

**HIGH HEDGES ACT
(NORTHERN IRELAND) 2011 –
GUIDANCE FOR
COMPLAINANTS**

HOW CAN YOU DEAL WITH A HIGH HEDGE PROBLEM?

Guidance and Advice for COMPLAINANTS

The right hedge can be an enhancement to a garden but the wrong hedge may bring problems.

Use this guide to help you:

- **understand what can be done to resolve hedge problems informally;**
- **understand what a council's responsibilities are if a high hedge complaint is lodged with it under the High Hedges Act (Northern Ireland) 2011; and**
- **understand what is - and importantly what is not - covered by the legislation.**

This is intended to be a straightforward guide - not a statement of the law.

Introduction

You do not normally need permission to plant a hedge in your garden and there are no laws that limit the height you can grow your hedge. Nor is it an offence for a hedge of any particular height or species (variety) to be grown. Planning law¹ that governs the height of boundary walls and fences does not apply to hedges.

Problems can however occur if a hedge is allowed to grow unchecked, particularly without considering its effect on neighbours. If you have an issue about a neighbour's hedge, it is best to talk to them about it and to try and sort things out amicably.

Common law rights entitle neighbours to cut overhanging branches back to the boundary line (unless other legal restrictions, such as a tree preservation order, apply), but require you to offer the return of cut foliage to the owner. These common law rights do not extend to reducing the height of a hedge without the owner's agreement.

Responsible hedge owners² look after any hedge on their property and make sure it is not a nuisance to anyone else. This normally means trimming the hedge regularly, both its top and all sides and ensuring that it does not pose a danger to people or property. In addition, **Roads Service³ can require trees or hedges blocking sightlines to be cut back.**

The High Hedges Act (Northern Ireland) 2011 provides a legal basis for taking action over a problem high hedge. The legislation will help people in Northern Ireland who are adversely affected by high hedges bordering their domestic property. It deals with evergreen and semi-evergreen hedges that are more than 2-metres in height and affecting light reaching a neighbouring domestic property. It introduces a formal complaints system that will be operated by local councils, but it should only be used as a **last resort** as neighbours are encouraged to resolve the problem themselves.

The legislation will not mean that all hedges above 2-metres in height will need to be cut down. Nor will people need council permission to grow or retain a hedge along the boundary of their property. Councils will only intervene in circumstances where a complaint is made. Even then, each case will be determined on its own merits.

A complaint cannot be made about single trees or single shrubs, whatever their size. In addition, the High Hedges Act excludes areas of forest or woodland (greater than 0.2 hectares in area).

The Act **only** applies to problems experienced because the hedge is too tall. The problems that will be considered include obstruction of daylight and

¹ The Planning (General Development) Order (Northern Ireland) 1993

² The term 'hedge owner' means 'every owner and every occupier of the neighbouring land', a term used in the High Hedges Act (Northern Ireland) 2011

³ The Roads (Northern Ireland) Order 1993 (Article 50)

sunlight, jointly or as separate issues. Loss of view or satellite signals cannot be considered.

What can be done before resorting to a formal complaint?

Before deciding to make a formal complaint to your local council, you need to be sure that the hedge meets the criteria outlined in the High Hedges legislation.

The hedge must:

- act as a barrier to light;
- be formed wholly or predominantly by a line of 2 or more evergreen or semi-evergreen trees or shrubs; and
- rise to a height of more than 2 metres above ground level.

You also need to try to resolve the problem with your neighbour as the council may reject your complaint if you can't demonstrate that you have tried to sort out the problem yourself.

What is a High Hedge?

A high hedge is defined in the Act as so much of a barrier to light as is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than 2 metres above ground level. But, for these purposes, a line of evergreens or semi-evergreens is not to be regarded as forming a barrier to light if gaps significantly affect its overall effect as such a barrier at heights of more than 2 metres above ground level.

When considering whether a particular hedge can be the subject of a complaint under the Act, you should ask yourself the following series of questions:

- is the hedge - or the portion that is causing problems - made up of a line of 2 or more trees or shrubs;
- is it mostly evergreen or semi-evergreen;
- is it more than 2 metres above ground level;
- even though there are gaps in the foliage or between the trees, is the hedge still capable of obstructing light?

