

HIGH HEDGES ACT
(NORTHERN IRELAND) 2011 –
GUIDANCE FOR HEDGE
OWNERS

HOW CAN YOU DEAL WITH A HIGH HEDGE PROBLEM?

Guidance and Advice for HEDGE OWNERS

The right hedge can be an enhancement to a garden but the wrong hedge may bring problems.

Use this guide to help you:

- understand what can be done to resolve hedge problems informally;**
- understand what a council's responsibilities are if a high hedge complaint is lodged with it under the High Hedges Act (Northern Ireland) 2011; and**
- understand what is - and importantly what is not - covered by the legislation.**

This is intended to be a straightforward guide - not a statement of the law.

Introduction

You do not normally need permission to plant a hedge in your garden and there are no laws that limit the height you can grow your hedge. Nor is it an offence for a hedge of any particular height or species (variety) to be grown. Planning law¹ that governs the height of boundary walls and fences does not apply to hedges.

Problems can however occur if a hedge is allowed to grow unchecked, particularly without considering its effect on neighbours. If a neighbour has an issue about your hedge it is best to talk to them about it and try and sort things out amicably.

Common law rights entitle neighbours to cut overhanging branches back to the boundary line (unless other legal restrictions, such as a tree preservation order, apply), but require the cut foliage to be offered back to the owner. These common law rights do not extend to reducing the height of a hedge without the owner's agreement.

You, as a hedge owner², are responsible for looking after any hedge on your property and for making sure it is not a nuisance to anyone else. This means trimming the hedge regularly, both its top and all sides and ensuring that it does not pose a danger to people or property. In addition, **Roads Service³ can require trees or hedges blocking sightlines to be cut back.**

The High Hedges Act (Northern Ireland) 2011 provides a new legal basis for taking action over a problem high hedge. The legislation will help people in Northern Ireland who are adversely affected by high hedges bordering their domestic property. It deals with evergreen and semi-evergreen hedges that are more than 2-metres in height and affecting light reaching a neighbouring domestic property. It introduces a formal complaints system that will be operated by local councils, but it should only be used as a **last resort** as

¹ The Planning (General Development) Order (Northern Ireland) 1993

² The term 'hedge owner' throughout this document means 'every owner and every occupier of the neighbouring land', a term used in the High Hedges Act (Northern Ireland) 2011

³ The Roads (Northern Ireland) Order 1993 (Article 50)

neighbours are encouraged to resolve the problem themselves.

The legislation will not mean that all hedges above 2-metres in height will need to be cut down. Nor will people need council permission to grow or retain a hedge along the boundary of their property. Councils will only intervene in circumstances where a complaint is made. Even then, each case will be determined on its own merits.

A complaint cannot be made about single trees or single shrubs, whatever their size. In addition, the High Hedges Act excludes areas of forest or woodland (greater than 0.2 hectares in area).

The Act **only** applies to problems experienced because the hedge is too tall. The problems that will be considered include obstruction of daylight and sunlight, jointly or as separate issues. Loss of view or satellite signals cannot be considered.

The right hedge

The right hedge can be an ideal garden boundary but the wrong hedge may bring problems. A hedge can be cheap to create and last for a long time. It can help bring wildlife into your garden and its flowers, berries and leaves can add colour.

The wrong hedge – and what to do about it

Problems can occur if a hedge is allowed to grow unchecked, particularly without considering its effect on neighbours.

If your neighbour is troubled by your hedge, the best way to deal with the issue is to talk to them about it. It is in both your interests to try and sort things out. After all, you have to continue to live near each other and so it is

better if you are on good terms. If your neighbour has to resort to a formal complaint to the council it might make matters worse.

Here are some things to consider from your neighbour's point of view.

- Does your hedge block light to the main rooms in your neighbour's home?
- Does it deprive your neighbour of winter sunshine?
- Does your neighbour have to have their lights on for longer?
- Is your neighbour's garden in shade for much of the day
- Have you looked at the hedge from your neighbour's side? It may give you a better idea of how it affects their property.

If you can answer yes to any of these questions I am sure you will wish to resolve the problem amicably, remember you could find yourself in a similar position and you would want your problem to be treated seriously.

In the event that you cannot resolve the problem to your neighbour's satisfaction you may wish to familiarise yourself with the council guidance which sets out the steps that can be taken by the complainant and consider the implications for you if their complaint is successful.

