Passage of the

High Hedges (Scotland) Bill 2012

SPPB 186
Passage of the
High Hedges (Scotland) Bill 2012
SP Bill 16 (Session 4), subsequently 2013 asp 6

SPPB 186
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Bill was a Member’s Bill which had the support of the Scottish Government, and for which the Scottish Government provided drafting assistance. The process by which the Bill was developed, including previous proposals for Member’s Bills on this issue, is fully explained in the Policy Memorandum included in this volume.

The oral and written evidence received by the Local Government and Regeneration Committee at Stage 1 was originally published on the web only. That material is included in this volume after the Stage 1 Report. Certain information has been redacted from some of the submissions before publication, in order to comply with requirements in relation to potentially defamatory material and data protection issues. Four written submissions were not published by the Committee due to the amount of personal information about ongoing disputes contained in them. These submissions are not, therefore, included in this volume.
The Local Government and Regeneration Committee’s Stage 1 Report did not include material relating to the Finance Committee’s consideration of the Financial Memorandum or the Subordinate Legislation Committee’s consideration of the delegated powers provisions in the Bill. The Subordinate Legislation Committee’s report at Stage 1 is included in this volume. The Subordinate Legislation Committee did not take oral evidence on the Bill and agreed its report without debate. No extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included in this volume. Correspondence from the Finance Committee, along with the oral and written evidence received by it, is also included in this volume.

The Subordinate Legislation Committee considered the delegated powers in the Bill after Stage 2, and agreed its report without debate. No extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included in this volume.
# High Hedges (Scotland) Bill

[AS INTRODUCED]

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High Hedges (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about hedges which interfere with the reasonable enjoyment of residential properties.

Meaning of “high hedge”

1 Meaning of “high hedge”

(1) This Act applies in relation to a hedge (referred to in this Act as a “high hedge”) which—

(a) is formed wholly or mainly by a row of 2 or more evergreen or semi-evergreen trees or shrubs,

(b) rises to a height of more than 2 metres above ground level, and

(c) forms a barrier to light.

(2) For the purposes of subsection (1)(c) a hedge is not to be regarded as forming a barrier to light if it has gaps which significantly reduce its overall effect as a barrier at heights of more than 2 metres.

(3) In applying this Act in relation to a high hedge no account is to be taken of the roots of a high hedge.

High hedge notices

2 Application for high hedge notice

(1) Where subsection (2) applies, an owner or occupier of a domestic property (referred to in this Act as the “applicant”) may apply to the relevant local authority for a high hedge notice.

(2) This subsection applies where the applicant considers that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have.

3 Pre-application requirements

(1) Before making an application under section 2(1), the applicant must take all reasonable steps to resolve the matters in relation to the high hedge which would otherwise be the subject of the application.
(2) In complying with the duty imposed by subsection (1) the applicant must have regard to any guidance issued by the relevant local authority under section 31(2)(a).

4 Fee for application

(1) An application must be accompanied by a fee of such amount (if any) as the relevant local authority may fix.

(2) An authority may fix different fees for different applications or types of application.

(3) A fee fixed by an authority must not exceed an amount which it considers represents the reasonable costs of an authority in deciding an application under this Act.

(4) A fee paid to an authority may be refunded by it in such circumstances and to such extent as it may determine.

5 Dismissal of application

(1) A relevant local authority must dismiss an application where the authority considers that—
   (a) the applicant has not complied with the duty imposed by section 3(1), or
   (b) the application is frivolous or vexatious.

(2) As soon as is reasonably practicable after dismissing an application, the authority must notify the applicant of—
   (a) its decision, and
   (b) the reasons for its decision.

6 Consideration of application

(1) This section applies where a relevant local authority does not dismiss an application under section 5.

(2) The authority must give every owner and occupier of the neighbouring land—
   (a) a copy of the application, and
   (b) a notice informing the person to whom it is given of the matters mentioned in subsection (3).

(3) The matters are—
   (a) that the authority is required to make a decision under subsection (5),
   (b) that the person has a right to make representations to the authority in relation to the application before the expiry of the period of 28 days beginning with the day on which the notice is given,
   (c) that the authority must give a copy of any such representations to the applicant,
   (d) that the authority has power to authorise entry to the neighbouring land under section 18(1), and
   (e) that it is an offence under section 21 intentionally to prevent or obstruct a person authorised to enter land from acting in accordance with this Act.

(4) If any representations are received by the authority during the period mentioned in subsection (3)(b), the authority must—
(a) give the applicant a copy of those representations, and
(b) take into account those representations in making its decision under subsection (5).

(5) After the end of the period of 28 days referred to in subsection (3)(b), the authority must decide—
(a) whether the height of the high hedge adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and
(b) if so, whether any action to remedy the adverse effect or to prevent the recurrence of the adverse effect (or both) should be taken by the owner in relation to the high hedge (any action that is to be taken being referred to in this Act as the “initial action”).

(6) If the authority decides under subsection (5)(b) that initial action should be taken, the authority must—
(a) specify a reasonable period of time within which the initial action is to be taken (the “compliance period”), and
(b) decide whether any action to prevent the recurrence of the adverse effect should be taken by the owner in relation to the high hedge at times following the end of the compliance period while the hedge remains on the land (the “preventative action”).

(7) In making a decision under subsection (5)(b), the authority must have regard to all the circumstances of the case, including in particular—
(a) the effect of the high hedge on the amenity of the area, and
(b) whether the high hedge is of cultural or historical significance.

7 Notice of decision where no action to be taken

(1) This section applies where—
(a) the relevant local authority decides under section 6(5)(a) that there is no adverse effect, or
(b) the relevant local authority decides under section 6(5)(b) that no action should be taken in relation to the high hedge.

(2) As soon as is reasonably practicable after making its decision the authority must notify the persons mentioned in subsection (3) of—
(a) the making of the decision,
(b) the reasons for it,
(c) the right to appeal under section 12(1).

(3) Those persons are—
(a) the applicant, and
(b) every owner and occupier of the neighbouring land.
8 High hedge notice

(1) Where a relevant local authority decides under section 6(5)(b) that action should be taken, it must issue a high hedge notice as soon as is reasonably practicable after making that decision.

(2) A high hedge notice is a notice—
   (a) identifying the high hedge which is the subject of the notice and the neighbouring land,
   (b) identifying the domestic property in relation to which the authority has decided under section 6(5)(a) that an adverse effect exists,
   (c) stating the date on which the notice is to take effect,
   (d) stating the initial action that is to be taken by the owner of the neighbouring land and the compliance period for that action,
   (e) stating any preventative action that is to be taken by the owner of the neighbouring land,
   (f) informing the recipient that there is a right to appeal under section 12(2)(a),
   (g) informing the recipient that the authority is entitled to authorise a person to take action under section 22 where there is a failure to comply with the notice and that the authority may recover the expenses of that action, and
   (h) informing the recipient that it is an offence under section 24 intentionally to prevent or obstruct a person authorised to take action from acting in accordance with this Act.

(3) The date referred to in subsection (2)(c) must be at least 28 days after the date on which the notice is given.

(4) The authority must—
   (a) give the persons mentioned in subsection (5) a copy of the high hedge notice, and
   (b) notify those persons of the reasons for its decision.

(5) Those persons are—
   (a) the applicant, and
   (b) every owner and occupier of the neighbouring land.

9 Effect of high hedge notice

A high hedge notice is binding on every person who is for the time being an owner of the neighbouring land specified in the notice.

10 High hedge notice: withdrawal and variation

(1) After a relevant local authority issues a high hedge notice, it may—
   (a) withdraw the notice, or
   (b) vary the notice.

(2) Before withdrawing or varying a notice under subsection (1), the authority must have regard to all the circumstances of the case, including in particular—
(a) whether, after the proposed withdrawal or variation, the height of the high hedge would adversely affect the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and

(b) the matters mentioned in section 6(7).

5 (3) Where an authority withdraws a high hedge notice under subsection (1)(a), it must give the persons mentioned in subsection (4) notice of—

(a) the withdrawal,

(b) the reasons for the withdrawal, and

(c) the right to appeal under section 12(2)(b).

10 (4) Those persons are—

(a) every owner and occupier of the domestic property identified in the notice, and

(b) every owner and occupier of the neighbouring land.

5 (5) The withdrawal of a high hedge notice under subsection (1)(a) does not of itself prevent the issuing of a further high hedge notice in respect of the same hedge.

15 (6) Where an authority varies a high hedge notice under subsection (1)(b), it must—

(a) issue a revised high hedge notice stating the date on which the revised notice takes effect,

(b) give a copy of the high hedge notice to the persons mentioned in subsection (4),

(c) notify those persons of the reasons for its decision, and

(d) notify those persons of the right to appeal under section 12(2)(b).

20 (7) The date referred to in subsection (6)(a) must be at least 28 days after the date on which the revised notice is given.

(8) Subsections (1) to (7) apply in relation to a revised high hedge notice issued by the authority under subsection (6)(a) as they apply in relation to a high hedge notice.

25 11 Tree preservation orders

(1) Subsection (2) applies where a high hedge notice issued by a relevant local authority, relates to a high hedge which—

(a) includes a tree which is subject to a tree preservation order, or

(b) forms part of a group of trees or woodland which is subject to a tree preservation order.

30 (2) The tree preservation order has no effect in relation to the initial action or any preventative action specified in the high hedge notice.

Appeals

12 (1) The applicant may appeal to the Scottish Ministers against—

(a) a decision by a relevant local authority under section 6(5)(a) that there is no adverse effect,
(b) a decision by a relevant local authority under section 6(5)(b) that no action should be taken in relation to the high hedge.

(2) A person mentioned in subsection (3) may appeal to the Scottish Ministers against—
(a) the issuing by a relevant local authority of a high hedge notice, or
(b) the withdrawal or variation of a notice by a relevant local authority under section 10(1).

(3) Those persons are—
(a) every owner and occupier of the domestic property identified in the high hedge notice, and
(b) every owner and occupier of the neighbouring land.

(4) An appeal must be made before the end of the period of 28 days beginning with—
(a) in the case of an appeal under subsection (1), the date of the notification given by the authority under section 7,
(b) in the case of an appeal under subsection (2)(a), the date of the notification given by the authority under section 8(4),
(c) in the case of an appeal under subsection (2)(b), the date of the notification given by the authority under section 10(3) or (6).

13 Effect of appeal

(1) This section applies during the period beginning with the making of an appeal and ending with its final determination, withdrawal or abandonment.

(2) Where the appeal is made under section 12(2)(a), the high hedge notice has no effect.

(3) Where the appeal is made under section 12(2)(b)—
(a) the high hedge notice has no effect, and
(b) the withdrawal or variation has no effect.

14 Determination of appeal

(1) Where an appeal is made under section 12(1), the Scottish Ministers may—
(a) confirm the decision to which the appeal relates, or
(b) quash the decision of the authority under section 6(5)(a) or (b), with or without issuing a high hedge notice.

(2) Where an appeal is made under section 12(2), the Scottish Ministers may—
(a) confirm the high hedge notice or decision to which the appeal relates,
(b) quash the high hedge notice or decision, or
(c) vary the high hedge notice issued under section 8(1) or, as the case may be, 10(6)(a).

(3) A high hedge notice issued or varied under this section is to be treated as if issued or varied by the relevant local authority.
15 **Person appointed to determine appeal**

(1) An appeal may be determined by a person appointed by the Scottish Ministers for that purpose instead of by the Scottish Ministers.

(2) An appointed person has, in relation to the appeal, the same powers and duties as the Scottish Ministers have under this Act.

(3) Where an appeal is determined by a person appointed by the Scottish Ministers, the decision is to be treated as if it were a decision of the Scottish Ministers.

16 **Notice of determination**

(1) As soon as is reasonably practicable after determining an appeal the Scottish Ministers must—

(a) where they have made a determination in accordance with section 14(1)(b) and are to issue a high hedge notice—
   (i) issue the high hedge notice,
   (ii) give a copy of the high hedge notice to the persons mentioned in subsection (2), and
   (iii) notify those persons of the reasons for their decision,

(b) where they have made a determination in accordance with section 14(2)(c)—
   (i) issue a revised high hedge notice,
   (ii) give a copy of the revised notice to the persons mentioned in subsection (2), and
   (iii) notify those persons of the reasons for their decision,

(c) where they have made any other determination, notify the persons mentioned in subsection (2) of their decision and the reasons for their decision.

(2) Those persons are—

(a) the relevant local authority,

(b) every owner and occupier of the domestic property identified in the high hedge notice or, as the case may be, the revised high hedge notice, and

(c) every owner and occupier of the neighbouring land.

17 **Period for taking initial action following appeal**

(1) This section applies where an appeal under section 12(2) is—

(a) determined, or

(b) withdrawn or abandoned by the person making the appeal.

(2) The compliance period for the initial action specified in the high hedge notice or varied high hedge notice is to be taken as beginning on—

(a) the day on which the appeal is determined, or

(b) such later day as is specified in the revised notice issued under section 16(1)(b).
(3) Where the appeal is withdrawn or abandoned, the compliance period for the initial action specified in the high hedge notice is to be taken as beginning on the day on which the appeal is withdrawn or abandoned.

Powers of entry

18 Power to enter neighbouring land

(1) A person authorised by a relevant local authority may enter the neighbouring land for the purpose of—
   (a) obtaining information required by that authority to carry out the authority’s functions under section 6 or 10,
   (b) determining whether initial action or preventative action set out in a high hedge notice has been carried out.

(2) A person may enter the neighbouring land for the purpose of obtaining information required to determine an appeal under section 14 if—
   (a) the person is authorised to do so by the Scottish Ministers,
   (b) the person is appointed under section 15(1), or
   (c) the person is authorised to do so by a person appointed under section 15(1).

(3) A person authorised to enter land by virtue of this section may enter a building which is for the time being occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

19 Supplementary powers

(1) A person authorised to enter land by virtue of section 18 (referred to in this section as an “authorised person”) may—
   (a) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the authorised person to fulfil the purpose for which entry is taken,
   (b) take samples of any trees or shrubs that appear to the authorised person to form part of the high hedge,
   (c) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.

(2) A person mentioned in subsection (3) must give every owner and occupier of the land at least 14 days’ notice of the intended entry by the authorised person.

(3) Those persons are—
   (a) in the case of a person authorised by virtue of section 18(1), the relevant local authority,
   (b) in the case of a person authorised by virtue of section 18(2)(a), the Scottish Ministers,
   (c) in any other case, the person appointed under section 15(1).

(4) An authorised person must on request produce written evidence of the authorisation.
(5) On leaving neighbouring land which is unoccupied or from which all of the occupiers are temporarily absent, an authorised person must ensure that the land is as effectively secured against unauthorised entry as it was when the person entered it.

20 Warrant authorising entry

(1) The sheriff or a justice of the peace may by warrant authorise any person entitled to enter the neighbouring land under section 18 to enter the land and to use reasonable force in doing so.

(2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—

(a) that there are reasonable grounds for entering the land concerned,

(b) that—

(i) entry to the land has been refused,

(ii) such a refusal is reasonably expected, or

(iii) the land is unoccupied, and

(c) that the relevant local authority has or, as the case may be, the Scottish Ministers have complied with the notice requirements imposed by section 19(2).

(3) A warrant must not authorise—

(a) entry to a building which is for the time being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge,

(b) the use of force against an individual.

(4) A warrant expires—

(a) when it is no longer required for the purpose for which it is granted, or

(b) on the expiry of such period as may be specified in it.

21 Offence

(1) It is an offence intentionally to prevent or obstruct a person authorised to enter land under section 18 from doing anything which that person is authorised to do by virtue of this Act.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Local authority enforcement action

22 Power to take action

(1) A person authorised by a relevant local authority (referred to in this section as an “authorised person”) may—

(a) enter the neighbouring land,

(b) take any initial action or preventative action which—

(i) is required to be taken by a high hedge notice, and

(ii) has not been taken in accordance with the high hedge notice,
(c) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the authorised person to take the required action, and

(d) do anything else which is reasonably required for the purpose of taking the required action.

(2) The relevant local authority must give every owner and occupier of the neighbouring land at least 14 days’ notice of the intended entry by the authorised person.

(3) An authorised person may enter a building which is for the time being occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

(4) An authorised person must on request produce written evidence of the authorisation.

(5) On leaving neighbouring land which is unoccupied or from which all of the occupiers are temporarily absent, an authorised person must ensure that the land is as effectively secured against unauthorised entry as it was when the person entered it.

23 Warrant authorising entry by local authority

(1) The sheriff or a justice of the peace may by warrant authorise any person entitled to enter the neighbouring land under section 22 to enter the land and if necessary to use reasonable force in doing so.

(2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—

(a) that there are reasonable grounds for entering the land concerned,

(b) that—

(i) entry to the land has been refused,

(ii) such a refusal is reasonably expected, or

(iii) the land is unoccupied, and

(c) that the relevant local authority has complied with the notice requirements imposed by section 22(2).

(3) A warrant must not authorise—

(a) entry to a building which is for the time being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge,

(b) the use of force against an individual.

(4) A warrant expires—

(a) when it is no longer required for the purpose for which it is granted, or

(b) on the expiry of such period as may be specified in it.

24 Local authority action: offence

(1) It is an offence intentionally to prevent or obstruct a person authorised by a relevant local authority under section 22 from doing anything which that person is authorised to do by virtue of this Act.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
Expenses of enforcement action

25 Recovery of expenses from owner of land

(1) A relevant local authority may recover from any person who is an owner of the neighbouring land—

(a) any expenses reasonably incurred by the authority in taking action under section 22,
(b) any administrative expenses (including registration fees) reasonably incurred by it in connection with recovering those expenses, and
(c) interest, at such reasonable rate as it may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

(2) The date specified under subsection (1)(c) must be after the date on which a demand for payment is served by the authority.

(3) Each owner of the neighbouring land is jointly and severally liable for the expenses and interest mentioned in this section.

26 Notice of liability for expense of local authority action

(1) A relevant local authority may apply to register a notice (a “notice of liability for expenses”) specifying the matters mentioned in subsection (2).

(2) The matters are—

(a) the amount of the expenses payable in accordance with section 25(1)(a) and (b),
(b) whether interest is payable under section 25(1)(c),
(c) the action taken under section 22 to which those expenses relate,
(d) a description of the neighbouring land in respect of which an owner is liable under section 25,
(e) the effect of section 27 in relation to a new owner of that land, and
(f) the name and address of the local authority.

(3) For the purposes of subsection (2)(d) the description must—

(a) in the case of land registered in the Land Register of Scotland, include the title number of the land,
(b) in any other case, identify the land by reference to a deed recorded in the General Register of Sasines.

27 Recovery of expenses from new owner of land

(1) Subsection (2) applies where—

(a) a notice of liability for expenses is registered in relation to the land, and
(b) the notice was registered at least 14 days before the date on which a person (the “new owner”) acquires right to the neighbouring land.

(2) The new owner is severally liable with any former owner of the neighbouring land for any expenses and interest for which the former owner is liable under section 25(1).
Continuing liability of former owner

(1) An owner of the neighbouring land who is liable for expenses and interest under section 25 does not, by virtue only of ceasing to be such an owner, cease to be liable for the expenses and interest.

(2) Where a new owner pays any expenses and interest for which a former owner of the land is liable, the new owner may recover the amount so paid from the former owner.

(3) A person who is entitled to recover an amount under subsection (2) does not, by virtue only of ceasing to be the owner of the land, cease to be entitled to recover that amount.

Notice of discharge

(1) This section applies where liability for expenses and interest to which a registered notice of liability for expenses relates has been discharged.

(2) The relevant local authority must apply to register a notice (a “notice of discharge”) specifying the matters mentioned in subsection (3).

(3) The matters are—

(a) the date of registration or recording of the notice of liability for expenses to which the notice of discharge relates,

(b) the action taken under section 22 to which that notice of liability relates,

(c) a description of the neighbouring land in respect of which an owner was liable under section 25,

(d) that the liability for the expenses and interest has been discharged,

(e) the name and address of the local authority.

(4) For the purposes of subsection (3)(c) the description must—

(a) in the case of land registered in the Land Register of Scotland, include the title number of the land,

(b) in any other case, identify the land by reference to a deed recorded in the General Register of Sasines.

(5) On registration, the notice of discharge discharges the notice of liability for expenses to which it relates.

Receipt of notices by the Keeper

(1) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in a notice of a type mentioned in subsection (2) which is submitted for registration is accurate.

(2) The notices are—

(a) a notice of liability for expenses,

(b) a notice of discharge.

General

Guidance

(1) The Scottish Ministers may issue guidance about this Act.
(2) A local authority may issue guidance on—
   (a) the duty imposed by section 3(1),
   (b) any other provision of this Act.

(3) A local authority must have regard to any guidance issued under subsection (1) when—
   (a) issuing guidance under subsection (2),
   (b) carrying out its functions under this Act.

32 Service of documents

(1) If, having made reasonable inquiries, a person is unable to ascertain the name or address of a person to whom a notice relating to land is to be given under this Act, the notice may be given by—
   (a) addressing it to the person concerned by name or by a description of the person’s interest in the land, and
   (b) delivering it by—
      (i) leaving it in the hands of a person who is or appears to be resident on the land or employed on the land, or
      (ii) fixing it to a building or object on, or to a conspicuous part of, the land (or, where that is not practicable, to a building or object near that land).

(2) Where a document is delivered as mentioned in subsection (1)(b)(ii) it is to be taken to have been given on the day on which it is fixed on or near the building, object or land, unless the contrary is shown.

33 Interpretation

(1) In this Act, unless the context otherwise requires—
   “applicant” has the meaning given by section 2(1),
   “compliance period” has the meaning given by section 6(6)(a),
   “domestic property” means—
      (a) any part of a building in Scotland which is occupied or intended to be occupied as a separate dwelling, and
      (b) a yard, garden, garage or outhouse in Scotland which belongs to such a building or is usually enjoyed with it,
   “high hedge” has the meaning given by section 1,
   “high hedge notice” has the meaning given by section 8(2),
   “initial action” has the meaning given by section 6(5)(b),
   “neighbouring land”, in relation to a high hedge, means the land on which the high hedge is situated,
   “new owner” has the meaning given by section 27(1),
   “notice of discharge” has the meaning given by section 29,
   “notice of liability for expenses” has the meaning given by section 26,
“office-holder in the Scottish Administration” is to be construed in accordance with section 126(7) of the Scotland Act 1998 (c.46),

“owner” in relation to any property, means a person who has right to the property whether or not that person has completed title; but if, in relation to the property (or, if the property is held pro indiviso, in relation to any pro indiviso share in it) more than one person comes within that description of owner, then “owner” means such person as most recently acquired such right,

“preventative action” has the meaning given by section 6(6)(b),

“register”, in relation to a notice of liability for expenses and a notice of discharge, means register the information contained in the notice in question in the Land Register of Scotland or, as the case may be, record the notice in question in the General Register of Sasines; and “registered” and other related expressions are to be construed accordingly,

“relevant local authority” means the local authority in whose area the high hedge is situated,

“tree preservation order” has the meaning given by section 160(1) of the Town and Country Planning (Scotland) Act 1997 (c.8),

“vary”, in relation to a high hedge notice, means—

(a) remove initial action or preventative action from the notice,

(b) amend initial action, the compliance period or preventative action in the notice,

(c) add further initial action (with a compliance period) or preventative action to the notice,

(d) correct a defect, error or misdescription in the notice.

(2) References in this Act to a high hedge include references to part of a high hedge.

(3) References in this Act to enjoyment of domestic property include references to enjoyment of part of the property.

(4) Where domestic property is for the time being unoccupied, references in this Act to the reasonable enjoyment of that property are to be read as if they were references to the reasonable enjoyment of an occupant of the property if the property were occupied.

34 Power to modify meaning of “high hedge”

(1) The Scottish Ministers may by regulations modify the meaning of “high hedge” for the time being in section 1.

(2) Regulations under this section may—

(a) make different provision for different cases,

(b) include such supplementary, incidental, consequential, transitory or transitional provision or savings as the Scottish Ministers consider appropriate,

(c) modify any enactment (including any other provision of this Act).

(3) Regulations under this section are subject to the affirmative procedure.
Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional or transitory provision or savings as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under this section may modify this or any other enactment.

(3) An order under this section containing provision which adds to, replaces or omits any part of the text of an Act, is subject to the affirmative procedure.

(4) Otherwise an order under this section is subject to the negative procedure.

Crown application

(1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(2) Despite subsection (1), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(3) The powers conferred by sections 18, 19 and 22 are exercisable in relation to Crown land only with the consent of the appropriate authority.

(4) For the purposes of subsection (3), land is “Crown land” if an interest in the land—
   (a) belongs to Her Majesty in right of the Crown or in right of Her private estates,
   (b) belongs to an office-holder in the Scottish Administration or to a Government department,
   (c) is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department.

(5) In subsection (3) “appropriate authority” means—
   (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners,
   (b) in the case of any other land belonging to Her Majesty in right of the Crown, the office-holder in the Scottish Administration or, as the case may be, Government department having the management of the land,
   (c) in the case of land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
   (d) in the case of land belonging to an office-holder in the Scottish Administration or to a Government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department, the office-holder or Government department.

(6) Any reference in this section to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(7) If a dispute arises in relation to the meaning of “appropriate authority” in the case of any land—
   (a) it is for the Scottish Ministers to determine the appropriate authority, and
   (b) the Scottish Ministers’ decision is final.
(8) In this section “Government department” means a department of the United Kingdom Government.

37 Commencement
(1) This section and sections 33, 35 and 38 come into force on the day after Royal Assent.
(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
(3) An order under subsection (2) may contain transitory or transitional provision or savings.

38 Short title
The short title of this Act is the High Hedges (Scotland) Act 2013.
High Hedges (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about hedges which interfere with the reasonable enjoyment of residential properties.

Introduced by: Mark McDonald
On: 2 October 2012
Bill type: Member's Bill
These documents relate to the High Hedges (Scotland) Bill (SP Bill 16) as introduced in the Scottish Parliament on 2 October 2012

HIGH HEDGES (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the High Hedges (Scotland) Bill introduced in the Scottish Parliament on 2 October 2012:
   - Explanatory Notes;
   - a Financial Memorandum;
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 16–PM.
EXPLANATORY NOTES

INTRODUCTION

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or part of a section, does not seem to require any explanation or comment, none is given.

3. These Explanatory Notes have been prepared by Mark McDonald MSP, with the assistance of the Scottish Government, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

SUMMARY OF THE BILL

4. The Bill provides for applications to be made to a relevant local authority where a high hedge on neighbouring land is considered to be having an adverse effect on the reasonable enjoyment of domestic property. The Bill gives the local authority powers to settle disputes between neighbours related to high hedges. If the local authority, having taken all views into account, finds that the hedge is having an adverse effect, it could issue a high hedge notice requiring the hedge owner to take action to remedy the problem and prevent it recurring. Failure to comply with such a notice would allow the authority to go in and do the work itself, recovering the costs from the hedge owner. There is a right of appeal to the Scottish Ministers against decisions of an authority and any high hedge notice issued by it.

COMMENTARY ON SECTIONS

Meaning of “high hedge”

Section 1 – Meaning of “high hedge”

5. This section defines a “high hedge” as being one which is being formed wholly or mainly by a row of two or more evergreen or semi-evergreen trees or shrubs which exceed two metres in height and which forms a barrier to light. Semi-evergreens are trees or shrubs which generally have some live foliage during the winter, depending on weather conditions.

6. Subsection (2), however, makes it clear that the density of the hedge is relevant. It provides that a hedge is not to be regarded as forming a barrier to light when the row of trees or shrubs contains gaps, which significantly reduce its overall effect as a barrier to light at heights of over two metres.

7. Subsection (3) makes it clear that the roots of the hedge are not relevant.

High hedge notices

Section 2 – Application for high hedge notice

8. This provision allows an owner or occupier of a domestic property to apply to the relevant local authority for a high hedge notice, if that person feels that the occupier’s reasonable enjoyment of the property has been adversely affected by the height of the hedge on land
occupied by another person. This land does not necessarily need to share a boundary with the domestic property affected by the hedge, nor does it exclusively refer to other domestic properties.

Section 3 – Pre-application requirements

9. This section places a responsibility on a potential applicant to take all reasonable steps to resolve the high hedge dispute before making an application for a high hedge notice. It also provides that in doing so, applicants must have regard to any guidance published by the relevant local authority on this issue. Guidance issued by the relevant local authority may, for example, require applicants to have attempted to resolve matters through mediation before making an application.

Section 4 – Fee for application

10. This section gives the local authority the power to charge a fee for applications. It provides that applications must be accompanied by any fee set by the relevant local authority. The fee must not exceed an amount which the local authority considers represents the reasonable costs of deciding an application. This would include administration costs.

11. Subsection (2) allows different fees to be charged for different types of applications. This ensures that the local authority has the scope to alter any charging regime according to factors it considers appropriate other than simply amending the price of all applications. The local authority is given the power in subsection (4) to refund fees as it may determine.

Section 5 – Dismissal of application

12. This section provides that the local authority must dismiss an application if it considers the applicant has not taken all reasonable steps to resolve the high hedge dispute without involving the authority, or if it considers that the application is frivolous or vexatious. Whether an application is frivolous or vexatious will turn on the particular circumstances, but may include the situation where someone has repeatedly applied (unsuccessfully) to the local authority without there being any change in circumstances which would affect the local authority’s decision.

13. If the local authority dismisses an application it must, under subsection (2), inform the applicant as soon as is reasonably practicable, giving reasons for its decision.

Section 6 – Consideration of application

14. This section applies where the local authority does not dismiss an application under section 5 and proceeds to consider the application. It must give a copy of the application to every owner and occupier of the neighbouring land. A notice must also be given informing such owners and occupiers of the matters set out in subsection (3).

15. Subsection (3) lists the matters that must be included in the notice provided in subsection (2)(b). These include informing such owners and occupiers of their right to make representations
These documents relate to the High Hedges (Scotland) Bill (SP Bill 16) as introduced in the Scottish Parliament on 2 October 2012

within a period of 28 days and letting them know that a copy of such representations will be given to the applicant.

16. Subsection (4) requires the local authority to take any representations made into account when making a decision in relation to the high hedge.

17. Subsection (5) requires that, after the period of 28 days, the local authority must take a decision on the application. It must decide in the first place whether the height of the high hedge is adversely affecting the enjoyment of the property that an occupant of the property could reasonably expect to have. The test, therefore, is an objective occupier’s enjoyment and not the enjoyment that the particular applicant has, or expects, if they were to live in the property. If the local authority concludes that there is an adverse effect, it must then decide what, if any, action should be required to be taken, and by when, in relation to the hedge in order to remedy the adverse effect or to prevent it recurring. This is referred to as “initial action”.

