

**EXPLANATORY MEMORANDUM TO THE
HIGH HEDGES (APPEALS) (ENGLAND) REGULATIONS 2005**

2005 No. 711

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

- 2.1 These Regulations specify the grounds on which appeals may be made against a local authority's decisions in connection with a complaint about a high hedge; against any remedial notice issued by the local authority; and any decision to withdraw, or waive or relax the requirements of, any such notice. They also set out the procedure for dealing with such appeals.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This is the first occasion on which powers conferred by section 72 of the Anti-social Behaviour Act 2003 have been exercised in England.

4. Legislative Background

- 4.1 These Regulations are being made to ensure effective and appropriate arrangements for dealing with appeals under Part 8 (high hedges) of the Anti-social Behaviour Act 2003 ("the 2003 Act"), which introduced new powers for local authorities to deal with complaints about high hedges that are having an adverse effect on a neighbour's enjoyment of his or her domestic property. The coming into force of these Regulations will coincide with the substantive commencement of Part 8 of the 2003 Act.

- 4.2 The provisions in Part 8 of the 2003 Act are similar to those contained in earlier Private Member's Bills on this subject, notably:

- High Hedges Bill introduced by John M Taylor MP for Solihull, 2000/01
- High Hedges Bill [HL] introduced by Baroness Gardner of Parkes, 2002/03
- High Hedges (No. 2) Bill introduced by Stephen Pound MP for Ealing North, 2002/03.

- 4.3 The House of Lords Select Committee on Delegated Powers and Regulatory Reform reported on Baroness Gardner's High Hedges Bill [HL] in its First Report of 2002/03.

5. Extent

5.1 These Regulations apply in relation to appeals under section 71 of the 2003 Act relating to hedges situated in England.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 Part 8 of the 2003 Act creates a new procedure for dealing with complaints about high hedges, to be administered by local authorities in England and Wales. It is estimated that thousands of people are adversely affected by overgrown hedges on neighbouring property. Leyland Cypress hedges are often singled out for blame but they are not the only culprits.

7.2 Problems tend to occur where a hedge is not suitable for its location and not properly maintained. This can happen because people do not realise the full growth potential or maintenance requirements of the plants used. In addition, a once well-maintained hedge can become neglected and overgrown when ownership changes. The commonest concern is about the perceived reduction in light caused by high hedges.

7.3 Where neighbours do not co-operate, there is little that the person affected by the hedge can do to obtain relief. Common law rights entitle people to cut overhanging branches back only to the boundary line of the property. They do not, however, allow them to reduce the height of a neighbouring hedge. Existing laws, such as those relating to statutory nuisance, are untested as far as high hedges are concerned and are unlikely to be appropriate in the vast majority of cases. In addition, the time and cost involved in taking action through the civil courts - and the uncertainty of the outcome - mean that people are reluctant to pursue this route.

7.4 Against this background, the Government carried out (at the end of 1999) a public consultation on possible solutions to these problems (*High hedges: possible solutions*). This included non-statutory as well as legislative options. Over 3,000 people responded. The results showed that 94% of respondents believed that new laws were needed to control these hedges. This included 77% of local authorities. A new system to allow local authorities to determine complaints was the clear favourite. 72% of respondents chose this option, including 67% of local authorities.

7.5 In the light of this support for new laws, the Government announced (in August 2000) that it would bring forward legislation in England to allow local authorities to determine complaints about high hedges, as soon as Parliamentary time allowed. The National Assembly for Wales indicated (in October 2000) that they wished these new laws to extend to Wales.

7.6 After supporting two failed Private Member's Bill on this subject, the Government included suitable provision in Part 8 of the 2003 Act. In

summary, the Act provides for local authorities (district and unitary councils, London Borough councils and the Common Council of the City of London as respects England, and county and county borough councils as respects Wales) to consider complaints by the owners/occupiers of domestic property adversely affected by evergreen or semi-evergreen hedges that are over 2 metres high. The local authority are able to charge a fee, to be paid by the complainant. They may reject the complaint if they consider that insufficient effort has been made to resolve the matter amicably, or that the complaint is frivolous or vexatious. If the complaint is not rejected at this stage, the local authority must then decide whether the hedge is adversely affecting the complainant's reasonable enjoyment and, if so, what action (if any) should be taken. If they decide action should be taken, the authority must issue a "remedial notice". The notice must specify what action is required to be taken in relation to the hedge in order to remedy the problem and by when (the "compliance period"); and, what further action, if any, is required to prevent the problem recurring.

- 7.7 Sections 71(1) and (3) of the 2003 Act sets out the various rights of appeal against a local authority's decisions under section 68 of the Act (procedure for dealing with complaints), and under section 70 of the Act (withdrawal, waiver or relaxation of remedial notices); and against any remedial notice issued by the local authority.
- 7.8 In his capacity as the appeal authority in relation to hedges situated in England, section 72 of the 2003 Act gives the Secretary of State the power to make regulations to provide the procedure for dealing with appeals under Part 8 of the Act (including specifying the grounds on which appeals may be made).
- 7.9 A consultation paper - *'High Hedges Consultation: Implementing Part 8 of the Anti-social Behaviour Act 2003'* - which set out the proposed appeals procedures, including the grounds on which appeals may be made, was issued on 29 March 2004. The paper indicated that such appeals would be administered by the Planning Inspectorate.
- 7.10 The grounds of appeal proposed in the consultation paper were broad. Comments were invited on whether they were sufficiently comprehensive.
- 7.11 The appeals procedures that were proposed were based on an exchange of written representations between the parties, together with a visit to the site of the hedge. For the purposes of high hedges appeals, the parties would be the complainant, the owner and occupier of the land where the hedge is situated, and the local authority who made the decision in question. Everyone else who commented or took part in the original decision in question would - under the consultation proposals - also have had the opportunity to participate, albeit in a more limited capacity.
- 7.12 The consultation paper specifically invited comments on:

- whether only the main parties (that is the complainant, the owner and occupier of the land where the hedge is situated and the local authority) should be involved in the appeals process;
 - whether the procedures could be simplified.
- 7.13 194 responses were received to the consultation, of which 100 commented on the proposals relating to the grounds of appeal, and 109 on the appeals procedures.
- 7.14 Most of those who commented on the matter supported the proposed grounds of appeal. Although some suggested additional grounds of appeal, these were covered by the consultation proposals and so did not need separate provision.
- 7.15 While most of those who commented on the matter considered that the proposed appeals procedures were fair and reasonable, local authority respondents had serious reservations about the cost implications associated with high hedges appeals. Some proposed a fee in order to deter frivolous appeals. Others suggested that the appeal procedures should be simplified.
- 7.16 In the light of concerns about the impact of the proposed appeal procedures, the process has been slimmed whilst ensuring that the principles of natural justice are preserved. The key features of the revised procedure are:
- **Only the main parties - the complainant, hedge owner and local authority - will be directly involved.** Other interested people (eg neighbours, amenity societies) will not be separately notified of the appeal. If they had submitted representations at the complaint stage, these will be on the local authority's file and will be placed before the Secretary of State or the appointed person along with other case papers, as indicated below;
 - **Evidence to enable the Secretary of State or the appointed person to determine the appeal will be supplied primarily from the local authority case file.** Experience of other appeal procedures has shown that the gathering of information through an exchange of representations often results in the duplication of material obtained during the initial stages. The questionnaire issued by the Secretary of State will specify descriptions of documents to be supplied from the local authority's case file. The intention is to include all submissions taken into account by the decision-maker (eg. statements from the main parties; and any representations from, or results of consultation with, other interested parties) together with information about the decision-making process (eg. any report prepared by the case officer; minutes of any committee meeting where the decision was discussed). The completed questionnaire will be copied to the complainant and the hedge owner so that they will be aware of the information that is before the Secretary of State. All documents mentioned in the questionnaire should have been circulated previously to the main parties under the procedure for dealing with complaints recommended in Government guidance. This guidance is currently being finalised and will be published shortly. If this advice has not been followed, the complainant and the hedge owner will be able to request copies of relevant documents from the local authority. The safeguards described below will also apply;

- **Other information/evidence will be sought at the discretion of the Secretary of State or the person appointed to determine the appeal.** It is envisaged that the Secretary of State or the appointed person will, in particular, require the production of documents where it is apparent that they were considered at the complaint stage but have not been disclosed to all the main parties, or where new issues or evidence arise in the course of the appeal. The aim is to ensure that the appeals process is open and transparent;
- **A site visit will be an integral part of the process.**

7.17 The problems associated with overgrown hedges have been the subject of widespread media attention.

7.18 Implementation of Part 8 of the 2003 Act is legally and politically important, because it gives local authorities new powers to intervene in these disputes. The appeal arrangements are significant in that they differ in several respects from established practice.

8. Impact

8.1 A Draft Regulatory Impact Assessment was prepared and published as part of the public consultation on implementation of Part 8 of the 2003 Act. The detailed costings in the Regulatory Impact Assessment have been refined in the light of consultation responses and, in particular, to reflect the streamlined appeals procedure set out in the Regulations. The final Regulatory Impact Assessment is attached. It includes, as an Annex, a summary of the responses to the public consultation.