What is a High Hedge?

A high hedge is defined in the Act as so much of a barrier to light as is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than 2 metres above ground level. But, for these purposes, a line of evergreens or semi-evergreens is not to be regarded as forming a barrier to light if gaps significantly affect its overall effect as such a barrier at heights of more than 2 metres above ground level.

When considering whether your hedge could be the subject of a complaint under the Act, you should consider the following series of questions:

- is the hedge - or the portion that is causing problems - made up of a line of two or more trees or shrubs;
- is it mostly evergreen or semi-evergreen;
- is it more than 2 metres above ground level;
- even though there are gaps in the foliage or between the trees, is the hedge still capable of obstructing light.

If the answer to all these questions is 'yes', then it is likely to be a high hedge for the purposes of the Act.

It is not necessary for the whole of the hedge to fall within the definition. If some parts of it qualify, they can be considered as individual hedges under the Act.

The following additional information might help when you are considering the answers to the questions set out above.

Line of two or more trees or shrubs

A complaint cannot be made under the Act about single trees or shrubs, whatever their size. A tree or shrub that has multiple stems, all growing from the same trunk or root plate, remains a single tree or shrub and so falls outside the scope of the Act. This is the position even though the multiple stems might result in a considerable spread.

The two or more trees or shrubs do not have to form a straight line. As long as they are roughly in line, they will be caught. A group of trees forming a woodland area of 0.2 hectares or more is specifically excluded from the Act. The area of 0.2 hectares only relates to an area of **woodland**. It **does not** relate to the area of a garden or the area occupied by a long single line of trees.

Mostly evergreen or semi-evergreen

The Act applies not only to Leyland cypress or conifers but also includes

other evergreen trees or shrubs, such as laurel. It does not include climbing plants, such as ivy, or bamboo - which is classed as a grass.

The term semi-evergreen is not separately defined in the Act but normally means that the hedge retains some live foliage throughout the year. Depending on geographical location, they may drop their leaves in cold winters but retain them in mild winters.

Deciduous trees lose all their living leaves during part of the year, thus Beech hedges are excluded. Although they may retain some foliage for most of the year, this is brown and dead.

Reference works such as Hillier Gardener's Guide to Trees and Shrubs or the RHS A-Z Encyclopedia of Garden Plants may help to clarify whether particular trees and shrubs are classed as evergreen, semi-evergreen or deciduous.

A hedge does not have to comprise wholly evergreen or semi-evergreen trees or shrubs to fall within the definition. The Act applies to hedges that are predominantly evergreen or semi-evergreen. Whether a particular hedge is mostly evergreen or semi-evergreen is a matter of judgement. It does not necessarily require a set number or proportion of the trees or shrubs in the hedge to meet this description.

The effect of including predominantly evergreen or semi-evergreen hedges is to bring mixed hedges - that include some deciduous species - within the scope of the definition. Thus deciduous trees that are located within a predominantly evergreen hedge might be the subject of a complaint under the Act.

More than 2 metres above ground level

The 2 metres should be measured from the ground where the hedge is growing - that will usually be on your side. Even if the property affected is on a lower (or higher) level than the land where the hedge is situated, the 2 metres should still be measured from the ground where the hedge is

growing. This is in line with planning requirements for a wall.

For these purposes, ground level means the natural level of the ground where the hedge is situated. Normally, therefore, any measurements should be taken from the ground at the base of the trunks or stems of the trees or shrubs in the hedge. An exception might be where the hedge has been planted on a mound, or in a bed or other container that is raised above the ground. In such a case, the measurement should be from the natural ground rather than of the hedge alone.

In order for a complainant to make a complaint about a high hedge, it should be sufficient for them to estimate of the height of the hedge in order to determine whether or not the hedge falls under the scope of the Act. Neither the legislation nor the guidance suggests that the complainant should enter a neighbour's land to take any measurements – this will be the responsibility of the council if a formal complaint is made.

When a council is investigating a high hedge complaint, it will need to measure the height of the hedge on the complainant's side to assess the impact on the complainant's property. It will also need to confirm that the height of the hedge is more than 2-metres which is likely to necessitate measurements on the hedge owner's side, depending on the specific circumstances and also to ensure that any remedial action does not require the hedge to be reduced below 2 metres on the land where it is growing.

