

# Social Justice and Regeneration Committee SJR-09-04(p.3)

**Date:** 9 June 2004

**Venue:** Committee Room 3

**Title:** Anti-social Behaviour Act 2003 – Housing Provisions

## **Purpose**

1. The Committee is invited to scrutinise the draft Commencement Order at **Annex 1**, relating to the housing provisions of the Anti-social Behaviour Act 2003. The Order is currently in draft form and will be subject to final checking by OCG.

## **Summary / Recommendations**

2. Following a suggestion by Peter Black, it was agreed at the Committee meeting of 11 February that secondary legislation relating to the Anti-social Behaviour Act would be presented to the Committee.
3. It is recommended that you note the content of the draft commencement order at doc 1, and agree to its continuation through the Assembly's legislative procedure. A decision is required by 11 June to enable the order to be passed to the Assembly Business Unit by 14 June. This is in order to comply with the legislative timetable, which will see the relevant parts of the Act commenced on 30 September 2004.

## **Background**

4. The Anti-social Behaviour Act received Royal Assent on 20 November 2003. It builds on existing legislation to clarify, streamline and reinforce the powers that are available to tackle

these issues. It will give local authorities (and housing associations in terms of the housing provisions) more tools to deal proactively with the various forms of anti-social behaviour that can cause disruption in our communities.

5. Some of the provisions of the Act are applicable on an England and Wales basis, and have already been enacted by the UK Government (a list of these is at **Annex 3**). Some of the provisions of the Act relate to devolved areas of responsibility, and these will be commenced separately in Wales by the National Assembly for Wales.
6. The commencement order at doc 1 specifically relates to housing provisions under Sections 13, 14 (part), 16, 17 and 91 of the Anti-social Behaviour Act 2003. The full implications of the commencement of these sections can be found at **Annex 2**.

## Consideration

7. Tackling anti-social behaviour has become one of the most pressing issues for social landlords. The commencement of these sections in Wales will increase the range of preventative and enforcement measures available to them.
8. ODPM hopes to commence the sections referred to above by 30 June 2004. We aim to commence all sections as quickly as possible, although due to the longer legislative process in Wales, following the same timetable as ODPM will not be practicable. This Order, and all subsequent ones, will follow the standard legislative procedure, with the Committee having the opportunity to scrutinise and comment.
9. Sections 13, 14 (part), 16, 17 and 91 can be commenced by 30 September 2004. Section 12 requires landlords to publish Statements of the Policies and Procedures for dealing with anti-social behaviour within 6 months of commencement. They must also "have regard to Guidance issued by the National Assembly for Wales" when doing so. This Guidance has been drafted, and a 3-month consultation exercise will begin shortly. The aim therefore, is to commence this section by the end of December 2004. The Committee will have the opportunity to scrutinise the Commencement Order for Section 12 and the associated Guidance later in the year.
10. There is one set of regulations to be made in relation to the housing provisions of the Act, regarding a demoted tenant's right to a review of their landlord's decision to demote them. These are to be made under sections 143F(3) and 143F(4) of the Housing Act 1996 introduced by schedule 1, which itself is introduced by section 14 of the Anti-social Behaviour Act.
11. It would be inappropriate to commence all of section 14, or section 15 at present, as there is a need to have these Regulations in place, before giving landlords the power to demote tenancies.
12. Section 14 will be commenced in September, under this Commencement Order, but only in so far as it gives the Assembly power to make Regulations. The other part of section 14, and section 15 will be commenced when the Regulations are prepared. Further advice will be provided for the Committee later in the year.

## **Financial Implications**

13. There are no financial implications for the Assembly relating to this commencement order.

## **Cross Cutting Themes**

14. The Anti-social Behaviour Act 2003 is cross cutting in that it has implications for a number of devolved functions:

**Education** – Parental responsibilities.

**Environment** – Noise, graffiti and fly-posting, sale of aerosol paint to children, fly-tipping and the extension of litter authority powers to take remedial action.

**Local Government Modernisation** – Trespassing

**Planning** – High hedges

Full details of the implications of these sections are at **Annex 4**.

## **Action for Subject Committee**

15. Agree the commencement order at doc 1, suggesting any amendments it feels necessary.

**Mrs Edwina Hart AM**

**Minister for Social Justice and Regeneration**

Contact Point: Anna Davies (ext. 1537) or Peter Owen (ext. 5785) - Housing Management & Homelessness Branch.