9. Contact

Julie Richardson at the Office of the Deputy Prime Minister (Tel: 020 7944 5624 or e-mail: julie.richardson@odpm.gsi.gov.uk) can answer any queries regarding the Regulations.

14th March 2005

Regulatory Impact Assessment (RIA)

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High Hedges: Implementing Part 8 of the Anti-social Behaviour Act 2003

Purpose and intended effect

Objective

1. It is estimated that thousands of people could be adversely affected by overgrown garden hedges. If neighbours are unwilling to co-operate, there is little the person affected by the hedge can currently do to obtain relief.
2. The aim is to minimise hedge disputes by establishing a clear and transparent process for resolving these matters, including a formal role for local authorities.
3. This Regulatory Impact Assessment relates to England only.

Background

4. The 1999 consultation paper 'High hedges: possible solutions'¹ estimated there might be around 17,000 unresolved neighbour disputes over problems caused by overgrown hedges. The most common concerns related to light obstruction and loss of visual amenity. Existing procedures were, however, found to be ineffective in settling these disputes. Common law rights entitled people only to cut overhanging branches; they did not allow them to reduce the height of a neighbouring hedge. Existing regulatory controls, such as those relating to statutory nuisance, were unlikely to be appropriate. And people were reluctant to pursue action through the civil courts, not only because of the time and cost but also because the outcome was uncertain.
5. The 1999 consultation paper considered several possible solutions for dealing with these hedge problems and sought views on four options - ranging from doing nothing, through voluntary action to legislation. The majority of respondents to the consultation favoured legislation to allow local authorities, as a last resort, to determine hedge complaints.
6. Provisions were accordingly included in Part 8 of the Anti-social Behaviour Act 2003 to allow local authorities in England and Wales to deal with complaints about problem high hedges where neighbours were unable to agree a solution. The local authority's role would be to act as an impartial third party. If - having taken all views into account - they found that a hedge was adversely affecting the complainant's property, they would be able to order the hedge owner to take action to remedy the problem and/or to prevent it recurring. Failure to comply with such an order could result in a fine. The Act also included rights of appeal against a local authority's decision. The complainant as well as the hedge owner would be able to exercise these.
7. The 2003 Act established the scope and the main framework of the complaints system. Regulations and guidance cover the finer points of detail of how local authorities should assess complaints, and the appeals procedure.
8. The Welsh Assembly Government is responsible for implementing Part 8 of the Anti-social Behaviour Act 2003 in Wales. The Act does not extend to Scotland or Northern Ireland.

Risks

9. Without local authority involvement, there is a high risk that the number of high hedge disputes would increase with more people suffering loss of amenity. Although difficult to predict how many

¹ 'High hedges: possible solutions', a consultation paper, DETR November 1999.

more disputes would arise, it is probable that the numbers would increase steadily over time. In some cases, the existence of the dispute as well as the harm caused could result in a reduction in the value of the affected property.

10. There is some evidence that, if there is no resolution in sight, these disputes could escalate. People could be tempted to cut back the offending hedge beyond the boundary line, leading to civil court actions for damages by the hedge owner. A few cases of this nature arose after the first Private Members Bill failed. There have also been a few instances of violence. However, the numbers of disputes reaching such a pitch are likely to remain low, making this a low risk.

11. More and more resource, especially among public sector organisations (local authorities, police, courts) and advice agencies, would nevertheless be tied up in dealing with the consequences of these disputes - without leading to their resolution.

12. Further quantification of these risks is contained in the Costs analysis.

Options

13. There are only two main options:

Option 1: do not implement Part 8 of the Anti-social Behaviour Act 2003 and so rely on existing procedures to settle hedge disputes; or

Option 2: implement Part 8 of the Anti-social Behaviour Act 2003 to give local authorities the role of determining high hedge complaints that cannot otherwise be resolved.

14. There are variations within Option 2 depending on the information gathering and decision-making procedures adopted by local authorities, and by the Planning Inspectorate on appeal. The legislation requires them to undertake a balancing exercise, taking into account not only the views of the complainant and the hedge owner but also the wider public interest. There are, however, different ways that they can fulfil this role:

Option 2A: follows closely the well-established procedures in other regulatory regimes, such as planning which deals with similar neighbourhood issues. This would involve publicity of complaints, wide consultation and possibly protracted exchanges of representations and comments between all interested parties;

Option 2B: involves simpler and more streamlined procedures whereby only the complainant and hedge owner would be invited to submit written statements, with limited exchange of comments and wider consultation only if necessary.

Benefits - Economic, Social and Environmental

15. Consultees could not identify any benefits - **economic, social or environmental** - to **Option 1**, beyond the fact that local authorities would not face another new burden. Existing procedures have failed to resolve hedge problems and are unlikely to prove any more effective in the future.

16. **Option 2** would provide a clear and transparent mechanism for resolving existing hedge problem cases and any that might arise in the future. In addition, the legislation could alter people's behaviour, encouraging them to maintain their hedges at a reasonable height, which preserves their amenity and that of neighbours. The number of households adversely affected by high hedges would thus be reduced, and the number of costly and time consuming disputes over high hedges would decline.

17. There are considerable uncertainties about the number of existing hedge disputes making it difficult to quantify the effects of implementing this legislation. The 1999 survey suggested there could be 17,000 households waiting for the legislation to come into force to help solve their hedge

problems. Although the 2004 consultation² asked local authorities for help to update this figure, responses showed they have not generally been keeping systematic records of hedge disputes. Estimates of potential caseload ranged from around 30 to 300 per authority, suggesting that the total number of unresolved hedge disputes could be anywhere between 10,000 and 100,000. The higher estimates tended, however, to relate to number of enquiries rather than to formal complaints. In any event, we could expect the vast majority of these outstanding cases to be resolved through the formal complaints procedure and significantly fewer new disputes to be referred to the local authority.

18. The Costs analysis suggests this would yield **economic** benefits in the longer term, as numbers of disputes decline. Dealing with such disputes through the formal complaints procedure in the legislation could be less costly than maintaining current arrangements. There would be **environmental and social** benefits in terms of improved amenity for complainants and possibly better neighbour relations. A clear and transparent procedure and an impartial adjudicator, in the form of the local authority, would offer householders (both complainants and hedge owners) assurance and certainty that a fair resolution could be achieved. This might help to make disputes less confrontational. It is impossible to quantify such benefits.

Sectors Affected

19. Groups affected by proposals to deal with hedge disputes are:

- **Householders** - that is owner/occupiers and tenants on both sides of the hedge. As noted above, numbers of affected households remain unclear as no systematic records exist. Although latest estimates from local authorities suggest there might be between 10,000 and 100,000 households with some tree or hedge related problem, these might involve individual trees or deciduous hedges which fall outside the scope of the legislation. The figures might also include cases that may be capable of resolution by negotiation between neighbours. They are not necessarily, therefore, a reliable guide to the number of unresolved hedge disputes.
- **Landlords** - including local authorities, housing associations, co-operatives and private letting agencies. There are about 4.5 million households living in properties, managed by an estimated 13,000 to 15,000 private and social landlords, which have access to a garden or yard and so could either have a high hedge or be affected by one.
- **Mediation services** - can help to solve some hedge disputes. Mediation UK represents nearly 300 mediation services with volunteers working among local communities. There are also a number of commercial companies who provide alternative dispute resolution services.
- **The Courts** - may currently be asked to settle some hedge disputes and would deal with prosecutions under the Anti-social Behaviour Act 2003 for failure to carry out works to remedy hedge problems.
- **Local authorities** - people tend to look first to their council for help in solving their hedge disputes. Responsibility for administering complaints about high hedges under the Anti-social Behaviour Act 2003 rests with the 354 unitary and district councils in England.
- **The Planning Inspectorate** - would deal with appeals against local authority decisions on hedge complaints.
- **Tree surgeons and arboricultural advisers** - complainants and hedge owners might engage experts to advise them on a complaint or need to employ professional help to reduce the size of a large hedge. There are currently 34 arboricultural advisers on the Arboricultural Association's list of registered consultants and around 130 tree surgeons on the list of approved contractors operating in England.

² 'High Hedges Consultation: Implementing Part 8 of the Anti-social Behaviour Act', ODPM March 2004.

- Growers, retailers and landscapers - might need to be prepared to offer alternative plants and advice on suitable hedges if demand for, and sales of, conifer hedging declined.

Costs - Economic, Social and Environmental

20. As there is no reliable data on the number of outstanding hedge disputes that might fall to be considered by local authorities, this Regulatory Impact Assessment looks at the costs associated with a range of potential caseloads. Taking account of information from consultation responses, Hedgeline membership and numbers of neighbour disputes resolved through mediation, these are considered to represent the most likely scenarios.

21. These outstanding cases should be resolved over the first three years that the legislation is in operation. The total costs have, therefore, been divided by three to derive an annual estimated cost. Once the backlog has been resolved, however, fewer new hedge complaints should arise. The annual cost is, therefore, expected to be lower in future years.

