

## Limits of the legislation

### *What sorts of complaint can the Local authority look at?*

You will find the answer to this and other questions about the complaints system in the leaflet '**High Hedges: Making a complaint**'

### *What about bamboo? Is this covered by the legislation?*

No, bamboo is not covered by the legislation. It is classed as a grass.

### *What about ivy? That's evergreen?*

Ivy may be evergreen but it is a climber and so needs support in order to give it height.

Any height-related problems are thus caused not so much by the ivy as by what it is growing up. For this reason, we take the view that ivy is not covered by the legislation.

### *But all these plants block light and cause other problems. It is illogical - and unfair - to exclude them?*

The Tree and High Hedges Act 2005 was never intended to provide the answer to all nuisance tree and hedge problems. Nor was it intended to provide people with general rights to uninterrupted light or views.

## Pre-complaint advice

### *What advice can the Department / local authority provide to potential complainants and hedge owners?*

Factual information should be provided - such as what constitutes a high hedge or how a complaint will be processed. This might include sending relevant leaflets or pointing people to where material is available on the web. If the Department / local authority consider that negotiation or mediation between the parties might be useful, they should direct them towards other organisations, such as any local community mediation service. It is important that any such negotiation is carried out by people other than those who will be deciding any formal complaint in order that the Department / local authority is clearly seen to be fair and impartial.

### *As a complainant, what evidence of attempting to resolve the problem with my neighbour am I required to give the Local authority?*

This will depend on how well you get on with your neighbours. Further information on the steps you can take to settle your hedge differences is in the leaflet '**Garden Hedges**', a record of what you've done - eg. copies of letters or a diary - that you can show to the local authority. It won't be enough to say your neighbour is not approachable.

***There is no mediation service in the area. What can I do?***

People are not required to go through mediation before submitting a complaint to the local authority. Mediation is recommended as a good way of settling neighbour disputes. But, if there is no mediation service near you, it is obviously not reasonable to expect you to try it. You should, however, have tried the other steps suggested in the leaflet called '**Garden Hedges**' to sort things out with your neighbour.

***Is it possible to forecast whether a complaint will be successful?***

Given the balancing exercise that the local authority has to carry out in order to determine whether a tree(s) / hedge is adversely affecting the reasonable enjoyment of the complainant's property, it is not easy to predict the outcome in any particular case. However, the detailed guidance on handling high hedge complaints in the booklet entitled '**Guidance for Department or Local Authority Officers – Trees and High Hedges**' is not just for local authorities.

In particular, **section 2.45 – 2.47 : 'Weighing the Evidence'** explains how the local authority might assess various grounds of complaint. Both potential complainants and hedge owners can also use this information to gauge the strengths and weaknesses of their case.

**Hedge owner's perspective*****My neighbour has approached me and told me that I must cut my hedge down to 2 metres. Is this right?***

No - The legislation does not require all hedges to be reduced to 2 metres in height. The law enables people, who have tried and exhausted all other avenues for resolving their tree(s) / hedge dispute, to take their complaint about a neighbour's high hedge / tree to their local authority/Department. For the complaint to be successful, they need to show that the hedge / tree(s) is adversely affecting the reasonable enjoyment of their property.

***My neighbour has asked me to reduce the size of my hedge. I am willing to do some works to it but is there any guidance to help me establish what would be a reasonable hedge height?***

This is difficult because there is no single right answer. It's a question of trying to find what suits both you and your neighbour. As suggested in the leaflet '**Garden Hedges**', it's best to look at all the options rather than discuss just one possible solution.

The leaflet also has some useful information to help you find the right answer. For example, it tells you how high a hedge needs to be to prevent you being overlooked. Please also see the '**Hedge height and light loss**' booklet, which refers to calculations you can do to find out what height the hedge should be if its not to block too much daylight and sunlight. **However, please note that the document should only be used when dealing with a row of evergreen bushes or trees, and NOT deciduous trees, single trees or woodlands.**

***If my neighbour makes a formal complaint to the local authority about my hedge, what involvement will I have in the process?***

The local authority will write to you to let you know that they have received a formal complaint about your hedge. They might ask you to provide certain factual information, such as whether you own the property as well as occupy it and whether there are any legal restrictions that apply to the property (eg a tree preservation order). The local authority will also ask you for your comments on the points made in the complaint and to provide any further information that you want the local authority to take into account.