## **Sections to be commenced with this Order, by 30 September 2004:**

**Section 13** - introduces new provisions into the 1996 Housing Act to allow all social landlords to apply to the Court for an injunction to prevent a person from engaging in unacceptable conduct. Previously, this was only available for local authority properties. The nuisance or annoyance could be to residents, visitors, persons lawfully in the neighbourhood, or staff.

**Section 14** - amends the Housing Act 1985 to allow a secure tenancy to be brought to an end by a 'demotion order'. Before granting this the Court must be satisfied that the tenant or person visiting the tenant has committed an act of anti-social behaviour, or used the premises unlawfully. This part of the Act also amends the Housing Act 1988, to allow for demotion of assured tenants of RSLs, on the same terms as secure tenants. Subordinate legislation is needed under this section. Therefore, section 14 is now being commenced only insofar as it gives the National Assembly the power to make regulations.

**Section 16** - amends the Housing Acts of 1985 and 1988, to ensure that when a court is considering whether to grant a possession order against a secure or an assured tenant on nuisance grounds, it must consider the actual or likely effect which the tenant's behaviour has had or could have on others.

**Section 17** - ensures that the National Assembly for Wales has power to deal with these amendments and repeals. The National Assembly has power to commence all the housing sections in Wales.

**Section 91** - extends the County Court's powers to attach a power of arrest to an anti-social behaviour injunction on an application by a local authority. The court must be satisfied that the conduct complained of in the application consists of, or includes the use or threatened use of violence, or there is a significant risk of harm to that person.

## **Sections to be commenced later in the year:**

**Section 12** – introduces a new duty on social landlords to prepare an anti-social behaviour policy, and procedures for dealing with occurrences of ASB. Local authorities and RSLs will have six months from commencement to publish a statement of their policy and procedures, and will also have to prepare a summary of this, and make this available to the public. In doing this, social landlords must have regard to guidance issued by the National Assembly.

**Section 15** - introduces a new section into the Housing Act 1988 to set out the legal basis for the form of demoted tenancy that can be used by RSLs. A demoted assured shorthold tenancy will be converted into an assured tenancy after one year unless the landlord has issued notice of proceedings for possession during that year.

**The following measures were introduced on an England and Wales basis on 20 January 2004:**

**Part 1** - (Sections 1-11) Drugs: Closure of Premises where drugs are used unlawfully.

**Part 4** - (Sections 30-36) Dispersal of Groups, whose behaviour is intimidating, etc

**Part 5** - (Sections 37-39) Firearms: Introducing New Prohibitions on possession, etc. of Air Weapons and Imitation Firearms.

NB: Part of Section 39(3) does not come into force until 30<sup>th</sup> April 2004.

**Part 6** - (Section 53) Display of Advertisements - increase of maximum fine for contravention of regulations.

**Part 7** - (Sections 57 - 59) Public Assemblies, Raves and Aggravated Trespass. Various amendments to the law.

**Part 9** - (Section 85 part) County councils and housing actions trusts are given the powers to apply for anti-social behaviour orders, helping to tackle nuisance neighbours.

NB: Subsection 8 which makes provision about parenting order for under 16 year-olds Part 9 - (Section 87) when an anti-social behaviour order is made, came into force on 27<sup>th</sup> February. Most of the remainder of section 85 came into force on 31 March 2004.

**Part 9** - (Section 86(3), in part) Lifting automatic reporting restrictions on anti-social behaviour orders on conviction in youth court;

**Part 9** - (Section 86(4)(5) and (6)) amending court proceedings in connection with orders made under the Football Spectators Act 1989

**Part 9** - (Section 87) Penalty notices for disorder: Extension to 16 and 17 year olds.

**Part 9** - (Section 89 ss(1)-(4), (6), (7)) Extension of powers of community support officers.

**The following measures were introduced on an England and Wales basis on 27 February 2004:**

**Part 3** - (Section 18) Parenting Orders.

**Part 3** - (Sections 25 - 29) Parenting Contracts in respect of criminal conduct and Anti-social behaviour.

**Part 7** - (Sections 60 - 64) Additional Power for police to remove trespassers when alternative site available.

**The following measures were introduced on an England and Wales basis on 31 March 2004:**

**Part 6** - (Section 46) additional powers given to Community Support Officers to issue fixed penalty notices for graffiti and fly-posting.

