

THE HIGH HEDGES ACT (NORTHERN IRELAND) 2011

Q&A BRIEFING

Q. What will the Act do?

- A. The High Hedges Act (Northern Ireland) 2011 will give district councils certain powers to deal with complaints about **high hedges** which are having an adverse effect on a neighbour's reasonable enjoyment of their domestic property through acting as a barrier to light.

The Act comes into operation on 31 March 2012.

Q. What is a High Hedge?

- A. A high hedge is a line of two or more evergreen or semi-evergreen trees or shrubs that are more than two metres tall and are acting as a barrier to light.

The hedge can contain some deciduous trees or shrubs provided it is predominantly evergreen or semi-evergreen.

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

A semi-evergreen hedge normally retains some live foliage throughout the year. However depending on geographical location, during a very cold winter a semi-evergreen hedge may lose all its living foliage, as happened to many privet hedges during the winter of 2010-2011.

Q. What does the legislation not apply to?

- A. No single trees of any species, including conifers, are covered by this legislation. A tree or shrub that has multiple stems, all growing from the same trunk or root plate, remains a single plant and so falls outside the scope of the Act.

A group of trees forming a woodland 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 an area occupied by a long single line of trees.

Non-evergreen hedges are also not covered by this legislation.

The impact or other effects caused by the roots of trees or shrubs, dangerous trees, interference with television signals, leaf fall or litter is not covered by the Act.

Q. Who can complain?

- A. Only the owner or occupier of a domestic property.

Q. What High Hedges can be complained about?

- A. Any High Hedge, situated on another property, which is having an adverse effect on the reasonable enjoyment of a domestic property through acting as a barrier to light. The hedge can be owned by anyone, including a private individual, a company, a local authority, a housing association, a government department or the Crown. The problem hedge does not have to be immediately adjacent to the boundary of the affected property; it may be some distance away. However the further away the hedge is the less impact it will have as a barrier to light.

Q. Is there a legal height for a hedge?

- A. No, a hedge may be any height - there is no restriction. However the Act applies to evergreen and semi-evergreen hedges over 2 metres in height that are acting as a barrier to light. This does **not** mean that all hedges must be cut to 2 metres tall. It is not illegal to plant or grow a hedge to any height.

Q. What should I do about a hedge that is causing problems to my property?

- A. Under common law rights you are entitled to cut overhanging branches back to your boundary provided the cut material is offered back to the owner of the tree, shrub or hedge and there are no other legal restrictions, such as a tree preservation order, applying. The hedge owner is not obliged to take the cuttings or remove them or pay for their removal.

If the problem hedge is acting as a barrier to light then the first thing you need to do is contact the 'hedge owner' and try to agree measures to resolve the matter. It is important that you keep a record of your negotiations with the 'hedge owner', because if you subsequently decide, as a last resort, that you need to complain to your local council you will have to prove that you have taken all other reasonable steps to resolve the matter.

If you cannot get the 'hedge owner' to reasonably agree to remedy the problem you may consider complaining to your local council.

Q. How do I make a complaint?

- A. Contact the council whose area contains the land on which the hedge is situated as they will be the authority who will deal with the complaint.

The council will supply you with an appropriate form for making a complaint. It is very important for you to complete this form fully and honestly, as the council will use this to judge the validity of your complaint and will be limited to investigating only what is specified as the problem.

You will need to provide the council with evidence of the reasonable steps you took to resolve the problem before making a complaint.

The council may charge you a fee for making the complaint.

Q. What does it cost to make a complaint?

- A. The legislation allows councils the discretion to set the fees up to the prescribed maximum of £360. It is for individual councils to set their fee structure and they may decide in certain circumstances to charge no fee or a reduced fee to take account of an individual's ability to pay.

If the council finds that the complaint is justified and issues a remedial notice they will refund the complainant's fee when the notice becomes effective.

Q. Is the Council obliged to accept a complaint?

- A. No. the council will not accept the complaint if it considers that the complainant has not taken all reasonable steps to resolve the problem with their neighbour, or if they believe the complaint to be frivolous or vexatious. Please remember that a complaint to a council should be a last resort after all other attempts to resolve the problem have failed.

The council also does not have to accept the complaint if the complainant has not correctly completed the form or has not paid the correct fee.

There is no appeal against the decision of the council to reject a complaint.

Q. If the council accepts the complaint as valid, what happens next?

- A. The council will investigate the complaint and decide if it is justified. Only the high hedge or hedges specified on the complaint form will be investigated. The investigation will include a site visit, this may involve both properties, and the council will decide whether the height of the high hedge, acting as a barrier to light, is adversely affecting the complainant's reasonable enjoyment of their property.

In reaching a decision the council will consider any relevant legal or environmental issues, such as Tree Preservation Orders; Planning Conditions; Built Heritage; Natural Heritage; and Hedges situated on farmland.

Q. If the council decides that the hedge is too high, what happens next?

- A. The Council will advise the hedge owner what is required and if necessary issue a "remedial notice", specifying, initial action to be taken by them; any preventative action to be taken and the penalties for failing to comply with the notice. The initial action is the action to be taken to reduce all or part of the hedge to the height calculated to be reasonable. The preventative action is the action deemed necessary to maintain the hedge at or below the height calculated to be reasonable. This notice is a statutory charge on the property, even if the property changes ownership.

Q. What if I disagree with the council decision, is there anything I can do?

A. If you disagree with the council's decision, you may be able to appeal to the Northern Ireland Valuation Tribunal. You should ask your council for a copy of the Guide to Appeals.

Q. What happens if my neighbour complains about my hedge?

A. If your neighbour approaches you about the height of your hedge, you should listen to their concerns and try to reach an amicable agreement. It is also advisable to read the guidance for hedge owners and the technical guidance available from your council.

If your neighbour makes a formal complaint to the local council and the council decides that action should be taken, you may have to pay a fee of up to £360 to the council as well as having to reduce the height of the hedge. In addition, the remedial notice issued by the council will be registered as a statutory charge on your land which means that prospective future buyers will be aware of the high hedge problem. If you disagree with the council's decision, you may be able to appeal to the Northern Ireland Valuation Tribunal. You should ask your council for a copy of the Guide to Appeals.