

ANTI-SOCIAL BEHAVIOUR ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: High Hedges

134. This Part gives local authorities the powers to deal with complaints about high hedges which are having an adverse effect on a neighbour's enjoyment of his property. Such a system was favoured by the majority of respondents to the 1999 consultation paper 'High hedges: possible solutions'. 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, found that the hedge was having an adverse effect it could 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 in a fine not exceeding level 3 on the standard scale in the Magistrate's Court. The local authority would have the power to go in and do the work itself, recovering the costs from the hedge-owner.

Section 65: Complaints to which this Part applies

135. Complaints must be made by the owner or occupier of a domestic property, on the grounds that his 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 (the "neighbouring land"). Even if the property is currently unoccupied, the owner may still bring a complaint under the amendments (subsection (2)). Complaints about the effects of roots are specifically excluded (subsection (4)).

Section 66: High Hedges

136. A "high hedge" is defined as so much of a barrier to light or access as is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than two metres above ground level.

Section 67: Domestic Property

137. This section defines "domestic property" as a dwelling or its associated garden or yard.

Complaints procedure

Section 68: Procedure for dealing with complaints

138. Complaints must be made to the local authority whose area contains the land on which the hedge is situated. Complaints must also be accompanied by any fee set by the authority. The level of such a fee must not exceed the amount specified in regulations made under this section (subsection (7)).
139. The local authority may reject the complaint if they consider that the complainant has not taken all reasonable steps to resolve the matter without involving the authority, or if they consider that the complaint is frivolous or vexatious (subsection (2)). If the local

authority decide, on this basis, not to proceed with the complaint, they must inform the complainant as soon as is reasonably practicable and must explain the reasons for their decision (subsections (5) and (6)).

140. Where the local authority proceed with the complaint, they must decide in the first place whether the height of the high hedge is adversely affecting the complainant's reasonable enjoyment of his property. If so, the authority must then consider what, if any, action to require to be taken in relation to the hedge in order to remedy the adverse effect and to prevent it recurring (subsection (3)).
141. The authority must, as soon as is reasonably practicable, inform the parties of their decision and the reasons for it. If the authority decide that action should be taken, they must also issue a remedial notice (under section 69).

Section 69: Remedial Notices

142. The remedial notice must specify the hedge it relates to; what action is required to be taken in relation to the hedge in order to remedy the adverse effect and by when; what further action, if any, is required to prevent recurrence of the adverse effect; what date the notice takes effect; and the consequences of failure to comply with the requirements of the notice.
143. The action specified in a remedial notice may not involve reducing the height of the hedge below 2 metres, or its removal.
144. While the remedial notice is in force, there is an obligation on the local authority to register it as a local land charge. In addition, the notice is binding not only on whoever is the owner or occupier of the neighbouring land at the time it is issued but also on their successors.

Section 70: Withdrawal or relaxation of requirements of remedial notices

145. A local authority can withdraw a remedial notice or waive or relax its requirements. If they do so, they must notify the complainant and the owner/occupier of the neighbouring land.

Appeals

Section 71: Appeals against remedial notices and other decisions of relevant authorities

146. This section sets out rights of appeal against the local authority's decisions under sections 68 and 70, and against any remedial notice issued by them. The appeal authority is the Secretary of State in respect of appeals relating to hedges situated in England, and the National Assembly for Wales in respect of appeals relating to hedges situated in Wales.

Section 72: Appeals procedure

147. The appeal authority can set down in regulations the procedure for dealing with such appeals. The appeals authority may appoint another person to hear and determine appeals under the Bill, and may also require such a person to carry out all or any of its appeals functions (subsection (4)).

Section 73: Determination or withdrawal of appeals

148. The appeal authority may allow or dismiss an appeal, either in total or in part. If the appeal authority decides to allow the appeal, it may quash or vary the remedial notice to which the appeal relates. It may also issue such a notice in those cases where the local authority decided not to do so in response to the original complaint.

Whatever its decision on the appeal, the appeal authority may correct any defect, error or misdescription in the original remedial notice if it considers this will not cause injustice.

Powers of entry

Section 74: Powers of entry for the purpose of complaints or appeals

149. This section gives local authorities and the appeal authority powers to enter the neighbouring land in order to carry out their functions under the Bill. They must give 24 hours' notice of their intended entry and, if the land is unoccupied, leave it as effectively secured as they found it. Intentionally obstructing a person exercising these powers is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale.

Enforcement powers etc.

Section 75: Offences

150. Failure to comply with a remedial notice is a criminal offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale. There is also provision for daily fines if the requisite work remains outstanding following a court order.

Section 76: Power to require occupier to permit action to be taken by owner

151. This applies section 289 of the Public Health Act 1936 with modifications to allow the owner of the land where the hedge is situated, rather than the occupier or another person with an interest in the land, to comply with a remedial notice.

Section 77: Action by relevant authority

152. This section gives the local authority power to enter the neighbouring land and carry out the works specified in the remedial notice, if the owner or occupier of the land fails to comply with its requirements. It will be open to the authority to exercise these powers whether or not criminal proceedings are brought under section 75. The costs of this work can then be recovered from the owner or occupier of the land. Any unpaid expenses would (until recovered) be registered as a local land charge. When exercising these powers, the local authority must give 7 days' notice of their intended entry on to the land.

Section 78: Offences committed by bodies corporate

153. Where offences are committed by bodies corporate, proceedings may, in certain circumstances, be taken against individual officers as well as against the body corporate.

Supplementary

Section 79: Service of documents

154. This section explains how documents referred to in this Part should be delivered to the recipients.

Section 80: Documents in electronic form

155. This deals with delivery of documents in electronic form. In particular, it prevents the use of electronic communications for sending copies of a remedial notice (under section 69).

Section 81: Power to make further provision about documents in electronic form

156. This section gives the Secretary of State and the National Assembly for Wales power to make regulations amending the provisions about the delivery of documents in electronic form.

Section 83: Power to amend sections 65 and 66

157. This section gives the Secretary of State and the National Assembly for Wales power to extend the scope of complaints covered by this Part (under section 65) and to alter the definition of 'high hedge' (in section 66) through regulations. Such regulations are subject to the affirmative resolution procedure.

Section 84: Crown application

158. This section applies the provisions to the Crown. Crown employees (but not the Crown itself) will be liable to prosecution for a criminal offence under this Part. A local authority will be able to investigate and determine complaints about high hedges on Crown land, for example a hedge on land owned by a Government Department may be affecting neighbouring domestic property.