



**Northern Ireland  
Assembly**

# Research and Library Service Bill Paper

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**Suzie Cave**

## High Hedges

**NIAR 269-10**

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.



## 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:

- The scope of the Bill in relation to the fact that the provisions were not made to deal with nuisance roots and single 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<sup>1</sup>. 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<sup>2</sup>.

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<sup>3</sup>, 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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<sup>1</sup> [Anti-social Behaviour Act 2003](#)

<sup>2</sup> [Consultation on High Hedges and other nuisance vegetation](#)

<sup>3</sup> [Nuisance High Hedges Consultation – Summary of Findings 2005](#)

- 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:

- 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<sup>4</sup>, 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:

- 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.

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<sup>4</sup> [The proposed Northern Ireland High Hedges Bill](#)

## 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:

- 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*<sup>5</sup>), 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<sup>6</sup>:

- 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;

<sup>5</sup> [UK Parliament Research Paper \(2010\): Dealing with Nuisance Trees and Hedges by Edward White](#)

<sup>6</sup> 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>

- 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](#)<sup>7</sup>

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.<sup>8</sup>

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:

- 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.

<sup>7</sup> to view visit <http://freespace.virgin.net/clare.h/JHdgFees.htm>

<sup>8</sup> [High Hedges \(Fees\) \(Wales\) Legislation 2004](#)

Under the new legislation, the complainant will also appeal against:

- 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:

- 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 carry out 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<sup>9</sup>) came into force 1 June 2005. The regulations for Wales (The High Hedges (Appeals) (Wales) Regulations 2004<sup>10</sup>) 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<sup>11</sup>.

A number of documents have been produced offering guidance on making an appeal, for example:

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<sup>9</sup> [High Hedges \(Appeals\) \(England\) Regulations 2005](#)

<sup>10</sup> [High Hedges \(Appeals\) \(Wales\) Regulations 2004](#)

<sup>11</sup> Welsh Assembly - [High Hedges Complaints System: Guidance](#)

- [‘A Guide for Appellants \(High Hedges\)’<sup>12</sup>](#), produced by PINS in 2005
- The Welsh Assembly issued similar guidance in 2005- [High Hedges Complaints System: Guidance](#)<sup>13</sup>
- [‘High Hedges Complaints – Prevention and Cure’](#)<sup>14</sup>, 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](#)<sup>15</sup>)

## 4 Areas of Issue

According to the consultation<sup>16</sup>, 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:

- 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.

<sup>12</sup> [http://www.planninginspectorate.gov.uk/pins/environment/high\\_hedges/guide\\_appellants\\_high\\_hedgev3.doc](http://www.planninginspectorate.gov.uk/pins/environment/high_hedges/guide_appellants_high_hedgev3.doc)

<sup>13</sup> [http://www.webarchive.org.uk/wayback/archive/20060329120000/http://www.wales.gov.uk/subiplanning/content/highhedges/hi\\_ghhedges-guide-final-e.pdf](http://www.webarchive.org.uk/wayback/archive/20060329120000/http://www.wales.gov.uk/subiplanning/content/highhedges/hi_ghhedges-guide-final-e.pdf)

<sup>14</sup> <http://www.communities.gov.uk/documents/planningandbuilding/doc/613948.doc>

<sup>15</sup> [http://www.niassembly.gov.uk/legislation/primary/2009/niabill15\\_09\\_efm.htm](http://www.niassembly.gov.uk/legislation/primary/2009/niabill15_09_efm.htm)

<sup>16</sup> [Synopsis of Responses to the consultation on the High Hedges Bill](#)



Area of Issue	The Issue	Department's Response
Scope of the Bill	<p>Respondents expressed their concern on the potential harm caused to forests under the legislation, and suggested that forests should be exempt from the Bill.</p> <p>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.</p> <p>Other suggestions included hedges:</p> <ul style="list-style-type: none"> <li>• that obstruct views of a road;</li> <li>• that border non-domestic property; and</li> <li>• should be less than 2m.</li> </ul> <p>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.<sup>17</sup></p> <p>Some respondents requested explanation of 'barrier to light or access', and felt that the term 'or access' was a cause of confusion.</p>	<p>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.</p> <p>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.</p> <p>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.</p>
Fees	The majority of local government responses felt that paying a fee does not fall in line with their usual practices of addressing environmental	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