In framing your comments, it is best to keep to the facts and explain how the hedge contributes to your enjoyment of your property and what the effect would be if its height had to be reduced. Bear in mind that a copy of your comments will be sent to the complainant.

The local authority will also want to arrange a visit to your property so that they can see the hedge and its surroundings for themselves. In making their decision, the local authority must take account of all relevant factors and must strike a balance between the competing interests of the complainant and hedge owner, as well as the interests of the wider community.

If they uphold the complaint, they may issue you with a remedial notice which will set out what you must do to the hedge to remedy the problem, and when by.

***I offered to reduce the hedge to what I consider a reasonable height but my neighbour wanted more. They have now made a formal complaint. Will my offer be taken into account by the local authority in deciding the complaint?***

It is not the role of the Department/ local authority to negotiate or arbitrate between individuals. Acting as an independent and impartial third party, they will adjudicate on whether the hedge is adversely affecting the reasonable enjoyment of the complainant's property. So any offers that you made earlier to reduce the hedge will not be directly relevant to what they have to decide, which is instead about the impact of the hedge.

Negotiations between you and your neighbour do not have to stop just because a formal complaint has been made. It's worth continuing to talk to one another. If you agree a solution, the complaint can be withdrawn and it is possible, in certain circumstances, that part of the fee may be refunded.

***The hedge was there before the complainant's property was built [or before they moved into it]. Will the local authority take this into account?***

No, the history of the hedge or of the site where it is located is not relevant to the question that the local authority have to decide - which is about the impact of the hedge on the complainant's reasonable enjoyment of their property.

## Party hedges

***What happens where a hedge is jointly owned but your neighbour does not maintain their side of it? Can you complain to the local authority under this legislation?***

You can only complain to the local authority about a tree(s) or hedge that is on land owned or occupied by someone else. In this example, the land where the hedge is growing is jointly owned by the person who would be making the complaint so you can't use the high hedges legislation to solve your problems. Depending on the terms of the party agreement, both neighbours might be entitled to cut the whole of the hedge - both sides and top.

## Overhanging branches

***I'm not so worried about the height of next door's hedge but I cannot reach to cut the portion that overhangs my garden. Nor can I afford to get it cut professionally. Why isn't it mandatory for the owner to maintain their hedge within the bounds of their own property?***

This is the general effect of current common (unwritten) law. A tree or hedge belongs to the owner of the land it is growing on and, under common law, that person is responsible for managing and maintaining it so that it is not a nuisance to anyone else - in the same way that they are responsible for looking after any other part of their property.

Where the branches of a tree or hedge cause a nuisance by trespassing onto an adjoining property, the common law allows the neighbour to remedy this by cutting back to the boundary any overhanging branches - provided there are no other legal restrictions in place, such as Registration under the Tree Preservation Act 1993.

The other way of enforcing these common law responsibilities is through the civil courts, by pursuing an action against the owner of the tree or hedge for trespass, nuisance and/or negligence. The law on nuisance/negligence is complicated and so such a step is not to be taken lightly. Anyone considering such action would be well advised to seek specialist legal help.

A middle route is to use the small claims procedure court to seek recovery of the costs of professional cutting back of overhanging branches of neighbouring hedges. Other ways of settling the matter should, of course, be tried before issuing a claim at court - for example, by writing to the hedge owner to ask for recompense. Hedgeline have published on their website a procedure to help people who are considering pursuing such a course of action.

***I have a hedge at the bottom of my garden. My neighbours have asked me twice to go into their garden and trim the hedge from their side. Physically, I can't do the work. Am I legally required to cut the other side of the hedge?***

The legal position is set out in the previous answer. As this shows, your neighbour would have to take you to court to force you to cut their side of the hedge, or to recover the costs of getting it cut professionally.

The best way forward is to discuss the upkeep of the hedge with your neighbour and try to agree a solution that will suit you both. Some general advice on how to approach your neighbour and find the right answer is in the leaflet '**Garden Hedges**'. Although it is mainly aimed at people who have problems with someone else's hedge, the advice holds good whichever side of the hedge you're on.

In particular, you will need to try and see things from your neighbour's point of view. They might resent having constantly to maintain a hedge that they did not plant - and might not like. Remember that one option is to get rid of the hedge and replace it with something more suitable. The leaflet '**The right hedge for you**' offers some useful advice in this case.