Barrier to light

The Act applies to hedges that, despite any gaps that occur above the 2 metre mark, act as a barrier to light. This is about the physical appearance of the trees and shrubs in question - and whether or not they form what we might commonly consider to be a hedge. Only what they look like above 2 metres counts. This is consistent with the fact that complaints cannot be brought against 2 metre high hedges. It effectively takes anything below this height outside the scope of the Act.

Whether a particular hedge meets this criterion is a matter of judgement,

depending on its composition, form, growth habit, and past management. The key question is whether - even though there might be gaps in the foliage or between the trees or shrubs - the hedge is capable of obstructing light.

The trees or shrubs in the hedge may have been closely planted and become so entangled that they appear as a solid green wall. In such circumstances, the matter is straightforward: the hedge is evidently capable of blocking light. Other cases may be more difficult to judge. The trees or shrubs may be more widely spaced so their branches are not touching. Branches might have fallen off or been removed so the canopy is lifted. Or the growth might be straggly and foliage sparse. Such cases must be assessed individually, on their particular merits. But, if individual trees or shrubs are so widely spaced, or the gaps in the foliage are so extensive, that it is possible to see what lies behind them, then the hedge might fall outside the Act.

If someone were to remove every other tree from their hedge, whether or not it would still be caught under the definition would depend on what the hedge looks like afterwards. If, despite any gaps, the hedge still acts as a barrier to light; and it comprises wholly or predominantly a line of two or more evergreen or semi-evergreen trees or shrubs; and it is over 2 metres high - then it would meet the definition of a high hedge. Insofar as parts of the hedge meet the definition, they could be considered as individual hedges.

What happens if your neighbour makes a complaint?

If you own a high hedge, your neighbour is required to approach you to ask you to reduce the height of the hedge. If you cannot resolve the issue by discussion, you may wish to consider mediation, although there may be a cost associated with this. Further information on mediation services can be found in Annex A.

If the situation cannot be resolved amicably and your neighbour makes a formal complaint to the council, the council will visit the site to investigate the complaint.

In essence, the council will consider whether the hedge meets the criteria of the High Hedges Act. It will carry out an investigation which includes seeking your views and, if necessary, take representations from interested parties. As part of the process of gathering and assessing the evidence, council officers are likely to visit your property to examine the hedge and may take photographs and hedge samples. The council is not there to facilitate mediation or negotiation between you and your neighbour and there will be no discussions of the merits of the complaint. The council will give you 24 hours notice before visiting your property.

If it thinks it is justified, the council may issue a notice requiring you, the hedge owner, to remedy the problem. This is known as a remedial notice and gives effect to the council's decision. It details the action to be taken to restore a suitable balance between the amenity enjoyed by the complainant and the hedge owner. The notice will specify what needs to be done – how much needs to be cut off the height of the hedge and what needs to be done to keep it at the lower height.

This remedial notice will be registered as a statutory charge – this means that any prospective buyers of the land in question will be made aware of the hedge problems. A remedial notice will run with the land in question and is 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. Remedial notices are not, therefore, served on or addressed to a particular person. **The remedial notice is registered as a statutory charge on the property and remains as a charge to cover ongoing maintenance unless the hedge is removed or circumstances change.** (For further information see High Hedges Act (Northern Ireland) 2011 – Guidance for Councils).

Fees

If the council has decided to issue a remedial notice and that notice takes effect (after any appeals have been processed), the council can levy a fee on

you, the 'hedge owner', to recover the investigation and administration costs arising as a result of a complaint under the High Hedges Act.

In cases of joint ownership, the High Hedges Act allows a council to require payment of a fee from every owner and every occupier of the land. This fee transfer mechanism is laid out in the High Hedges (Fee Transfer) Regulations (Northern Ireland) 2012. There are no circumstances in which a refund of this fee can be offered. If unpaid, the council will seek recovery of any outstanding fees and the High Hedges Act provides for the registration as a statutory charge of an unpaid fee by the owner/occupier of the neighbouring land.

Failure to comply with a remedial notice

Both the owner and occupier of the land where the hedge is situated could be prosecuted for failure to comply with the requirements of a remedial notice. The council has the power to carry out the remedial work. The costs of this work can be recovered from the owner or occupier of the land. This includes the cost of dealing with any waste removed from the site at the owner or occupier's request. Any unpaid expenses would (until recovered) be registered as a statutory charge on the property.