22. It must be stressed that the costs outlined below are uncertain, given that they are based on assumptions about both the volume of outstanding hedge complaints and future events.

Option 1

Complainants

23. If things are left unchanged, people affected could be tempted to cut down the offending hedge and might then be sued in the civil courts for damages. They could face paying compensation and the hedge owner's legal costs in taking the matter to court, as well as their own. The final bill could range from £5,000 to over £100,000 (based on the case of *Stanton v Jones* which first drew attention to these problems).

24. There has been no record of this happening since the commitment to legislate to deal with hedge disputes was made in 2000. Prior to that date, however, Hedgeline had reports of 12 cases where members were taken to court and most of them fined heavily for cutting beyond the boundary. Assuming only 10 people were driven to such action in future, this would give a total **economic** cost of between £50,000 and £1 million. The annual cost would be between about £16,500 and £330,000.

25. There is some anecdotal evidence that the presence of a neighbouring high hedge could detract from a property's value, reflecting the impact on amenity. The existence of a hedge dispute would have to be declared to potential purchasers and could also affect the market value of the property. The effect of a decrease in property value ranging from £1,000 to £10,000 is shown in Table 1 below. These represent **environmental and social** costs.

Table 1: reduced property value

No. of affected properties (ie outstanding cases)	Total loss assuming £1,000 reduction in property value	Total loss assuming £10,000 reduction in property value
Low (8,000)	£8 million	£80 million
Medium (10,000)	£10 million	£100 million
High (14,000)	£14 million	£140 million

26. These are notional rather than actual costs. In reality, not everyone will want to sell. In addition, not all affected homes will be privately owned. For these reasons, the figures have not been included in Table 20 which summarises costs and benefits.

Hedge owners

27. Owners are currently responsible for any hedges on their property and for looking after them. The problems tend to arise because they do not maintain their hedges. This is likely to remain the position if things are left as they are so there are no direct **economic** costs for owners associated with managing their hedges.

28. However, we could find that neighbours take steps to manage their side of the hedge so that it has less impact on their property and then reclaim their costs from the owner, through the small claims court if necessary. This could include employing professional help or hiring special equipment. Hedgeline have published on their website a procedure that people could use. If a few people used this successfully, it might encourage others to follow. The costs would vary depending on the size and condition of the hedge. Assuming a range of £100 to £600 for the cost of cutting back and disposal of overhanging branches and £30 to £80 in court fees, and that 1,000 people pursue this route, the total costs for hedge owners would range from £130,000 to £680,000. And this might not be a one-off cost; it could recur every few years. Assuming it was necessary to repeat this action every three years, the annual cost would be around £43,000 to £226,500.

Local authorities

29. Option 1 is not without **economic** cost for local authorities. People would still approach their authority for help and advice, even though they have no formal role in these matters. Assuming, on average, administrative officers spend 15 minutes talking to each of the estimated 8,000 to 14,000 affected people, this would give a total cost across all local authorities of about £34,000 to £66,500. If this fell to case officers, costs would rise to between £46,000 and £103,250³. These could be annual recurring costs.

The courts

30. As suggested above, if nothing is done to help resolve hedge disputes, the people affected might face a claim for damages if they cut down a hedge. In addition, hedge owners might be taken to the county court to repay the costs of managing the spread of the hedge. Both would have workload implications for the courts.

31. However, the cost of action in the civil courts is met by the parties - in particular the losing party - and has been apportioned accordingly in the costings above.

Summary of annual costs: Option 1

Table 2

	Low Annual Cost	High Annual Cost
Illegal hedge cutting	£16,500	£330,000
Hedge management	£43,000	£226,500
Local authority advice	£34,000	£103,250
TOTAL COST⁴	£93,500	£659,750

32. These costs might continue beyond the initial three year period as outstanding cases would remain unresolved under this Option. The above estimates could, therefore, represent an annual recurring cost.

³ Footnotes to Table 6 explain how these costs have been derived. These figures are based on median maximum salary plus net overheads.

⁴ This may be an underestimate because of the possible effect on house prices.

Option 2

33. The possible variations in Option 2 identified above relate to administrative procedures and so affect local authorities and the Planning Inspectorate only. The costs for others will be the same under Options 2A and B.

34. As noted earlier, the annual costs described below relate to the early years of operating the legislation when outstanding hedge disputes would be resolved. Once this backlog has been cleared, the number of cases dealt with is expected to decline dramatically and so costs in future years would be significantly lower. The possible effect is illustrated in Table 19.

Complainants

35. If part 8 of the Anti-social Behaviour Act 2003 were implemented, owners or occupiers of the property affected by a high hedge would pay a fee to the local authority to deal with their complaint. It would be for each local authority to determine the level of the fee and such issues as whether to waive it entirely; whether to set different rates for different groups of people; and whether any refund should be allowed.

36. The majority of local authority respondents to the consultation favoured a fee at a level that would allow them to recover their costs in implementing the high hedges legislation. Most thought a fee in the range of £300 to £600 would achieve this. A few authorities thought that £1,000 to £2,000 might better reflect the full cost of administering the legislation. Some of these alternative costings were, however, based on the mistaken belief that the legislation required them to mediate between the parties to the dispute, involving lengthy discussion and negotiation.

37. Depending on the charging policies of the local authority, therefore, the cost of making a complaint could range from nil to £600. Total and annual estimated costs for complainants are shown in Table 3 below. They represent an **economic** cost.

Table 3: cost of making a complaint

No of outstanding cases	£300 fee		£600 fee	
	Total costs	Annual costs ⁵	Total costs	Annual costs
Low (8,000)	£2.4m	£0.8m	£4.8m	£1.6m
Medium (10,000)	£3m	£1m	£6m	£2m
High (14,000)	£4.2m	£1.4m	£8.4m	£2.8m

38. There is no requirement for complainants to submit detailed, technical information in support of their complaint. It will be for individuals, therefore, to decide whether to employ professional help to present their case.

Hedge owners

39. Hedge owners will be responsible for meeting the costs of any remedial action that might be required under the legislation. The costs involved will vary considerably, depending on the extent of the works and the size and condition of the hedge. Assuming that the hedge has not been actively managed, they could run from £100 up to £600 should specialist equipment and professional help be needed to get a long, tall hedge back into shape. The estimated costs for hedge owners, assuming remedial action was ordered in all outstanding hedge disputes cases, are shown in Table 4.

⁵ Assumes outstanding cases are resolved over a period of 3 years.

40. Whatever the true number of outstanding hedge dispute cases, the actual costs of remedial action are likely to be lower than those given in Table 4. This is because it is unlikely that all complaints will result in remedial action. In some cases it may be found that the hedge has no unreasonable adverse effect and it may be left unchanged.

Table 4: cost of remedial works - all hedge owners

No. outstanding cases	Remedial works - £100		Remedial works - £600	
	Total costs	Annual costs ⁶	Total costs	Annual costs
Low (8,000)	£0.8m	£0.27m	£1.4m	£0.47m
Medium (10,000)	£1m	£0.33m	£6m	£2m
High (14,000)	£4.8m	£1.6m	£8.4m	£2.8m

41. Depending on the final size of the hedge, it might be necessary to employ specialist help and equipment to maintain the hedge in accordance with the requirements of a remedial notice. The annual costs shown above could, therefore, represent a recurring **economic** cost.

42. Such costs will fall mainly on householders - that is owner/occupiers and tenants. Depending on the nature of the individual tenancy agreement or contract, however, landlords in the private rented sector and charities such as housing associations and co-operatives could be liable. Costs of remedial works are most likely to fall on landlords where properties are in multiple occupation.

43. It is estimated that about 5% of households are in flats or maisonettes that have gardens or yards and are managed by the private rented sector or by social landlords⁷. The latter includes local authorities as well as housing associations or cooperatives. Assuming they account for a similar portion of hedge complaints, the estimated costs for private and social landlords of carrying out remedial works would be as shown in Table 5. These costs are not additional to the costs in Table 4, but a subset of them. The purpose of the following table is to illustrate the likely impact on the private rented sector and social landlords.

Table 5: cost of remedial works - private and social landlords

No. outstanding cases	Remedial works - £100		Remedial works - £600	
	Total costs	Annual costs ⁸	Total costs	Annual costs
Low (400)	£40,000	£13,000	£240,000	£80,000
Medium (500)	£50,000	£17,000	£300,000	£100,000
High (700)	£70,000	£23,000	£420,000	£140,000

44. Local authorities should take account of the amenity of both the complainant and hedge owner in reaching a balanced decision. The hedge owner should suffer no unreasonable loss of amenity as a result of taking remedial action and so there would be no direct **environmental** impact arising from the local authority's decision on a complaint. While disposal of the additional green waste generated by reducing the size of the hedge would represent an environmental cost, it is impossible to quantify. The volume of such material is unknown and costs would vary depending on the method used - whether it was recycled, sent to landfill or illegally dumped.

⁶ Assumes remedial notices would be issued over a period of 3 years.