If the answer to all these questions is 'yes', then it is likely to be a high hedge for the purposes of the Act.

It is not necessary for the whole of the hedge to fall within the definition. If some parts of it qualify, they can be considered as individual hedges under the Act.

The following additional information might help when you are considering the answers to the questions set out above.

Line of two or more trees or shrubs

A complaint cannot be made under the Act about single trees or shrubs, whatever their size. A tree or shrub that has multiple stems, all growing from the same trunk or root plate, remains a single tree or shrub and so falls outside the scope of the Act. This is the position even though the multiple stems might result in a considerable spread.

The 2 or more trees or shrubs do not have to form a straight line. As long as they are roughly in line, they will be caught. A group of trees forming a woodland area of 0.2 hectares or more is specifically excluded from the Act. The area of 0.2 hectares only relates to an area of **woodland**. It **does not** relate to the area of a garden or the area occupied by a long single line of trees.

Mostly evergreen or semi-evergreen

The Act applies not only to Leyland cypress or conifers but also includes other evergreen trees or shrubs, such as laurel. It does not include climbing plants, such as ivy, or bamboo - which is classed as a grass.

The term semi-evergreen is not separately defined in the Act but normally means that the hedge retains some live foliage throughout the year. Depending on geographical location, the trees and shrubs may drop their leaves in cold winters but retain them in mild winters.

Deciduous trees lose all their living leaves during part of the year, thus Beech hedges are excluded. Although they may retain some foliage for most of the year, this is brown and dead.

Reference works such as Hillier Gardener's Guide to Trees and Shrubs or the RHS A-Z Encyclopedia of Garden Plants may help to clarify whether particular trees and shrubs are classed as evergreen, semi-evergreen or deciduous.

A hedge does not have to be only evergreen or semi-evergreen trees or shrubs. The Act applies to hedges that are predominantly evergreen or semi-evergreen. Whether a particular hedge is mostly evergreen or semi-evergreen is a matter of judgement. It does not necessarily require a set number or proportion of the trees or shrubs in the hedge to meet this description. Evergreen or semi-evergreen hedges that include some deciduous species will fall within the scope of the definition in the Act. Thus deciduous trees that are located within a predominantly evergreen hedge might be the subject of a complaint under the Act.

More than 2 metres above ground level

The 2 metres should be measured from the ground where the hedge is growing - that will usually be on the hedge owner's side. Even if the property

affected is on a lower (or higher) level than the land where the hedge is situated, the 2 metres should still be measured from the ground where the hedge is growing. This is in line with planning requirements for a wall.

For these purposes, ground level means the natural level of the ground where the hedge is situated. Normally, therefore, any measurements should be taken from the ground at the base of the trunks or stems of the trees or shrubs in the hedge. An exception might be where the hedge has been planted on a mound, or in a bed or other container that is raised above the ground. In such a case, the measurement should be from the natural ground rather than of the hedge alone.

In order for a complainant to make a complaint about a high hedge, it should be sufficient for them to estimate of the height of the hedge in order to determine whether or not the hedge falls under the scope of the Act. Neither the legislation nor the guidance suggests that the complainant should enter a neighbour's land to take any measurements – this will be the responsibility of the council if a formal complaint is made.

When a council is investigating a high hedge complaint, it will need to measure the height of the hedge on the complainant's side to assess the impact on the complainant's property. It will also need to confirm that the height of the hedge is more than 2-metres which is likely to necessitate measurements on the hedge owner's side, depending on the specific circumstances and also to ensure that any remedial action does not require the hedge to be reduced below 2 metres on the land where it is growing.

Barrier to light

The Act applies to hedges that, despite any gaps that occur above the 2 metre mark, act as a barrier to light. This is about the physical appearance of the trees and shrubs in question - and whether or not they form what we might commonly consider to be a hedge. Only what they look like above 2 metres counts. This is consistent with the fact that complaints cannot be brought against 2 metre high hedges. It effectively takes anything below this height outside the scope of the Act.

Whether a particular hedge meets this criterion is a matter of judgement, depending on its composition, form, growth habit, and past management. The key question is whether - even though there might be gaps in the foliage or between the trees or shrubs - the hedge is capable of obstructing light.

