

ENVIRONMENT DEPARTMENT

CONSULTATION PAPER

PROPOSAL FOR NEW LEGISLATION TO DEAL WITH THE ISSUE OF HIGH HEDGES

1. Purpose and type of consultation

The Environment Department, in conjunction with Deputy Al Brouard, has prepared proposals on which basis, subject to the outcome of this consultation, it intends to seek States approval to introduce new legislation to deal with the issue of high hedges.

Most hedges provide a suitable garden boundary but they can have an adverse effect on the enjoyment of neighbouring property when they are not properly maintained or are allowed to grow too tall. Difficulties can also arise when trees and hedging which are not suitable for a particular location are planted. Some hedge species grow at a rapid rate and so can have adverse effects for those living in their shadow. In other cases the person planting the hedge is unaware of the size it may reach when mature.

Currently, there is no legislation in Guernsey which specifically addresses the potential adverse effects that a high hedge may create for neighbours, including the loss of light into a neighbouring property.

The purpose of this consultation is to publicise the Department's proposals regarding high hedges legislation and to gather views from the public and stakeholders as to whether its proposals are effective and proportionate, and if there are any issues with the legislation as proposed.

This consultation paper sets out the background to the proposals and an overview of the new Law. In addition, "High Hedges Your Questions Answered", provides an example of the type of guidance which the Department intends to issue. This takes the form of easily readable 'FAQ's'

2. Closing date for consultation

16th February 2015

3. Summary of questions

The Environment Department would particularly like your views as to whether its proposals for high hedges legislation are effective and proportionate, and if there are any issues with the legislation as proposed. To assist with this, a questionnaire is attached at the end of this consultation paper.

4. Contact details

Please send your comments by letter or email addressed to:-

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5. High Hedges proposal overview

5.1. Background

The issue of high hedges has been well documented and for those affected is a continuing blight on their enjoyment of their property. The issue has featured in the media with high hedges being addressed in England and Wales through Remedial Orders made under the High Hedges part of the Anti-Social Behaviour Act, 2003, in Jersey through the High Hedges (Jersey) Law, 2008 and in Northern Ireland through the High Hedges Act (Northern Ireland) 2011. Scotland has also passed the High Hedges (Scotland) Act, 2013. All contain provisions which are similar to those in England.

Subject to the outcome of this consultation, the Department intends to seek the approval of the States for the drafting of new, specific high hedges legislation as outlined below which is similar to that enacted elsewhere.

In addition, "High Hedges Your Questions Answered", provides an example of the type of guidance which the Department intends to issue. This takes the form of easily readable 'FAQ's'

5.2. Overview of the Proposed Law

The proposed new law would establish a procedure for complaints about high hedges to be made to and dealt with by the Environment Department.

(a) Complaining to the Department would be a last resort

Before accepting a complaint under the Law, the Department would require the person/s making the complaint to provide evidence that they have taken all reasonable steps to resolve their hedge problems by discussion or negotiation with their neighbours. Provision would be made for guidance to be issued by the Department to assist householders as to what they must do to meet that requirement.

(b) What complaints can be considered?

Where someone is unable to reach an amicable settlement in a dispute with a neighbour over the height and impact of a hedge on their property despite having taken all reasonable steps to do so, they would be able to take their complaint to the Environment Department provided that:

- the hedge or tree in question is formed wholly or predominantly by one or more evergreen or semi-evergreen trees or shrubs;
- it is over two metres high;
- the hedge or tree forms a barrier to light; and
- because of its height, it is adversely affecting the complainant's reasonable enjoyment of their home or garden.

(c) How would complaints be dealt with?

In each case, the Environment Department, or an authorised person on its behalf, would inspect the hedge or tree to decide whether the height of the hedge or tree is adversely affecting the complainant's reasonable enjoyment of their property by virtue of its effect on light. If the Department concludes that the hedge or tree is having a detrimental effect, it would consider what, if any, action should be taken in order to remedy the adverse effect and to prevent it happening again.

In reaching a decision, the Environment Department would take into account all relevant factors, including comments of relevant owners and occupiers and:

- the extent to which the hedge adds to the privacy and enjoyment of the property or the neighbouring land; and
- the contribution of the hedge to the wider amenity of the area.

There would also be provision for the complaints and any Notices and other documents to be copied to occupiers of the land (where different from the owner) on which the hedge/tree is situated.

In England, the Department for Communities and Local Government has published guidance to assist parties involved in such disputes to understand their obligations and the remedies under the law. The “Hedge height and light loss” guidance can be found at

<https://www.gov.uk/government/publications/hedge-height-and-light-loss>.

In Jersey, this guidance is made available on the relevant part of the States of Jersey website. It would be the Department’s intention to issue similar guidance locally reflecting the proposals set out in this report.

(d) Fees

The proposed new Law would also include provision for the Environment Department to charge a fee, to be paid by the person bringing the complaint.

In Jersey, a fee of £282 is payable. The income from this fee is used to cover the costs of an initial survey of the problem hedge and its relationship to the complainant's property which is undertaken by a firm of local surveyors appointed to carry out this work on behalf of the Minister for Planning and Environment. In Jersey, the income from the fees does not cover any of the Departmental officers’ time involved in dealing with the application.

In the UK fees vary from council to council, for example:

South Norfolk Council	£350
Swale Borough Council	£450
London Borough of Redbridge	£500

As the main purpose is having specific legislation which would act as an incentive to reach a private agreement without the need for making a complaint there should, as the Jersey experience has shown, be few complaints made to the Department. A complaint application fee of £500 is proposed which unlike in Jersey would cover both the costs of the assessment and also the costs of determination of the complaint by the Environment Department. The Environment Department would not be obliged to consider the complaint until the fee was paid in full and there would be a power to change the level of the fees by Regulations of the Department. There would be scope to reduce or waive the fee in exceptional circumstances where genuine financial hardship is proven and this would apply to both application and appeal fees.

