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# *High Hedges Bill*

**Bill 13 of 2000-2001**

This paper covers the Private Member's Bill introduced by John Taylor to deal with the problems of high hedges. A second reading is due on 9 March 2001. The paper also summarises the results of the Government consultation on the issue.

The Bill will cover England and Wales.

A background to the problem and the current legal position can be found in Library Paper 99/35 *The Control of High Hedges*.

Elena Ares

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## Summary of main points

In January 2000 the Government consulted on the issue of high hedges.

The Consultation offered four possible approaches to dealing with the issue:

- Promote existing procedures;
- Non-legislative approach;
- Extend easements of light;
- System based on complaints.

The Consultation results showed a large majority support for a complaints based system.

The current Private Member's Bill introduces a complaints system for dealing with the problem. Owners or occupiers of a property will be able to complain to local authorities if the property is affected by an unreasonable obstruction of light caused by a high hedge. A high hedge is defined as two or more adjacent evergreens which together form a barrier of more than two metres high.

The Bill will allow for consideration disputes predating the legislation.

A background to the problem and the current legal position can be found in Library Paper 99/35, *The Control of High Hedges*.



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## I The Issue

The issue of high hedges has received extensive publicity as rapid growth evergreen hedges have become increasingly popular over the last 30 years as a way of screening neighbouring properties from each other.

The species most frequently of concern is the Leyland Cypress (*X Cupressocyparis leylandii*), which is commonly known as Leylandii. This is a fast growing evergreen hybrid, with a growth rate of 1 metre (~3 feet) per year, which can reach heights of 30 metres (100 feet). Because of this high growth rate, proper maintenance requires trimming at least two or three times a year.<sup>1</sup> If planted as hedging and not properly maintained it can cause various problems, the main one being loss of light. Whether this is intentional, when the hedge is being used as a screen, or unintentional, because proper maintenance has not been carried out, it can lead to disputes between neighbours.

This problem is not restricted to Leylandii, as there are other evergreen species with similar characteristics:

Species	Growth rate (cm/year)	Ultimate Height (Metres)
<b>Leylandii</b>	100	30
<b>Lawson Cypress</b>	60	20
<b>Thuja (western red cedar)</b>	75	25
<b>Privet</b>	60	7
<b>Yew</b>	20	13
<b>Holly</b>	30	10

Source: High Hedges, possible solutions.<sup>2</sup>

A 1993 report *Trees in Towns* found that the most common, at 22%, type of tree in urban areas was a cypress type tree, including Leylandii. More importantly, cypress type trees accounted for 50% of hedges higher than 2.5 metres.<sup>3</sup>

Hedgeline is an organisation that was set up in 1998, by members of the public concerned about the problem of high hedges. Their aim is to campaign for effective legislative control of problem hedges. They see the following as problems associated with high hedges:

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<sup>1</sup> DETR, *High Hedges: possible solutions A consultation paper covering England and Wales*, November 1999. <http://www.wildlife-countryside.detr.gov.uk/consult/highhedges/index.htm>

<sup>2</sup> *ibid*

<sup>3</sup> DoE, *Trees in towns: a survey of trees in towns and villages in England*, HMSO, 1993

Untopped fast growing hedges can be grown, and left untopped and unmaintained, so that the burden of continual, often hazardous maintenance falls on a person, not wanting this hedge, and by law prevented from reducing its height.

These tree and shrub hedges frequently;-

- Threaten roofs, gutterings, drains.
- Deprive unwilling sufferers of light in their houses.
- Deprive them of the right to use their gardens in the way they choose.