The trees or shrubs in the hedge may have been closely planted and become so entangled that they appear as a solid green wall. In such circumstances, the matter is straightforward: the hedge is evidently capable of blocking light. Other cases may be more difficult to judge. The trees or shrubs may be more widely spaced so their branches are not touching. Branches might have fallen off or been removed so the canopy is lifted. Or the growth might be straggly and foliage sparse. Such cases must be assessed individually, on their particular merits. But, if individual trees or shrubs are so widely spaced, or the gaps in the foliage are so extensive, that it is possible to see what lies

behind them, then the hedge might fall outside the Act.

If someone were to remove every other tree from their hedge, whether or not it would still be caught under the definition would depend on what the hedge looks like afterwards. If, despite any gaps, the hedge still acts as a barrier to light; and it comprises wholly or predominantly a line of 2 or more evergreen or semi-evergreen trees or shrubs; and it is over 2 metres high - then it would meet the definition of a high hedge. If separate parts of the hedge meet the definition, they could be considered as individual hedges.

Location of the Hedge

The Act says that the hedge must be on land that is owned by someone other than the complainant. Otherwise, there is no restriction on where the hedge is situated. It is the effect of the hedge on a domestic property that is important, rather than where it is located.

Although the Act describes where the hedge is growing as "neighbouring land", the use of the word neighbouring has no special significance here. In particular, the hedge does not have to be next door. It could, in theory, be several gardens down the road. Though, in practice, the farther away a hedge is, the less its impact and the less chance that a complaint will be successful. Nor does the hedge have to be wholly on a neighbour's property. It could extend over several properties.

In addition, the problem hedge does not have to be growing in someone else's garden. It could, for instance, be on parkland that backs onto a garden or yard, or on commercial premises.

Crown land

The Act applies to Crown land. This means that Councils are able to investigate and determine complaints about high hedges on land owned by the Crown. For example, a hedge on land owned by a Government Department might be adversely affecting neighbouring domestic property. The Crown itself is not liable to prosecution under the Act, though its employees might be.

Affected Property

You can bring a complaint under the Act if a domestic property is affected. The Act defines domestic property as a dwelling or any associated garden or yard. And it defines dwelling as any building or part of a building occupied, or intended to be occupied, as a separate dwelling.

This would exclude properties that might be in a residential area but wholly occupied by, say, a dental practice or other commercial use.

A complaint could not be brought under the Act if a hedge was affecting a garage, barn, shed or other outbuilding that might be used for storage or for purposes other than as living accommodation.

Where a property contains a mix of domestic and commercial uses, the Act would apply to protect the living quarters from the effects of a neighbouring high hedge.

Sometimes the division between domestic and commercial elements will be clear, e.g. the doctor's surgery that operates out of an extension to a home, or the flat above a shop or pub. In such cases, a complaint could be brought under the Act only if the doctor's home or the flat over the shop or pub were adversely affected.

Where the boundaries between the business and living quarters are more blurred, the question of whether or not a complaint may be brought under the legislation will turn on the facts of the particular case.

A garden or yard does not have to be attached to the dwelling, as long as it is linked - legally rather than physically - with a domestic property e.g. a split property with a garden on the other side of a road.

Reasonable attempts to resolve the problem

Before you contact your neighbour, be clear in your own mind about what you think the problem is, how it affects you and what you want done. When arranging a time to discuss the problem with the hedge-owner, allow them some time to think about your concerns. It's better to speak face-to-face rather than just pushing a note through the door. You could try inviting them to see the hedge from your side – it may help them to understand the problem. You should keep a record of these discussions as this will form part of the evidence that you will need to provide to the council if you need to make a formal complaint.

Write to the hedge-owner

If you decide to write to the hedge-owner, think carefully about what you write – you may like to include a description of the problems caused by the hedge and how it affects you; don't be rude or abusive. Put yourself in the hedge-owner's position and think how you would feel if you received the letter; write or type the letter neatly – a scrappy note pushed through the door suggests that you don't really care. Again, you should keep records of any correspondence.

Mediation

If the hedge-owner refuses to either talk or correspond with you, you may wish to consider the use of mediation. You could ask a community representative or a mutual acquaintance to intervene or alternatively, you can ask for the help of an independent mediator, although there may be a cost associated with this. The mediator's job is not to make a decision but to help the people concerned to understand each other's point of view, without apportioning blame. Annex A provides further information on mediation services.