18. If a local authority decides that initial action should be taken, subsection (6) requires it to decide a reasonable period of time for this action to be taken, the “compliance period”. It must also decide whether or not any preventative action should be taken following the end of the compliance period so as to prevent the recurrence of the adverse effect. An example of “preventative action” would be annual maintenance of the hedge.

19. Subsection (7) makes it clear that in considering whether any action is required, the local authority must have regard to all the circumstances of the case, including in particular, the effect of the high hedge on the amenity of the area and whether the high hedge is of cultural or historical significance. This is to ensure protection for ancient trees and hedgerows, as well as any hedges that may have an effect on the amenity of the area.

Section 7 – Notice of decision where no action to be taken

20. This section requires that, as soon as reasonably practicable after deciding there is no adverse effect, or that no action should be taken in relation to the high hedge, the local authority must notify the applicant and every owner and occupier of the land on which the high hedge is situated of its decision, giving reasons and notifying the recipients of the right to appeal.

Section 8 – High hedge notice

21. This section provides that where the local authority decides that initial action should be taken it must issue a high hedge notice. The high hedge notice should be issued as soon as reasonably practicable after the decision.

22. Subsection (2) lists what a high hedge notice must state. This includes identification of the hedge and the date on which the notice is to take effect. This must be at least 28 days after the date on which the notice is issued, so as to allow time for an appeal under section 12 to be made.

23. The notice must also specify the initial action and the compliance period for that action and any preventative action following that period required to be carried out.
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24. The notice must also outline the right of appeal and the consequences of failure to comply with the notice. These are that the local authority has power to go in and take action itself, recovering the expenses of that action from the hedge owner.

25. Subsections (4) and (5) require the local authority to send a copy of the high hedge notice to the applicant and every owner and occupier of the neighbouring land, giving reasons for its decision.

Section 9 – Effect of high hedge notice

26. This section provides that a high hedge notice is binding on every person who is for the time being an owner of the neighbouring land specified in the notice. This provision makes it clear that a notice is binding not only on whoever is the owner at the time it is issued but also on subsequent owners.

Section 10 – High hedge notice: withdrawal and variation

27. This section provides that a local authority can, having regard to all the circumstances of the case, withdraw or vary a high hedge notice. “Vary” is defined in section 33(1). Before making any withdrawal or variation, regard must be had in particular to (a) whether, after the withdrawal or variation, the height of the high hedge would adversely affect the enjoyment of the domestic property that an occupant could reasonably expect to have and (b) all of the circumstances of the case, including the effect of the high hedge on the amenity of the area and whether it is of cultural or historical significance.

28. Under subsections (3) and (4), where a local authority withdraws a high hedge notice it must notify each owner and occupier of the domestic property identified in the notice and each owner and occupier of the neighbouring land of its action giving reasons for the decision and notifying the recipient of the right to appeal.

29. Subsection (5) allows the local authority to issue another high hedge notice if it has withdrawn a previous high hedge notice. A later application may be made in respect of the same hedge.

30. Subsections (6) to (8) relate to the issuing of a revised high hedge notice. Where a local authority varies a notice, it must issue a revised notice containing the date on which it is to take effect. This must be at least 28 days after the date on which the revised notice is given, so as to allow time for an appeal under section 12 to be made. The same notification requirements apply as in respect of a withdrawal of a notice. A revised notice can be withdrawn or further varied.

Section 11 – Tree preservation orders

31. This section applies where a high hedge notice relates to a high hedge which includes a tree or forms part of a group of trees subject to a tree preservation order. Section 33(1) provides that a tree preservation order has the meaning given by section 160(1) of the Town and Country Planning Act 1997. Such an order can be made by a planning authority providing for the
preservation of trees or groups of trees or woodlands where it is expedient in the interests of amenity or that the trees, groups of trees or woodlands are of cultural or historical significance.

32. Subsection (2) provides that a tree preservation order has no effect in relation to any initial or preventative action done to any tree or group of trees specified in a high hedge notice. However, under section 6(7) the local authority must have regard (amongst other things) to the effect of the high hedge on the amenity of the area and whether the high hedge is of cultural significance in determining an application for a high hedge notice.

Appeals

Section 12 – Appeals

33. This section provides rights of appeal to Scottish Ministers against decisions made by local authorities.

34. Under subsection (1), applicants may appeal against decisions made by the local authority that there is no adverse effect or that no action should be taken on the hedge.

35. Under subsections (2) and (3), owners and occupiers of the domestic property and owners and occupiers of the neighbouring land may appeal against the issue of a high hedge notice or a withdrawal or variation of a high hedge notice.

36. Subsection (4) provides that any appeal must be made before the end of the period of 28 days, beginning with the date of the notification by the local authority of the decision or the high hedge notice or the withdrawal of the notice or the revised high hedge notice as the case may be.

Section 13 – Effect of appeal

37. This section provides that, where an appeal has been made against a high hedge notice, the notice has no effect until the appeal is either determined, withdrawn or abandoned. The section also provides that where an appeal has been made against the withdrawal or variation of a notice, the withdrawal or variation has no effect until the appeal is either determined, withdrawn or abandoned.

Section 14 – Determination of appeal

38. This section sets out how Scottish Ministers may determine an appeal. It allows Scottish Ministers to confirm the decision or high hedge notice, quash the decision or high hedge notice, vary a notice or issue a high hedge notice, depending on circumstances.

Section 15 – Person appointed to determine appeal

39. As with appeals under the Town and Country Planning (Scotland) Act 1997, this section enables Scottish Ministers to appoint a person to hear and determine an appeal. Under subsection (2), the appointed person will have, in relation to the appeal, the same powers and duties
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provided for Scottish Ministers under the Bill. Under subsection (3), the decision of the appointed person is to be treated as that of the Scottish Ministers.

Section 16 – Notice of determination

40. This section sets out the notification requirements once an appeal has been determined.

Section 17 – Period for taking initial action following appeal

41. This section sets out the relevant time period in which the initial action must be taken (“the compliance period”), following appeals.

Powers of entry

Section 18 – Power to enter neighbouring land

42. Subsection (1) gives local authorities the power to enter neighbouring land for the purpose of obtaining information required to consider an application for a high hedge notice, or required to consider the withdrawal or variation of a notice or for determining whether a high hedge notice has been complied with.

43. The Scottish Ministers and any person appointed to determine an appeal under section 15 have a similar power under subsection (2) for the purpose of obtaining information required in relation to an appeal.

44. The power to enter land includes a power to enter buildings (including houses) by virtue of the definition of “land” in the Interpretation and Legislative Reform (Scotland) Act 2010, which includes buildings and other structures. This power may be used for entry where the building is occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

Section 19 – Supplementary powers

45. This section sets out what additional persons, materials and equipment can be taken onto the land in question and allows certain samples of trees or shrubs to be taken. It requires 14 days’ notice of intended entry to be given and requires unoccupied land to be left secured against unauthorised entry. Notice must be given, by either the local authority, the Scottish Ministers or the person appointed to determine an appeal under section 15, depending on who authorised the person to enter the land under section 18.

Section 20 – Warrant authorising entry

46. This section enables a sheriff or justice of the peace to grant a warrant to any person entitled to exercise a power of entry under section 18 to do so. A warrant allows the person authorised to use reasonable force but does not allow the use of force against individuals (see subsections (1) and (3)).
47. Subsection (2) describes the circumstances in which a warrant may be granted. These are (a) that there are reasonable grounds for exercising the right of entry, (b) that entry to the land has been refused or a refusal is reasonably expected or the land is unoccupied, and (c) that the local authority has complied with the 14 day notice requirements imposed under section 19(2). The warrant must not authorise entry to a building being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge.

Section 21 – Offence

48. Subsection (1) makes it an offence for a person to intentionally obstruct or prevent an authorised person from doing anything which that person is authorised to do by virtue of the Bill. The offence is punishable on summary conviction up to a maximum fine of level 3 (currently £1000) on the standard scale.

Local authority enforcement action

Section 22 – Power to take action

49. This section gives the local authority the power to enter neighbouring land and take the action specified in the high hedge notice, where the owner or occupier of the land fails to comply with the notice. The costs of this work can be recovered from the owner under section 25.

50. The section also sets out what additional persons, materials and equipment can be taken onto the land in question. When exercising these powers the local authority must give 14 days’ notice of its intended entry on to the land and must leave unoccupied land secured against unauthorised entry. This power may be used for entry where the building is occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

Section 23 – Warrant authorising entry by local authority

51. This section contains similar provisions to those found in section 20, but relates to the right of the local authority to enter land to take action. The warrant must not authorise entry to a building being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge.

Section 24 – Local authority action: offence

52. This section creates a similar obstruction offence (punishable in the same way) to that created in section 21 except it relates to the power to enter neighbouring property for the purpose of the local authority taking initial or preventative action required under a high hedge notice.

Expenses of enforcement

Section 25 – Recovery of expenses from owner of land

53. Subsection (1) enables the local authority to recover expenses incurred in taking the action required under a high hedge notice from the owner of the neighbouring land. The expenses can also be recovered from subsequent owners. Associated reasonable administrative expenses may also be recovered. Interest is also recoverable.
54. Subsection (2) provides that each owner of the neighbouring land is jointly and severally liable for the expenses. Each owner is equally liable for the full amount with a right of relief against the other owners.

Section 26 – Notice of liability for expense of local authority action

55. This section enables a notice of liability for expenses to be registered in the appropriate property register against neighbouring land. Subsection (2) sets out the information the notice must contain.

Section 27 – Recovery of expenses from new owner of land

56. This section deals with the liability of an incoming or “new” owner of the neighbouring land. It provides that a new owner, as well as the former owner, is liable for any expenses and interest for which the former owner is liable, under the terms of section 25. However, this is only the case where subsection (2) applies.

57. Subsection (2) provides that a new owner is liable only if a notice of liability for expenses is registered in the property registers (on or before a date 14 days prior to the new owner becoming the owner). If no such notice is registered then the new owner is not liable.

Section 28 – Continuing liability of former owner

58. This section provides that an owner of the neighbouring land does not cease to be liable if they are no longer the owner of that land. If the new owner has paid the expenses and interest to the local authority, the new owner may recover that amount paid from the former owner, if the former owner is liable. This remains the case even if another person takes ownership of the land.

Section 29 – Notice of discharge

59. This section applies where the expenses and interest to which a registered notice of liability for expenses relates has been discharged. It states that the relevant local authority must register a notice (“a notice of discharge”) in the appropriate property register. Subsection (3) sets out the information the notice must contain.

60. Subsection (5) provides that the notice of liability for expenses is discharged as soon as the notice of discharge has been registered.

Section 30 – Receipt of notices by the Keeper

61. This section makes it clear that the Keeper of the Registers of Scotland is not required to investigate or determine whether or not the information contained in either a notice of liability for expenses or a notice of discharge is accurate.
These documents relate to the High Hedges (Scotland) Bill (SP Bill 16) as introduced in the Scottish Parliament on 2 October 2012

General

Section 31 – Guidance

62. This section places a duty on local authorities to have regard to any guidance issued by the Scottish Ministers when carrying out their functions under the Act and when issuing guidance on the duty imposed under section 3 (relating to pre-application requirements) and any other provision of the Act.

Section 32 – Service of documents

63. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 regarding service of documents will apply to notices sent under the Bill. The application of the 2010 Act enables those documents to be served either by person, by registered post, recorded delivery or by being sent by way of electronic communication (where agreed in writing with the recipient).

64. Section 32 supplements that with additional ways in which notices may be served when the name and address of the recipient is unknown.

Section 33 - Interpretation

65. Section 33 defines terms that are used frequently in the Bill. In particular, “domestic property” means any part of a building occupied or intended to be occupied as a separate dwelling, including a yard, garage or outbuilding belonging to or usually enjoyed with the building, and located in Scotland.

66. “Owner” means a person who has right to the property whether or not that person has completed title. This is someone who is entitled to take entry under a conveyance of the property. It will not be necessary for the person to have completed title by registering it in the property registers before a person is considered an owner. If more than one person comes within the description of an owner then the “owner” is the person who has most recently acquired that right to take entry under a conveyance.

67. “Neighbouring land” means the land on which the hedge is situated. There is no restriction on where the hedge is situated. The hedge does not have to be next door to the domestic property affected by the hedge. In addition, the hedge could be growing on commercial property or on parkland.

Section 34 – Power to modify meaning of “high hedge”

68. This section provides Scottish Ministers with the power to modify the definition of a “high hedge”, as defined by section 1, by regulations. Subsections (2) and (3) specify that those regulations may also make other appropriate changes to this and other Acts and that they are subject to affirmative procedure.
Section 35 – Ancillary provision

69. This section provides Scottish Ministers with the power to make, by order, such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate. It provides that an order under this Bill may modify this, or any other, enactment.

70. Subsections (3) and (4) make it clear that an order made under subsection (1), which adds to, replaces or omits any part of the text of this Bill or another Act is subject to the affirmative procedure. Any other order is subject to the negative procedure.

Section 36 – Crown application

71. Under section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Bill applies to the Crown in Scotland. However, subsection (1) absolves the Crown of any criminal liability, should it be in contravention of the provisions of this Bill.

72. Subsection (3) provides that the powers in sections 18 (power to enter neighbouring land), 19 (supplementary powers) and 22 (power to take action) are exercisable in relation to Crown land, but only if the appropriate authority gives its consent.

Section 37 – Commencement

73. Section 37(1) provides for certain provisions of the Bill to come into force on the day after Royal Assent. Subsection (2) gives power to the Scottish Ministers to appoint a day for the coming into force of the other provisions of the Bill. Subsection (3) provides that a commencement order may include transitory, transitional or saving provision.

FINANCIAL MEMORANDUM

INTRODUCTION

74. This document relates to the High Hedges (Scotland) Bill introduced in the Scottish Parliament on 2 October 2012. It has been prepared to satisfy Rule 9.3 of the Parliament’s Standing Orders. The Financial Memorandum should be read in conjunction with the Bill. It has been prepared by Mark McDonald MSP, with the assistance of the Scottish Government, in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

75. The purpose of the Financial Memorandum is to set out, as far as possible, the responsibility for costs associated with the Bill’s provisions, which give local authorities new powers to deal with disputes relating to high hedges through the provision of an application, decision and enforcement process, with provision for an appeal to be made to Scottish Ministers.
These documents relate to the High Hedges (Scotland) Bill (SP Bill 16) as introduced in the Scottish Parliament on 2 October 2012

76. The Bill acknowledges that the individuals involved in a dispute should have the primary responsibility for resolving disputes over high hedges and requires that they should have taken all reasonable steps to resolve the matter before applying for a high hedge notice. That approach is reflected in the responsibility for costs of local authorities exercising their new powers, which will fall primarily upon the individuals involved in the dispute. There will be minor costs to the Scottish Government arising from appeals and the issuing of guidance.

Overview of the Bill

77. The intent of the Bill’s provisions is to put in place an effective mechanism for the resolution of disputes relating to high hedges. It provides local authorities with new powers to address these problems and enables them to recover the costs of doing so, ensuring that the cost to the public purse of resolving these private disputes is minimised, with the costs falling principally on those involved in such disputes.

Details of the Bill

78. The objective of this Bill is to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property. It aims to provide an effective means of resolving disputes over the effects of a high hedge where the issue has not been able to be resolved amicably between neighbours. It does so by giving home owners and occupiers a right to apply to a local authority for a high hedge notice, where they believe that a high hedge is adversely affecting the reasonable enjoyment of their property, and empowers local authorities to make and enforce decisions in relation to high hedges. A fee will be payable by the applicant towards the cost to the authority of making the decision. The proposals will provide a remedy to such problems which in some cases have affected people’s lives for a number of years.

79. A high hedge notice, if issued, will require action to be taken by the hedge owner, at their own expense. Where a high hedge notice is not complied with within the specified time, a local authority can do the work and recover costs from the hedge owner. The Bill provides for appeals to Scottish Ministers against a decision to award, or not to award, a high hedge notice.

80. Full details of the Bill’s provisions are set out in the accompanying Policy Memorandum.

COSTS ON LOCAL AUTHORITIES

81. The Bill provides new powers for local authorities to resolve disputes relating to high hedges. The Bill enables local authorities to recover the costs of exercising those powers from those individuals, so the costs will ultimately fall on those involved in the dispute; both the applicant and the hedge owner.

82. The provisions of the Bill are intended to be largely cost-neutral with respect to local authorities. It provides that local authorities may set a fee to be paid by those applying for a high hedge notice and explicitly enables local authorities to set that fee with regard to the cost of reaching a decision on the issue of a high hedge notice. It also provides that local authorities may
These documents relate to the High Hedges (Scotland) Bill (SP Bill 16) as introduced in the Scottish Parliament on 2 October 2012

recover the costs of any enforcement action from a hedge owner, where the hedge owner has failed to comply with a high hedge notice within the specified time.

83. COSLA has been consulted on the new local authority powers proposed by the Bill and the provisions made by the Bill for local authorities to recover the costs involved in exercising those powers. COSLA has advised that the Bill is broadly welcomed and councils do not anticipate a financial burden arising from the powers currently specified in the Bill. It has also indicated that it will monitor the Bill’s progress in case any of the provisions are amended in a way that might place an additional burden on local authorities.

84. Discussion has been had with the Scottish Tree Officers Group (STOG) which represents local authority tree officers to discuss the proposed new powers. This has made clear that some local authority staff are already engaged on high hedge issues with members of the public. There is currently a non-recoverable cost attached to this. The expectation is that the introduction of new powers will assist local authority handling and resolution of such cases and that it will be largely cost-neutral for local authorities. Savings may actually accrue as a result of the introduction of a statutory procedure and the additional powers provided to local authorities to enforce action, which is anticipated will avoid protracted correspondence with no solution, as can be the case at present.

85. Most local authorities in Scotland already employ staff dealing with tree issues as they have parks and gardens to maintain, and have the responsibility for the protection of certain trees. In light of experience of the level of applications to local authorities across England and Wales under largely similar legislation, there is no expectation that additional administrative or technical staff will require to be recruited to implement the Bill’s provisions.

86. It will ultimately be a matter for local authorities how much – if anything – they decide to spend on guidance accompanying the Act. However, it is anticipated that local authorities will initially do what has been done extensively in England and Wales where they have simply provided links from their own websites to the guidance produced by central government. This guidance covers all aspects of the Act and offers guidance to hedge owners, their neighbours, and decision makers within local authorities alike. It is likely that any guidance will largely mirror the guidance produced in England and Wales on both scope and content. However, over time, local authorities may wish to adapt their guidance in light of experience.

87. An applicant for a high hedge notice will be required to pay a fee at the time of making a formal application. The Bill provides that each local authority may set an appropriate fee, based upon its anticipated costs of handling such applications up to and including the point where a decision regarding the application for a high hedge notice is made. Local authorities will be able to fix different levels of fees for different applications or types of applications. Details of the expected range of such fees are set out later in this Memorandum. The Bill intends that the fees imposed by a local authority will be commensurate with the costs of the work it is expected to undertake to make a decision and issue a high hedge notice. As a result, it is anticipated that local authorities’ ability to levy such fees will avoid any increase in funding required by local authorities from Government to undertake such work.
88. The power to charge a fee for this purpose is not regarded as a new means of raising revenue. The Bill limits the level of fee that can be charged by specifying that it cannot exceed an amount which the local authority considers represents the reasonable costs to an authority in deciding an application for a high hedge notice. It is intended that the fee will be set to reflect what the local authority considers to be a reasonable amount required for it to make a decision in a case, rather than reflect the actual cost of the specific decision in question as the actual cost would only be known after the decision was made. The Bill’s approach to setting fees is intended to enable local authorities to recover their costs, while effectively limiting the upper level of the fee in a way which retains the flexibility necessary for local authorities to respond to local circumstances, which might be lost by setting a cap on the fee level.

89. The requirement to pay a fixed fee at the time an application is made by an individual should act to discourage vexatious or frivolous applications. That will be reinforced by the Bill’s requirement that applicants must have taken all reasonable measures to resolve the issue before making an application. Indeed, the experience of the operation of similar legislation in England and Wales indicates that the creation of a formal mechanism for resolving high hedge disputes will itself encourage the resolution of most cases without the need for local authority involvement. The low level of formal complaints, set against the number of enquiries, appears to show it encourages disputes to be resolved.

90. Experience in England and Wales also indicates that enforcement action will rarely need to be taken. The Bill intends that the costs of undertaking the work specified in a high hedge notice should fall on the owner of the high hedge. Should the hedge owner fail to do this work within the specified time, a local authority will be able to enter the property and undertake the work itself. The Bill provides that the costs of doing so, including administration costs and interest, can be recovered from the owner of the hedge. It is anticipated that local authorities will apply their usual debt management procedures to the recovery of enforcement costs relating to high hedge notices although, as noted above, that is likely to be necessary only in exceptional cases. The ability to charge interest should also act as an additional incentive for prompt payment.

91. Consultation with COSLA has indicated that local authorities would welcome a formal power to facilitate the recovery of such debts. The Bill therefore provides that a local authority may register a ‘notice of liability for expenses’ in the Land Register of Scotland or the Register of Sasines, as appropriate, against the land on which the hedge is situated. The effect of registering a ‘notice of liability for expenses’ will be that any new owner of the land will also become liable for expenses specified in the notice. In practice, that is likely to result either in the debt being settled by the seller prior to completion of the agreement or a suitable adjustment being made to the purchase price to ensure that the purchaser may do so. Where such informal arrangements do not result in the settlement of the debt, it will remain open to a local authority to pursue the seller or the buyer since they are severally liable, and a hedge owner remains liable for enforcement expenses even after they have sold the land. The Bill also provides that a new owner who pays enforcement expenses incurred by the previous owner can recover that amount from the previous owner. A new owner maintains the right to recover those costs even if they themselves sell or otherwise dispose of the land.
Results of enquiries made to local authorities in England

92. Figures provided by the National Association of Tree Officers (NATO) across England and Wales in respect of the English and Welsh legislation on high hedges indicates that local authorities in England and Wales received on average 204 enquiries between 2005 and 2011, resulting in an average of about 10 formal applications per authority in that period, and an average of 6.5 high hedge notices being issued over this same time, per local authority.

93. We would expect similar or lower levels of formal applications in Scotland, based on the relative levels of responses to consultations on high hedges legislation either side of the border (full details of those consultations are set out in the Policy Memorandum).

94. Following this general picture provided by NATO, a number of local authorities across England were engaged directly, and two were visited for more detailed discussions on their experience. From the returns and information obtained from those authorities, the following table gives an indication of the level of enquiries individual local authorities in England received after the English legislation was enacted, and the subsequent level of activity that this generated for those local authorities. The formal applications are those where the individual has made an application and included a fee in order for the authority to assess the case. Enforcement action is where local authorities have had to undertake action where the owner of the hedge has not done so within a certain time after being issued with a high hedge notice.

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>Enquiries</th>
<th>Formal Applications (2005-11)</th>
<th>Enforcement Action (where Council has had to cut back hedge, not just issue high hedge notices)</th>
<th>Fees (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Forest (nr Southampton)</td>
<td>Not Known</td>
<td>14</td>
<td>Not given</td>
<td>507</td>
</tr>
<tr>
<td>Royal Borough of Windsor and Maidenhead</td>
<td>300+</td>
<td>20</td>
<td>0 – Council does not take remedial action but prosecutes via courts and has not done so</td>
<td>600</td>
</tr>
<tr>
<td>Croydon (London)</td>
<td>100</td>
<td>22</td>
<td>None stated beyond high hedge notices</td>
<td>300</td>
</tr>
<tr>
<td>Hillingdon (London)</td>
<td>250+</td>
<td>13</td>
<td>None stated beyond high hedge notices</td>
<td>500</td>
</tr>
<tr>
<td>Ashford (Kent)</td>
<td>Not Known</td>
<td>11</td>
<td>0</td>
<td>400</td>
</tr>
<tr>
<td>South Tyneside</td>
<td>100+</td>
<td>28</td>
<td>1</td>
<td>350</td>
</tr>
<tr>
<td>Hartlepool</td>
<td>170</td>
<td>7</td>
<td>0</td>
<td>150</td>
</tr>
<tr>
<td>Sandwell (West Midlands)</td>
<td>300+</td>
<td>10</td>
<td>0</td>
<td>No fee for applications</td>
</tr>
<tr>
<td>Medway (Kent)</td>
<td>Not Known</td>
<td>Not Known</td>
<td>0</td>
<td>420</td>
</tr>
<tr>
<td>North Somerset</td>
<td>Not Known</td>
<td>22</td>
<td>0</td>
<td>420</td>
</tr>
<tr>
<td>Dover</td>
<td>Not Known</td>
<td>14</td>
<td>0</td>
<td>350</td>
</tr>
</tbody>
</table>
95. The table demonstrates that experience of the operation of the high hedge legislation for England and Wales has been that a potentially large number of disputes (as indicated by the number of enquiries) has generated a relatively low level of formal applications, and that there is a need for enforcement action only in exceptional cases. While there can be no evidence at this stage, there is no reason to believe that experience in Scotland will be very different. It should be noted however that no definitive information is held by the Scottish Government on the number of high hedges disputes in Scotland, other than the level of correspondence on the issue (in 2010-11 the Scottish Government received 79 letters or emails from individuals about high hedges and 118 in 2011-12; but correspondence is not held in a searchable form which can provide any authoritative data). Neither are we aware of local authorities holding such information. The consequence of this position, at both a local and national level, provides a margin of uncertainty on the final costs associated with this Bill.

96. Scottish Government staff time is already committed to addressing the issue of high hedges. The issue of high hedges attracts a significant amount of correspondence and with the increases in correspondence appearing to occur when there has been a significant development. This requires a considerable amount of staff time. Thus far, the role of Scottish Government staff has been confined to encouraging correspondents that disputes between neighbours be resolved through discussion and/or mediation given the absence of existing powers on this issue. While we might expect a “spike” in correspondence as the Bill progresses, we would expect correspondence on high hedges to fall over the longer term as the focus of individuals and groups moves away from lobbying Government and requiring it to take action; to individuals resolving their own problems.

Projected costs associated with making a decision

97. Following discussion with one of Scotland’s tree officers, a cost of £50 per hour for a tree officers time as a starting point has been assumed. This results in the following range of timings, costs and resultant fee levels.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Estimated Time</th>
<th>Projected Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Visit</td>
<td>1 - 2 hours</td>
<td>£50 - £100</td>
</tr>
<tr>
<td>Travel Time</td>
<td>0.5 – 1 hour</td>
<td>£25 - £50</td>
</tr>
<tr>
<td>Land Check</td>
<td>0.5 – 2 hours</td>
<td>£25 - £100</td>
</tr>
<tr>
<td>Report from Visit</td>
<td>2 hours</td>
<td>£100</td>
</tr>
<tr>
<td>Follow Up Visit</td>
<td>1 hour</td>
<td>£50</td>
</tr>
<tr>
<td>Travel Time (2\textsuperscript{nd} visit)</td>
<td>0.5 – 1 hour</td>
<td>£25 - £50</td>
</tr>
<tr>
<td>General Administration</td>
<td>1 hour</td>
<td>£50</td>
</tr>
<tr>
<td></td>
<td>\textbf{6.5 – 10 hours}</td>
<td>\textbf{£325 - £500}</td>
</tr>
</tbody>
</table>

[source: discussion with a Scottish tree officer]

98. These figures are only indicative and local authorities will be expected to set fee levels that reflect their own circumstances and issues.

99. Local authorities, while able to charge a fee which reflects the costs of making a decision, will also be able to charge reduced rates if they so wish in circumstances that they consider appropriate.
Costs once a high hedge notice has been issued

100. Once the local authority has decided that action should be taken in respect of a high hedge, it will issue a “high hedge notice” to every owner and occupier of the land on which the hedge is situated. This notice will outline the action required to be taken and the period in which it must be taken. The owner of the hedge is ultimately responsible for compliance with the notice and it will be up to them to take such action at their own cost.

101. Should a high hedge notice not be complied with within the specified time, then the authority will be able to enter the owner’s property and carry out the necessary works itself. The local authority will be able to recover the costs of undertaking this work. As indicated above, it is expected that this will be necessary only in exceptional cases.

102. It is not possible to be definitive about the costs of enforcing a high hedge notice as the actual costs incurred will depend on a number of factors. These would include how high the hedge is, which in turn might dictate whether workers with particular expertise in working at height and using ropes are required; how accessible the hedge is both for manpower and equipment; the volume of cuttings etc. The range of costs below was provided by an arboricultural firm.

<table>
<thead>
<tr>
<th>Workers</th>
<th>Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labourer</td>
<td>£50 - £60 per day</td>
</tr>
<tr>
<td>Ground Worker</td>
<td>£80 - £100 per day</td>
</tr>
<tr>
<td>Climber</td>
<td>£120 per day</td>
</tr>
<tr>
<td><strong>Additional Equipment</strong></td>
<td></td>
</tr>
<tr>
<td>Wood Chipper</td>
<td>£10-15 per hour</td>
</tr>
<tr>
<td>Mobile Elevating Work Platform</td>
<td>£120+ per full working day dependent on what kind of platform</td>
</tr>
</tbody>
</table>

[sources: return from an arboricultural firm, plus internet searches on tool hires]

103. One local authority contacted during consultation with COSLA estimates that enforcement costs are likely to be in the range of £500-£700 per day. Its estimate is based on the cost of two operatives skilled at doing this type of work, access to and from the address, suitable welfare facilities (a van for shelter when having breaks as well as to transport the equipment, access to toilets and washing facilities (probably the time cost to travel to and from)), safety clothing, equipment and fuel as well as the cost to remove the debris. The authority estimates that the costs would rise to around £700 per day if the work is likely to take longer and higher access platforms are required as well as chipping plant and/or if mobile access platforms are to be required at higher daily charges.

COSTS ON THE SCOTTISH ADMINISTRATION

104. The Bill allows for an appeal against a decision to issue, or not to issue, a high hedge notice to be made to the Scottish Ministers. An appeal can also be made against a decision to vary or withdraw a high hedge notice. It is intended that the Scottish Government’s Directorate for Planning and Environmental Appeals¹ would provide this function. The Bill does not provide

for a fee to be charged for appeals and it is anticipated that the primary cost of dealing with appeals will fall on the Scottish Government.

105. The Planning Inspectorate in England has provided figures for the number of high hedges appeals it considered over the last three years. We understand in the first year following enactment (2005) there were approximately 300 appeals. More recently, the level of appeals is as indicated below.

**Appeals in England**

<table>
<thead>
<tr>
<th>Year</th>
<th>2008/09</th>
<th>2009/10</th>
<th>2010/11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received</td>
<td>142</td>
<td>119</td>
<td>111</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>13</td>
<td>16</td>
<td>13</td>
</tr>
<tr>
<td>Decided</td>
<td>105</td>
<td>128</td>
<td>93</td>
</tr>
</tbody>
</table>


**Appeals in Wales**

<table>
<thead>
<tr>
<th>Year</th>
<th>2008/09</th>
<th>2009/10</th>
<th>2010/11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeals</td>
<td>4</td>
<td>9</td>
<td>5</td>
</tr>
</tbody>
</table>

[source: Welsh Assembly Government³]

106. Estimated on the basis of 10% of the appeals heard under the England and Wales legislation, we might reasonably expect around 30 appeal cases to be heard in Scotland in the first year. The cost of an appeal, based on appeals currently being handled by the Directorate for Planning and Environmental Appeals, is estimated to be around £600 each, or £18,000 in total for the first year. We would expect the number of appeals and the cost to the Scottish Government to reduce below that level in subsequent years, and fairly quickly to around a third of that level, based on the latest information on the level of appeals in England and Wales.

107. Appeals in England dropped by some 30% after the first year; and a further 30% in the second year to the figures noted above. In Wales appeal figures dropped by over 50% in the first year, and 50% again the following year. We might therefore expect the cost of appeals in year 2 to be in the range of £9,000 - £12,000 and in year 3 to be in the range of £4,500 - £8,000.

108. The Bill provides that Scottish Ministers may issue guidance to local authorities in respect of the Bill. It is anticipated that the cost of producing any guidance will be met from existing budgets and will not be greater than £10,000. The guidance will be made available free of charge in electronic form on the Scottish Government’s website. It is not anticipated that there will be a need for a public information campaign as the level of correspondence received by the Government on this issue indicates that there is already a significant level of awareness of the Bill and the lobby group “Scothedge” is very active in informing its membership and will help to ensure that the Bill and its provisions are well known amongst those with concerns over high hedges.

Future costs

109. The Bill aims to ensure that the costs of the legislation ultimately fall mainly on those who are involved in disputes over high hedges, other than minor costs falling on the Scottish Government as a result of appeals. In looking at the English experience it appears that both applications and appeals, after an initial flurry once the legislation is enacted, will likely settle down to a much lower level, which will decline further over time. Future costs are, therefore, expected to be minimal.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

110. As is set out in detail above, the main costs arising from this Bill largely fall on those who are involved in disputes over high hedges, as the Bill provides that an application fee may be set by local authorities to cover the costs of them exercising the new powers granted to them by the Bill to make decisions on high hedge disputes and issue high hedge notices requiring action to be taken. Similarly, where a local authority uses the powers it is granted under the Bill to step in to enforce a high hedge notice with which the hedge owner has failed to comply within the specified time, the local authority can recover the enforcement costs from the hedge owner.

111. Full details of those processes and estimates of the potential costs are set out above in the section dealing with costs to local authorities.

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

112. On 2 October 2012, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the High Hedges (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
INTRODUCTION

1. This document relates to the High Hedges (Scotland) Bill introduced in the Scottish Parliament on 2 October 2012. It has been prepared by Mark McDonald MSP, with the assistance of the Scottish Government, to satisfy Rule 9.3.3A of the Parliament’s Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 16–EN.

POLICY OBJECTIVES OF THE BILL

2. The objective of this Bill is to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property.

3. The Bill defines a high hedge as one which is wholly or mainly formed by a row of two or more evergreen or semi-evergreen trees or shrubs which is over two metres in height and forms a barrier to light.

4. The Bill aims to provide an effective means of resolving disputes over the effects of a high hedge where the issue has not been able to be resolved amicably between neighbours. It does so by giving home owners and occupiers a right to apply to a local authority where it is considered a high hedge is affecting the enjoyment of their property, and empowers local authorities to make and enforce decisions in relation to high hedges.

5. The Bill gives local authorities new powers to decide whether a high hedge adversely affects the reasonable enjoyment of domestic property. It enables a local authority to reject an application if it concludes the applicant has not taken all reasonable steps to resolve the matter before applying, or where the application is frivolous or vexatious.

6. The Bill enables a local authority to issue a high hedge notice where, having taken all the circumstances into account, it finds that a hedge is having an adverse effect. It then has to decide whether any action should be taken. If the local authority considers that action should be taken, it may issue a high hedge notice. A high hedge notice may require a hedge owner to take action to remedy the problem and prevent it recurring.

7. The Bill makes provision for both the applicant and the hedge owner to appeal against a decision to issue a high hedge notice. It provides that an appeal may result in a high hedge notice
being confirmed, varied or quashed. An applicant can also appeal against a decision not to issue a high hedge notice.

8. The Bill also provides local authorities with the power to undertake the work specified in a high hedge notice, if the notice is not complied with by the hedge owner within the time specified. The Bill enables local authorities to recover the costs of any such enforcement from the hedge-owner and to charge a fee for applications for a high hedge notice.

9. The effect of the Bill’s provisions is to put in place an effective mechanism for the resolution of disputes relating to high hedges. It provides local authorities with new powers to address these problems and enables them to recover the costs of doing so, ensuring that the costs to the public purse of resolving these private disputes is minimised.

BACKGROUND

Current law

10. There is currently no legislation in Scotland governing the height of a hedge.

11. Most boundary fences or walls do not exceed two metres as planning law generally requires planning permission for the erection of fences or walls exceeding that height\(^1\). However, there is no such restriction on planting trees or shrubs to form a hedge, despite the potential for their height to exceed two metres – in some cases by a considerable margin.

12. It is, therefore, perhaps not surprising that problems can arise with hedges if they are planted in unsuitable locations or suffer from a lack of maintenance. These problems can be aggravated by the availability of low cost and fast growing plants or trees sold as hedging. Some plants used as hedges on property boundaries can grow at a rate of a metre a year, which can increase the problem of effective maintenance over the years, particularly in urban settings. It is clear that unsuitably positioned, inappropriately high and/or badly maintained hedges can have a severe impact on neighbours’ enjoyment of their property.

Parliamentary history

13. The prevalence and extent of the problems caused by high hedges is very evident in many MSPs’ constituency correspondence and spelled out in the two petitions on high hedges which were submitted to the Parliament on 24 April 2002 (PE497\(^2\)) and 30 June 2006 (PE984\(^3\)). It is also clear in the long history of proposed Member’s Bills on high hedges in the Scottish Parliament.

14. Scott Barrie MSP first lodged a proposal for a High Hedges (Scotland) Bill as long ago as May 2002\(^4\), during the first session of the Parliament. He went on to lodge proposals for a high

\(^1\)http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/HouseholderPDR/Dwellings/other
\(^2\)http://archive.scottish.parliament.uk/business/petitions/docs/PE497.htm
\(^3\)http://archive.scottish.parliament.uk/business/petitions/docs/PE984.htm
\(^4\)http://www.scottish.parliament.uk/S1_Bills/Session1MembersProposals.pdf
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hedges Bill on two further occasions, in September 2003 and November 2006. While those proposals were not successful, Scott Barrie’s efforts in pursuing this issue played an important part in setting the agenda which this Bill takes forward. That history, and the wide range of constituencies represented by the supporters of this Bill, emphasises the breadth of interest in this issue within the Parliament and its importance to people across the length and breadth of Scotland.

Government activity

15. That Parliamentary history both reflects and has in turn stimulated Government interest and activity relating to high hedges. In January 2000, the then Scottish Executive consulted on options for resolving high hedge disputes. It asked whether special measures were required in Scotland because the scale of the problem appeared to be much less extensive than in England and Wales.

16. That followed a UK Government consultation in November 1999 which received 3,062 responses and eventually led to Part 8 of the Anti-social Behaviour Act 2003, which gave local councils in England and Wales the power to deal with complaints about high hedges. Legislation on high hedges has since been introduced in the Isle of Man (2005) and Northern Ireland (2011).

17. The Scottish Executive exercise received 90 responses. In addition to this relatively low response, a much lower proportion of local authorities in Scotland favoured a tailor-made statutory remedy compared with councils in England and Wales. Despite this, the Scottish Executive of the day offered its support for legislation, indicating that a Member’s Bill would be the most appropriate way to introduce it.

18. The most recent consultation undertaken by the Scottish Government was in 2009, and attracted 617 responses, plus 51 additional pieces of correspondence. An analysis of the consultation showed that, of the 617 responses, nearly 93% came from private individuals, almost 60% of those private individuals describing themselves as being “neighbours of hedge/tree owners currently involved in a dispute”. A summary of the analysis has also been published.

19. Nearly 90% of all respondents to the consultation indicated that high hedge disputes should be a matter for Government intervention and a large majority of respondents (68%) suggested that the Scottish Government should replicate or adapt the legislation applying in England and Wales. Nearly half of all private individuals who responded felt that the definition of a high hedge should be set down in legislation, as it is in England and Wales.

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5 http://www.scottish.parliament.uk/S2_Bills/Session2toNov04MembersProposals.pdf
6 http://www.scottish.parliament.uk/parliamentarybusiness/Bills/18175.aspx
10 http://www.scotland.gov.uk/News/Releases/2001/01/519a42a9-7588-47d1-878f-58b17e850f
11 http://www.scotland.gov.uk/Publications/2010/03/25102917/10
20. A significant number of responses to both Scottish consultations came from the campaign group Scothedge, which reports a membership of over 200 members from households throughout Scotland. Scothedge has consistently called for legislation on high hedges in Scotland and has published information\(^\text{13}\) in support of that campaign which is helpful in understanding both the difficulties in defining the problem and in appreciating the impact which high hedges can have.

21. I announced on 8 September 2011 that I would bring forward a Member’s Bill on high hedges. The Scottish Government announced that day that it would support the Bill and work with me constructively in taking it forward, with a view to seeing legislation put in place that will ensure everyone with an interest in the issue knows their rights, responsibilities and remedies.

CONSULTATION

22. I submitted a draft proposal\(^\text{14}\) for the High Hedges (Scotland) Bill on 21 December 2011. This was accompanied by a statement of reasons\(^\text{15}\) outlining why I felt that no further consultation was needed in taking this forward.

23. My statement of reasons outlined the previous consultation in 2009 and the results of it. That consultation contained a number of policy options for the potential resolution of high hedge disputes (and, in the case of the legislative option, four options for delivery). The options were:

- do nothing;
- promote existing remedies such as mediation;
- strengthen and supplement existing remedies with research, guidance and title conditions; or
- provide a legislative solution by:
  - replication or modification of English and Welsh legislation;
  - statutory nuisance;
  - civil action – summary cause, small claims or summary application; or
  - Lands Tribunal for Scotland or the Scottish Land Court.

24. As noted above, nearly 90% of all respondents to the consultation indicated that high hedge disputes should be a matter for Government intervention and a large majority of respondents (68%) suggested that the Scottish Government should replicate or adapt the legislation applying in England and Wales. My proposal, that individuals should be able to apply to a local authority for a high hedge notice, clearly corresponded to the first of the four delivery options set out above, largely replicating the legislation in place in England and Wales, and had, therefore, effectively been consulted on during the 2009 consultation.

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\(^\text{14}\) [http://www.scottish.parliament.uk/parliamentarybusiness/Bills/45607.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/45607.aspx)

25. The Local Government and Regeneration Committee considered my draft proposal and statement of reasons on 1 February 2012. I set out the history of the issue to the Committee, informed it of the individuals and organisations that I had consulted with at that stage, and outlined my proposals.

26. The Committee’s scrutiny of my proposals specifically asked about my proposed definition of a high hedge and I made clear to the Committee that I wanted “a tightly defined Bill that concerns specifically high hedges ... [including] other vegetation, would run the risk of creating unwieldy legislation that was difficult to enforce.” I advised the Committee that “I do not intend to include deciduous trees, because there are loopholes to do with whether trees that shed their leaves could be considered to form a constant barrier to light in the same way that evergreens and semi evergreens can.”

27. The Committee noted the deterrence value in simply having legislation in place and how this could hopefully resolve many of the issues and asked me about a range of other issues, including how local authorities would be able to enforce the provisions; whether or not the Bill would be prescriptive regarding hedge heights; and what the cost implications were for local authorities. Following this discussion, the Local Government and Regeneration Committee agreed with me that no further consultation was required. I subsequently submitted my final proposal and a revised statement of reasons on 22 March 2012 and was granted the right to introduce the Bill a month later as the proposal had attracted the support required by Rule 9.14.12 of the Parliament’s Standing Orders.

28. The Bill has been informed not only by all of the previous activity on high hedges described above, but by the many people I and those supporting me have met and spoken to as well as those who have written to me about this issue. While I have undertaken no formal, written, consultation on my proposal for a high hedges Bill, both I and the Scottish Government officials supporting me have spoken to and consulted with a broad range of individuals and organisations, including business with an interest in hedges and government departments, directorates and agencies, who have an interest in the provisions of the Bill. These include the parts of the Scottish Government with responsibility for planning, nature conservation, wildlife crime, and strategic environmental assessment.

29. Organisations consulted include:
   - Aberdeen City Council
   - Clackmannanshire Council
   - COSLA
   - Directorate for Planning and Environmental Appeals
   - Forestry Commission Scotland
   - Historic Scotland
   - Registers of Scotland

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- Royal Botanic Gardens Edinburgh
- RSPB
- Scottish Court Service
- Scottish Natural Heritage
- Scottish Tree Officers Group (local authority tree officers)
- Woodland Trust.

30. Businesses consulted include:
- Alba Trees in East Lothian
- Arbor Vitae in Edinburgh
- Christie Elite Nurseries Ltd in Forres, Moray
- Craigmarloch Nurseries in Kilsyth
- Klondyke Garden Centre in Edinburgh
- Mill Garden Centre in Armadale.

31. Officials supporting me have also written to a number of other businesses about the Bill, providing information on the proposal and seeking their views. The businesses which have been contacted but who have not (so far) responded are: C Arnot & Son Ltd (Forfar); Clatto Community Woodland (Fife); Conifox Nurseries (West Lothian); Dobbies Garden Centre (Edinburgh); Merryhatton (East Lothian); New Hopetoun Garden Centre (West Lothian); Riccarton Garden Centre (Edinburgh); Pentland Plants (Midlothian); Smeaton Nurseries (East Lothian); and Strawberry Corner (East Lothian).

32. Officials supporting me have also contacted a range of organisations elsewhere in the UK in order to draw on their expertise on high hedges and their experience of high hedge legislation in practice. Those organisations include the Communities and Local Government Department (UK Government); the Department of Environment (Northern Ireland); the Planning Inspectorate (England); a number of English councils (see below); the London Tree Officers Association; the National Association of Tree Officers; the Department for Infrastructure on the Isle of Man; and Braddan and Ramsay authorities from the Isle of Man (Douglas, Onchan and Port Erin authorities were also contacted but no reply has been received).

33. Information has been obtained from the following English councils (Barnet and Fylde councils were also contacted, but no reply received):
- Ashford
- Dover
- East Cambridgeshire
- Hartlepool
- Hillingdon
Medway
New Forest
North Somerset
Royal Borough of Windsor and Maidenhead
Sandwell
South Tyneside.

NATURE OF THE BILL

General approach

34. The intent of the Bill’s provisions is to put in place an effective mechanism for the resolution of disputes relating to high hedges. It, therefore, provides local authorities with new powers to address these problems and enables them to recover the costs of doing so, ensuring that the costs to the public purse of resolving these private disputes is minimised. The Bill’s approach to the processes to be followed in making those decisions aims for transparency and, as far as possible, simplicity in order to minimise the overall costs of the system.

Provision of a formal remedy

35. The experience of the legislation in England and Wales shows that simply creating a formal mechanism for resolving disputes encourages the resolution of most cases, without the need for local authority involvement. The low level of formal complaints, set against the number of enquiries, appears to encourage disputes to be resolved. That experience also indicates that the need for enforcement action to be taken will be rare.

36. The Bill provides that primary responsibility for resolving disputes over high hedges should lie with individuals in the first instance. The Bill requires that applicants for a high hedge notice must have taken all reasonable steps to resolve the issue before making an application to a local authority. It enables local authorities to reject an application where such steps have not been taken. These provisions will help to ensure that Scottish experience should be similar to that in England and Wales, with the majority of disputes apparently being resolved without the need for local authority intervention.

37. The following table gives details of the experience in England and Wales, demonstrating the number of enquiries that were made, the number of formal applications that this generated, and the number of times this resulted in a local authority taking enforcement action.

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>Enquiries</th>
<th>Formal Complaints (2005-11)</th>
<th>Remedial Action where Council has had to cut back hedge (not just issue remedial notices advising what action to take)</th>
<th>Fees (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Forest (nr Southampton)</td>
<td>N/K</td>
<td>14</td>
<td>Not given</td>
<td>507</td>
</tr>
<tr>
<td>Royal Borough</td>
<td>300+</td>
<td>20</td>
<td>0 – Council does not take action</td>
<td>600</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>of Windsor and Maidenhead</th>
<th>but prosecutes via courts to recover expenses and has not yet done so</th>
</tr>
</thead>
<tbody>
<tr>
<td>Croydon (London)</td>
<td>100  22  None stated beyond remedial notices</td>
</tr>
<tr>
<td>Hillingdon (London)</td>
<td>250+ 13  None stated beyond remedial notices</td>
</tr>
<tr>
<td>Ashford (Kent)</td>
<td>N/K  11  0</td>
</tr>
<tr>
<td>South Tyneside</td>
<td>100+ 28  1</td>
</tr>
<tr>
<td>Hartlepool</td>
<td>170  7   0</td>
</tr>
<tr>
<td>Sandwell (West Midlands)</td>
<td>300+ 10  0</td>
</tr>
<tr>
<td>Medway (Kent)</td>
<td>N/K  N/K  0</td>
</tr>
<tr>
<td>North Somerset</td>
<td>N/K  22  0</td>
</tr>
<tr>
<td>Dover</td>
<td>N/K  14  0</td>
</tr>
</tbody>
</table>

General approach

38. The Bill gives home owners and occupiers a right to apply to local authorities for a high hedge notice to prevent high hedges from interfering with the enjoyment of their property. The Bill gives local authorities powers to:
   - deal with applications for a high hedge notice and charge an appropriate fee;
   - issue a high hedge notice requiring a hedge-owner to take remedial and/or preventative action where a hedge is found to be having an adverse effect;
   - undertake the specified work if there is a failure to comply with a high hedge notice within the specified time, recovering the costs of doing so from the hedge owner.

39. The Bill also gives home owners and occupiers and hedge owners a right to appeal against a local authority’s decision on a high hedge notice.

Definition of a high hedge

40. The Bill defines a “high hedge” as one formed wholly or mainly by a row of two or more evergreen or semi-evergreen trees or shrubs, exceeding two metres in height and forming a barrier to light (Section 1: ‘Meaning of “high hedge”).

41. This definition is similar to those used in England and Wales and in Northern Ireland and captures the commonly perceived problems of fast-growing conifers in suburban areas. As a hedge consists of a row of two or more trees or shrubs, a single tree is not considered a hedge. Shrubs are typically woody plants smaller than trees, usually having multiple permanent stems branching from or near the ground. The definition of a high hedge takes no account of the roots of a plant. Roots can have a number of adverse effects as they encroach into property but such effects would likely be covered under the common law of encroachment. This Bill does not seek to provide a resolution where one already exists.
42. The high hedge must also form a “barrier to light”. Evergreens and semi-evergreens form a constant barrier to light all year round unless there is a particularly harsh winter where a semi-evergreen hedge may drop some foliage in order to survive, but will otherwise maintain its foliage. Otherwise, semi-evergreens will form as much of a barrier as an evergreen. To form such a barrier implies planting sufficiently close together although conifers planted with gaps between them may form a hedge if the overall effect as a barrier is not significantly reduced by those gaps. Deciduous plants are likely to form a barrier only at certain times of the year. The Bill does not rule out deciduous plants from being part of a high hedge which need only be “wholly or mainly” evergreen or semi-evergreen. This means that a mainly evergreen hedge that contains some deciduous plants would be captured in the definition. A sufficiently large hedge with many deciduous plants could still be captured if there is an even larger number of evergreens and it forms a barrier to light.

43. The Bill is therefore relatively tightly defined in that it concerns predominantly evergreen and semi-evergreen high hedges and excludes single trees. If single trees and other types of plants and vegetation were to be included it would run the risk of creating complex and unwieldy legislation that would be difficult to enforce. The focus on evergreen and semi-evergreen trees and shrubs is intended to ensure that decisions are as straightforward as possible. As the definition is similar to those already used elsewhere, some reassurance can be taken from experience of similar legislation elsewhere in the UK, which provides a reasonable degree of comfort to local authorities who will be carrying out the processing of applications, and any enforcement actions required, that the tasks are achievable.

44. COSLA supports a narrow and focussed Bill as the experience of its implementation elsewhere provides comfort that costs will not be significant and numbers will not be unmanageable. The Royal Society for the Protection of Birds also supports a narrow definition which excludes wholly deciduous hedges as deciduous plants generally have a greater wildlife value than conifers. The Woodland Trust also supports a narrow definition as does the Scottish Tree Officers Group, who are concerned that a wider definition would be more difficult, time-consuming and expensive to administer.

45. Scothedge has indicated that it is generally supportive of the approach taken to high hedges, which addresses the concerns of the majority of its members, but has noted that some of its members have concerns about both single trees and deciduous plants. Deciduous plants are not excluded if they are part of a mainly evergreen or semi-evergreen hedge but widening the Bill further is not considered to be appropriate for the reasons set out above.

46. In my view, the support of many stakeholders for a narrower definition of high hedge derives from a natural, and understandable, caution on the part of COSLA and local authorities in particular about the potential implications of new systems and powers which we do not yet have any experience of in Scotland, as well as potential for a more complex interpretation which is more open to dispute. It is important, however, that we can react to any lessons learned from that experience, once we have it. The Bill, therefore, provides that Scottish Ministers may modify the definition of a “high hedge” and make other appropriate and ancillary changes to legislation (Section 34: ‘Power to modify meaning of “high hedge”). That will enable changes to the definition of a high hedge to be made in future, in the light of a specifically Scottish experience of the operation in practice of high hedges legislation.
Complaints about high hedges

47. The Bill provides that home owners and occupiers affected by a high hedge can complain to the local authority where the hedge is located where a dispute over the height of a hedge has not been resolved by individuals themselves. This involves making an application to the authority for a high hedge notice (Section 2: ‘Application for high hedge notice’). The application must be accompanied by the fee set by the local authority (Section 4: ‘Fee for application’). It will provide the local authority with information on the hedge’s adverse effect on their property and evidence that they have taken all reasonable steps to resolve matters before making an application.

48. The Bill acknowledges that the individuals involved should have the primary responsibility for resolving disputes over high hedges. While it provides a mechanism for resolving disputes, the Bill sets out ‘Pre-application requirements’ (Section 3: ‘Pre-application requirements’) which applicants must comply with before they apply i.e. they must be able to demonstrate that they have taken all reasonable steps to resolve the matter.

49. The Bill does not specify what action or actions should be taken by individuals to meet this requirement. Individual circumstances will differ and services available to individuals may vary between local authority areas, so it would be unrealistic for the Bill to dictate what action should be taken. It will, therefore, be up to local authorities to decide whether or not the applicant has taken all reasonable steps to resolve the matters in dispute in the light of the facts and circumstances of each individual case.

50. The Bill also enables local authorities to issue guidance on ‘Pre-application requirements’ (Section 31(2): ‘Guidance’) and requires applicants to have regard to that guidance (Section 3(2) ‘Pre-application requirements’). It will, for example, be open to local authorities to require applicants to have attempted to resolve matters through mediation before making an application. The feasibility of such a requirement may however vary between local authorities. The Bill, therefore, neither imposes requirements nor places limitations on what local authorities may specify in such guidance. However, it provides that Scottish Ministers may issue guidance on the operation of the Act (Section 31: ‘Guidance’) and local authorities must have regard to that guidance when carrying out their functions under the Bill, including when issuing their own guidance. The UK Government has issued extensive guidance on the application of high hedges legislation in England and Wales.

51. The Bill provides that local authorities may dismiss an application if the ‘Pre-application requirements’ are not met or if the application is frivolous or vexatious (Section 5: ‘Dismissal of application’). Applications relating to a hedge which does not meet the criteria for a high hedge will also be dismissed. It will be for local authorities to determine whether an application is ‘frivolous or vexatious’ but an example might be repeated applications in respect of a hedge where the local authority has already made a decision not to make a high hedge notice and there has been no change in circumstances.

52. Where an application is dismissed, the applicant must be informed as soon as reasonably practicable, with the local authority giving reasons for its decision. The Bill provides that

applicants and hedge owners may appeal against a decision by a local authority to issue a high hedge notice (see below) but does not provide for an appeal where an application is dismissed. It is, however, open to applicants to make a fresh application, enabling them to take account of a local authority’s reasons for dismissal of a previous application.

Application fees

53. The intention of this Bill is to enable local authorities to recover the costs of exercising their new powers to resolve high hedge disputes. The Bill, therefore, provides that a local authority may charge a fee for applications which can cover the costs that it incurs in the making of a decision and the issuing of a high hedge notice, if it decides to do so (Section 4: ‘Fee for application’).

54. The Bill does not specify any upper limit or ‘cap’ on fees but requires that fees must not exceed an amount which the local authority considers represents the reasonable costs of an authority in deciding an application. This is intended to enable local authorities to take account of local facts and circumstances when setting application fees as well as to ensure that fees are not set beyond a level that is reasonable.

55. The Bill also provides that local authorities can also set different fee levels for different applications or types of applications. It also has the power to refund fees in circumstances and to an extent that it can determine.

Decision Process

56. The local authority, once satisfied that efforts have been made by individuals to resolve the dispute, may make an assessment of the situation and must decide whether the height of the high hedge is adversely affecting the reasonable enjoyment of the applicant’s property. This involves seeking representations on that application and may include investigations by the local authority.

57. If an application is not dismissed, the local authority must notify the owner(s) and occupier of the land containing the hedge which is the subject of the application (Section 6: ‘Consideration of application’). The local authority must send a copy of the application to every owner and occupier of the land containing the hedge (defined in the Bill as “neighbouring land”). The notification by the local authority must also set out its powers in relation to decisions on high hedges, inform recipients that they have 28 days in which to make representations in relation to the application, and make clear that copies of all representations must be passed to the applicant.

58. The local authority must take into account any representations that it receives in relation to an application when it makes a decision on the application. It may also undertake its own investigations. The authority will be able to visit the location, take necessary measurements, and investigate other relevant issues which it may take into consideration.

59. The Bill provides that a person authorised by a local authority may enter the land on which the hedge is situated in order to obtain information required for the purposes of
considering an application (Section 18: ‘Power to enter neighbouring land’). A person who has been authorised in this way may take with them other persons, materials, equipment and vehicles that may be necessary, take samples of any trees or shrubs which form part of the hedge; and may do anything else reasonably required to fulfil the purpose for which entry is taken (Section 19: ‘Supplementary powers’). The Bill requires that written evidence of authorisation must be provided should it be requested.

60. The Bill requires that hedge owners are given fourteen days’ notice prior to an authorised person exercising this power of entry. It also provides that it will be a criminal offence, punishable on summary conviction by a fine not exceeding level 3 on the standard scale (currently £1,000), to prevent or obstruct an authorised person from carrying out their duties (Section 21: ‘Offence’). Where there are reasonable grounds for exercising the power of entry but entry has been refused, is reasonably expected to be refused, or the land is unoccupied, then a warrant may be obtained from a sheriff or justice of the peace authorising entry using reasonable force, although not against an individual (Section 20: ‘Warrant authorising entry’).

61. The Bill explicitly requires that a copy of the application is sent to the hedge owner(s) and that any representations received from hedge owner(s) are sent to the original applicant. This transparency is intended to enable the local authority to be fully informed of the different perspectives on the dispute and, by requiring that views are shared, encourage those involved in the dispute to focus on the issue.

62. The Bill provides that a local authority must decide whether the height of the hedge adversely affects the reasonable enjoyment of the applicant’s property (Section 6(5)(a): ‘Consideration of application’). If the local authority decides that there is no adverse effect it must, as soon as reasonably practicable, inform the parties of its decision and the reasons for it (Section 7(1)(a): ‘Notice of decision where no action to be taken’). If the local authority decides that there is an adverse effect it must then consider what, if any, action requires to be taken in relation to the hedge in order to remedy the adverse effect and prevent it recurring (see 8: ‘High hedge notice’, below).

63. To make a decision on ‘adverse effect’, the authority will consider the application, all representations received, any relevant factors from its own investigations and any relevant local circumstances before assessing each case on its particular merits. It is not intended that the local authority should negotiate between the parties, rather it must make its own assessment before issuing a decision.

64. It is intended that local authorities will act as independent and impartial adjudicators as to whether a hedge is adversely affecting the reasonable enjoyment of an applicant’s property. In doing so, it is intended that local authorities should seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general. The Bill, therefore, requires that a local authority must have particular regard to the effect of the hedge on the amenity of the area and consider whether the hedge is of cultural or historical significance (Section 6(7): ‘Consideration of application’).

65. This requirement is intended to ensure that the nature of the hedge in its widest sense as well as the local community context are taken into account alongside the other facts and
circumstances of the case. Local authorities will, therefore, require to have regard to the special characteristics of ancient hedgerows, or hedges of a historic nature such as the Meikleour Beech Hedge\(^\text{19}\), planted in 1745 and reaching 30 metres (100 ft) in height and 530 metres (1/3 mile) in length.

**Tree preservation orders**

66. Where a tree has already been identified as having particular significance, it may be protected by a tree preservation order under section 160 of the Town and Country Planning (Scotland) Act 1997\(^\text{20}\) (as amended by section 28 of the Planning etc (Scotland) Act 2006\(^\text{21}\)). The intention of this Bill is that local authorities should take account of any tree preservation orders when making a decision on a high hedge application (in the light of the same factors to be considered when a tree preservation order is made\(^\text{22}\)) but should not be unnecessarily constrained by it in deciding what action should be taken in respect of a high hedge.

67. The Bill, therefore, specifies that a tree preservation order which applies to a hedge, or a tree or trees which are included in a high hedge, has no effect in relation to any action specified in a high hedge notice in order to remedy the adverse effect and prevent it recurring (Section 11: ‘Tree preservation orders’). In considering an application, the local authority must have regard to the effect of the high hedge on the amenity of the area and the cultural or historical significance of the high hedge, similar to the way it is required to consider those issues by section 160 of the Town and Country Planning (Scotland) Act 1997 (as amended). This is intended to enable local authorities to take a holistic view of the issues in coming to a decision which strikes an appropriate balance between the potentially competing issues arising from an application for a high hedge notice and the prior issue of a tree preservation order.

**Conservation areas**

68. A similar issue arises where a hedge is situated in a conservation area as such hedges which include trees not subject to a tree preservation order are afforded similar protection under section 172 of the Town and Country Planning (Scotland) Act 1997\(^\text{23}\). I believe that a similar approach to that taken for tree preservation orders should be followed for conservation areas.

