

Guidance for Department or Local Authority Officers

This booklet is for guidance purposes only and should not be relied upon as a definitive statement of the law. The law is contained in the relevant primary and secondary legislation. Please note that only the courts can give an authoritative interpretation of any point of law, and so this guidance booklet has no legal force.

1 Introduction

(1) The provisions of the Trees and High Hedges Act 2005 set down procedures whereby those inconvenienced by excessively high hedges or tree(s) bordering their property may seek, by law, to have neighbouring hedges cut down to, and maintained at, a height no lower than 2 metres.

(2) This guidance booklet sets out the procedures to be followed when handling or investigating complaints from initial informal options to accepting and investigating a formal written complaint and on through the issue of a remedial notice to any possible appeal and/or enforcement action.

(3) In areas of doubt as to interpretation of procedures to be followed or law then the Legislation and Policy Unit of the Department of Infrastructure on 685890 or 686246 may be contacted. Where professional issues arise out of planning issues then the Secretary to the Planning Committee should be contacted initially. In determining matters relating to trees, tree preservation orders, wildlife or nature conservation, officers of DEFA may be contacted (see contact details set out on page 33).

(4) Within this guidance booklet, references made to:

- “the Act” mean the Trees and High Hedges Act 2005;
- “Department” means the Department of Infrastructure and also includes, where an instrument of Delegation has been made under Section 3 of the Government Departments Act 1987, a local authority. References to the Department include and apply to local authorities to the extent of their delegated powers;
- “DEFA” means the Department of Environment, Food and Agriculture.

2 Informal Action

(1) When first approached by someone with tree, trees or high hedge problems, a complaints form and leaflet about the procedure should **not** automatically be sent out. It is good practice to use the opportunity to explore with the person the nature of the problem and what has been done to try to settle the matter through negotiation; and to guide them through the terms of the Act and the complaints procedures.

(2) The Department should be careful not to give any of the parties advice on the merits of their case. They should offer factual information only. Nevertheless early discussion can save time later and is encouraged.

(3) In particular, early discussion can help to establish:

- whether the hedge and or tree(s) in question and the problems encountered fall within the scope of the Act;
- whether there is more that the person can do try to resolve the matter without involving the Department;
- where the Department has considered an earlier complaint, whether there has been a subsequent change in circumstances that was not previously taken into account.

(4) If the Department thinks more could be done to resolve the dispute amicably, it should explain what further steps the person should take. Depending on the extent of contact with the owner of the hedge, the Department might consider providing information on alternative dispute resolution methods and including. The leaflet '*garden hedges*' could be issued in conjunction with the letter at **Annex Ai**.

(5) The Department should not, however, mediate directly in high hedge disputes. Given that its role in these complaints is to act as an independent and impartial third party, it could prejudice its position in determining any subsequent formal complaint if it seeks to act as a go-between.

(6) The Department recommends that complainants should refer to the document "Hedge height and light loss" produced by the Building Research Establishment. This guidance document provides an objective method for assessing whether a hedge is obstructing light to windows. **However, please note that it should ONLY be used when dealing with a row of evergreen bushes or trees, and NOT deciduous trees, single trees or woodlands.** Details of the publication may be accessed via the Department's website.

Making a Formal Complaint

(7) When the Department is approached by someone wishing to make a formal complaint under the Act, it should normally provide the person with:

- a covering letter which includes details of the fees payable – see **Annex A ii**
- a complaints form for completion;
- the leaflet '*Guidance notes for completing the complaint form: high hedges*'.
- the leaflet "*High Hedges: making a complaint*"

(8) It is also good practice for the Department to provide the name and contact details of the officer who will be dealing with the complaint.

Form

(9) A complaint must be submitted in writing.

(10) As a minimum, the person making a complaint will need to supply the following information:

- their name, address and other contact details;
- confirmation that the address relates to a domestic property;

- the name and address of the occupier of the land where the hedge or tree(s) is situated, together with similar details for the owner of the land in question (if different and if known);
- a location plan showing the hedge or tree(s), the garden and any windows that might be affected;
- photos of the hedge or tree(s) with a figure for scale;
- its approximate height;
- details of the steps taken to settle the dispute by negotiation, with copies of relevant correspondence or other papers;
- details of how the height of the hedge or tree(s) is adversely affecting the complainant's amenity.

It will help the Department if this does not just list the problems caused by the hedge or tree(s) but explains their impact on the complainant and their severity, in factual terms (for example, the hedge or tree blocks light to our living room which means that we need to keep electric lights on all day during the winter).

(11) The person making the complaint should send a copy to the owner and occupier of the land where the hedge or tree(s) is situated, at the same time as they submit it to the Department. The owner and occupier of the land in question should have been forewarned that failure to negotiate a solution would lead to the matter being referred to the Department and so the complaint should not come as a surprise.

Fees

(12) The Department shall collect, and, subject to 'Weighing the evidence' at paragraph (45) below, may retain, a fee for determining a formal complaint about a high hedge. This is laid down in a fees Order approved by Tynwald¹.

(13) It is for the Department to decide whether any refund should be allowed at any point in the complaints process (for example, if the matter is subsequently settled through further negotiations by the parties).

Linked cases

(14) It is possible that more than one complaint may be received at any one time in respect of a single hedge or tree(s). Where there has been infill development, for example, a hedge or tree(s) that bounds a large garden could affect several smaller neighbouring properties. The Department must consider each individual complaint on its particular merits as the impact of the hedge or tree(s) may vary from case to case. It is advisable to link the complaints so that the relationship between them and the practical implications for the hedge owner are considered. Further advice is given later in this chapter in 'Deciding the Complaint' and in Chapter 4: '*Remedial Works*'.

Whether or Not to Proceed with a Complaint

(15) The Department may decide not to proceed with a complaint² if they consider either:

- that the complainant has not taken all reasonable steps to resolve the matters complained of before involving the Department; or

¹ SD 331/07 approved by Tynwald on 15th May 2007.

² s.4(2) of the Act.

- that the complaint is frivolous or vexatious.

2.16 In either event, the Department must inform the complainant as soon as they can, explaining the reasons for the decision³. Model letters are at **Annex Bi, ii and iii**.

2.17 There is a right of appeal against any decision not to proceed with a high hedge complaint⁴.

Reasonable steps to resolve the dispute amicably

2.18 What steps people should have taken before approaching the Department will vary from case to case, depending on the circumstances.

2.19 For example, the parties might be encouraged to try mediation. This is a remarkably quick and informal means of resolving disputes - with great potential for success. It works best where people willingly participate. For this reason, it is not a compulsory part of the process but is to be encouraged.

2.20 In other cases, where communication has completely broken down, a couple of exchanges of letters might be all that can reasonably be expected.

2.21 For some people, their hedge or tree problems will be long-standing and date back to well before the Act came into operation. During this time they may have made several attempts to settle the matter through negotiation and been repeatedly rebuffed. Nevertheless, they should make a fresh approach to the owner or person living where the hedge is situated before making a formal complaint to the Department.

2.22 Circumstances will have altered significantly as a result of this new law. This time, the person affected by the hedge would be negotiating from a position of strength. The person with the hedge will know that the Department could force them to cut it back and so might be more inclined to co-operate.

2.23 If communication has broken down it is still expected that the complainant will first write to the person with the hedge, advising them of the change in the law and asking to discuss the problem. If the approach is rejected or there is no response, it would then be expected that they warn the person that a formal complaint will be made to the Department.

2.24 As noted in paragraphs 2.1 to 2.5, people are encouraged to discuss with the Department - before submitting a formal complaint - what action they have taken to try to settle matters by negotiation and what other avenues might be open to them.

2.25 If, nevertheless, a formal complaint is received, with the right fee, but it is felt that more could be done to resolve the dispute amicably, the Department should explain what further steps the complainant should take. The Department should then put the matter on hold while the parties try to settle the matter. The original complaint may be re-activated should this prove unsuccessful. The Department should consider refunding an appropriate proportion of the fee in those cases where the additional steps are successful in resolving a complaint.

Frivolous or vexatious

2.26 The requirements to take prior steps to resolve the dispute through negotiation, or consider mediation, and to pay a fee up-front when making a

³ s.4(6) of the Act.

⁴ s.7(3) of the Act.

complaint should help to discourage frivolous or vexatious complaints reaching the Department in the first place.

2.27 Whether a complaint is frivolous or vexatious will turn on its particular circumstances and so needs to be considered on a case by case basis.

2.28 The most obvious example is where someone repeatedly complains (unsuccessfully) to the Department without there having been any change in circumstances since the matter was last investigated.

2.29 It will be for Department to consider what proportion, if any, of the fee they should refund if they decide not to proceed with a formal complaint for these reasons.

2.30 The Department should **not** use this provision to turn away complaints where limited evidence has been provided of the problems caused by the height of the hedge. It should instead ask the complainant for additional information so that it can consider the matter further. Obviously it will not help the complainant if they are unable or unwilling to provide additional information and any possible refund may be reduced accordingly.

Gathering the Evidence

2.31 The Act does not specify the procedure that must be followed in determining complaints. But all relevant factors should be taken into account and each case should be assessed on its particular merits. Information about the hedge and its effect on both the complainant and the person occupying the land where the hedge is situated will need to be gathered. It is suggested that the necessary information is collected through an exchange of representations or letters between the parties and a visit to the site.

2.32 The following section on '*Weighing the Evidence*' (paragraph 2.45) offers advice on how the various issues raised might be assessed. This has a direct bearing on the information the Department will need to collect.

Exchanging representations

2.33 If it is decided to proceed with a complaint, the Department should normally send a letter of acknowledgement to the complainant giving the name and contact details of the person dealing with the case. The letter should also explain briefly the procedure that the Department will follow. In particular, it should make clear that comments will be sought from the owner and occupier of the land where the hedge is situated and that the Authority intends to visit the site. A model letter is at

Annex C.

2.34 The Department should then write to the owner and occupier of the land in question to notify them formally that the Department are considering a complaint about their hedge. The complainant should have sent them a copy of the complaint at the same time as it was submitted to the Department and so the approach from the Department should not come as a surprise.

2.35 The letter should explain briefly the procedure that the Department will follow, including that the Department intends to visit the site. In particular, it should invite the owner and occupier of the land where the hedge is situated to comment on the points raised by the complainant and to provide any additional information that they wish the Department to consider. Copies of these papers should be sent to the complainant at the same time as they are submitted to the Department.

2.36 The model letters at **Annexes D (i) and D (ii)** may be used to ensure information is provided in a consistent format. (**Annex D (i)** to be sent to occupier, **Annex D (ii)** to be sent to owner if different to occupier).

2.37 The Department should normally allow a short further period for the parties to provide any additional representations. Again, these should be copied between the parties as well as to the Department so that everyone has the same information.

Interested parties

2.38 Most complaints are unlikely to raise wider neighbourhood issues and so the Department should not normally publicise these complaints. Exceptions might be where the tree or trees in the hedge are protected by being Registered under the Tree Preservation Act, or it is situated in a conservation area, or it is at the front of a property and is a feature of the street scene.

2.39 If representations are received from people not directly involved in the dispute (for example, from neighbouring properties), the Department should inform them that - unless withdrawn within a specified timescale - their representations will be forwarded to the complainant and the owner and occupier of the land where the hedge is situated for comment.