Small gardens can be completely dominated by the high neglected hedge at the bottom of someone else's large garden. This can prevent them from growing the plants they wish to grow.<sup>4</sup>

The Government consultation on high hedges listed the following as the most common problems giving rise to complaints:

- Reduction in light
- Blocking views
- Damage to drains and nearby structures
- Other concerns, including poor mental and physical health

Using data on the number of complaints (5,200) received by around 30% of local authorities in the year 1998-99 the DETR estimated the likely number of problem hedges in England and Wales to be 17,000.<sup>5</sup>

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<sup>4</sup> Hedgeline, *Some thoughts on the subject of hedge tyranny*, September 1997  
<http://freespace.virgin.net/clare.h/hdg8Tyr.htm>

<sup>5</sup> DETR, *High Hedges: possible solutions A consultation paper covering England and Wales*, November 1999. <http://www.wildlife-countryside.detr.gov.uk/consult/highhedges/index.htm>



## II Past Bills

There exists a common belief that current law should be able to deal with the problem of high hedges. Existing legislation, as summarised in Library Paper 99/35, in the fields of planning, nuisance, tree roots and right to light does not seem to offer any solution.

During the 1998-99 session Andrew Rowe presented the (*Hedges Control*) Bill [Bill 28 of 1998-99]. This aimed to control high hedges by changing planning law to apply when the amenity value of land in a residential area is judged to be adversely affected by the condition of any hedges.

The above Bill never reached second reading. However, Baroness Farrington of Ribbleton made a statement on the difficulties the Government saw in changing the planning laws to set height limitations for hedges, when discussing a subsequent Private Members Bill:

Our study of the matter suggests that to bring the height of hedges within planning law may be disproportionate. Such controls would apply to all hedges, existing ones as well as any planted in the future, regardless of whether they caused problems. It would mean a spate of activity because to keep within the law owners would have to seek permission if their hedge exceeded a specified height limit. This would involve a major effort on the part of both hedge owners, including the noble Lord, Lord Dixon-Smith, and myself, and local authorities. Such a solution would also have other practical difficulties. For example, people might be uncertain as to at what point a growing hedge exceeded the height limit and thus required planning permission.<sup>6</sup>

*The Control of Residential Hedgerows Bill* [Bill 61 of 1998/1999] was presented by Jim Cunningham in the 1998-99 session.<sup>7</sup> This would have added to the list of statutory nuisances in s79 of the *Environmental Protection Act 1990* “any residential hedgerow in such a place, or maintained in such a manner, as to be prejudicial to health or a nuisance”. The Bill did not reach second reading.

Baroness Gardner of Parkes introduced a bill in the House of Lords in the 1999-2000 session, the *Statutory Nuisances (Hedgerows in Residential Areas)* [HL Bill 10 of 1999/2000].<sup>8</sup> It was very similar to Jim Cunningham’s Bill and proposed that the *Environmental Protection Act 1990* be amended by adding to the existing list of possible nuisances “boundary hedges between two private dwellings prejudicial to health or a nuisance”. It reached report stage in the Lords.

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<sup>6</sup> HL Deb 11 January 2000 c 611

<sup>7</sup> HC Deb 11 Mar 1999 c 1263 (Adjourned); WITHDRAWN: VP 14 Jul 1999

<sup>8</sup> Delegated Powers and Deregulation Select Committee second report, 15 December 1999, HL 16 1999/2000; HL Deb 11 January 2000 cc 600-18; HL Deb 03 May 2000 c 1091-8

The addition of high hedges to a list of statutory nuisances is not supported by the Government as case law suggests that this would only be a successful approach in a very limited number of cases. During the second reading of the *Statutory Nuisances (Hedgerows in Residential Areas) Bill* in Lords the Government spokesperson, Baroness Farrington of Ribbleton, stated the following:

The Government have an open mind at this stage about the best way forward. All options have merit but obviously some have limitations. Our investigations have raised doubts about the effectiveness of the proposal in the Bill to add boundary hedges to the list of statutory nuisances in Section 79 of the *Environmental Protection Act 1990* [...] During the passage of that legislation Parliament considered whether the definition of statutory nuisance should be widened, for example to include nuisance from flood and security lights. It was concluded that statutory nuisance legislation was not the most appropriate way to deal with these problems. Among the issues considered were the additional burdens that such a move might place on local authority resources.

