriate district council claims to recover any expenses from a person as being the person upon whom the notice was served and that person proves that he—

(a) is receiving the rent merely as agent or trustee for some other person, and

(b) has not, and since the date of the service on him of the demand has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the council,

his liability shall be limited to the total amount of the money which he has, or has had, in his hands.

(6) Any expenses and interest due to the appropriate district council under this Article shall, until recovered, be deemed to be charged on and payable out of the estate of the person responsible in the land, in relation to which they have been incurred.

(7) For the purposes of paragraph (6)—

(a) where a notice of unfitness was served under Article 18(1) or a notice of disrepair was served under Article 19(1), the estate of the person responsible is the estate of the landlord and of any person deriving title from him; and

(b) where a notice of unfitness was served under Article 18(2) or a notice of disrepair was served under Article 19(2), the estate in the land of the person responsible is the estate of the owner of the building and of any person deriving title from him.

(8) The charge created by paragraph (6) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the appropriate district council by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the appropriate district council may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgages by deed accordingly.

(9) There shall be included among the matters required to be registered in the Statutory Charges Register any charge created under paragraph (6).

(10) An application for registration of such a charge shall be made by the appropriate district council within 2 months from the date when a demand is served under paragraph (4).

B. Fee Structure Methodology

As per Article 26 of the Private Tenancies Order, and the associated Prescribed Fees Regulations

C. English High Hedges Review

An update is currently being sought from Peter Annett in Department of Communities and Local Government. This information will be submitted to the Committee as soon as it becomes available.

D. Volume of Complaints

It is anticipated that after an initial rush of complaints, councils will experience 0-10 complaints a month, depending on the size of councils and the nature of the geography of the council (i.e. urban, suburban or rural).

We are aware that Belfast City Council has noted 800 unresolved complaints to date, and it is likely that a large volume of complaints will be experienced in the first few months of a change to legislation. The percentage of complaints that would be viewed as legitimate under the legislation is currently unknown.

Appendix 1 - Background Information

Private Tenancies (Northern Ireland) Order 2006

The Private Tenancies (Northern Ireland) Order 2006 came into effect on 1st April 2007 which provides a new structure for the private rented sector in Northern Ireland.

The new system rewards the efforts of landlords who wish to provide good quality housing for their tenants and remove restrictions which would hamper the development of good quality, privately rented housing. Protected tenants retain their security of tenure. The Private Tenancies Order has the potential to remedy housing concerns and some of the main features of the Order are:

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- New tenancies are defined according to their fitness for human habitation - an unfit tenancy will be subject to rent control until it is made fit.
- District Councils are responsible for inspecting tenancies for fitness and have been given new powers to ensure that unfitness and serious disrepair are addressed.
- Controlled rents are now based on a number of factors including:
 - the condition of the property; the equivalent Housing Executive rent for a similar dwelling; and the general level of rents in the area.
- Restricted and regulated tenancies will retain their protection. Existing tenants will have a tenancy for life but there will only be one further succession possible rather than two as at present.
- There are to be no more protected tenancies. On vacancy, all currently protected tenancies will be decontrolled. If the property is rented out subsequently, the rent is not subject to

control, as long as the property is fit. As a result, whether a tenancy is furnished or unfurnished no longer has any significance.

- As well as having rent books, new tenants have to be supplied with a written statement of the terms of their tenancy. Where a tenancy agreement fails to clarify repairing obligations, the law provides default terms.

Impact of Private Tenancies Order on Existing Registered Regulated Tenancies

The provisions of the Rent Order allowing for annual increases (Article 33) was repealed on 1st April 2007, therefore, the current registered rent for regulated tenancies will not change. For any increase to be applied after 1st April 2007, a landlord must apply to the Rent Officer for Northern Ireland under the Private Tenancies Order 2006.

The effect this new legislation has on the rents of registered tenancies

If a tenancy is currently registered as regulated and

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- was built after 1945, or
- had a regulated rent certificate issued within the past 10 years, or
- had a renovation grant paid by the Housing Executive within the past 10 years, or
- had a HMO (Housing in Multiple Occupation) grant paid within the past 10 years

the property will be assumed to meet the fitness standard, and no fitness inspection is required and the landlord can apply directly to the Rent Officer to set a new rent.