69. The legal framework for conservation areas is however different from that regarding tree preservation orders in that a legal power already exists to dis-apply the effects of a conservation area. That power is set out in section 173 of the Town and Country Planning (Scotland) Act 1997 and provides that Scottish Ministers may by regulations direct that section 172 shall not apply in such cases as may be specified in the regulations. Scottish Ministers are considering the use of those powers in relation to this Bill’s provisions.

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\(^{19}\) [http://en.wikipedia.org/wiki/Meikleour_Beech_Hedges](http://en.wikipedia.org/wiki/Meikleour_Beech_Hedges)


\(^{22}\) [http://www.scotland.gov.uk/Publications/2011/01/28152314/0](http://www.scotland.gov.uk/Publications/2011/01/28152314/0)

Other considerations

70. Specific provision has been made in relation to hedges containing a tree subject to a tree preservation order. However, the historic and cultural significance of the hedge and its effect on the amenity of the local area are expressly mentioned (in section 6 of the Bill) as having to be taken into consideration in all decisions. Local authorities would also need to have regard to other legal and local policy restrictions and guidelines which are intended to protect the wider public interest which could be relevant. Examples of these include whether:

- any protected birds, animals or plants are present in the hedge (having regard to the Wildlife and Countryside Act 1981\(^{24}\) and the subsequent amendments found in the Nature Conservation (Scotland) Act 2004\(^{25}\) as well as local Biodiversity Action Plans);
- the hedge is within the boundary of a listed building or historic site;
- there are planning conditions attached to a planning permission which relate to the hedge;
- the hedge is situated in a designated nature conservation site such as a Site of Special Scientific Interest;
- the hedge is situated in a National Scenic Area;
- any licence or consent is required from the Forestry Commission; and
- the hedge is within the boundary of a National Park.

71. There are currently two National Parks in Scotland – Loch Lomond and the Trossachs National Park, and the Cairngorms National Park. The Bill provides for local authorities to make decisions with regards to certain high hedges, and to enforce those decisions. There is a general duty on local authorities, under section 14 of the National Parks (Scotland) Act 2000\(^{26}\), to have regard to National Park Plans (prepared by the National Park authority and approved by the Scottish Ministers) when exercising functions which affect a National Park. We would expect that any local authority considering issuing or enforcing a high hedge notice in its area and which also falls within the boundary of a National Park, would then liaise with that National Park, taking due account of the National Park Plan.

72. The Bill applies to Crown land (Section 36: ‘Crown application’). This means that local authorities are able to consider and determine applications about high hedges on land owned by the Crown. However, the Crown itself is not criminally liable but its employees might be. Further, consent is required in order to exercise the powers of entry under the Bill on Crown land.

High hedge notices

73. If a local authority decides that the height of a hedge adversely affects the reasonable enjoyment of the applicant’s property it must then consider what, if any, action requires to be

\(^{24}\) http://www.legislation.gov.uk/ukpga/1981/69/contents
\(^{26}\) http://www.legislation.gov.uk/asp/2000/10/section/14
taken in relation to the hedge in order to remedy the adverse effect and prevent it recurring (Section 6(6)(b): ‘Consideration of application’).

74. If a local authority decides that no action should be taken in relation to a high hedge it must, as soon as reasonably practicable, inform the parties of its decision and the reasons for it (Section 7(1)(b): ‘Notice of decision where no action to be taken’).

75. If a local authority decides that action should be taken it must, as soon as is reasonably practicable, issue a high hedge notice (Section 8(1): ‘High hedge notice’). It must send a copy of the notice and an explanation of the reasons for the decision to the applicant and every owner and occupier of the land on which the hedge is situated.

76. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010\(^{27}\) specifies that such notices may be served in person; by a registered post service; by a recorded delivery postal service; or by using electronic communications. The Bill provides for additional means of serving such notices, including affixing it to an object on the land where reasonable enquiries are unable to determine the name or address in respect of whom a notice relating to land is to be served under the Act (Section 32: ‘Service of documents’).

77. A high hedge notice must specify the hedge it relates to, the action required to be taken to remedy the adverse effect caused by the hedge and the compliance period within which that action must be taken. It may also specify what further action, if any, is required to prevent recurrence of the adverse effect, both within and outwith the compliance period (Section 8(2): ‘High hedge notice’).

78. The owner of the hedge that is the subject of a high hedge notice is required to carry out the works specified at their own expense. The notice will advise the hedge owner of the local authority’s power to enforce the decision, and recover from the hedge owner the costs of doing so, if the hedge owner fails to comply with the requirements of the notice.

79. A high hedge notice is binding not only on whoever is the owner of the land on which the hedge is situated at the time the notice is issued but also on successive owners (Section 9: ‘Effect of high hedge notice’).

80. The Bill provides that a local authority may vary or withdraw a high hedge notice it has issued (Section 10: ‘High hedge notice: withdrawal and variation’). Before doing so it must consider what effect its action would have, having regard to all the circumstances. The withdrawal of a notice does not prevent the issue of a further notice in respect of the same hedge and a notice which has been varied can itself be varied. If a notice is varied or withdrawn, the local authority must inform all owners and occupiers of the domestic property affected by the hedge concerned as well as all owners and occupiers of the property containing the hedge.

Enforcement

81. The Bill provides that local authorities may enforce the decisions specified in a high hedge notice if the hedge owner fails to take the action specified within the compliance period (Section 22: ‘Power to take action’). As noted above, experience in England and Wales is that the need for enforcement is relatively rare and so it is not anticipated that local authorities in Scotland will require to use these powers routinely; rather they are likely to be used only in exceptional cases.

82. The Bill provides that a person authorised by a local authority will be able to enter the hedge owner’s property and carry out the work specified in a high hedge notice if the hedge owner fails to take the action specified within the compliance period. A person who has been authorised in this way may take with them other persons, materials, equipment and vehicles as may be reasonably required and may do anything else reasonably required to fulfil the purpose of the enforcement action. The Bill requires that written evidence of authorisation must be provided should it be requested.

83. The Bill requires that hedge owners are given fourteen days’ notice prior to an authorised person exercising these powers. It also provides that it will be a criminal offence, punishable on summary conviction by a fine not exceeding level 3 on the standard scale (currently £1,000), to prevent or obstruct an authorised person from carrying out their duties (Section 24 ‘Local authority action: offence’). Where there are reasonable grounds for the enforcement action but entry has been refused, is reasonably expected to be refused, or the land is unoccupied, then a warrant may be obtained from a sheriff or justice of the peace authorising entry using reasonable force, although not against an individual (Section 23: ‘Warrant authorising entry by local authority’).

Recovery of enforcement costs

84. The Bill provides that local authorities will be able to recover the costs of enforcement from the hedge owner. As noted above, experience in England and Wales is that the need for enforcement is relatively rare and so it is not anticipated that local authorities in Scotland will require to undertake enforcement action other than in exceptional cases and so the need to recover those costs should also be exceptional.

85. Where a local authority finds it necessary to undertake the works specified in a high hedge notice due to the hedge owner not having done so, the Bill provides that the local authority can recover any expenses, including any administrative expenses, reasonably incurred in undertaking that action and may also charge interest (Section 25: ‘Recovery of expenses from owner of land’).

86. It is anticipated that local authorities will apply their usual debt management procedures to the recovery of enforcement costs relating to high hedge notices although, as noted above, that is likely to be necessary only in exceptional cases. The ability to charge interest should also act as an additional incentive for prompt payment.
87. However, representations from COSLA have indicated that local authorities would welcome a power to formally register such expenses where there may be difficulty in securing repayment in order to facilitate the recovery of such debts. The Bill, therefore, provides that a local authority may apply to register a ‘notice of liability for expenses’ in the Land Register of Scotland or the Register of Sasines, as appropriate against the land on which the hedge is situated. Such notice will specify the expenses of enforcing a high hedge notice, and will specify that interest will be payable (Section 26: ‘Notice of liability for expense of local authority action’).

88. The effect of registering a ‘notice of liability for expenses’ will be that any new owner of the land will also become liable for expenses specified in the notice (Section 27: ‘Recovery of expenses from new owner of land’). The liability can either be discharged by the seller or the buyer at the point of sale. In practice, solicitors acting on behalf of prospective purchasers of such a property are likely to ensure that such notices are brought to their attention. That is likely to result either in the debt being settled by the seller prior to completion of the agreement or a suitable adjustment being made to the purchase price to enable the purchaser to do so.

89. Where such informal arrangements do not result in the settlement of the debt, it will remain open to a local authority to pursue either the seller or the buyer for the full amount, as they are severally liable and a hedge owner remains liable for enforcement expenses even after they have sold the land (Section 28: ‘Continuing liability of former owner’). The Bill also provides that a new owner who pays enforcement expenses for which the previous owner is liable can recover that amount from the previous owner. A new owner maintains the right to recover those costs even if they themselves sell or otherwise dispose of the land.

90. Where enforcement expenses have been recovered, local authorities must apply to register a notice discharging the notice of liability (Section 29: ‘Notice of discharge’). This will give any prospective purchaser of the property reassurance that debts associated with the property with respect to high hedges have been settled.

Appeals

91. The Bill provides that applicants can appeal a local authority’s decision not to issue a high hedge notice and that owners and occupiers of both the land occupied by the high hedge and the property affected by the high hedge may appeal a local authority’s decision to issue, vary or withdraw a high hedge notice (Section 12: ‘Appeals’). Appeals must be made within 28 days of notification by the local authority of its decision on a high hedge notice.

92. Where an appeal is against a decision by a local authority not to issue a high hedge notice (where the local authority concludes that there is no adverse effect or that no action need be taken in relation to a high hedge even though there is an adverse effect), an appeal can either confirm that no notice should be issued or result in the issue of a high hedge notice. Where the appeal is against the issue of a high hedge notice or the withdrawal or variation of a notice, an appeal may confirm, quash or vary the high hedge notice or decision including correcting a defect, error or mis-description in the notice (Section 14: ‘Determination of appeal’).
This document relates to the High Hedges Bill (SP Bill 16) as introduced in the Scottish Parliament on 2 October 2012

93. As soon as reasonably practicable after determining the appeal, the outcome must be notified to every owner and occupier of the domestic property identified in the notice and every owner and occupier of neighbouring land, as well as to the local authority in whose area the hedge is situated, together with a copy of any high hedge notice or varied high hedge notice issued as a result of the determination of the appeal (Section 16: ‘Notice of determination’).

94. The Bill provides that a high hedge notice, or its variation or withdrawal, has no effect while an appeal is underway (Section 13: ‘Effect of appeal’). It also provides that appropriate adjustments are made to the time specified within which any action required by a high hedge notice should be undertaken, to take account of the determination of an appeal or its withdrawal or abandonment (Section 17: ‘Period for taking initial action following appeal’).

95. The Bill provides that appeals are to be made to the Scottish Ministers. In practice, it is intended that appeals will be dealt with by the Directorate for Planning and Environmental Appeals (DPEA) on behalf of Scottish Ministers. The Bill also provides that Scottish Ministers may appoint persons to determine appeals instead of them (Section 15: ‘Person appointed to determine appeal’). Appointed persons will have, in relation to appeals, the same powers and duties as the Scottish Ministers have under the Bill and the determination of an appeal by an appointed person is treated as that of Scottish Ministers.

96. This means that DPEA, through one of its inspectors, will be able to undertake its own investigation and make its own assessment with regard to the situation. This could include visiting the property in question. They would then be able to make a decision, whether it is to quash, vary or confirm a high hedge notice. They would also be able to issue a high hedge notice where none had been issued previously and this had been the subject of the appeal.

97. Each owner and occupier of the domestic property identified in the high hedge notice and each owner and occupier of the land on which the high hedge is situated may appeal against the issue of a high hedge notice or the withdrawal or variation of a notice.

ALTERNATIVE APPROACHES

98. The Scottish Government consultation in 2009 asked whether disputes such as those over high hedges were a matter for Government intervention, or best left for individuals to resolve privately. Of those who responded to that question, 95% favoured Government intervention. The Bill takes account of the responses to that consultation and builds on previous Parliamentary proposals and takes account of previous analysis of the consultation.

99. The consultation outlined a number of different approaches to the issue. These were: do nothing; promote existing remedies such as mediation; strengthen and supplement existing remedies with research, guidance and title conditions; and provide a legislative solution by utilising or extending existing provisions or introducing new ones. Under the legislative solution were a number of further options which included replication or modification of English and Welsh legislation; use of statutory nuisance provisions; civil action (through summary cause or small claims; and summary application); and the Lands Tribunal for Scotland. Planning provisions had already been ruled out at this stage.
Court-based solution

100. Over two thirds (68%) of private individuals who responded to the consultation favoured replication or modification of the English and Welsh legislation as the preferred delivery mechanism and this Bill takes that approach. However, consideration was also given to adopting a court-based solution. Work showed that a right could be created to be exercised through the sheriff courts. The court could decide on the basis of the information before it whether that right had been breached and then issue a decree (judgement) outlining what should be done to address the problem caused by the height of the hedge.

101. The owner of the hedge, in failing to take the action detailed in the decree, could be fined or ultimately imprisoned as punishment. However, this would not necessarily deal with the hedge itself and enforcement of the court degree would involve further procedure.

102. This is an untried and untested solution in the context of a high hedge and moves the court option away from being a simple and straightforward solution to something more complex and requiring legal representation. It could also carry the risk of significant costs for individuals. Instructing a solicitor can vary between £130 and £250 per hour and as well as paying their own costs, the person who loses the case may also face paying legal costs of their opponent.

103. Our best estimate of the costs associated with this option (before any work on the hedge is undertaken) would be in the region of £3000 - £5000 with a one day proof. If the cases are taken in the sheriff court then there could be eligibility for legal aid. However, it is difficult to say whether or not legal aid would be paid as there are a number of tests to be met by the applicant. The average case costs in the sheriff court for civil legal aid in 2010-11 was £1,917.

104. Based on a small number of cases, it is considered that the cost implications for the legal aid fund would not be significantly high. However, even where civil legal aid was available, people might still be required to pay a contribution to the costs of their civil legal aid and any publicly-funded advice and assistance received.

105. Over and above these costs identified above, there would remain the costs of any remedial work identified as being necessary.

106. Having considered these issues alongside the alternative proposal for a local authority-based system, I concluded that a local authority would be better placed to make a judgement that balances the respective rights of the hedge owner and the applicant, and the wider public/community interest and that the resulting system would be likely to involve considerably less expense for the parties to the dispute.

England and Wales / Northern Ireland

107. The definition of a high hedge used in this Bill is very similar to that currently in place in England and Wales and Northern Ireland (in section 66 of the Anti-social Behaviour Act 2003)\(^{28}\)

and section 2 of the High Hedges Act (Northern Ireland) 2011\(^{29}\) respectively. Both of these Acts define a high hedge in terms of forming a barrier to light, greater than two metres high, and consisting wholly or predominantly of a line of two or more evergreens.

108. I have given consideration to whether or not non-compliance with a high hedge notice should be an offence, as is the case in the Anti-social Behaviour Act 2003 which contains the English provisions, but concluded it should not. I consider that the powers of enforcement and cost recovery which this Bill grants to local authorities should be sufficient to encourage compliance and I do not believe that it would be useful to criminalise people for failing to control high hedge growth in the context of trying to resolve problems between neighbours.

Isle of Man

109. The Isle of Man’s Trees and High Hedges Act 2005\(^{30}\) covers single trees as well as high hedges. It uses a similar definition to that used in England and Wales and Northern Ireland but defines a high hedge as a row of “two or more trees or shrubs” without requiring that they are wholly or mainly evergreen or semi-evergreen plants. While the Act includes single trees it does not define a tree, nor does it provide any test that a tree would have to meet to be covered by the Act, other than it is affecting a person’s reasonable enjoyment of property.

110. My view is that extending legislation to include trees and deciduous hedges increases the complexity and difficulty of decision-making in considering such cases in comparison with evergreen hedges. In my view, those difficulties – and the consequent additional expense for all involved – are demonstrated by the recent appeal case of Boardman versus the Braddan Commissioners\(^31\) heard by the High Bailiff’s Court sitting at Douglas on the Isle of Man which relates to a deciduous hedge. The decision itself extends to 18 pages and the High Bailiff noted that the “amount of paperwork generated by this appeal has been somewhat large”. The High Bailiff’s decision also refers to the difficulties in noting that “disputes of this kind can result in a certain amount of heat and for landowners, perhaps, to a lack of ability to see a problem from both sides”. This Bill does not include trees and adopts a narrower definition of a high hedge to provide a more straightforward decision-making process which will limit costs both to the public purse and to the parties involved in the dispute, who will themselves bear the majority of those costs.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT, ETC.

Equal opportunities

111. The Bill’s impact on equal opportunities has been assessed. It does not unlawfully discriminate in any way with respect to any of the protected characteristics (i.e. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly. The Bill promotes the resolution of disputes by providing a remedy for disputes about high hedges which neighbours cannot


resolve amicably amongst themselves. By doing so it promotes strong supportive communities for all people – including those with protected characteristics.

112. While the Bill provides a new remedy for such disputes it does not establish any new bodies with responsibility for the functions it creates. Instead the Bill provides that local authorities will have responsibility for delivery and, therefore, from an equalities perspective, places reliance on their tried and tested approach for achieving and promoting equality of opportunity in the delivery of their services. The assessment of the Bill indicates that the main equality issues will arise at local authority level and local authorities will need to ensure that the new regime is as accessible as possible to all protected groups. It is envisaged that will be supported and encouraged through the guidance which the Bill enables the Scottish Government to issue to local authorities.

113. The problem addressed by the Bill – the adverse effect of high hedges on the reasonable enjoyment of domestic property – does not in itself have an equalities dimension, in that there is no available evidence which indicates that the different equalities groups are more or less likely to be involved. However, the impact of such an adverse effect could be more severe in the case of older people or those with disabilities where mobility is affected as, consequently, any adverse effect on the reasonable enjoyment of their domestic property may be a more serious issue. Evidence from Scothedge confirms that analysis. As the Bill provides a remedy in such cases, it promotes equality by addressing the more severe indirect impact of the issue on those equalities groups.

114. The assessment of the Bill’s impact on equalities has not identified any other direct or indirect impacts on equalities groups.

Human rights

115. The provisions of the Bill are compatible with the European Convention on Human Rights. Article 6 which gives individuals a right to a fair trial, Article 1 of Protocol 1 which affords individuals the right to peaceful enjoyment of their property and Article 8 which gives individuals the right to respect for private and family life were considered relevant in relation to the provisions. The Bill will enable a high hedge notice to be issued requiring work to be carried out on a person’s property. It also allows authorised persons in certain circumstances to enter private property both to examine high hedges and, if necessary, to carry out the work on high hedges. The right of judicial review to an Article 6 compliant tribunal is considered sufficient to render the provisions compliant with Article 6. The rights under Article 1 of Protocol 1 are not absolute and they may be interfered with if this can be justified in the public interest, is proportionate and is in accordance with the law. Although there may be interference with enjoyment of an individual’s property, such interference is considered limited in scope, and subject to certain safeguards in pursuit of providing an effective means of resolving disputes over the adverse effects of high hedges. This meets the fair balance test and does not offend Convention rights. The provisions also strike a fair balance between the right to respect for home in Article 8 and the public interest test. The powers do not go beyond what is necessary for the purposes of the legislation and are considered proportionate. Any interference will be in accordance with the law.
Island and rural communities

116. The Bill has no identified differential impact on island and rural communities.

Local government

117. The Bill provides local authorities with new powers to resolve disputes relating to high hedges where those disputes cannot be resolved by the individuals involved and to enforce their decisions where that is necessary. The Bill provides that local authorities may charge an application fee to cover the cost of providing the service of making a decision on the application. It also provides that local authorities may recover the full costs of action taken to enforce a high hedge notice. These impacts are spelled out in detail throughout this Policy Memorandum and the financial impacts are considered in more detail in the accompanying Financial Memorandum.

Sustainable development

118. This Bill will have no negative impact on sustainable development.

Business and Regulatory Impact Assessment

119. A separate Business and Regulatory Impact Assessment will be completed in relation to the Bill.
PURPOSE

1. This memorandum has been prepared by Mark McDonald MSP with the assistance of the Scottish Government. Its purpose is to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.6.2 of the Parliament’s Standing Orders, of provisions in the High Hedges (Scotland) Bill conferring powers to make subordinate legislation. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. The Bill aims to provide an effective means of resolving disputes over the effects of a high hedge where the issue has not been able to be resolved amicably between neighbours. It does so by giving homeowners and occupiers a right to apply to a local authority where it is considered a high hedge is affecting the enjoyment of their property, and empowers local authorities to make and enforce decisions in relation to high hedges.

3. The Bill gives local authorities new powers to decide whether a high hedge adversely affects the reasonable enjoyment of domestic property. It enables a local authority to reject an application if it concludes the applicant has not taken all reasonable steps to resolve the matter before applying, or where the application is frivolous or vexatious.

4. The Bill enables a local authority to issue a high hedge notice where, having taken all the circumstances into account, it finds that a hedge is having an adverse effect. A high hedge notice may require a hedge owner to take action to remedy the problem and prevent it recurring. Should that action not be taken within the time specified in the high hedge notice, the local authority will be empowered to enter the property, take the specified action, and recover the costs from the owner of the hedge. There is a right of appeal to Scottish Ministers.

Rationale for subordinate legislation

5. In deciding whether the provision should be specified on the face of the Bill or left to subordinate legislation, careful consideration has been given to the importance of each matter against the need to—
strike the right balance between the importance of the issue and the need to provide flexibility to respond to changing circumstances quickly, in the light of experience, without the need for primary legislation;

- the need to make proper use of parliamentary time; and

- the need to anticipate the unexpected, which might otherwise frustrate the purpose of any provision in primary legislation approved by the Parliament.

Delegated powers

6. The Bill’s delegated powers provisions are set out below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure is considered appropriate.

Section 34 – Power to modify meaning of “high hedge”

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative procedure

Provision

7. Section 1 defines a “high hedge” for the purposes of this Bill. Subsection (1) states that the Act only applies to a hedge which is formed wholly or mainly by a row of 2 or more evergreen or semi-evergreen trees or shrubs, which rises to a height of more than 2 metres above ground level and forms a barrier to light. Subsection (3) states that no account is to be taken of the roots of a high hedge in applying this Act.

8. Section 34 of the Bill confers on Scottish Ministers the power to modify by regulations the definition of a high hedge, as set out in section 1.

9. This power could be used to add deciduous trees or shrubs to the definition of a high hedge, to adjust the height at which a hedge comes within the ambit of the Act or to amend the type of barrier which it forms.

Reason for taking power

10. When developing the policy that has produced this Bill, special consideration was given to the definition of a high hedge. Currently, section 1 would include deciduous plants and shrubs if they formed part of a mainly evergreen or semi-evergreen hedge, but would exclude hedges that were formed wholly or mainly of deciduous plants. Full details of the considerations underlying the definition are set out in the Policy Memorandum accompanying the Bill.

11. The definition of high hedge in the Bill is similar to that in the legislation in place in England and Wales and Northern Ireland. However, there are differing views on what the
definition should cover. Some stakeholders have been vocal in their support for the inclusion of much more than just a “high hedge” in the Bill.

12. The approach taken in the Bill is to adopt a tightly focused definition which minimises complexity and expense. This seeks to avoid creating unwieldy legislation that would be difficult and expensive to enforce.

13. However, as there are competing arguments, it is thought desirable to have some flexibility and therefore a power to adjust the coverage of the Bill by means of altering the definition of high hedge. While the proposed power would not go so far as to allow unrelated things to be within the mechanism of the Bill, there may, after observing the operation of the Bill, be a desire to revisit the definition of high hedge, either to widen or to narrow it.

14. Giving the Scottish Ministers a power to amend the definition by order is considered to be the best way to build in that flexibility and offer the opportunity for a review of the operation of the Bill.

15. This power would avoid the need for the Parliament to consider entirely new primary legislation, the sole purpose of which would be to amend the definition of a high hedge and make any necessary consequential changes. It is not envisaged that if it was considered appropriate to amend section 1 in such a way it would raise any issues which could not adequately be considered by the Parliament under the affirmative procedure.

16. The power also allows for such supplementary, incidental, consequential, transitory, transitional or saving provisions as the Scottish Ministers consider appropriate as it may be necessary to amend other provisions of the Act – or of other Acts – to take account of any adjustments to the definition in section 1.

Choice of procedure

17. This power can be used to narrow or widen the definition of a high hedge, which could have a significant impact on the application of the legislation. Affirmative procedure is therefore considered to be the appropriate level of parliamentary scrutiny.

Section 35 – Ancillary provision

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Provision

18. Section 35 of the Bill confers on Scottish Ministers a power to make by order such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any
provision of the Bill. Section 35(2) provides that the power extends to the modification of any enactment.

Reason for taking power

19. Any body of new law may give rise to the need for a range of ancillary provisions. For example, consequential provision may be required in order to make necessary changes to related legislation. It may be that the consequences have not been identified and as such further changes may be required. The order-making power is considered to be necessary to allow for this flexibility.

20. It is considered that the power to make such provision should extend to the modification of enactments. Without the power to make incidental, supplementary and consequential provision, it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with a matter which is clearly within the scope and policy intentions of the original Bill. That would not be an effective use of either the Parliament’s or the Scottish Government’s resources.

21. The power is limited as it can only be used if the Scottish Ministers consider it appropriate to do so for the purposes of, or in consequence of, or for giving full effect to the Bill or any provision of it.

Choice of procedure

22. Section 35(3) provides that any order made under this section will be subject to affirmative procedure if it adds to, replaces or omits any part of the text of an Act. Otherwise, it will be subject to negative procedure. This provides the appropriate level of parliamentary scrutiny, taking account of the nature of the orders which may be made using this power.

Section 37 – Commencement

Power conferred on: the Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: The Order must be laid before the Parliament (subject to section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Provision

23. Section 37 of the Bill provides that, with the exception of that section and sections 33, 35 and 38 which come into force on the day after Royal Assent, the Scottish Ministers may by order appoint the day on which the provisions of the Bill come into force. Section 37(3) provides that such an order may include transitory, transitional or savings provision.

Reason for taking this power

24. Section 37 enables Scottish Ministers to bring the Bill’s main provisions into effect by means of a commencement order. This is intended to enable the Scottish Government to bring
the Bill’s provisions into force once they have ascertained that local authorities have the necessary administrative and other arrangements in place and have published any necessary guidance.

25. It is intended to use the power in subsection (3) to make the necessary transitory provision amending section 12 of the Land Registration (Scotland) Act 1979 to exclude the Keeper of the Registers of Scotland indemnity for losses arising in consequence of an inaccuracy in any information contained in a notice of liability for expenses or a notice of discharge registered under this Bill until such time as the provision of the Land Registration etc. (Scotland) Act 2012 repealing section 12 is in force. There may be unforeseen issues which arise at the time of commencement which require other transitional or transitory provisions. The power in subsection (3) enables such provision to be made.

Choice of procedure

26. As is now usual for commencement orders, the default laying requirement applies (as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010).
Local Government and Regeneration Committee

3rd Report, 2013 (Session 4)

Stage 1 Report on the High Hedges (Scotland) Bill

Published by the Scottish Parliament on 28 January 2013
### Remit and membership

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Local Government and Regeneration Committee

Remit and membership

Remit:

To consider and report on a) the financing and delivery of local government and local services, and b) planning, and c) matters relating to regeneration falling within the responsibility of the Cabinet Secretary for Infrastructure and Capital Investment.

Membership:

Stuart McMillan
Anne McTaggart
Margaret Mitchell
John Pentland
Stewart Stevenson
Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
David Cullum

Senior Assistant Clerk
Fiona Mullen

Assistant Clerk
Seán Wixted

Committee Assistant
Fiona Sinclair
Local Government and Regeneration Committee

3rd Report, 2013 (Session 4)

Stage 1 Report on the High Hedges (Scotland) Bill

The Committee reports to the Parliament as follows—

SUMMARY OF RECOMMENDATIONS

1. The Committee supports the general purpose of the Bill.

2. The Committee is content with the definition of a high hedge as established in section 1 of the Bill.

3. The Committee would welcome clarity regarding the instances where a local authority is considering an application where one or more of the properties concerned in the application for a high hedge notice are owned by the local authority.

4. The Committee recommends that the Government examine the feasibility of establishing a central tree officer to provide a core of expertise to local authorities, as is the case in Wales.

5. The Committee recommends that the Scottish Government take the opportunity of the on-going review of Scottish Planning Policy to examine the issues raised such as residential development in proximity to woodlands.

6. The Committee recommends that the Bill be amended to include reference to National Park Authorities as statutory consultees for any high hedge notice applications made within their park area.

7. The Committee recommends that the Bill include a mechanism for a review. Such a review should take place within a reasonable timeframe, no later than five years, after the commencement of the system. Such a review should examine the operation of the Bill in general and not be confined to any specific issues.

INTRODUCTION

Parliamentary scrutiny

8. The High Hedges (Scotland) Bill, (“the Bill”), was introduced into the Scottish Parliament on 2 October 2012 by Mark McDonald MSP, the member in charge of
the Bill (“the member in charge”). The Parliament designated the Local Government and Regeneration Committee as the lead committee for the consideration of the Bill.

9. The Bill is a Members’ Bill, as specified under Standing Orders Rule 9.14. The Scottish Government has publically stated that it is supporting the passage of the Bill; and officials from the Scottish Government assisted the member in charge in drafting the Bill. The Bill is accompanied by both a Policy Memorandum and Explanatory Notes, containing a Financial Memorandum.

10. The Committee issued a call for evidence on the Bill on 5 October 2012. The call for evidence closed on 29 November, and the Committee received 90 submissions in response.

11. On 5 December the Committee took oral evidence from Pamala McDougall and Derek Park, Scothedge; Dr Maggie Keegan, Scottish Wildlife Trust; Aedán Smith, RSPB Scotland, and Angus Yarwood, Woodland Trust Scotland.

12. On 12 December the Committee took oral evidence from Roy Corlett, Legislation Manager, Isle of Man Department of Infrastructure; Peter Keenan, Southern Area Forester, Isle of Man Department of Environment, Food and Agriculture; Colin Whiteway, Clerk, and Paul Parker, Community Warden, Braddan Parish Commissioners (Isle of Man); Robert Paterson, Land Services Officer with Clackmannanshire Council and Member of the Scottish Tree Officers Group; Eric Hamilton, Forestry Officer for Dundee City Council and Treasurer of the Arboricultural Association’s Scottish branch, and Graham Phillips, Forest Manager, Bell Ingram Ltd.