Consultation

2.40 Similarly, the Department is advised to confine its consultations, if any, to those specialist organisations or individuals whose input will help inform the decision on the complaint. For example, the Planning and Building Control Division might be consulted if the hedge is associated with or affecting a listed building. Landscape etc. advice or advice about trees might need to be sought from DEFA.

Site visit

2.41 After the exchange of representations is completed, the Department should normally arrange to visit the site. This enables the officer dealing with the case to see the hedge or tree(s) and surroundings at first hand, so that he or she can properly consider the written statements already provided.

2.42 It may be necessary for the complainant and the person on whose land the hedge or tree(s) is situated to attend so that the officer can gain access to the site and so see the hedge or tree(s) from both sides.

2.43 The Department should, wherever possible, enter the land where the hedge or tree(s) is situated with the agreement of the owner or occupier. But where the voluntary approach does not work, and the Department cannot obtain the information in any other way (for example, from the complainant's property), the Act gives powers⁵ to enter the land where the hedge is growing in order to carry out their functions under the Act.

2.44 Where such access is required, the Department must give at least 24 hours' notice of the intended entry to all occupiers of the land and should produce - if asked - evidence of their authority to enter the land in question. Further information about Departments' powers of entry under the Act is in Chapter 6: *'Entry to Land'* (paragraph 6.22).

⁵ s.9

Weighing the Evidence

2.45 As noted previously, in determining complaints, the Department should take account of all relevant factors. This will include not only points raised by the parties during the exchange of representations but also other considerations that appear to the Department to be material (for example, any legal restrictions that might apply to the hedge).

2.46 Many of the issues identified by the parties are likely to be personal and individual but the following advice on how to assess the various factors should help the Department to deal with these complaints in an impartial, and broadly consistent, manner.

2.47 The list of factors that the Department might be called on to consider is not exhaustive. Issues might occur that are not covered here. Equally, not all these factors will be relevant in every case.

Privacy

2.48 A hedge can help prevent someone from being overlooked inside their home or garden. But it does not necessarily have to be very tall to achieve this.

2.49 On a level site, a height of 2 metres will usually provide privacy from a neighbouring ground floor or garden and should, therefore, usually be enough in the town or village districts.

2.50 3.5 to 4 metres will normally be enough to prevent overlooking from first floor to ground floor or garden, although this depends on whether the hedge is an equal distance from both properties.

2.51 A higher hedge height might be justified in special cases where one property can be seen into more easily than the other. For instance, if one of the gardens is steeply terraced or if the complainant has a balcony or roof garden and the hedge owner does not.

Shelter

2.52 A hedge can be an effective windbreak and will usually provide good shelter from the wind for a distance of 8 to 10 times its height. It should not normally be necessary for a windbreak, in this context, to exceed 2 metres in height.

Noise, smell, smoke

2.53 Protection from, say, noisy neighbours or from the smell and smoke of bonfires or barbecues may be cited as a benefit of a high hedge.

2.54 However, noise will normally pass through hedges. While it is possible to design a hedge as an acoustic screen, it will usually incorporate a special type of fence as well as a planting.

2.55 Equally, hedges are largely ineffective in stopping smells and smoke. Such pollutants can make their way over or through a hedge.

Damage to plants

2.56 A hedge might lead to poor plant growth or their death, affecting the complainant's amenity.

2.57 This can be caused by the hedge drawing water and nutrients from the soil, reducing what is available to other plants. The Act specifically excludes complaints

about the effects of the roots of a high hedge and so this cannot be taken into account.

2.58 But the problems might be attributable to the height of the hedge. For example, a tall hedge might prevent light reaching plants. It might also be too high for the complainant to trim branches that overhang his or her property, thereby preventing rain from reaching the plants. Further advice on overhanging branches and light obstruction is given below.

2.59 The Act does not serve to protect particular areas of a garden or particular activities. It makes no difference, therefore, whether the hedge interferes with a greenhouse, a vegetable patch, the growing of competition plants or annual bedding. On the other hand, the portion of the garden that is affected by the hedge, and thus its impact on overall amenity, could be material.

Overhanging branches

2.60 The Act deals only with complaints that relate to the height of the hedge and or tree(s). As people in neighbouring properties have the right to cut overhanging branches back to the boundary, problems with the width of the hedge will normally not be considered.

2.61 The exception might be where the hedge is so high that someone could not reasonably be expected to exercise their rights to trim branches that overhang their property. As a result, they are unable to mitigate the adverse effects of the hedge.

2.62 A person would probably not be able to trim any part of a hedge over 2.5 metres high without specialist equipment or professional help. Whether or not the problem could be solved by cutting back overhanging branches up to this height would, therefore, be relevant.

2.63 Problems caused by a hedge blocking a path or other means of access might be resolved by trimming branches to just above head height, without the need for the Department to intervene under the Act. On the other hand, a large overhang that restricted the useable area of the garden could be considered. The proportion of the garden affected should be taken into account.

Litter dropped by the hedge

2.64 Evergreen hedges produce litter (for example needles, berries) which might need clearing from paths or gutters. Whether or not this is caused by the excessive height of the hedge will depend on the particular circumstances. For example, the branches of a high hedge might hang over the roof of a bungalow, depositing litter in the gutters and possibly blocking them. In other cases, the debris could be wind-borne and might not even come from the hedge in question.

2.65 In any event, the volume of litter dropped by the hedge is likely to be low and so represent a minor irritant.

Obstruction of sunlight

2.66 A hedge will cast a shadow. On very hot days, the extra area of shade may be welcome. But, for much of the year, the lost sunlight would be regarded as a valued amenity.

2.67 It is possible to calculate the extent of shading from a hedge.

2.68 Account should be taken of the fact that it is not normal for properties to receive sunlight as much of the time as daylight - either in a garden or inside a

house. In addition, winter sunshine comprises a small portion of the total sunlight that a property receives.

2.69 The position of the sun - low in the sky - during the winter means that, even low obstructions might deprive a property of the benefit of winter sunlight. It might be useful, therefore, to look first at what impact a 2 metre high hedge would have on access to winter sunlight. If the effect is severe, the additional obstruction caused by a hedge above this height is likely to be minimal. However, extra summer sun could be blocked by the taller hedge.

2.70 Special consideration might need to be given to properties that have been specifically designed to harness passive solar energy, rather than those which happen to have large windows. Such properties would normally be characterised by a main window wall facing within 30 degrees of due south, significantly larger windows on the south facing wall compared to the north facing one, provision of thermal mass to store heat, and heating controls to make sure the solar energy is utilised.

2.71 Loss of solar radiation to solar panels for water or space heating or the generation of electricity may also be taken into account. Normally these panels will be roof mounted, although occasionally a solar heating system may serve a swimming pool in the garden.

Obstruction of daylight

2.72 A hedge might cut out natural light to a property.

2.73 Loss of light to a window will depend on the height of the hedge, its distance from the window, and whether it is opposite the window or to one side. Loss of light is material if it affects the main rooms of a house. These include living rooms, dining rooms, kitchens and bedrooms. To a lesser extent loss of light to bathrooms and circulation areas (hall, stairs and landing) may be taken into consideration. However, toilets and store or utility rooms are less important and windows to such rooms need not be analysed.

2.74 Loss of light to the garden will depend on the width of the hedge and its orientation (whether it is to the north or south of the garden) as well as its height. The area of the affected garden is also an issue; the area of shadow caused by the hedge will cover a greater proportion of a small garden.

2.75 It is not an absolute science and so a hedge below the limit could still cut out light (though, in that case, nothing could then be done about it). As mentioned in paragraph 2.6, the booklet "Hedge height and light loss" can be used to help assess whether a hedge is blocking too much daylight and sunlight to neighbouring properties. **However, it should only be used when dealing with a row of evergreen bushes or trees, and not deciduous trees, single trees or woodlands.** Details of the publication may be accessed via the Department's website.

Blocking of views

2.76 A tall hedge can block out an eyesore or someone's cherished view.

2.77 The value that is placed on an individual outlook is very personal. However, no-one has a right to a particular view or outlook. Nevertheless, factors that might be taken into account include the extent of the view and whether it is near or distant.

2.78 The Act specifies that it cannot be insisted that a hedge be reduced to below 2 metres in height, so it may be advisable to investigate whether a 2 metre high hedge would still block the view. In many situations a 2 metre high hedge is enough to restrict views from a garden or downstairs room.

Oppressive/disproportionate

2.79 A large hedge might be out of proportion for its setting, dominating a neighbouring property and affecting its overall amenity. It can lead to feelings of confinement and oppression.

2.80 Factors that might be taken into account include the height and length of the hedge, the area that it covers compared with that of the garden. The surroundings, especially what else borders the property, might also be relevant. For example, the presence of other hedges or trees and their impact.

2.81 If a hedge or tree is close to buildings, especially main living rooms, its main impact will be in terms of light obstruction or blocked views. Advice on how such factors might be assessed is given above.

2.82 Just because a tree or the trees in the hedge are taller than neighbouring buildings does not necessarily mean that they will have a significant effect on someone's amenity.

Protected trees

2.83 The majority of trees on the Island are protected from being felled without permission. A tree or the trees in a hedge might be further protected by being Registered under the Tree Preservation Act or they might be subject to special controls that apply in conservation areas. These normally require people to get permission from DEFA or the Planning Division before carrying out certain works to the trees, or to give prior notice of their intentions.

2.84 Any remedial notice issued under the Act cannot override the requirements of the Tree Preservation Act⁶. When determining a complaint under the Act, the Department should take into account the contribution that the tree or trees in the hedge make to local amenity and the impact of possible works to the hedge.

Other legal restrictions

2.85 Some properties have legal covenants that stipulate the size or type of hedge than can be grown. These are normally enforceable through the civil courts but could be material to a complaint. They might, for example, require that a hedge is kept tall in order to provide a screen or shelter. How long ago the restriction⁷ was introduced, its original purpose and whether circumstances remain the same or have changed significantly might be relevant in considering the continuing relevance of any covenant.

2.86 In addition, some hedges or trees must be retained under the terms of a condition attached to a planning permission. This would also need to be taken into account. Similarly, the age of the original planning permission and the extent to which circumstances on the ground have altered since the original condition was imposed would be material considerations.

⁶ s.4(4)(c) subjects this Act to the provisions of the Tree Preservation Act 1993, c. 6.

⁷ s.Conveyancing Act 1983.

2.87 Whether any protected birds, animals or plants are present in the hedge and how they would be affected by any works to it would also be relevant considerations.

Effect of gaps

2.88 When assessing these or other factors, the effect of any gaps in the hedge should - where relevant - be taken into account. The extent of any gaps and their position in the hedge could be material. In some cases, the depth of the hedge might mean that gaps have little appreciable effect. In others, especially where the canopy is raised, the impact could be significant.

Factors unrelated to the impact of the hedge

2.89 Some points might be introduced by the parties that are not directly related to the impact of the hedge (or the tree or trees). For example:

- fears that the hedge will break or fall;
- that the problems with the hedge have caused worry, concern or depression, leading to health problems;
- that other hedges in the area are maintained at a lower height;
- that the hedge was there before the affected property was built or before the complainant moved into it;
- that cutting down the hedge is too costly and beyond the means of the person who owns or occupies the site where it is growing.

2.90 Such factors are unlikely to be relevant to the main matter to be determined by the Department - that is, whether or not the hedge is, because of its height, adversely affecting the complainant's reasonable enjoyment of their property.

Deciding the Complaint

2.91 If the Department proceeds with a complaint, the Act⁸ requires it to decide two matters:

1. in the first place, it must decide whether the hedge or tree(s) is, because of its height, adversely affecting the complainant's reasonable enjoyment of his or her property; and
2. if it finds that the height of the tree or hedge is causing problems, the Department must then consider what action (if any) should be taken to remedy the situation and prevent it from recurring.

The sorts of action that might be taken to remedy the problems caused by a tree or high hedge and to prevent them recurring are considered in Chapter 3: *'Remedial Works'*.

Making the decision

2.92 In reaching their decision, the Department will consider all relevant factors and assess each case on its particular merits. It will normally come down to a question of balance between the various issues raised during the course of the complaint.

⁸ S.4(3).

2.93 In carrying out this balancing act, the issues the Department will address are:

(a) is the hedge or tree(s), because of its height, adversely affecting the complainant's reasonable enjoyment of his or her property to some degree, having regard in particular to the grounds cited in the complaint;

(b) how severe is the impact of the hedge or tree(s) and is this sufficient to justify action being taken to remedy the matter; and

(c) if so, are there any reasons why such action should not be taken, or should be moderated, having regard in particular to all representations received and to the amenity of the area.

2.94 In general, if the hedge or tree(s) has little adverse effect and any remedial action would be minimal, the Department might decide not to issue a remedial notice even though the arguments in favour of the hedge are weak. Even if the Department finds that a hedge or tree(s) is adversely affecting the complainant's property, it is open to it to conclude that no action should be taken in relation to the hedge or tree(s).

2.95 On the other hand, the greater the impact of the hedge or tree(s) on the complainant's amenity, the stronger the mitigating factors needed to justify a remedial notice **not** being issued.

Linked cases

2.96 Where, at any one time, the Department has more than one complaint in respect of a single hedge or tree(s), it should consider each individual complaint separately, following the process set out above. The Department should, however, review the linked cases, noting any differences in outcome and ensuring the reasons for these are clear. The implications for any remedial action that might be ordered by the Department are considered in Chapter 3: 'Remedial Works'.

Communicating the decision

2.97 The Act⁹ requires the Department to notify the complainant and the owner and occupier of the land where the hedge or tree(s) is situated of its decision, and the reasons for it, as soon as is reasonably practicable. If it decides to issue a remedial notice, this must also be copied to all the parties mentioned above. Where it does decide to issue a remedial notice, a copy should be sent to the General Registry as a charge against that property/land. If the decision is successfully appealed against then a copy of the appeal decision should be forwarded to the General Registry for inclusion with the records also.

2.98 The Department should also explain the rights of appeal against its decision. Chapter 5: '*Appeals*' explains the grounds on which such an appeal can be made.

2.99 Model decision letters are at **Annex E (Annex Ei and ii)**. The reasons for the decision should be clear, precise and as full as possible to help the parties assess the merits of an appeal.

2.100 A copy of the Department's decision letter should be sent to any other interested parties who have been involved in the case.

⁹ Section 4, sub-sections (5), (6) and (7).

2.101 Where the Department decides not to issue a remedial notice because any action to remedy the adverse effect would be minimal, they should consider providing practical advice on how the hedge might be maintained so that it does not cause problems in the future.

Level of decision-making

2.102 Most complaints are likely to deal with private matters that are of concern only to the parties and so the Department might wish to delegate the decision entirely to officers.

the Department as a party to the complaint

2.103 There are no special procedures laid down in the Act for dealing with complaints in which the Department, or another Department or Statutory Board, is directly involved as one of the parties. The hedge might, for example, be on land owned by the Department, or another Department or Statutory Board.

2.104 It is important that the process for deciding such complaints is seen to be fair and impartial. The Department should, therefore, consider setting up internal procedures to ensure that the complaint is considered by a committee or officers who do not have responsibility for managing the land or trees in question. This should avoid any potential conflict of interest.

2.105 Equally, it may be the case that an Officer or a Member of the Department has made, or is the subject of, a complaint. Procedures should be in place to require that such persons declare their interest and are not involved in the consideration of that complaint.

Time limits

2.106 The Act sets no timetable for the Department to reach a decision on these complaints.

2.107 The absence of statutory time limits provides flexibility so that other means of resolving the dispute can be pursued even after a complaint has been lodged with the Department - and without the complication of stopping and starting clocks.

2.108 It is important that, once a complaint has started, people do not find themselves locked into a rigid process. If, at any time, it appears either to the parties or to the Department that the dispute might be resolved through negotiation or by reference to a mediator, the formal complaints procedure should be halted.

2.109 Should any attempt to settle matters in this way fail, there is no need to restart the process from the beginning. But the Department would normally need to agree with the parties how the threads should be picked up. It might, for example, be advisable to allow a further round of written representations so that the Department has up to date information, even if the exchange of written representations had previously been completed.

Change in the Parties

2.110 It is possible that one or more of the parties to the complaint might change while it is being considered by the Department.

2.111 In these circumstances, there is no legal bar to the complaint proceeding. However, the Department might consider suggesting a breathing space to allow the parties an opportunity to settle the dispute by negotiation.

2.112 Where this fails, the Department should ensure that the new people have all relevant papers and give them a chance to submit further representations. If it is the complainant who has changed, the Department should also obtain confirmation from them that they wish the complaint to proceed.

Withdrawing a Complaint

2.113 The complainant may withdraw their complaint at any time before the Department issues its final decision and any remedial notice. If, for any reason, the complaint is withdrawn the complainant may be entitled to receive a refund of a proportion of the fee. The amount of the refund will depend on the point the investigation of the complaint has reached and the terms of the relevant fees Order in force at the time. If someone is aggrieved by the Department's decision and/or the terms of the remedial notice, they should pursue this either by negotiating a different solution with the other parties to the complaint (see 4.14: *'Parties Agree a Different Solution'*) or through the appeals process (see Chapter 5).

Delivering Documents

2.114 The Department's decision letter, and other documents or notices mentioned in the Act, must be delivered in one of the ways provided for in the Act¹⁰, such as:

- (a) by putting the papers in the hands of the person in question;
- (b) by sending them by post to that address;
- (c) by leaving the documents at the person's usual or last known address with a person aged 16 years or over;
- (d) In the case of a company, or other corporate body, by delivering by post or in person to the Secretary or Clerk at its principal office.
- (e) When a document or notice is to be sent to someone as the owner, lessee or occupier of land and the name or address of that person cannot - after reasonable enquiry - be found, the document or notice will be regarded as having been delivered if it is posted and addressed to the 'owner', 'occupier' or 'lessee' of the (named) premises, or left in the hands of some person who appears to be living, or employed, at those premises; or it is conspicuously fixed to some building or object on the land in question.

2.115 These arrangements apply to the following documents or notices:

- complaint form and accompanying documents;
- the Department's decision on the complaint (together with details of appeal options);
- remedial notice;
- the Department's decision to withdraw a remedial notice, or to waive or relax its requirements;
- preliminary information supplied by the Department in connection with an appeal;

¹⁰ s.14 of the Act & s.41 of the Interpretation Act 1976, c.20 1976.

- notice of intended entry to land (see Chapter 6: *'Entry to Land'*).

Chapter 3: Remedial notices

3.1 Remedial notices are not served on or addressed to a particular person. They run with the land in question and are binding on whoever owns or occupies it. This includes not only whoever owns or occupies the land at the time the notice is issued, but also their successors.

3.2 In these circumstances, a remedial notice should normally be a separate document, issued with the Department's letter notifying the parties of their decision on the complaint. Remedial notices must be delivered by one of the methods described in paragraph 2.114. They cannot be sent electronically.

Contents of the Notice

3.3 The Act¹¹ requires that a remedial notice include the following information: it must describe the hedge it relates to;

- state that a complaint has been made to the Department about the tree(s) or high hedge or tree(s) and that the Department have decided that the height of the hedge or tree(s) is adversely affecting the complainant's reasonable enjoyment of their property;
- it must specify the property affected by the hedge and/or tree(s);
- explain what action must be taken in relation to the hedge or tree(s) in order to remedy the adverse effect and, if necessary, to prevent it recurring ("initial action") and by when ("the compliance period");
- what further action, if any, is required to prevent longer-term recurrence of the adverse effect ("preventative action");
- what date the notice takes effect ("the operative date"); and
- the consequences of failure to comply with the requirements of the notice.

3.4 A model remedial notice is at **Annex F**.

Description of the hedge or tree(s)

3.5 The hedge or tree(s) should be described in sufficient detail so that there is no doubt what the notice relates to.

3.6 It will not normally be enough to give the address of the property where it is located. While it might be the only hedge on the site when the remedial notice is issued, this could change. The position of the hedge or tree(s) within the property should, therefore, be specified or should be shown on a plan attached to the notice.

3.7 A general description of species in the hedge or tree(s) should also be included. This will help to differentiate it from any new hedge or tree(s) that might be planted as a replacement for the original one. It should be enough to identify the predominant species. It will not normally be necessary - or advisable - to specify the precise number of trees or shrubs that are contained in the hedge, or to list all the species.

¹¹ S. 5.

Affected property

3.8 The full address of the property that is affected by the hedge or tree(s) is likely to be the best means of identifying it.

Initial action

3.9 The initial action covers the one-off works that must be carried out to the hedge or tree(s) to alleviate the problems it is causing. It can include:

- action to remedy the adverse effect ("remedial action"); or
- action to prevent the problems recurring ("preventative action"); or
- a mixture of both.

3.10 This enables the Department to specify that the hedge be cut below what is necessary to remedy its adverse effect, if this will help to prevent problems recurring.

3.11 Further advice on what, in practical terms, such action might involve is given in the section on 'Remedial Works' below.

Preventative action

3.12 Preventative action covers continuing works to ensure that the hedge or tree(s) does not cause problems again in the future.

3.13 The initial action specified in the notice - the one-off works to the hedge or tree - is likely to provide only short-term relief from its adverse effects. If the remedial notice is to deliver a lasting solution, it will normally need to include longer-term action - such as annual pruning - to prevent the problems caused by the hedge or tree(s) recurring.

Operative date

3.14 The operative date is when the remedial notice formally takes effect and marks the start of the compliance period.

3.15 It must be set at least 28 days after the date on which the remedial notice is issued by the Department. This is to allow people time to lodge an appeal. The notice is suspended while any appeal is considered.

Compliance period

3.16 The remedial notice must set a time limit for carrying out the initial action. This should start from the date when the notice takes effect ("the operative date"). Even though there may be pressure from the complainant for early action, the compliance period needs to reflect what can reasonably be achieved. The owner or occupier of the land where the hedge is situated can appeal if they do not think they have been given enough time to comply with the requirements of the notice.

3.17 In setting the compliance period, account should be taken of the extent of the work involved and whether specialist equipment or professional help will be needed. They should also bear in mind that it is against the law to kill, injure or disturb nesting wild birds¹². With that in mind, account may need to be taken of whether or not compliance, in any particular case, within a certain period of the year (1st February to 31st August) risks injury or disturbance to wild birds.

¹² s.1 of the Wildlife Act 1990.