If a current regulated tenancy does not fall into one of the above categories the landlord can still apply direct to the Rent Officer but the new rent determined will be based on the assumption that the property does not meet the fitness standard. In order to maximise the rent that can be charged, the landlord will need to apply to their council for a fitness inspection.

Certificate of Fitness applications

Councils carry out inspections to check whether properties are fit to live in, under the Private Tenancies (Northern Ireland) Order 2006 (Article 33). This means landlords who own certain types of properties must apply to councils for a Certificate of Fitness.

Tenants can also apply for a fitness inspection in the same way.

Apply for a Certificate of Fitness online (landlords only)

It costs £50 to apply for a Certificate of Fitness inspection. This fee is non-refundable. The fee for a re-application for an inspection is £100.

The tenant occupying the property concerned will receive a copy of information provided in the application.

Applications must be completed within 28 days of the start date of a new tenancy. It is an offence not to return the application within this period.

Timescales and inspections

After an application for a Certificate of Fitness is made, it can take up to one month for councils to conduct an inspection of the property.

Checks are carried out with the Northern Ireland Housing Executive, and councils also write to the tenant to ask if they have any objections to the inspection.

The tenant must reply in writing and, if they don't reply (which is common) councils must hold the application for 28 days before passing it to an inspection officer. Councils will then try to arrange access to the property by ringing the tenant, landlord or agent.

If the property is deemed fit, following the inspection, councils will issue a Certificate of Fitness.

If the property is found to be unfit for people to live in, the applicant will be given a Notice of Refusal. This outlines the type of work needed to make the property fit for people to live in.

Once the repairs are completed, a reapplication can be made for another fitness inspection. If the property fails the inspection, the rent may be controlled by a rent officer from the start date of the tenancy.

Appendix 2

Statutory Rules of Northern Ireland 2007 No. 39

Landlord and Tenant

The Prescribed Fees and Charges Regulations (Northern Ireland) 2007

Made

25th January 2007

Coming into operation

1st April 2007

The Department for Social Development makes the following Regulations, in exercise of the powers conferred on it by Articles 25(4), 36(2) and 72(1) of The Private Tenancies (Northern Ireland) Order 2006(1):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as The Prescribed Fees and Charges Regulations (Northern Ireland) 2007 and shall come into operation on 1st April 2007.

(2) In these Regulations:—

"the Order" means The Private Tenancies (Northern Ireland) Order 2006.

Rate of Interest

2. Schedule 1 shall have effect for prescribing the rate of interest on expenses incurred under Article 25 of the Order.

Amount of fees

3. Schedule 2 shall have effect for prescribing the amount of fees payable in respect of an application under Articles 33 or 35 of the Order.

Regulation 2

SCHEDULE 1

(1) The rate of interest payable on expenses recoverable under Article 25(4) of the Order shall be one percentage point above LIBOR on a day-to-day basis.

(2) In this Schedule, LIBOR means the sterling three-month London interbank offered rate in force during the period specified in Article 25 (4) of the Order.

Regulation 3

SCHEDULE 2

Table 1

Inspection fees chargeable by a district council for the inspection of a dwelling house under Articles 33 or 35 of the Private Tenancies (Northern Ireland) Order 2006

Initial inspection fee	£50
Re-inspection fee	£100

EXPLANATORY NOTE

(This note is not part of the Regulations)

Article 36 (2) of The Private Tenancies (Northern Ireland) Order 2006 permits a district council to charge a fee to a landlord or tenant in respect of an application to conduct an inspection of a dwelling house, which is let or to be let under a private tenancy, in order to determine whether the dwelling house is fit for human habitation.

Article 25 of the Order permits a district council to charge the costs of carrying out works specified in a notice of unfitness or notice of disrepair to the person on whom the notice was served, together with interest at a rate to be prescribed by the Department.