13. Finally, on 19 December the Committee took oral evidence from Derek Mackay MSP, Minister for Local Government and Planning (“the Minister”) and the member in charge of the Bill. Extracts from the minutes of the Committee are attached at Annexe A. Oral and written evidence received by the Committee is attached at Annexe B and Annexe C.

**Purpose of the Bill**

**Policy intention**

14. The Policy Memorandum states that the policy objective of the Bill is to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property. The Bill provides that primary responsibility for resolving disputes over high hedges should lie with individuals in the first instance. The Bill requires that applicants for a high hedge notice must have taken all reasonable steps to resolve the issue before making an application to a local authority. The Bill also enables local authorities to reject an application where such steps have not been taken.1

15. The principle objective of the Bill is to establish a system to resolve disputes over high hedges. The Bill seeks to achieve this by putting in place a mechanism which provides local authorities with new powers to resolve disputes. The Bill

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1 Policy Memorandum, paragraph 36.
enables local authorities to consider an application from an individual, seeking action against a high hedge located next to their property. The Bill also enables local authorities to recover the costs of taking action to address a high hedge problem. The Policy Memorandum states that the aim of the Bill is to ensure that the costs to the public finances of resolving private disputes over high hedges are minimised.

16. In summary, the Bill includes provisions which:

- define a high hedge as one which is wholly or mainly formed by a row of two or more evergreen or semi-evergreen trees or shrubs which are over two metres in height and form a barrier to light;

- provide an effective means of resolving disputes over the effects of a high hedge where the issue has not been able to be resolved amicably between neighbours. It does so by giving home owners and occupiers a right to apply to a local authority where they consider a high hedge [as defined] is affecting the enjoyment of their property, and empowers local authorities to make and enforce decisions in relation to high hedges;

- enable a local authority to issue a high hedge notice where, having taken all the circumstances into account, it finds that a high hedge is having an adverse effect. A high hedge notice may require a high hedge owner to take action to remedy the problem and prevent it recurring;

- make provision for both the applicant and the high hedge owner to appeal against a decision to issue/not issue a high hedge notice;

- provide local authorities with the power to undertake the work specified in a high hedge notice, if the notice is not complied with by the high hedge owner within the time specified;

- empower local authorities to charge a fee for applications for a high hedge notice, and recover the costs of any enforcement action from the hedge-owner, and

- ensure the provisions for resolving a high hedge dispute are to be largely cost-neutral for local authorities.

**Background to the Bill**

*Previous consultations in Scotland*

17. Former MSP Scott Barrie lodged proposals for the introduction of a members’ bill on high hedges into the Parliament on two previous occasions, in September 2003 and November 2006. On neither occasion was a bill introduced into the Parliament.

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2 Policy Memorandum, paragraphs 2 - 9.
3 Financial Memorandum, paragraph 82.
18. Between August and November 2009 the Scottish Government undertook a public consultation on the issue of high hedges and nuisance vegetation. In response the Government received 617 written submissions to the consultation, 575 from private individuals, 13 from local authorities and 29 from other stakeholder organisations. Approximately 90% of respondents favoured the introduction of legislation to address the issue of high hedges.

19. On 21 December 2011, the member in charge lodged a draft proposal for a members’ bill. In light of the Scottish Government public consultation in 2009, and the level of response to the consultation, the member in charge lodged a statement of reasons stating that, in his opinion there was no further need for public consultation on his draft proposal.

20. The Local Government and Regeneration Committee considered this statement of reasons on 1 February 2012 and was satisfied with the reasons given by the member for not consulting on the draft proposal. As a result, the member in charge became entitled to introduce a members’ bill.

Legislation in other jurisdictions

21. Scotland is currently the only part of the UK which has not enacted legislation to address the issue of disputes between property owners or occupiers in relation to problems caused by high hedges.

22. England, Wales and Northern Ireland all have legislation currently in force which empowers local authorities to operate schemes to address the problems of high hedges. The scope of these schemes, and the statutory definition of a high hedge in each jurisdiction, are similar.

23. The Isle of Man also has legislation to deal with high hedges, however, that legislation also covers the issue of single trees. The Bill effectively seeks to establish a scheme for high hedges in Scotland similar to the ones operating in England, Wales and Northern Ireland.

GENERAL PRINCIPLES OF THE BILL

High hedges

Introduction

24. The definition of a high hedge is the central issue raised by witnesses who gave evidence to the Committee. Most of the written and oral evidence commented on this aspect on the Bill. Opinion varied with some witnesses who believe the definition should be expanded to include other forms of vegetation, such as single and deciduous trees. Other witnesses favoured retaining the definition set out in the Bill, while some called for it to be narrowed even further to provide protection to various types of evergreen, or semi-evergreen species (e.g. yew or juniper).

25. Other aspects of the Bill which were considered where:

- its implications for tree preservation orders (TPOs);
• the fees system;
• the cost of the Bill and the resource implications for local authorities;
• the delegated powers set out in the Bill, and
• other issues relating to the Bill.

Definition of a high hedge
26. Central to the operation of the system which the Bill proposes to introduce is the need to provide a statutory definition in Scots law of a high hedge. In this regard the member in charge of the Bill has opted to follow the statutory definition used in England and Wales. Section 1 of the Bill defines a high hedge as a hedge which:

• “is formed wholly or mainly by a row of 2 or more evergreen or semi-evergreen trees or shrubs,
• rises to a height of more than 2 metres above ground level, and
• forms a barrier to light.
• For the purposes of this definition “a hedge is not to be regarded as forming a barrier to light if it has gaps which significantly reduce its overall effect as a barrier at heights of more than 2 metres.”

27. In its evidence to the Committee, Scothedge speculated that there would be up to 5,000 cases in Scotland where there is a dispute between property owners about obstruction of light by high hedges or trees. Based on the experience of high hedge legislation in other jurisdictions such as England and Wales, Scothedge estimates that up to 92% of these cases would “resolve themselves” if the Bill were enacted, without the need for any formal action.

28. Indeed, Scothedge suggested to the Committee that there has been a case which has recently been resolved on the basis of the Bill being introduced. Scothedge cited this as an example of the persuasive effect that legislation in this area will have in compelling individuals to reach an agreed resolution to a high hedge dispute and avoid the possibility of formal action being pursued.

29. Scothedge are strongly supportive of the introduction of the Bill, and believe it is a long overdue revision to the legislative framework in Scotland in relation to such disputes. However, they felt that the definition of a high hedge should be expanded to include single evergreen or deciduous trees. They referred to situations where the enjoyment of property, or quality of life, has otherwise been impacted by trees. Scothedge cited surveys undertaken by them in 2005 and 2009 which showed that 78% of cases involved disputes over evergreens plants,

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4 Sections 1(1) and 1(2) of the Bill.
5 Local Government and Regeneration Committee, Official Report, 5 Dec Col 1482.
6 Local Government and Regeneration Committee, Official Report, 5 Dec Col 1481.
and around 20% involved deciduous plants. The surveys showed that 49% of all Scothedge cases involved a dispute over “a single inappropriate tree.”

30. While acknowledging that the definition in the Bill broadly replicates the system currently in place in England, Wales and Northern Ireland, Scothedge stated in oral evidence that—

“Our preferred definition is the one that is used in the Isle of Man, because it is a wide definition. The wording is about something that stops people having reasonable enjoyment of a property….We prefer the Isle of Man definition because it allows all the cases to be made. People can make a complaint and their case can be considered. If we do not do that, the danger is that people will just switch species. Believe me; our experience is that some pretty unscrupulous people are growing these hedges.”

31. The Committee took oral evidence from witnesses representing both government and local authorities on the Isle of Man. The witnesses outlined how the Manx system, which has been in place since 2005, deals with the issue of disputes over single trees. Roy Corlett of the Isle of Man Department of Infrastructure informed the Committee that—

“The legislation has gone down well on the Isle of Man. It certainly seems to have settled many cases that would previously have caused issues.”

32. Paul Parker of Braddan Parish Commissioners, one of the Isle of Man’s 24 local authorities, gave evidence on their experience of operating the system over the last 7 years. Mr Parker stated that of the six cases a year that Braddan Commissioners deal with, about 75% have included a deciduous tree of some sort.

33. Witnesses from the Isle of Man highlighted differences in the statutory framework in relation to forestry and tree management between the Isle of Man and the various parts of the UK. Peter Keenan of the Forestry Directorate of the Isle of Man Department of Environment, Food and Agriculture outlined the statutory background to forest management and tree felling in the Isle of Man. He stated that in the Isle of Man “areas of trees and individual trees are registered under the Tree Preservation Act 1993”, and that the Manx Government has responsibility for monitoring and supervising these areas. This made the Isle of Man “unique in as much as home owners need to apply to us for a felling licence to remove any trees from their property.” This allows the Manx authorities to assess and deal with any cases that might arise before they come up under the high hedge system.

34. Other witnesses giving oral evidence were unanimously opposed to the expansion of the Bill to cover single trees. Dr Maggie Keegan of the Scottish Wildlife Trust told the Committee that the principle intention of the Bill should be to

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8 HH66, Scothedge submission, page 2, paragraph 10.
10 Local Government and Regeneration Committee, Official Report, 12 Dec 2012, Col 1517.
“capture leylandii and other trees such as western red cedar that have little biodiversity value.” Dr Keegan suggested that the definition in section 1 could be amended to specifically identify “non-native evergreen and semi-evergreen” plants.\textsuperscript{13}

35. Aedán Smith of the RSPB highlighted what he saw as the advantages of retaining the definition of a high hedge as set out in the Bill. In oral evidence he stated—

“The current definition has the merit of simplicity, which has obvious benefits in terms of administration and management if the implementation of the bill is progressed. As Dr Keegan said, the current definition is likely to mean that hedges and trees that, broadly speaking, are of higher biodiversity value—those tend to be native species—will not be captured by the bill. Our primary concern is that there should not be an adverse impact on wildlife or biodiversity, and the current simple definition means that adverse implications for wildlife are less likely.”\textsuperscript{14}

36. The Scottish Wildlife Trust also expressed concerns in relation to the inclusion of single trees and the potential impact for forested land which adjoins urban areas, or where domestic property is developed adjacent to existing woodland. This may give rise to pressure from developers, or property owners, to seek to have existing trees removed on the grounds they impinge on the reasonable enjoyment of their property. They highlighted a case where a developer had built houses close to existing woodland. The land manager of the woodland eventually had to cut down trees in response to complaints from homeowners.\textsuperscript{15}

37. Angus Yarwood of the Woodland Trust Scotland expressed a concern that widening the definition of the Bill to include single trees would require a more considered examination of the implications, telling the Committee—

“If there is to be a broader definition, we would want to go back and look at the other sections in the bill, particularly with regard to tree preservation orders and the importance of heritage trees and the proper assessment of biodiversity value.”\textsuperscript{16}

38. Concerns were also expressed by some witnesses that expanding the scope of the Bill to include single or deciduous trees may create a situation in law where trees which may have existed for dozens, or hundreds of years could come under threat. It was feared that pressure from modern property development to remove trees which obstruct light to new housing, or to conservatory/sun room extensions in existing properties, may increase.

39. The Scottish Tree Officers Group (“STOG”) represent local authority tree officers who will have primary responsibility for implementing and managing the high hedge notice system under the Bill. In their evidence to the Committee they

expressed some concerns in relation to the definition of a high hedge in section 1 of the Bill. STOG felt that this definition may be drawn too widely and could lead to the removal of trees and hedges of historic and biodiversity value.

40. In its written evidence STOG provided an example where the Bill may give rise to a problem where two evergreen trees could be planted 5 meters apart. Eventually, the lower branches come together and form a barrier to light, however the original intention was the establishment of two individual trees, not to form a hedge.  

41. In oral evidence to the Committee, Robert Paterson of STOG expanded these concerns when he stated—

“My understanding of section 1 is clear, which is that it applies to a hedge or two or more trees growing closely together. We would seek to have the latter part of the provision removed because it could relate to a couple of mature yew trees that are 3,000 years old. If, as you suggest, those trees are reduced to 2m high, we will no longer have yew trees that look individual.”

42. Graham Phillips of Bell Ingram Ltd, which manages commercial forestry and woodland areas for private clients, expressed general satisfaction with the definition of a high hedge in the Bill. However, he stressed that the definition would need to be “tight enough to deal with the specific problems that the bill wants to address without giving too much scope for capturing individual trees and woodland trees”.

43. Eric Hamilton, Forestry Officer with Dundee City Council, stated that the definition of a high hedge “must cover just high hedges and not any trees of any type”, adding that the inclusion of trees in a bill designed to address high hedges “would lead to tremendous problems.”

44. Commenting on the potential level of inquiries tree officers might receive from people seeking to have neighbouring trees removed to improved levels of light, or landscape views, Mr Hamilton responded—

“I could not put that into numbers. There would be too many—we would be inundated. My switchboard and emails would light up……The number would be very substantial.”

45. Graham Phillips referred to six potential cases Bell Ingram Ltd has dealt with in the last two years which may have come under the provisions of the Bill if it were to include provisions for making applications to remove single trees.

46. Some of the written evidence questioned the suitability of adapting definitions in legislation in operation in England and Wales, for use in Scotland. Mr Peter Robinson, in his submissions, pointed to the differences in the angle of sunlight in

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17 HH68 Scottish Tree Officers Group submission, page 1, paragraph 2.
18 Local Government and Regeneration Committee, Official Report, 12 Dec 12, Col 1533.
winter between locations in the south of England, as opposed to locations in central and northern Scotland.22

**Exemptions for native species**

47. The Scottish Wildlife Trust and Bell Ingram Ltd also expressed a view that the Bill should explicitly exclude, or protect, native species of evergreen and semi-evergreen plants from being subject to high hedge notices.

48. Dr Maggie Keegan of the Scottish Wildlife Trust highlighted the important role native evergreen species such as holly, juniper and yew stating that these “native trees have much more biodiversity value than do non-native tree species”. She questioned whether the definition of a high hedge in section 1 should be amended to read “non-native evergreen or semi-evergreen trees”, to protect such species.23

49. Grahame Phillips, of Bell Ingram Ltd stated that yew trees should be explicitly excluded from the definition of a high hedge. Yew, he stated, was usually part of a historic landscape, such as churchyards, and is “a fairly slow-growing species”.24

50. In response to some of these concerns, Derek Park of Scothedge pointed out that even if deciduous or single trees were included in the Bill, they only constitute less than 0.5% of the total domestic hedge stock in Scotland.25

51. Pamala McDougall of Scothedge also pointed to the effect a long running dispute with a neighbour, irrespective of where it involves an evergreen hedge or a deciduous tree, can have on the health and wellbeing of the people involved. She stated—

“I am sorry but, as much as I love trees, I think that when it comes to weighing people’s quality of life against the value of a tree, there are definite priorities to consider.”26

**Tree Preservation Orders**

52. Where a tree has already been identified as having particular significance, it may be protected by a tree preservation order under section 160 of the Town and Country Planning (Scotland) Act 199727. The Policy Memorandum states that the intention of this Bill is that local authorities should take account of any tree preservation orders when making a decision on a high hedge application (in light of the fact that the same factors are considered as for the making of a tree preservation order). However, a local authority should not be unnecessarily constrained by a tree preservation order in deciding what action should be taken in respect of a high hedge.28

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22 HH38 Submission from Peter Robinson.
27 Section 160 of the Town and Country Planning (Scotland) Act 1997 (as amended by section 28 of the Planning etc. (Scotland) Act 2006).
28 Policy Memorandum, paragraph 66.
53. The evidence received by the Committee pointed to concerns regarding the lack of uniform application and enforcement across Scotland in relation to tree preservation orders ("TPOs"). Angus Yarwood of Woodland Trust Scotland, in response to questions on the application of TPOs, informed the Committee that—

“...tree preservation orders are not applied uniformly throughout Scotland for various reasons. Recently, we did some research on their use in the past 10 years or so, and their numbers have dropped off significantly. One local authority in Scotland is not even able to lay its hands on the legal documents, although most other authorities are much better prepared. There is a big issue about enforcement and you are right to say that, in certain cases, the penalties are not high enough. The same is true of building regulations—if trees are cut down, the penalties are not high enough.”

54. Scothedge stated that they were content with the way the Bill proposes to deal with TPOs.

55. Other concerns were expressed regarding the possible impact the Bill may have on the system of TPOs. Eric Hamilton of Dundee City Council requested that the Bill be amended to “remove altogether...any contact with tree preservation orders”.

56. Mr Hamilton also referred to the issue of the effective reviewing of TPOs by local authorities, pointing out that currently there is no set timescale in Scotland within which TPOs must be reviewed, so it is at the discretion of each local authority. Mr Hamilton informed the Committee that currently Dundee City Council is “undertaking a 10 year review [of TPOs] after 30 years of not reviewing anything.”

57. Concerns over the impact of the Bill on TPOs were also shared by Grahame Phillips of Bell Ingram Ltd. In response to a question as to whether the Bill might present an opportunity to ensure a more effective monitoring regime for TPOs in Scotland, thereby pre-empting some of the issues in relation to single trees, Mr Phillips responded—

“The issue should be dealt with more through a review of TPOs rather than through the bill. If a tree became dangerous, that would not preclude a TPO. The commonsense approach is valid, but it should be taken at the TPO stage rather than under the bill.”

Views of the Scottish Government

58. In oral evidence to the Committee, the Minister stated that the Scottish Government supports both the Bill, and the definition of a high hedge as set out in
section 1, stating that it “broadly strikes the right balance and required neither narrowing nor expanding.”

59. The Minister added the Government’s view that the Bill will change behaviour amongst property owners who are in dispute over a high hedge and “sets a scene and a tone such that one would hope that others would not use vegetation or other such growth to upset their neighbours.” Moreover, widening the definition in a way that satisfied everyone would come with its own particular difficulties which may not be achievable.

60. In relation to questions raised about the implications of the Bill on TPOs, the Minister stated—

“I am aware that there has been much discussion of the bill’s interaction with tree preservation orders. The Government’s memorandum makes it clear that we support the bill’s approach as it ensures that a local authority’s decision to issue a high hedge notice will not be frustrated by an inappropriate TPO. The committee will be aware that a similar issue arises in relation to conservation areas. The Government’s memorandum makes it clear that we are prepared to take forward regulations under the Town and Country Planning Act (Scotland) 1997 to ensure that high hedge notices are not adversely affected by conservation areas…”

61. The Minister confirmed that the Scottish Government would examine the legislation and guidance around TPOs in Scotland, with the aim of ensuring it is complementary to the provisions of the Bill.

Views of the member in charge of the Bill
62. The member in charge addressed the questions raised about whether the definition of a high hedge should be amended, stating that “we should go forward on the current basis and see how the definition works in a Scottish context.” On single trees he added—

“…deciduous trees will be covered by the bill if they are part of a high hedge that is mainly formed of evergreen or semi-evergreen plants. Deciduous trees are not, by definition, completely off the agenda. However, in our view, the real problem in the context of barriers to light is the semi-evergreen or evergreen hedge.”

63. The member in charge did not support protection for native Scottish species of evergreen and semi-evergreen plants fearing it would “create a significant loophole”, so that anyone who wished to pursue a neighbourhood dispute could
simply shift from a non-native to a native species. He stated that each case should be judged on its merits. 40

64. Responding to concerns that the definition of a high hedge might adversely impact the biodiversity value of certain native evergreen species, the member in charge commented—

“Undoubtedly, there will be some requirement to look at the biodiversity impacts of any action that will be taken, but I do not view the inclusion of native species in the bill as a problem. It prevents the creation of an unnecessary loophole.” 41

65. Referring to the points raised in relation to TPOs, the member in charge pointed out that section 6(6) of the Bill will ensure that the same test applied to making TPOs, will be applied in assessing whether any action is required to be taken in relation to a high hedge notice. This, he stated, is a “pragmatic approach”, which “will ensure that protections for valuable trees are kept in place.” 42

Conclusions and recommendations

66. The Committee supports the general purpose of the Bill to establish a statutory system to address disputes over high hedges. The Committee notes the views expressed by Scothedge and the member in charge of the Bill that approximately 92% of current cases where a dispute exists over a high hedge could potentially be resolved under the proposals set out in the Bill.

67. The Committee believes it is desirable that the application of the Bill seeks to resolve as many disputes as possible, but considers it unrealistic to expect any single piece of legislation in this area to resolve 100% of cases. This Bill is the simplest way of addressing the majority of cases relating to disputes over high hedges.

68. The Committee is content with the definition of a high hedge as established in section 1 of the Bill. The Committee does not believe, at this stage, that the definition needs to be amended to include single or deciduous trees, or other forms of vegetation. 43

69. The Committee notes the concerns expressed over the provisions of the Bill and how they will work in relation to Tree Preservation Orders (TPOs). The Committee is satisfied that a TPO will not be varied, or removed, as a result of a high hedge notice being granted, without due process and consideration taking place.

43 Stuart McMillan dissents.
Fees, costs and resources

70. Section 4 of the Bill provides for an application fee to be charged by a local authority for persons seeking a high hedge notice. In relation to the fees which local authorities may charge, the Policy Memorandum states—

“...The Bill does not specify any upper limit or ‘cap’ on fees but requires that fees must not exceed an amount which the local authority considers represents the reasonable costs of an authority in deciding an application. This is intended to enable local authorities to take account of local facts and circumstances when setting application fees as well as to ensure that fees are not set beyond a level that is reasonable.”

71. Much of the discussion which took place in relation to the Financial Memorandum centred on issues such as whether there should be a cap on the fees chargeable under the Bill, and whether the effect of the Bill would truly be cost neutral on local authorities, as the member in charge of the Bill intends.

Fees

72. It was noted that other jurisdictions with similar legislation had set a cap on application fees. Several witnesses called for an upper limit to be set (somewhere in the region of £350 - £400). This level, it was suggested, would deter frivolous or vexatious applications while at the same time fund the operation of the system so as to be cost neutral for local authorities.

73. Scothedge expressed concerns around fees, stating their first choice would be for the owner of a high hedge to pay the full costs, including the fees of the applicant. They stated—

First and foremost, we do not think that justice would be served if a claimant who has lived in an awful condition for years had to pay hundreds of pounds. Most of these people—who are victims—could not afford it.

Capacity and resource issues

74. Several witnesses expressed concerns regarding the potential need for additional staffing and training for local authority tree officers if the definition in the Bill were expanded to include issues such as single trees.

75. In the event that the definition of a high hedge is expanded to include single trees, Dr Maggie Keegan of the Scottish Wildlife Trust pointed out that there may be a need to set a fee level which would go some way to supporting the additional staff training needs, (e.g. to support conducting biodiversity surveys). She feared that there—

44 Police Memorandum, paragraph 54.
“...would be an impact if an authority were to be using someone who did not know a lot about biodiversity, because that person would need a lot of training.”

76. Aedán Smith of the RSPB pointed out that additional assessments of the biodiversity value of given areas may be needed if the definition in the Bill was broadened to include trees. That might result in more work for tree officers.

77. Angus Yarwood of Woodland Trust Scotland was concerned that—

“The number of biodiversity officers and tree officers in local authorities has been hard hit in the past five or six years. Fife has one part-time tree officer, and I think that I am right in saying that Edinburgh has gone from four or five members of staff in its tree officer group to two or two and a half. That is quite common throughout Scotland because of the economic climate. If authorities have to upskill staff and provide extra training for biodiversity or tree survey work, there will undoubtedly be an impact.”

78. Eric Hamilton of Dundee City Council informed the Committee that—

“If the bill sticks to hedges, I will be able to deal with that comfortably. If trees are introduced to it, I will be taking early retirement.....I would think that, in my urban environment, once all the hoo-ha had died down [following the coming into force of the law], I would be looking at 10 cases a year, or perhaps fewer.”

79. Robert Paterson of STOG elaborated on this point in response to questions on the potential workload issues for tree officers—

“I get six to eight inquiries a year, a couple of which are repeat inquiries. In the case of three current inquiries, people are waiting for the High Hedges (Scotland) Bill to be enacted before they consider their individual situations further.

As Eric Hamilton suggested, when the bill is enacted, there will be an initial flurry of complaints. That has already been anticipated in the background papers to the bill. We hope that we will deal with that at the inquiries stage and that the number of cases in which there is a need for a notice will be few, but it is difficult to ascertain that because such legislation is a new beast for us in Scotland.”

80. Scothedge suggested—

“In Wales, there is a central tree officer—or whatever you want to call the person—to provide a core of expertise that covers the whole of Wales. We
have advocated that in the past as a possibility for Scotland so that we could pool the expertise and make it available to all the local authorities.\textsuperscript{52}

81. Witnesses from the Isle of Man discussed resourcing implications arising from a recent legal court challenge to a decision by the Braddan Parish Commissioners. This followed remedial action taken by the Commissioners relating to a high hedge between two residential properties, following an application from one of the residents.\textsuperscript{53} Responding to questions on the costs to the Commissioners, Colin Whiteway stated—

“The local authority picked up the tab for the case. We had to present it. Because it was so important, we had to instruct an advocate. By the end of the case, we had spent more than £7,500. We think that the complainant had spent considerably more than that.....We have not calculated the cost in staff time. The £7,500 relates to the legal expenses that were paid to our advocate. The amount of time spent on the matter was extraordinary and I am sure that the cost would be many thousands of pounds.”\textsuperscript{54}

Refunds and the loser-pays principle
82. Various witnesses referred to the concept of the “loser-pays principle”\textsuperscript{55}. This is where a local authority has the discretion to charge a portion, or the whole cost of the application fee to the person on whom the high hedge notice is served. It was suggested this could be an incentive to persuade a reluctant or unreasonable party to reach an agreement. This approach could also allow the complainant to be reimbursed by the hedge owner, via the council clawing back their application fee.

83. Roy Corlett of the Isle of Man Department of Infrastructure, informed the Committee of the system they operate for refunds—

“The fees on the Isle of Man are set at £150 and have been set at that figure for several years now. However, there is discretion to allow a refund, depending on the stage of the complaint at which the matter is dealt with—that might be after the first remedial letter is issued or a visit is made to the site. The department would encourage the two parties to continue talking and to take part in a mediation process, even though the fee would have been paid by the complainant.”\textsuperscript{56}

84. Eric Hamilton of Dundee City Council suggested that the policy “would be easier to apply if there were one price for all”\textsuperscript{57}.

85. In relation to his primary role in Clackmannanshire Council, Robert Paterson of STOG suggested that Clackmannanshire would approach the issue of fees for high hedge applications in a similar way to that for planning application fees—

\begin{footnotesize}
\begin{enumerate}
  \item Boardman v Braddan Commissioners (June 2012), High Bailiff’s Court, Douglas, Isle of Man: \url{http://www.scotland.gov.uk/Resource/0040/00401665.pdf} [Retrieved 14 January 2013].
\end{enumerate}
\end{footnotesize}
“The fee will vary depending on the local authority that takes the case and the number of different departments that are involved—the legal advisers and others that Eric Hamilton mentioned. From the initial meeting that I had with my service manager at Clackmannanshire Council, I know that she takes the view that we should deal with such issues as we deal with planning applications and should apply the same fee. That may be the way in which Clackmannanshire Council will take the matter forward.”  

Views of the Scottish Government  
86. The Minister took the view that not specifying a cap on fees is the correct approach to take—

“I do not have concerns, because the proposition is that the fee will reflect the cost of the local authority’s work. If that is applied proportionately, fairly and reasonably, that would not give us cause for concern…The Scottish Government is fairly content as long as the approach is followed of local authorities recovering the costs by using the fee for the applicant and recovering the costs of any enforcement work from the so-called perpetrator. The fee will be fair and proportionate to the cost of the service, which is why we are content that we do not need to set a national cap on the fee.”  

87. On the cost neutrality of the Bill, the Minister told the Committee that—

“We should be able to design a system that is as low cost as possible. Just because that is difficult does not mean that we should not proceed, because clearly there is a need for legislation to enable action to be taken where none has been taken in the past. We will want to design the legislation, regulations and guidance in a way that tries to keep costs down and avoids such figures.”  

88. Commenting on the loser-pays principle, the Minister highlighted the need to be fair to a high hedge-owner who has complied with a high hedge notice and paid for the high hedge to be cut. On any deterrent factor which a loser-pays principle may deliver in terms of an early resolution to a dispute the Minister added—

“I understand the rationale, and I can see how what you describe could be a deterrent. However, the system in which the complainant pays the fee works, too, and also serves as a deterrent. Rather than a free-for-all, in which people complain frivolously, it seems to encourage an appropriate use of the system.”  

Views of the member in charge  
89. The member in charge, Mark MacDonald, also opposed placing a cap on the level of fees set by a local authority in making an application for a high hedge notice—

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“...I am keen to ensure that the costs of providing the service can be recovered by local authorities. I believe that my bill provides the ability to do that while giving local flexibility on the fee-setting process. The bill provides that, in setting the fees, a local authority

“must not exceed an amount which it considers represents the reasonable costs”

to the authority of making that decision. That is a key point. Although there will be no cap on fees, in effect the bill provides a form of capping by ensuring that the service cannot be a revenue raiser while simultaneously providing flexibility to take account of local circumstances.”

Conclusions and recommendations

90. The Committee is content that the provisions of the Bill require local authorities to set fees at a reasonable level.

91. Based on the current definition of a high hedge as set out in the Bill, the Committee is of the view that the proposed fees system should be sufficient to ensure the provisions of the Bill are substantially cost neutral.

92. The Committee recommends that the Government examine the feasibility of establishing a central tree officer to provide a core of expertise to local authorities, as is the case in Wales.

93. The Committee notes that the Finance Committee did not make any recommendations to the Committee, setting out their conclusions in relation to the Financial Memorandum, or otherwise. Instead they simply forwarded the written evidence, and official report of their oral evidence session, under cover of a letter to the Committee.

OTHER ISSUES

Local authority owned property

Applications involving local authority property

94. Questions were raised as to how a local authority would deal with a situation where an application was received from a person occupying council property (a tenant). Or an application seeking action against a high hedge located on council-owned or managed property (e.g. council housing; council property, urban parks, green spaces etc.). Questions were also posed in relation to how an application may be handled where the boundary between two councils is involved.

95. Aedán Smith of the RSPB drew on the parallel with planning applications which involve local authority boundary issues—

“If a planning application had been submitted, there would be a requirement to consult the neighbours, regardless of whether they lived across a local authority boundary. The planning application would go to the authority in which the development was to take place. I guess that the bill would work in a similar way, and that the authority in which the tree or the hedge that was

being dealt with was situated would be the lead authority on the matter, but there would need to be scope for cross-border co-operation.”

Views of the Scottish Government

96. Responding to the issues, Norman MacLeod of the Scottish Government Legal Directorate informed the Committee that “if the hedge is on local authority land, the notice can be brought against the local authority and vice versa. There are no restrictions on local authority use and there is an option to appeal to ministers in the event that you do not like the decision that you get.”