**Part 6** - (Sections 48 - 52 (part) additional powers in connection with removal of graffiti.

**Part 6** - (Section 54) makes it an offence to sell spray paints to children.

**Part 9** - (Section 86 (remainder)) adds to the powers of the court in connection with orders under the Crime and Disorder Act 1998.

**Annex 4**

**ANTI-SOCIAL BEHAVIOUR ACT 2003 (Part 3)**

**PARENTAL RESPONSIBILITIES**

**PARENTING ORDERS AND PARENTING CONTRACTS**

The introduction of parenting contracts and enhancements to parenting orders represent important additions to the interventions already available to promote better school attendance and behaviour. They are intended to help ensure that parents take their parenting responsibilities seriously.

## Parenting Contract (section 19 of the Anti-social Behaviour Act 2003)

A new initiative and represents a two-sided formal agreement between a parent and either the local education authority or the governing body of a school. It is a voluntary agreement and neither the parents nor governing bodies or local education authorities are compelled to enter into a parenting contract.

## Parenting Order (section 18 and 20 of the Anti-social Behaviour Act 2003)

Currently available in cases of truancy but will be extended to also cover behaviour. They are applied for directly to courts and parents not complying with an Order are liable to prosecution for breaching the order and may be liable for a fine not exceeding level 3 on the standard scale (currently up to £1000).

Parenting Orders can be made, in any Court proceedings where:

- a child safety order is made in respect of the child;
- an anti-social behaviour order or sex offender order is made in respect of a child or young person;
- a child or young person is convicted of an offence; or
- a person is convicted of an offence under section 443 (*failure to comply with school attendance order*), or section 444 (*failure to secure regular attendance at school of registered pupil*) of the Education Act 1996;

against a person who is the parent or guardian of the child or young person, or with regards sections 443 and 444, the parent convicted of that offence.

A parenting order can last up to 12 months in duration. A person who is made subject to a parenting order does not receive a criminal conviction as a consequence.

A parent/guardian who received a parenting order may be required to attend counselling or guidance sessions. They may also have conditions imposed on them such as attending their child's school, ensuring their child does not visit a particular place unsupervised or ensuring their child is at home at particular times. If, while a parenting order is in force, the parent without reasonable excuse fails to comply with any requirement included in the order, or specified directions given by the responsible officer, the parent will be liable on summary conviction to a fine not exceeding level three on the standard scale, (currently £1,000).

The responsible officer in relation to the parenting order is one of the following:

- a probation officer;
- a social worker or a local authority social services department;

- a person nominated by a person appointed as chief education officer under section 532 of the Education Act 1996; or
- a member of a youth offending team.

The new provisions under the Anti-social Behaviour Act are:

### **Section 18: Parenting Orders under section 8 of the Crime and Disorder Act 1998 Act**

This section amends section 8 by:

- omitting the requirement that a parent cannot be required to attend more than one counselling session a week; and
- inserting a new power to allow a programme to consist of or to include a residential course provided the court is satisfied that this is likely to be more effective than a non-residential course and that any interference with family life is proportionate.

### **Section 19: Parenting contracts in cases of exclusion from school or truancy**

This section sets out provisions for schools and local authorities to enter into parenting contracts. Local education authorities (LEAs) and schools will not be required to use parenting contracts and parents will not be required to sign them. For parents, signing a contract will be voluntary.

The exact details of how Parenting Contracts will apply in Wales will be contained in Wales only regulations which will shortly be consulted on.

In the English regulations, a school related parenting contract can be made when a pupil has:

- been excluded from school for a fixed period or permanently; or
- failed to attend regularly at the school at which he is registered;

and the relevant period has not expired.

A parenting contract is defined as a document containing:

- a statement by the parents or guardians that they agree to comply for a specified period with whatever requirements are specified in the contract; and
- statement by the local education authority or governing body agreeing to provide support to the parents



This section complements section 25, which enables youth offending teams to arrange parenting contracts for parents of children who have engaged or are likely to engage in criminal conduct or anti-social behaviour.

## **Section 20: Parenting orders in cases of exclusion from school**

This enables LEAs to apply to magistrates' courts for parenting orders for parents of children who have been excluded from school.

An LEA may apply for a parenting order as a first response or it may make an application following a parent's refusal to sign, or breach of, a parenting contract. This section complements section 26, which enables youth offending teams to apply for parenting orders for parents of children who have engaged or are likely to engage in criminal conduct or anti-social behaviour.

