



## Dealing with nuisance trees and hedges

Standard Note: SN/SC/2999

Last updated: July 29 2005

Author: Edward White  
Science and Environment

**This information is provided to Members of Parliament in the performance of their parliamentary duties, and may not fully address the specific circumstances of any particular individual. It should not be relied upon by either Members or others as legal or professional advice, or a substitute for it. If specific advice is needed, a suitably qualified professional should be consulted.**

---

This note sets out the options available to homeowners to deal with nuisance trees and hedges. It includes details of the recent legislation to deal with high hedges.

### Contents

A.	High Hedges	2
1.	Consultation	2
2.	Fees	4
3.	Complaints to Local Authorities about High Hedges	5
a.	What are the grounds for complaint?	5
b.	Investigating a complaint	5
c.	Remedial Notices	6
d.	Enforcement Action	6
e.	Appeals	7
B.	Common law remedies for nuisance trees	7
1.	Damage by trees – Law Lords Ruling	8
2.	Right to light	8

## A. High Hedges

A procedure for dealing with complaints from home owners about high hedges was introduced in the *Anti-Social Behaviour Act 2003* (Part 8). These provisions are the same as included in Stephen Pound's *High Hedges (No 2) Bill* which fell in 2003. Library Standard Note SN/SC/959 provides the history of the various bills that sought to introduce similar provisions.

The provisions create a new procedure for dealing with complaints from owners or occupiers of domestic properties about high hedges, to be administered by local authorities in England and Wales. This complaints procedure is expected to be used as a last resort when people have tried and failed to solve their hedge problems by negotiation with their neighbours. If they have not done so their complaint can be rejected.

### 1. Consultation

The relevant section of the Act (Part 8) was due come into force on 1 October 2004 in England. The ODPM launched a public consultation on Part 8 on 29 March 2004. The Government sought views on draft regulations covering certain procedural details such as the fees that authorities should charge for this service and how appeals against their decisions should be dealt with. Views were also sought on how authorities should assess whether a hedge is having an adverse affect on a neighbour's amenity. Consultation documentation is available on the Office of the Deputy Prime Minister's website at:

[http://www.odpm.gov.uk/stellent/groups/odpm\\_urbanpolicy/documents/downloadable/odpm\\_urbpol\\_028044.pdf](http://www.odpm.gov.uk/stellent/groups/odpm_urbanpolicy/documents/downloadable/odpm_urbpol_028044.pdf)

The closing date for responses was 30 June 2004. Responses to the consultation were published in the Regulatory Impact Assesment of the legislation published in March 2005:

High Hedges - Implementing Part 8 of the Anti-social Behaviour Act 2003 (PDF 265 Kb)

The ODPM took longer to finalise the Regulations and guidance than expected. It was not until March 2005 that the ODPM were able to announce an implementation date of 1 June 2005.

**The Parliamentary Under-Secretary of State, Office of the Deputy Prime Minister (Phil Hope):** I am today announcing that we will be commencing the remainder of part 8 of the Anti-social Behaviour Act 2003 in England on 1 June. From this date, local authorities will be able to deal with complaints about high hedges that are having an adverse effect on a neighbour's amenity. Alongside the commencement order, we have laid regulations specifying the grounds on which appeals can be brought against local authority decisions under the legislation, and setting out how such appeals will be handled. The appeals procedure has been streamlined in the light of responses to the public consultation held last year.

Consultation comments have also led us to decide that we should not exercise our power to set a ceiling on what local authorities can charge for dealing with high hedges complaints. Section 68 of the Anti-social Behaviour Act 2003 specifies that any such fee must be paid by the complainant. As a result of our decision, local authorities in England will be free to decide whether, and at what level, it is appropriate to charge for this service, taking account of local circumstances and local taxpayers' wishes. Should they so wish, authorities may provide this service for free, or charge different amounts to different groups of people. This is in line with the Government's general policy of allowing such decisions to be made at the local level. We have published a full Regulatory Impact Assessment on implementing the high hedges legislation. It includes an estimate of what it might cost a local authority, on average, to deal with a high hedge complaint. It also contains, as an Annex, a summary of the consultation responses.

To support local authorities as they prepare to take on this new responsibility, we will publish shortly detailed guidance on administering complaints and enforcing any action that hedge owners may be required to take to remedy the problems caused by the hedge. We also plan to hold, during May, regional workshops to provide training for local authority officers.

For the public, we are publishing two free explanatory leaflets. "Over the garden hedge" is a revision of the previous leaflet of this name and offers advice on how people can settle these disputes for themselves. Negotiation is a necessary precursor to submitting a formal complaint to a local authority. The authority can reject a complaint if they consider the complainant has not done everything they reasonably could to settle the matter themselves. The second leaflet "High hedges: complaining to the council" explains what complaints local authorities can consider and how they will deal with them.

Copies of the Regulatory Impact Assessment and both leaflets will be placed in the Libraries of both Houses and have been published on the website of the Office of the Deputy Prime Minister at [www.odpm.gov.uk](http://www.odpm.gov.uk). The guidance for local authorities "High hedges complaints: prevention and cure" will similarly be deposited in House Libraries and published on the web as soon as it is available.<sup>1</sup>

In March 2005 three Statutory Instruments were passed to implement the regulations in England:

- Local Authorities (Functions & Responsibilities) (Amendment) (England) Regs 2005 Statutory Instrument 2005 No. 714. Specify that decisions relating to high hedges complaints cannot be taken by local authority executives.
- The High Hedges (Appeals) (England) Regulations 2005 Statutory Instrument 2005 No. 711. These establish the grounds on which complainants and hedge owners can appeal against local authorities' decisions under the legislation, and the procedure for determining appeals.
- The Anti-social Behaviour Act 2003 (Commencement No. 5) (England) Order 2005 Statutory Instrument 2005 No. 710 (C.31). Brings all of Part 8 of the Anti-social Behaviour Act 2003 into effect.

---

<sup>1</sup> HC Deb 25 Mar 2005 cc70-1 WS

In Wales the the process was less delayed. The *Anti-Social Behaviour Act 2003* enables the Welsh Assembly the legislate for the implementation of high hedge procedures. The legislation was passed on 31 December 2004 though definitive guidance for local authorities was not produced until later.

## 2. Fees

With the implemetation of the legislation objections have been raised to the fees that local authorities are able to charge for the complaints service. It is thought that the delay in the implementation of the regulations was a result of finalising a decision on the charging streategy. The following article is typical:

Under the new laws, the owners of hedges that are more than two metres tall can be fined up to £1,000 by their local authority if they refuse to cut them down.

The only problem is that some councils will charge those who complain about their neighbour's hedges a fee of up to £550 to investigate and rule on the matter. One protest group has described the charges as "deplorable".

"If I throw a brick through your window, when the police come, they don't charge you a fee, do they?" said Clare Hinchliffe, a spokeswoman for Hedgeline, which lobbies on behalf of victims of high hedges. "Why should you have to pay when you have a serious grievance?"

She said a nominal charge to deter frivolous complaints was reasonable enough, but objected to high fees, such as the £550 that Cotswold district council is planning.

"We don't see why the innocent victim has to bear the cost of resolving the anti-social problem caused by their neighbour. These high fees are deplorable and likely to deter many well-founded complaints."

She added: "Some councils will definitely be making money out of helpless people."

A Cotswold district council spokeswoman said individual authorities had set the fees according to their own costings.

"The Cotswolds is a large area, so it is just a case of making sure we can cover the cost," she said. "But the new law is a bit of an unknown and if it turns out to be less then we will revise our charges down. The law has come in and we have to implement it but we still hope people will resolve their disputes amicably."

She said people with low incomes and those on benefits would pay only £100 to have their complaints investigated.<sup>2</sup>

Lord Greaves questioned the Government on the level of fees that local authorities were charging for investigating high hedge complaints. The following response was given:

This information is not collected centrally and could be provided only at disproportionate cost. Of the sample local authorities that have provided information

---

<sup>2</sup> Law to cut out unneighbourly hedge wars, *Guardian*, 1 June 2005.

to the Office of the Deputy Prime Minister, the majority are setting fees within a range of £300–£400.<sup>3</sup>

Hedgeline, an organization 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. Complaints to Local Authorities about High Hedges**

#### ***a. What are the grounds for complaint?***

A complaint will be considered by the local authority provided that:

- the hedge in question is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs;
- it is over 2 metres high from ground level;
- the hedge acts, to some degree, as a barrier to light or access; and because of its height, adversely affects the complainant's reasonable enjoyment of their domestic property (that is, their home or associated garden or yard).
- the hedge is situated on "neighbouring land" ie on land owned or occupied by another person.