## Fees

### ***Who in the Department/ local Authority decides what fee should be charged for dealing with tree(s) or high hedge complaints?***

Responsibility for deciding how much the fee should be, and the policy on such matters as discounts and refunds, rests with Department of Infrastructure.

### ***Is VAT payable on the fee?***

No. as it is a fee for providing a statutory service then this is considered as non-business, and therefore outside the scope of VAT.

### ***Why should the person who is suffering the hedge problems have to pay the local authority to intervene?***

The Trees and High Hedges Act 2005 states that complainants must pay a fee to the Department / local authority when they submit their hedge /tree(s) complaint. There are several reasons why we think this is fair and reasonable:

- Most people who responded to consultation about fees in early 2006 thought it was fair that the complainant should pay something for the local authority to intervene in their hedge/ tree(s) dispute.
- Payment of a fee will encourage people to try to settle these disputes amicably, making sure that involvement of the local authority really is a last resort.
- A fee also helps to deter frivolous or vexatious complaints.
- It is common practice to charge a fee for a service which is likely to benefit an individual (in this case, the complainant) rather than the community in general.

You might argue the complainant is the innocent party in this dispute and so they should not be charged. However, it is important to understand the way the legislation works. It allows the Department / local authority to review these cases, as independent and impartial third parties. Authorities are not investigating any offence – none has been committed, even if a complainant “wins” their case – and so the legislation does not deal in innocent or guilty parties. As a result, the fee is a payment for a service – not a penalty.

### ***How can there be no offence: it's anti-social behaviour?***

No offence is committed until such time as a hedge owner fails to implement a Department's / local authority's order to carry out works to the hedge to remedy the problems it is causing.

### ***Can I reclaim the fee from the hedge owner?***

There is no procedure under the Trees and High Hedges Act 2005 for the complainant to obtain re- payment of the fee from the hedge owner. In certain circumstances the Department / local authority may refund a percentage of the fee if the -

- complaint is withdrawn before any letters are issued - 75% of fee
- complaint is withdrawn before a visit is made - 50% of fee
- complaint is withdrawn before a remedial notice is issued – 25% of fee

## Protected Trees

### ***If trees are registered with the Department of Environment, Food and Agriculture, (“DEFA”), is the registration overridden by high hedges legislation?***

The Tree Preservation Act 1993 has primacy over the Trees and High Hedges Act 2005. Under section

2(1) of the 1993 Act, the DEFA is empowered to maintain a register of trees, groups of trees, or woods which it considers ought to be preserved in the interests of amenity. The register is kept at DEFA's offices on Foxdale Road in St John's and may be inspected at all reasonable hours. Please contact the Forestry Directorate for more information (Tel: 801263).

### ***If trees are involved will the Department / local authority seek the advice of officers from DEFA?***

Yes - the Department / local authority will involve officers from DEFA in the decision making process. Due consideration will need to be taken of the extent to which the tree(s) contributes to the amenity of the neighbourhood.

### ***Does a remedial notice override the need to get a licence under the Tree Preservation Act 1993?***

A remedial notice cannot require removal of a hedge so the need for a felling licence should generally not arise. However, if a person receiving a Remedial Notice decides it would be best to remove a hedge or tree in its entirety rather than just reduce the height, then a Licence under the Tree Preservation Act from DEFA would be required. In addition, the reduction of the height of trees or hedges which are Registered under the Tree Preservation Act would also require a Licence.

### ***Are single trees covered under the legislation?***

Yes - the Trees and High Hedges Act 2005 provides a mechanism for resolution of disputes regarding either a tree or a high hedge which, allegedly, adversely effects the reasonable enjoyment of the complaining party. A high hedge, defined under section 2 of the 2005 Act, means “so much of a barrier to light as –

- (i) is formed wholly or predominantly by a row of 2 or more trees or shrubs; and
- (ii) rises to a height of more than 2 metres above ground level.”

## Planning conditions

### ***How should Authorities deal with high hedge complaints where there is a planning condition requiring the hedge to be maintained at a certain height?***

It is highly unlikely that any such planning conditions will have been imposed. If in doubt you are advised to contact the planning office at the Department of Infrastructure (Tel: 685950). Any remedial notice issued in response to a complaint would not, however, override a planning condition.