The exact details of how Parenting Orders will apply in Wales will be contained in Wales-only regulations which will shortly be consulted on.

In English regulations the LEA may apply to a magistrates court for a parenting order when:

- a pupil has been excluded for school for a fixed period within a period of twelve months;
- or after a pupil has been permanently excluded from school;

and the relevant period has not expired.

## **ANTI-SOCIAL BEHAVIOUR ACT – ENVIRONMENTAL PROVISIONS (Part 6)**

### **Noise (section 40-42)**

Section 40 allows a chief executive of a local authority to issue a closure order in relation to licensed premises or premises operating under a temporary event notice which are causing a public noise nuisance. It sets out the circumstances under which a closure order can be made and states that the closure order can apply for a maximum of 24 hours, starting from the time when the notice is issued to the manager. If a person disobeys a closure order they are committing an offence and can receive a penalty of up to 3 months imprisonment and/or a fine of up to £20,000. Section 41 outlines the circumstances under which an order can be cancelled, and the procedures for doing this.

Section 42 amends the Noise Act 1996, which currently gives powers to deal with noise at night (by way of warning notices, fixed penalties etc.). These powers have previously only applied to the areas of local authorities (in England, Wales or Northern Ireland) in respect of which the relevant provisions have

been adopted, either by a resolution of that authority or by an order made by the Secretary of State or the National Assembly for Wales. This clause removes the adoptive nature of the powers in respect of England and Wales, thereby bestowing these powers on all English and Welsh local authorities. It removes the previously associated duty (once the powers had been adopted) to take reasonable steps to investigate a complaint, and substitutes a discretionary power to take such steps in response to a complaint.

Sub section (5) of this part of the Act provides for local authority to be able to use the penalty notice receipts for functions under the Noise Act 1996 or any other functions that the Secretary of State may specify in regulations. Local authorities must also supply the Secretary of State with such information as he may require. The Secretary of State will also have the power to make regulations providing what local authorities should do with their receipts pending their being used for "qualifying functions", the time by which they must be used for "qualifying functions" and the accounting arrangements for the penalty receipts. Local authorities and other interested bodies must be consulted before these regulations are made.

### **Graffiti and fly-posting (sections 43-53)**

These sections introduce a power to issue fixed penalty notices for graffiti and fly-posting offences under a range of Acts listed in section 44. Only authorized local authority officials and community support officers and accredited persons designated under the Police Reform Act 2002 will be allowed to issue the notices, in a form specified by order under section 43(9). Offenders will be given 14 days to pay or risk being taken to court. The level of the fixed penalty payable under such a notice is fixed at £50 in line with current levels for litter and dog-fouling offences in England, but there is scope for the Secretary of State in England, and the National Assembly in Wales, to increase this penalty by order under section 43(11). Local authorities will be able to retain the penalty receipts for their "qualifying functions" as they do now for dog and litter offences. Local authorities must provide the Secretary of State/National Assembly with such information relating to these receipts as required. Regulations made under section 45(7) can make the same provisions for the administration and accountancy arrangements for these receipts as can be made for noise penalty receipts under section 42(5).

**Section 46 relates to the powers of police civilians designated under the Police Reform Act 2002 who can issue penalty notices under this part of the Act.**

**Section 47(3) gives the Assembly the power to issue guidance to local authorities on the exercise of these new powers to issue penalty notices.**

Local authorities will also have the power under section 48 to issue graffiti removal notices to persons responsible for street surfaces and furniture [this includes any building, structure, apparatus, plan or other object in or on any street], statutory undertakers and educational institutions, requiring them to

remove graffiti from land or property for which they are responsible within 28 days. If they fail to do so then local authorities will then have the power to intervene and clear up the graffiti.

Section 49 allows the local authority to recover costs for the removal of graffiti while section 50 requires the Secretary of State and the National Assembly to issue guidance on the exercise of these powers to local authorities in England and Wales respectively. Local authorities must have regard to this guidance.