⁷ ODPM Survey of English Housing 2001-02.

⁸ Assumes remedial notices would be issued over a period of 3 years.

Mediation services

45. Mediation can offer a quick and informal means of resolving hedge disputes. And community mediation, using volunteers, is particularly effective in tackling this type of neighbourhood problem. But it works best where people willingly participate and want to reach a settlement.

46. For this reason, people are not required to go through mediation before taking their complaint about a neighbour's high hedge to their local authority. Nevertheless, they must demonstrate that they have taken all reasonable steps to resolve the dispute and that referral to the local authority is a last resort. Implementing the legislation might also exert pressure on hedge owners to negotiate rather than have the local authority involved. As a result, there could be an increased demand for community mediation services.

47. Bearing in mind that many of the outstanding hedge disputes are long-running ones where communication between the parties may have completely broken down, it is difficult to predict how many more cases might go to mediation. Assuming mediation was pursued in 10% of outstanding cases, this would result in an extra 800 to 1400 cases for community mediation services. At an average cost of £400 per mediation, the total **economic** costs would be from £320,000 to £560,000, and the annual costs from £107,000 to £187,000.

Local authorities

48. If Part 8 of the Anti-social Behaviour Act 2003 were implemented, local authorities would incur **economic** costs when determining complaints, defending their decisions on appeal and enforcing remedial action. These would vary depending on whether well established administrative procedures were followed, under Option 2A, or whether more focussed and streamlined processes were adopted in accordance with Option 2B.

Complaints: Option 2A

49. Based on information provided by local authority respondents to the consultation, the estimated time and costs involved in investigating a complaint about a high hedge and deciding whether to require the owner to carry out remedial works are shown in Table 6. Total and annual estimated costs are in Table 7.

Table 6: cost of dealing with a typical complaint

	Hours per case ⁹	Costs: Gross OH ¹⁰		Costs: Net OH ¹¹	
		a. Media n min ¹²	b. Media n max	c. Media n min	d. Media n max
Administrative Officer ¹³	4.5	£56.25	£63	£76.5	£85.5
Case Officer ¹⁴	10	£170	£220	£230	£295

⁹ Based on estimates provided in Isle of Wight Council's consultation response. Adjusted in particular to reduce time spent on negotiation, which is not the primary role of the local authority in these cases.

¹⁰ Uplifted by 155% to cover all labour costs. Based on the findings in 'The Planning Service: Costs and Fees', ODPM 2003.

¹¹ Uplifted by 210% to include unproductive time (holiday, sickness, training days etc) as an overhead. Based on the findings in 'The Planning Service: Costs and Fees', ODPM 2003.

¹² Based on salaries in the *Market Pay Survey: Employers Organisation - Local Government Digest* August 2004. Assumes 36 hour working week.

¹³ Group 4: Admin Officer in the *Market Pay Survey* (salary range £14,800 to £16,500).

¹⁴ Group 43: Planning Officer in the *Market Pay Survey* (salary range £21,300 to £26,600).

	Hours per case⁹	Costs: Gross OH¹⁰		Costs: Net OH¹¹	
		a. Median min¹²	b. Median max	c. Median min	d. Median max
Senior Officer ¹⁵	0.5	£12	£14	£16	£12
Legal Adviser ¹⁶	0.5	£12.5	£14	£17	£12.5
TOTAL	15.5	£250.75	£311	£339.5	£405

Table 7a: total costs of dealing with complaints

No. of outstanding cases	Total Costs Gross OH		Total Costs Net OH	
	e. Median min	f. Median max	g. Median min	h. Median max
Low (8,000)	£2.01m	£2.49m	£2.72m	£3.24m
Medium (10,000)	£2.51m	£3.11m	£3.34m	£4.05m
High (14,000)	£3.51m	£4.35m	£4.75m	£5.67m

Table 7b: annual costs of dealing with complaints

No. of outstanding cases	Annual Costs Gross OH		Annual Costs Net OH	
	i. Median min	j. Median max	k. Median min	l. Median max
Low (8,000)	£0.69m	£0.83m	£0.91m	£1.08m
Medium (10,000)	£0.84m	£1.04m	£1.11m	£1.35m
High (14,000)	£1.17m	£1.45m	£1.58m	£1.89m

Complaints: Option 2B

50. The majority of consultation respondents favoured simplifying the procedures for dealing with complaints by inviting only the parties directly affected - the complainant and hedge owner - to submit written statements and by limiting the exchange of comments. This would save local authorities some expense in publicising complaints, notifying people about decisions and copying their comments and representations to the main parties. The effect of such streamlining on officer time and costs in dealing with a typical complaint is shown in Table 8. Total and annual estimated costs under these simplified complaints procedures are shown in Table 9.

¹⁵ No equivalent in the *Market Pay Survey*. Salary range £29,100 to £34,500 drawn from job adverts and cross-checked with 'Table 4.2: Planning service staff by salary band, percentages' in *The Planning Service: Costs and Fees*, ODPM 2003.

¹⁶ Group 53: Solicitor in the *Market Pay Survey* (salary range £29,800 to £34,100).

Table 8: cost of dealing with a typical complaint under simplified procedures

	Hours per case	Costs: Gross OH		Costs: Net OH	
		m. Median min	n. Median max	o. Median min	p. Median max
Administrative Officer	3.5	£44	£51	£59.5	£66.5
Case Officer	8	£136	£176	£184	£236
Senior Officer	0.5	£12	£14	£16	£19
Legal Adviser	0.5	£12.5	£14	£17	£19
TOTAL	12.5	£204.5	£255	£276.5	£340.5

Table 9a: total costs of dealing with complaints under simplified procedures

No. of outstanding cases	Total Costs Gross OH		Total Costs Net OH	
	q. Median min	r. Median max	s. Median min	t. Median max
Low (8,000)	£1.64m	£2.04m	£2.21m	£2.72m
Medium (10,000)	£2.05m	£2.55m	£2.77m	£3.41m
High (14,000)	£2.86m	£3.57m	£3.87m	£4.77m

Table 9b: annual costs of dealing with complaints under simplified procedures

No. of outstanding cases	Annual Costs Gross OH		Annual Costs Net OH	
	u. Median min	v. Median max	w. Median min	x. Median max
Low (8,000)	£0.55m	£0.68m	£0.74m	£0.91m
Medium (10,000)	£0.68m	£0.85m	£0.92m	£1.14m
High (14,000)	£0.95m	£1.19m	£1.29m	£1.59m

Appeals: Option 2A

51. Local authorities will also wish to defend their decisions on appeal. The estimated time and costs involved in submitting statements, commenting on representations from the parties and attending a site visit are shown in Table 10. Total and annual estimated costs are in Table 11. In the light of concerns that the caseload of 2,000 appeals in the draft Regulatory Impact Assessment was low, Table 11 looks at the effects of higher appeals numbers. The appeal rates range from 25% to 60%. These compare with a 10% rate of appeal on statutory nuisance cases and 23% on planning decisions.

Table 10: cost of dealing with a typical appeal

	Hours per case	Costs: Gross OH		Costs: Net OH	
		y. Median min	z. Median max	aa. Median min	bb. Median max
Administrative Officer	1	£12.5	£14	£17	£19
Case Officer	4	£68	£88	£92	£118
Senior Officer	0.5	£12	£14	£16	£19
TOTAL	5.5	£92.5	£116	£125	£156

Table 11a: total costs of dealing with appeals

Caseload	Total Costs Gross OH		Total Costs Net OH	
	cc. Median min	dd. Median max	ee. Median min	ff. Median max
Low (2,000)	£0.19m	£0.23m	£0.25m	£0.31m
Medium (5,000)	£0.46m	£0.58m	£0.63m	£0.78m
High (8,000)	£0.74m	£0.93m	£1.0m	£1.25m

Table 11b: annual costs of dealing with appeals

Caseload	Annual Costs Gross OH		Annual Costs Net OH	
	gg. Median min	hh. Median max	ii. Median min	jj. Median max
Low (2,000)	£0.06m	£0.08m	£0.08m	£0.10m
Medium (5,000)	£0.15m	£0.19m	£0.21m	£0.26m
High (8,000)	£0.25m	£0.31m	£0.33m	£0.42m

Appeals: Option 2B

52. As with complaints, local authority respondents to the consultation saw scope to simplify the appeal procedures. In particular, local authority officers who were sounded out on the proposals favoured a streamlined process where their input was confined to handing over the case file. The effect of such streamlining on officer time and costs in dealing with a typical appeal is shown in Table 12. Total and annual estimated costs under these simplified appeals procedures are shown in Table 13.