## Hedge height and light loss

### *How do you calculate light to conservatories?*

Where a house has a conservatory, the opening between it and the house is taken as the window position for calculating the action hedge height - not the front or the side of the conservatory. This is because the glazing allows light in from all sides of the conservatory.

### *How do you calculate the area of oddly-shaped gardens?*

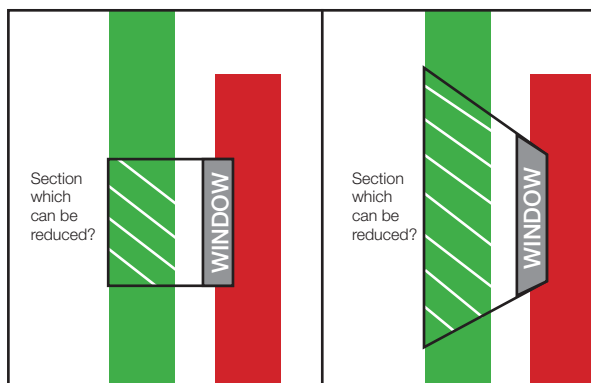
One way of working out the area of gardens that are awkwardly shaped is to overlay a scaled plan with a grid - ie to divide it into smaller building blocks. This confines the complications to the margins and, even here, should give an indication of what proportion of the area covered by the grid falls within the garden.

### *The sole impact is to a bathroom window, which faces and is about 1 metre away from the hedge. As bathroom windows are excluded from the Hedge Height and Light Loss calculations, does this mean that the complaint should automatically be rejected?*

The Hedge Height and Light Loss booklet (paragraph 5.1) states “Loss of light to toilets, bathrooms, store rooms and circulation areas (hall, stairs and landing) is deemed less important and such windows need not be analysed.”. This is, however, only for the purpose of carrying out the BRE calculations. There is nothing in the legislation that says particular rooms are excluded from consideration. The fact that the affected rooms are bathrooms, does not necessarily mean therefore that the complaint is invalid but that little weight would be given to this particular ground of complaint. The reason for this is that loss of light to bathrooms is unlikely to have much impact on the complainant’s general use and thus reasonable enjoyment of their property.

### *Where light to a window is affected by a hedge growing directly opposite, particularly where it is close, how long a section of the offending hedge is cut? Is it the section of hedge that is directly opposite the affected window or is there some kind of splayed system?*

*For example -*



Diffuse light can come from many directions, and the BRE guidelines have been developed assuming the whole length of the hedge is cut to the same height. In principle, you could leave intact the areas that were at an oblique angle to the window, but you would have to compensate for this by reducing the section to be cut to a lower height. You could use the vertical sky component technique in Site layout planning for daylight and sunlight: a guide to good practice to determine how much lower.

**The BRE guidelines should only be used when dealing with a row of evergreen bushes or trees, and not deciduous trees, single trees or woodlands.**

***The hedge grows at an angle to the window. It is not opposite, at right angles or 45o. How do I calculate the action hedge height?***

Use the most appropriate formula in the 'Hedge height and light loss' booklet – i.e. the formula for the angle closest to that of the hedge.

***How do I calculate the action hedge height for a garden where the hedge only covers part of the boundary?***

Paragraph 4.2 of the 'Hedge height and light loss' booklet explains that you should carry out the full calculation - garden area divided by effective hedge length - to produce the correct effective garden depth. This should then be multiplied by the relative orientation factor.

***I have a hedge which bends and faces different compass points, eg. South East and East. How do I calculate the action hedge height?***

In this case you would need to calculate a new orientation factor (see Table 1 of 'Hedge height and light loss' booklet) to apply to the whole length of hedge. First, multiply the length of each section that faces a different direction by the factor for its orientation. Then add together the results for each section of hedge and divide this total by the total length of the hedge. This will provide a new orientation factor. Because the garden in such an example will not be rectangular you would then use the full calculation in paragraph 4.2 of 'Hedge height and light loss' to obtain the 'Effective depth' of the garden. This should be multiplied by the new orientation factor to produce the action hedge height which would apply to the total length of the hedge.