97. The Minister expanded further on this response by adding—

“…we would want to check who would be responsible. If it was a council tenant, for example, they have probably signed a tenancy agreement that says that they are responsible for the maintenance of the garden. If the tenant has taken responsibility for the garden and the hedge and the hedge is a problem, it is not necessarily the local authority that would be charged by the tenant. Fundamentally, though, the issue would still have to be resolved. We are happy to look into the detail of that to ensure that we are absolutely accurate and bring back a response through me or through Mr McDonald.”

Conclusions and recommendations

98. The Committee would welcome clarity regarding the instances where a local authority is considering an application where one or more of the properties concerned in the application for a high hedge notice are owned by the local authority.

99. The Committee notes the views expressed regarding the existing situation where a local authority may consider and rule on a planning application involving property or lands owned by the authority itself. The Committee is content, in light of this parallel, that no additional provisions are required to provide for the situation where an authority must consider an application for high hedge notice relating to hedges or property owned by the authority.

Planning issues

100. Some reference was made to the role of the planning system during the oral evidence on the Bill. Scottish Wildlife Trust cited an example of where the construction of domestic property adjoining existing woodland has caused problems. Dr Maggie Keegan stated—

“…we have had conflicts with neighbours in Cumbernauld, where a development went up after a woodland was established. Neighbours who adjoin our woodland now want some of our woodland cut down. If a big buffer zone had been created by the developer that might not have happened. One of the unintended consequences is that that could happen more often. The issue is about having the right tree in the right place and there is Forestry

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Commission guidance on having smaller trees. If local authorities had that
guidance to give to people and developers and if urban woodland and
development was designed more about what will happen in 20 years’ time,
we would have fewer of these conflicts.\(^{66}\)

101. Angus Yarwood of Woodland Trust Scotland, highlighted the important role of
the planning system in Scotland in managing the tensions between woodland
development and urban development, and in ensuring a healthy sustainable
ecosystem in urban areas.\(^{67}\) He went on to refer to some difficulties which have
arisen in the construction of domestic housing developments close to urban
woodland and vegetation—

“I agree with what has been said about properties being built near trees that
are already there. There are lots of examples of developments being built
close to fairly young trees….that, over many years, will grow to a bigger size.
You must appreciate the process that native and deciduous trees go through
of maturing into large trees and then falling back as they die over the years.
Those dimensions are often not included in planning considerations.”\(^{68}\)

102. Aedán Smith of the RSPB informed the Committee that the effect trees may
have on the levels of light to private property would be a planning matter.\(^{69}\)

103. In relation to interaction with the planning system, Robert Paterson of STOG
set out the role of a local authority tree officer in terms of an application for, say
the extensions of an existing domestic property—

“When construction is concerned and planning consent is required, such as
for an extension to a house, the advice note BS5837—the amended 2012
version—takes cognisance of trees in relation to the proposed development.
Advice would be given to our development team on how the application
should be processed in view of that issue……that would be for any type of
construction, but you mentioned a conservatory or something like that. For
anything that requires planning consent, if there are trees involved there
should be a consultation process whereby the tree officer is asked to give
advice to the development team on the relationship of the proposed building
to the tree and whether there would be any adverse effects on the
residents—the occupants—or indeed on the tree.”\(^{70}\)

104. In response to further questioning by the Committee Mr Paterson confirmed
that this procedure applies to applications for new housing developments and
those seeking to extend existing houses.\(^{71}\)

View of the Scottish Government

105. The Minister informed the Committee—
“Each planning application will continue to be developed on its merits. Issues about trees, hedges and the environment are already a consideration in any planning application. To take it a level further, perhaps local authorities will consider producing good practice guidance on being a good neighbour in relation to hedge growing and so on. We do not have a plan for new national guidance on the issue but, as people will want to understand and interpret the bill, we will want to produce guidance on it. The planning system, however, will continue as at present, with each planning application being considered on its merits.”

Conclusions and recommendations

106. The Committee is content that issues regarding single trees which have been raised in evidence can be addressed under the current planning system.

107. The Committee recommends that the Scottish Government take the opportunity of the on-going review of Scottish Planning Policy to examine the issues raised such as residential development in proximity to woodlands.

Implementation of the Bill

108. Several witnesses referred to the need for detailed guidance to be issued by the Scottish Government in relation to the operation of the system established by the Bill. Examples of guidance in other jurisdictions were cited in terms of ensuring uniform application of the high hedge dispute resolution system across various local authorities.

109. Roy Corlett of the Isle of Man Department of Infrastructure informed the Committee of the Building Research Establishment guidelines they have utilised in operation their high hedge system in the Isle of Man—

“I think that the general view is that, although we have had a few difficulties with enforcing the legislation, nothing has proved to be insurmountable. We have been able to rely on the guidance that is available for England from the BRE, although we have had to bear it in mind that that needs to be slightly adjusted to take account of the differences in our definition of a high hedge and the fact that we also include single trees.”

110. The STOG also stressed the need for clear guidance under the Bill in order to assist property owners in mediating a dispute over a high hedge, and in reaching a decision on whether to lodge an application for a high hedge notice. Robert Paterson of STOG suggested that guidance similar to ‘Hedge height and light loss’, which was issued by the UK Government at the time of the introduction of the legislation in England and Wales legislation in 2005, should be made available in Scotland. Following that approach, he added, would mean that

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“making a calculation and a judgment of a high hedge would be a straightforward process.”  

**Views of the Scottish Government**

111. The Minister referred to the potential role good practice guidance might play in terms of ensuring that property owners do not develop hedges which might go on to cause disputes with their neighbours. He stated it would be up to local authorities to develop such guidance. The Minister informed the Committee that the Scottish Government will be seeking to develop national guidance to assist people in understanding and interpreting the system established by the Bill.  

**Views of the member in charge of the Bill**

112. In responding to questions posed with the Committee, the member in charge of the Bill highlighted the role guidance could play in addressing many issues.

113. The member in charge referred to existing guidance in other parts of the UK, as well as to industry standards for issues such as hedge height, which can assist tree officers, and members of the public, in making determinations on applications received under the Bill. However, the member in charge pointed out that, ultimately “each case will be judged on its merits”. The member in charge went on to set out the role guidance could play in supporting the system for resolving high hedge disputes—

“The guidance will look to draw on best practice elsewhere. I believe that documents have been drafted on taking account of issues such as the height of the hedge and the effect of light when making an assessment. We put our trust in the professionalism of the officers who will make the decisions.”

**Conclusions and recommendations**

114. Many of the issues raised in relation to the operation of the system established by the Bill will benefit from the provision of clear and comprehensive information to the public. This will assist in understanding and interpreting the high hedge dispute resolution system established by the Bill.

115. The Committee are content that the Scottish Government plans to develop guidance utilising best practice from other jurisdictions. It is appropriate that the guidance also draw on existing best practice documentation produced by the Building Research Establishment and the UK Department of Communities and Local Government.

**National parks**

116. Some national park authorities in Scotland have responsibility for planning within their park area. They will not, however, determine applications on high hedge notices under the terms of the Bill. In its written evidence to the Committee Loch Lomond and the Trossachs National Park Authority stated that—

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75 *Hedge Height and Light Loss* (2005), UK Department of Communities and Local Government [Retrieved 18 January 2013].


“[We are] the planning authority for the geographical area [the Park] covers and therefore has the same powers as any other planning authority under the Town & Country Planning (Scotland) Act 1997 to make new and administer existing TPO’s within the National Park; consider notices of intention to remove trees in conservation areas and; attach conditions to planning permissions to protect trees/require new planting. While we agree that the most suitable body to administer the high hedge legislation would be the relevant local authority we think it’s necessary that the relevant National Park Authority is a statutory consultee for any proposed high hedge notice within its area. This should ensure that any notice affecting a protected tree or other trees considered to contribute to the special qualities of the National Park can be carefully considered. In this regard we consider it appropriate to: (1) include consultation with the NPA’s in section 6(2) and to amend section 6(7) to include “(c) comments from any relevant National Park Authority”. Section 7(3) should include “(c) any relevant NPA”.”

117. The STOG also supported the inclusion of the national park authorities as statutory consultee on high hedge notice applications, where the property in questions falls within their park area.

Conclusion

118. The Committee recommends that the Bill be amended to include reference to National Park Authorities as statutory consultees for any high hedge notice applications made within their park area.

Delegated Powers

The views of the Subordinate Legislation Committee

119. Section 34(1) of the Bill enables the Scottish Ministers to make regulations which modify the meaning of a high hedge, as set out in section 1 of the Bill. As the Bill will only apply to hedges which are high hedges within the meaning of section 1, this power enables the Scottish Ministers to vary the applicability of the Bill by making subordinate legislation.

120. The Subordinate Legislation Committee has expressed reservations about the delegated powers set out in section 34, which allow the Scottish Ministers to modify the definition of a high hedge. They felt that this power is particularly broad in its scope, pointing out that it may be used to significantly alter the scope of the Bill. Either by narrowing the definition to the point that it defeats the ends of the Bill, or by widening the definition so that it extends beyond anything that may have been considered by the Parliament.

121. In commenting on the views of the Subordinate Legislation Committee, the Minister stated his understanding that—

“…there is an enabling power in the bill to expand the definition—as long as it still refers to high hedges, because this is, at the end of the day, a high

79 HH60 Loch Lomond and the Trossachs National Park Authority submission, paragraph 3.
80 HH68 Scottish Tree Officers Group submission, page 4, paragraph 15.
hedges bill. There are reasons why trees have not been considered, other than in the scenario that is outlined in the definition."\(^{82}\)

122. The Minister expanded on this view stating that a reasonable use of the section 34 powers would be say to change the height of a high hedge from 2 meters to 3 meters.\(^{83}\)

**Views of the member in charge of the Bill**

123. The member in charge further clarified the position on the use of the section 34 powers—

"Let me be clear that only the definition of a hedge, including its height, can be amended. As I understand it, the provision will not allow for a statutory instrument to bring single trees into the picture at a later stage. The definition could be amended to include, for example, deciduous hedgerows as opposed to evergreens or semi-evergreens. That might well happen. However, I am not going to give a yes or no answer to the question. Who knows what the future holds? Who knows what is going to happen tomorrow, never mind in a few years’ time?"\(^{84}\)

**Conclusions and recommendations**

124. The Committee notes the conclusions and recommendations of the Subordinate Legislation Committee in relation to the breadth of the proposed delegated powers as set out in the Bill. This would allow the Scottish Ministers to expand the definition of a high hedge to include more that the definition as currently set out in section 1 of the Bill. On the face of it this provision may seem like a sensible mechanism to facilitate inclusion of other types of vegetation in the future, without the need for further primary legislation. However, it is clear from the report of the Subordinate Legislation Committee that this power could be used to amend the definition of a high hedge to such an extent as to fall outside both the clear purpose of the Bill, and the powers granted to the Government by the Parliament to make reasonable adjustment to the law without the need to return to the Parliament to seek further powers via primary legislation.

125. The Committee notes the statement of the member in charge that any future amendment made by way of delegated powers under section 34 of the Bill could only seek to amend the current definition of a high hedge, as set out in section 1. Section 34 could not be used to redefine other vegetation, such as a single tree, as a high hedge for the purposes of the Bill.

126. **The Committee therefore recommends that section 34 of the Bill be amended to explicitly make this clear.**

**Problems caused by nuisance vegetation**

127. The Policy Memorandum makes clear that the objective of the Bill is to address disputes over high hedges which "interfere with the reasonable enjoyment
of domestic property”.

Subsection 1(1)(c) of the Bill established the principle of interference to be addressed as being the blocking of natural daylight from a domestic property by high hedges in close proximity to an adjoining property.

128. A significant number of submissions received highlight other issues which people wish the legislation to address in relation to high hedges, trees and plants on property which adjoins their own.

129. These include complaints over organic litter from the shedding of foliage from one property to another; obstruction of landscape views by trees and plants in a neighbouring property; damage caused by the growth and expansion of the root bulbs of large trees; concerns of property owners of potential damage from trees or large plants which they considered to be in an unsafe condition, or unstable location, and which may fall onto their property, especially in bad weather.

Conclusion

130. It is clear that the Bill as introduced does not primarily seek to address these issues. While the Committee has sympathy with the plight of many of the individuals who have made representations to the Committee, it would clearly be outwith the scope of the policy intention on which the member in charge is seeking the Parliament to legislate, to use this Bill to address such issues as the obstruction of landscape views, damage from root growth etc. In many instances such issues are already covered by existing legislation or guidance in terms of urban planning or dangerous trees etc. The Committee, therefore, does not intend to comment further in this report on these issues.

Reviewing the legislation

131. When high hedge legislation came into effect in England in 2005, the UK Department of Communities and Local Government asked English local authorities to maintain records of complaints under the high hedge system. This was to inform a review of the process, which would take place on a five-yearly basis. For each year of operation, the following information was requested from local authorities:

- numbers of enquiries about the legislation;
- numbers of formal complaints received;
- number determined;
- number of remedial notices issued;
- number of complaints about failure to comply with the requirements of a remedial notice (enforcement cases);
- number resolved informally;
- number of prosecutions and outcome;

85 Policy Memorandum, paragraph 2.
• number of occasions that the authority used its default powers to carry out works to the high hedge.\textsuperscript{86}

132. In response to questions as to whether there had been any requests to review the Manx legislation on high hedges in the light of experience, Roy Corlett from the Isle of Man Department of Infrastructure informed the Committee—

“The department may wish to consult on that issue, or some local authorities may wish to draw issues with the legislation to our attention. The department would certainly be prepared to review any elements of the legislation if it received a request from a local authority. We would undertake due consultation to seek the views of all 24 local authorities on the island. Our colleagues from the department of environment, food and agriculture would be involved, too…. in the light of recent developments, I suspect that that could happen in the next few weeks.”\textsuperscript{87}

Conclusions and recommendations

133. The Committee notes the review procedures put in place by the UK Government at the time of the introduction of legislation in England in 2005. Similarly, the authorities in the Isle of Man have expressed the view that a review of certain aspects of their high hedge system may now be warranted, in the light of experience. The Committee believes that there is value in establishing a review process at the commencement of the provisions of the Bill.

134. The Committee recommends that the Bill include a mechanism for a review. Such a review should take place within a reasonable timeframe, no later than five years, after the commencement of the system. Establishing a defined review date to take account of experience at the time the provisions of the Bill comes into force will provide certainty for local authorities and members of the public as to the mechanism for improving and refining the system in Scotland. Such a review should examine the operation of the Bill in general and not be confined to any specific issues.

135. Such a review should include any additional issues identified by local authorities in the operation of the high hedges system which may not have been considered during the progress of the Bill through the Parliament. A review will also be an opportunity for the Government to decide whether any further legislative or regulatory provisions are required to address other issues surrounding nuisance vegetation etc.

136. The results of the review, and any actions the Government may propose to take as a result of its findings, should be published and laid before the Parliament. This would enable the relevant committee to conduct informed post-legislative scrutiny of the legislation.


\textsuperscript{87} Local Government and Regeneration Committee, Official Report, 12 Dec 2012, Col 1520.
CONCLUSIONS ON THE GENERAL PRINCIPLES OF THE BILL

137. In conclusion, the Committee reports to the Parliament that it is content with the general principles of the Bill and recommends that the Bill be agreed to at Stage 1. The Bill meets the policy intention of the member in charge in seeking to establish a system to resolve disputes between property owners over high hedges.
ANNEXE A: EXTRACTS OF MINUTES OF THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

3rd Meeting, 2012 (Session 4) - Wednesday 1 February 2012

Decision on taking business in private: The Committee decided to take item 3 in private.

Proposed high hedges bill: The Committee took evidence on the statement of reasons lodged to accompany the draft proposal from Mark McDonald.

Proposed high hedges bill (in private): The Committee considered the statement of reasons and agreed that it was satisfied with the reasons given by the member for not consulting on the draft proposal.

21st Meeting, 2012 (Session 4) - Wednesday 3 October 2012

High Hedges (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1 and agreed to undertake an eight week call for written evidence on the Bill. The Committee also agreed to bring this call for evidence to the attention of key stakeholders, as well as utilising any opportunities for fact-finding exercises on the Bill. Finally, the Committee agreed to hold a discussion, in private, at the end of each meeting at which oral evidence is taken; to consider all draft reports on the Bill in private, and to delegate to the Convener, under Standing Order Rule 12.4.3, responsibility for arranging to pay expenses to witnesses under the SPCB witness expense scheme.

28th Meeting, 2012 (Session 4) - Wednesday 5 December 2012

High Hedges (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
- Pamala McDougall, Scothedge
- Derek Park, Scothedge
- Dr Maggie Keegan, Head of Policy, Scottish Wildlife Trust
- Aedán Smith, Head of Planning and Development, RSPB Scotland
- Angus Yarwood, Government Affairs Manager, Woodland Trust Scotland

High Hedges (Scotland) Bill (in private): The Committee considered the evidence received.
29th Meeting, 2012 (Session 4) - Wednesday 12 December 2012

High Hedges (Scotland) Bill: The Committee took evidence, via video conference, on the Bill at Stage 1 from—

Roy Corlett, Legislation Manager, Department of Infrastructure, Government of the Isle of Man;

Peter Keenan, Southern Forester, Department of Environment, Food and Agriculture, Government of the Isle of Man;

Colin Whiteway, Clerk, and Paul Parker, Community Warden, Braddan Parish Commissioners; Isle of Man;

Robert Paterson, Land Services Officer, Clackmannanshire Council, Member of the Scottish Tree Officers Group;

Eric Hamilton, Forestry Officer, Dundee City Council, Branch Treasurer, Scottish Branch of Arboricultural Association;

Graham Phillips, Forest Manager, Bell Ingram Limited.

High Hedges (Scotland) Bill (in private): The Committee considered the evidence received.

30th Meeting, 2012 (Session 4) - Wednesday 19 December 2012

High Hedges (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Derek Mackay, Minister for Local Government and Planning, Scottish Government; Gery McLaughlin, Head of Community Safety Law, Scottish Government; Norman MacLeod, Senior Principal Legal Officer, Scottish Government Legal Directorate, Scottish Government.

Mark McDonald, Member in Charge; John Brownlie, Policy Manager, Community Safety Unit and High Hedges Bill Team Leader, Scottish Government; Emma Thomson, Principal Legal Officer, Scottish Government Legal Directorate, Scottish Government.

High Hedges (Scotland) Bill (in private): The Committee considered the evidence received.

2nd Meeting, 2013 (Session 4) - Wednesday 23 January 2013

High Hedges (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to, and the Committee agreed the report for publication.
ANNEXE B: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

28th Meeting 2012 (Session 4), 5 December 2012

Written Evidence

- RSPB Scotland
- Scothedge
- Scottish Wildlife Trust
- Woodland Trust Scotland

Oral Evidence

- Scothedge
- Scottish Wildlife Trust
- RSPB Scotland
- Woodland Trust Scotland

Supplementary Written Evidence

- Scothedge
- Scothedge

29th Meeting 2012 (Session 4), 12 December 2012

Written Evidence

- Bell Ingram Limited
- Eric Hamilton, Forestry Officer, Dundee City Council
- Scottish Tree Officers Group

Oral Evidence

- Bell Ingram Limited
- Braddan Parish Commissioners, Isle of Man
- Department of Infrastructure, Government of the Isle of Man
- Eric Hamilton, Forestry Officer, Dundee City Council
- Scottish Tree Officers Group

Supplementary Written Evidence

- Eric Hamilton, Forestry Officer, Dundee City Council
- Department of Infrastructure, Government of the Isle of Man

30th Meeting 2012 (Session 4), 19 December 2012

Oral Evidence

- Minister for Local Government and Planning
  Mark McDonald MSP
ANNEXE C: OTHER WRITTEN EVIDENCE

The following submissions were received in response to the Committee’s call for evidence on the High Hedges (Scotland) Bill.

Note: certain information has been redacted from some of the submissions published online in order to comply with requirements in relation to potential defamatory material, Data Protection issues and confidentiality.

HH1 – Jim Paxton
HH2 – Pauline Wilson
HH3 – Colin Reid
HH4 – Alastair Gowans
HH5 – Helen Smith
HH6 – Linda McGhie
HH7 – Carole Walker
HH8 – John Radcliffe
HH9 – Philip McAulay
HH10 – Janet and Hazel Finlayson
HH11 – David G Jones
HH12 – Aileen Benson
HH13 – Allan Wright
HH14 – Elaine Smith
HH15 – Andrew Maclean
HH16 – Sarah Chadfield
HH17 – Desmond Brady
HH18 – Donald Craig
HH19 – William Biggans
HH20 – Alasdair Moodie
HH21 – Zander Caven
HH22 – Jennie Gibson
HH23 – Tommy Bolton
HH24 – Duncan Cameron
HH25 – Joan and Clayton McCormick
HH26 – Bill and Anne Duncan
HH27 – Fiona McIntosh
HH28 – Carol Glover
HH29 – Julian Morris
HH30 – Elizabeth Moran
HH31 – Bruce Crichton
HH32 – Derek Park (Scothedge)
HH33 – Andrea Brooks
HH34 – Neil White
HH35 – Pam Cameron
HH36 – Aberdeen City Council
HH37 – James Robertson
HH38 – Peter Robinson
HH38A – Peter Robinson
HH39 – Arnold Sidebothan
HH40 – Tom Pyemont
HH41 – Dr Colin Watson
HH42 – Neil Smith
HH43 – Ian Kirton
HH44 – Peter Buchanan
HH45 – UK Mediation
HH46 – Katherine Bain
HH47 – Keith Aitchison
HH48 – Rosemary Meyers
HH49 – Melanie Chambers
HH50 – Ljubica Erikson
HH51 – Alison Bryceland
HH52 – Mr Pedro Gajardo and Mrs Evelyn Love- Gajardo
HH53 – Private submission
HH54 – Professor R and Mrs M Churchill
HH55 – Stephen Catto
HH56 – Margaret Currie
HH57 – Deirdre Balaam
HH58 – Brian Blacklaw
HH59 – Peter McGlone
HH60 – Loch Lomond and the Trossachs National Park Authority
HH61 – Livingston Village Community Council
HH62 – Woodland Trust Scotland
HH63 – John Knowles and Margaret Kane
HH64 – Margaret Bell
HH65 – RSPB Scotland
HH66 – Scothedge
HH67 – Private submission
HH68 – Scottish Tree Officers Group
HH69 – Bell Ingram Ltd
HH70 – Falkirk Council
HH71 – Sheena Watson
HH72 – Alan Motion and John Harkiss
HH73 – Alison Byrne
HH74 – George Donnachie
HH75 – Hannah Ross
HH76 – Eric Hamilton
HH77 – Carol Walsh
HH78 – Mr and Mrs Alexander Rutherford
HH79 – Mr and Mrs Brunton
HH80 – Mr and Mrs J MacGregor
HH81 – Mr R Hopkins
HH82 – Muriel G Thompson
HH83 – Stuart McHardy
HH84 – Ann Robertson (submission not reproduced online)
HH85 - Blackadders Solicitors on behalf of Ann Olsen (submission not reproduced online)
HH86 - Mr and Mrs Mitchell (submission not reproduced online)
HH87 – Colin and Jean MacKay (submission not reproduced online)
HH88 – Donald Macsween
HH89 - Scottish Wildlife Trust
HH90 - COSLA
High Hedges (Scotland) Bill: Stage 1

10:00

The Convener: Agenda item 2 is oral evidence on the High Hedges (Scotland) Bill.

Before I welcome the witnesses, I welcome the member in charge of the bill, Mark McDonald. As it is the committee's function to scrutinise the bill, we have agreed that committee members will put their questions to the witnesses first. Once those are complete, Mark will be invited to put to the witnesses any questions that he may have.

I welcome Pamala McDougall and Derek Park of Scothedge; Dr Maggie Keegan, who is head of policy with the Scottish Wildlife Trust; Aedán Smith, who is head of planning and development with RSPB Scotland; and Angus Yarwood, who is Government affairs manager with the Woodland Trust.

I ask the witnesses to make some brief opening remarks, if they want to, before we move to questions. We will start with Scothedge.

Pamala McDougall (Scothedge): I thank Mark McDonald, his team and the MSPs across the parties who have supported us.

As you know, Scotland is the only country in the United Kingdom without legislation on high hedges. I am convinced—and so is Scothedge—that deciduous and single trees should be included in the bill. Other than that, we are really happy with it.

We have total respect for the other organisations that are represented at the meeting. They are all paid professionals—as are the committee members—and we are the amateurs. However, we are no less passionate and knowledgeable after the past 13 years of campaigning. We hope to convince you of that.

Dr Maggie Keegan (Scottish Wildlife Trust): I am head of policy at the Scottish Wildlife Trust, which owns or manages more than 120 reserves in Scotland. More than 20 of those are in urban areas and contain woodlands.

In the written evidence that I submitted, I highlighted some of the concerns that we have about what would happen if the bill was broadened out to include deciduous trees. We come from a biodiversity point of view and are concerned that, when considering legislation, we must always look at the unintended consequences.

I hope to make those points more clearly during the course of the meeting.

Aedán Smith (RSPB Scotland): Good morning and thank you for the invitation to come and speak
to the committee. Most members will be familiar with our organisation and its aims. Our main interest in the bill is to ensure that birds and wildlife are considered as it progresses. I am happy to take any questions that the committee may have on the written evidence that we have submitted.

Angus Yarwood (Woodland Trust Scotland): Thank you for inviting us. The Woodland Trust Scotland is part of the UK Woodland Trust and our key objectives are creating new woodlands, protecting veteran and ancient trees and inspiring people to enjoy woodlands and trees in their own right.

Our interest is in trying to avoid, as an unintended consequence of the bill—Maggie Keegan pointed that out—the capture of important individual trees, such as heritage trees or veteran trees. I have particular concerns about the interaction of tree preservation orders with the bill.

Biodiversity and the enjoyment of trees are our interests in the matter.

The Convener: What are the witnesses’ views of the statutory definition of a hedge as set out in section 1 of the bill?

Derek Park (Scotthedge): Good morning. As Pamala McDougall said, our concern about the statutory definition in the bill is that it does not cover every possible case. For example, deciduous trees and single trees are excluded from the definition. There seems to be a certain amount of misunderstanding within the Convention of Scottish Local Authorities and perhaps among the wider public that the inclusion of deciduous trees and single trees would add wildly to the scope of the bill.

The Convener: Let me stop you there, Mr Park. You say in your submission that COSLA is against widening the scope of the bill, but our clerks have spoken to COSLA, which says that it has said no such thing. I think that you need to check that part of your submission with COSLA. My understanding is that COSLA has no objection to the widening of the bill.

Derek Park: We saw in a policy memo that there was concern that the inclusion of such trees would add significantly to the scope and complexity of the bill. If COSLA now says that that is not the case, that is wonderful and we welcome it. That is good news for us.

People need to understand that, just by passing the bill, 95 per cent—or 92 per cent, to be accurate—of the cases will resolve themselves. That is based on evidence that we took out of the policy memo about cases in England.

If you will indulge me, I have provided a graphic of a football pitch to illustrate that. The total football pitch area represents what we consider would be the total number of cases in Scotland. That is based on the data available for the six local authorities in England that are mentioned in the policy memorandum. Given the population figures for those six typical English boroughs, our projection for the Scottish situation is that there would be possibly 5,000 cases in Scotland.

The yellow area—covering most of the penalty box—is all that will remain of the evergreen cases if we simply pass the bill. Cases will dissolve because people will start to do the right thing. If you introduce a 30mph limit, most people will obey the 30mph limit—you do not need a policeman with a speed gun at the entrance to every village.

The red area—a much smaller part of the penalty box—shows the difference that will be made by including evergreen species. That is based on the data that we in Scotthedge have obtained from our members and it is also based on the data from the 2009 consultation.

In our view, that is why a wider definition would not add significantly to the complexity of the bill. We cover that at great length in our submission. Do you want me to go any further with that, or does that answer your questions?

The Convener: I think that the submission covers much of what you have just said. Perhaps we can move on to Dr Keegan.

Dr Keegan: The definition refers to “evergreen or semi-evergreen trees”. Obviously, “evergreen trees” covers native Scottish trees such as juniper, holly and yew. In considering the biodiversity value, given that native trees have evolved along with invertebrates and other wildlife in Scotland since the last glaciations, native trees have much more biodiversity value than do non-native tree species.

If we have any thought about the bill, it is that it would probably be better for the definition to refer to “non-native evergreen or semi-evergreen trees”, because that would not capture native species and non-native conifers. The definition needs to capture leylandii and other trees such as western red cedar that have little biodiversity value. Obviously, those trees are quite fast growing, whereas some of our native trees are not so fast growing. I will leave it at that for now.

Aedán Smith: I broadly agree with Dr Keegan. The current definition has the merit of simplicity, which has obvious benefits in terms of administration and management if the implementation of the bill is progressed. As Dr Keegan said, the current definition is likely to mean that hedges and trees that, broadly speaking, are of higher biodiversity value—those tend to be native species—will not be captured by the bill.
Our primary concern is that there should not be an adverse impact on wildlife or biodiversity, and the current simple definition means that adverse implications for wildlife are less likely. There might be other ways of doing that, but broadening the definition would mean that the bill would have to be a bit more complicated because it would have to contain additional safeguards to ensure that our birds and wildlife were not impacted.

For that reason, we support the simple, clear definition that is in the bill. That does not mean that we are necessarily absolutely opposed to the definition being broadened, but additional safeguards would have to be introduced to ensure that there would be no additional adverse risks to wildlife.

**Angus Yarwood:** We also support the addition of the phrase “non-native” to the definition for reasons of biodiversity and heritage value. For example, in Fife there was a recent case of a 300-year-old sycamore tree that had a tree preservation order placed on it. The local authority was asked to consider felling the tree because of concerns for a local house. We are interested in that kind of tree that has cultural and historical value. Although we acknowledge that the bill contains proposals to cover that under the discussion and assessment of each case that the tree officer would have to consider, we think that including non-native semi-evergreen and evergreen trees would clarify the situation for tree officers. At the moment they are under a huge amount of resource pressure to deal with their caseloads. My experience of working with them and talking to them is that giving them clarity and a framework within which to work makes their job a lot easier. We found that with tree preservation orders, which were discussed in the Parliament in February. That was also a consideration for the Rural Affairs and Environment Committee.

We want things to be kept simple and straightforward, and to make sure that the tree officers are clear about what they are doing every day.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I speak about my personal circumstances, not because I have a personal concern but because it illustrates a general point. I live in a rural location that is surrounded on three sides by commercial, non-native conifers that are so densely grown that I cannot receive any terrestrial television signal and my light is significantly obstructed. Of course, I knew what I was buying because it was all there when I bought the house. Should commercial forestry of that nature be caught by the definition that is used in the bill? I am not directing that question at anyone in particular.