Table 12: cost of dealing with a typical appeal under simplified procedures

	Hours per case	Costs: Gross OH		Costs: Net OH	
		kk. Median min	ll. Median max	mm. Median min	nn. Median max
Administrative Officer	1	£12.5	£14.5	£17	£19
Case Officer	1	£17	£22	£23	£29.5

TOTAL	2	£29.5	£36.5	£40	£48.5
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Table 13a: total costs of dealing with appeals under simplified procedures

Caseload	Total Costs Gross OH		Total Costs Net OH	
	oo. Median min	pp. Median max	qq. Median min	rr. Median max
Low (2,000)	£0.06m	£0.07m	£0.08m	£0.10m
Medium (5,000)	£0.15m	£0.18m	£0.20m	£0.24m
High (8,000)	£0.24m	£0.29m	£0.32m	£0.39m

Table 13b: annual costs of dealing with appeals under simplified procedures

Caseload	Annual Costs Gross OH		Annual Costs Net OH	
	ss. Median min	tt. Median max	uu. Median min	vv. Median max
Low (2,000)	£0.02m	£0.02m	£0.03m	£0.03m
Medium (5,000)	£0.05m	£0.06m	£0.07m	£0.08m
High (8,000)	£0.08m	£0.10m	£0.11m	£0.13m

Enforcement

53. If a hedge owner does not comply with a local authority's orders, the authority will be able to enforce remedial action by prosecuting the hedge owner and/or by carrying out the work themselves.

54. We expect that complainants will inform local authorities if a hedge owner has failed to comply with the requirements of a remedial notice so that the legislation will be enforced largely through self-policing. Local authorities are advised to employ a light touch when enforcing the legislation, using informal discussions and warning letters to secure compliance before resorting to the courts.

55. The estimated time and costs involved in dealing with an enforcement case are shown in Table 14. Total and annual estimated costs of local authorities' enforcement action, across a range of caseloads, are shown in Table 15.

Table 14: cost of dealing with a typical enforcement case

	Hours per case	Costs: Gross OH		Costs: Net OH	
		ww. Media n min	xx. Media n max	yy. Media n min	zz. Media n max
Administrative Officer	1	£12.5	£14.5	£17	£19
Case Officer	3	£41	£66	£69	£88.5
Legal Adviser	0.5	£12.5	£14	£17	£19
TOTAL	4.5	£76	£94.5	£103	£126.5

Table 15a: total costs of dealing with enforcement cases

Caseload	Total Costs		Total Costs	
	Gross OH		Net OH	
	aaa. Median min	bbb. Median max	ccc. Median min	ddd. Median max
Low (2,000)	£0.15m	£0.19m	£0.21m	£0.25m
Medium (3,000)	£0.23m	£0.28m	£0.31m	£0.38m
High (5,000)	£0.38m	£0.47m	£0.52m	£0.63m

Table 15b: annual costs of dealing with enforcement cases

Caseload	Annual Costs		Annual Costs	
	Gross OH		Net OH	
	eee. Median min	fff. Median max	ggg. Median min	hhh. Median max
Low (2,000)	£0.05m	£0.06m	£0.07m	£0.08m
Medium (3,000)	£0.07m	£0.09m	£0.10m	£0.13m
High (5,000)	£0.13m	£0.16m	£0.17m	£0.21m

56. Where local authorities decide to prosecute, or if they carry out the necessary works themselves, they can recover their costs. Any unpaid expenses arising from the local authority using its default powers to carry out the work specified in the remedial notice would (until recovered) be registered as a local land charge.

Other implementation costs

57. As well as the cases that result in formal complaints, local authorities will have to deal with general enquiries about the high hedges legislation. Anecdotal evidence suggests that people may have unrealistic expectations of how the legislation will work, anticipating that it can be used to get all problem trees and hedges reduced to 2 metres in height. The volume of enquiries is, therefore, likely to be higher initially until the limits of the complaints system are more widely understood. As noted earlier, local authorities' estimates of potential enquiries ranged widely from a total of around 10,000 to 100,000.

58. A variety of methods would be used to answer these queries, including local authority websites, telephone contact centres, printed leaflets, email. In addition, some local authorities might produce their own publicity material while others might rely on external sources, such as the Office of the Deputy Prime Minister website and publications.

59. As a result, it is difficult to estimate the cost of enquiry handling. However, assuming an administrative officer (on the median maximum salary plus net overheads) deals with 20 queries an hour, on average, the total cost would be from £95,000 to £950,000, giving an annual cost of about £31,700 to £317,000.

60. The costings in the tables above that are based on salary plus net overheads include unproductive time, such as staff training. Time spent by staff learning about the new requirements in respect of high hedges and familiarising themselves with the guidance published by the Office of the Deputy Prime Minister has not, therefore, been costed separately.

Fees

61. These costs may be covered by the fees charged for making a complaint. It would be for each local authority to decide what to charge for dealing with high hedge complaints, and thus how to distribute the costs of providing this service between complainants, who must pay the relevant fee, and council taxpayers.

62. Table 2 indicates that these fees are expected to raise between £0.8m and £2.8m. Therefore it is necessary to calculate the net costs to local authorities after accounting for costs recovered from fees, in order to avoid double counting.

The Planning Inspectorate

63. The Deputy Prime Minister as First Secretary of State intends to delegate all his appeals functions to the Planning Inspectorate (PINS).

Option 2A

64. It is estimated to cost about £1,035 on average to deal with an appeal under current written representations procedure. This would give total and annual costs for PINS as shown in Table 16.

Table 16: cost to PINS of dealing with appeals

Caseload	Total Costs	Annual Costs
Low (2,000)	£2.07m	£0.69m
Medium (5,000)	£5.18m	£1.73m
High (8,000)	£8.28m	£2.76m

Option 2B

65. If simplified appeals procedures were adopted, it might be possible to do an additional 2 site visits in a week. This would reduce the average cost for dealing with an appeal to around £700. The estimated effect on PINS costs is shown in Table 17.

Table 17: cost to PINS of dealing with appeals under simplified procedures

Caseload	Total Costs	Annual Costs
Low (2,000)	£1.4m	£0.47m
Medium (5,000)	£3.5m	£1.17m
High (8,000)	£5.6m	£1.87m

66. Implementation costs, including recruiting additional Inspectors and staff training, are estimated at £120,000. If spread over three years, this would give an annual cost of £40,000.

67. There is no provision in the Anti-social Behaviour Act 2003 for a charge to be made for appeals. These costs will, therefore, fall to central Government, to be met from within existing Departmental running cost limits.

The courts

68. Failure to comply with a remedial notice would be an offence under the legislation liable, on conviction in the magistrates' court, to a level 3 fine (up to £1,000). 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. There would be a further offence of failure to comply with the court order, liable to a level 3 fine. At 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 remains outstanding thereafter.

69. If the courts were to use the full range of penalties at their disposal, this should act as a powerful deterrent to others. Only the most intractable cases are likely, therefore, to result in prosecution.

70. If 1% of the 8-14,000 outstanding problem cases were to go to court, this would result in a total of 80 to 140 prosecutions - or, on average, about 30 to 40 cases a year. This estimate assumes, of course, that remedial notices would be issued in 100% of cases, which is most unlikely.

71. At a cost of £328 per case, this would give a total cost of £26,240 to £45,920 or an annual cost of £8,746 to £15,306.

72. The Courts would also be involved in dealing with applications for judicial review of decisions made under the high hedge legislation. In 2003/04, less than 0.5% of the Planning Inspectorate's decisions on planning appeals (in England) were contested in the High Court. If we assume a similar rate of challenge in respect of high hedges appeals, we could expect a total of 10 to 12 decisions to be subject to judicial review. However, as the cost of action in the civil courts is met by court fees, the cost of any action would be met by the parties and, in particular, the losing party.

Summary of annual costs: Option 2

Table 18

	Option 2A		Option 2B	
	iii. Low Annual Cost	jjj. High Annual Cost	kkk. Low Annual Cost	lll. High Annual Cost
Complainant fees	-£0.8m	-£2.8m	-£0.8m	-£2.8m
Remedial action	£0.27m	£2.8m	£0.27m	£2.8m
Mediation services	£0.11m	£0.19m	£0.11m	£0.19m
Local authority decisions	£0.69m	£1.89m	£0.55m	£1.59m
Local authority appeals	£0.06m	£0.42m	£0.02m	£0.13m
Local authority enforcement	£0.05m	£0.21m	£0.05m	£0.21m
Local authority enquiries	£0.03m	£0.32m	£0.03m	£0.32m
Appeals to PINS	£0.73m	£2.80m	£0.51m	£1.91m
TOTAL COST	£1.14m	£5.83m	£0.74m	£4.35m

Recurring Annual Costs after Three Year Backlog Has Been Cleared

73. Once the backlog of cases has been dealt with the costs of this regulation should fall significantly. In future years only the newly arising disputes will have to be settled. The total number of new disputes per year can be expected to be significantly lower than the 8,000 to 14,000 outstanding cases.

74. If we assume that the number of new cases per year is between 100 and 500, we can apply per case costs derived from the previous calculations in order to estimate an annual cost after the backlog has been cleared. Table 19 summarises these potential costs.