The Environment Department is also considering whether or not, in the interests of natural justice, a mechanism should be included within the proposed new Law to provide powers that once a high hedge Notice takes effect on a particular hedge, and subject to any appeal, the complainant’s fee, or a proportion of it, may be refunded and an equivalent fee be levied on the owner/occupier of the neighbouring land which includes the hedge in question. A similar fee-transfer process was introduced in Northern Ireland in 2012. Your comments on this particular aspect of detail would be most appreciated.

(e) Remedies

If the Department decided that action should be taken to resolve the complaint, it would issue a formal Notice setting out the actions to be taken to mitigate the effects and by when these actions must be completed. The types of actions which may be required under such a Notice would include long-term maintenance of the hedge or tree at a lower height, but could not involve reducing the height of the hedge below two metres, or the removal of the hedge or tree.

This Notice would be binding not only on whoever was the owner and/or occupier of the land where the hedge is situated at the time the Notice was issued but also on anyone who subsequently bought or occupied the property.

The Law would provide for the Department to maintain a public register of Notices so that prospective purchasers of land could be alerted to them.

The Environment Department would be authorised to have the works carried out if the owner or occupier of the land where the hedge is situated fails to comply with a Notice and would be able to recover costs incurred as a civil debt from that owner or occupier. These powers would broadly reflect those conferred under section 50 of the Land Planning and Development (Guernsey) Law, 2005 in respect of the execution and costs of works required under a Compliance Notice. It is however envisaged that this power would rarely be used.

(f) Scope

The proposed new Law would allow owners or occupiers of domestic properties to make a complaint. It would also give such rights to owners or occupiers of non-domestic residential properties such as nursing homes and tourist accommodation.

In reaching its decision regarding whether or not to issue a Notice and the extent of the actions required under the Notice, the Department would have regard for the privacy of the hedge owner and the contribution of any hedge to the amenity of the area.

The Department, or those appointed by it, would need reasonable access to the property on which the hedge is situated to undertake the assessment of the hedge. In normal circumstances this could be arranged with the owner but it is proposed that the legislation provides for standard powers of entry and a related obstruction offence to allow it to undertake the assessment and carry out its duty, should the neighbour be uncooperative.

The proposed new Law would include provision to amend the Law by Regulations to change the types of plants and trees covered by the Law, to amend the scope and tenure of properties covered under the Law, and also regarding fees as noted above.

(g) Appeals

Under the proposed new Law, both the owners and occupiers of the land on which the hedge is situated and also the complainants would have a right of appeal against a decision of the Environment Department. Rather than establish a new appellate body to determine such appeals, it is proposed that appeals would be determined by the Planning Tribunal established under the 2005 Law to determine appeals against planning decisions. The reason for this approach is that the Planning Panel from which Tribunals are appointed has the necessary experience and expertise to deal with these matters and it is also a more cost effective approach as there will be no requirement to set up a separate appeals administration.

Provision would be made to allow determinations by a single Panel member and/or on written representations so that this is available as an option for cases which are straightforward and where there is no dispute as to the facts.

The proposed new Law would allow a dissatisfied party 28 days from the date of the notification of the Department's decision to make their appeal to the Planning Tribunal.

It is proposed that, as is the case for most planning appeals, an appeal fee equivalent to the application fee under the Law would be payable by the party making the appeal and that there should be provision for the level of the fee to be changed by Regulations.

The proposed Law would also include a provision for standard powers of entry to land for the Tribunal in relation to the determination of an appeal and powers to refer a point of Law to the Royal Court and for appeals against decisions of the Tribunal to be made to the Royal Court.

(h) Enforcement

Failure to comply with a notice, on the part of the owner or occupier of the land on which the hedge is situated, would be an offence for which the penalty would be a fine. There would also be provision for a further offence if the failure to comply continues after the first conviction and a power for the Court to order a person convicted to take the steps set out in the notice.

It is proposed that the maximum level of fine for any convictions under the new law would be Level 4 (current maximum £5,000).

As noted above, the Department would also have powers to authorise a person to undertake the steps required in a Notice and to recover costs from the owner or occupier of the land on which the hedge is situated as a civil debt. The Department would be able to use these powers whether or not a prosecution was taken.

(i) Tree Protection Orders and Conservation Areas

The existence of any Tree Protection Order in relation to the hedge or tree in question or its inclusion within a designated Conservation Area would be taken into account by the Department in assessing a complaint under the proposed new Law. The Department would have the power to issue a Notice under the proposed High Hedge Law in respect of a tree or group of trees which are already subject to a Tree Protection Order if the circumstances require. Insofar as any permission is required under any other Laws, that permission would be taken to have been granted to undertake the work required to comply with a High Hedge Notice.

6. Next steps

Following this public consultation, the Environment Department will finalise its proposals with a view to submitting a States Report for consideration by the States. If approved by the States, the legislation would be drafted and brought into force later in 2015.

Questionnaire:

I believe that it is worthwhile having High Hedges legislation and am in favour of this proposal in principle	Yes/No Comment:
I believe that the Environment Department's proposals for how the legislation would operate are an appropriate and proportionate way of dealing with the issue	Yes/No Comment:
On a specific matter of detail, I believe that a successful complainant's fee, or a proportion of it, should be refunded and an equivalent fee be levied on the owner/occupier of the land which includes the high hedge in question	Yes/No Comment:
I would like to make some additional comments to help the Environment Department when considering its proposals for High Hedges legislation	Yes/No Comment: