

High Hedges Bill

[AS AMENDED AT FURTHER CONSIDERATION STAGE]

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TO

Provide for the control of high hedges.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Introductory

Complaints to which this Act applies

1.—(1) This Act applies to a complaint which—

- 5 (a) is made for the purposes of this Act by an owner or occupier of a domestic property; and
(b) alleges that the complainant’s reasonable enjoyment of that property is being adversely affected by the height of a high hedge situated on land owned or occupied by another person.

(2) This Act also applies to a complaint which—

- 10 (a) is made for the purposes of this Act by an owner of a domestic property that is for the time being unoccupied, and
(b) alleges that the reasonable enjoyment of that property by a prospective occupier of that property would be adversely affected by the height of a high hedge situated on land owned or occupied by another person,

15 as it applies to a complaint falling within subsection (1).

(3) In relation to a complaint falling within subsection (2), references in sections 3 and 5 to the effect of the height of a high hedge on the complainant’s reasonable enjoyment of a domestic property are to be read as references to the effect that it would have on the reasonable enjoyment of that property by a prospective occupier of the property.

(4) This Act does not apply to complaints about the effect of the roots of a high hedge.

(5) In this Act, in relation to a complaint concerning a high hedge—

“complainant” means—

- (a) a person by whom the complaint is made; or
 - (b) if every person who made the complaint ceases to be an owner or occupier of the domestic property specified in the complaint, any other person who is for the time being an owner or occupier of that property;
- and references to the complainant include references to one or more of the complainants; 5
- “the neighbouring land” means the land on which the high hedge is situated;
- “the council” means the district council in whose district that land is situated.
- (6) In this Act “domestic property” means— 10
- (a) a dwelling; or
 - (b) a garden or yard which is used and enjoyed wholly or mainly in connection with a dwelling.
- (7) In subsection (6) “dwelling” means any building or part of a building occupied, or intended to be occupied, as a separate dwelling.
- (8) A reference in this Act to the reasonable enjoyment of domestic property includes a reference to the reasonable enjoyment of a part of the property. 15

High hedge

- 2.—(1) In this Act “high hedge” means so much of a barrier to light as—
- (a) is formed wholly or predominantly by a line of two or more evergreens; and 20
 - (b) rises to a height of more than two metres above ground level.
- (2) For the purposes of subsection (1) a line of evergreens is not to be regarded as forming a barrier to light if the existence of gaps significantly affects its overall effect as such a barrier at heights of more than two metres above ground level.
- (3) In this section “evergreen” means an evergreen tree or shrub or a semi-evergreen tree or shrub. 25
- (4) But nothing in this Act applies to trees which are growing on land of 0.2 hectares or more in area which is forest or woodland.

Complaints procedure

Procedure for dealing with complaints 30

- 3.—(1) This section has effect where a complaint to which this Act applies—
- (a) is made to the council; and
 - (b) is accompanied by such fee (if any) as the council may determine.
- (2) If the council considers— 35
- (a) that the complainant has not taken all reasonable steps to resolve the matters complained of without proceeding by way of such a complaint to the council, or
 - (b) that the complaint is frivolous or vexatious,
- the council may decide that the complaint should not be proceeded with.
- (3) If the council does not so decide, it must decide— 40