For the purposes of the Act the line of evergreens is not to be regarded as forming a barrier to light or access if the existence of gaps significantly affects its overall effect as such a barrier at heights of more than two metres above ground level. A complaint can still be made if the property which is being affected is unoccupied. However, complaints about the tree roots are specifically excluded.

#### ***b. Investigating a complaint***

Complaints must be made to the local authority whose area contains the land on which the hedge is situated. Complaints must also be accompanied by any fee set by the authority. The level of such a fee must not exceed the amount which will be specified in regulations later this year.

The local authority may reject the complaint if they consider that the complainant has not taken all reasonable steps to resolve the matter without involving the authority, or if they consider that the complaint is frivolous or vexatious. If the local authority decides, on this

---

<sup>3</sup> HL Deb 14 Jul 2005 c170WA

basis, not to proceed with the complaint, they must inform the complainant as soon as is reasonably practicable and must explain the reasons for their decision.

Under the new provisions, if the local authority decided to proceed with the complaint, the key thing they have to decide is whether the height of the high hedge is adversely affecting the complainant's reasonable enjoyment of their property. If so, they then have consider what, if any, action needs to be taken to remedy the adverse effect and to prevent it recurring. In reaching its decision on what action, if any, should be taken, the local authority is expected to take into account all relevant factors, including the views of the hedge owner and the impact of the hedge on the wider amenity of the area. The local authority is required to inform the parties of their decision and the reasons for it as soon as is reasonably practicable.

### ***c. Remedial Notices***

If the local authority *does* find that the hedge is having an adverse effect and action should be taken it must issue a formal notice (a remedial notice). This will require the hedge-owner to take action to remedy the problem and to prevent it recurring. This could well include long-term maintenance of the hedge at a lower height, but may not involve reducing the height of the hedge below 2 metres, or its removal. It would be binding on the owner or occupier of the land where the hedge was situated at the time the notice was issued as well as their successors.

The remedial notice must specify:

- the hedge it relates to
- what action is required to be taken in relation to the hedge in order to remedy the adverse effect and by when
- what further action, if any, is required to prevent recurrence of the adverse effect;
- what date the notice takes effect;
- and the consequences of failure to comply with the requirements of the notice.

While the remedial notice is in force, there is an obligation on the local authority to register it as a local land charge. A local authority can withdraw a remedial notice or waive or relax its requirements. If they do so, they must notify the complainant and the owner/occupier of the neighbouring land.

### ***d. Enforcement Action***

Failure to comply with such a notice will be an offence which could result in a fine up to level 3 (£1000) on the standard scale in the Magistrate's Court. The court might then - in addition to, or in place of, a fine - issue an order for the offender to carry out the required work within a set period of time. Failure to comply with the court order would be another offence, liable to a level 3 fine. From this point, the court would also be able to set a daily fine of up to one twentieth of a level 3 fine for every day that the work remained outstanding.

The local authority will also have default powers to go in and do the work itself, recovering its costs from the hedge owner. The authority would be able to use these powers whether or not the criminal offence was pursued.

*e. Appeals*

Both the hedge owners and complainants will have rights of appeal against the local authority's decision. The appeal authority is the Secretary of State for hedges in England and for hedges situated in Wales the authority will be the National Assembly for Wales.

The appeal authority can set down in regulations the procedure for dealing with such appeals. They may also appoint another person to hear and determine appeals under the provisions of the Act, and may also require such a person to carry out all or any of its appeals functions.

The appeal authority may allow or dismiss an appeal, either in total or in part. If the appeal authority decides to allow the appeal, it may quash or vary the relevant remedial notice. It may also issue a remedial notice in those cases where the local authority decided not to do so in response to the original complaint. Whatever its decision on the appeal, the appeal authority may correct any defect, error or misdescription in the original remedial notice if it considers that this will not cause injustice.

