

REGULATORY APPRAISAL

THE HIGH HEDGES (FEES) (WALES) REGULATIONS 2004

Purpose and intended effect

1. A 1999 survey of local authorities in England and Wales suggested that thousands of people could be adversely affected by overgrown garden hedges. If neighbours are unwilling to co-operate, there is little the person affected by the hedge can do to obtain relief.
2. The aim is to make hedge disputes a thing of the past by implementing Part 8 of the Anti-social Behaviour Act 2003 which provides for these complaints to be determined, as a last resort, by local authorities.
3. This draft Regulatory Appraisal relates to Wales. The Office of the Deputy Prime Minister is responsible for implementing part 8 of the 2003 Act in England. The Act does not extend to Scotland or Northern Ireland.

Background

4. Part 8 of the Anti-social Behaviour Act 2003 gives local authorities in England and Wales the powers to deal with complaints about high hedges which are having an adverse effect on a neighbour's enjoyment of his/her property. Such a system was favoured by the majority of respondents to the 1999 Consultation.
5. On 21 December 1999 the Assembly instigated the Wales part of an England and Wales consultation by issuing a consultation paper 'High hedges: possible solutions' summarising the key issues and options relating to problems caused by nuisance high hedges.
6. Of the 142 responses in Wales 128 were from individuals, 11 from local authorities and responses were also received from the Countryside Council for Wales, the Planning Inspectorate and the Farmers' Union of Wales
7. Complaining to the local authority would always be a last resort and neighbours would be expected to have made every effort to resolve the issue amicably. If the local authority, having taken all views into account, finds that the hedge is having an adverse effect it can order the hedge owner to take action to remedy the problem and to prevent it recurring. Failure to comply with such an order could result, on conviction, in a fine not exceeding level 3 on the standard scale (£1000) and up to £50 per day for not complying after being convicted
8. The Anti-Social Behaviour Act 2003 includes rights of appeal against a local authority's decision. The complainant as well as the hedge owner can exercise these rights.

9. What complaints can be referred to local authorities, and the framework for how they are considered and enforced, is already dealt with in the 2003 Act. Draft regulations relating to the appeal process and the level of fee and a draft regulatory impact assessment were issued to all AMs, all Welsh constituency MPs, all local planning authorities and a number of representative organisations as well as a number of individuals who had asked to be included in any consultation on 30 June 2004. The consultation period ended on 28 July 2004.
10. Based on the 1999 survey of local authorities, we estimate there could be a backlog of up to 1,000 hedge problem cases which would fall to be determined by local authorities in the first 3 years that the legislation is in operation. These are spread across Wales. The consultation paper asked local authorities whether they could provide up to date figures. As no alternative figures were provided by the respondents our estimate of the backlog remains at 1,000 cases.

Risks

11. Without local authority involvement, the number of high hedge disputes would continue to rise with more people suffering loss of amenity. In some cases, the existence of the dispute as well as the harm caused could result in a reduction in the value of the affected property.
12. There is some evidence that, if there is no resolution in sight, these disputes could escalate. There has been an increase in the number of civil court actions for damages against neighbours who have cut back the offending hedge beyond the boundary line, although the numbers remain low. There have been some instances of violence.
13. More and more resources, especially among public sector organisations (local authorities, police, courts) and advice agencies, would be tied up in dealing with the consequences of these disputes, but would still not lead to their resolution.

Options

14. There is no option to the Assembly setting a maximum fee as that is required by the Anti-social Behaviour Act 2003.

Benefits

15. The complaints system has the potential to resolve existing hedge problem cases and any that might arise in the future. In addition, implementing the legislation could alter people's assumptions about how high they can reasonably grow their hedges and so lead to more cases being settled amicably - without the need to involve the local authority.

Compliance Costs

16. 14. Local authorities will be able to charge complainants a fee for determining complaints made under Part 8 of the Act. The maximum fee will be set at a level that allows local authorities to recover their costs fully. It will be for each local authority to decide what, up to the maximum, they charge for this service and, thus, whether to pass on the full costs to complainants or whether council taxpayers should fund a portion.

17. The consultation suggested a range of £280 to £320 as the maximum fee an authority can charge. The authorities that responded to the consultation were unable to say whether the proposed level would cover their costs. In the absence of any evidence to the contrary the upper limit of £320 is considered the most appropriate to enable authorities to recover their costs.
18. Within this maximum, it will be for each local authority to determine whether to charge a fee; whether to set different rates for different groups of people; and whether any refund should be allowed. Depending on the charging policies of their local authority, therefore, the cost of making a complaint could range from nil to £320. This gives a total compliance cost of nil to £320,000. There is no requirement for complainants to submit detailed, technical information in support of their complaint. It will be for individuals, therefore, to decide whether to employ professional help to present their case.

Impact on Small Business

19. Minimal, and only if a complainant, in which case see paragraphs above.

Competition Assessment

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

Consultation

With Stakeholders

22. Out of 186 been altered accordingly individuals and organisations consulted between 30 June 2004 and 28 July 2004, only 15 responses were received from the Snowdonia National Park Authority, Denbighshire CC, the Isle of Anglesey CC, Monmouthshire CC and Wrexham CBC, the Law Society, Hedgeline, and 8 were received from individual members of the public.
23. As expected the main area of response related to the questions of whether a fee should be payable on making a complaint and, if so, what that fee should be. It is accepted practice for local authorities to be able to charge a fee to enable them to recover their costs of administering applications/complaints and no reason is seen to depart from that principle here. The fee being set in the regulations is the maximum that the authority may charge and the question of whether people in different circumstances e.g. the elderly or unemployed should pay the full fee would be a matter for the authority's discretion.
24. As to the level of the fee, the range of £280 - £320 was estimated following the original consultation exercise on the principle of the high hedges complaints system. I am aware that a number of local authorities in England have indicated in response to the Office of the Deputy Prime Minister's (ODPM) consultation exercise that an upper limit of £500 is more appropriate. The authorities that responded to our consultation exercise were unable to say whether the level proposed would cover their costs but, in the absence of any evidence to the contrary, I consider that the upper limit of £320 would be the most

appropriate to enable authorities to recover their costs. That figure would, of course, be open to review.

With Subject Committee

25. The proposed Order was notified to the EPC Subject Committee, via the rolling programme of forthcoming legislation, on 5 May 2004 (item No.80) and on 6 October 2004 (item No.21). It was not identified for formal scrutiny.

Enforcement and Sanctions

26. Complaints about high hedges will be administered by local authorities. Both complainants and hedge owners will be able to appeal against their decisions to the Planning Inspectorate. There are criminal sanctions for failure to comply, which has implications for the courts.

Implications for local authorities

27. Local authorities will incur costs when determining complaints. Respondents to the 1999 consultation suggested it would take around 8 hours to investigate a complaint and decide whether to require the owner to carry out remedial works. It is estimated that officers' time would cost some £35 to £40 per hour, giving an average cost per case of £280 to £320.

28. Local authorities are expected to have to deal with around 1,000 cases in the first 3 years that the legislation is in operation. Once these are settled, however, the continuing caseload should be much smaller. On this basis, the total cost to local authorities of administering these complaints would be some £280,000 to £320,000 over the first 3 years.

Review

29. It is proposed to review how the legislation is working after it has been in operation for 5 years.

Summary

30. The SI allows for the cost to the public purse for handling complaints to be borne by the complainant although it would be for the local authority to determine the level of fee, up to the maximum permitted, it wished to charge. The SI is one of a number necessary to secure the implementation of a complaints system that has been approved by Parliament.