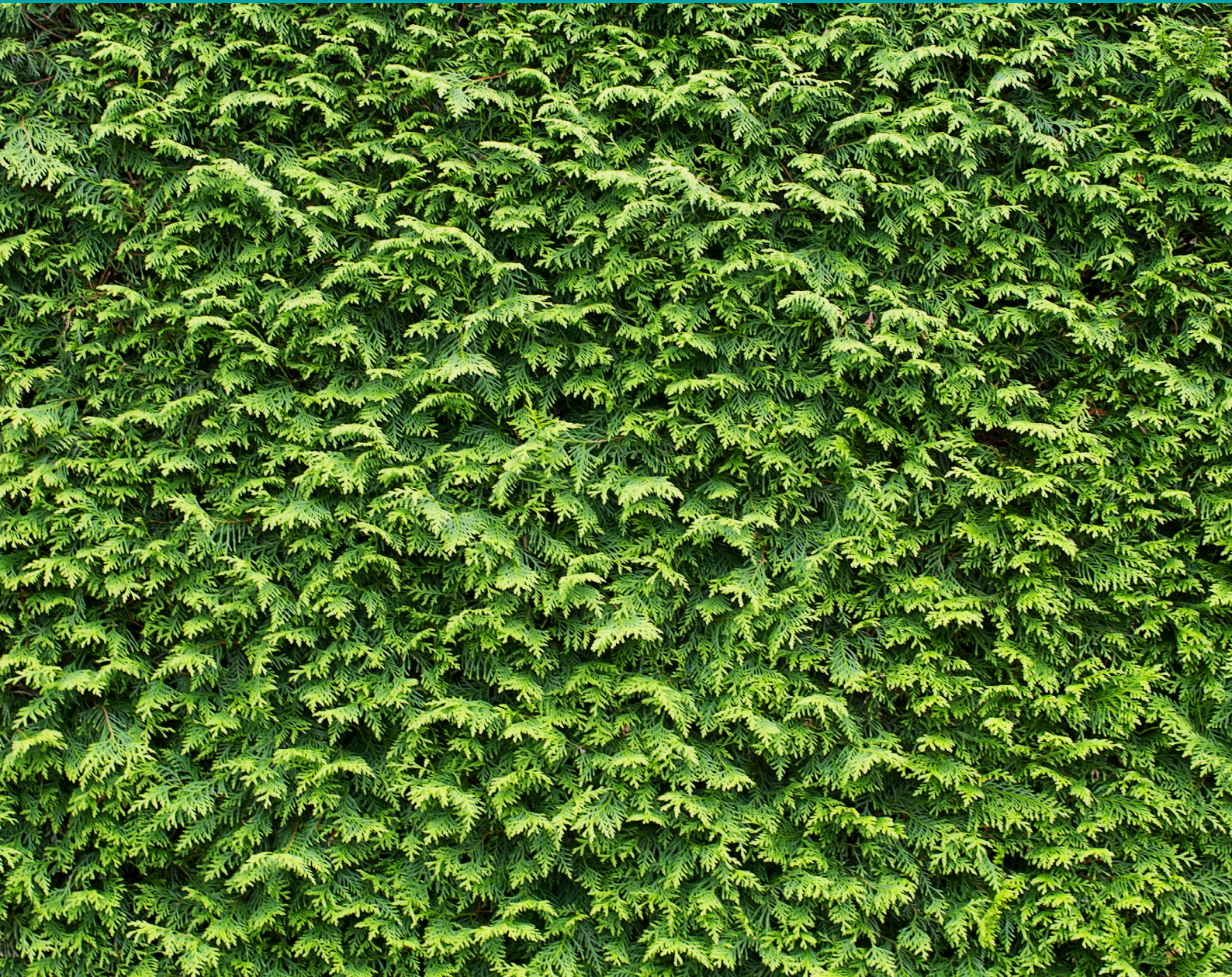


High hedges and nuisance trees

Research Briefing

August 2019



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National Assembly for Wales
Senedd Research

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Paper Overview:

High hedges and nuisance trees can be an inconvenience and source of concern to a neighbour. Disagreements between neighbours can lead to ongoing conflict and vexation. The responsible parties are often neighbouring house owners or occupiers, but can be business owners or councils.