3.18 Any continuing preventative action, such as regular trimming to keep the hedge at its reduced size, would probably not be time limited.

Failure to comply

3.19 As remedial notices are not addressed to a particular person, they should include a clear statement that the owner or occupier of the land where the hedge or trees) is situated is responsible for implementing the requirements of the notice.

3.20 So that there is no doubt on the matter, the letter informing the parties of the decision on the complaint might also usefully explain that the notice does not give the complainant any rights to step in and take the necessary action themselves.

3.21 Who out of the owner or occupier (assuming they are different people) is responsible for complying with the terms of the notice will depend principally on the contractual arrangements between them. However, if the owner of any domestic property is prevented by the occupier from executing any work which the Department has required him or her to execute, he or she may complain to the High Bailiff who may order the occupier to permit the execution of the work¹³. They can do this even though, under the terms of their contract, the occupier might have sole responsibility for maintaining the hedge.

3.22 The notice should make clear that failure to comply with its requirements could lead to a prosecution and a fine, and that the Department could also enter the land, carry out any works required and recover expenses reasonably incurred. Enforcing remedial notices is discussed in more detail in Chapter 6.

Correcting errors

3.23 If the Department makes a mistake in the notice, it should withdraw it and issue a new one - using their powers under section 6 of the Act - as soon as the error comes to their attention. This will usually require consequential changes to the operative date and to the compliance period. The appeal period would also re-start, from the date that the new notice is issued.

3.24 Once an appeal has been made against a remedial notice, it is held in abeyance until the appeal has been decided. If an error or omission comes to light while an appeal is being considered, it should be drawn to the attention of the High Bailiff. The High Bailiff has powers under the Act¹⁴ to correct any defect, error or misdescription in the remedial notice provided this will not cause injustice to any of the parties to the complaint.

Remedial Works

3.25 As a general rule, the Department should ensure that the works specified in a remedial notice:

- do not exceed what is necessary to remedy the adverse effect of the hedge or tree(s), or to prevent it recurring; and
- are directly related to the adverse effect found to be caused by the hedge or tree(s).

3.26 Within this, there is flexibility to tailor the action to the problem. There is nothing in the Act that says hedges or tree(s) must be reduced to 2 metres.

¹³ s.11(7) of the Act.

¹⁴ S.8(2)(b).

3.27 In determining the extent of any works to be specified in the remedial notice, the Department might wish to adopt a three stage approach.

Step 1: taking care of the problem

3.28 First, decide what action is necessary to remedy the adverse effect of the height of the hedge or tree(s) on the complainant's reasonable enjoyment of their property. This is called "remedial action" in the Act.

3.29 As noted in Chapter 2: *'Making the decision'*, determining "reasonable enjoyment" means looking at all relevant factors, including all representations received and the amenity of the area. The same principles apply when determining what remedial action might be appropriate in a particular case.

3.30 Nevertheless, the Department might find it helpful to start by looking at just one side of the hedge or tree and developing some initial ideas on what would provide relief for the complainant. Investigators should then stand back to consider the impact of their proposal on other parties and in its local setting, making adjustments - as necessary - to strike a balance between the different needs.

3.31 In doing so, the Department might ask: what works are needed to provide relief for the complainant from the adverse impact found to be caused by the excessive height of hedge. Points to consider include:

- the severity of the problems it is causing;
- whether this is simply a matter of reducing the height of the hedge or tree(s) or whether other remedies would be more effective. These might include reducing the height of selected trees forming the hedge, to open up gaps. Alternatively, the lower branches of the hedge or tree(s) might be removed (known as crown lifting) or the branches might be thinned out. In some cases, an appropriate remedy might well include reducing the width of the hedge or tree(s) as well as its height;
- whether action needs to be taken along the whole length of the hedge or whether works to a portion of it would provide the necessary relief. In particular, it will normally be necessary to require action in relation to only part of a long hedge that borders other properties besides that of the complainant;
- whether there are likely to be any side effects from the proposed works on the growth of the hedge or tree(s), which have the potential to harm the complainant's amenity and so might require additional action. For example, reducing the height of some species might result in them putting on more lateral growth - bushing out. Action might be needed to keep this under control;
- what would be the impact of such works on other parties to the complaint and on its surroundings. Points to take into account, where relevant to the case, include: issues or concerns raised, in the course of consideration of the complaint, by the owner or occupier of the land where the hedge or tree(s) is situated. The likely cost of remedial action or the means of the owner or occupier of the site where the hedge is growing are, however, unlikely to be relevant considerations;
- representations submitted by other residents;

- the setting of the hedge or tree(s), especially contribution to local amenity;
- what adjustments, if any, need to be made to the proposed works in order to mitigate these impacts. This might suggest a change of approach. For example, selected trees forming the hedge that have particular amenity value might be retained.

3.32 General factors such as the impact of the works on the appearance of the hedge, or on the health of the trees or the tree should be considered only insofar as they may be relevant to the particular case. For example, such matters might be material where it is important to preserve the contribution that the hedge or tree(s) make to the wider amenity of the area or to retain its function as a screen or shelter. Otherwise, they might more appropriately be dealt with through good practice advice.

3.33 When deciding what height the hedge should be reduced to it is important to maintain a balance. Any action which is too drastic might result in the hedge being killed. That judgement depends on the species of the shrubs or trees in the hedge, their age and health, and past management. In general, each case should be considered on its merits and, if necessary, expert arboriculture advice should be sought.

3.34 If a substantial reduction of the hedge is required to remedy the problems, it might be preferable to cut it in stages over several seasons, especially if there is a danger that the hedge would not recover if it were reduced in one cut. If staged cutting was not feasible, the Department might order the hedge to be cut to a height which would leave sufficient live wood and foliage to enable it to regenerate, or it might consider alternative remedies to reducing the height of the hedge, such as more selective pruning to let more light through.

3.35 Having established what action is required to remedy the adverse effect of the hedge or tree(s), the Department should then consider whether anything more needs to be done to prevent the problems recurring. This is called "preventative action" in the Act. The Department should think about what preventative action might be needed both in the short term (to allow for any re-growth) and over a longer period (to provide for ongoing maintenance).

Step 2: allowing for re-growth

3.36 In deciding what - if any - action is needed to avoid the problems caused by the hedge or tree(s) coming back again in the short term, the Department might ask: whether the remedial action on its own is enough to forestall further problems over, say, a period of around 12 months - before any longer-term maintenance requirement kicks in or, if not, how should the remedial action be adjusted to cater for this.

3.37 This is likely to be particularly relevant where the hedge or tree(s) are fast-growing varieties. If, in these cases, the height of the hedge or tree(s) was reduced to the level necessary to remedy the adverse effect, it might soon grow back and cause problems again. In such circumstances, the Department might require that the hedge or tree(s) be further reduced - to create a buffer zone or growing margin, which allows the hedge or tree(s) to grow between annual (or more frequent) trimming and still not cause significant problems.

3.38 A suitable margin would normally be equivalent to a year's growth for the species concerned.

3.39 For example, the Department might consider that the problems caused by the hedge would be remedied if it were no more than 3 metres tall. The Department might, however, require the hedge to be reduced initially to a height of 2 metres so that it has room to grow. This combination of remedial and preventative action is called "initial action" in the Act.

3.40 In the above example, the Department would also need to consider requiring ongoing maintenance to ensure that the hedge is never again allowed to grow above 3 metres.

3.41 The Department cannot require a hedge or tree to be reduced to below 2 metres in height. If the buffer zone or growing margin would take it below this limit, the Department should deal with the matter through good practice advice (see paragraph 3.54).

Step 3: ongoing maintenance

3.42 Thirdly, the Department should determine whether long-term maintenance of the hedge or tree(s) is needed in order to stave off future problems. The Department might ask:

- what will be the effect on the future growth of the hedge or tree(s) of the initial action proposed to remedy its adverse impact (see Steps 1 and 2 above);
- is this likely to lead to a recurrence of the problems found to be caused by the hedge or tree(s);
- if so, what action would ensure that the hedge or tree(s) is preserved in its revised state over the longer term and so help to avoid further problems;
- is this reasonable in the particular circumstances of the case.

3.43 The management regime imposed will depend on the nature of the remedial or initial action. However, it will most often take the form of continuing maintenance of the hedge or tree(s) at its new height or shape, by regular trimming/pruning.

Excluded works

3.44 In general terms the action specified in a remedial notice cannot involve the removal of a tree or hedge or its reduction to below 2 metres in height (see section 5(3) of the Act).

3.45 Although the Department cannot require such action, the person who is responsible for the hedge is free to go further than the remedial notice requires, and to remove the hedge entirely, if they want - unless other legal restrictions apply (see paragraph 3.56).

3.46 A remedial notice cannot require works other than to the hedge or tree(s).

Linked cases

3.47 Where the Department is dealing with more than one complaint in respect of a single long hedge, it must consider each case on its particular merits. It must issue a separate remedial notice in respect of each complaint.

3.48 By following the process set out above, this could produce several different solutions in respect of one length of hedge. Thus it is possible that separate remedial notices could be issued requiring one section of the hedge to be reduced to a certain height while another portion should be cut lower, with the rest of the hedge left intact.

3.49 Under the terms of the Act, it is not open to the Department to amend the remedial action required in one case to take account of the impact of the hedge on another property that is the subject of a separate complaint, even though this might produce a more workable solution. The Department cannot, therefore, resolve these different outcomes through the terms of the remedial notices.

3.50 Instead, such matters must be left to good practice advice. Where cases are linked in this way, therefore, the Department is advised to highlight the apparent inconsistencies to the owner or occupier of the land where the hedge is situated and suggest ways in which the various requirements might be met.

Specifying the action

3.51 Both the initial action and preventative action need to be carefully specified in the remedial notice so that it is clear to all parties what must be done to comply with the notice and when enforcement action could be taken. At the same time, the wording needs to offer some flexibility to those responsible for implementing the notice in terms of how they meet its requirements. For example, it might set thresholds or define outcomes rather than including step by step instructions.

3.52 The Department cannot attach conditions to remedial notices, such as requiring works to be carried out in accordance with good arboricultural practice or, for example, with relevant British Standards.

Good practice advice

3.53 The Department could, however, consider attaching to remedial notices practical advice on how the hedge might be cut safely and maintained so that it remains attractive. Specialist equipment or professional help may be needed to trim any part of a hedge over 2.5 metres high.

3.54 Where drastic action is called for which might leave an unsightly feature, good practice advice might suggest that the owner consider removing the hedge. It might be accompanied by a leaflet to help them choose a suitable replacement hedge. The Department cannot, however, require a replacement hedge to be planted.

3.55 Advice might also usefully be given on legal restrictions that could apply. For example, where trees in the hedge or garden are protected under the Tree Preservation Act or it is located in a conservation area, it might be necessary to apply or give notice to DEFA or the Department before doing any works that go beyond what is required by the remedial notice.

3.56 In addition, if removal of the hedge is suggested, the Department should - where appropriate - warn that prior permission might be required under other legislation. In particular, DEFA's consent will be needed if the trees in the hedge are protected by the Tree Preservation Act. If the hedge is located in a conservation area, the Department's Planning Division would normally need to be notified of the proposed removal.