Example:

	Length of section of hedge (m)	Orientation	Factor from Table 1	Length x factor
	8	South East	0.3	2.4
	14	East	0.4	5.6
Totals	22			8

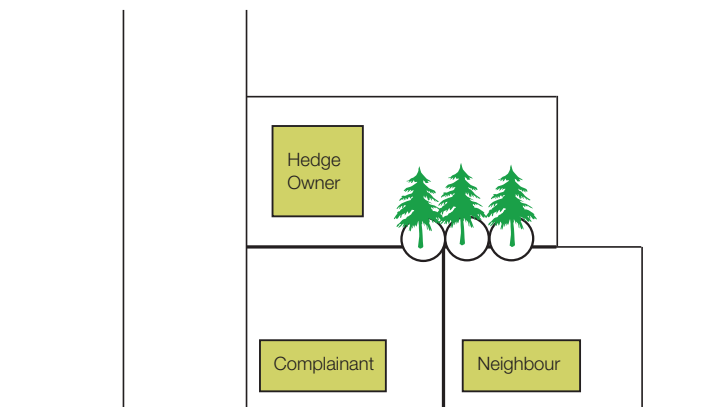
**New factor** = Total of length x factor (8)/ Total length (22) = 0.36

**Action hedge height** = Effective depth of garden x New factor



***Only a small portion of a hedge borders the complainant's property (see the example below). What does the Authority consider - just that portion or the whole hedge?***

Under the Trees and High Hedges Act 2005, an offending hedge need not be located on the boundary between the complainant's property and that of the hedge owner. The whole hedge, therefore, can be considered, provided that it satisfies the legal tests. However, when assessing the impact on light to the complainant's property, using the Hedge height and light loss calculations, only the portion of hedge on the complainant's boundary is taken into account. Work could, nevertheless, be justified to the portion of the hedge not situated on the boundary, depending on other grounds of complaint. If the Authority are likely to require work to the whole length of the hedge, it may be appropriate to consult other neighbours who could be affected.



## Loss of view

***Is loss of a cherished view a valid ground of complaint?***

There are several strands here that need to be considered separately -

First, the definition of a high hedge. The Trees and High Hedges Act 2005 talks about “a barrier to light.” What you see is not relevant at this stage. So it is not about loss of a particular view but whether or not it is possible to see whatever happens to lie behind the trees or shrubs in the hedge. If you can't see what is the other side of the hedge, and it has all the other attributes set out in section 2 of the 2005 Act, then it is a high hedge and can be the subject of a complaint under 2005 Act.

The references to “view” in paragraphs 2.76 -2.78 of the booklet entitled “**Guidance for Department or Local Authority Officers**” relate, therefore, purely to the physical characteristics of the hedge and applies only when assessing whether or not a hedge meets the definition of a high hedge.

Turning next to the grounds of complaint, these comprise a set of allegations. Under the Trees and High Hedges Act 2005, a complaint is valid if it is alleging that the complainant's reasonable enjoyment of their property is adversely affected by the height of a tree or high hedge. Loss of view is about height and the amenity/enjoyment of the property and so fits into this category, making it a valid ground of complaint.

However, in considering the allegations and determining the complaint, the Authority has to look at things from the objective position of the enjoyment that a reasonable person might expect. This might be different to the complainant's expectations. Thus the complainant might attach particular value to a view along the coast or of the countryside but we suggest that may be an unreasonable expectation. Loss of a particular view is unlikely, therefore, to have a significant impact on “reasonable” enjoyment of property and so would be given little weight in the decision making process.

The basic message is that loss of view is a valid ground of complaint but, by itself, is unlikely to be enough to justify a remedial notice being issued.

## Remedial works

### ***Who does the Authority serve a remedial notice on?***

The Authority does not serve a remedial notice on a particular person. This is because it runs with the land on which the tree/ hedge is growing and is binding on all future owner and occupiers. The notice must be registered as a local land charge so that prospective buyers of the property are aware of the obligation they will be taking on.

### **Can the Authority only require the height of the hedge to be reduced?**

No. The Authority can order whatever works to the hedge they consider necessary to remedy the problems it is causing, and to prevent them from recurring. Reducing the height of the hedge along the whole or part of its length is only one solution. Other options include crown lifting, crown thinning, retaining selected trees or phased works. It is important that Authorities obtain arboricultural advice to help them identify the right management solution.

### **Can Authorities order remedial works that would kill a hedge?**

In the Government's view this would amount to the same as removing the hedge altogether and, under section 5(3) of the Trees and High Hedges Act 2005, the Department/ local authority are expressly prevented from ordering action involving removal of a hedge. Requiring removal of a high hedge would represent a disproportionate response to the problem.