In theory, the remedy exists and no change to the law is necessary. In practice, however, no one has successfully used these provisions to solve hedge problems because existing case law (not involving hedges) suggests that, in deciding whether something is a statutory nuisance, account should be taken of the background and intentions of the legislation. These are concerned with issues of public health and mean that there must be a direct risk of disease or illness for the matter to be a statutory nuisance. For example, if someone could show that dust particles in the hedge foliage caused or aggravated respiratory problems or an allergy he might be able to use these provisions to remedy the situation. Where the person suffers stress-related illnesses, which we believe account for the vast majority of nuisance hedge cases, it is likely to be difficult to prove that the hedge rather than the dispute with the neighbour is the cause. To add hedges to the list of statutory nuisances will not remove these difficulties. It appears to the Government that the approach in this Bill may be of no more use than the existing provisions in controlling boundary hedges.<sup>9</sup>

Jim Cunningham introduced a ten minute rule Bill, again called the *Control of Hedgerows in Residential Areas Bill* on 29 February 2000. The aim of the Bill was, again, to include tall hedgerows to the list of environmental nuisances and extend the powers of environmental health officers to intervene in neighbourly disputes.

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<sup>9</sup> HL Deb 11 January 2000 c 611

### III Consultation

#### A. Possible Options

The Department of the Environment, Transport and the Regions consultation paper on this topic, *High Hedges* (November 1999) is available on the DETR website.<sup>10</sup> It considered four options.

- Promote existing procedures;
- Non-legislative approach;
- Extend easements of light;
- System based on complaints.

The paper represented a considerable development in Government thinking on the topic, since earlier responses had simply been to state that “they were considering whether to intervene and, if so, in what way”. The Paper accepted that improvements might be made upon the legal recourse currently available to those suffering from nuisance hedges.

The system based on complaints was favoured, because the first two would bring little benefit, while the third would only bring benefit to some people, and then at considerable cost in legal fees.

The paper listed the key features of a complaints-based system (p 34):

- Someone who was adversely affected by a high hedge, for example a neighbour, could complain to their local authority.
- There might be a fee, possibly to be paid by the person making the complaint.
- The local authority would consider the complaint only if certain criteria were met. These might restrict complaints to conifer hedges on or next to residential properties. They might also specify that the hedge must be above a set height and within a certain distance of the boundary. Alternatively, complainants might need to provide evidence that the hedge was obstructing light or interfering with the amenity of their property.
- Local authorities would decide whether to uphold the complaint, taking account of all the circumstances of the case – including the hedge owner’s views.
- Where a complaint was upheld, the local authority would serve a notice on the hedge owner requiring them to reduce the size of the hedge or remove it altogether, within a specified deadline, for example two months.
- The hedge owner would be able to appeal against such a notice. The appeal might be heard by an internal review within the local authority, or by the Planning Inspectorate. Action would be suspended until the appeal was determined.

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<sup>10</sup> DETR, *High Hedges: possible solutions A consultation paper covering England and Wales*, November 1999. <http://www.wildlife-countryside.detr.gov.uk/consult/highhedges/index.htm>

- If the hedge owner failed to comply with a notice within the deadline, the local authority could then enter the property and carry out work on the hedge, recovering their costs from the hedge owner.

## **B. Responses**

The results of the consultation were published in August 2000. The DETR received 3,062 responses to the consultation paper. These were summarised as follows:

A very large proportion of these came from members of the public: 2,779 in all, or 91% of the responses. Many of these people were homeowners who have been or are currently involved in a high hedge dispute. 755 (or 30%) of these public responses have some common elements, based on a standard response issued by the principal campaign group (Hedgeline). 193 responses came from local authorities. This represents just 6% of responses to the consultation paper, but also makes up a significant proportion of local authorities in the country. The remaining 90 responses (3%) came from other organisations or professionals, including amenity and residents associations, house builders, mediation groups and professionals from a wide range of disciplines (such as the tree industry, planners, landscape architects, engineers, solicitors).<sup>11</sup>

The vast majority of those who responded to the consultation (97%) thought that the Government should take further action to deal with the issue. Consultees were asked to state what they thought of the four proposals in the consultation document:

In particular, they were asked whether they thought the Government should promote existing remedies (option 1), or issue better advice (option 2), or introduce new laws in one form or another (options 3 and 4). An overwhelming majority of respondents (2,867 or 94%) believed that new laws should be made. This high demand for legislation came from all classes of respondents: 95% of individual members of the public who responded, 77% of local authorities and 72% of the other organisations and professionals.

### **Statutory complaints system**

As to what form any new laws should take, a clear majority of respondents favoured a tailor-made statutory complaints system run by local authorities (option 4). Almost three quarters of respondents (2,205 or 72%) wanted to see the introduction of such a system, either on its own or combined with other measures. Furthermore, a complaints system was the clear majority choice across all sectors, including over two thirds of the local authority respondents (129 or 67%), although they were more inclined to see a complaints system as just one element in a larger package of measures<sup>12</sup>

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<sup>11</sup> DETR Press Release 540/00, *Nuisance hedges to get the chop*, 10 August 2000

<sup>12</sup> DETR Press Release 540/00, *Nuisance hedges to get the chop*, 10 August 2000

The Government press release stated legislation to deal with the issue would be put forward as soon as parliamentary time became available:

The Government is to work up new laws to be introduced in England as soon as there is space in the Parliamentary timetable. Specially designed to tackle nuisance garden hedges, such as Leylandii, the legislation would mean that people could ask their local council to settle their hedge disputes, if they could not resolve matters amicably.<sup>13</sup>

There wasn't a bill in the Queen's speech for session 2000-2001. However a Private Member's Bill (*High Hedges Bill*) was introduced by John Taylor and is discussed in more detail in the following section. A recent PQ indicates this Bill has Government support.

#### **Leylandii Hedges**

**Mr. Blizzard:** To ask the Secretary of State for the Environment, Transport and the Regions if he will make a statement on his plans to control leylandii hedges and the proposed timetable for their implementation.

**Mr. Robert Ainsworth:** In August last year, my right hon. Friend the Minister for the Environment announced our commitment to introduce legislation that would give local authorities powers to deal with complaints about problem hedges, including leylandii. Although it was not possible to make provision for such a Bill in the Queen's Speech, the issue is being taken forward as a private member's Bill by the hon. Member for Solihull (Mr. Taylor). The High Hedges Bill was introduced on 17 January and is due to have its Second Reading on 9 March.<sup>14</sup>

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<sup>13</sup> DETR Press Release 540/00, *Nuisance hedges to get the chop*, 10 August 2000

<sup>14</sup> HC Deb 14 February 2001 363 c 150w

## ***IV High Hedges Bill***

This is a Private Members Bill introduced by Mr John Taylor on 17 January 2001 and will have a second reading debate on 9 March.

### **A. Scope**

The explanatory notes give the following overview of the Bill:

The Bill makes provision for local authorities (district or unitary councils, London Boroughs, the City of London in England, and Welsh equivalents) to determine complaints by the owners/occupiers of residential property affected by evergreen hedges that are over 2 metres high and obstruct light to the complainant's home or garden. The local authority would be able to charge a fee for this service, to be paid by the complainant. They would also be able to reject the complaint if they considered that insufficient effort had been made to resolve the matter amicably, or that the complaint was frivolous or vexatious. The local authority would, if they considered the circumstances justified it, issue a notice requiring the owner or occupier of the neighbouring land to undertake action to remedy the problem and to prevent it recurring. This would be known as a 'remedial notice'.

9. The Bill includes rights of appeal against the local authority's decision and enables the remedial notice to be enforced through criminal prosecutions and/or by the local authority entering the land and carrying out the necessary work if the owner or occupier fails to do so.<sup>15</sup>

A detailed clause by clause commentary on the Bill can be found in the explanatory notes.

The Bill will apply to a complaint made by the owner or occupier of a property if:

it alleges that his reasonable enjoyment of that property is being affected by an unreasonable obstruction of light caused by a high hedge situated on land owned or occupied by another person.<sup>16</sup>

For the purpose of the Bill a high hedge is defined as two or more adjacent evergreens which together form a barrier of more than two metres high. This is different from the definition established in the courts during the *Stanton v Jones* case. This was a case in which the hedge marked the boundary between the two properties and was a party hedge to be maintained by the occupants on either side. The dispute reached the Court of Appeal in 1994 and was then referred back to the County Court in November 1995.<sup>17</sup> There was scope for legal argument as to whether cutting off the tops of the trees in the hedge did or did

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<sup>15</sup> High Hedges Bill Explanatory Notes [Bill 13-EN], HMSO, 26 February 2001

<sup>16</sup> *High Hedges Bill*, Bill 13 2000-2001, clause 1 (1)(b)

<sup>17</sup> *Stanton V Jones*, Birmingham County Court, 1 December 1995, Case No. 91-7727-6

not constitute maintenance. During the case the judge gave the following definition of a hedge:

"hedge" means a number of woody plants, whether capable of growing into trees or not, which are so planted as to be intended to be in line and, when mature, to be so integrated together as to form both a screen and a barrier.<sup>18</sup>

If the above definition were to be used it would extend the Bill to hedges consisting partly or wholly of deciduous trees.

## **B. Power to make regulations**

The Bill also gives the Secretary of State or the National Assembly for Wales the power to amend regulations to extend the scope of what could be considered a domestic property, what can be considered a high hedge and what is an unreasonable obstruction of light. There is currently no definition in the Bill of what "unreasonable obstruction of light" would be. According to the DETR briefing on the Bill the Building Research Establishment and the Tree Advice Trust are currently developing objective tests that would show:

- If a hedge is obstructing daylight and/or sunlight
- Whether this is unreasonable
- How much it needs to be reduced by

The aim is to have simple tests so that householders and local authorities can use it (*sic*) without specialist input. It is hoped this will help cut down numbers of complaints because people would be able to predict the outcome and it would enable them to negotiate with hedge owners from a position of strength.<sup>19</sup>

## **C. Complaints system**

The local authority would be able to charge a fee to be paid by the complainants. This will be limited by regulations. The DETR briefing on the Bill indicates that the fee will be in the region of £100. Costs to local authorities are estimated at £200 per case.<sup>20</sup> The Local Government Association agrees with this, estimating an average of eight man-hours per case at a cost of £25/hour.<sup>21</sup>

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<sup>18</sup> DETR, *High Hedges: possible solutions A consultation paper covering England and Wales*, November 1999. <http://www.wildlife-countryside.detr.gov.uk/consult/highhedges/index.htm>

<sup>19</sup> DETR, *High Hedges Bill: Briefing Pack*, 2 March 2001

<sup>20</sup> *ibid*

<sup>21</sup> LGA officer, Personal Communication, 6 March 2001

If authorities decide action should be taken they will be able to issue a remedial notice, setting out to the owner of the hedge any action to be taken, including maintaining the hedge at a lower height. A right of appeal will exist for both parties.

Courts will have the power to impose a fine of up to £1000 (level 3 fine) for failing to comply with a remedial notice and will have the power to issue an order for work to be carried out. Courts would be able to impose a further fine of £1000 for failure to comply and a daily charge until work is carried out. The daily charge should not exceed a twelfth of the level 3 fine.

No time limit is set for dealing with complaints by local authorities.

## **D. Responses**

### **1. Hedgeline**

Hedgeline supports the Bill, and is in favour of the use of a measurement of light to decide whether a hedge is a problem:

The idea of having a single light criterion to judge the height to which problem hedges should be reduced is because:

- The aim is to have simple tests so that householders and local authorities can use it without specialist input.
- Loss of available light is measurable. All other nuisances which hedges can cause are not measurable in the sense that an objective scale of heights, relative to size of gardens, can be developed.
- It is acknowledged that light is not the only problem, but it tends to be the main one and it can be used to identify the problem hedges, irrespective of what is the main form of nuisance they are causing. A problem hedge will nearly always cut off light whatever other nuisance it causes. The work, at present being commissioned by the DETR, should help establish how far this one measurement encompasses other hedge problems and so can be used as a proxy.
- The scale of light measurements is a new one, being developed now and tested on our members hedges. It has nothing to do with the old much eroded, and virtually unusable, 'right to light' law .
- With this light criterion operating, victims would be able to predict the outcome and it would enable them to negotiate with hedge owners from a position of strength.<sup>22</sup>

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<sup>22</sup> Hedgeline, *High Hedges Bill: Second Reading*, 9 March 2001  
<http://freespace.virgin.net/clare.h/hdg1Polit.htm>



Their main criticism of the Bill is:

that there are various points in the Bill where the Local Authorities are not given sufficient direction, for example over the matter of whether they should impose ongoing maintenance on the hedges as well as a once-only reduction in height.<sup>23</sup>

## 2. Local Government Association

The LGA produced the following response to the Government announcement of its intention to legislate:

Local Government Association leaders today welcomed government proposals for new local authority powers to help them deal more effectively with neighbourhood disputes over the ever growing problem of leylandii trees.

Cllr Jane Chevis, chair of the Association's public protection executive said: 'These fast growing trees are a huge problem in some parts of the country but current regulations do not enable local councils to tackle it effectively and they are often only able to provide mediation between disputing neighbours.

'We are pleased that the government has finally decided to give councils more effective powers to tackle this issue. However these proposals include very little detail and we look forward to discussions with ministers in the near future to examine what legislation would need to include', she said.<sup>24</sup>

The Local Government Association main concern with the legislation is that it should allow local authorities to recover all the costs involved in dealing with complaints. They agree that as simple method as possible should be used to determine whether a hedge is causing problems and that light obstruction is a reasonable way forward. The other main concern is that a great emphasis has been placed on mediation as a way of reducing the numbers of complaints. This not a universally available service and something which local authorities are not usually able to fund.<sup>25</sup>

There is some provision of mediation services through third party organisations such as the charity Mediation UK<sup>26</sup> which can aid in the resolution of conflicts without resort to court proceedings.

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<sup>23</sup> *ibid*

<sup>24</sup> LGA Press Release (219/00), New powers will help tackle growing problem of Leylandii trees, 10 August 2000

<sup>25</sup> LGA officer, Personal Communication, 6 March 2001

<sup>26</sup> <http://www.mediationuk.org.uk>

## V Scotland

The Scottish Executive began a consultation on high hedges in January 2000. The aim of this was to establish whether a problem existed similar to that in England. There were 90 formal responses. In addition 120 individuals wrote to the Scottish Executive on the issue.

Following the consultation, the Executive concluded that, though the problem was not as extensive in Scotland, councils should be given new powers to intervene in disputes:

Justice Minister Jim Wallace took steps today to cut the scope for neighbourhood problems over garden hedges, with an announcement that he would support new powers for councils to intervene.

However he noted that the introduction of new powers would have to wait for a suitable opportunity in the Parliamentary programme.

Consultation on the issue shows that legislation is needed to tackle high boundary hedges in gardens which create a significant nuisance to neighbours. Local authorities will need powers to deal with troublesome hedges - such as Leylandii allowed to grow unchecked - but only as a last resort if matters cannot first be amicably resolved between neighbours.

Mr Wallace said

"We recognise that overgrown garden hedges cause distress to a number of people in Scotland. Though the problem is not as widespread here as in England, such hedges can seriously affect people's quality of life so that we do require to take the problem seriously.

"Our consultation has confirmed a demand exists for tougher controls to provide a remedy for those who have exhausted all other avenues.

"We are committed to dealing with the problems people are experiencing when a suitable legislative opportunity becomes available."

The announcement follows public consultation inviting people to give their views on the scale of such problems and on whether a statutory remedy was required. Around 90 organisations and individuals responded to the consultation paper, with a further 120 members of the public writing in with their views, and explaining their difficulties.

Almost all the individuals who responded were strongly in favour of giving local authorities powers to order problem hedges to be cut back. The views of interested organisations were more divided on whether an additional remedy was required.<sup>27</sup>

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<sup>27</sup> Scottish Executive Press Release SE0196/2001, *Tougher Controls on Nuisance Hedges*, 31 January 2001