These regulations specify the amount of fee which can be charged in respect of an application to have an inspection for fitness carried out. The rate of interest which can be charged on expenses incurred under Article 25 is also specified.

S.I. 2006/1459 (N.I. 10)

Departmental reply to Committee queries on High Hedges Bill, Clauses 2 and 3

Private Office Assembly Unit
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10-18 Adelaide Street
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BT2 8GB

Telephone: 028 9054 0855
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Our reference: CQ/206/10

Date: 26 November 2010

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Alex

I refer to your request for further information in relation to the High Hedges Bill.

Background

At its meeting on Thursday 18 November 2010 the Environment Committee asked that on clause 2, the Department reconsiders the inclusion of single evergreen/semi-evergreen trees. The Committee also asked that on clause 3, the Department explores the potential for an amendment to refund fees for upheld complaints.

Clause 2 of the High Hedges Bill defines a high hedge as a line of 2 or more evergreen or semi-evergreen trees or shrubs, rising to a height of more than 2 metres above ground level. Planning Service carried out a public consultation in 2005 on the problem of nuisance high hedges in Northern Ireland. It was in this document that the Clause 2 definition was first used and single trees and shrubs were specifically excluded from consideration as they were recognised as not constituting a hedge, whatever their size. When the Department, in 2010, went out to public consultation on the draft Bill it specifically stated "The proposed legislation focuses on problems associated with hedges and does not, and is not intended to, address problem issues relating to roots of trees or single trees". Approximately 100 responses to the Bill consultation were received and of these only 8% raised the issue of single trees. The Bill has therefore been designed specifically to provide a much needed means of redress for people who are suffering because of a high hedge on a neighbour's land.

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. The general public would need to be given the opportunity to consider the significant change to the definition being proposed, particularly in light of the potential Human Rights consequences associated with the personal enjoyment of their property. Such a consultation would require several months to carry out and, given the limited time left in this

Assembly, it is likely that there would be insufficient time for the Bill to complete its passage. For this reason the Department is not minded to support this proposed change to Clause 2.

Clause 3 of the High Hedges Bill outlines the complaints procedure including how councils deal with the matter of fees.

The Bill provides a discretionary power enabling District Councils to charge a complainant a discretionary fee. This is intended to allow councils to recover their costs and also to have the effect of deterring frivolous or malicious complaints. The fee would be a payment for a service provided to the complainant and not a penalty imposed on any party. The Council could decide to waive or reduce the level of fee to take account of the circumstances of the complainant.

The Department wishes to reassure the Committee that the Bill also makes provision for the fee to be refunded, at the discretion of the council, "in such circumstances and to such extent as it (the council) may determine". The Bill, as currently drafted does therefore allow a Council to refund the fee to a complainant so it satisfies the Committee's query in respect of that specific issue.

However, at the Environment Committee meeting some members asked that the Department explore the option of transferring the fee associated with a high hedge complaint (paid by the complainant) to the hedge owner. The Department is actively exploring the proposal put forward by the Committee and officials will be very happy to engage in further discussion on this at future Committee meetings. In working with the Committee on this issue, the Department fully understands the need to ensure that claimants do not feel unfairly penalised and the need to ensure that costs are apportioned fairly. At the same time, the Department will seek to ensure that any mechanism which is proposed is transparent and able to meet the needs of all parties.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey
DALO
[by e-mail]

Further Departmental Reply on Clause 3

DOE Private Office
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Our reference: CQ/206b/10

Date: 3 December 2010

Mrs Alex McGarel
Clerk to the Environment Committee

Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Alex

I refer to your request for further information in relation to the High Hedges Bill.

Background

Further to my letter of 26 November 2010, I advised that the Department was actively exploring the proposal put forward by the Committee that the hedge owner should bear the costs associated with a high hedge complaint.

Current Position

An options paper is attached at Annex A and officials will be very happy to engage in further discussion on this at future Committee meetings. In working with the Committee on this issue, the Department fully understands the need to ensure that complainants do not feel unfairly penalised and the need to ensure that costs are apportioned fairly. At the same time, the Department will seek to ensure that any mechanism which is proposed is transparent and able to meet the needs of all parties.