### **Is there a danger that certain remedial works might kill the hedge?**

How far you can reduce a hedge before you kill it will vary according to the particular circumstances. To illustrate the point, a healthy Leyland cypress hedge will usually respond well to a reduction by up to one-third whereas an older specimen may not. There will be circumstances where Leyland cypress, or other species, may be reduced by more than one-third without destroying them.

For these reasons, we recommend that Authorities consider each case on its merits and obtain arboricultural advice.

### ***So how much can you reduce a hedge before you kill it?***

This will depend on the species, age and health of the hedge. Past management will also be a factor. So it comes down to a professional judgement of whether the remedial works proposed in a particular case could result in the death of the hedge.

If so, Authorities might suggest cutting the hedge in stages over several seasons.

If that is not feasible, they might need to modify the remedial action to ensure the hedge survives.

***Does this mean that a remedial notice might specify a hedge height that would ensure its survival but not fully address the issues raised in the complaint?***

This and other considerations, such as preserving the hedge owner's amenity, could mean that the remedial notice does not fully remedy the problems identified in the complaint. Such an outcome is inevitable given the constraints of the legislation and that an Authority's role in these cases is to seek a balance between the various interests involved.

You might argue that this undermines the legislation. However, the legislation is about striking an appropriate balance between the interests of the complainant and the tree/ hedge owner.

There may be some cases where Authorities might be prevented from requiring action to be taken that would provide a full remedy to the problems identified. Nevertheless they should still be able to order works that offer some relief to the complainant.

In addition, the legislation is helping all those who are now managing to resolve their hedge disputes voluntarily, without involving the Council.

***Surely there is no balance here. Everything is stacked against the victim who might have paid a lot of money for the Authority to consider their complaint.***

People might feel let down if the Authority agrees the hedge is causing problems but is unable to remedy the problem. This may be because in occasional cases the proposed remedial action may severely damage or even kill the hedge, and the Government remains of the view that such a course of action may represent a disproportionate response.

But this fails to protect the interests and human rights of the individual who is affected by a high hedge. Shouldn't they be given more consideration?

There are two separate 'human rights' decisions here.

When Authorities are deciding complaints, they need to carry out the balancing exercise that is central to safeguarding human rights. This involves trying to secure a reasonable balance between the interests of the complainant, on the one hand, with those of the hedge owner and the wider community (eg public amenity) on the other. This exercise has to be carried out within the confines of the law which - as discussed above - constrains what Authorities can do by way of remedy.

When we were considering the content of the legislation, however, we had to take a broader view. We had to consider whether (under Article 1 of the First Protocol) it was in the public interest to deprive someone of their property/ possessions (ie. hedge). There were several reasons why we felt this could not be justified. First, such action tends to be used primarily to deprive people of the proceeds of criminal activities - and there is no law against growing a high hedge. Secondly, most hedge problems can be remedied by reducing the hedge rather than removing it entirely. So legislating to allow removal of a hedge would be a disproportionate response to the problem.

***What if the remedial works won't kill the hedge but will make it look daft?***

So be it - unless the hedge makes a contribution to the wider amenity.

If someone wishes to challenge our interpretation of the legislation, they would need to find a suitable case on which they could make an application to the Courts for judicial review of the decision. Only the Courts can provide definitive interpretation of legislation.

***What can Authorities do when removing the hedge is the best solution?***

It remains open to the hedge owner to go further than the remedial notice requires and to remove the hedge entirely if they want.

Where Authorities cannot order action that would provide a full remedy to the adverse effects of a hedge, they might wish to make clear in their decision letter that the circumstances justify a lower hedge height. In these cases, or where the end result may look daft, the Authority can recommend that the owner consider removing the hedge entirely.

***If the hedge dies after the works set out in the remedial notice have been carried out, does the owner have a right to compensation?***

The owner would have to make a claim for damages against the Authority through the civil courts. They would need to show that the Authority had been negligent. This is a complicated area of the law and so anyone contemplating such action should seek their own legal advice.

***Can a remedial notice include conditions - eg requiring the work to be carried out to a certain standard?***

No, the Authority cannot attach conditions to a remedial notice. They might offer good practice advice with the notice or include it in an "informative". But as the name suggests, this would be for information only and cannot be enforced.