The council will provide you with a copy of all the papers relating to the case, including the decision notice and remedial notice.

Legal and environmental factors to be considered when a council is assessing the content of a remedial notice

When deciding the contents of a remedial notice, the council must consider any relevant legal or environmental issues:

Protected trees

When considering a high hedge complaint, the council will need to know if any trees that form part of the hedge are protected, either by a tree preservation

order or because they are in a conservation area. You will be expected to provide this information when contacted by the council.

Planning conditions

Some hedges must be retained under the terms of a condition attached to a planning permission. You will be expected to advise the council if any such restrictions are in existence.

Historic, wildlife and landscape value

Councils must also take account of other factors such as:

- whether the hedge is part of or within the boundaries of a listed building, registered park or garden or other site of archaeological or historic importance and the effect that any removal may have on the said site;
- whether it has historic associations or contains veteran trees;
- whether it is situated in an Area of Outstanding Natural Beauty, or forms an important link with other landscape features;
- whether it is within a designated nature conservation site such as an Area of Special Scientific Interest⁴;
- whether any protected birds, animals or plants are present in the hedge⁵ and how they would be affected by any works, having regard not only to relevant legislation but also to local Biodiversity Action Plan policies;
- whether appropriate advice has been taken to ensure that the proposed remedial action will not result in the hedge dying; or

⁴ See the Environment (Northern Ireland) Order 2002

⁵ See the Wildlife and Natural Environment Act (Northern Ireland) 2011, the Conservation (Natural Habitats etc) Regulations (Northern Ireland) 1995 and the Wildlife (NI) Order 1985

- the potentially seasonal nature of the work since hedge cutting should be avoided during the bird nesting season (March – August) if birds are nesting in the hedge.

Covenants

Some properties have legal covenants that stipulate the size or type of hedge that can be grown. They might, for example, require that a hedge is kept tall in order to provide a screen or shelter. These are private rights or restrictions which are normally enforceable through the civil courts.

The terms of a covenant could, nevertheless, be relevant to a complaint, though they would not necessarily be decisive: it is possible that other factors, including the wider public interest, could have greater weight and importance. How long ago the restriction was introduced, its original purpose and whether circumstances remain the same could be material in considering the continuing relevance of any covenant.

Farm hedges

Hedgerows are a characteristic feature of the landscape and many form field boundaries which are valuable for wildlife, attractive in the landscape and are an important part of our heritage. If a problem hedge is on farm land which may be subject to Cross-Compliance requirements (aimed at protecting nesting birds and securing a supply of food for a range of wildlife), the council should discuss the matter with countryside management staff at the local DARD office before deciding the contents of a remedial notice, particularly in relation to the timescale within which the remedial works should be completed.

How do I appeal against the council's decision?

If you are unhappy with the council's decision, you can appeal to the Northern Ireland Valuation Tribunal. (For information on appeals see High Hedges Act

(Northern Ireland) – Guide to Appeals). If the Tribunal upholds the council's decision, the remedial notice will take effect.

Any appeal should be made on the High Hedges Appeals Form (available from the Northern Ireland Valuation Tribunal) and should be accompanied by the appropriate fee. Before you appeal, you should consider carefully the reasons for the council's decision.

If you decide to appeal, the Northern Ireland Valuation Tribunal will review the case file with all relevant documentation and may also visit the site to view the hedge and assess its impact.

If you consider that the council has not applied the legislation correctly, you can refer the matter to the council's own complaints procedures or to the Northern Ireland Ombudsman. It is possible in certain circumstances to make an application to the High Court for a judicial review. Such a review is about whether the council has applied the law properly by adhering to the proper procedures.

Annex A

Citizens Advice Bureaux give free, confidential, impartial and independent advice on a range of subjects and may be able to put you in touch with their local community mediation service or help you in your dealings with the complainant. They also run an online advice guide containing up-to-date and practical information, at www.adviceguide.org.uk. You can locate your nearest Citizens Advice Bureau through this site, as well as through the local telephone directory.

Further information about local community mediation services can be found on the **Mediation UK** website at www.mediationuk.org.uk.

The **Directory of UK Mediation** on the ADRNow website at www.adrnow.org.uk can also help you to find a mediator in your area.

Mediation Northern Ireland can put you in touch with a trained mediator in your area:

e-mail: info@mediationnorthernireland.org,

website: www.mediationnorthernireland.org