Duration of Remedial Notice

3.57 The remedial notice remains in force for as long as the hedge or tree(s) remains on the site.

3.58 If the hedge or tree(s) is removed, the remedial notice automatically lapses. Were it to be replaced by another evergreen hedge or tree(s) which, in time, grew to such a height that it adversely affected a neighbouring property, a fresh complaint would have to be made.

General Registry

3.59 As long as the remedial notice is in force, it must be registered as a charge against that land/property. In this way, prospective buyers of the land/property should be alerted to the commitment that they would be taking on.

Chapter 4: Withdrawing and relaxing remedial notices

4.1 The Act¹⁵ gives the Department powers to withdraw a remedial notice that it has issued or to waive or relax some of its requirements in two sets of circumstances:

- (a) Where there is a joint application (request) in writing by the complainant and the owner or occupier of the neighbouring land.
- (b) where there has been a material change in circumstances and a request is made by the complainant, the owner or occupier of the neighbouring land or DEFA.

4.2 The procedure is likely to vary according to the circumstances. For example, a joint request to withdraw or vary the requirements of the remedial notice is likely to be straightforward. However, a request, particularly for a variation of its terms, by one of the parties involved or by DEFA is likely to require careful consideration turning on the facts of that case – see paragraphs 4.14 to 4.32 below.

Correcting Errors

4.3 As indicated in paragraph 3.23, if the Department makes a mistake in the remedial notice, it should withdraw it and issue a new one as soon as the error comes to their attention. This can be done before or after the remedial notice comes into effect, but is best done before the original 28 day appeal period expires.

4.4 Any alteration of the contents of the notice will usually require consequential changes to the operative date and to the compliance period. The appeal period would also re-start, from the date that the new notice is issued.

Procedure

4.5 Given the importance of acting quickly, the Department would not normally consult the parties to the original complaint before making the necessary changes to

¹⁵ s.6

the remedial notice. It should write to the complainant and the owner and occupier of the land where the hedge or tree(s) is situated enclosing the revised remedial notice and explaining how this differs from the original and the reasons for the changes. It is good practice to send a copy of this letter to any third parties who were informed of the Department's earlier decision.

Appeal rights

4.6 The Department should also inform the parties of the effect on their appeal rights. The complainant and the owner and occupier of the land where the hedge is situated will have 28 days from the date that the new remedial notice is issued in which to appeal against the revised remedial notice as a whole¹⁶ - not just against the alterations. This applies even if they did not appeal against the original remedial notice and even if any changes are minor, making no difference to the requirements of the notice.

4.7 If an error comes to light after an appeal has been lodged against the original remedial notice, the matter should be drawn to the attention of the High Bailiff.

Extending the Compliance Period

4.8 The Department should not normally entertain requests by the owner or occupier of the land where the hedge or tree(s) is situated for the compliance period to be extended in order to give them extra time to carry out remedial works to the hedge or tree(s).

4.9 This should not usually be necessary as the Department, in setting the time allowed for completion of the initial one-off works to the hedge or tree(s), should have taken account of what can reasonably be achieved.

4.10 There may, however, be exceptional circumstances which have prevented the owner or occupier of the land where the hedge or tree(s) is situated from complying with the requirements of the remedial notice. For example, extended and enforced absence, say, on business or in hospital could mean that the remedial notice was received late in the compliance period or that the time available has been significantly shortened. A key consideration will be not just the amount of time available but whether it is practicable to carry out the required works within it.

Procedure

4.11 If the Department considers that the circumstances justify altering the remedial notice to extend the compliance period - and if time allows - it is good practice to inform the complainant of its intentions and to invite comments within a set period. Any comments received should be taken into account before the Department makes its final decision.

4.12 The Department must notify the complainant and the owner and occupier of the land where the hedge or tree (s) is situated of any decision to relax the requirements of the remedial notice by extending the compliance period. It is good practice to send a suitably annotated version of the remedial notice. The Department might, however, want to make clear - in a covering letter - when the extended period expires and spell out the consequences of failure to comply with the requirements of the notice.

¹⁶ s.7(1)(b).

Compliance period expired

4.13 Once it has expired, the compliance period cannot be extended using these powers. Chapter 6: *'Informal Action'* gives advice on action - falling short of prosecution - that the Department might take to ensure works specified in a remedial notice are carried out. This includes allowing more time and/or issuing a formal warning.

Parties Agree a Different Solution

4.14 It is possible that the complainant - or their successors - and the owner and occupier of the land where the hedge or tree(s) is situated might agree different one-off works (remedial or initial action) or different longer-term maintenance (preventative action) to that specified in the remedial notice.

4.15 If this goes further than the requirements of the notice (for example, keeping the hedge trimmed to a lower height than that specified), there is no need for the parties to do anything to formalise the arrangement. It is open, at any time, to the owner or occupier of the site with the hedge or tree(s) to do more than the notice requires - unless other legal restrictions apply.

4.16 If the agreed solution is less exacting than the remedial notice requires (for example, allowing a higher screen), the parties should apply to the Department for the notice to be withdrawn or its requirements relaxed.

Procedure

4.17 **The aim of the Act is to take the heat out of hedge disputes and to encourage communication and negotiation between the parties.** It should not normally work, therefore, so as to frustrate implementation of an agreed solution.

4.18 If the Department receives an application requesting that a remedial notice be withdrawn or certain of its requirements relaxed or waived, it should write to the complainant - or their successors - and the owner and occupier of the land where the hedge or tree(s) is situated inviting their comments within a set period. This should be not less than 3 weeks.

4.19 The Department need not go through this consultation process if the application is submitted jointly by the parties.

4.20 If either the complainant - or their successors - or the owner or occupier of the land where the hedge or tree(s) is situated indicate at any time that they no longer wish to proceed with the application or they object to it, it should automatically fall. In these circumstances, the Department should inform all the parties of the position and that they will be taking no further action.

4.21 If objections or representations are received from other consultees, the Department must consider these before withdrawing the remedial notice, or relaxing or waiving any of its requirements. This might necessitate a visit to the site and its surroundings.

4.22 As noted above, the wishes of the parties should normally prevail. Where the main parties to the complaint are happy to proceed, therefore, objections or representations from other consultees would need to be significant. For example, that the hedge or tree(s) is located in a sensitive area and that the changes sought would have a major impact on local amenity.

4.23 In any event, the Department should notify the complainant - or their successors - and the owner and occupier of the land where the hedge or tree(s) is situated, plus anyone who submitted representations, of their decision on the application.

4.24 Where they decide to withdraw the remedial notice, or to relax or waive any of its requirements, the Department should send to the complainant and the owner and occupier of the land where the hedge is situated a suitably annotated/endorsed version of the remedial notice. The annotations should include specifying a date when the changes to the notice come into operation. The Department should also ensure that the record held by the General Registry, in respect of the land/property, is amended.

Material Change in Circumstances

4.25 Over time, circumstances might change to the extent that keeping to the requirements of the remedial notice adversely affects the reasonable enjoyment of their property by the complainant - or their successors - or the owner or occupier of the land where the hedge or tree(s) is situated. This relates primarily to any requirements in respect of longer-term maintenance of the hedge or tree(s) (preventative action).

4.26 It is most unlikely that circumstances will have changed to such a degree that any relaxation or waiver of the initial one-off works (remedial or initial action) would be justified.

Material change

4.27 A material change in circumstances is something that significantly affects the Department's decision on the original complaint. If the circumstances had been known to the Department at the time, it might have caused them to reach a different conclusion.

4.28 Examples of what might constitute a material change in circumstances include:

- development on either the affected property or the land where the hedge or tree(s) is situated which means that the hedge or tree(s) is no longer an adequate screen or does not sufficiently safeguard privacy. This might be small-scale development within permitted development rights, or it could involve new higher density housing, or other buildings, on the site;
- change of use or increased activity on either the affected property or the land where the hedge or tree(s) is situated which the hedge or tree(s) does not adequately screen out.
- in the case of the complainant's property, part of it would still have to be used for domestic purposes. Otherwise the Act would no longer apply. For example, someone might live in and work from the property.

4.29 A change in ownership of either the affected property or the land where the hedge or tree(s) is situated is unlikely to represent a material change in circumstances for these purposes. This is unrelated to the effect that the hedge or tree(s) has on anyone's reasonable enjoyment of their property.

Resolving the dispute amicably

4.30 This includes encouraging the applicant to try to reach agreement with the other party or parties on the alterations sought to the notice. If they can agree a

way forward, the parties should make a joint application, using the simplified procedure set out in the section above on *'Parties Agree a Different Solution'*.

Application

4.31 Where the parties fail to resolve the matter themselves, a formal application should be made to the Department for the remedial notice to be amended. This should include the following information:

- the applicant's name, address and other contact details;
- the name and address of whichever of the complainant - or their successors - or the owner or occupier of the land where the hedge or tree(s) is situated is not the applicant;
- a copy of the original remedial notice;
- whether the applicant seeks withdrawal of the notice or for certain requirements to be waived or relaxed. It will help the Department if the applicant explains what requirements they wish to see altered;
- details of the steps taken to settle the matter by negotiation, with copies of relevant correspondence or other papers;
- reasons in support of the application. This should include: what has changed since the original complaint was considered to justify re-opening the matter;
- details of how maintaining the hedge or tree(s) in accordance with the terms of the notice is adversely affecting the applicant's reasonable enjoyment of their property. It will help the Department if this does not just list the problems caused by the hedge or tree(s) but explains their severity and their impact, in factual terms.

4.32 The applicant should send a copy of their application to the other parties involved in the original complaint - or their successors - at the same time as they submit it to the Department.

Deciding the application

4.33 The Department should follow a similar process to that set out in Chapter 2 for *'Gathering the Evidence'* and *'Weighing the Evidence'* in connection with the application.

4.34 The Department must notify the complainant - or their successors - and the owner and occupier of the land where the hedge or tree(s) is situated of their decision and the reasons for it. The Department should also explain the rights of appeal against their decision.

4.35 Where they decide to withdraw the remedial notice, or to relax or waive any of its requirements, the Department should send to the complainant - or their successors - and the owner and occupier of the land where the hedge or tree(s) is situated a suitably annotated/endorsed version of the remedial notice. They should also ensure that the record held by the General Registry is amended.

4.36 The decision letter should specify a date when the changes to the notice come into operation. This should be set at least 28 days after the date of the Department's decision to allow time for the parties to appeal against the decision. The decision in question will be held in abeyance while any appeal is determined and the requirements of the original notice will continue to apply.

Appeal rights

4.37 There is a right of appeal under the Act¹⁷ if the Department rejects an application for a remedial notice to be withdrawn or for some of its requirements to be waived or relaxed, and decides in favour of retaining the current arrangements.

4.38 Both the complainant - or their successors - and the owner and occupier of the land where the hedge or tree(s) is situated may appeal against the Department's decision to withdraw a remedial notice, or to waive or relax any of its requirements. Chapter 5: '*Grounds of appeal*' explains the grounds on which such an appeal can be made.

Case Beyond the Scope of the Act

4.39 Changes might arise that take the case outside the scope of the Act, with the result that the remedial notice can no longer be enforced. For example, if the hedge or tree(s) is removed or the affected property is no longer classed as domestic use. Although the remedial notice would have no practical effect, it remains on the General Registry record until the Department removes it.

4.40 If the Department is asked formally to withdraw a remedial notice for these reasons, it is good practice to notify the complainant and the owner and occupier of the land where the hedge or tree(s) is situated of their intention to withdraw the notice, and to invite comments within a set period. This will help provide assurance that the hedge or tree(s) has been removed or other change has taken place.

