

2005 No. 711

ANTI-SOCIAL BEHAVIOUR, ENGLAND

HIGH HEDGES

The High Hedges (Appeals) (England) Regulations 2005

<i>Made</i>	- - - -	<i>14th March 2005</i>
<i>Laid before Parliament</i>		<i>22nd March 2005</i>
<i>Coming into force</i>		<i>1st June 2005</i>

The First Secretary of State, in exercise of the powers conferred by sections 72 and 94 of the Anti-social Behaviour Act 2003(a), hereby makes the following Regulations:

Citation, commencement, and application

1.—(1) These Regulations may be cited as the High Hedges (Appeals) (England) Regulations 2005 and shall come into force on 1st June 2005.

(2) These Regulations apply in relation to appeals under section 71 of the Anti-social Behaviour Act 2003 relating to hedges situated in England.

Interpretation

2. In these Regulations—

“the Act” means the Anti-social Behaviour Act 2003;

“appeal form” means a document in the form supplied by the Secretary of State for the purposes of proceedings under these Regulations, or in a form to the same effect;

“appointed person” in relation to an appeal, means a person appointed under section 72(3) of the Act to hear and determine the appeal;

“complainant” in relation to an appeal, means—

(a) all or any of the persons who made the complaint by reference to which the remedial notice that is the subject of the appeal was given; or

(b) if, when notice of the appeal is given, each of them has ceased 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;

“parties” in relation to an appeal, means the appellant, the relevant authority and every person, other than the appellant, who is—

(a) a complainant; or

(b) an owner or occupier of the land where the high hedge is situated;

(a) 2003 c.38. In relation to appeals relating to hedges situated in England, the reference in section 72(1) to the appeal authority, is, by virtue of section 71(7)(a), a reference to the Secretary of State.

“preliminary information” means the names and addresses supplied by the relevant authority in accordance with regulation 8;

“questionnaire” means a document in the form supplied by the Secretary of State for the purpose of these Regulations, or in a form to the same effect; and

“relevant authority” in relation to an appeal, means the local authority that made the decision or took the action that is the subject of the appeal.

Issue of a remedial notice - grounds of appeal

3. An appeal under section 71(1) of the Act against the issue of a remedial notice may be made on any of the following grounds—

- (a) that the height of the high hedge specified in the remedial notice is not adversely affecting the complainant’s reasonable enjoyment of the domestic property so specified;
- (b) that the remedial action or preventative action, or both (as the case may be) specified in the remedial notice is insufficient to remedy the adverse effect of the high hedge on the complainant’s reasonable enjoyment of the domestic property so specified or to prevent its recurrence;
- (c) that the remedial action or preventative action, or both (as the case may be) specified in the remedial notice exceeds what is necessary or appropriate to remedy the adverse effect of the high hedge or to prevent its recurrence;
- (d) that the period specified in the remedial notice for taking the initial action so specified falls short of what should reasonably be allowed.

Withdrawal etc of remedial notice - grounds of appeal

4.—(1) Where—

- (a) a remedial notice is withdrawn without the agreement of the complainant; and
- (b) the relevant authority have not issued a further remedial notice in respect of the same high hedge,

an appeal under section 71(1) of the Act against the withdrawal of the notice may be made on the ground that there has been no material change in circumstances since the remedial notice was issued that justifies withdrawal of the notice.

(2) Where the relevant authority has waived or relaxed the requirements of a remedial notice without the agreement of the complainant or the owner or occupier of the land where the high hedge is situated (as the case may be), an appeal under section 71(1) of the Act against the waiver or relaxation may be made on any of the following grounds—

- (a) that there has been no material change in circumstances since the notice was issued that justifies the waiver or relaxation of its requirements;
- (b) that the requirements of the remedial notice, as waived or relaxed, are insufficient to remedy the adverse effect of the high hedge on the complainant’s reasonable enjoyment of the domestic property specified in the notice or to prevent its recurrence;
- (c) that the requirements of the remedial notice, as waived or relaxed, exceed what is necessary or appropriate to remedy the adverse effect of the high hedge or to prevent its recurrence.

Unfavourable decisions - grounds of appeal

5. An appeal under section 71(3) of the Act (where the relevant authority decide otherwise than in the complainant’s favour), may be made on either of the following grounds—

- (a) that the relevant authority could not reasonably conclude that the height of the high hedge specified in the complaint is not adversely affecting the complainant’s reasonable enjoyment of the domestic property so specified;

- (b) that, having concluded that the height of the high hedge specified in the complaint is adversely affecting the complainant's reasonable enjoyment of the domestic property so specified, the authority could not reasonably conclude that no action should be taken with a view to remedying that adverse effect or preventing its recurrence.

Determination of appeals by Secretary of State

6. Paragraph 2(c) of Schedule 20 to the Environment Act 1995 (revocation of appointments)(a) shall apply in relation to appointments under section 72(3) of the Act as it applies in relation to appointments under section 114 of the Environment Act 1995.