<sup>17</sup> See Ms Lo's speech [Official Assembly Report 10/05/10](#)

Area of Issue	The Issue	Department's Response
	<p>issues. They felt that the 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.<sup>18</sup></p> <p>The provision of leaving each council to determine the amount of a fee appears to be a</p>	<p>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.</p> <p>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 investigated<sup>21</sup>.</p> <p>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.</p> <p>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</p> <p>Therefore for all the above reasons, the Department does not propose to amend the Bill in relation to fees.</p>

<sup>18</sup> [Official Assembly Report 10/05/10](#)

<sup>19</sup> [Official Assembly Report 19/01/10](#)

<sup>20</sup> [Official Assembly Report 10/05/10](#)

<sup>21</sup> [Official Assembly Report 10/05/10](#)

Area of Issue	The Issue	Department's Response
	<p>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 approach<sup>19</sup>. 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 councils<sup>20</sup>. 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.</p>	
Guidance	<p>Several respondents requested clarity and guidance on different aspects of the proposed system:</p> <ul style="list-style-type: none"> <li>• guidance for complainants- for example, the Welsh Assembly issued similar guidance in 2005- <a href="#">High Hedges Complaints System: Guidance</a></li> <li>• guidance for councils-for example, in England '<a href="#">High Hedges Complaints – Prevention and Cure</a>', produced by Communities and Local Government (CLG). According to PINS, the CLG guidance is used by councils when making a decision.</li> </ul> <p>The Bill provides that individuals must initially try to find a resolution on their own. One of the members, Mr. Ross MLA, stresses that it is</p>	<p>The Department intends:</p> <ul style="list-style-type: none"> <li>• to produce guidance on making a complaint to the local council about a problem high hedge.</li> <li>• 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 href="#">A Guide for Appellants (High Hedges)</a>' produced by PINS in 2005.</li> </ul>

<sup>22</sup> [Official Assembly Report 10/05/10](#)

Area of Issue	The Issue	Department's Response
	<p>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.<sup>22</sup></p>	
Definitions	<p>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.</p>	<p>According to the Department, 'reasonable steps' to resolve a problem will take a variety of forms depending on the case, but may include:</p> <ul style="list-style-type: none"> <li>• Records of discussions or attempts at discussion between parties;</li> <li>• Copies of letters sent to the hedge owner by a complainant; or</li> <li>• Records of meetings attended by the parties</li> </ul> <p>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</p>

<sup>23</sup> [Official Assembly Report 10/05/10](#)

Area of Issue	The Issue	Department's Response
	<p>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.<sup>23</sup></p>	<p>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.</p>
Other Issues	<p>Many local government respondents expressed concern about:</p> <ul style="list-style-type: none"> <li>• Vacant land;</li> <li>• Provision of a mediation service;</li> <li>• Public awareness; and</li> <li>• Potential conflict with tree preservation orders and resources.</li> </ul> <p>Respondents were concerned that councils could be held liable if remedial action resulted in the</p>	<p>The Department states that land owners can be traced through Land and Property Services, and that in extreme circumstances 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 pro long the process if they are not happy with the detail provided in the guidance.</p> <p>The Department proposes to amend the Bill to protect councils from liability when they have acted in default and</p>

<sup>24</sup> [Official Assembly Report 10/05/10](#)

Area of Issue	The Issue	Department's Response
	<p>death of a hedge</p> <p>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.<sup>24</sup></p>	<p>carried out remedial action, provided they carry out their duty responsibly and seek appropriate professional advice.</p>
Appeals body	<p>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)<sup>25</sup></p> <p>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.<sup>26</sup></p>	<p>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.</p>

<sup>25</sup> 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/>

<sup>26</sup> [Official Assembly Report 10/05/10](#)

## 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<sup>27</sup>.

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.<sup>28</sup>

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<sup>27</sup> [Official Assembly Report 10/05/10](#)

<sup>28</sup> DoE, Partial Regulatory Impact Assessment