**Dr Keegan:** That could have implications for the Climate Change (Scotland) Act 2009. I did put something in my submission about woodlands in and around towns.

We have seen an instance in which a developer put houses close to a woodland, which was there first. Doing that put the onus on the land manager of the woodland to take responsibility and chop down trees. One of our concerns is that if the definition is broadened out, that would be an unintended consequence.

**Angus Yarwood:** As Stewart Stevenson will know, woodlands and forests are covered by the Forestry Act 1967. As he pointed out, if someone buys a property where there are already trees, they are aware of that at the beginning.

We manage a mixture of urban and rural sites, as we have quite a lot of property around Livingston and Glenrothes, and our experience is that the only way to solve such issues is through dialogue with our neighbours. I appreciate that the bill has come up because dialogue is difficult to achieve, but if a wood or a forest is involved, that must be covered by forestry legislation. Whether that legislation is fit for purpose is a separate discussion. Certainly, I would not want woods or forests to be included in the definition that we are discussing, which needs to be restricted to hedges and boundaries where houses are close to each other. In essence, the nature of the problem is that people are living close to a boundary that is causing a problem. If someone lives in a rural area and has a forest next to their property, they have chosen to live in that place.

10:15

**Stewart Stevenson:** You have clearly laid out that you would exclude commercial forestry that is covered by relevant forestry legislation. However, there are other commercial wood-growing activities—for example, coppicing—that are not covered by forestry legislation. Where would you place those if they were otherwise to fall in the definitions? Would you exclude anything that has commercial value, or would you draw the line elsewhere? Or is that something that we should explore with a range of other people?

**Angus Yarwood:** It is not something that I have a particular view on. As far as I can see, if someone has a piece of land that is commercially forested, it is not captured by Scothedge’s concerns; it is similar to someone having a piece of farmland next to where they live. My understanding is that the bill is looking at neighbour disputes about hedges or trees that cause a problem on boundaries. We are concerned with wooded land that is covered by forestry legislation; if anyone wanted to change its
use, they would have to go to the Forestry Commission for a felling licence and so on.

**Stewart Stevenson:** Sure. It might be worth saying that the committee seeks to understand the policy intention and whether the bill will deliver it. There may be a mismatch in that regard, which is partly why we ask the questions that we do.

**Derek Park:** The same thing applies to planning regulations. Some written submissions referred to developers using regulations to get more properties on to a plot. We are talking about a relatively low number of specifically domestic cases.

To answer the question about tree officers, we have used the data in the policy memorandum to work out that we expect an average local authority—there are 32 in Scotland—to have about two or three formal complaints a year over the seven years that it will probably take. Okay, there will probably be front loading, but there will be on average only two or three cases a year.

There are roughly 1.5 million ground-floor properties in Scotland, if we take out flats or apartments. If one in three of those has a hedge, that amounts to about 500,000 properties. We think there will be about 5,000 cases. Even if we included deciduous or single trees, we are talking about less than 0.5 per cent of the total Scottish domestic hedge stock. We are not talking about a huge undertaking involving tree officers going out with theodolites measuring the height of trees and chopping them down or about busybodies going round assessing whether a tree is 6ft or 6ft 1in; we are talking about a complaints-based system in which the people who complain will often be old, bullied, infirm, disabled, low-income people whose lives are, frankly, being made an absolute misery by vegetation.

**Aedán Smith:** Stewart Stevenson’s woodland example highlights some of the potential administrative difficulties in trying to judge when trees or hedges are causing a problem. We can envisage that it might be difficult to work out to what extent a piece of woodland is causing a problem. It could be quite an administrative challenge to work that out. One of the challenges in progressing the bill is to ensure that it will be workable.

The biodiversity value of a commercial forest is likely to be relatively low, although it might still have some value. However, woodland surrounding houses may be of a different type with a much higher biodiversity value. We would be concerned if the scope of the bill was such that it would make it easier for works to happen that would affect such biodiversity.

**Stewart Stevenson:** As dense as the forest is, it has five badger setts in 76 acres as well as foxes, pheasants, a barn owl, buzzards and weasels—there is a lot there, even though it is dense. The presence of the badgers means that it might not be possible to cut it down anyway, as legislation would protect those five setts.

**Pamala McDougall:** We are not talking about chopping down and removing trees at all in the bill; we are talking about reducing them to a sensible height. I do not think that there would be fewer birds in my garden if the 50 to 60-foot leylandii were cut down to a decent 2m. We have all kinds of birds in our garden, and they roost and nest in 2m-high hedges just as well as they do in the huge ones. So, it is a bit of a red herring, although I appreciate Mr Stevenson’s point about badgers and what have you. We have them in Angus, too, but they do not nest in our trees.

**Dr Keegan:** If someone had a 200-year-old deciduous tree in their garden, it would be quite hard to bring that down to 3m in height. Unless they are coppiced right at the beginning, most trees will not take pollarding, so that would be quite difficult. The other thing to remember is that older trees have biodiversity value in that they may provide roost sites for European protected species such as bats. A highly trained tree preservation officer would have to inspect a tree to see whether there was a bat roost present and, if there was, alternative nesting sites would have to be provided. In the case of a wind farm development, if trees are going to be taken down a bat survey must be carried out. I used to undertake bat surveys, and I know that it is quite difficult to assess whether a tree has the potential to be a bat roost.

**Stuart McMillan (West Scotland) (SNP):** There is much agreement on both sides of the debate about one of the fundamental aspects of the bill—certainly in what has been discussed over the past 20 minutes or so—in terms of the definition. There have been different definitions in legislation that has been passed elsewhere in these islands. This bill is based on legislation that was passed at Westminster, but the legislation that was passed in the Isle of Man contains a different definition. Which of the definitions is better or preferred from your organisation’s perspective? Why should that definition be introduced here? What benefits or failings do you think that it would have if it were introduced in Scotland?

**The Convener:** Can we hear from someone from Scothedge first?

**Derek Park:** You are absolutely right. England and Wales have a definition although, as we say in our paper, it was a pretty second-rate job of producing a definition. That happened for various political reasons that I will not go into. Northern Ireland has something pretty similar. Our preferred definition is the one that is used in the Isle of Man,
because it is a wide definition. The wording is about something that stops people having reasonable enjoyment of a property. That gets the case in play. If someone considers that trees, shrubs, hedges or whatever are affecting their right to reasonable enjoyment of a property, they can raise a case. They will probably have to pay a fee—it will cost them some money; it will not be a frivolous or vexatious claim—but at least the process can then start to happen fairly for everybody. Everyone’s concerns can be taken into account, including those of tree preservation officers and all the other people who might want to be involved from the local authority. We prefer the Isle of Man definition because it allows all the cases to be made. People can make a complaint and their case can be considered. If we do not do that, the danger is that people will just switch species. Believe me; our experience is that some pretty unscrupulous people are growing these hedges.

I will return to the point about native species. If that condition is put in place, the people will go down to Dobbies and buy the native plants, which will already be 20 feet high. People will be just as bad and cause just as much distress with native species—probably within a few months—as they have done with the dreaded leylandii.

We would prefer a wide definition and a tight process after that definition. Please do not exclude people from the start just because of some vagary about species.

**Dr Keegan:** It must be awful to live next door to someone who has such intentions.

**Pamala McDougall:** It certainly is.

**Dr Keegan:** We appreciate the misery that fast-growing hedges or whatever can cause, but if we broaden the scope there will be implications. We could put people off planting trees in gardens because of the likelihood that they would need to keep them within the specified heights. The future biodiversity value of urban sites could be decreased.

As I mentioned in our written evidence, we have had conflicts with neighbours in Cumbernauld, where a development went up after a woodland was established. Neighbours who adjoin our woodland now want some of our woodland cut down. If a big buffer zone had been created by the developer that might not have happened. One of the unintended consequences is that that could happen more often.

The issue is about having the right tree in the right place and there is Forestry Commission guidance on having smaller trees. If local authorities had that guidance to give to people and developers and if urban woodland and development was designed more about what will happen in 20 years’ time, we would have fewer of these conflicts.

**The Convener:** In a former life I came across a similar situation. It was a case in which somebody bought a house next to a playground and then campaigned to get rid of the playground. Should there be something in the bill so that existing woodland is taken into account when a developer builds next to an existing tree line?

**Dr Keegan:** That would help. I am not a reserve manager, but I spoke to all the reserve managers when putting together the evidence. We have worked with developers on master plans, and then, further down the line, we have ended up with slightly different developments with less of a buffer zone than before.

In Cumbernauld glen, the development went up at the same time as the woodland was planted. We did not manage the woodland at that time. Larch was planted right smack next door to the houses, so 30 years down the line the houses would be shaded. We took over management of the woodland and the neighbours complained about the woodland. As it happened, the trees were larch, which has less biodiversity value, so we were quite happy to take out that line of trees. We then got a woods in and around town grant and planted native species further away from the houses and put in a shrub line.

That conflict would have been avoided if the developers had had guidance on what would happen in the future. They had put in the tree line to act as a buffer against a nearby road, to abate noise and things like that.

**The Convener:** Would Mr Smith or Mr Yarwood like to comment on the different definitions in legislation?

**Aedán Smith:** Sure. As I indicated earlier, there are advantages in the detail of the definition being quite tight. That could help to produce quite simple legislation that, because of its simplicity, would make an adverse impact on biodiversity less likely. There are two ways of looking at it. Either we go for a tight definition, which would prevent any adverse impact on biodiversity, or we go for a broader definition, with a more complicated and rigorous way of assessing individual cases. The disadvantage of the latter approach is that it will add additional burdens to the end of the process, when individual assessments are happening. For that reason, we have been relatively supportive of the current tight definition in the bill.

10:30

**Angus Yarwood:** I echo that. If there is to be a broader definition, we would want to go back and look at the other sections in the bill, particularly
with regard to tree preservation orders and the importance of heritage trees and the proper assessment of biodiversity value. We would want to ensure that tree officers have a basis in law rather than just guidance, so that they can explain why they are keeping certain trees, and that, although they might have an application to deal with a particular hedge, those native species have a biodiversity value that is enshrined in legislation.

We are open to that discussion, and—as Dr Keegan said—we are sympathetic to the situation. My family has experienced such a problem in the past, so I am very aware of the issues. However, I think that the current narrow definition will allow the bill to work quite nicely as it stands.

Stuart McMillan: Dr Keegan said something a moment ago about the need to have the right tree in the right place. There are examples of deciduous trees and forestry species in urban areas where they should not be. Given what goes on under the ground, they can create even more damage. That is an interesting point, and we certainly need to consider it.

Many folk will plant seedlings that they have purchased through mail order or that they have been given as a gift. They might not have a clue what they have got until they plant the seeds and things happen. I was told of an example from the west of Scotland last year, in which a 60ft Populus robusta was cut down and had to be taken out through the close of a particular area. Not everyone fully understands what they have planted, so the point about people knowing what they have is extremely important, and we need to understand that.

Dr Keegan: You certainly would not want a giant redwood in your garden, because they grow to 100m or whatever. Perhaps there could be guidance in nurseries to show people what a tree will look like in 20 or 30 years’ time.

In London, people are advocating planting street trees. We should not forget that trees have a value other than just being nice to look at. They sequester carbon and slow water run-off, so they have ecosystem service values. In London, there is guidance on where to plant trees—it would be quite useful if we had that sort of thing here, even if it was only in nurseries.

The Convener: Such guidance will not come in under this bill, so I will skip that issue.

Pamala McDougall: We are getting away from what the bill intends.

The Convener: That is why I am steering the discussion away. If you have no comments on that, I will move to Margaret Mitchell.

Pamala McDougall: I agree that education plays a huge part, but the garden centres are not interested; they are interested only in selling trees. I just wanted to make that point about education and guidance—

The Convener: The bill will not do anything—

Pamala McDougall: Nor does it cover anything underground, so I think that it is out of our—

The Convener: That is why we are moving on.

Margaret Mitchell (Central Scotland) (Con): Good morning. It is obvious that the definition is key. If I understand Dr Keegan correctly, the Scottish Wildlife Trust’s position is that you do not want the definition extended—you have ruled that out—and that in fact you would like it to be narrowed a bit. Others are perhaps more open-minded on that, as long as there are certain safeguards.

Dr Keegan, if you are in favour of even a narrow definition, you appear to have accepted the proposition in section 2(2), which states that a notice can be applied for “where the applicant considers that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have.”

You have accepted that there are certain scenarios in that regard.

Knowing, as we do, that there could be loopholes and that deciduous trees could be planted that were not covered by that narrow definition, would it not be a way forward to look at it not so much from the perspective of the Isle of Man definition and its ethos, but with a view to protecting the historical, cultural and, according to RSPB Scotland, biodiversity benefits so that a commonsense approach could be taken without adversely affecting what everyone wants to achieve from the bill?

Dr Keegan: Yes, I can see that, but it would require quite a lot of expertise, and the issue is the capacity in local authorities and who the work would fall to. A well-trained expert is needed to assess the biodiversity value of an old tree. An old oak tree has a high biodiversity value by definition, but in other cases someone needs to have a good look to see whether a tree has a squirrel drey or whether it is a bat roost site, and I would question whether local authorities have the capacity to do that. Would it fall to tree preservation officers or to biodiversity officers? They are already quite hard pressed in their roles. If they have to carry out that work as well, will that affect biodiversity in other areas?

Margaret Mitchell: That is an important point and it is key to what we are discussing. Before anyone else gives me their opinion, I want to hear more about that. Is there not a huge problem with
enforcement? The Woodland Trust is concerned about tree preservation orders, but in my experience they are not worth the paper that they are written on. People just cut trees down, breaching tree preservation orders, and say, “Oops!” There is a huge issue about the lack of enforcement in local authorities, and that also impinges on the planning regulations issues that you talked about. Where builders have only guidance, is that strong enough? It seems to me that it is being breached as well. It would be helpful to hear some opinions on that.

The Convener: Dr Keeg an, do you want to continue?

Dr Keegan: I should let somebody else have a go.

The Convener: Mr Yarwood, do you want to give us the Woodland Trust’s point of view?

Angus Yarwood: Margaret Mitchell is quite right that tree preservation orders are not applied uniformly throughout Scotland for various reasons. Recently, we did some research on their use in the past 10 years or so, and their numbers have dropped off significantly. One local authority in Scotland is not even able to lay its hands on the legal documents, although most other authorities are much better prepared.

There is a big issue about enforcement and you are right to say that, in certain cases, the penalties are not high enough. The same is true of building regulations—if trees are cut down, the penalties are not high enough. However, that is a separate issue from the bill. The Parliament considered the issue when tree preservation orders were introduced in February 2011, but there are still problems with their enforcement.

Given the way in which local authorities deal with tree preservation orders and the difficulties that tree officers find in dealing with them, I think that a narrow definition in the bill will help them to deal with the problems that exist with high hedges. If the definition was broader, we would get into problems with how trees were assessed and the workload that that would place on those officers. There would also be all the difficulties that Dr Keeg an described with assessing the trees.

Yesterday, I spoke to a colleague who is a site manager in Scotland but who worked in England when the legislation was introduced there. His experience is that, in bringing established trees or evergreen hedges down to an acceptable level, the local authority runs the risk of killing the trees or hedges. It will then be liable for that, because it is not in a position to be able to kill the trees; it can only help to control the problem. His argument is that, in the case of very tall leylandii or other non-native species, local authorities will not take any action because they run the risk of killing them.

There are so many complications with opening up the definition. Keeping it clearly defined will help the people on the ground to deliver what the bill seeks to achieve.

Margaret Mitchell: Is there not a competing interest—the reasonable enjoyment of property, which is the very essence of the bill? Having a narrow definition might solve your problem with TPOs—I can see why you are worried about that issue—but do you not need to look at the bigger picture and hope that, when a particular situation comes before a local authority, it will look at it on a commonsense basis and determine where the greater need lies?

Angus Yarwood: Yes—that is the decision that local authorities have to make. It is worth talking about all the options, as that is why we are here. It is a question of judgment. As I have said, we come to the issue from a tree enjoyment and biodiversity perspective. As I mention in my submission, trees have other important benefits, particularly in urban areas. Planning policy in Scotland embraces place making and the greening of urban areas for lots of reasons to do with people’s enjoyment of where they live, the health benefits, the removal of pollutants from the air, the provision of wind breaks and the reduction of energy transfer from properties into the environment. All of that helps with the climate change targets. There are numerous complications, which is what makes the issue difficult.

The Convener: Ms McDougall wishes to comment.

Pamala McDougall: I wonder whether the health deficits for the people who have to live on the other side of such hedges have been considered. People’s physical, mental and psychological health is affected, as is evident from some of the telephone calls that I have had over the past 13 years.

We love trees, too. We agree with everything that Mr Yarwood has said about trees and biodiversity, but there are priorities to be considered. I am sorry but, as much as I love trees, I think that when it comes to weighing people’s quality of life against the value of a tree, there are definite priorities to consider.

The Convener: In relation to Margaret Mitchell’s question about trees that are covered by tree preservation orders, do you believe that, if such trees are causing grief to someone, they should be levelled?

Pamala McDougall: We are reasonably happy with what Mark McDonald’s bill says about tree preservation orders because they usually relate to single trees as opposed to huge hedges. We do not have a problem with that.
Derek Park: It is just another factor that goes into the mix and must be considered.

Pamala McDougall: The photo that I am holding up shows a single deciduous tree that is covered in ivy. It acts completely as a leaf-bearing tree.

The Convener: Margaret, do you want to follow up on that?

Margaret Mitchell: No, thank you.

Anne McTaggart (Glasgow) (Lab): I return to the issue of fees, which was partially discussed earlier.

The financial memorandum includes an example of the projected costs that are associated with making decisions on applications for the imposition of high hedge notices. The bill does not specify an upper limit or cap on the fees that local authorities may charge. An indicative figure of between £325 and £500 has been suggested. Do you have any concerns or evidence to show that that may be prohibitive for some people who have been involved in disputes?

The Convener: Well done, Anne. I know how difficult that was for you, given the state of your voice.

Pamala McDougall: I have taken great interest in the fees side of things, because I hear many members of Scotchedge talking about their fear that they will not be able to complain about high hedges.

We have definite proposals. We have looked at what has been done at Westminster and in other parts of the UK. Our first choice, for the sake of justice, is that the innocent party should incur no costs and the loser should pay the full costs. If deposits are required to prevent malicious or vexatious complaints, the complainer should have to pay a fee, but it should be returned if the complaint is upheld.

In Scotland, justice can be accessed through, for example, the small claims court. The fee for that is £65 for claims up to a value of £5,000. That is the fee to access the system. We fully recognise that there are other costs on top of that, but the fee to access the system is only £65. We do not think that hedge victims should be treated less favourably than any other victims. Although fees in England vary quite a lot, the average fee is roughly £350. In Wales, as the committee knows, there is an upper limit of £320, whereas in Northern Ireland it is £360. A wide variety of fees are applied.

Like COSLA, we would like the bill to be cost neutral, and we believe that it can be. In fact, we have been told in the documents that we have been given that savings might accrue as a result of statutory procedures.

We think that it should be a statutory requirement that fees be reduced on a concessionary basis. That is not in the bill. Local authorities have been given the power to decide. Some councils charge on a sliding scale or make concessions. In some cases, proof of mediation is required. Practice varies widely.

First and foremost, we do not think that justice would be served if a claimant who has lived in an awful condition for years had to pay hundreds of pounds. Most of these people—who are victims—could not afford it.

10:45

The Convener: Do any of the other organisations wish to comment?

Dr Keegan: That point was well made.

My only thought on having fees is this. If the bill was broadened, we would have to train people to assess biodiversity value. Will the fees provide the resources that local authorities will need to sort out such problems? I can see why a fee is needed, although I will not say who should pay it.

John Pentland (Motherwell and Wishaw) (Lab): I am reminded of the fact that one of the first surgery inquiries that I received as the newly elected MSP for Motherwell and Wishaw was on high hedges. Pamala McDougall highlighted the issue of quality of life, which was of great concern to my constituent. Following on from that inquiry, I wrote to Roseanna Cunningham to ask her when a bill would be introduced to tackle the issue, and I was informed that a bill was pending. I am not sure whether it was my question that led to the bill's introduction, but I will take the credit for it, along with my constituent.

My question is about appeals. As you are probably aware, the bill provides for an appeals mechanism. An applicant for a high hedge notice can appeal to the council, as can someone who has been served with such a notice. However, when an application for a high hedge notice has simply been dismissed, there is no room for an appeal. Do you have any concerns about that?

The Convener: Mr Park, do you want to answer first on the issue of appeals?

Derek Park: Yes. We have confidence that local authorities, along with the experts, will use all their powers to make correct decisions. If an appeal is dismissed, it is dismissed. That must be the end of the matter, as is the case in all law, unless it would be possible to go to the European Court of Human Rights or something—I am not sure about that. That would be the end of it as far as we are
concerned. I do not think that that holds any fears for us.

It is possible that there might be frivolous or vexatious claims. We are not holding a candle for every person who might want to use the process. There must be some sanction—that is fine.

The Convener: It appears that none of the other organisations wishes to comment. Do you have a further question, Mr Pentland?

John Pentland: No, convener.

John Wilson (Central Scotland) (SNP): I declare that I am a member of the Scottish Wildlife Trust, the RSPB and the Woodland Trust. I also have in my garden a leylandii hedge that may be more than 2m high, but I do not think that it impinges on the garden or property of any of my neighbours.

My questions are mainly for Scothedge. Your submission uses some fairly strong language. You say that a small number of people “are happy to abuse and victimise their neighbours”. You say that “the law uniquely allows” trees and hedges “to be used as weapons for that purpose.”

Quality of life has been referred to. Members of Scothedge make complaints against their neighbours for having high hedges or trees that block out light or impinge on other aspects of their enjoyment of life, but the people who have such hedges or trees say that removing them would affect their enjoyment of their environment and would take away something that they are content to live with. How do you balance that? The neighbour of a complainant might say that they enjoy their high hedge or tree, that they have watched it grow and develop for 50 years and that they enjoy watching the wildlife that it attracts. They might feel that it is beneficial for their mental health and wellbeing, and that it is wrong to be asked to remove it by a neighbour who might have just moved in or who might not have lived there for as long.

Earlier, we heard the example of people who bought houses on a new estate in Cumbernauld glen, which was built in the past five or 10 years, and who wanted woodland to be cut down. What would you say to individuals in those circumstances?

Derek Park: You asked a lot of questions, so please bear with me.

I had better declare an interest, too. As I told Aedán Smith earlier, I am a fellow of the RSPB.

We are looking at specific circumstances. You mentioned the language in our written submission. It is strong because we are passionate and we strongly believe in what we are trying to do. The statement about weapons might be a bit strong, but I will give some examples of what we are talking about. The classic example is the brick wall. You are not allowed to build a 30-foot brick wall to upset your neighbour, but you are allowed to grow a 30-foot tree. At the moment, there is no recourse.

Another common example is that someone may apply for an extension to a house that would have a detrimental impact on a neighbour by, for example, blocking out light or a view—it would usually be a two-storey extension that would do that. We know of cases—mine is one of them—in which planning permission was refused on the grounds that it would block out light and the view, with the result that an extension could not go ahead. In my case, my neighbour is now happily cultivating dual rows of leylandii and silver birch trees in the knowledge that, whatever happens, he will be able to punish me, even though it was not me who objected to his planning application—I inherited the situation from a previous owner.

A fairly recent case, on which I will not give too much detail because it involves violence and vindictiveness, relates to a property that is designed to be eco-friendly. There was a dispute with the neighbour, although I will not tell the committee why. The neighbour has now taken the opportunity to grow deciduous trees in the knowledge that that will take the sunlight off the eco-house, with the result that it will be rendered useless. That is a new type of case that we are starting to see. Those are examples of how people can be vindictive.

You asked what we should do about the guy who says that he enjoys his tree. We just have to be proportionate. Trees are rarely grown high to the south of a property, because people always want to have access to light to the south, but they will quite happily grow them on the north side of their property and not care that the neighbour suffers, because they are okay. People often plant trees to block the views of other people in a development, but they maintain their open aspect and view.

We get a lot of backland development cases in which plots of land in big houses are sold off and little houses are put in. The owners of the big property then think that they can grow massive great trees around the border of their property and cut out all the small properties that belong to their neighbours. However, although a big tree at the far end of a huge garden might not be an issue, a big tree on the boundary of a small property that
does not have a lot of garden can be close to the building itself.

The issue is proportionality. A balance must be struck. We cover that at some length in our publication “A Growing Problem”. For whoever makes the judgment, a key issue to consider is proportionality and whether the benefit that a tree has for neighbour A is wildly out of proportion to the detriment to neighbour B. If we have a good, robust and rigid process, we will be able to make those judgments.

The Convener: Will you clarify a point that you made, Mr Park? You said early on in that reply to Mr Wilson that a planning authority took into consideration lack of light and lack of view or the removal of a view. It is my understanding that planning authorities do not take view into consideration.

Derek Park: That is not what I was told in my case. However, as I said, it was not to do with me, as I bought the house from somebody else. I accept that perhaps planning authorities do not take view into account. That is why we need to go back to the definition of reasonable enjoyment of a property.

Dr Keegan: We have a case that relates to view. We have Southwick coastal reserve, which is a site of special scientific interest—a nationally designated site. One of the neighbours said that some trees blocked his view of the Solway Firth. We worked as we could and took out some of the hedge-like aspen trees, but we have native oak trees that have been there for a couple of hundred years and are part of the definition of the SSSI, so we do not want to take them out. I wonder what would happen under the bill if it mentioned views.

John Wilson: That is the issue that I am trying to get to. Areas move on. Major housing developments are taking place throughout central Scotland. The Cumbernauld glen example is a good example of a developer coming along and building houses that encroach. In some areas, communities feel that they are being encroached upon because of the developments that are taking place.

Existing communities have built up trees, shrubs and hedges for the community. When a development comes along, how do we measure the value of those trees to the individuals who have lived in the area and grown them? If somebody who moves in says, “My view is being obstructed. I don’t like the trees, so I want them to be removed,” and starts taking out notices under the bill, would that be seen as frivolous and vexatious?

Angus Yarwood: There are a couple of points in that. There are plenty of examples of developers having developed on the land around historic houses as it has been sold off.

Aedán Smith is a planner, so he might be able to answer the question about views.

We must remember that, as the football pitch diagram that Mr Park held up earlier indicates, we are all of the view that we can deal with the majority of the hedge problems that are being discussed. The Woodland Trust is focusing narrowly on deciduous trees.

11:00

John Wilson: You might be agreed on the hedges issues, but the Scotmedge submission refers to inappropriate tree growth, trees blocking light and the leaf litter that tree cause. It is much wider than just hedges.

Angus Yarwood: Yes. I just wanted to point out that deciduous trees are a narrow issue. I agree with what has been said about properties being built near trees that are already there. There are lots of examples of developments being built close to fairly young trees—we have talked about oak, but there are other examples—that, over many years, will grow to a bigger size. You must appreciate the process that native and deciduous trees go through of maturing into large trees and then falling back as they die over the years. Those dimensions are often not included in planning considerations.

Pamala McDougall: I think that Mr Wilson mentioned cutting trees down. I hope that he does not mean cutting them out. Did he mean bringing them down? It is slightly ambiguous.

John Wilson: No. Dr Keegan indicated earlier that, if we cut some trees too far, we kill them off. There is the potential for losing a tree by cutting it too far. There are issues with what type of tree we are talking about and how far someone wants to cut it back. The bill has a 2m maximum height but to take some older trees down to 2m would destroy them and the wildlife that uses them.

Pamala McDougall: The tree officers have a lot of expertise in the matter and we have a lot of trust in them.

John Wilson: I refer you to Margaret Mitchell’s earlier comment that TPOs are sometimes completely ignored. People cut down trees and then say, “Oops!”

Pamala McDougall: We are not concerned about the TPOs.

Aedán Smith: If it is helpful, I can confirm how the planning system deals with views and impact on light because, for my sins, I am a former local authority development control officer. The effect on light on private property would be a planning
matter. The effect on a private view would not be a planning matter, but the effect on a public view would be.

The Convener: Thank you for that clarification, Mr Smith.

Derek Park: I will go back briefly to the point about the danger of killing a tree. It would not be good to put into the bill, as was put into the legislation down south, a measure that said that the deal is off if there is any risk—I think that that is what Angus Yarwood said—of the tree being killed. That would be particularly unfair in Scotland, because we have waited for legislation on high hedges since the Scottish Parliament was set up and the problem has grown for another 13 years.

Such a measure would, in a way, reward the worst cases. The fact that people have failed to do the decent thing and control their shrubs, trees or hedges should not mean that they have a way out because there is a risk of killing the tree. Even some tree surgeons down south are loth to get involved, because the local authority is trying to get them to carry the risk.

John Wilson: Are you content that, if there was any risk of a tree being killed off by the actions proposed under a high hedge notice, it should not be touched?

Derek Park: No—quite the opposite. We would say that that was not of any relevance. If a tree is judged to cause concern and nuisance, the remedial work should be done and, if it kills the tree, I am afraid that it kills the tree. People are more important. That will happen. I am sure that, occasionally, a qualified tree surgeon will work on a tree and the consequence will be disease, which will kill it.

John Wilson: Thank you for that clarification.

I want to move on to the timing of any remedial action. Submissions from the RSPB and others indicate that the timing of action to chop down trees or hedges might have an adverse impact on wildlife that uses those trees or hedges. Would Scothedge be content with the idea that any remedial action should be taken outwith the breeding season of any wildlife that uses that habitat?

Derek Park: Absolutely. We would have no problem at all with that.

The Convener: Thank you. Do other members have questions?

Stuart McMillan: How would the bill deal with a situation in which there was a tree or a hedge in the garden of a house that was in local authority area X but which was adversely affecting a neighbour in local authority area Y?

The Convener: Do witnesses have opinions on that? That is probably a complicated question for everyone but the former development control officer.

Derek Park: Our answer is that we would rely on you experts to solve that problem for us.

On a serious note, I do not think that such a situation should preclude action being taken.

Aedán Smith: If a planning application had been submitted, there would be a requirement to consult the neighbours, regardless of whether they lived across a local authority boundary. The planning application would go to the authority in which the development was to take place. I guess that the bill would work in a similar way, and that the authority in which the tree or the hedge that was being dealt with was situated would be the lead authority on the matter, but there would need to be scope for cross-border co-operation.

The Convener: Thank you very much. I bet that you did not expect all these planning questions, Mr Smith.

Mark McDonald (North East Scotland) (SNP): I am having flashbacks to days on the resources management committee of Aberdeen City Council—although the convener will be pleased to learn that they are happy ones.

