

REGULATORY APPRAISAL

THE HIGH HEDGES (APPEALS) (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 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. In view of the provisions of Part 8 of the Anti-social Behaviour Act 2003 there is no option to not implement the appeal provisions.

Benefits

15. The appeal process 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

Implications for

(i) Appellants

16. Irrespective of the outcome of an appeal the parties to that appeal are expected to bear their own costs. It is not possible to assess what the appellant's costs are likely to be in respect of these appeals as the appellant would be either the hedge owner or the original complainant and it would be entirely a matter for them as to the amount of evidence they collected and submitted and whether they would represent themselves or be professionally represented.

(ii) Local authorities

17. Local authorities will also be involved in appeals against their decisions, submitting statements and commenting on representations from the parties. As they will largely draw on existing material, we assume they will spend no more than 3 to 4 hours (based on officer time of £35 - £40 per hour) on each case. Based on an estimated appeal rate of 200 cases over 3 years, this suggests total costs ranging from £21,000 to £32,000.

(iii) the Planning Inspectorate (PINS)

18. The intention is for the Assembly's appeal function to be delegated to PINS.

19. It is likely that the vast majority of appeals will be dealt with under the written representations procedure, which is estimated to cost about £1,080 on average. As both complainants and hedge owners have rights of appeal, it is estimated there might be around 200 appeals in the initial 3-year period, giving a total cost of around £216,000. After 3 years, the number of new cases, and thus appeals, is expected to drop dramatically.

20. There is no provision in the Anti-Social Behaviour Act 2003 for a charge to be made for appeals. These costs will, therefore, fall to the Assembly, to be met from within existing Departmental running cost limits.

(iv) for the courts

21. The Courts will also be involved in dealing with applications for judicial review of appeal decisions made under the high hedge legislation. However, as the court's cost of hearing the action in the civil courts is met by court fees, the cost of any action would be met by the parties and, in particular, the losing party.

Impact on Small Business

22. Minimal, and only if acting as an appellant (see above paragraph on appellant's costs).

Competition Assessment

23. 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 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

24. Out of 186 individuals and organisations consulted, only 15 responses were received from the Snowdonia National Park Authority, Denbighshire CC, the Isle of Anglesey CC, Monmouthshire CC, Wrexham CBC, the Law Society, Hedgeline and 8 were received from individual members of the public.

25. On the regulations relating to the appeal process a few concerns were expressed about the processes proposed, but they related to deadlines and actions proposed which have proven successful in other appeal/complaint regimes and which I see no reason to alter in respect of this system.

With Subject Committee

26. The proposed Regulations were notified to the EPC Subject Committee, via the rolling programme of forthcoming legislation submitted, on 5 May 2004 (item No. 79) and on 6 October 2004 (item No.20). It was not identified for formal scrutiny.

Enforcement and Sanctions

27. 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. Decisions on appeals could be challenged through the judicial review process, which has implications for the courts.

Review

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

Summary

29. The parties to the appeals will bear their own costs in the operation of a system which has the potential to resolve existing hedge problem cases and any that might arise in the future. The SI is one of a number necessary to secure the implementation of a complaints system that has been approved by Parliament.