

# High Hedges Legislation

Hedges and trees form an important part of the environment and in the vast majority of cases add significantly to the neighbourhood in which they grow. Sometimes the growing of the wrong type of hedge in a residential neighbourhood can cause very real suffering to those who live alongside it. Legislation to assist such "hedge victims" became law in the United Kingdom on 6 June, 2005. The High Hedges (Jersey) Law, 2008, (the "2008 Law") became law in this island on 12 January 2008.

## 1. A remedy of last resort

The 2008 Law does not make it a criminal offence to grow a high hedge although failure to comply with an order made under the law can be a criminal offence. Fundamentally the 2008 Law provides a procedure to help resolve disputes between neighbours where they cannot agree a solution between themselves.

The owner or occupier of a property used or intended to be used for the provision of residential accommodation (including tourist accommodation) and ancillary gardens and yards can refer a complaint as to a "high hedge" that is growing on a neighbouring property (including land belonging to the Crown) and affecting the reasonable enjoyment of his property to the Minister for Planning and Environment. Any such complaint must be accompanied by a fee of £350. That fee is intended to go some way towards covering the costs which will be incurred by the Planning Department in dealing with a complaint under the 2008 Law. The fee is neither repayable to, or recoverable by the complainant if his complaint is successful. The imposition of the fee is also seen as being one way in which frivolous complaints may be discouraged. In addition the Minister may reject a complaint if it seems to him that the complainant has not taken all reasonable steps to resolve the issue with his neighbour upon whose land the hedge is established before making a complaint under the 2008 law.

## 2. When is a hedge high?

Determining whether or not a particular hedge is a high hedge which should be made the subject of an enforcement notice (termed a "remedial notice" in the 2008 law), is not always a clear cut issue. The surrounding circumstances and the impact of the hedge upon the complainant, the neighbourhood and its value to its owner will always be relevant considerations.

To be a high hedge for the purposes of the 2008 law the hedge must be so much of a barrier to light as:

- is formed wholly or predominantly by a line of two or more evergreens; and
- rises to a height of more than 2 metres above ground level.

For the purposes of the law an "evergreen" means an evergreen tree or shrub or a semi-evergreen tree or shrub. Although not defined in the 2008 law a "semi-evergreen" would seem to be a tree or shrub that keeps some (but not all) live or green leaves all year round. Hedges consisting predominantly of beech or hornbeam cannot accordingly fall within the ambit of high hedge for the purposes of the 2008 law, because although they retain some leaves throughout the winter such are brown and dead.

The 2008 law equally it would seem does not apply to clumps of bamboo and most certainly not to single deciduous trees. A tall deciduous tree can clearly during the summer months when covered in green leaves cast a long dense shadow over a neighbouring property but the 2008 law does not provide any remedy to the neighbour whose property falls in such shadow. The policy seems to be that it would be inappropriate for the law to adopt a stance which might deter people from planting trees in the future.

The law also provides that the hedge must be formed by a "line" of trees or shrubs. From this it seems to follow that a dense copse established alongside one's boundary where the trees and shrubs are planted randomly and not in a line is not caught by the terms of the law. As against that English practice seems to accept that there are no rules that say that if trees and shrubs are more than a set distance apart (though one assumes still in a "line") they can't in law form a hedge. In many instances much seems to be a question of fact or degree.

The notion of being a "barrier to light" is an essential element which must be established before a hedge can be made the subject of a successful complaint for the purposes of the 2008 law. There is a specific provision to the effect that a line of evergreens is not to be taken to be regarded as a barrier to light if the existence of gaps significantly affects its overall effect at heights of more than two metres above ground level.

It is important to appreciate that the thrust of the law is to provide an occupier of a dwelling unit with a remedy when a neighbouring high hedge is depriving his property of sunshine and light. It is not a law which can be used to protect or recover a view lost to a hedge which has grown so as to block a view. The issue is solely whether the hedge is depriving the neighbouring property of light.

Above all it is important to realise that although a hedge must be at least two metres high to be the subject of a successful complaint the fact that it exceeds that height will not by itself render the hedge one that can be the proper subject of a complaint under the law.

It would also seem that the law applies only to hedges growing on a neighbouring property and on such basis does not apply to party-owned hedges.

The 2008 law does not give any form of guidance as to how close an offending hedge must be from the boundary with the neighbour. Common sense would dictate that the further the hedge is from the boundary the less likely it is to be held to be the proper subject of a complaint. Some assistance in trying to actually calculate what might constitute a high hedge which can be made the subject of a successful complaint can be found in the UK Government publication: "Hedge height and light loss" which can be downloaded from [www.gov.uk/government/publications/hedge-height-and-light-loss](http://www.gov.uk/government/publications/hedge-height-and-light-loss).