Table 19: recurring annual costs post backlog

	Option 2A	Option 2B

100 new cases a year	£0.04m-£0.12m	£0.02m-£0.09m
500 new cases a year	£0.2m-£0.6m	£0.12m-£0.44m

Equity and Fairness

75. Implementing Part 8 of the Anti-social Behaviour Act 2003 is intended to correct a current inequality whereby a high hedge may have an adverse impact on neighbouring properties whilst the amenity of the hedge owner is unaffected. The role of local authorities in determining complaints about high hedges would be to secure a balance between the competing interests of the complainant and hedge owner and of the community as a whole, taking account of the particular circumstances of the case. Issues of equity and fairness would, therefore, be central to the decision-making process.

76. As complaints may be brought only where residential properties are affected and as around 80% of the population live in urban areas, the impact of the legislation is likely to be felt more in urban than in **rural** areas. Otherwise, it has no disproportionate effect on any particular group of people. In particular, it would apply to any owner or occupier of an affected property or of the land where the hedge is situated, regardless of **race**, gender or age.

77. It is possible that people on low incomes may not be able to afford the fee that has to be paid when a complaint is submitted to a local authority, thereby preventing them from using this service and so putting them at a disadvantage. Local authorities have discretion, however, to waive or reduce the fee in such circumstances.

78. Insofar as some people have suggested that the stress of the dispute over the hedge could be causing health problems, providing a clear and impartial mechanism for resolving these matters might indirectly offer some **health** benefits.

Impact on Small Business

79. The impact of high hedges legislation on housing providers in the private and voluntary sectors and on community mediation services is discussed above. The total cost to these organisations is estimated to be around £360,000 to £980,000, and the annual cost from £120,000 to £327,000.

80. Other businesses, charities and voluntary organisations will be affected by the implementation of Part 8 of the Anti-social Behaviour Act 2003 only if they own property that adjoins a residential area and that has a high hedge. The correspondence that we receive suggests such cases are rare. The overall impact of the legislation on these sectors is likely, therefore, to be minimal. The Small Business Service have been consulted and have agreed this analysis.

Competition Assessment

81. Implementing the legislation would have no direct impact on competition. There is evidence that sales of conifers and, specifically, conifer hedging have declined in the wake of the adverse publicity these hedge disputes have attracted. Nurseries and garden centres have, for some time, been adjusting supplies in response to these changing demands.

Enforcement and Sanctions

82. Implementing Part 8 of the Anti-social Behaviour Act 2003 would send out a strong message that people should not grow hedges that unreasonably impact on neighbours, and so might help to alter assumptions about acceptable neighbourly behaviour. People might also be more inclined to negotiate a solution to these problems rather than face the prospect of the local authority deciding the matter. Just bringing the legislation into force should, therefore, help to minimise the number of unresolved hedge disputes.

83. Where negotiation does not work and people refer their complaint to the local authority, the authority would be able - if they considered the circumstances justified it - to order the owner to cut back the hedge by issuing a remedial notice. Given their close interest in the matter, the complainant is likely to monitor compliance closely and to inform the local authority of any breach. The high media interest in neighbourhood disputes also means that any failure to comply with a remedial notice could lead to the hedge owner being named and shamed in the local press. These would be strong inducements to secure compliance.

84. These self-policing measures would be supported by criminal offences and fines. As noted earlier, conviction in the magistrates' court of failure to comply with a remedial notice would carry a level 3 fine (up to £1,000). This is in line with fines for similar offences, such as failure to remedy a statutory nuisance (under the Environment Protection Act 1990) or failure to deal with land which is adversely affecting the amenity of an area (under the Town and Country Planning Act 1990).

85. Those who continued to defy the local authority's order could face the prospect of a court order and daily fines. Such strong penalties were considered essential to ensure that the necessary works to the hedge were carried out and so provide relief to the complainant.

86. For this reason, local authorities also have discretionary powers to go in and do the work themselves, recovering their costs from the hedge owner. They would be able to use these powers whether or not the criminal offence was pursued. The costs of the work would be recovered from the owner or occupier of the land. Any unpaid expenses would (until recovered) be registered as a local land charge.

Monitoring and Review

87. It is proposed to review how the legislation is working after it has been in operation for 5 years. This timescale has been selected so that it is possible to assess whether the predicted decline in new high hedge complaints, after the outstanding cases have been resolved, has happened. Such a review will include a survey of local authorities. In notifying authorities of the operational date for the legislation, we will advise them of the need to maintain records of complaints and their outcome in order to inform the review process.

Consultation

Within Government

88. The following Government Departments and Agencies have been consulted on implementation of high hedges legislation:

- Cabinet Office
- Department for Constitutional Affairs
- Department for the Environment, Food and Rural Affairs
- Department of Trade and Industry
- HM Treasury
- Home Office
- Small Business Service
- The Planning Inspectorate

Public Consultation

89. A report summarising the results of the public consultation held between March and July 2004 is attached as an Appendix. It also explains how the results have helped to shape the detailed arrangements for implementing high hedges legislation in Part 8 of the Anti-social Behaviour Act 2003.

Summary and Recommendation

90. The costs and benefits of the options identified in paragraph 13 above are summarised in Table 20.

Table 20: summary of costs and benefits

Option	Annual Cost	Benefits
1. Do nothing	£0.09m to £0.66m ¹⁷	None identified.
2A. Implement part 8 of the Anti-social Behaviour Act 2003 following established procedures	£1.14m to £5.83m	Transparent process to resolve outstanding hedge disputes. Role of local authority, plus appeals procedure, provide certainty of fair and impartial resolution. Improved amenity for complainants. Better neighbour relations. Better managed hedges. Fewer new hedge disputes.
2B. As Option 2 but with more streamlined procedures	£0.74m to £4.35m	Benefits as for Option 2A but with a lighter regulatory touch.

91. Option 2B is recommended as offering the most effective means of minimising hedge disputes, with a light regulatory touch.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

.....
Date

.....

¹⁷ These may be an underestimate because of the possible effect on house prices.

Phil Hope

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Appendix: Analysis of Consultation Responses

High Hedges Consultation: Implementing Part 8 of the Anti-social Behaviour Act 2003

Introduction

1. Between March and June 2004, the Government undertook a public consultation on how Part 8 of the Anti-social Behaviour Act 2003, which gives local authorities new powers to deal with complaints about high hedges, should be implemented in England. In addition, soundings were taken of 10 local authority officers at a meeting in June.
2. The consultation sought views on draft Regulations governing certain procedural details - notably the fee for making a complaint and how appeals against local authority decisions should be handled. Comments were also invited on draft operational guidance, principally intended for local authorities.
3. In total, 194 responses were received. 96 (50%) of these were from local authorities, 22 (11%) were from organisations and professionals (including arboricultural, planning, local government, and legal interests) and 76 (39%) were from members of the public. A full list of respondents is at Annex A. A table summarising the answers to each question, by category of respondent, is at Annex B.
4. Some respondents replied specifically to the questions asked while others adopted a more thematic approach. Not every respondent dealt with each question asked. For example, members of the public tended to confine their comments to the issue of fees. As a result, this report is divided into key areas, incorporating all responses. Percentages given relate to the number of respondents who commented on a particular topic.
5. It does not cover the results of the separate consultation on implementation of the legislation in Wales conducted by the Welsh Assembly Government. These are available on the planning pages of the Welsh Assembly Government website at: www.wales.gov.uk/subiplanning/index.htm.

Fees

What we asked

6. Section 68 of the Anti-social Behaviour Act 2003 requires that, in submitting a complaint, it must be accompanied by such fee (if any) as the local authority determines. The Government has a discretionary power to set a ceiling on what local authorities can charge for this service, through Regulations.
7. The key issue for consultation was, therefore, the level at which any maximum fee should be fixed. Views were sought, in particular, on whether it should be set so as to allow local authorities fully to recover their costs in administering high hedge complaints.

What you said

8. There were widely divergent views on the issue of fees.
9. On the one hand, 76% of local authority respondents favoured a maximum fee based on full cost recovery. While 38% of authorities agreed that the proposed fee of £280 to £320 would cover their costs, more (47%) thought this was an underestimate. A fee in the range of £400 to £600 had most support but a few authorities thought that £1,000 to £2,000 might better reflect the full

cost of administering the legislation. Some of these alternative costings were, however, based on the mistaken belief that the legislation required them to mediate between the parties to the dispute, involving lengthy discussion and negotiation.

10. On the other hand, Hedgeline (which represents around 4,000 people who have problems with neighbours' hedges) and 77% of the public who commented on the subject argued strongly for a national maximum fee of no more than £100. They drew parallels with the cost of making a planning application to extend your home and argued that a higher fee would prevent people getting access to the system, and so would be counter-productive. The latter concern was also shared by some local authorities.
11. In addition, some members of the public queried why the complainant should pay, particularly where the complaint was upheld. People felt that in such cases the hedge owner should bear part, if not all, of the cost.

How we've responded

12. The differences revealed by the consultation suggest that decisions on whether and at what level it is appropriate to charge for this service should rest with local authorities, so that they can take account of local circumstances and local taxpayers' wishes. This would also be in line with the Government's general policy of allowing such decisions to be made at the local level. We will, not therefore, be prescribing a maximum fee.
13. Under the terms of the Anti-social Behaviour Act 2003, authorities may set different rates for different groups - for example, for those on low incomes or benefits. They may also decide whether, and in what circumstances, to allow any refund. But there is no obligation on them to do so.