Section 51 provides that a person upon whom a graffiti removal notice or a expenditure recovery notice has been served may appeal to a magistrates' court against the issuing of the graffiti removal notice or the excessive recovery of costs within 21 days of the notice being issued. Section 52 provides that a local authority, its employees and persons authorised by the authority shall be exempt from any liability for damages arising from the exercise of their powers under section 48(4), (5) and (8) in relation to graffiti removal notices unless it is shown that they acted, or failed to act, in bad faith, or that the liability arose out of failure to exercise due care and attention, or that the act or omission was unlawful under section 6(1) of the Human Rights Act.

Section 53 increases the level of fine for offences under s.224(3) of the Town and Country Planning Act 1990 relating to the display of advertisements in contravention of regulations from 3 to 4.

Sections 43 to 45 and section 47 to 53 are to be commenced by the Secretary of State in England and by the National Assembly in Wales. Section 46 is to be commenced by the Secretary of State in both England and Wales as it relates to policing matters which have not been devolved to the Assembly.

### **Sale of aerosol paint to children (section 54)**

This clause makes the sale of aerosol paint to anyone under 16 an offence. The maximum penalty is a level 4 fine (i.e., £2,500 at present).

### **Fly-tipping (section 55)**

This section gives waste collection authorities in England and Wales a strategic role for dealing with the illegal dumping of waste (or "fly tipping"), facilitates the definition of this role further to the receipt of statutory directions and extends the range of powers available to those authorities. This should lead to better enforcement of current legislation, a significant increase in investigation activity, better detection of the perpetrators of the crime and, eventually, a reduction in levels of unlawfully deposited waste.

Sub section (2) corrects an error in the Control of Pollution (Amendment) Act 1989 (c. 14). Sub section (3) also amends this Act to give waste collection authorities in England and Wales the powers to stop,

search and seize a vehicle they suspect of being used for the unlawful deposit of waste.

Sub section (4) inserts a new section 59A into the Environmental Protection Act 1990 which gives the Secretary of State the power to issue statutory directions setting out the categories of waste to which a waste regulation authority (the Environment Agency) or a waste collection authority (local authority) should give priority in the exercise of its powers under section 59 of that Act. There is scope to vary those prioritised categories of waste between different authorities. The power to issue such directions is exercisable by the National Assembly in Wales.

Sub section (5) introduces a power for the Secretary of State to issue a notice in writing requiring the Environment Agency and local authorities to provide such information relating to the exercise of their powers under ss.33(1) and 59 of the 1990 Act when dealing with fly tipping incidents as is specified in the notice.

Subsections (6) to (9) amend s.108(15) of the Environment Act 1995 by extending the definition of an "enforcing authority" carrying out the pollution control functions described in that section of the 1995 Act to include waste collection authorities as defined in s.30 (3) (a), (b) and (b)(b) of the 1995 Act. The purpose of these amendments is to confer pollution control functions on these authorities when dealing with fly-tipping incidents. These powers allow enforcing bodies to enter premises, ask questions and request documents, remove evidence, material and documents, take samples and install monitoring equipment.

Subsection (10) has the effect of making the Secretary of State's new functions under this section exercisable by the National Assembly in Wales.

**The power to commence section 55 in Wales rests with the National Assembly.**

### **Extension of litter authority powers to take remedial action (section 56)**

This clause amends section 92(10) of the Environmental Protection Act 1990 to remove the barrier which currently prevents local authorities from entering relevant land (Crown land or land owned by a Statutory Undertaker), clearing that land of litter, and recovering its costs through the courts. Exceptions will still apply to land occupied for naval, military or air force purposes and to statutory undertakers' land which the Secretary of State has exempted, by order, on the grounds that such an exemption is requisite or expedient in the national interest. The power to make such an order will rest with the Assembly in relation to land in Wales.

## **POWER TO REMOVE TRESPASSERS**

### **Section 59: Aggravated Trespass:**

This section amends sections 68 and 69 of the Criminal Justice and Public Order Act 1994 so as to extend the provisions relating to the offence of aggravated trespass. The result is that this offence can in future be committed in buildings as well as in the open air, as previously.

### **Section 60: Power to remove trespassers: alternative site available**

This section inserts a new section 62A into the Criminal Justice and Public Order Act 1994 so as to create a new power for a senior police officer to direct a person to leave land and remove any vehicle or other property with him on that land. *Subsection (2)* sets out the conditions that the senior police officer must believe to be satisfied before he can give a direction to leave the land to a person. At least two persons must be trespassing on land; they must have between them at least one vehicle; they must be present on the land with the intent of residing there; and the occupier of the land must have asked the police to remove them. In addition, it must appear to the senior police officer, after consultation with the local authority, that there are relevant caravan sites with suitable pitches available for the trespassers to move to. *Subsections (6) and (7)* enable the Secretary of State to make an order subject to the negative resolution procedure to change the definition of 'relevant site manager'.