This briefing has been published to inform Members and their constituents of the guidance and legislation relating to nuisance trees and high hedges.



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1 Introduction

High hedges and nuisance trees can be an inconvenience and source of concern to a neighbour. Disagreements between neighbours can lead to ongoing conflict and vexation. The responsible parties are often neighbouring house owners or occupiers, but can be business owners or councils.

High hedges can be responsible for blocking light and prohibiting 'reasonable enjoyment' of a neighbouring property. Trees can be a nuisance if they damage a neighbour's property, for example roots causing subsidence, or if their branches block out light.

These issues will be covered in detail in this briefing.

2 High hedges

If a hedge is not regularly checked and trimmed, it can block light from entering a garden or property. The UK Government's '[Over the garden hedge guidance](#)' gives practical advice on the steps to take if a neighbouring hedge is having a negative effect on a property or garden. This guidance is relevant for cases in Wales. The guidance stresses the importance of talking to the neighbour to try to resolve the problem before contacting the council or taking a case to court.

Legislation

As part of the [Anti-Social Behaviour Act 2003 \(as amended\) \('the 2003 Act'\)](#), the UK Government put in place new rules which give more protection for neighbours affected by overshadowing from 'high hedges'. The 2003 Act defines a high hedge as:

- Formed wholly or predominantly by a line of two or more evergreens; and
- Rising to a height of more than two metres above ground level.

These rules do not apply to individual trees, groups of trees, woodlands, or deciduous trees (trees that seasonally shed their leaves).

[Part 8](#) of the 2003 Act gives local authorities the power to deal with complaints about high hedges which are having an adverse effect on a neighbour's enjoyment of their property.

Planting a hedge

When considering planting a new hedge, the UK Government's '[Over the garden hedge guidance](#)' states:

You don't normally need permission to plant a hedge in your garden. And there are no laws that say how high you can grow your hedge.

But you are responsible for looking after any hedge on your property and for making sure it's not a nuisance to anyone else.

You can help prevent a hedge on your property from becoming a nuisance by trimming the hedge regularly, both its top and all sides.

The guidance also suggests getting advice from organisations such as the [Royal Horticultural Society](#) before planting a hedge.

Making a complaint

Under [Part 8](#) of the 2003 Act a complaint may be made by the owner or occupier of a domestic property on the grounds that their reasonable enjoyment of the property is being adversely affected by the height of a hedge situated on land owned or occupied by another person. The legislation does not cover damage from hedge roots or deal with the width of hedges (hedge width is a common law issue).

Before speaking to the owner or occupier of the property, the UK Government's '[Over the garden hedge](#)' guidance states it is important to be prepared:

Be clear in your own mind what the problem is. For example, the hedge:

- blocks light to the main rooms of your home
- deprives you of winter sunshine
- spreads into your garden and is affecting the growth of your plants
- is pushing over your fence
- the roots are damaging your path, drive, garage, or home

Be clear about how it affects you. For example:

- you have to have the lights on for longer
- your garden is in shade for much of the day
- you will have to pay to replace your fence only for the hedge to damage it again
- you are afraid someone will trip on your broken path or drive
- you will have to pay to repair your path, drive, garage, or home

Be clear about the solution you are seeking. For example:

- the size you would like the hedge to be
- how it should be kept to this size

The guidance advises that it is better to talk face-to-face in a calm manner, but that a carefully worded letter should suffice if neighbours are not on speaking terms. If necessary, a mediator can facilitate communication between two neighbours. The [Civil Mediation directory](#) has a list of civil mediation providers. Following this, neighbours should try to negotiate an agreement with which they are both content.

Failing mediation, a complaint can be made to the local authority in whose area the land on which the hedge is situated lies. A complaint fee must also be paid. In Wales, fees for complaints relating to hedges are set by local authorities. Fees for submitting a complaint to a local authority in Wales are pursuant to regulations set out in the *High Hedges (Fees) (Wales) Regulations 2004*. The **maximum fee** that can be applied in Wales is £320.

Section 68 (4) of the 2003 Act which covers the procedure for dealing with complaints, states that:

- (2) If the authority consider—
- (a) that the complainant has not taken all reasonable steps to resolve the matters complained of without proceeding by way of such a complaint to the authority, or
 - (b) that the complaint is frivolous or vexatious,
- the authority may decide that the complaint should not be proceeded with.

The UK Government's advice on '**High hedges: complaining to the council**' also applies in Wales, and explains the criteria that must be satisfied for the local authority to intervene:

- Is the hedge (or the part of it that's causing problems) a 'high hedge'?
- Is the hedge:
 - growing on land owned or occupied by someone else?
 - made up of a line of 2 or more trees or shrubs?
 - mostly evergreen or semi-evergreen?
 - more than 2 metres tall?
 - a barrier to light or access (even if there are gaps)?
- Does this hedge's height harm the reasonable enjoyment of a home you own or occupy and/or its garden or yard?
- Are you the owner or occupier of this domestic property?

When investigating a complaint, a person authorised by the local authority may enter the neighbouring land in order to obtain information for the complaint. The authority does not have to require the hedge to be cut down to two metres and cannot require a hedge to be removed. It is also possible that the local authority may not wish to act.

Remedial notices

Under **Section 68** of the 2003 Act, if the authority decides that action should be taken, it must, as soon as is reasonably practicable:

- (a) issue a remedial notice under section 69 implementing their decision;
- (b) send a copy of that notice to the following persons, namely—
 - (i) every complainant; and
 - (ii) every owner and every occupier of the neighbouring land; and
- (c) notify each of those persons of the reasons for their decision.

Section 69 of the 2003 Act gives details on remedial notices. Remedial notices may include requirements for maintenance of the hedge or reducing the height of the hedge, but it cannot involve its removal, or height reduction below two metres.

If the local authority decides not to proceed with the complaint, it must as soon as is reasonably practicable notify the appropriate person(s) of any such decision and of the reasons for it.

The 2003 Act states that remedial notices must include:

- (a) that a complaint has been made to the authority under this Part about a high hedge specified in the notice which is situated on land so specified;
- (b) that the authority have decided that the height of that hedge is adversely affecting the complainant's reasonable enjoyment of the domestic property specified in the notice;
- (c) the initial action that must be taken in relation to that hedge before the end of the compliance period;
- (d) any preventative action that they consider must be taken in relation to that hedge at times following the end of that period while the hedge remains on the land; and
- (e) the consequences under sections 75 (offences) and 77 (action by relevant authority) of a failure to comply with the notice.

Enforcement of remedial notices

Under Section 75 of the 2003 Act, if the action required by a remedial notice is not taken within the compliance period a person can be liable on summary conviction to a fine. If a person is convicted of an offence and the failure to comply with the remedial notice is continuing the court may order them to take the steps specified in the order for securing compliance with the notice.

Appealing a decision

Under **Section 71** of the 2003 Act, a complainant or occupier / owner of the neighbouring land can appeal against a high hedge remedial notice or against the local authority's decision not to issue a notice. ***The High Hedges (Appeals) (Wales) Regulations 2004*** sets out the grounds on which an appeal can be made. Grounds may include, for example, the hedge owner disagreeing that a notice is necessary, or the complainant believing the actions in the notice do not go far enough. Appeals can be made:

- Against the issue of a remedial notice;
- Against the withdrawal of a remedial notice, or the waiver or relaxation of its requirements (only if the relevant authority has not issued another remedial notice in respect of the same high hedge, or the person appealing did not consent to the withdrawal, waiver or relaxation of the notice or its requirements); and
- From a complainant against the authority not proceeding with a complaint.

An appeal must be made to the Planning Inspectorate within 28 days of either the remedial notice or the authority's decision to take no action. There is no fee for appealing a decision. More information on appealing high hedge decisions can be found in the Welsh Government's guidance '***Appeal a high hedges decision***'.

If a person disagrees with the appeal decision, they can further challenge the decision in the High Court if they consider the Planning Inspectorate has made a legal mistake.

3 Nuisance trees

If a tree situated on a neighbour's land has caused damage to a property, then the owner of the tree may be liable for the damage under the law of nuisance.