4.41 Provided that any comments received do not identify a problem, the Department should send to the complainant and the owner and occupier of the land where the hedge or tree(s) is situated a copy of the remedial notice, endorsed to verify its withdrawal. They should also confirm that the relevant record at the General Registry has been deleted.

Exceeding the Requirements of a Remedial Notice

4.42 As noted in paragraph 4.15, if the owner or occupier of the site with the hedge or tree(s) wishes to carry out works that go further than the remedial notice requires, it is open to them do so at any time - unless other legal restrictions apply.

4.43 On the other hand, if the owner or occupier of the affected property - the complainant or their successors - wants to see a more drastic management regime implemented, they should in the first place seek to negotiate a solution with the owner or occupier of the land where the hedge or tree(s) is situated.

4.44 Where such negotiations fail, the owner or occupier of the affected property would need to make a fresh complaint to the Department following the procedure set out in Chapter 2 - provided that the affected property remains in domestic use.

4.45 This would include payment of a fee and provision of evidence that reasonable steps had been taken to resolve the matter without involving the Department. As with any application to relax the requirements of a remedial notice, the complainant would need to show there had been some change in circumstances since the Department last considered the case that justifies re-opening the matter. Without this, the Department could reject the complaint as frivolous or vexatious. They would also take account of the time that had elapsed since the original remedial notice was issued.

¹⁷ s.7(1)(c)

Chapter 5: Appeals

Rights of Appeal

5.3 Under the Act¹⁸, the complainant and the owner and occupier of the land where a hedge is situated can appeal to the High Bailiff against:

- the issue of a remedial notice;
- the variation or withdrawal of a remedial notice;
- the refusal of an application to vary or withdraw a remedial notice.

In the case of a tree, DEFA may likewise appeal.

5.4 In addition, the complainant can appeal against a decision by the Department that :

- the complainant has not taken all reasonable steps to resolve the matter before making the complaint;
- the complaint is frivolous or vexatious;
- the height of the hedge or tree(s) is not adversely affecting the complainant's reasonable enjoyment of their property;

5.5 A remedial notice - or its withdrawal, waiver or relaxation - is suspended while the appeal is being determined.

5.6 In hearing the appeal the High Bailiff may authorise a person who will have the same rights¹⁹ to enter the land where the hedge or tree(s) is situated as the Department officer who dealt with the original complaint. The person authorised by the High Bailiff is also subject to the same obligations in respect of prior notice (see Chapter 6: *'Entry to Land'*).

5.7 As on-site discussion is not allowed, it is not necessary for the Department to be represented by the officer who dealt with the original decision. Site visits will not normally be delayed, therefore, because the officer concerned would be unavailable on the date suggested.

Revised operative date of remedial notice

5.8 If the High Bailiff decides to uphold the original remedial notice, or to vary or correct its contents, the date when it comes into effect (the operative date - see paragraph 3.14) will need to be revised. This will be either the date of the High Bailiff's decision or such later date as the High Bailiff may set.

5.9 The compliance period will start again from the revised operative date.

5.10 There is no separate right of appeal against an appeal decision.

5.11 The only recourse is by means of Petition of Doleance. Permission is needed to bring a Petition. This will only be granted where an applicant is able to satisfy the court that they have both sufficient interest in the matter and an arguable case. Such a review is designed to ensure that the powers laid down in the Act have been exercised properly and in accordance with good administration. It does not consider the merits of the appeal decision.

¹⁸ s. 7.

¹⁹ s. 9(2).

Chapter 6: Enforcement

Offences

6.1 Failure to comply with the requirements of a remedial notice is an offence punishable, on summary conviction, to a fine not exceeding £5,000²⁰.

6.2 This means that offences are committed:

- where someone does not complete the initial one-off action specified in the remedial notice within the time specified; and
- where any continuing maintenance works are not carried out in accordance with the requirements set out in the notice.

6.3 A separate action may be brought against each contravention of a remedial notice. For example, someone could be prosecuted for failure to carry out the initial action specified in the remedial notice. They might then cut the hedge but subsequently fail to maintain it as required. This would be a separate offence for which they could also be prosecuted. Equally, if they then trimmed the hedge but did not do so again, as specified in the remedial notice, a new offence would be committed.

6.4 Where the requirements of a remedial notice are breached, whoever is the owner or occupier of the land where the hedge is situated at the time when the offence takes place could be liable to prosecution. This includes not only the owner and occupiers of the site who originally received copies of the remedial notice but also their successors (but see the section below on *'Defences'*). Where there is both an owner and an occupier (for example, landlord and tenant), the Department should direct enforcement action at the person who has responsibility for the hedge.

Defences

6.5 A person will be able to defend themselves against prosecution under the Act if they can show that²¹:

- they did all that could be expected of them to meet the requirements of a remedial notice. This is relevant where there is both an owner and an occupier of the land in question and a prosecution is brought against the person who does not have control of the hedge; and/or
- they were not aware of the existence of the remedial notice at the time that the offence took place.

This last defence can be used only where the person was not sent a copy of the original remedial notice and could not be expected to know about it. Someone would normally be expected to know about the remedial notice if they own the site and a copy of the notice is lodged with the records of the General Registry against that land/property.

6.6 These defences provide important safeguards. But people should not need to rely on them if allegations of any contravention of the Act are fully investigated before the case is brought to court and if any prosecution is focused on the person who has responsibility for the hedge.

²⁰ s. 10(1).

²¹ s. 10.

Enforcement Procedures

6.7 It is for the Department to determine its policy and approach to enforcing remedial notices, depending on available resources. Most enforcement activity is, however, likely to be reactive - mainly responding to neighbours' complaints of alleged failure to comply with the requirements of a remedial notice.

6.8 It might be necessary, in some cases, to consider establishing a set of priorities to help manage enforcement cases effectively. The degree of harm caused by the alleged failure might be one criterion that could be used. For example, failing to carry out the initial one-off works, necessary to remedy the adverse effect of the hedge or tree(s), within the time allowed might be considered more serious than allowing the hedge or tree(s) to grow just above the specified height between annual trims.

Documenting the Case

6.9 Throughout the enforcement process it is essential to maintain a complete, accurate and up to date record of all investigation carried out and assessment of the results. This is important even in those cases where the initial decision is not to take formal enforcement action. If it is necessary to return to the case in the future, officers dealing with it will be able quickly to establish the relevant facts and history.

Investigations

6.10 On receiving a complaint that the actions required under a remedial notice have not been carried out, the Department should investigate the allegations. They may wish to visit the site to collect and verify information.

6.11 If the results of these initial investigations suggest that an offence has occurred, the Department should contact the owner and occupier of the land where the hedge or tree(s) is situated, inform them of the alleged breach and seek their comments.

6.12 It is good practice for the Department to inform the person who made the complaint what action, if any, is to be taken to enforce the requirements of the remedial notice and the reasons for their decision.

Informal Action

6.13 The main aim of any enforcement action should be to ensure that the owner or occupier of the land in question carries out the required works to the hedge, or tree(s). In some cases, this might be achieved only by taking the person to court so that a fine can be imposed. Alternatively, and this falls short of prosecution, the Department should consider having an informal chat with the person to encourage them to comply with the remedial notice; or sending a formal warning letter of the consequences of their continuing failure to act.

6.14 What enforcement action, or combination of actions, the Department pursues will depend on the particular circumstances of the case. Where, however, it is clear that the owner or occupier was unaware of the existence of a remedial notice, the Department should provide them with a copy and should normally give them more time to comply.

Prosecutions

6.15 If the Department considers that prosecution is the most appropriate way to secure compliance with a remedial notice, they will need evidence to show that a

requirement in the notice has been, or is being, contravened and so an offence has occurred.

6.16 The High Bailiff will have had no practical experience of such cases and so it will be helpful for the Department to explain fully to the court the context in which the alleged offence has occurred.

6.17 Depending on the circumstances, the following approach might help the High Bailiff to appreciate the strength of the Department's case:

- explain that the provisions of section 10(1) of the Act make it an offence to contravene the requirements of a remedial notice;
- describe the nature of the particular offence, in factual terms;
- outline the actions taken by the Department to secure compliance with the remedial notice.

6.18 Evidence on such matters as whether the contravention is blatant or attributable to carelessness or negligence; or the degree of harm caused by it are irrelevant to the issue of proving the offence. They might, however, be relevant to the High Bailiff's assessment of the appropriate penalty.

6.19 Where offences are committed by bodies corporate, proceedings can, in certain circumstances, be taken against individual officers²² as well as the body corporate.

Intervention

6.20 The Department has the power to enter the land where the hedge or tree(s) is situated and carry out the works specified in the remedial notice, if the owner or occupier of the land fails to comply with its requirements.²³ Unlike the owner or occupier of the site with the hedge, the Department cannot exceed the requirements set out in the remedial notice.

6.21 It is for the Department to consider whether it will use these powers to carry out the works specified in the remedial notice; if so, when to employ them; and whether this is done instead of, or alongside, a prosecution. There is no requirement or obligation on the Department to intervene. In addition, as noted in paragraph 6.13 above, the aim is to get the owner or occupier of the land in question to carry out the required works to the hedge. The burden of compliance should not be shifted onto the Department. There should not be a general expectation that the Department will step in, nor that they will do so immediately after a breach of a remedial notice occurs.

Entry to Land

6.22 The Department may authorise their officers to enter the land where the hedge/trees/the tree is situated in order to obtain information that will help them decide²⁴:

- whether the complaint is one that can be considered under the legislation;
- whether to issue or withdraw a remedial notice;
- whether to vary a requirement of a remedial notice; or

²² s.12.

²³ s. 11.

²⁴ s. 9.

- whether a notice has been breached.

6.23 At least 24 hours' notice of the intended entry must be given to all occupiers of the land. The Department might, in particular, need to gain quick access in order to establish whether or not the requirements of a remedial notice had been met. These might relate not only to the works that must be carried out to the hedge but also the timescale within which action must be taken. Timing of a site visit could, therefore, be critical.

6.24 Department officers entering land under these powers would be able to take with them other people, equipment or materials as necessary. They might, for example, need someone else to help them measure a hedge.

6.25 Besides giving prior notice of their intentions, there would be other conditions that officers would have to meet when exercising these powers. In particular, they would - if asked - have to produce evidence of their authority to enter the land in question. If the land was unoccupied, they must leave it as effectively secured as they found it.

6.26 Intentionally obstructing any person exercising these powers is an offence punishable on summary conviction by a fine not exceeding £5,000²⁵.

6.27 Where a person exercising their rights of entry under these provisions causes damage, the owner or occupier of the property would be able to make a claim through the civil courts. The fact that they were operating under statutory powers would not be sufficient to defend Departments against liability for such damage. They would need to demonstrate that the damage was reasonable in the exercise of their statutory functions.

7 Conclusion

7.1 The aim of the Trees and High Hedges Act 2005 is to provide a legal procedure whereby persons who have complaints about the affect of a neighbour's hedge or tree(s) on their land may seek redress. Prior to the Act the only legal means was by High Court civil action which was costly, lengthy and confrontational.