### 3. The balance of interests

Unless the Minister dismisses a complaint because it appears either that the complainant has not taken all reasonable steps to resolve the issue with his neighbour or because the complaint is frivolous and vexatious he must proceed to decide whether an order should be made under the 2008 law requiring the owner upon whose land the hedge is growing to take certain action. In deciding whether or not to make such order he must firstly take into account every relevant consideration. Such includes an obligation on him to consider whether the relevant hedge existed at the time the complainant acquired his interest in his property and the height of the hedge at that time. If the hedge was higher than two metres at the time the complainant acquired his property then it is probable the Minister will not make an order requiring it to be reduced below such height. On the other hand he will in all probability make an order requiring the hedge to be kept at a height no greater than its height at the time the complainant acquired his property if subsequent to that acquisition the hedge is permitted to grow in height. The Minister must also consider the extent to which the hedge adds to the privacy and enjoyment of the neighbouring land and contributes to the quality of the neighbourhood.

Once the Minister is satisfied that the hedge does indeed constitute a high hedge, and is one in respect of which a complaint should be upheld, he must then consider the height to which the hedge could be reduced that would still afford reasonable protection to the interests of the occupier of the neighbouring land upon which the hedge is growing.

If the Minister decides that the complaint is not justified and does not issue a remedial notice he must so advise the complainant who has 28 days from the date upon which he receives notice from the Minister of his decision in which he can appeal to the Royal Court.

### 4. Remedial Notices

Once the Minister has decided that a complaint in respect of a high hedge is justified he must send a remedial notice to the owner or occupier of the neighbouring land specifying what needs to be done to the hedge to remedy the adverse effect it is having upon the complainant's property. A copy of such notice must be sent to the complainant.

In addition to specifying what must be done and any relevant conditions the remedial notice must specify during what period the required works are to be undertaken and any period during which they are not to be undertaken. Works to hedges are unlikely to be required during nesting seasons or at times when such works might cause long-term damage to the health of the hedge. A remedial notice can also specify any action which needs to be undertaken to prevent an occurrence of the problem.

Failure to take the required action will amount to a criminal offence carrying a fine of up to £2,000.

A remedial notice must also advise the neighbouring owner that he has the right to appeal against the decision of the Minister. The remedial notice cannot require the neighbour to undertake any of the works specified in such notice in the 28 days which follow its service and the neighbour may appeal against the Minister's decision to the Royal Court in such period of time.

It is worth noting that a remedial notice which is not set aside remains in force and is effective against the owner or occupier from time to time of the neighbouring land. To such end the Minister must maintain a Register of Remedial Notices which are still in force and such register shall be open for inspection by the public at all reasonable hours.

### 5. Enforcement

For the purposes of investigating a complaint made in accordance with the 2008 law and to determine what remedial action should be taken to deal with a high hedge which is to be made the subject of a remedial notice the Minister (and persons authorised by him) has a power to enter the land of the neighbour upon whose land the hedge is growing. He can also enter

to ascertain if the action required in a remedial notice has been taken. In all instances at least 24 hours notice must be given to the occupier of the land.

If a person upon whom a remedial notice has been served fails to comply with its terms the Minister (and persons authorised by him) may enter that person's land and undertake what was required by the notice and recover the costs from such person. At least seven days' notice of such intended entry needs to be given by the Minister.

If a person intentionally obstructs or hinders a person exercising the Minister's above powers of entry he shall be guilty of an offence and liable to pay a fine of up to £5,000.

It is worth noting that the Minister has the ability at any time to withdraw or amend a remedial notice. It is, of course, also open for the parties to reach an amicable solution after a complaint has been made, but before an order has been issued, and for the complaint to be withdrawn.

## 6. Conclusion

As can be seen from the above the 2008 law has its limitations and there are certain situations which an occupier might find intolerable in respect of a hedge or tree on a neighbour's property for which the law provides no remedy. In many cases however, it seems that the 2008 law will where a high hedge is causing real loss of enjoyment to a residential property provide a comparatively cost effective remedy where agreement cannot be reached with the neighbour. Although with an estimate of 12 weeks from the making of a complaint to service of a remedial notice the procedure is not exactly instantaneous. Especially if the remedial notice stipulates that works on the hedge are to be delayed until the end of a nesting season or for some other reason.

*The information and expressions of opinion contained in this guide are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.*

# Contact Us

For a friendly chat call the residential property team on

Ogier uses cookies to help us improve our services and to enhance your experience of our site. By continuing to browse the site you are agreeing to our use of cookies. For more details about cookies and how to manage them, see our [cookie policy](#)

× Accept and close