Whilst, given time, all these options are legislatively possible, options 1-3 are a significant departure from the policy that was publicly consulted upon and, to avoid the risk of legal and human rights challenges, the Department believes that option 4 provides the most appropriate mechanism for dealing with high hedge complaints, considering the Assembly time available.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey
DALO
[by e-mail]

2 December 2010

NB – hedge owner = owner/occupier of the neighbouring land

OPTION 1 – Transfer of fee/charge to the hedge owner

Clause 3(1)(b) of the High Hedges Bill gives local councils a discretionary power to charge a fee to a person making a high hedges complaint. This option would amend the High Hedges Bill to allow the council not only to refund the complainants fee, if the complaint was found to be justified, but to transfer this cost to the hedge owner. In effect the cost would follow the event.

Provision would probably have to be made to allow the council the discretion to alter the fee payable by the hedge owner, as is currently the case for the complainant. The council will have to publish the standard complaints fee and what discounts (if any) would be available. Such discounts will probably have to apply to both parties. Provision would also have to be made to ensure all owners and occupiers of the neighbouring land were held liable for the transferred fee. The transfer would occur when the remedial notice takes effect.

PRO

This addresses the concerns of the Environment Committee members who felt that, as a matter of natural justice, the successful party should not bear the cost of the complaint. It could also mean that the council may recover at least a proportion of their costs.

CON

The discretionary nature of the level of the fee could cause perceived unfairness, namely:

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- in the event that a complainant pays a reduced fee and the hedge owner is required to pay the full cost – the hedge owner could complain of unfavourable treatment in comparison with the complainant;
- in the event that the complainant pays the full fee and the hedge owner pays a reduced fee – the complainant could argue that they have suffered unfavourable treatment in comparison with the complainant.

The administrative complexities of the Bill are likely to increase greatly as under the current draft the only concern of the council is to receive the complainant's fee up-front.

Under this option, the council would be required to refund the fee to the complainant and try to recover the fee from the hedge owner. If the hedge owner was not willing to pay, the council would face the prospect of legal action to recover the fee and this would be likely to cost significantly more than the fee.

Also there could be considerable delays in the council recovering the fee as the hedge owner may appeal the remedial notice, the fee not being due until the notice becomes effective.

This option has not been fully explored with NILGA or any local council, but they have expressed concerns at the implications of increased administrative burden on front line services and the associated cost burden on councils and ratepayers.

Further administrative problems for the council arise due to the need to inform the hedge owner of the impending fee and also to have to put in place a system of assessing the financial circumstances of both parties.

Risk

The complex discretionary provision of the transfer of the fee is likely to increase the number of appeals and thus the administrative burden on the councils.

The Bill has been designed to resolve a neighbourhood dispute, where neither party is considered to have committed any offence. It was found that the Bill was needed because the problem could not be resolved using any of the available remedies, such as taking the matter to

the civil courts. However this option relies upon the judicial principle of the cost following the event, as would be expected if a civil case was taken. Council action is not a judicial process but an administrative one. Councils are ill-equipped to carry out a judicial investigation, into the relative fault and means of parties, of the type required in assessing and apportioning the costs to be borne by a plaintiff and defendant in a civil case.

The current draft of the Bill was based on English and Welsh legislative precedents. Concerns over allowing councils a discretion as to the amount of a complainant's fee were allayed by an understanding that the issue has seemingly not been raised (at least successfully) in those jurisdictions. There does not seem to be any precedent for this option which introduces a further discretion for councils to negotiate. Added to this, as the Department has only consulted the public on charging a complainant fee, there is a greater likelihood the Bill would be subject to legal challenge

The complainant pays a fee for a service from the council, the hedge owner would pay for the remedial actions including ongoing maintenance if the case was found against them and this becomes a statutory charges burden. This option would then also transfer the complaint fee to them. This increases the risk that the Bill could be challenged on human rights grounds due to the unfairness of disproportionate costs being placed on a hedge owner who may already be arguing that a remedial notice constitutes an unjustified interference with the right to the protection of property and respect for private life.