Appeals

What we asked

14. Section 71 of the 2003 Act specifies the appeal rights of the complainant and the hedge owner in relation to the decision by the local authority on the original complaint, including the issue of a remedial notice. It also provides rights of appeal against any decision by the authority to withdraw a remedial notice, or to waive or relax its requirements. The grounds on which appeals can be made and the procedures for determining appeals are left to Regulations.
15. The consultation sought views on the grounds of appeal set out in draft Regulations and the proposal that appeals should be determined on the basis of an exchange of written representations, together with a visit to the site of the hedge. Comments were invited, in particular, on how the appeals procedure might be simplified.

What you said

16. Around 67% of respondents supported the proposed grounds of appeal, though some additional grounds were put forward. In particular, it was felt that people should be able to appeal against a remedial notice on the grounds that the works specified in it would have an adverse effect on the visual amenity of the local area. Or that the works were not in accordance with good arboricultural practice and so might result in the death of the hedge. As such matters are encompassed within the broad grounds of appeal proposed, these comments showed the need for clarification on the circumstances covered.
17. On the appeals procedure, 57% of respondents across all sectors considered that only the main parties to the original complaint - that is, the complainant, hedge owner and local authority - should be involved in the appeal. Some 27% of respondents felt there should be discretion to seek

representations from others who had commented on the original complaint, depending on the circumstances of the case.

18. There was consensus that appeals were best dealt with by the submission of written representations. As the proposed procedures closely followed the planning model, respondents generally regarded them as fair and reasonable, including the timetable for submission of representations. Hedgeline suggested shorter deadlines in the light of concerns that appeals might be unreasonably prolonged. They also considered that a site visit by the appeal Inspector should be mandatory.
19. Despite this overall support for the consultation proposals, comments from local authorities revealed serious reservations about the cost implications associated with high hedges appeals. Some proposed a fee in order to deter frivolous appeals. Others suggested that appeal procedures should be simplified. In particular, local authority officers who were sounded out on the proposals favoured a streamlined process where their input was confined to handing over the case file.

How we've responded

20. The Regulations governing the grounds of appeal against local authority decisions on complaints about high hedges have been refined and the relevant section of the guidance has been expanded so it is clearer what circumstances are covered.
21. In the light of concerns about the impact of the proposed appeal procedures on local authorities and on the Planning Inspectorate (PINS), who will administer appeals relating to high hedges, the process has been radically slimmed. The key features of the revised procedure are:
 - **Only the main parties - the complainant, hedge owner and local authority - will be involved.** Other interested people (eg neighbours, amenity societies) may have made their views known to the local authority at the complaint stage. These will be on file and will be taken into account in determining the appeal;
 - **All appeals will be conducted in writing;**
 - **Evidence to enable the Inspector to determine the appeal will be supplied from the local authority case file.** This would replace the normal procedure of gathering information through an exchange of representations, which often duplicate material obtained during consideration of the original complaint;
 - **Other information/evidence will be sought at PINS' or the Inspector's discretion.** For example, the views of the parties would need to be sought on any new issues raised in the appeal, which had not been considered at the complaint stage;
 - **A site visit by the Inspector will remain an integral part of the process.**

Draft Guidance

What we asked

22. Alongside the main consultation paper we published '*High Hedges Complaints: Prevention and Cure - Consultation Draft*' which offered advice, principally for local authorities, on the operation of the legislation in England. The consultation sought comments on this draft guidance, not only whether it was clear and easy to use but also whether the proposed procedures could be simplified.

What you said

23. There was a general welcome for the draft guidance, with most respondents finding it clear and well structured. A few people thought it was overly prescriptive, while others sought more detail. It was suggested that checklists or flow charts, and perhaps chapter summaries, should be added to aid navigation.
24. The proposed procedure for dealing with complaints, through written submissions and a site visit, was generally considered sensible and workable. 70% of respondents thought it should be simplified, however, by only inviting the parties directly affected - the complainant and hedge owner - to submit written representations and by limiting the exchange of comments. Although 75% respondents regarded high hedge complaints as essentially private matters that should not be advertised to stimulate comment, some 16% felt that local authorities should have discretion to canvas wider views in certain circumstances. For example, where the hedge contributed to the wider amenity of the area, perhaps because it was situated in a conservation area or it contained protected trees.
25. Several respondents took the trouble to submit detailed comments on the draft guidance. These included requests for additional advice on some issues that might be encountered when considering complaints or enforcing the legislation. Specific suggestions were also made on how the draft guidance might be improved. The sections offering advice on how local authorities might assess and determine complaints, in order to achieve a reasonable balance between the competing interests of the individuals affected and the community as a whole, received most comment.

How we've responded

26. The guide *'High Hedges Complaints: Prevention and Cure'* has been altered to incorporate many of the detailed comments made and to simplify the process where possible. In particular, it suggests that while the complainant and hedge owner should exchange statements setting out their case to ensure transparency, inviting further comment is unlikely to generate additional information. The section on assessing and determining complaints has been recast so that it is clearer.

Draft Regulatory Impact Assessment

What we asked

27. Comments were sought on the draft Regulatory Impact Assessment on implementing the high hedges legislation. We asked local authorities if they had been keeping records of the number of people who had approached them about making a complaint and thus how many cases they were anticipating. In addition, we asked for comments on the estimated costings for both private individuals and public sector bodies, and whether there were any benefits of not implementing the legislation.

What you said

28. Apart from a handful of individuals and Hedgeline, the bulk of the comments on the draft Regulatory Impact Assessment came from local authorities and their representative organisations. While several local authorities offered estimates of the number of complaints expected, few had kept records of enquiries. Even where they had such records, authorities accepted that not all enquiries would result in formal complaints.
29. Most local authority respondents were concerned about the resource implications of this new burden. As noted in the discussion on fees above, the majority considered that we had underestimated the time that it would take to determine these complaints and thus the costs.

Some also predicted a higher percentage of cases going to appeal and requiring enforcement action. Where alternative costings were offered, however, few provided a breakdown to show how they had arrived at the figures.

30. No benefits of the 'do nothing' option of not implementing high hedges legislation were identified, other than the fact that it would not impose a new burden on local authorities.

How we've responded

31. The estimated costs to local authorities have been revised and put on a more robust footing in the final Regulatory Impact Assessment. In addition, in view of the uncertainties over demand, different scenarios are illustrated - depending on whether the caseload is high, medium or low. Other changes reflect the simplified procedures that have been adopted, especially in relation to appeals (see above).

Annex A: List of Respondents

Mrs E Appleyard
Ashford BC
Aylesbury Vale DC
Mr Christopher Balogh
S W D Banks
LB Barnet
Basingstoke & Deane BC
Mr John Bazley
Mr & Mrs W Beck
Bedford BC
Birlingham PC
Bolsover District Council
Mr Peter Bottomley MP
Bournemouth DC
Mr Clive Bowman
Mrs Roselyn Bradford
Braintree DC
Breckland DC
Bridgnorth DC
Broads Authority
Bromsgrove DC
Broxtowe BC
Mr P C Buckingham
Richard Burden MP
Mr John Cairns
Cannock Chase DC
Canterbury CC
Caradon DC
Mrs Judith Carter
Mr Ronald Cavanagh
Sir Sydney Chapman MP
Cheltenham BC
Chesterfield BC
Colchester BC
The Commission for Local Administration in England
Cornwall County Council
Cotswold DC
Council on Tribunals
Country Land & Business Association
Mr D F Crabtree
Lesley Cundiff
Dartford BC

Mr Garth Davies
Mr & Mrs John Daykin
Derby City Council
Derbyshire Dales DC
Dover DC
Mr Clive Dunnico
East Cambridgeshire DC
East Dorset DC
East Hampshire DC
East Herts DC
Mr & Mrs John Elliott
English Heritage
Essex Association of Local Councils
Forest of Dean DC
Mr L M Garner
Gateshead Council
Mr Lawrence Geary
Guildford BC
Harborough DC
Sarah Harrison
Harrow Council
Health & Safety Executive
Hedgeline
Mr D E Hennessey
Hertsmere BC
Mr C W E Heywood
Mr Alan Hingley
Mr Paul Hoddy
Horsham DC
Mr & Mrs John Humphries
Hyndburn BC
Institute of Horticulture
Isle of Wight Council
Mr Richard Jackson
Mr Robert Jackson MP
Mr Christopher Jarvis
Mr A D Jones
Lynne Jones MP
Kent Tree Officers Group
Kerrier DC
Kettering BC
Kingston Upon Hull City Council
Kirklington PC
Lancaster City Council