Notice of appeal

7.—(1) A person who wishes to appeal shall give notice of that appeal to the Secretary of State by submitting to him, within the period determined or allowed under section 71(4) of the Act(b) a completed appeal form and a copy of any supporting documents.

(2) The appellant shall, at the same time as he gives notice to the Secretary of State under paragraph (1), send to the relevant authority a copy of the appeal form and a copy of any supporting documents.

Preliminary information

8. The relevant authority shall, on receipt of a notice of appeal under regulation 7(2), forthwith inform the Secretary of State and the appellant of the name and address of every person, other than the appellant, who is a complainant or an owner or occupier of the land where the high hedge is situated.

Steps to be taken by Secretary of State

9.—(1) The Secretary of State shall, as soon as practicable after receipt of the preliminary information under regulation 8—

- (a) advise the parties of—
 - (i) the reference number allocated to the appeal; and
 - (ii) the address to which written communications to the Secretary of State about the appeal are to be sent;
- (b) send to every person, other than the appellant, who is a complainant or an owner or occupier of the land where the high hedge is situated a copy of the appeal form and supporting documents; and
- (c) supply to the relevant authority a questionnaire.

Questionnaire

10.—(1) The relevant authority shall, within such period as the Secretary of State may specify in writing, being not less than 21 days from the date on which the questionnaire is supplied, submit to him and copy to each of the other parties a completed questionnaire.

(2) The questionnaire shall state the date on which it is submitted to the Secretary of State.

Further Information

11. The Secretary of State or the appointed person (as the case may be) may in writing require the parties to provide such further information relevant to the appeal as he may specify, and such information shall be provided—

(a) 1995 c.25

(b) "relevant date" is defined in section 71(5) of the Act.

- (a) in writing; and
- (b) within such period as the Secretary of State or the appointed person may specify.

Decision

12. Where under regulation 11 information is required to be submitted within a specified period, the Secretary of State or the appointed person (as the case may be) may proceed to a decision on an appeal taking into account, as regards information of that description, only such information as has been submitted within the specified period.

Notification of reasons for decision

13. When the Secretary of State or the appointed person (as the case may be) complies with section 73(4) of the Act (notification of the decision on an appeal), he shall in writing notify the parties of the reasons for his decision.

Effect of decision

14. The decision of the Secretary of State or the appointed person (as the case may be) shall be binding on the appellant and every other person who is a complainant or an owner or occupier of the land where the high hedge is situated.

Signed by authority of the First Secretary of State

14th March 2005

Phil Hope
Parliamentary Under Secretary of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 8 of the Anti-social Behaviour Act 2003 (“the Act”) gives local authorities power to deal with complaints about high hedges which are having an adverse effect on a neighbour’s enjoyment of his or her domestic property.

A complaint may be made by the owner or occupier of a domestic property (“the complainant”) on the grounds that his or her reasonable enjoyment of the property is being adversely affected by the height of the hedge situated on land owned or occupied by another person. A complaint must be made to the local authority in whose area the land on which the hedge is situated lies and the complaint must be accompanied by such fee, if any, as is determined by the local authority.

Section 71 of the Act sets out the rights of appeal against a local authority’s decisions under section 68 (procedure for dealing with complaints) and section 70 (withdrawal, waiver or relaxation of remedial notices) of the Act and against any remedial notices issued by the local authority under section 69. Any appeals in relation to hedges in England must be made to the Secretary of State. The Secretary of State may appoint under section 72 a person to hear and determine the appeal on his behalf. This appointment may also be revoked under regulation 6.

These Regulations deal with the procedure for appeals under section 71 of the Act. Regulation 3 sets out grounds of appeal against the issue of a remedial notice. Regulation 4 sets out the grounds of appeal against the withdrawal, waiver or relaxation of a remedial notice. Regulation 5 sets out the grounds of appeal against decisions by the local authority under section 68(3) of the Act that are unfavourable to the complainant.

Regulations 7 to 11 set out the procedure for making an appeal and for the conduct of the appeal. Regulation 12 allows the Secretary of State or, where a person has been appointed to hear and determine the appeal, the appointed person, to ignore any further information which has been supplied to him under regulation 11 and is out of time where a time limit has been specified. Regulation 13 requires reasons to be given for decisions on appeals. Regulation 14 provides for a decision on an appeal under section 71 of the Act to be binding on the appellant and every other person who is a complainant or an owner or occupier of the land where the high hedge is situated.

A regulatory impact assessment of the effect that this instrument will have on the costs of business is available on the internet at www.odpm.gov.uk. Copies can be obtained by post from the Office of the Deputy Prime Minister, 3/C5, Eland House, Bressenden Place, London SW1E 5DU, or by phoning 0207 944 2847.

STATUTORY INSTRUMENTS

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