



20 APRIL 2006

Local Authority Chief Executives in England

## **PART 8: ANTI-SOCIAL BEHAVIOUR ACT 2003**

### **HIGH HEDGES: REMEDIAL WORKS**

We have received a good deal of correspondence expressing concern that the ODPM's guidance is undermining the high hedges legislation by advising local authorities that they cannot order more than one-third to be taken off the height of a problem hedge. Several questions have also been asked in Parliament on the matter. As there seems to be some confusion about our advice, I thought it might be helpful to offer some clarification.

The concerns centre on paragraph 6.24 (page 45) of our publication *High Hedges Complaints: Prevention and Cure*, which deals with the remedial works that local authorities can require in response to a high hedge complaint.

#### **Interpretation of "remove"**

Section 69(3) of the Anti-social Behaviour Act 2003 prevents local authorities from ordering works that involve reducing the hedge to below 2 metres in height or its removal. In our view (based on legal advice), works that would result in the death or destruction of the hedge amount to the same as removing it and so are outlawed under the 2003 Act.

This interpretation is consistent with the general thrust of the Act which is about balancing different interests. It does not provide absolute rights or protection to the person affected by the hedge. One way it maintains this balance is by preventing too drastic a remedy. We consider that it would run counter to this general approach to permit local authorities to require actions that would kill a hedge.

#### **Assessing whether remedial works will kill a hedge - key message**

Within the constraints imposed by the legislation, it is for local authorities to decide what height the hedge should be reduced to whilst ensuring its survival. That judgement depends on the species of the shrubs or trees in the hedge, their age and health, and past

management. As a result, **we recommend that authorities consider each case on its merits and obtain arboricultural advice when judging whether or not a hedge will tolerate the remedial works proposed in a particular case.**

### **No one-third rule**

We do not advise or recommend that Leyland cypress or other hedges can be reduced by one-third only. There is no one-third rule. As noted above, the wide variation in circumstances means that it is not possible to apply such general rules of thumb.

It has been suggested that our guidance stipulates that only one-third of a healthy hedge can be safely trimmed. This is a misunderstanding. Rather, our guidance (paragraph 6.24) offers an example of how a healthy and vigorous hedge might stand more drastic cutting than an older specimen, to illustrate how the amount of cutting that a hedge can tolerate will vary according to the particular circumstances.

### **Staged cutting**

If a substantial reduction of the hedge is required to remedy the problems, it might be preferable to cut it in stages over several seasons. The feasibility of such a solution will, again, need to be considered in the light of the particular circumstances. For example, phased cutting might not be feasible if the shrubs or trees in the hedge have no branches on the bottom portion. It will not, therefore, be appropriate in all cases.

Where it offers a suitable way forward, local authorities should encourage the hedge owner to discuss and agree with them a suitable timetable for the staging of the work. It is possible to specify the details in the remedial notice. A sample form of words can be found on page 113 of *High Hedges Complaints: Prevention and Cure*.

While the hedge owner is not committing an offence if a stage is missed, local authorities can take steps to make it happen. For example, warning letters can be effective in securing compliance.

### **Suggested procedure**

Against the background set out above, local authorities might adopt the following approach in determining what remedial works a hedge will bear. **In all cases, this should be underpinned by arboricultural advice.**

If such advice indicates that the hedge would survive the degree of cutting necessary to remedy the problems it is causing, the matter is straightforward and the authority would normally issue a remedial notice requiring the hedge owner to carry out the work.

If the authority considered that the hedge would not recover were it to be reduced in one cut, they might give the hedge owner more time so that the height of the hedge could be reduced in stages.

If staged cutting was not feasible, the local authority might order the hedge to be cut to a height which left sufficient live wood and foliage to enable it to regenerate. Or they might consider alternative remedies to reducing the height of the hedge, such as more selective

pruning to let more light through. We acknowledge that, in such cases, local authorities might be prevented from requiring action to the hedge that would provide a full remedy to the problems identified.

### **Dissemination**

I should be grateful if you would ensure this letter is cascaded to the officers in your authority who deal with high hedges complaints.

It should be treated as a supplement to our guidance document *High Hedges Complaints: Prevention and Cure*. As such, a copy will be posted on the ODPM website at [www.odpm.gov.uk/treesandshedges](http://www.odpm.gov.uk/treesandshedges).

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