You will need to keep a record of your attempts to resolve the issue because in the event of you subsequently having to lodge a formal complaint with the council, you will be required to provide evidence of having tried unsuccessfully to resolve the matter with your neighbour.

Who can make a complaint?

You can bring a complaint to the council if a hedge is adversely affecting the reasonable enjoyment of your property due acting as a barrier to light. Grounds of complaint must, therefore, relate to the impact of the hedge on your property, i.e. home and garden (see paragraph – Affected Property – Page 8).

The reference to "reasonable" enjoyment of the property is significant. It affects the way that councils will determine complaints. It requires them to:

- Assess the impact of the hedge, acting as a barrier to light, on the enjoyment that a person might expect from their home and garden, thereby introducing a degree of objectivity to the decision-making process. This may differ from the complainant's expectations. For example, the complainant might attach particular importance and weight to the loss of winter sunlight. The council, however, will have regard to what is a reasonable amount of sunlight for people to get in their property at this time of year. It will also take into account the fact that the effect lasts for a limited time;
- Consider what is reasonable in the circumstances. This means they must take account of all relevant factors, including the opinions of the complainant and hedge owner and the contribution that the hedge makes to the wider amenity of the area. They will not look solely at the complainant's concerns. They must look at each case on its particular merits. A problem that leads to the issue of a remedial notice in one complaint might not necessarily produce the same outcome in another case - because of the different circumstances.

Potential complainants should have regard to these points in framing their grounds of complaint and substantiating their case. You must be able to demonstrate that you have tried unsuccessfully to resolve the problem with your neighbour. If there is insufficient evidence that you have taken all reasonable steps to resolve the problem, the council may reject your complaint. It may also reject your complaint if it believes that it is frivolous (not serious) or vexatious (intended to harass).

Owner/Occupier Responsibility

A complaint can be made by the owner or occupier of the affected property. Where there is both an owner and an occupier (e.g. landlord and tenant), each is entitled to complain to the council, although only one complaint is required to start the formal council process.

You do not have to live at the address for a set period before you can make a

complaint, although it is unlikely that you would be in a position to complain to the council shortly after occupying or taking ownership of a property since you would need to have some experience of the adverse effects of the high hedge and to have attempted to arrive at a solution with your neighbour.

Although the Act does not require an occupier (e.g. tenant) to get permission from the owner of their property before making a complaint, this could be a condition in the tenancy agreement. You should, therefore, check the terms of any such agreement before getting in touch with the council.

Even if there is no requirement to obtain the property owner's consent, it is good practice for the occupier to inform them before a complaint is submitted to the council. This is important as the owner may have already complained. This is particularly important if someone is occupying a property for only a short time - especially where the owner is temporarily absent and intends to return to the property.

There is provision for the owner of an empty property to bring a complaint to a council. They might, for example, have moved out but be unable to sell the house because of the impact of the high hedge.

Making a formal Complaint

If you feel that you have made every effort to resolve the problem, without any success, you may wish to consider making a formal complaint to your local council. **You will be required to demonstrate the steps that you have taken.**

You must contact your local council to obtain a High Hedge Complaints Form and to find out how much you will be required to pay to have your complaint investigated.

You should complete all parts of the High Hedge Complaint Form, available from your local council, and return it with the appropriate fee. The fee to make complaints will be determined by your local council. The complainant pays for a service provided by the council and the fee is justified on the grounds of recovering the council's costs. But you will get a refund if the remedial notice issued by the council takes effect.

You must provide as much supporting information as possible, as your local council will require evidence that you have tried to solve the problem before it can investigate your complaint.

In the case of vacant land, you should take reasonable steps to identify the owner of the land and these steps should be recorded on the complaints form before it is submitted to the council. Land and Property Services should be contacted to find out if the land is registered. Companies House may be able to provide information on land owned by a business. In exceptional circumstances, ownerless property, under common law, passes to the Crown. The Treasury Solicitor, on behalf of the Crown, administers the estates of

people who die intestate or without known kin and collects the assets of dissolved companies and failed trusts. Further information is on their website at www.bonavacantia.gov.uk. As a general rule, the Treasury Solicitor does not undertake any management responsibilities in respect of properties that it holds.