Mr Brian Laughland
The Law Society
Leeds City Council
Mr Ken Lewis
Ms Sue Lewis
Lichfield DC
Mr & Mrs Mike Liddicoat
Liverpool CC
London Tree Officers Association
Luton BC
Mr John Machin
Maidstone BC
Mr J T Mallinson
Malvern Hills DC
Mr Ian Mateer
Mr V Merrill
Mid Sussex DC
Mr Ian Miller
Milton Keynes Council
Mole Valley DC
Mr Deepak Mukerjee
National Association of Estate Agents
National Association of Tree Officers
National Consumer Federation
National Urban Forestry Unit
Dr Doug Naysmith MP
New Forest DC
Newcastle CC
North Norfolk DC
North Somerset
North Warwickshire BC
Northampton BC
Mr Adam Ogilvie-Smith
Mrs Alyson Osborne
Mr Tom Perry
Mr & Mrs Phillips
Planning & Environment Bar Association
Planning Inspectorate
Planning Officers Society
Poole BC
Mr A W Popham
Purbeck DC
LB Redbridge
Redcar & Cleveland

Redditch BC
LB Richmond
Rochford DC
Royal Horticultural Society
Royal Town Planning Institute
Cllr Jan Ruhmund
Mrs Hazel Rumbelow
Runnymede BC
Ryedale BC
Mr & Mrs William Sannwald
Mr B F Sansom
Sefton Council
Shrewsbury & Atcham BC
Mr D E Smith
Mr Michael Souper
South Cambridgeshire DC
South Norfolk Council
South Northants DC
South Staffordshire Council
Southampton City Council
Mr Brian Spencer
St Albans DC
Stafford BC
Stockport Council
Surrey Heath BC
Tandridge DC
Mr P Tebbit
Teignbridge DC
Mr Trevor Terry
Tewkesbury BC
Thanet DC
Mrs C Thomas
Jenny Tonge MP
Torbay Council
Totnes Town Council
Mrs T Tyler
Mrs Barbara Vaughan
Mrs Lesley Vaughan
Mr Edward Walliss MBE
LB Wandsworth
Warrington BC
Warwickshire DC
Waverley BC
Wealden DC

Wellingborough Council
Mr D Wells
Mr Charles Welsh
West Dorset DC
West Lancashire DC
Mrs M E Weston
Mr & Mrs D W Whetton
Mr Christopher White
Wilks Head & Eves
E Williams
Mr Derek Williamson
Berry Wilson
Windsor & Maidenhead RB
Woking BC
Woodland Trust
City of Worcester

4 respondents requested confidentiality

Annex B: Statistical Summary of Responses

Sector totals		Local Authorities	Organisations & Professionals	Public	TOTAL (& % of total)
Responses	Sector totals	96	22	76	194
	% of total	49%	11%	39%	

Fees (Q1-3)		Local Authorities		Organisations & Professionals		Public		NUMBER (& % of TOTAL)
Responses	Topic total	90		13		53		156
	% of sector total	94%		59%		70%		80%
Should fees be set to allow full recovery?		Y	N	Y	N	Y	N	
	number	68	8	7	4	3	41	131
	% of sector total	71%	8%	32%	18%	4%	54%	68%
	% topic total	76%	9%	54%	31%	6%	77%	84%
If so is £280-£320 OK?		Y	N	Y	N	Y	N	
	number	34	42	3	5	1	41	126
	% of sector total	35%	44%	14%	23%	1%	54%	65%
	% topic total	38%	47%	23%	38%	2%	77%	81%

Grounds of appeal (Q4-6)		Local Authorities		Organisations & Professionals		Public		NUMBER (& % of TOTAL)
Responses	Topic total	80		14		6		100
	% of sector total	83%		64%		8%		52%
Are grounds of appeal against RN OK?		Y	N	Y	N	Y	N	
	number	57	15	10	3	0	2	87
	% of sector total	59%	16%	45%	14%	0%	3%	45%
	% topic total	71%	19%	71%	21%	0%	33%	87%
Are grounds of appeal against refusal to issue RN OK?		Y	N	Y	N	Y	N	
	number	58	13	9	1	0	2	83
	% of sector total	60%	14%	41%	5%	0%	3%	43%
	% topic total	73%	16%	64%	7%	0%	33%	83%
Are grounds of appeal against withdrawal of RN OK?		Y	N	Y	N	Y	N	
	number	64	5	8	1	0	2	80
	% of sector total	67%	5%	36%	5%	0%	3%	41%
	% topic total	80%	6%	57%	7%	0%	33%	80%

Appeals Procedure (Q7-11)		Local Authorities		Organisations & Professionals		Public		NUMBER (& % of TOTAL)
Responses	Topic total	84		16		9		109
	% of sector total	85%		73%		12%		56%
Should the main parties play an equal part?		Y	N	Y	N	Y	N	
	number	70	3	12	0	3	0	88
	% of sector total	73%	3%	55%	0%	4%	0%	45%
	% topic total	83%	4%	75%	0%	33%	0%	81%
Should all interested parties take part (Y) or be restricted to main parties (N)?		Y	N	Y	N	Y	N	
	number	23	50	3	10	3	2	91
	% of sector total	24%	52%	14%	45%	4%	3%	47%
	% topic total	27%	60%	19%	63%	33%	22%	83%
Are the procedures fair?		Y	N	Y	N	Y	N	
	number	55	13	10	1	0	2	81
	% of sector total	57%	14%	45%	5%	0%	3%	42%
	% topic total	65%	15%	63%	6%	0%	22%	74%
Are all the actions needed?		Y	N	Y	N	Y	N	
	number	50	15	10	0	1	0	76
	% of sector total	52%	16%	45%	0%	1%	0%	39%
	% topic total	60%	18%	63%	0%	11%	0%	70%
Are timetables for submissions reasonable?		Y	N	Y	N	Y	N	
	number	52	16	8	2	0	1	79
	% of sector total	54%	17%	36%	9%	0%	1%	41%
	% topic total	62%	19%	50%	13%	0%	11%	72%

Draft guidance - Form of complaint (Q12-14)		Local Authorities		Organisations & Professionals		Public		NUMBER (& % of TOTAL)
Responses	Topic total	80		15		4		99
	% of sector total	83%		68%		5%		51%
Is the format of the guidance OK?		Y	N	Y	N	Y	N	
	number	68	7	8	1	0	0	84
	% of sector total	71%	7%	36%	5%	0%	0%	43%
	% topic total	85%	9%	53%	7%	0%	0%	85%
Is it clear and comprehensive?		Y	N	Y	N	Y	N	
	number	58	13	7	3	0	1	82
	% of sector total	60%	14%	32%	14%	0%	1%	42%
	% topic total	73%	16%	47%	20%	0%	25%	83%
Are all the model documents useful?		Y		Y		Y		
	number	58		4		0		62
	% of sector total	60%		18%		0%		32%
	% topic total	73%		27%		0%		63%

Draft guidance - Gathering evidence (Q15-16)		Local Authorities		Organisations & Professionals		Public		NUMBER (& % of TOTAL)
Responses	Topic total	80		11		5		96
	% of sector total	83%		50%		7%		49%
Should the exchange of reps be limited to main parties only?		Y	N	Y	N	Y	N	
	number	57	12	9	1	1	2	82
	% of sector total	59%	13%	41%	5%	1%	3%	42%
	% topic total	71%	15%	82%	9%	20%	40%	85%

Draft guidance - Dealing with the complaint (Q17-19)		Local Authorities		Organisations & Professionals		Public		NUMBER (& % of TOTAL)
Responses	Topic total	78		13		4		95
	% of sector total	81%		59%		5%		49%
Should complaints be advertised?		Y	N	Y	N	Y	N	
	number	7	64	4	7	4	0	86
	% of sector total	7%	67%	18%	32%	5%	0%	44%
	% topic total	9%	82%	31%	54%	100%	0%	91%
Is advice on weighing the evidence clear?		Y	N	Y	N	Y	N	
	number	39	23	6	2	0	0	70
	% of sector total	41%	24%	27%	9%	0%	0%	36%
	% topic total	50%	29%	46%	15%	0%	0%	74%

Draft guidance - Reaching a decision (Q20-22)		Local Authorities		Organisations & Professionals		Public		NUMBER (& % of TOTAL)
Responses	Topic total	77		13		4		94
	% of sector total	80%		59%		5%		48%
Is advice on balancing issues raised OK?		Y	N	Y	N	Y	N	
	number	29	18	6	4	0	0	57
	% of sector total	30%	19%	27%	18%	0%	0%	29%
	% topic total	38%	23%	46%	31%	0%	0%	61%

Introduction to the legislation and its implementation (Q23-24)		Local Authorities		Organisations & Professionals		Public		NUMBER (& % of TOTAL)
Responses	Topic total	79		11		2		92
	% of sector total	82%		50%		3%		47%
Would a workshop be useful?		Y		Y		Y		
	number	76		10		2		88
	% of sector total	79%		45%		3%		45%
	% topic total	96%		91%		100%		96%

RIA (Q25-27)		Local Authorities		Organisations & Professionals		Public		NUMBER (& % of TOTAL)
Responses	Topic total	69		6		3		78
	% of sector total	72%		27%		4%		40%
Have LAs kept records of enquires about high hedges problems?		Y		Y		Y		
	number	22		1		0		23
	% of sector total	23%		5%		0%		12%
	% topic total	32%		17%		0%		29%