***Can the hedge owner carry out more work than that specified in the remedial notice?***

It is open to the hedge owner, at any time, to do more than the remedial notice requires - unless other legal restrictions apply. For example, if the trees in the hedge are protected under a tree preservation order or it is in a conservation area.

***What if the hedge owner removes the hedge and plants a new one in its place. Do the requirements in the remedial notice apply to the new hedge?***

No. The remedial notice applies only to the hedge that was the subject of the original complaint. If the replacement hedge, in time, grows to such a height that it adversely affects a neighbouring property, a fresh complaint would have to be made.

***I cannot afford to do the work. Can I get a grant to help pay for the work?***

There are no general grants available to help with the costs of carrying out the work specified in a remedial notice. Nor can the Authority take this into account in determining a complaint under the legislation. As a general rule, such expenses must be expected and accepted as part of the general maintenance of your property - in the same way as the costs of maintenance of doors and windows and household wear and tear.

***Can an Authority issue a remedial notice in respect of a hedge that it owns - ie against itself?***

Yes, an Authority can issue a remedial notice in respect of a hedge on land that it owns. But, as a single legal entity, the Council could not take enforcement action against itself. This does not, however,

prevent someone else seeking to enforce such a notice. Equally, someone could complain to the Chief Executive if the Authority failed to comply. Hopefully, no Authority would get to the position where it breached its own remedial notice.

**Enforcement*****What happens if the hedge owner does not comply with a remedial notice because they can't afford to do the work?***

The Authority should consider whether, in these circumstances, it would be in the public interest to prosecute the hedge owner.

***What if the Authority can't find the owner or occupier of the land where the tree or hedge is situated in order to enforce a remedial notice - or to carry out any of their other functions relating to high hedges?***

Under section 37 of the Local Government Act 1985, Authorities have power to serve a notice on certain people to obtain the names and addresses of the owners and occupiers of land, where they need this to perform any of their statutory functions. If people don't provide the information, or offer false information, they may be prosecuted and fined.

***Can a warrant for entry to the land where the hedge is situated be obtained?***

No. There is no power in the Trees and High Hedges Act 2005 for Authorities to obtain a warrant for entry to land either when dealing with a high hedge complaint or enforcing a remedial notice. Under section 9 of the Act, Authorities may authorise officers to enter the land where the hedge is situated in certain circumstances and subject to at 24 hours' notice of intended entry. Authority officers entering land under these powers would be able to take with them other people. This might include the Police in extreme cases.

## Alternative legislative remedies

### *Wouldn't it have been easier to introduce a general height restriction on hedges?*

A general height restriction would not work because there are plenty of neighbours who are quite happy with the high hedge growing between them. It would be unreasonable to suddenly tell them that their hedge was no longer considered acceptable and must be cut down. There are also cases where a tall hedge is a positive benefit. For example, it might screen something unsightly or block the view of, say, a busy road. It might act as a windbreak, protecting tender plants or crops. One size hedge does not fit all.

### *Why not just apply the planning rules on the height of walls and fences to hedges?*

This option was considered in England and Wales - and ruled out - in their 1999 consultation paper High hedges: possible solutions. Requiring planning permission for high hedges in the way that it is required for fences or walls seems a simple and logical solution. The issue is, however, fundamental to planning law as it would need a change to the definition of development to include the planting or growing of hedges. Such a major step could not be taken lightly.

In addition, this solution has practical difficulties. For instance, it would not be clear to people at what point a growing hedge would exceed the height limit and require planning permission. It would affect all hedges, whether or not they were causing problems. This would be intrusive. There are also doubts about whether it would apply to all existing high hedges and so how effective it would be in solving these problems.

### *Why not adopt the European solution of a simple height and distance rule that operates across the board?*

Some countries in continental Europe have laws imposing a height limit on trees and hedges that are within a certain distance of a property's boundary. These laws tend to date back 100 years or more and are a well-established part of those countries' legal systems. We do not have the same tradition in the UK. If we were, therefore, to introduce a similar system here, it would represent a significant intrusion into people's lives and property rights.

## Further information

The leaflets:- **The right hedge for you**, **Garden Hedges and Guidance for Department or Local Authority Officers**, together with the guidance **High Hedges making a complaint** and **Hedge height and light loss** are available on this website. Alternatively, you can also contact the Department of Infrastructure or your local authority.