If you need help to complete the form, you could contact your local Citizens Advice Bureau or other community support service. Your local council cannot help you to complete the form.

A copy of the Complaint Form should be sent to the Hedge Owner/Occupier at the same time it is submitted to the council.

Fees

Complaints fee

Local councils can charge a fee for administering a high hedge complaint. The maximum fee that can be charged is specified in the High Hedges (Fee) Regulations (Northern Ireland) 2012. Your complaint must be accompanied by the appropriate fee and you should contact your council to find out what this fee is.

Refund of fees

If a council investigates your complaint, issues a remedial notice requiring action to deal with the height of the hedge and that remedial notice then takes effect (after any appeals have been decided), the council will refund the fee that you paid.

Fee transfer

When a remedial notice takes effect i.e. after any appeals have been determined and the council has refunded your fee, the council can then levy a fee on the 'hedge owner' for the investigation and administration costs arising as a result of a complaint under the High Hedges Act. The fee transfer mechanism is laid out in the High Hedges (Fee Transfer) Regulations (Northern Ireland) 2012.

What can the council do?

The role of the council is to act as an independent and impartial third party. It will **not** negotiate or mediate but will adjudicate on whether the hedge, by forming a barrier to light, is adversely affecting the reasonable enjoyment of your property. In doing so, it will take account of all views and relevant factors - including the hedge-owner's amenity and that of the wider neighbourhood. Each case will be assessed on its particular merits.

The council will not deal with complaints made about roots of trees, single trees, woodlands 0.2 hectares or more in area or deciduous hedges under this legislation. **The council will consider whether or not the hedge meets the criteria of the High Hedges Act.**

If the council decides to investigate the complaint it will write to everyone who owns and occupies the land where the hedge is situated, notifying them formally that it is considering a complaint about their hedge. As you should have sent them a copy of the complaint form at the same time as the complaint was submitted to the council, its approach should not come as a surprise.

After the exchange of representations has been completed, the council should normally arrange to visit the site. This enables the officer dealing with the case to see the hedge and surroundings at first hand, so that the written information and evidence already provided can be considered properly. The purpose of the visit is not to facilitate mediation or negotiation between the people in dispute, and so there should be no discussion of the merits of the complaint.

Where a visit is required, the council must give at least 24 hours notice of the intended entry to all occupiers of the land and should be prepared to produce - if asked - evidence of authority to enter the land in question.

If it thinks it is justified, the council may issue a remedial notice requiring the hedge owner to remedy the problem by, for example, reducing the height of the hedge and maintaining it at the lower level. The notice is binding on the owner or occupier of the land where the hedge is situated.

The remedial notice will include the following information:

- a description of the hedge it relates to and where it is situated;
- a statement that a complaint has been made to the council about the hedge and that the council has decided that the height of the hedge is adversely affecting the complainant's reasonable enjoyment of their property;
- the property affected by the hedge (full postal address and any local 'town-land', if applicable);
- what action must be taken in relation to the hedge in order to remedy the adverse effect and, if necessary, to prevent it recurring ("initial action") and by when ("the compliance period");
- further action, if any, that is required to prevent longer-term recurrence of the adverse effect ("preventative action");
- the date the notice takes effect ("the operative date"); and
- the consequences of failure to comply with the requirements of the

notice.

The council can only require works to the hedge that address any problem it is causing and cannot require the hedge to be removed. The council may also reject your complaint if it feels that the hedge falls outside the scope of the legislation.

If a council decides to issue a remedial notice and this notice takes effect (after any appeals have been processed) you will have your complaints fee refunded (if the council charged you a fee for investigating the complaint).

The council will provide you with a copy of all the papers relating to the case, including the decision notice and remedial notice.

Legal and environmental factors to be considered when a council is assessing a complaint

When deciding the contents of a remedial notice, the council must consider any relevant legal or environmental issues:

Protected trees

When considering a high hedge complaint, the council will need to know if any trees that form part of the hedge are protected, either by a tree preservation order or because they are in a conservation area. The Local Planning Office⁴ must normally give consent before any work can be carried out on protected trees. Further advice on assessing and weighing the issues is given in the Planning Information Leaflet 4: Tree Preservation Orders⁵.