Legislation

Private land

Unlike hedges, single trees are not covered in the *Anti-Social Behaviour Act 2003*. However, under common law, the owner of a tree (i.e. owner of the land it grows on) is responsible for maintaining the tree. The owner has a duty to do what is reasonable to minimise the nuisance or damage to a neighbour's property, if they knew or ought to have known there was a risk.

In the case of dangerous trees, the occupiers of the premises are responsible for ensuring that the state of the land (and trees on it) does not harm any visitor on that land, under the ***Occupiers Liability Act 1984*** and ***Occupiers' Liability Act 1957***. In practice, this means the occupier of the land that the tree is on should inspect trees (or have them inspected) if significant potential for harm exists.

Under the ***Local Government (Miscellaneous Provisions) Act 1976***, local authorities have the power to take action regarding trees considered dangerous. A local authority may take such steps on the land, whether by felling the tree or otherwise, as it thinks appropriate for the purpose of making the tree safe and may recover expense reasonably incurred in doing so.

Local authority land

Like private owners, local authorities have a duty of care to reduce the risk of harm to people and property from local authority owned trees. To do this, local authorities are required to inspect and maintain the trees growing on land that they own.

Under the ***Health and Safety at Work etc. Act 1974***, local authorities are also required to take care of the health and safety of third parties. An effective system for managing trees should also meet the requirements set out in the *Management of Health and Safety at Work Regulations 1999* and the associated Approved Code of Practice HSG 65. This does not mean that all trees must be inspected, but it does mean that trees in frequently visited public places or trees with structural faults are likely to need inspection. More information on this can be found on the **[Health and Safety Executive \(HSE\) website](#)**.

Damage from roots

Tree roots can cause direct damage to foundations, drains, walls, and driveways. Roots can also cause indirect damage by dehydrating and rehydrating the soil, causing shrinking and swelling of the ground, particularly if it is clay. This shrinking and swelling can lead to movement of other structures and subsidence, causing damage and cracks in property walls.

The tree owner may be liable, if the complainant can show that damage to their property was caused by the tree roots. If the owner is liable, the complainant can seek injunctive relief (a legal remedy requiring or prohibiting action by a party that may be sought in place of monetary damages) or damages. If several things caused the damage, one of them being the tree roots, the owner may be liable for part of the neighbour's costs. The damage must also have been reasonably foreseeable. Foreseeability is an essential element in determining liability in nuisance and is about taking steps to eliminate risk.

Overhanging tree branches

Overhanging branches can lead to claims by the owner of the neighbouring property for nuisance or negligence if they cause physical damage to structures on that adjoining property. The same principles apply as for tree roots to determine whether the tree owner is under a duty to do something about overhanging branches to avoid damage to another's property. Unlike high hedges, there is no distinction between evergreen and deciduous trees in this area.

Taking action on a nuisance tree

Common law allows a neighbour to abate a nuisance. Abatement in relation to nuisance trees is the right of the owner of the neighbouring land to cut the encroaching tree back to the boundary between its property and the land on which the tree stands. The neighbouring owner does not need consent from the tree owner before exercising the right of abatement. The right of abatement is subject to some limitations:

- The cutting back must not be so severe that it makes the tree unstable or causes it to die (the complaining neighbour may be liable for costs if the tree were to fall or cause damage);
- The cut branches must be returned to the tree owner. Any branches or fruit that are cut from a neighbour's tree still belong to that neighbour, so should be offered to them (not simply deposited on their land without permission), although they are not obliged to accept them; and
- If the tree is subject to a **[Tree Preservation Order \(TPO\)](#)**, then consent may be required before cutting back the tree (see 'Restrictions on works' section for more information).

The above applies only to trees where branches or roots extend over or into the complainant's own property. This can also include issues with hedge width, such as overhanging branches.

The issue may also be taken further through the civil courts, although the law on nuisance/negligence is complicated. Also, the small claims procedure court could be used to recover the costs of professional cutting back of overhanging branches.

A claimant can take civil proceedings against a defendant for either, or both:

- Injunctive relief to abate a continuing nuisance and prevent its recurrence; and
- Damages to compensate for their loss.