High Hedges

- (a) whether the height of the high hedge specified in the complaint is adversely affecting the complainant's reasonable enjoyment of the domestic property so specified; and
- 5 (b) if so, what action (if any) should be taken in relation to that hedge, in pursuance of a remedial notice under section 5, with a view to remedying the adverse effect or preventing its recurrence.
- (4) If the council decides under subsection (3) that action should be taken as mentioned in paragraph (b) of that subsection, it must as soon as is reasonably practicable—
- 10 (a) issue a remedial notice under section 5 implementing its decision;
- (b) send a copy of that notice to the following persons, namely—
- (i) every complainant; and
- (ii) every owner and every occupier of the neighbouring land; and
- (c) notify each of those persons of the reasons for its decision.
- 15 (5) If the council—
- (a) decides that the complaint should not be proceeded with, or
- (b) decides either or both of the issues specified in subsection (3) otherwise than in the complainant's favour,
- it must as soon as is reasonably practicable notify the appropriate person or
- 20 persons of any such decision and of the council's reasons for it.
- (6) For the purposes of subsection (5)—
- (a) every complainant is an appropriate person in relation to a decision falling within paragraph (a) or (b) of that subsection; and
- 25 (b) every owner and every occupier of the neighbouring land is an appropriate person in relation to a decision falling within paragraph (b) of that subsection.

Fees

- 4.**—(1) The Department shall by regulations prescribe the maximum fee which may be determined by a council under section 3(1)(b).
- 30 (2) A fee received by a council under section 3(1)(b)—
- (a) must be refunded by it where subsection (3) applies; and
- (b) may be refunded by it in such other circumstances and to such extent as it may determine.
- (3) This subsection applies where—
- 35 (a) a fee is paid to the council under section 3(1)(b) in connection with the making of a complaint to which this Act applies;
- (b) a remedial notice is issued by, or on behalf of, the council in respect of the complaint; and
- (c) the remedial notice takes effect.
- 40 (4) Regulations may make provision, in relation to a case where subsection (3) applies, for the payment to the council by any person who is an occupier or owner

of the neighbouring land of a fee of such amount (if any) as the council may determine.

- (5) Regulations under subsection (4) may in particular—
 - (a) provide for the fee not to exceed such amount as may be prescribed by the regulations; 5
 - (b) provide that, where two or more persons are liable to pay the fee, those persons are jointly and severally liable;
 - (c) provide for the fee to be refunded in such circumstances or to such extent as may be prescribed by, or determined in accordance with, the regulations. 10

Remedial notices

- 5.—(1) For the purposes of this Act a remedial notice is a notice—
- (a) issued by the council in respect of a complaint to which this Act applies; and
 - (b) stating the matters mentioned in subsection (2). 15
- (2) Those matters are—
- (a) that a complaint has been made to the council under this Act about a high hedge specified in the notice which is situated on land so specified;
 - (b) that the council has decided that the height of that hedge is adversely affecting the complainant’s reasonable enjoyment of the domestic property specified in the notice; 20
 - (c) the initial action that must be taken in relation to that hedge before the end of the compliance period;
 - (d) any preventative action that the council considers must be taken in relation to that hedge at times following the end of that period while the hedge remains on the land; and 25
 - (e) the consequences under sections 10 and 12 of a failure to comply with the notice.
- (3) The action specified in a remedial notice is not to require or involve—
- (a) a reduction in the height of the hedge to less than two metres above ground level; or 30
 - (b) the removal of the hedge.
- (4) A remedial notice shall take effect on its operative date.
- (5) “The operative date” of a remedial notice is such date (falling at least 28 days after that on which the notice is issued) as is specified in the notice as the date on which it is to take effect. 35
- (6) “The compliance period” in the case of a remedial notice is such reasonable period as is specified in the notice for the purposes of subsection (2)(c) as the period within which the action so specified is to be taken; and that period shall begin with the operative date of the notice. 40
- (7) Subsections (4) to (6) have effect in relation to a remedial notice subject to—
- (a) the exercise of any power of the council under section 6; and

(b) the operation of sections 7 to 8 in relation to the notice.

(8) While a remedial notice has effect, the notice—

(a) shall be a statutory charge; and

5 (b) shall be binding on every person who is for the time being an owner or occupier of the land specified in the notice as the land where the hedge in question is situated.

(9) In this Act—

“initial action” means remedial action or preventative action, or both;

10 “remedial action” means action to remedy the adverse effect of the height of the hedge on the complainant’s reasonable enjoyment of the domestic property in respect of which the complaint was made; and

“preventative action” means action to prevent the recurrence of the adverse effect.