Planning conditions

Some hedges must be retained under the terms of a condition attached to a planning permission. Planning conditions can be removed or varied only by making an application under section 28 of the Planning (Northern Ireland) Order 1991.

Historic, wildlife and landscape value

Councils must also take account of other factors such as:

- whether the hedge is part of or within the boundaries of a listed building, registered park or garden or other site of archaeological or historic importance and the effect that any removal may have

⁴ This responsibility will pass to local councils when the relevant parts of the Planning Act (Northern Ireland) 2011 are commenced

⁵ For further information see

www.planningni.gov.uk/index/advice/advice_leaflets/leaflet04.htm

on the said site;

- whether it has historic associations or contains veteran trees;
- whether it is situated in an Area of Outstanding Natural Beauty, or forms an important link with other landscape features;
- whether it is within a designated nature conservation site such as an Area of Special Scientific Interest⁶;
- whether any protected birds, animals or plants are present in the hedge⁷ and how they would be affected by any works, having regard not only to relevant legislation but also to local Biodiversity Action Plan policies;
- whether appropriate advice has been taken to ensure that the proposed remedial action will not result in the hedge dying; or
- the potentially seasonal nature of the work since hedge cutting should be avoided during the bird nesting season (March – August) if birds are nesting in the hedge.

Covenants

Some properties have legal covenants that stipulate the size or type of hedge that can be grown. They might, for example, require that a hedge is kept tall in order to provide a screen or shelter. These are private rights or restrictions which are normally enforceable through the civil courts.

The terms of a covenant could, nevertheless, be relevant to a complaint, though they would not necessarily be decisive: it is possible that other factors, including the wider public interest, could have greater weight and importance. How long ago the restriction was introduced, its original purpose and whether circumstances remain the same could be material in considering the continuing relevance of any covenant.

Farm hedges

Hedgerows are a characteristic feature of the landscape and many form field boundaries which are valuable for wildlife, attractive in the landscape and are an important part of our heritage. If a problem hedge is on farm land which may be subject to Cross-Compliance requirements (aimed at protecting nesting birds and securing a supply of food for a range of wildlife), the council should discuss the matter with countryside management staff at the local DARD office before deciding the contents of a remedial notice, particularly in relation to the timescale within which the remedial works should be completed.

⁶ See the Environment (Northern Ireland) Order 2002

⁷ See the Wildlife and Natural Environment Act (Northern Ireland) 2011, the Conservation (Natural Habitats etc) Regulations (Northern Ireland) 1995 and the Wildlife (NI) Order 1985

How do I appeal against the council's decision?

You can appeal against a council's decision to the Northern Ireland Valuation Tribunal. Specific guidance on the appeals process can be found in the High Hedges Act (Northern Ireland) 2011 – Guide to Appeals.

Any appeal should be made on the High Hedges Appeals Form (available from the Northern Ireland Valuation Tribunal) and should be accompanied by the appropriate fee. Before you appeal, you should consider carefully the reasons for the council's decision.

If you decide to appeal, the Northern Ireland Valuation Tribunal will review the case file with all relevant documentation and may also visit the site to view the hedge and assess its impact.

There is no specific right of appeal against a council's decision that a complaint is invalid. If you consider that the council has not applied the legislation correctly, you can refer the matter to the council's own complaints procedures or to the Northern Ireland Ombudsman. It is possible in certain circumstances to make an application to the High Court for a judicial review. Such a review is about whether the council has applied the law properly by adhering to the proper procedures.

Annex A

Citizens Advice Bureaux give free, confidential, impartial and independent advice on a range of subjects and may be able to put you in touch with their local community mediation service or help you in your dealings with the hedge-owner. They also run an online advice guide containing up-to-date and practical information, at www.adviceguide.org.uk. You can locate your nearest Citizens Advice Bureau through this site, as well as through the local telephone directory.

Further information about local community mediation services can be found on the **Mediation UK** website at www.mediationuk.org.uk.

The **Directory of UK Mediation** on the ADRNow website at www.adrnow.org.uk can also help you to find a mediator in your area.

Mediation Northern Ireland can put you in touch with a trained mediator in your area:

e-mail: info@mediationnorthernireland.org,

website: www.mediationnorthernireland.org