There could also be a challenge based on the premise that the remedial action could increase the value, or at least saleability, of the complainant's property whilst reducing that of the hedge owner's, yet the complainant is getting the fee they paid refunded and the hedge owner is being further penalised.

OPTION 2 - Administrative charge to the hedge owner for the creation and issuing of the Remedial Notice

The complainant would continue to pay a fee that would cover the council's costs associated with the validation of the complaint, the subsequent investigation and the decision on whether the hedge is a problem or not. This element of Option 2 reflects the current draft legislation.

The key difference relates to the charges to the hedge owner. Under the current Bill, the council can, in the event of non-compliance with a remedial notice, recover their costs associated with cutting and maintaining the hedge. Under Option 2, councils would have the power to extend the charges beyond these specific costs.

Following investigation and a decision on the complaint, the council would issue a decision notice advising the hedge owner that there is a problem and of its intention to issue a remedial notice. The council would also advise the hedge owner that they have to pay a standard fee associated with the creation, the issue of the remedial notice, the registering of the remedial notice as a statutory charge and that this fee will be due when the notice becomes effective.

The intention would be to make this fee discretionary, to allow the council to consider the financial circumstances of the hedge owner in the same way as it considers the circumstances of the complainant. To ensure all those responsible for the hedge pay, all owners and occupiers of the neighbouring land would be jointly and severally liable.

PRO

This approach takes the view that the hedge owner is responsible for the problem and therefore should bear some of the costs of the council. The apportioning of the administrative costs between the complainant and the hedge owner should mean that the burden on the ratepayer is much reduced and it should encourage both parties to resolve their problem, rather than involving the council.

CON

The administrative financial burden to the hedge owner would have to be regarded as a charge or penalty rather than a fee. This option would introduce a penalty on the hedge owner for growing a high hedge even though this is a perfectly legal activity. The complainant has elected to make a complaint and to pay any associated fee but the hedge owner has not elected to have a remedial notice issued. Councils will also have to take account of both the complainant's and the hedge owner's circumstances to ensure that any relief is correctly given.

The costs associated with the creation, issue and registering of the remedial notice may well be small compared with the council's costs leading up to this point, presumably covered by the complainant's fee. If the hedge owner complies with the remedial notice actions but fails to pay the charge to the council, this could result in costly legal action by the council to recover the payment.

The appeal procedure would now need to be altered to accommodate an appeal against paying both portions of the charge, the administration and remedial works costs, adding a burden to the work of Northern Ireland Valuation Tribunal (NIVT), of which they are currently unaware. Again it would be better if a standard charge was set.

The administrative complexities of the Bill will increase greatly for the council as an additional stage has been added. It needs to be clear who pays for what and how that is apportioned. The payment must be transparently related to the service provided because of the overlap between what is needed for the investigation and the creation of the remedial notice.

Risk

The Bill has been designed to resolve a neighbourhood dispute, where neither party is considered to have committed any offence. It was found that the Bill was needed because the problem could not be resolved using any of the available remedies, such as taking the matter to the civil courts. However this option relies upon the assumption that the hedge owner has deliberately caused the problem. In other words they grew the hedge to adversely affect the reasonable enjoyment of their neighbour's property. This is a questionable assumption and the Department could be legally challenged as to the validity of the new powers.

There is a real risk that this option would lead to significant additional costs being levied on the hedge owner – councils may routinely engage specialist arboriculturalists to advise on the content of a remedial notice to provide further protection against liability, as well as including the cost of registering the statutory charge and all administrative costs associated with the process. Given that the hedge owner has not committed an offence and has had the remedial notice imposed upon them this charge could be considered disproportionate and an infringement of their human rights, i.e. the peaceful enjoyment of their possessions.