Withdrawal or relaxation of requirements of remedial notice

15 **6.—**(1) The council may—

(a) withdraw a remedial notice issued by it; or

(b) waive or relax a requirement of a remedial notice so issued.

(2) The powers conferred by this section are exercisable both before and after a remedial notice has taken effect.

20 (3) Where the council exercises the powers conferred by this section, it must give notice of what it has done to—

(a) every complainant; and

(b) every owner and every occupier of the neighbouring land.

25 (4) The withdrawal of a remedial notice does not affect the power of the council to issue a further remedial notice in respect of the same hedge.

Appeals

Appeals against remedial notices and other decisions of councils

7.—(1) Where the council—

(a) issues a remedial notice,

30 (b) withdraws such a notice, or

(c) waives or relaxes the requirements of such a notice,

each of the persons falling within subsection (2) may appeal to the Valuation Tribunal against the issue or withdrawal of the notice or (as the case may be) the waiver or relaxation of its requirements.

35 (2) Those persons are—

(a) every person who is a complainant in relation to the complaint by reference to which the notice was given; and

(b) every person who is an owner or occupier of the neighbouring land.

(3) Where the council decides either or both of the issues specified in section 3(3) otherwise than in the complainant's favour, the complainant may appeal to the Valuation Tribunal against the decision.

(4) An appeal under this section must be made before—

- (a) the end of the period of 28 days beginning with the relevant date; or 5
- (b) such later time as the Valuation Tribunal may allow.

(5) In subsection (4) "the relevant date"—

- (a) in the case of an appeal against the issue of a remedial notice, means the date on which the notice was issued; and
- (b) in the case of any other appeal under this section, means the date of the notification given by the council under section 3 or 6 of the decision in question. 10

(6) Where an appeal is duly made under subsection (1), the notice or (as the case may be) withdrawal, waiver or relaxation in question shall not have effect pending the final determination or withdrawal of the appeal. 15

(7) Rules under paragraph 7 of Schedule 9B to the Rates (Northern Ireland) Order 1977 (NI 28) (procedural rules for Valuation Tribunal) may, in particular, make provision—

- (a) specifying the grounds on which appeals under this section may be made;
- (b) requiring persons making an appeal under this section to pay such fee (if any) as may be prescribed; 20
- (c) for a decision on an appeal under this section to be binding on persons falling within subsection (2) in addition to the person by whom the appeal was made;
- (d) for incidental or ancillary matters relating to appeals under this section, including the awarding of costs. 25

Determination or withdrawal of appeals

8.—(1) On an appeal under section 7 the Valuation Tribunal may allow or dismiss the appeal, either in whole or in part.

(2) Where the Valuation Tribunal decides to allow such an appeal to any extent, the Tribunal may do such of the following as it considers appropriate— 30

- (a) quash a remedial notice or decision to which the appeal relates;
- (b) vary the requirements of such a notice; or
- (c) in a case where no remedial notice has been issued, issue on behalf of the council a remedial notice that could have been issued by the council on the complaint in question. 35

(3) On an appeal under section 7 relating to a remedial notice, the Valuation Tribunal may also correct any defect, error or misdescription in the notice if the Tribunal is satisfied that the correction will not cause injustice to any person falling within subsection (2) of that section. 40

(4) Once the Valuation Tribunal has made a decision on an appeal under section 7, the Tribunal must, as soon as is reasonably practicable—

- (a) give a notification of the decision, and

- (b) if the decision is to issue a remedial notice or to vary or correct the requirements of such a notice, send copies of the notice as issued, varied or corrected,

to every person falling within section 7(2) and to the council.

5 (5) Where, in consequence of the decision on an appeal, a remedial notice is upheld or varied or corrected, the operative date of the notice shall be—

- (a) the date of the decision; or
- (b) such later date as may be specified in the decision.