7.2 The form of redress set down in the Act and the procedure notes included within this guide is not without cost (a fee is expected to be paid) and it cannot require immediate decision-making due to the need to follow due process. However, the Act and the procedures do seek to offer a way for the parties involved in any dispute to be kept fully informed throughout and to offer opportunities for them to resolve their dispute by mutual agreement at any time.

7.3 This guide provide instructions on how to deal with any complaint about a neighbour's high hedge from initial informal contact with a complainant to the receipt of a formal written complaint. They set out the prior actions expected of complainants, the details required and how the complaint may be investigated. Preliminary issues to be assessed include whether or not the complaint is frivolous or vexatious or reasonable steps have been taken to resolve the dispute amicably. Should the Department be satisfied that the complaint is well founded, this guide details some issues that need to be addressed, such as obstruction of day or sunlight, decision-making, communicating the decision, rights of appeal and the enforcement of any decision.

7.4 This guidance booklet does not cover every nuance of the process involved in deciding whether or not a particular hedge or tree(s) is in need of remedial action as

²⁵ s.9(7).

each case will inevitably turn on different circumstances. However, the booklet does seek to offer some general guidance on procedure. More detailed information or assistance may be obtained from the contacts listed below.

Contacts for further information:

General advice about procedures or the law:

Roy Corlett, Manager, Legislation and Policy Unit, DOI or Steve Willoughby (Tel: 685890 or 686246).

Advice about Planning Division matters:

Jo Callow, Secretary to the Planning Committee, DOI (Tel: 685910)

Advice about trees and tree preservation issues:

Forestry Amenity and Lands Directorate, DEFA, St Johns (Tel: 801263)

Advice about wildlife and conservation issues:

Ms Liz Charter, Biodiversity Officer, DEFA, (Tel: 685835).

FIRST CONTACT

To be sent to the enquirer/potential complainant

RE: COMPLAINT ABOUT A HIGH HEDGE

Thank you for your [letter/email/telephone call] of [date] indicating that you wish to make a formal complaint about your neighbour's hedge, under the Trees and High Hedges Act 2005. The Department/Local Authority can only intervene once you have tried and exhausted all other avenues for resolving your hedge dispute. I am **enclosing** a copy of the leaflet "**Garden Hedges**" which sets out some steps that you should consider trying.

The Department recommends that complainants should refer to the document "**Hedge height and light loss**" produced by the Building Research Establishment. This guidance document provides an objective method for assessing whether a hedge is obstructing light to windows. **However, it is only to be used when dealing with a row of evergreen bushes or trees, and not deciduous trees, single trees or woodlands.** Details of the publication may be accessed via the Department's website or at www.odpm.gov.uk

The Department/Local Authority's role is to act as an independent and impartial adjudicator in those cases which people cannot settle for themselves. We cannot, therefore, negotiate or mediate between you and your neighbour.

If you cannot agree a solution with your neighbour, let me know and I will send further information about the procedure for making a formal complaint which includes paying a fee of £150. You should, however, bear in mind that the Department/Local Authority can reject a complaint if we think someone has not done everything they reasonably could to negotiate a solution to their hedge problems. So if you don't follow the advice in the leaflet, you will need to explain why not. In any event you should also be aware that even if your complaint is accepted and investigated there is no certainty that remedial action will be recommended as that will depend on the findings of the Department/Local Authority.

Yours faithfully

COMPLAINT FORM: COVER LETTER

To be sent to the complainant

RE: COMPLAINT ABOUT A HIGH HEDGE

Thank you for your [letter/email/telephone call] of [date] indicating that you wish to make a formal complaint about your neighbour's hedge, under the Trees and High Hedges Act 2005.

You said that you had discussed the problem with your neighbour but had been unable to agree a solution. I **enclose** our **Complaints Form** together with some **guidance notes** to help you complete it. You will also see that a fee of £150 must accompany the Form if you do decide to send it back to us. Before filling it in, I recommend that you read the **enclosed** leaflet ***High hedges: making a complaint***. It explains what complaints we can consider and how we will deal with them. The leaflet also sets out what we expect you to have done to try to settle your hedge dispute. If you have not exhausted all the avenues mentioned, you should consider giving them a try. If you don't, you will need to explain why not. Otherwise, we might not proceed with your complaint.

The complaint form constitutes your statement of case as to why you consider the hedge is adversely affecting the reasonable enjoyment of your domestic property. It will be an important document in the Department/Local Authority's consideration of the complaint, as well as in any possible subsequent appeal against our decision. In setting out your grounds of complaint, therefore, you should describe fully the problems caused by the hedge, their severity and the impact on you. Please also send us any supporting information that you want us to take into account.

Please return the completed form to me at the above address. You **must** also send a copy to the owner and occupier of the land where the hedge is situated. [These are the people listed in sections 5.4 and 5.5 of the form].

When we receive your formal complaint, we will run some checks to make sure that it includes the fee of £150 and meets the requirements set out in the Trees and High Hedges Act 2005.

If we cannot proceed with the complaint, we will tell you why not. Otherwise, we will acknowledge that we have received it and explain what happens next.

Yours faithfully

COMPLAINT REJECTION: FRIVOLOUS OR VEXATIOUS

To be sent to the complainant

RE: COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

I refer to your complaint of [date] about the high hedge situated at [address].

We have considered your complaint but have decided that we cannot take any further action on it for the following reasons:

[SET OUT REASONS – FOR EXAMPLE, the complaint is considered frivolous/vexatious.]

[EXPLAIN REASONS – FOR EXAMPLE, you previously complained about the hedge on [date] and were notified on [date] that the Department/Local Authority had decided that the hedge was not adversely affecting your reasonable enjoyment of your property. [This decision was upheld following your appeal to the High Bailiff.] Your latest complaint indicates there has, subsequently, been no significant change in circumstances which would affect the Department/Local Authority's earlier decision.]

If you would like further information about our decision, please contact [name and contact details of case officer].

Yours faithfully

COMPLAINT REJECTION: INSUFFICIENT EFFORTS TO RESOLVE BY NEGOTIATION

To be sent to the complainant

RE: COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

I refer to your complaint of [date] about the high hedge situated at [address].

We have considered your complaint but have decided that we cannot take any further action on it for the following reasons:

[SET OUT REASONS – FOR EXAMPLE, you have not taken all reasonable steps to resolve the matter for yourselves.]

In particular, the Council/Commissioners consider that you should [SET OUT WHAT STEPS THEY SHOULD TAKE TO TRY TO SETTLE THE DISPUTE – FOR EXAMPLE:

- make a fresh approach to your neighbour as it is over [x] months since you last raised the issue with them;
- write to your neighbour if you are nervous about speaking to them. It is not enough to say that they are unapproachable;
- [ask your neighbour to consider talking to independent mediators.]

Further advice on settling your hedge dispute is contained in leaflet "Garden hedges" which should have already been issued to you.

If you would like further information about our decision, please contact [name and contact details of case officer].

There is no right of appeal if you disagree with our decision.

COMPLAINT REJECTION: INVALID COMPLAINT

To be sent to the complainant

COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

I refer to your complaint of [date] about the high hedge situated at [address].

I am sorry to tell you that, under the terms of the Trees and High Hedges Act 2005, the Department/Council/Commissioners is/are unable to deal with your complaint and so will be taking no further action on it.

The reasons for our decision are as follows:

[EXPLAIN WHY THE REQUIREMENTS OF THE ACT ARE NOT MET – FOR EXAMPLE:

- your grounds of complaint are about the effect of the roots of the hedge. The Act states specifically that the Department/Council/Commissioners cannot deal with such matters. We can only consider complaints related to the height of the hedge.]

I am returning the fee that accompanied your complaint. [**ISSUE:** In these cases it is suggested that it should be very easy to quickly determine the complaint and perhaps easier to return the whole fee than retain some and refund the rest, or do you think a basic 'administration' of say £15 would encourage people to check their forms very carefully before they submit them and offer some recompense to Local Authorities/us for time spent dealing with it?]

If you would like further information about our decision, please contact [name and contact details of case officer],

There is no right of appeal if you disagree with our decision.

Yours faithfully

ACKNOWLEDGEMENT OF COMPLAINT

To be sent to the complainant

RE: COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

I acknowledge receipt of your complaint about a neighbouring high hedge, made under the Trees and High Hedges Act 2005. We received your complaint and fee of £[amount] on [date].

Your complaint has been given the reference number: [insert] and is being dealt with by [name, address and other contact details of the case officer]. Please contact this officer, quoting the reference number given above, if you have any questions about your complaint or our procedures. In particular, please let us know immediately of any relevant change in your circumstances. For example, if you cease to own or occupy the property affected by the hedge/tree(s). Or if your neighbour agrees to reduce the hedge to a height that solves the problem. In the latter case it may be possible for the Department/ Local Authority to refund part of the fee.

We are satisfied, from the information you have provided, that your complaint meets the requirements set out in the Trees and High Hedges Act 2005 and so is one that we can deal with. We will be writing to the owner and occupier of the land where the hedge/tree(s) is situated to notify them that the Council are considering a complaint about their hedge. We will also invite them to comment on the points you have raised in your complaint and to provide any further information that they want us to take into account.

[SET OUT ANY ARRANGEMENTS FOR CONSULTING OTHER INTERESTED PARTIES. FOR EXAMPLE: We will also be seeking the views of the occupiers of the properties at [address]]. As the hedge/trees in question also neighbour these properties, they could potentially be affected by the Department/Local Authority's decision on your complaint.

OR

As [(i) there are tree(s) in the hedge, or (ii) the complaint relates to a tree or row of trees – *delete as appropriate*], the Department/Local Authority will also write to the Department of Environment, Food and Agriculture asking for their comments on your complaint. In the event that some or all of the trees are protected under the Tree Preservation Act 1993, the Department/Local Authority will ask the Department of Environment, Food and Agriculture to consider what, if any, remedial action may be possible on the tree/trees in question. You should be aware though that the provisions of the Tree Preservation Act 1993 take precedence and it may not therefore be possible to take any action with regard to the tree(s).

We will send you copies of all the comments that we receive so that you know what information and views we will be considering as we make a decision on your complaint. When we have gathered all the written information and evidence, we will be in touch again to arrange a suitable date for an officer of the Department/Local

ANNEX C contd

Authority to visit the site. The purpose of the visit is to enable the officer to see the hedge/tree(s) and surroundings at first hand, to help us assess the comments that you and others have provided. The officer is not there to negotiate or mediate between you and your neighbour. You will probably need to attend the visit as the officer will need to gain entry to your property. Please bear in mind that, although the officer of the Department/Local Authority might wish to ask questions to clarify factual points, they will not be able to discuss the merits of the case with either party. We will also be contacting the owner or occupier of the land where the tree/high hedge is situated.

NOTIFICATION OF COMPLAINT: OCCUPIER OF THE LAND WHERE THE HEDGE IS
SITUATED

To be sent to the occupier of the property where the hedge is situated

RE: COMPLAINT ABOUT A HIGH HEDGE/TREE(S) SITUATED AT [ADDRESS]

We have received the **enclosed** complaint, made under the Trees and High Hedges Act 2005, that a hedge/tree(s) on your property is adversely affecting your neighbour at [address]. I understand your neighbour has discussed this with you previously but you have been unable to agree a solution.

I **enclose** a copy of the leaflet *High hedges: making a complaint* which explains how the Department [or substitute Local Authority (by delegated authority)] deals with such complaints.

