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## **HIGH HEDGES - CONSULTATION**

### **1 SUMMARY**

- 1.1 The Government issued a consultation paper in respect of implementing the legislation in respect of the above and draft guidance. The two documents are entitled “High Hedges Consultation Implementing Part 8 of the Anti-Social Behaviour Act” and “High Hedges Complaints Prevention and Cure”. Both of these are on deposit in the Members’ Library. The Government has also published guidance for the general public, which gives a good overview of the proposals and a copy of this is attached at Appendix 1 of this report.
- 1.2 The purpose of the report is to seek Members’ views on the proposed response to the consultation.

### **2 BACKGROUND**

- 2.1 The Government believes there are thousands of people that may be adversely affected by overgrown garden hedges.
- 2.2 At present many Local Authorities have these issues referred to them, but are unable to take any action. The only remedy at present is for the aggrieved person to take civil action through the Courts.
- 2.3 The proposals are that Local Authorities will have the power to enforce appropriate action, but only when the people in dispute have exhausted all avenues available to resolve the issue amicably.
- 2.4 The consultation poses 27 questions to which responses are sought.

### **3 FEES**

- 3.1 It is proposed that fees may be charged by the Local Authority, which would be payable by the complainant. Should the Government legislate for fees to be set, there will be a statutory maximum to the charge. Authorities would be free to grant exemptions, lower charges, refunds where complaint is withdrawn, etc.
- Q.1. Should the maximum fee be set at a level that allows Local Authorities to recover fully the costs they incur in dealing with complaints about high hedges? This would mean that such costs could be met by complainants.
- Q.2. If the maximum fee should be set to allow full cost recovery, would the estimated average cost per case of £280 to £320 included in the draft

Regulatory Impact Assessment cover it? If not, what do you consider would be a reasonable figure? What is the basis for the figure you have suggested?

- Q.3. If the maximum fee should NOT be set to allow full cost recovery, what do you consider would be a reasonable figure? What is the basis for the figure you have suggested?

*Officer Comment*

*The full cost of administering the scheme should be covered by fees. Attempting to fund Councils through the Revenue Support Grant mechanism would result in some Councils being over-compensated and some being underfunded. Fees should deter frivolous or vexatious complaints.*

*Providing that the estimate of 8 hours to deal with a complaint is correct, the fee of £320 should be sufficient to recover costs. If a maximum is set, it needs to be increased on a regular basis to mirror inflation.*

*The Council would not support a fee that does not recover the full cost of the service. It should be for individual Councils to consider levying a lower fee as their residents will bear any cost through the council tax.*

#### **4 GROUNDS FOR APPEAL**

4.1 The grounds for appeal are proposed as follows:-

- The action specified in the remedial notice falls short of what is needed to remedy the adverse effect of the height of the hedge or to prevent it recurring.
- Contrary to the decision of the Council, the height of the hedge in question is not adversely affecting the complainant's reasonable enjoyment of their property and/or that no action needs to be taken in relation to the hedge.
- The action specified in the remedial notice exceeds what is necessary to remedy the adverse effects of the height of the hedge or to prevent it recurring.
- Not enough time has been allowed to carry out the works set out in the notice.

There are also grounds for appeal if the Authority does not issue a remedial notice. These are:-

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- Contrary to the decision of the Council, the height of the hedge in question is adversely affecting the complainant's reasonable enjoyment of their property; and/or
  - The adverse effect warrants action being taken in relation to the hedge.

Grounds of appeal will also be available should the Local Authority withdraw or amend a remedial notice. These are:-

- 28 days have elapsed from the date of the Council's decision to withdraw the remedial notice and they have not issued a new remedial notice relating to the same hedge.
- The withdrawal of the remedial notice, or the waiver or relaxation of certain of its requirements have not been agreed by all parties, ie., the complainant – or their successors – and the owner and occupier of the land where the hedge is situated.

In addition, one or more of the following grounds must apply:-

- That there has been no material change in circumstances since the original complaint was considered that would justify withdrawal of the notice or the waiving or relaxation of its requirements.
- That the revised requirements fall short of what is needed to remedy the adverse effect of the height of the hedge or prevent its recurring.

Q.4. Are the proposed grounds of appeal against the issue of a remedial notice sufficiently comprehensive? If not, what additional grounds are needed?

Q.5. Are the proposed grounds of appeal against a Local Authority's decision NOT to issue a remedial notice sufficiently comprehensive? If not, what additional grounds are needed?

Q.6. Are the proposed grounds of appeal against a Local Authority decision to withdraw a remedial notice or to waive or relax its requirements sufficiently comprehensive? If not, what additional grounds are needed?

*Officer Comment*

All of the grounds for appeal appear reasonable.

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**5 APPEALS PROCEDURE**

- 5.1 Appeals will be carried out by the Planning Inspectorate and be conducted in accordance with the spirit of the Town and Country Planning (Hearing Procedure) (England) Rules 2000.
- 5.2 It is proposed that all the main parties will play an equal part. Anyone who commented or took part in the original decision would have an opportunity to be involved, but in a more limited capacity.
- 5.3 The draft regulations suggest a framework for evidence gathering with timetables. Late submissions might not be taken into account in the final consideration of the appeal.