10 (6) Where the person making an appeal under section 7 against a remedial notice withdraws the appeal, the operative date of the notice shall be the date on which the appeal is withdrawn.

15 (7) In any case falling within subsection (5) or (6), the compliance period for the notice shall accordingly run from the date which is its operative date by virtue of that subsection (and any period which may have started to run from a date preceding that on which the appeal was made shall accordingly be disregarded).

Powers of entry

Powers of entry

20 **9.**—(1) Where, under this Act, a complaint has been made or a remedial notice has been issued, a person authorised by the council may enter the neighbouring land in order to obtain information required by the council for the purpose of determining—

- (a) whether this Act applies to the complaint;
- (b) whether to issue or withdraw a remedial notice;
- (c) whether to waive or relax a requirement of a remedial notice;
- 25 (d) whether a requirement of a remedial notice has been complied with.

(2) Where an appeal has been made under section 7, a member of, or person authorised by, the Valuation Tribunal may enter the neighbouring land in order to obtain information required for the purpose of determining the appeal.

30 (3) A person shall not enter land in the exercise of a power conferred by this section unless at least 24 hours' notice of the intended entry has been given to every occupier of the land.

(4) A person authorised under this section to enter land—

- (a) shall, if so required, produce evidence of that person's authority before entering; and
- 35 (b) shall produce such evidence if required to do so at any time while that person remains on the land.

(5) A person who enters land in the exercise of a power conferred by this section may—

- (a) be accompanied by such other persons as may be necessary;
- 40 (b) take onto the land equipment and materials needed in order to obtain the information required;

(c) take samples of any trees or shrubs that appear to that person to form part of a high hedge.

(6) If, in the exercise of a power conferred by this section, a person enters land which is unoccupied or from which all of the persons occupying the land are temporarily absent, that person must on departure leave the land as effectively 5 secured against unauthorised entry as that person found it.

(7) A person who intentionally obstructs a person acting in the exercise of the powers under this section is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Enforcement powers, etc. 10

Offences

10.—(1) Where—

(a) a remedial notice requires the taking of any action, and

(b) that action is not taken in accordance with that notice within the compliance period or (as the case may be) by the subsequent time by which it is required to be taken, 15

every person who, at a relevant time, is an owner or occupier of the neighbouring land is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) In subsection (1) “relevant time”— 20

(a) in relation to action required to be taken before the end of the compliance period, means a time after the end of that period and before the action is taken; and

(b) in relation to any preventative action which is required to be taken after the end of that period, means a time after that at which the action is required to be taken but before it is taken. 25

(3) In proceedings against a person (“D”) for an offence under subsection (1) it is a defence for D to show that D did everything D could be expected to do to secure compliance with the notice.

(4) In any such proceedings, it is also a defence for D to show, in a case in which D— 30

(a) is not a person to whom a copy of the remedial notice was sent in accordance with a provision of this Act, and

(b) is not assumed under subsection (5) to have had knowledge of the notice at the time of the alleged offence, 35

that D was not aware of the existence of the notice at that time.

(5) D shall be assumed to have had knowledge of a remedial notice at any time if at that time—

(a) D was an owner of the neighbouring land; and

(b) the notice was at that time registered as a statutory charge. 40

(6) Where a person is convicted of an offence under subsection (1) and it appears to the court—

(a) that a failure to comply with the remedial notice is continuing, and

5 (b) that it is within that person's power to secure compliance with the notice, the court may, in addition to or instead of imposing a punishment, order that person to take the steps specified in the order for securing compliance with the notice.

(7) An order under subsection (6) must require those steps to be taken within such reasonable period as may be fixed by the order.

10 (8) A person who fails without reasonable excuse to comply with an order under subsection (6) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

15 (9) If a person continues after conviction of an offence under subsection (8) or this subsection to fail, without reasonable excuse, to take steps which that person has been ordered to take under subsection (6), that person is guilty of a further offence and liable, on summary conviction, to a fine not exceeding one-twentieth of level 3 on the standard scale for each day on which the failure has so continued.