The complaint has been given the reference number: [insert] and is being dealt with by [name, address and other contact details of the case officer].

Please contact this officer, quoting the reference number given above, if you have any questions about the complaint or our procedures. In particular, please let us know immediately of any change in your circumstances. For example, if you cease to [own or] occupy the property where the hedge/tree(s) is situated. Or if you agree to reduce the hedge to a height that solves the problem.

To help us consider this complaint further, please complete the **enclosed** questionnaire [to follow] and return it to me by [date]. You are also invited to send us any comments you might have on the points raised in the complaint and to provide any further information that you want us to take into account. This should reach us no later than [date].

You should send a copy of the questionnaire and other papers to the person who has made the complaint [and to the owner of your property], at the same time as you submit them to the Department/Local Authority. You might wish to bear this in mind in framing your comments. The complainant's name and address are on the complaints form. Please send us confirmation that you have done this.
[SET OUT ANY ARRANGEMENTS FOR CONSULTING OTHER INTERESTED PARTIES.
FOR EXAMPLE: We will also be seeking the views of the occupiers of the properties at [addresses]. As the hedge in question also neighbours these properties, they could potentially be affected by the Department/Local Authority's decision on your neighbour's complaint.

OR

As the tree(s) are protected under the Tree Preservation Act 1993, it is the Department's policy [which we are obliged to comply with] to write to local residents asking for their comments on your complaint.

We will send you copies of all the comments that we receive so that you know what information and views we will be considering as we make a decision on the complaint.]

ANNEX D i Contd

When we have gathered all the written information and evidence, we will be in touch again to arrange a suitable date for an officer of the Department/Local Authority to visit the site. The purpose of the visit is to enable the officer to see the hedge/tree(s) and surroundings at first hand, to help us assess the comments that you and [your neighbour/others] have provided.

NOTIFICATION OF COMPLAINT: OWNER OF THE LAND WHERE THE HEDGE IS
SITUATED
(if different to the occupier)

To be sent to the owner of the property where the hedge is situated. This letter should be issued as soon as the relevant contact details are provided to the Department/Local Authority – either on the complaint form or the occupier's questionnaire.

**RE: COMPLAINT ABOUT A HIGH HEDGE/TREE(S) SITUATED AT [ADDRESS]
REFERENCE NUMBER [XXX]**

I **enclose** a copy of a letter sent to [name and address of the occupier of the land where the hedge/tree(s) is situated] notifying them that the Department/Local Authority has received a complaint about a hedge/tree(s) on the property. I understand that you own the land in question and so have an interest in this matter.

To help us consider this complaint further, you are invited to send us any comments you might have to the points raised in the complaint and to provide any further information that you want us to take into account. This should reach us no later than [date]. [Please also let us have answers to any items of the questionnaire that the occupier of the property has been unable to deal with.] You should send a copy of these papers to the person who has made the complaint and to the occupier of your property, at the same time as you submit them to the Department/Local Authority. You might wish to bear this in mind in framing your comments. The complainant's name and address is on the complaints form. Please send us confirmation that you have done this.

We will send you a copy of our decision, and the reasons for it, in due course.

Yours faithfully

DECISION LETTER: REMEDIAL ACTION

(illustrates longer decision letter for use where there is no separate case report)

To be sent to the complainant and every owner and occupier of the land where the hedge is situated

RE: COMPLAINT ABOUT A HIGH HEDGE LOCATED AT [ADDRESS]
REFERENCE NUMBER [XXX]

I refer to the complaint, made under the Trees and High Hedges Act 2005, about the high hedge/tree(s) situated at [site address/description]. The complaint alleged that the hedge/tree(s) is adversely affecting the enjoyment of the domestic property at [address].

The Department/Local Authority's gathered evidence and information in relation to the complaint by inviting the [owner/occupier] of the land where the hedge/tree(s) is situated to submit a statement [and by consulting neighbours and persons who appeared to the Department/Local Authority to have an interest in the matter]. In addition, an officer of the Department/Local Authority visited the site on [date].

This letter summarises the evidence and information gathered by the Department/Local Authority and explains how we have assessed and weighed the various issues raised by the complaint.

The Hedge/Tree(s) and its Surroundings

[BRIEF DESCRIPTION OF THE HEDGE/TREE(S) AND ITS SETTING. INCLUDE THE HEIGHT AND LENGTH OF THE HEDGE/TREE(S) AND GENERAL SPECIAL CONTENT; ASSESSMENT OF ITS GROWTH HABIT AND CONDITION (EG GAPS); EVIDENCE (IF ANY) OF PAST MANAGEMENT; ITS POSITION IN RELATION TO THE COMPLAINANT'S PROPERTY, WITH RELEVANT MEASUREMENTS, AND IN RELATION TO OTHER FEATURES ON THE LAND WHERE IT IS GROWING (EG THE HEDGE OWNER'S HOUSE). OTHER RELEVANT FACTORS MIGHT INCLUDE ORIENTATION, SIZE OF GARDENS, ANY DIFFERENCES IN LEVELS BETWEEN THE TWO PROPERTIES, OTHER TREES AND VEGETATION. IN ADDITION, DESCRIBE THE GENERAL CHARACTER OF THE AREA AND ANY SPECIAL FEATURES (EG CONSERVATION AREA).]

Relevant Policies or Legislation

[DRAW ATTENTION TO ANY POLICIES, OR LEGAL RESTRICTIONS, THAT APPLY AND COULD BE MATERIAL TO THE DEPARTMENT/LOCAL AUTHORITY'S CONSIDERATION OF THE COMPLAINT. THESE PROVIDE EVIDENCE OF THE COMMUNITY/PUBLIC INTEREST IN THE MATTER. THEY MIGHT INCLUDE LOCAL LANDSCAPE CHARACTER ASSESSMENTS, PLANNING POLICIES, EXISTENCE OF A TREE PRESERVATION ORDER OR A PLANNING CONDITION.]

Case for the Complainant

[SUMMARISE THE MATERIAL POINTS FROM THE COMPLAINT FORM AND OTHER INFORMATION SUBMITTED. FOR EXAMPLE:

The hedge/tree(s) is too large in view of its proximity to the small bungalow at [address] and the limited extent of the rear gardens. The dense shade it casts makes it necessary to use artificial lights within the bungalow during the daytime throughout the year.

DECISION LETTER: NO REMEDIAL ACTION

(illustrates short decision letter for use where case report is appended to the decision)

To be sent to the complainant and every owner and occupier of the land where the hedge is situated

**RE: COMPLAINT ABOUT A HIGH HEDGE/TREE(S) LOCATED AT [ADDRESS]
REFERENCE NUMBER [XXX]**

I refer to the complaint, made under the Trees and High Hedges Act 2005, about the high hedge/tree(s) situated at [site address/description]. The complaint alleged that the hedge/tree(s) is adversely affecting the enjoyment of the domestic property at [address]. In particular, it was alleged that the hedge/tree(s) [summarise main grounds of complaint].

The Department/Local Authority have taken into account:

- representations and other information you submitted and received from the [owner/occupier] of the land where the hedge/tree(s) is situated;
- [representations received from [number] other interested parties;]
- the contribution that the hedge/tree(s) makes to the character and amenity of the area. [We have paid special attention to the fact that the hedge/tree(s) is situated in a conservation area/the tree (in the hedge) are protected by a tree preservation order.]

An officer of the Department/Local Authority visited the site on [date].

Main Considerations and Conclusion

I **enclose** a copy of the case report which summarises the representations and other information before the Department/Local Authority and explains how we have assessed and weighed the various issues raised by the complaint.

The Department/Local Authority's role in these cases is to seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general, and thereby to formulate a proportionate response to the complaint. As the report indicates, the main considerations in this case are whether the problems complained of are sufficiently serious to justify action being taken in relation to the hedge, bearing in mind the effect such action would have on the property where the hedge/tree(s) is situated and on the wider area. [DEAL CONCISELY WITH THE MAIN ISSUES. THESE WILL NORMALLY RELATE TO THE DEGREE OF HARM CAUSED BY THE HEDGE/TREE(S) OWNER AND THE WIDER COMMUNITY. FOR EXAMPLE:

The report notes that the hedge/tree(s) is obstructing light to some windows in your property. The impact, at present, is not severe and would be remedied by the

ANNEX E ii Contd

hedge/tree(s) being lightly trimmed. Other problems identified, such as litter from the hedge/tree(s), are considered to be inconvenient and of little significance. On the other hand, the hedges/tree(s) defining the separation between the dwellings in this street are a characteristic feature of the conservation area. If the size of the hedge/tree(s) were to be reduced, it would have an adverse effect on the appearance of the neighbourhood and on the amenity of other residents.

[REMEDIAL NOTICE]

To be sent to the complainant and every owner and occupier of the land where the hedge/tree(s) is situated

IMPORTANT – THIS NOTICE AFFECTS THE PROPERTY AT [ADDRESS OF THE LAND WHERE THE HEDGE/TREE(S) IS SITUATED]

TREES AND HIGH HEDGES ACT 2005

REMEDIAL NOTICE

ISSUED BY: Department of Infrastructure/Douglas Borough Council/Commissioners of the Parish District or Village District or Town of ...

1. THE NOTICE

This Notice is issued by the Department/Local Authority under section 5 of the Trees and High Hedges Act 2005 pursuant to a complaint about a high hedge situated at [address]. The Department/Local Authority has decided that the hedge/tree(s) in question is adversely affecting the reasonable enjoyment of the property at [complainant's address] and that action should be taken in relation to the hedge/tree(s) with a view to remedying the adverse effect [and preventing its recurrence].

2. THE HEDGE/TREE(S) TO WHICH THE NOTICE RELATES

[THIS WILL NORMALLY BE THE HEDGE/TREE, OR PART OF IT, THAT MEETS THE LEGAL DEFINITION AND IS THE SUBJECT OF THE COMPLAINT.]

The hedge/tree(s) [in the rear garden] at [address] and marked red on the **attached** plan.

[COMPLAINT RELATES TO WHOLE HEDGE]

OR

The portion of hedge [in the rear garden] at [address] marked red on the **attached** plan. The portion is [10] metres in length, measured from the end of the hedge that is closest to the house at this address. This point is marked X on the plan.

[COMPLAINT RELATES TO PART OF A LONGER HEDGE, THE REST OF WHICH IS NOT A HIGH HEDGE].

AND

The [portion of] hedge is formed predominantly of [name eg cypress] trees [and shrubs].

3. WHAT ACTION MUST BE TAKEN IN RELATION TO THE HEDGE/TREE(S)

Initial Action

The Department/Local Authority requires the following steps to be taken in relation to the hedge/tree(s) before the end of the period specified in paragraph 4 below:
[SPECIFY THE ACTION NECESSARY TO REMEDY THE PROBLEMS CAUSED BY THE

HEDGE/TREE(S), PLUS A GROWING MARGIN TO FORESTALL FURTHER PROBLEMS IN THE SHORT TERM. FOR EXAMPLE:

- (i) reduce the hedge/tree(s) to a height not exceeding [3] metres above ground level.]

Prevention Action

Following the end of the period specified in paragraph 4 below, the Department/Local Authority require the following steps to be taken in relation to the hedge/tree(s): [SPECIFY THE LONG-TERM ACTION REQUIRED].