Further information on the process of making a complaint and how a local authority will handle a complaint is available on the ODPM website:

[http://www.odpm.gov.uk/stellent/groups/odpm\\_urbanpolicy/documents/divisionhomepage/037452.hcsp](http://www.odpm.gov.uk/stellent/groups/odpm_urbanpolicy/documents/divisionhomepage/037452.hcsp)

## **B. Common law remedies for nuisance trees**

Many people suffer nuisance from neighbouring trees because they may block light, have overhanging branches, and leave leaf litter and sap in neighbouring gardens. However, not all nuisance trees will be in a situation covered by the High Hedges provisions in the Anti-Social Behaviour Act 2003. For example, if it is only a single tree causing the problem. It is then necessary to look for a common law remedy. However, for the situation to be an *actionable* nuisance the tree needs to be proved to cause damage or harm. The proper recourse is then to contact the property insurers or to seek legal advice.

Case law has set a precedent whereby some action can be taken by the householder without recourse to the law. For example, where the branches of a tree protrude into the airspace of another property, the tree owner is not obliged to cut back the tree. However, the person whose property is overhung may at any time cut branches back to the boundary provided they can do so without entering the owners land. No notice need be given but the future stability of the tree needs to be taken into account as the neighbour would be liable for any damage

that occurred as a result of the pruning. A similar right of abatement is allowed by cutting applied to encroaching roots.<sup>4</sup>

## 1. Damage by trees – Law Lords Ruling

Encroaching roots from neighbouring property may cause damage to house foundations, drains, or lightly loaded structures such as walls, drives and garages. However, if roots cause damage to built structures, an action in nuisance for an injunction and damages against the owner or occupier will depend on the extent to which damage was foreseeable.

A high profile ruling by the House of Lords Appeal Court in 2001 against Westminster City Council made the situation clear in respect of tree damage from roots. The owners of a building took action against Westminster City Council where a single plane tree owned by the Council had damaged the foundations. Westminster Council refused to remove the tree and the claimant spent over £570,000 carrying out underpinning works which they then sought to claim from the council. The council lost its appeal to the House of Lords and the claimant recovered more than the cost of the repairs.

The Lords ruled that if it is clear that **where there is a continuing nuisance, which a defendant knows about or ought to know about, the claimant is entitled to recover the reasonable costs of eliminating the nuisance if he has given notice of the problem to the defendant and a reasonable opportunity to deal with it.**<sup>5</sup>

The unanimous opinion of the Law Lords summarises the major English case law relating to damage to property, particularly foundations, caused by tree roots belonging to trees on a neighbouring property. I understand that your constituent is only experiencing problems with the branches but the ruling is available at <http://www.parliament.the-stationery-office.co.uk/pa/ld200102/ldjudgmt/jd011025/dela-1.htm>.

## 2. Right to light

As a property owner you can acquire a legal right to a certain amount of natural light. Common law provides this “right to light” which may be acquired by 'anyone who has had uninterrupted use of something over someone else's land for 20 years without consent, openly and without threat, and without interruption of more than a year.' The acceptable level of light in a home is taken to be where just over half the room is lit by natural light. Broadly

---

<sup>4</sup> Lemmon v Webb [1894] 3 Ch 1, affirmed [1895] AC 1, where it was held that a neighbour could lop boughs overhanging his property without notice to the owner of the tree, provided that he could do so without entering the owner's land, Lindley, Lopes and Kay LJ all said that a similar right of abatement by cutting applied to encroaching roots (see [1894] 3 Ch 1, 14, 16 and 24).

<sup>5</sup> See House of Lords ruling HL55, Delaware Mansions Ltd v. Lord Mayor & Citizens of Westminster, 25 October 2001



speaking, the minimum standard is equivalent to the light from one candle, one foot away. However, the law also recognises that some loss of light is acceptable and the fact that there is less light does not necessarily give a land owner a right to complain.<sup>6</sup>

As the law presently stands, a right to light is attached to a window or aperture and it is the amount of light that passes through the aperture which counts. **There is no right to light in an open space or in a garden.** Further guidance on hedge height and light loss<sup>7</sup> has been provided by the Office of the Deputy Prime Minister and is available at [http://www.odpm.gov.uk/stellent/groups/odpm\\_urbanpolicy/documents/page/odpm\\_urbp01\\_607970.pdf](http://www.odpm.gov.uk/stellent/groups/odpm_urbanpolicy/documents/page/odpm_urbp01_607970.pdf)

---

<sup>6</sup> Royal Institute of Chartered Surveyors (RICS) Press Release, Let there be light - property owners have legal right to natural light, 02 December 2003.

<sup>7</sup> Hedge height and light loss, ODPM, March 2004,