### **Section 61: Failure to comply with direction: offences**

This section inserts a new section 62B into the 1994 Act. Its effect is that a person commits an offence if he fails to comply with a direction given under section 62A, or if, within 3 months of the direction being given, he returns to any land in the area of the relevant local authority as a trespasser with the intention of residing there. Subsection 5 provides a defence to this offence if the accused was not a trespasser, or had a reasonable excuse for failing to leave or returning to relevant land, or was under 18 and living with his parent or guardian when the direction under section 62A was given.

### **Section 62: Failure to comply with direction: seizure**

This section inserts a new section 62C into the 1994 Act. This provides the power for a constable to seize and remove a vehicle, if he reasonably suspects that the person who owns or controls the vehicle has committed an offence under section 62B, and the offence relates to the vehicle in question.

### **Section 63 and 64: Common land: modifications and interpretation**

New section 62D of the 1994 Act (inserted by section 63) makes necessary modifications to new sections 62A to 62C of the 1994 Act in their application to common land. New section 62E of the 1994 Act (inserted by section 64) provides for the interpretation of terms used in new sections 62A to 62D of the 1994 Act. Unlike the existing powers in section 61 of the 1994 Act, the definition of "land" includes roads.

## **ANTI-SOCIAL BEHAVIOUR ACT 2003 - HIGH HEDGES PROVISIONS (Part 8: Sections 65 to 84)**

This Part of the Act gives new powers to local authorities in England and Wales to deal with complaints about high hedges. If the local authority consider the circumstances justify it, they can issue a formal notice outlining what action should be taken to remedy the problem and to prevent it recurring. Both the complainant and the hedge owner have rights of appeal against the local authority's decision.

Before these provisions can be commenced in Wales the National Assembly for Wales will need to put in place regulations governing certain procedural arrangements - notably the maximum fee that can be charged for this service and the procedures for dealing with appeals to the National Assembly for Wales. In addition, detailed guidance will be provided to help local authorities administer complaints.

The intention is to issue draft guidance and regulations for consultation early in 2004 with the provisions of this Part of the Act being brought into force, by order, towards the end of 2004.

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### **2. Section 65: Complaints to which this Part applies**

Complaints must be made by the owner or occupier of a domestic property, on the grounds that his reasonable enjoyment of that property is being adversely affected by the height of a high hedge situated on land owned or occupied by another person (the "neighbouring land"). Even if the property is currently unoccupied, the owner may still bring a complaint under the amendments (subsection (2)). Complaints about the effects of roots are specifically excluded (subsection (4)).

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### **2. Section 66: High Hedges**

A "high hedge" is defined as so much of a barrier to light or access as is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than two metres above ground level.

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2. **Section 67: Domestic Property**

This section defines "domestic property" as a dwelling or its associated garden or yard.

Complaints procedure

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2. **Section 68: Procedure for dealing with complaints**

Complaints must be made to the local authority whose area contains the land on which the hedge is situated. Complaints must also be accompanied by any fee set by the authority. The level of such a fee must not exceed the amount specified in regulations made under this section (subsection (7)).

The local authority may reject the complaint if they consider that the complainant has not taken all reasonable steps to resolve the matter without involving the authority, or if they consider that the complaint is frivolous or vexatious (subsection (2)). If the local authority decide, on this basis, not to proceed with the complaint, they must inform the complainant as soon as is reasonably practicable and must explain the reasons for their decision (subsections (5) and (6)).

Where the local authority proceed with the complaint, they must decide in the first place whether the height of the high hedge is adversely affecting the complainant's reasonable enjoyment of his property. If so, the authority must then consider what, if any, action to require to be taken in relation to the hedge in order to remedy the adverse effect and to prevent it recurring (subsection (3)).

The authority must, as soon as is reasonably practicable, inform the parties of their decision and the reasons for it. If the authority decide that action should be taken, they must also issue a remedial notice (under section 69).

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3. **Section 69: Remedial Notices**

The remedial notice must specify the hedge it relates to; what action is required to be taken in relation to the hedge in order to remedy the adverse effect and by when; what further action, if any, is required to prevent recurrence of the adverse effect; what date the notice takes effect; and the consequences of failure to comply with the requirements of the notice.