An injunction could potentially be sought to restrain a continuing nuisance to property caused by encroachment of tree branches. An injunction could prevent future harm and the recurrence of any damage from the encroaching tree. The injunction could be sought to require the tree owner to prune or cut down the tree.

If the encroaching tree branches or roots have not yet caused damage, injunctive relief may be available to prevent harm from occurring. However, in previous cases the courts have proceeded cautiously in this context, and need to be satisfied that the risk of actual damage occurring is both imminent and real. The damages available to the claimant will generally be the reasonable cost of the work required to return the property to its state of repair before the damage occurred.

The owner of a tree must be given notice and reasonable time to respond. An owner will not be liable for any damage caused if they have not been given notice of the damage.

The neighbouring owner may be happy to pay for removal of a few overhanging branches or roots, but if the work requires a professional tree contractor or arboriculturalist, it will be more expensive, and the neighbouring owner may expect their costs to be reimbursed by the tree owner. Although this is a complicated matter, it may be possible for the claimant to recover the costs for eliminating the nuisance, if they have given the owner enough notice of the problem and time to abate it.

Action against dangerous trees

In the case of dangerous trees, under the **Local Government (Miscellaneous Provisions) Act 1976**, a neighbouring landowner can submit a written request to a local authority to make a tree safe. After conducting an investigation, the local authority may wish to issue a notice to the tree owner or land occupier to make the tree safe. If the notice is not complied with, the local authority can carry out the work itself and charge the owner/occupier for the work and any extra administrative costs and fees. The landowner/occupier does have the right to appeal against the notice to the County Court.

Restrictions on works

Before taking any action on a tree(s), there may be conditions to consider. For example, whether the tree(s) has a Tree Preservation Order, is in a Conservation Area, Site of Special Scientific Interest (SSSI), site of a Scheduled Ancient Monument (SAM), or is in the presence of European protected species (EPS) which are protected through the **Conservation of Habitats and Species Regulations (2017)**. It is also generally advised to check trees for nests before beginning any works, as all bird nests, whether in use or being built, are protected from disturbance, damage or destruction under the **Wildlife and Countryside Act 1981 (as amended)**. In addition to this, the felling of some trees may require a **Felling Licence**. However, you can still complain about protected trees being a nuisance.

Tree Preservation Orders (TPOs)

Local Planning Authorities (LPAs) make TPOs to protect specific trees, a group of trees or a woodland in the interest of amenity. If a tree(s) is subject to a TPO, then 'necessary work' cannot be carried until the LPA has given its consent. In seeking permission from their LPA, a landowner must specify which trees and what action the landowner wishes to take. The order prohibits the following activities to the specified trees without the LPA's written consent:

- Cutting down;
- Topping;
- Lopping;
- Uprooting;
- Wilful damage;
- Wilful destruction; and
- Cutting of roots.

If consent is given, it can be subject to conditions which have to be followed. If the landowner damages a tree in a manner likely to destroy it, they could be fined up to £20,000 if convicted in the magistrates' court. Further information can be found on the **Woodland Trust's website**.

Exceptions relating to trees subject to a TPO

The Welsh Government **guidance** advises that a landowner will always need the LPA's permission to work on a protected tree, unless they are:

- Cutting down trees in accordance with one of Natural Resources Wales grant schemes, or where the Natural Resources Wales has granted a felling licence;
- Cutting down or cutting back a tree:
 - ♦ which is dying, dead, or dangerous;
 - ♦ in line with an obligation under an Act of Parliament;
 - ♦ at the request of certain organisations specified in the order;
 - ♦ which is directly in the way of development that is about to start for which detailed planning permission has been granted;
 - ♦ in a commercial orchard, or pruning fruit trees in accordance with good horticultural practice; or

- ◆ to prevent or control a legal nuisance.

The Welsh Government guidance also advises that except for in a state of emergency, the landowner should give the LPA at least five days' notice before cutting down protected trees which are dying, dead or dangerous. It also suggests that the landowner may find it helpful to consult a tree surgeon to clarify what is required before contacting their LPA.