Power to require occupier to permit action to be taken by owner

20 **11.** If, on a complaint made by the owner of any land, it appears to a court of summary jurisdiction that the occupier of that land prevents the owner from taking any action on that land which the owner is by or under this Act required to take, the court may order the occupier to permit the taking of that action.

Action by council

12.—(1) This section applies where—

25 (a) a remedial notice requires the taking of any action; and
(b) that action is not taken in accordance with that notice within the compliance period or (as the case may be) after the end of that period when it is required to be taken by the notice.

(2) Where this section applies—

30 (a) a person authorised by the council may enter the neighbouring land and take the required action; and
(b) the council may recover any expenses reasonably incurred by that person in doing so from any person who is an owner or occupier of the land.

(3) Expenses recoverable under this section shall be a statutory charge and binding on successive owners of the land and on successive occupiers of it.

35 (4) Where expenses are recoverable under this section from two or more persons, those persons shall be jointly and severally liable for the expenses.

(5) A person shall not enter land in the exercise of a power conferred by this section unless at least 7 days' notice of the intended entry has been given to every occupier of the land.

40 (6) A person authorised under this section to enter land—

(a) shall, if so required, produce evidence of that person's authority before entering; and

(b) shall produce such evidence if required to do so at any time while that person remains on the land.

(7) A person who enters land in the exercise of a power conferred by this section may—

- (a) use a vehicle to enter the land; 5
- (b) be accompanied by such other persons as may be necessary;
- (c) take onto the land equipment and materials needed for the purpose of taking the required action.

(8) If, in the exercise of a power conferred by this section, a person enters land which is unoccupied or from which all of the persons occupying the land are temporarily absent, that person must on departure leave the land as effectively secured against unauthorised entry as that person found it. 10

(9) A person who intentionally obstructs a person acting in the exercise of powers under this section to enter land and take action on that land is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. 15

(10) The exercise by a council of its functions under this section shall not render the council subject to any liability in respect of damage to any hedge, unless such damage is directly attributable to a negligent act of the council or an officer or agent of the council. 20

Offences committed by a body corporate

13. For the purposes of an offence under this Act, section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) applies—

- (a) with the omission of the words “the liability of whose members is limited”; and 25
- (b) where the affairs of a body corporate are managed by its members, in relation to the acts or defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

Supplementary 30

Service of documents in electronic form

14.—(1) A requirement of this Act—

- (a) to send a copy of a remedial notice to a person, or
- (b) to notify a person under section 3(4) of the reasons for the issue of a remedial notice, 35

is not capable of being satisfied by transmitting the copy or notification electronically or by making it available on a website.

(2) The delivery of any other document to a person (the “recipient”) may be effected for the purposes of this Act—

- (a) by transmitting it electronically, or 40
- (b) by making it available on a website,

but only if it is transmitted or made available in accordance with subsection (3) or (5).

(3) A document is transmitted electronically in accordance with this subsection if—

- 5 (a) the recipient has agreed that documents may be delivered to the recipient by being transmitted to an electronic address and in an electronic form specified by the recipient for that purpose; and
- (b) the document is a document to which that agreement applies and is transmitted to that address in that form.

10 (4) A document which is transmitted in accordance with subsection (3) by means of an electronic communications network shall, unless the contrary is proved, be treated as having been delivered at 9 a.m. on the working day immediately following the day on which it is transmitted.

15 (5) A document is made available on a website in accordance with this subsection if—

- (a) the recipient has agreed that documents may be delivered to the recipient by being made available on a website;
- (b) the document is a document to which that agreement applies and is made available on a website;
- 20 (c) the recipient is notified, in a manner agreed by the recipient, of—
 - (i) the presence of the document on the website;
 - (ii) the address of the website; and
 - (iii) the place on the website where the document may be accessed.