The action specified in a remedial notice may not involve reducing the height of the hedge below 2 metres, or its removal.

While the remedial notice is in force, there is an obligation on the local authority to register it as a local land charge. In addition, the notice is binding not only on whoever is the owner or occupier of the neighbouring land at the time it is issued but also on their successors.

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3. **Section 70: Withdrawal or relaxation of requirements of remedial notices**

A local authority can withdraw a remedial notice or waive or relax its requirements. If they do so, they must notify the complainant and the owner/occupier of the neighbouring land.

## **Appeals**

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2. **Section 71: Appeals against remedial notices and other decisions of relevant authorities**

This section sets out rights of appeal against the local authority's decisions under sections 68 and 70, and against any remedial notice issued by them. The appeal authority is the National Assembly for Wales in respect of appeals relating to hedges situated in Wales.

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2. **Section 72: Appeals procedure**

The appeal authority can set down in regulations the procedure for dealing with such appeals. The appeals authority may appoint another person to hear and determine appeals under the Act, and may also require such a person to carry out all or any of its appeals functions (subsection (4)).

## **Section 73: Determination or withdrawal of appeals**

The appeal authority may allow or dismiss an appeal, either in total or in part. If the appeal authority decides to allow the appeal, it may quash or vary the remedial notice to which the appeal relates. It may also issue such a notice in those cases where the local authority decided not to do so in response to the original complaint. Whatever its decision on the appeal, the appeal authority may correct any defect, error or misdescription in the original remedial notice if it considers this will not cause injustice.

## **Powers of entry**

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2. **Section 74: Powers of entry for the purpose of complaints or appeals**



This section gives local authorities and the appeal authority powers to enter the neighbouring land in order to carry out their functions under the Act. They must give 24 hours' notice of their intended entry and, if the land is unoccupied, leave it as effectively secured as they found it. Intentionally obstructing a person exercising these powers is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale.

## **Enforcement powers etc.**

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## **Section 75: Offences**

Failure to comply with a remedial notice is a criminal offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale. There is also provision for daily fines if the requisite work remains outstanding following a court order.

1. **Section 76: Power to require occupier to permit action to be taken by owner**

This applies section 289 of the Public Health Act 1936 with modifications to allow the owner of the land where the hedge is situated, rather than the occupier or another person with an interest in the land, to comply with a remedial notice.

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2. **Section 77: Action by relevant authority**

This section gives the local authority power to enter the neighbouring land and carry out the works specified in the remedial notice, if the owner or occupier of the land fails to comply with its requirements. It will be open to the authority to exercise these powers whether or not criminal proceedings are brought under section 75. The costs of this work can then be recovered from the owner or occupier of the land. Any unpaid expenses would (until recovered) be registered as a local land charge. When exercising these powers, the local authority must give 7 days' notice of their intended entry on to the land.

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2. **Section 78: Offences committed by bodies corporate**

Where offences are committed by bodies corporate, proceedings may, in certain circumstances, be taken against individual officers as well as against the body corporate.

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2. **Supplementary**
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4. **Section 79: Service of documents**

This section explains how documents referred to in this Part should be delivered to the recipients.

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2. **Section 80: Documents in electronic form**

This deals with delivery of documents in electronic form. In particular, it prevents the use of electronic communications for sending copies of a remedial notice (under section 69).

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2. **Section 81: Power to make further provision about documents in electronic form**

This section gives the National Assembly for Wales power to make regulations amending the provisions about the delivery of documents in electronic form.

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2. **Section 83: Power to amend sections 65 and 66**

This section gives the National Assembly for Wales power to extend the scope of complaints covered by this Part (under section 65) and to alter the definition of 'high hedge' (in section 66) through regulations.

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2. **Section 84: Crown application**

This section applies the provisions to the Crown. Crown employees (but not the Crown itself) will be liable to prosecution for a criminal offence under this Part. A local authority will be able to investigate and determine complaints about high hedges on Crown land, for example a hedge on land owned by a Government Department may be affecting neighbouring domestic property.

### **Section 93: Commencement**

This section (subsection (3)) provides that Part 8 comes into force, in relation to complaints about hedges situated in Wales, in accordance with provision made by the National Assembly for Wales by Order on a date yet to be determined.