Q.7. Do you think that the main partners – that is the Local Authority, the complainant and the owner and occupier of the land where the hedge is situated – should play an equal part in the appeals process? If not, how would you ensure that the interests of the non-appellant are taken into account?

*Officer Comment*

*Agree that the main parties should play an equal part.*

Q.8. Does everyone who took part in or commented on the original decision need to be involved in appeals relating to high hedges? If not, should the process be confined to the main parties?

*Officer Comment*

*Other parties should have an opportunity to put their views forward, presumably the Inspector would decide to what extent they participate, judging each case on its merits*

Q.9. Do you consider the procedures in the draft regulations to be fair and reasonable? If not, what changes are needed?

Q.10. Are all of the proposed actions needed? If not, should any stages be dropped?

Q.11. Are the proposed timetables set for submission of representations and other documents reasonable? If not, what changes are needed?

*Officer Comment*

*The procedures and timescales appear reasonable.*

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**6 DRAFT GUIDANCE**

6.1 There are a number of questions in respect of the draft guidance. Officers have commented on the questions, but Members will need to refer to the copies of the draft guidance on deposit for more detailed information.

Q.12. Is the guidance presented in a format that is easy to follow and allows you to find the guidance that you want? If not, how should the structure of the document be improved?

*Officer Comment*

*Document easy to follow, no changes suggested.*

Q.13. Generally, is the guidance proved sufficiently clear and comprehensive? If not, how should it be improved?

*Officer Comment*

*Guidance appears comprehensive and fit for purpose.*

Q.14 Annex A to the guidance has a list of proposed model letters, notices, etc. Would all these be useful? What other model documents would you like to see provided?

*Officer Comment*

*The list referred to is not contained in the printed document. The Website version does have a list which appears to be comprehensive.*

Q.15. Although the Act does not specify procedure to be followed in considering high hedge complaints, Chapter 6 “Gathering the Evidence” proposes an exchange of representations between the parties and a visit to the site. Do you have any views on the suggested process? Could it be streamlined or made simpler?

*Officer Comment*

*Suggested procedure appears reasonable.*

Q.16. Should the process be confined to the main parties – that is the Local Authority, the complainant and the owner and occupier of the land where the hedge is situated?

*Officer Comment.*

*Generally speaking, yes. There may be rare occasions where other parties may have a view, but all cases should be judged on their merits.*

Q.17. Alternatively, should high hedge complaints be advertised more widely?

*Officer Comment*

*No.*

Q.18. Chapter 6 – Weighing the Evidence – offers advice on how to assess the various factors that might be raised in connection with complaints about high hedges. This is intended to help Local Authorities to deal with these complaints in an impartial and broadly consistent manner. Is this sufficiently clear and comprehensive? If not, what changes are needed?

*Officer Comment*

*Guidance appears to be comprehensive.*

Q.19. Are there other sources that the guidance could usefully refer to? If so, what do you suggest and why?

*Officer Comment*

*Document probably covers all areas.*

Q.20. Chapter 6 – Making the Decision – advises Local Authorities how they might seek to achieve a balance between the various issues raised during the course of the complaint and so reach a decision. Do you have any views on the proposed approach?

*Officer Comment*

*Approach seems reasonable.*

Q.21. Chapter 7 – Remedial works – suggests how Local Authorities might determine the extent of any works to be specified in the remedial notice. Do you have any views on the proposed approach?

*Officer Comment.*

*Approach seems reasonable.*

Q.22. Are there any potential problems with implementation of the complaints system or its enforcement – or unintended consequences – that we have not considered?

*Officer Comment*

*Resourcing could be a problem in some Councils.*

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*Whilst it is acknowledged that a charge will be made, it is unlikely that there would be sufficient number to justify additional staff. This would, therefore, need to be absorbed into workloads and the strict timescales required could have an adverse effect on other functions.*

Q.23. Would a workshop or other training event be useful to you?

Q.24. What in particular would you wish such an event to cover?

*Officer Comment*

*Any training would be welcomed in order to ensure consistency of approach wherever possible.*

## **7 DRAFT REGULATORY IMPACT ASSESSMENT**

7.1. The document contains an assessment carried out by the Government to quantify the costs and benefits of introducing the legislation.

Q.25. Have Local Authorities been keeping any records about approaches made to them relating to high hedge problems? If so, how many formal complaints under the legislation are you expecting?

*Officer Comment*

*No information available.*

Q.26. Questions about the estimated costs to Local Authorities are posed in the section on “Fees” above. This includes the extent to which such costs should be met from the public purse. But do you have any other comments on the estimated costings in the Draft Regulatory Impact Assessment, for both private individuals and public sector bodies?

*Officer Comment*

*The maximum fee suggested provides for 8 hours work to determine a complaint. Although there will be no costs involved with appeals there is officer time to consider. It seems this cost will fall on the Authority unless the maximum fee is increased to allow for a percentage of cases going to appeal.*

Q.27. Are there any benefits to the “do nothing” option of not implementing Part 8 of the Anti-Social Behaviour Act 2003?

*Officer Comment*

*None identified at present.*

**8 RECOMMENDATION**

- 8.1 It is proposed that the Committee **RESOLVES** to respond to the consultation on the basis set out in the report, subject to Member comments.

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**Background Papers:**

None

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