25 (6) A document made available on a website in accordance with subsection (5) shall, unless the contrary is proved, be treated as having been delivered at 9 a.m. on the working day immediately following the day on which the recipient is notified in accordance with subsection (5)(c).

30 (7) The Department may by regulations amend this section by modifying the circumstances in which, and the conditions subject to which, the delivery of a document for the purposes of this Act may be effected by—

- (a) transmitting the document electronically; or
- (b) making the document available on a website.

35 (8) The Department may by regulations also amend this section by modifying the day on which and the time at which documents which are transmitted electronically or made available on a website in accordance with that section are to be treated as having been delivered.

(9) Regulations under subsection (7) or (8) may make such consequential amendments of this Act as the Department considers appropriate.

(10) In this section—

40 “electronic address” includes any number or address used for the purposes of receiving electronic communications;

“electronic communication” means an electronic communication within the meaning of the Electronic Communications Act (Northern Ireland) 2001 (c. 9) the processing of which on receipt is intended to produce writing;

“electronic communications network” means an electronic communications network within the meaning of the Communications Act 2003 (c. 21); 5

“electronically” means in the form of an electronic communication;

“working day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971 (c. 80).

Statutory charges 10

15. In Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (c. 18) (statutory charges) at the end add—

“49. The following matters under the High Hedges Act (Northern Ireland) 2011—

(a) a remedial notice which has effect under that Act; 15

(b) fees payable under section 4(4) of that Act and expenses recoverable under section 12 of that Act.”.

Interpretation

16. In this Act—

“complaint” shall be construed in accordance with section 1; 20

“complainant” has the meaning given by section 1(5);

“the compliance period”, in relation to a remedial notice, has the meaning given by section 5(6);

“the council” has the meaning given by section 1(5);

“the Department” means the Department of the Environment; 25

“domestic property” has the meaning given by section 1(6);

“high hedge” has the meaning given by section 2;

“the neighbouring land” has the meaning given by section 1(5);

“occupier”, in relation to any land, means a person entitled to possession of the land by virtue of an estate in it; 30

“the operative date”, in relation to a remedial notice, shall be construed in accordance with sections 5(5) and 8(5) and (6);

“owner”, in relation to any land, means a person (other than a mortgagee not in possession) who, whether in that person’s own right or as trustee for any other person— 35

(a) is entitled to receive the rack rent of the land, or

(b) where the land is not let at a rack rent, would be so entitled if it were so let;

“preventative action” has the meaning given by section 5(9);

“remedial notice” shall be construed in accordance with section 5(1); 40

“remedial action” has the meaning given by section 5(9);

“the Valuation Tribunal” means the Northern Ireland Valuation Tribunal, established by Article 36A of the Rates (Northern Ireland) Order 1977 (NI 28).

Power to amend sections 1 and 2

- 5 **17.**—(1) The Department may by regulations do one or both of the following—
- (a) amend section 1 for the purpose of extending the scope of complaints relating to high hedges to which this Act applies;
 - (b) amend section 2 (definition of “high hedge”).
- (2) Regulations under this section may make such consequential amendments
10 of this Act as the Department considers appropriate.

Application to the Crown

- 18.**—(1) This Act and any provision made under it binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.
- (2) This section does not impose criminal liability on the Crown.
- 15 (3) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.

Regulations and orders

- 19.**—(1) Except as provided by subsection (2), regulations under this Act shall be subject to negative resolution.
- 20 (2) No regulations shall be made under section 4(4), 14(7) or (8) or 17 unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.
- (3) Regulations and orders under this Act may contain such incidental, supplementary, transitional and savings provisions as appear to the Department to
25 be necessary or expedient.

Commencement

20. The preceding sections of this Act come into operation on such day or days as the Department may by order appoint.

Short title

- 30 **21.** This Act may be cited as the High Hedges Act (Northern Ireland) 2011.