The general public, NILGA, councils and NIVT have only been consulted about the complainant fee and are currently unaware of this proposal. This option is a novel element within the Bill and there is a risk that introducing a charge on the hedge owner for the issuing of a remedial notice

is a significant change in policy and therefore the Department is obliged to seek the views of the general public. Failure to do so could leave the Bill open to legal challenge.

This is likely to increase the risk of legal challenge if individual councils apply different methods of apportioning costs because of the overlap between what is needed for the investigation and the creation of the remedial notice.

OPTION 3 - No fee for making a complaint

At present under clause 3(1)(b) of the High Hedges Bill a council may charge a complainant a fee. Removal of this discretionary power from the council would mean that only the hedge owner would face possible non-compliance costs, for the actions specified in the remedial notice. The council and ultimately the ratepayers would bear the cost of the investigation, the issuing of the remedial notice and any enforcement administration.

PRO

This option would reflect current council nuisance complaints policy. A person complaining about a range of statutory nuisance matters does not get charged and removing this discretionary power from the councils would alleviate the concerns of elected representatives.

CON

Removing the power could open the floodgates for frivolous or vexatious complaints and is likely to significantly increase the burden on councils. The cost will be borne entirely by the ratepayers and yet only the complainant or the hedge owner is likely to benefit. Only 1% of the respondents to the public consultation suggested that there should be no fee for making a high hedge complaint.

Risk

Councils will be overburdened with frivolous and vexatious complaints causing unnecessary costs for the ratepayer, with resultant delays in genuine cases being resolved. Councils, finding that the administration costs of implementing the Bill are so high, may opt not to proceed, as the Bill does not oblige them to act (may rather than shall). Auditors may question the value for money benefit to the ratepayer.

OPTION 4 – Retain existing legislative provisions

The Bill, as currently drafted, provides councils with the discretion to levy a complaints fee. Councils can also refund the fee or reduce the fee, depending on the specific circumstances.

The Bill provides a means of redress where none currently exists.

It strikes a balance between the needs of two parties and avoids the council becoming involved in negotiating between the parties.

It does not add significantly to the administrative burden on already busy frontline council services, which would be associated with the fee transfer process, but offers a simple mechanism for dealing with high hedge complaints.

PRO

This is a tried and tested piece of legislation that has been operating successfully in England and Wales since 2005. It provides a solution where none currently exists.

As currently drafted, the Bill adds only a small administration burden to district council staff and ensures the councils normally receive an up-front payment for the service they provide.

This does not apply disproportionate costs to the hedge owner.

CON

This Option could be seen as failing to apply the full costs of problem hedges to the hedge owner.

Risk

This is the lowest risk option because it is based on a process of consultation and engagement with key stakeholders. Of the above Options, it runs the lowest risk of challenge either from individual complainants or hedge owners and from judicial review on the grounds that there was not adequate consultation on the proposals.

Conclusion

There are pros, cons and risks associated with each of the above Options. However, Options 1, 2 and 3 are all higher risk options because they add a new level of complexity to the provisions which have significant implications in terms of personal and property rights. As these options have not been consulted on, and differ from those used elsewhere in the UK, the likelihood of successful legal challenge is increased.

Draft Committee Amendments for Clauses 2 and 3

1. Extending bill to include single trees (evergreen or semi-evergreen)

Clause 2, page 2, line 28

At end insert-

'Tall trees

2A. This Act applies to single evergreen or semi-evergreen trees as it does to high hedges.'

2. Refund of Fee / charging fee to owner of neighbouring land.

Clause 3, page 3, line 29

Leave out from 'may' to the end of line 30 and insert 'shall be refunded where a remedial notice is issued under subsection (4) or section 7(2)(c).'

Clause 3, page 3, line 30

At end insert-

'() Where a council refunds a fee to a complainant under subsection (8), the council shall charge the fee determined under subsection (1)(b) to the owner of the neighbouring land.'

3. Requiring Departmental regulations to set a cap on fees

Clause 3, page 3, line 27

Leave out subsection (7) and insert-

'(7) Regulations made by the Department shall prescribe the maximum fee that can be charged by a council under subsection (1)(b).'