I have two questions, the first of which is about the situation in the Isle of Man, which Stuart McMillan raised. My understanding is that the Isle of Man Government is seeing difficulties arising with enforcement of the legislation, in relation to deciduous trees and shrubs. If the bill were broadened, would that give rise to complexity and enforcement difficulties? How do you see that playing out?

Angus Yarwood: I am trying to think of points to make that would be additional to those that I have already made. I can see why the Isle of Man might be getting into that position, particularly if it is having to weigh up all the different benefits of the trees. I do not know what the guidance is like for tree officers on the Isle of Man, so it is difficult for me to comment. I do not know into how much depth the guidance goes. I am thinking about the issue from the other side of the fence, as it were. Perhaps the guidance could be tightened up so that it is clear and easy to follow. Maybe there are ways round that. It is hard to say without having looked at the situation there.

Aedán Smith: I am conscious from my experience of working in development control that definitions are often extremely challenging. Although it was not a major part of my work, I know that working on tree preservation orders could involve getting into debates about issues
such as “When is a tree a tree?” which can be quite difficult.

As we have discussed, it is important that we get definitions right. I think that the relatively simple and clear definitions in the bill are quite useful. As I have said, I think that if the bill were to be broadened, it would be more onerous and it would require a fair bit more work to assess each case.

Dr Keegan: I imagine that there would be difficulties around biodiversity value. If there was a scoring system for trees, an expert would have to be brought in to decide, and there could be disputes. I have seen cases in which there has been a nest in a tree and then suddenly it is not there any more. There may be unintended consequences.

Derek Park: The Isle of Man case—for those who are not familiar with it—was complicated because it involved a layered set of hedges and ground-elevation changes. The judgment hinged on light, and on the gradient across the hedges. The hedges near the affected property were short so that the sun could get in, and those further back were higher to give the hedge grower privacy. There is no problem with that, but the complainer appealed, because in his view all the hedges should have come down to 2m. That is the point that was raised earlier: no one is saying that everything should be down to 2m. An appropriate judgment might involve a height of 3.5m or whatever, but in that case the judgment was appealed because the complainer was under the impression that the height of all the hedges should have come down to 2m. The appeal was thrown out and the gradient was established, which we agreed with. That case was complicated, but not because it involved deciduous species. That was by the by: they were just trees and the issue had nothing to do with the species. It was all about the arrangement, the gradient and the different ground levels. I do not think, therefore, that the Isle of Man case has much relevance.

Pamala McDougall: I support everything that Mr Park said. New bills bring up strange and difficult cases, and that was one of them, but it is only one.

Mark McDonald: I have a couple of questions on fees. First, Dr Keegan, Mr Smith and Mr Yarwood spoke about the biodiversity assessment and further assessments that would be required if deciduous trees were to be included. They might like to comment on whether that would have an impact in terms of costs to the authority, and subsequently, because the fees that would be levied would be much higher than might be the case under the current definition.

Dr Keegan: There would be an impact if an authority were to use someone who did not know a lot about biodiversity, because that person would need a lot of training. As I said, I used to do bat survey work when I was a consultant, which is quite a specialist job and not something that you can learn in a couple of hours. If the person was not trained in that, the authority would have to get in and pay a bat specialist to carry out the survey.

Aedán Smith: I point out that in our submission we suggest that biodiversity should be considered in the current proposals. However, given that the current proposals contain a tight definition that would cover only species that are generally of lower biodiversity value, an additional assessment of the biodiversity value would be needed if the definition was broadened out. That might result in more work.

Angus Yarwood: The number of biodiversity officers and tree officers in local authorities has been hard hit in the past five or six years. Fife has one part-time tree officer, and I think that I am right in saying that Edinburgh has gone from four or five members of staff in its tree officer group to two or two and a half. That is quite common throughout Scotland because of the economic climate. If authorities have to upskill staff and provide extra training for biodiversity or tree survey work, there will undoubtedly be an impact.

Derek Park: We have all said with regard to the bill that we are where we are, but I am backtracking a bit on some of the earlier proposals. In Wales, there is a central tree officer—or whatever you want to call the person—to provide a core of expertise that covers the whole of Wales. We have advocated that in the past as a possibility for Scotland so that we could pool the expertise and make it available to all the local authorities.

11:15

Mark McDonald: My second question is directed at Scothedge. If I apply for Mr Stevenson to deal with his high hedge, which is affecting enjoyment of my property, and the authority finds in my favour, my fee will be reimbursed and the costs recovered from Mr Stevenson. How would you recover the cost? What is the potential cost benefit to a local authority of pursuing Mr Stevenson for the fee, given the cost of pursuing him?

Pamala McDougall: The recovery of fees, if that is what you are talking about, would surely be as you propose in the bill. I do not see any difference in the recovery of moneys from the loser—

Mark McDonald: I am sorry. I will try to explain better. There is a mechanism in the bill to recover
costs when the authority undertakes work. However, if that does not happen, I am thinking about proportionality, given the cost to the authority of pursuing Mr Stevenson for the fee, compared with the money that it would get back from him.

**Derek Park:** If the costs were prohibitive there would be no point in pursuing him. However, the key point is that the complainer whose complaint has been upheld should not suffer. We have never looked to punish people; we have never gone out to put people in the wrong or get back at them. That is not what we are after. We are looking to protect the interests of the people who suffer; we are not looking to punish the people whom we think cause the suffering.

**Mark McDonald:** Thank you.

**The Convener:** If committee members have brief questions, I will let them back in.

**John Wilson:** Mr Park mentioned the Isle of Man case in which the issue was whether a height of 2m or 3.5m was regarded as a barrier to light for the neighbour. The bill is specific, in that it says in section 1(1)(b) that it will apply to a hedge that “rises to a height of more than 2 metres above ground level”.

Would you be content if a council officer came along and said that they did not accept that 2m was too high and the hedge could be 3m or 3.5m high, rather than taking a blanket approach and enforcing a height of 2m?

**Derek Park:** We should be careful not to confuse the trigger height for initiating the process with the findings of the process. I absolutely accept that 3m might be appropriate in some circumstances. In my case, about 4m would do me, to be perfectly honest—just not 5.5m or 7m, which is the height of the trees now.

**John Wilson:** Thank you for that clarification.

**Margaret Mitchell:** What are the panel’s thoughts on the justification for not including a single tree in the scope of the bill?

**Pamala McDougall:** The picture that I brought demonstrates the issue. It is of a neighbour’s tree. A single tree can keep out as much light as a row of two or three trees in a hedge can do. That is the point.

**Margaret Mitchell:** I agree.

**Derek Park:** We have come across cases of single trees being very close to a neighbouring property, because a driveway is narrow, for example. It would be a shame not to sweep up such situations in the bill.

**Dr Keegan:** Again, it is about having the appropriate tree in the appropriate place.

**Aedán Smith:** I talked about the benefits of keeping the definition narrow and tight. In principle I have no opposition to extending the scope of the bill, provided that those safeguards are in place.

**Angus Yarwood:** Different people have different views about whether a tree is a problem or a pleasure. There are issues to do with age and whether a problem has arisen after the tree has been established or because the tree is young and is growing quickly. The historic and cultural value of the tree is an issue.

**The Convener:** No one else has caught my eye. I thank you all for your evidence.

11:20  
Meeting continued in private until 11:45.
SUPPLEMENTARY SUBMISSION FROM SCOTHEDGE

Many thanks for the opportunity to give evidence at the committee meeting last week and for the work you have both done so far. For the record I have attached the document which I gave (hard copy) to the recorder which featuring the football pitches and the statistics behind them.

We really appreciated the debate with the other witnesses and are grateful to the Convener and all the members for drawing out the key issues.

We fully understand the concerns about the need for an effective and efficient appraisal process, especially if the scope was widened in the way we favour. Scothedge has always advocated that centrally produced guidelines should be available to help local authorities come to a decision. England and Wales have such a document, High Hedges Complaints: Prevention and Cure and in 2009 Scothedge prepared a modified draft of key sections of this document to make them applicable to Scotland. We have reviewed this draft following last week’s committee session and the document can be found at Scothedge Draft Guidelines.

The Scothedge document is very much ‘work in progress but we particularly draw your attention to section 4.2 ff (page 15) ‘What Is Reasonable?’ and section 5.100 ff (page 38) ‘Proportionality’.

Scothedge would like to be sure that the committee are aware of these documents because they help answer many of the concerns raised last week. I think we all wish to avoid ‘re-inventing the wheel’ and much of the value of the documents is in the ‘prevention’ sections which should allay many of the fears of the Scottish Wildlife Trust etc., to which we remain largely sympathetic.

We showed in our evidence that the number of cases requiring local authority intervention and appraisal is likely to be low. However at this week’s session we anticipate that ‘resource’ will be a major concern for the tree officers. Alongside the guidelines, we feel that Scotland would be well served by some form of ‘central expertise’, advising and guiding councils towards good decisions. The arrangements in Wales are worthy of consideration.

We remain completely available at this crucial stage if there is any further help we can give to the committee.

Once again, many thanks.

Derek Park
for Scothedge
Statistics

The 6 English local authorities for which we have complete data have approx. one quarter of Scotland’s population.

- In the first seven years they experienced 1,220 enquiries which became 100 formal complaints. This means that 92% were cleared without formal complaints.
- In Scotland this would represent approx. 4,800 enquiries and 391 formal complaints over 7 years. (690 enquiries, 56 formal per year)
- For the average Scottish LA this is 150 enquiries and 12 formal complaints in 7 years.
- Uplifted by 50% to include deciduous and single trees this represents 225 enquiries and 18 formal complaints over 7 years for the average LA.

This is average of between 2 and 3 formal complaints per year for the average LA

Position of RSPB, Scottish Wildlife Trust & Woodland Trust

We estimate that there are 1.65 million ground level properties in Scotland. Assuming 1 in 3 has a hedge or tree this is 550,000 properties. The number of enquiries (4,800 over 7 years) represents 0.9% of the total Scottish domestic hedge stock. Again assuming 50% uplift (i.e. 0.45% for inclusion of deciduous & single trees) this means 1.4% of the total Scottish hedge and tree stock will be affected by the legislation.

By trying to exclude deciduous and single trees, these bodies are denying relief to some of the worst sufferers and supporting some of the worst human behaviour. This for the sake of a habitat which represents less than one half of one percent of the Scottish domestic hedge and tree stock.
How Cases Will ‘Dissolve’ Once Legislation Is In Place

Total Pitch Area Represents Scottish Enquiries Expected Per Year

Effect on Local Authorities of Adding Deciduous Cases

Evergreen Cases Needing Local Authority Action Per Year

Where Is The Justification for Exclusion of Deciduous Species?
The Likely Impact Of the Bill on the Entire Scottish Domestic Hedge & Tree Stock

Total Pitch Area Represents Scottish Domestic Hedge Stock – currently Trimmed And Well Looked After

Untrimmed Deciduous Stock

Untrimmed Evergreen Stock

These Two Areas Represent Scottish Hedge Stock Likely To Be Affected By The Bill

Where Is The Justification for Exclusion of Deciduous Species?
1. General

1. Scothedge was surprised that, with the exception of our submission, no further evidence was sought regarding the effect of ‘high hedges’ on people. We would have expected some professional input from the ‘caring disciplines’ and perhaps someone to comment on the effect on the value of property alongside the environmental lobbyists and tree officers. This is a problem which impacts on people and their property much more than on trees and wildlife. Outside observers could have been left with the impression of hedge victims unreasonably attacking the environment.

2. We saw the committee and witnesses struggle to find some sort of definition of a rogue hedge. For Scothedge this was a return to the fruitless attempts of previous administrations. Far from avoiding complexity, attempts to define the problem in terms of size, species and arrangements of plants are actually the cause of that complexity. The approach should be to develop legislation which requires the maintaining of vegetation such that it never ‘adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’. We advocate a robust process of assessing that reasonable expectation but with no one excluded from the process by some arbitrary ‘up front’ definition.

2. The Definition Issue

1. Everyone seeks the silver bullet and everyone can formulate ‘the correct definition’, but in reality, that is merely the definition that would work for them. Scothedge again urges the committee to avoid a definition based on size, arrangement and species of trees and instead focus on the effects of such trees. Parliament has a responsibility to the wider community and any legislation which is designed to exclude members of that community is unsound.

2. Excluding deciduous species or grossly inappropriate single trees from the remedial process would effectively afford legal protection to some of the worst examples and offer a legal loophole to those who would happily and maliciously continue to abuse their vulnerable neighbours. It was suggested by some that the planting of substitute legal species could only be a long term strategy but in some cases this has already happened, both in England and in Scotland, with some Scottish growers assuming that the English evergreen definition will apply here. Also ‘instant unreasonable trees and hedges’ are readily available, by using mature trees from garden centres and online suppliers. It has always been a tenet of Scothedge that we would question a solution which deliberately makes matters worse for any sufferers.

3. There was much discussion regarding ‘barrier to light’ and we saw how the need to assess it adds complexity and cost to the analysis. We have explained previously that it is only one of the many detrimental effects of a poorly maintained hedge or tree. It should be judged alongside the other effects so that authorities come to a balanced assessment as to whether the total effect of the tree or hedge ‘adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’.

If ‘barrier to light’ remains the sole criterion for defining the detrimental effects of the tree or hedge we fear that strict interpretation by tree officers or lawyers could mean that the number of cases resolved by the legislation could be considerably less than the 50% currently anticipated.

4. We also disagree with the notion expressed by the Minister that, regarding cases not covered by the proposals, it would however ‘create an environment where some people would want to address their issues’. From our case experience the opposite would be true, with unscrupulous and uncaring growers claiming some sort of victory and seeing the legislation as a vindication of their position.

5. Scothedge felt a strong sense of ‘déjà vu’ whilst watching the deliberations around the hedge definition. We are not alone in our belief that this is an inefficient approach and previous Government Ministers involved had come to agree that the issue to be addressed should be ‘nuisance vegetation’ rather than a narrowly defined selection of species.

3. Statistics

Throughout the evidence taking statistics were quoted, particularly with regard to the potential effectiveness of the different definitions. Scothedge are the source for many of these numbers so we offer the following clarifications.

1. ‘90% clear up rate’ – this figure relates to the number of cases which would ‘capitulate’ once legislation is enacted. It represents the number of ‘initial enquiries’ quoted by various local authorities in England (data sourced from the Policy Memo) with the number of cases which were eventually brought to those authorities for remediation. It is therefore an estimate of the percentage of people who ‘do the right thing’ once they realise that their position could be illegal. However ‘capitulation’ is only effective in cases which are covered by the definition. In Scotland, with the bill as proposed, the ‘clear up rate’ will be no more than 50% of the cases currently identified.

Scothedge does not believe (as quoted) that the current proposals will resolve over 90% of cases!

2. ‘Percentage of cases covered by the present definition’. - Using the Scothedge case files, the results of several public consultations and the case load of MSPs we estimate that the current legislation would cover around half of the current cases. Inclusion of deciduous species would capture an additional 20% and provision for single trees would cover the outstanding 30%. Of course no one can be sure of the outcome once legislation is enacted but Scothedge has shown in
its initial submission that even if the widest definition were to double the number of cases, the average local authority would still have to deal with less than four actionable cases per year. This evidence comes from Scotland and no claims or comparisons can be made with England because there is simply no data available there. The only evidence from England is that their legislation works in its truncated form but there is no evidence or data to support the speculation that widening the definition would cause an overwhelming escalation in the number of cases either side of the border.

3. Regarding the Isle of Man, statistically the data is insignificant based on population comparisons. We felt that there was confusion about which cases were just enquiries and how many actually required local authority action. One case did go beyond this and on to appeal, and we have addressed this in our original submission. The compelling evidence from the Isle of Man is that their legislation works. We would be happy to comment on any additional data if this has been passed to the committee.

4. Returning to Scotland it can be seen from the evidence of the tree officers that they in turn have no hard evidence or statistics to support their claims of escalation. When pressed by the committee on the possible effects of widening the definition the responses were (for example) ‘cases will snowball’, ‘it will cause tremendous problems’ or the classic ‘I will take early retirement’. There is simply no evidence or data to back up these rather vague speculations. As we have already pointed out the real evidence is found in the Scothedge case files, in the results of several public consultations, and in the case loads of MSPs. The evidence of the tree officers has, in our opinion, also been informed by COSLA misconceptions and they simply seemed to be ‘on COSLA message’ throughout. (See section 4)

4. The Position of COSLA
During our evidence Scothedge was challenged by the Convenor regarding our written statement that COSLA continued to favour the narrow definition. We explained that this was quoted from the Policy Memorandum (section 44) and the Convenor clarified that the committee understood that ‘COSLA now have no objection to the widening of the bill’. The Convenor further advised Scothedge that they should check again with COSLA, which we have done, and we have now received a response to our enquiry.

The COSLA stated position is that they have not been asked about any widening of the definition and that they would have to consult their members if asked for an opinion by Parliament, and that this would take time. In our view it is unacceptable that COSLA were not asked earlier for their view on a wider definition and to further infer from this that they would not be comfortable with such a wider definition. The facts are that whilst they are comfortable with the bill as proposed, this is not the same as saying that they would be uncomfortable with a wider scope.

Throughout the process of this bill (and indeed throughout our campaign) Scothedge has made clear to Parliament that they favoured a wider definition. This has been our long held and widely publicised position and had been largely accepted by the previous administration. When we tried to have a wider definition included in the initial proposals of the current bill we were told that our opportunity to lobby for this would come at the committee stage.

At the very least COSLA should have been made aware of the position based on the evidence available in Scotland, including that gathered from several expensive public consultations. Scothedge considers that failure to include this evidence alongside that gathered in England shows mismanagement on behalf of those responsible for administration of this process who were well aware that Scothedge would seek to have the definition widened at the committee stage, and indeed advised us to proceed in this way.

The question is what happens now? In our view the committee should not consider the COSLA position as being against widening the definition but rather one of them not having been asked. To consult COSLA again would be costly and time consuming so we urge the committee to accept the evidence of Scothedge, the public consultations and MSPs’ constituency case loads, and advise Parliament and COSLA that that a wider definition will also ‘provide comfort that costs will not be significant and numbers will not be unmanageable’ (Section 44 Policy Memorandum).

5. Evidence from RSPB and Others
Generally these bodies were against the widening of the definition to include deciduous species and single trees. Scothedge acknowledges their concerns but believes that safeguards could easily be built into any guidelines which would allay all their concerns. It would be wrong to deny a significant group of sufferers access to the remedial process because of restrictions which have no relevance to their specific case but are imposed on behalf of conservation groups.

- Using our ‘football pitch’ graphics we showed that less than 1.5% of Scotland’s domestic tree and hedge stock is the subject of dispute, even allowing for the widest definition. The remaining 98.5% is well looked after and most of it regularly trimmed and free from influence of local authorities and conservationists. We feel that, under the current proposals, it would be inappropriate for a tiny minority of problem trees and hedges to be automatically afforded protection, purely based on a notional and insignificant threat to habitat. Why should the conservation groups be given influence over the badly maintained domestic habitat when they do not have (or seek) such influence over the majority of well-maintained and often trimmed domestic trees and hedges?

- Scothedge has already expressed its support for principles of the conservation bodies, for example regarding the limitations on trimming during the nesting season. It should be remembered that far from being ‘anti-tree’ many of our members are keen gardeners and conservationists in their own right, and it is often their desire to protect their garden
and local environment that lies behind their grievance. Scothedge would be happy to see safeguards built into any guidelines to take full account of the concerns of the conservation groups in addition to the statutory provisions already in place. It would be grossly unfair however to seek to protect the wider environment by using the definition to exclude any cases from access to the remedial process. All Scothedge ask is that each case be allowed to stand on its merits.

6. The Role of the Tree Officers
We have already expressed our concerns regarding the evidence submitted by the tree officers but we have an even greater concern that they showed little or no understanding of the suffering of high tree and hedge victims. They seemed purely concerned about the effect on the trees and the effect on their own personal workload. Scothedge believes that the executive decision making in any remedial process should not rest with the tree officers. Whilst their technical input would be an important factor in any analysis, we believe that the final decision should be made by those more qualified to appreciate the human issues rather than simply the implications for the trees. We ask the committee to consider carefully the question of ‘who will decide?’

7. The Way Forward?
Scothedge wishes to express its gratitude to the Minister, the proposer of the bill, the committee and all the witnesses for their input into the process. Their efforts have brought Scotland to a position where a comprehensive and cost effective solution to the problem of nuisance vegetation is within grasp. We believe that these next steps offer the best way for the legislation to proceed.

Parliament to pass legislation which:

1. Allows any member of the public to have access to the remedial process if they believe that plants are impacting on their reasonable right to enjoy their property. Once it becomes known that this is the sole ground for action this will maximise the ‘capitulation’ by those who realise that a remedial process is in place. This would all be at no significant cost to the taxpayer.
2. Requires the development of comprehensive guidelines, based on those used in England and Wales, which deliver fair and consistent rulings.
3. Requires that after a reasonable period (6 months to one year?), an assessment is made of the number of cases which remain unresolved. This information to be used to develop the structure of a cost effective formal remedial process for Scotland. This would avoid local authorities feeling that they must create structure and process on day one of the legislation. It may well turn out that some form of central expertise, to advise councils in their decision making, is all the additional resource required.

Scothedge remains available to assist the Parliament in any way as things progress.

Scothedge
Edinburgh
January 8th 2012
High Hedges (Scotland) Bill: Stage 1

10:00

The Convener: Item 2 is an oral evidence session on the High Hedges (Scotland) Bill. This is the second of three evidence sessions that we are holding this month as part of our examination of the bill. We have two panels of witnesses today.

First, I welcome Mark McDonald, who is the member in charge of the bill. Our first panel of witnesses joins us live from Douglas in the Isle of Man via videolink; the witnesses represent the Manx Government and the local authority in Braddan. I ask them to introduce themselves for the record and to confirm that they can hear and see us.

Roy Corlett (Isle of Man Government): Good morning, Scotland—we can hear you loud and clear. My name is Roy Corlett and I am the legislation manager in the department of infrastructure on the Isle of Man.

Peter Keenan (Isle of Man Government): My name is Peter Keenan and I am a southern area forester in the department of environment, food and agriculture’s forestry directorate.

Colin Whiteway (Braddan Parish Commissioners): Good morning. My name is Colin Whiteway and I am clerk to Braddan Parish Commissioners, which is one of the larger of the 24 local authorities on the island.

Paul Parker (Braddan Parish Commissioners): Good morning, Scotland. My name is Paul Parker. I am the community warden for Braddan Parish Commissioners and I deal with enforcement.

The Convener: Thank you, gentlemen. As I said to you before we went live, I am Kevin Stewart, the committee’s convener. I will ask the first question and other members will ask questions as we go along.

What are your views on the statutory definition of a hedge as set out in section 1 of the bill?

Roy Corlett: From an Isle of Man perspective, we are aware of the proposals that Scotland seeks to introduce, which we recognise as being very similar to legislation that already operates in England and Wales. We are conscious that the Isle of Man legislation contains what is being proposed in Scotland and what is already in operation in England, which is why we have been asked to provide evidence today.

As the meeting progresses, I am sure that we will explain in more detail our views on the
definition in Scotland’s bill. We will try to emphasise our experience of the introduction of the legislation from an Isle of Man perspective.

The Convener: Okay, gentlemen. Your legislation is obviously somewhat different from ours. Have you had any difficulties with it?

Roy Corlett: We have had only a few days to discuss the issue with some of the larger enforcing authorities on the Isle of Man. It might help if I explain that, on the Isle of Man, we have nine Government departments. Two representatives from those departments are here today: I am from the department of infrastructure, and my colleague Peter Keenan is from the department of environment, food and agriculture. The department of infrastructure is responsible for overseeing local authorities on the Isle of Man and is involved in any legislation that could have an impact on local authorities.

It might also help if I point out to the committee that the Isle of Man has 24 local authorities, so it has not been possible in the short time that we have had available to consult all of them. We have tried to concentrate on obtaining views from a few of the people involved. The committee must recognise that the answers that we are giving today are a bit limited, because we have not had a chance to consult fully.

Having said that, I think that the general view is that, although we have had a few difficulties with enforcing the legislation, nothing has proved to be insurmountable. We have been able to rely on the guidance that is available for England from the BRE, although we have had to bear it in mind that that needs to be slightly adjusted to take account of the differences in our definition of a high hedge and the fact that we also include single trees.

The Convener: My colleague Margaret Mitchell has a specific question on your legislation.

Margaret Mitchell (Central Scotland) (Con): Good morning, gentlemen. My question may well be directed at Colin Whiteway and Paul Parker. We are examining the bill that is before us and deciding whether it should be extended to include trees and deciduous hedges. We are aware of the recent appeal court case in the Isle of Man, which was known as Boardman v Braddan commissioners. Will you outline for the committee the background to that recent appeal case and tell us whether it has led to any similar appeals?

Colin Whiteway: I can explain that briefly. The complaint was submitted to the authority, and the community warden was asked to deal with the matter once he was confident that there was sufficient mediation between both parties. I will pass you on to Paul Parker, who will explain what happened then.

Paul Parker: Good morning. Basically, the act in the Isle of Man requires all other avenues to be exhausted prior to any case being taken on board and reviewed by the local authority. We received the initial inquiry on 25 January 2011 from the complainant, Mr Boardman, and we explained the situation to him. He then went back and discussed the issues that he had with the hedge owner, which led to a formal complaint being submitted on 22 May.

On that occasion, the complainant could evidence the fact that he had exhausted all other avenues by showing us correspondence and records of telephone conversations et cetera. That was perfect, as we could see that there was an issue and that it was not going to be resolved between the two parties, so we took the case on board from that point.

On 24 May, we carried out site visits. First, we went to the complainant to establish his side of the story and his views. In that way, we got a visual on the issue concerning the hedge in question and its make-up, and we saw how it was affecting the property as a whole.

We then went to the hedge owner and got their views on why the hedge was planted and when it was established. From there on in, we carried out the investigation, which consisted of many field trips to both properties, including the gardens, and external inspections at various times of the day and in different months.

The benefit of the act is that we have no time constraints from the initial complaint being made to the resolution point. That allows us to view the alleged effects and see whether they are adverse seasonally. The process goes on for a long time, which gives us a chance to see the hedge in each growing period. We see it in full leaf and when it has lost its leaves if it is deciduous, which gives us an idea of the growth rate for the non-deciduous and deciduous plants and shrubs that make up part of the hedge that we are investigating.

That process went on for a number of months in the Braddan case, with visits backwards and forwards throughout June and July. We keep records from the Met Office in relation to the weather conditions, because we can get complaints that hedges are shading lawns and causing issues in that area and many other areas of gardens.

With all that said and done, the initial case that we are talking about, which was Boardman v Braddan commissioners, went on for quite some time. It was 14 September 2011 before we had a date from the courts for a directions hearing, and it was not until June this year that we got the case in court. It is therefore good not to have the time constraints, but—unfortunately—the process goes
on for a long time, so it can be time and cost consuming.

Margaret Mitchell: It would be helpful if you gave some details about what the hedge owner and the complainant said in the case. What was the issue? Was it light or something else?

Paul Parker: The main issue for the complainant was the amount of light for the garden and the property. He alleged that there was a continuous barrier to light, which affected the ground-floor rooms in his dwelling—mainly the living area and the kitchen area at the rear of the property. On investigation, we found that there was an issue, but not to the extent claimed. There was an adverse effect on part of the house, but not the whole house. The case therefore became quite complex.

The boundary between the two properties involved was a 2m-high bank on the complainant’s side, and the hedge line started at the centre of that bank and dropped on the owner’s side to between 2m and 3m in depth. The hedge owner said that he had established the hedge, that it had been professionally planted and that they had picked suitable hedges, although there were a couple of deciduous trees in there that perhaps were not suitable and had a growth rate that would cause issues in the coming years. The hedge owner said that the hedge was established for privacy reasons, because the upper-floor windows of the complainant’s property looked straight into the bedroom windows of the hedge owner’s property. We therefore had to take into account privacy issues that would be caused if everything was cut down to an action hedge height.

The view was that we could gain more light for the complainant by having strategically placed, significant gaps in the hedge at heights above 2m, allowing for an extended growth area for the deciduous trees and some of the deciduous shrubs. That allowed light to come through, but it maintained the hedge owner’s privacy.

Margaret Mitchell: That is helpful.

Anne McTaggart (Glasgow) (Lab): Good morning. The evidence suggests that no upper limit or cap is applied to the fees in the Isle of Man. What is the average fee for a single application?

Roy Corlett: I am pleased to assist with the answer. The fees on the Isle of Man are set at £150 and have been set at that figure for several years now. However, there is discretion to allow a refund, depending on the stage of the complaint at which the matter is dealt with—that might be after the first remedial letter is issued or a visit is made to the site. The department would encourage the two parties to continue talking and to take part in a mediation process, even though the fee would have been paid by the complainant.

Anne McTaggart: Has the fact that there is no upper limit or cap on application fees in your jurisdiction proven to be prohibitive for those who are experiencing problems with nuisance vegetation?

Roy Corlett: I think that the department will look to gain views from all the local authorities on that issue. We have had only a limited number of cases in which an amount of the fee was paid.

The department wanted to set a figure that was not too cost prohibitive, which would encourage people to use the applicable legislation. At the same time, in the light of experience, the department might want to consider the current level of fees.

10:15

The Convener: I take you back to Boardman v Braddan commissioners. That sounds like quite a complex case and I am quite sure that it will have cost quite a bit of money. Who has been picking up the tab for that case?

Colin Whiteway: The local authority picked up the tab for the case. We had to present it. Because it was so important, we had to instruct an advocate. By the end of the case, we had spent more than £7,500. We think that the complainant had spent considerably more than that. The case was adjudicated by the High Bailiff, and we were to meet our own costs so, in the end, £7,500 of the local authority’s money was spent on the matter.

The Convener: When we are dealing with our deliberations, it would be interesting for our committee to have a comprehensive figure for how much the case cost. If it is possible to email that to the clerks, I would be grateful.

John Wilson (Central Scotland) (SNP): Good morning. I want to ask about fees. Will you clarify whether the £7,500 that we have just heard about was the cost of taking the case to court or whether it was all the fees, including the cost of the site visits that staff made to monitor the growth and barrier to light?

Colin Whiteway: We have not calculated the cost in staff time. The £7,500 relates to the legal expenses that were paid to our advocate. The amount of time spent on the matter was extraordinary and I am sure that the cost would be many thousands of pounds. We could probably calculate that and come back to you with a figure, but the £7,500 was what we paid our advocate.

John Wilson: Paul Parker mentioned that there were a number of site visits throughout what I would assume was the growing season. If the barrier to light was being monitored, that would have to be done for 12 months and throughout all four seasons. I am concerned about the cost to a
local authority of 12-month monitoring of any barrier to light or growth that might accrue before the local authority decides to take action.

Colin Whiteway: Again, we would have to make a calculation, but Paul Parker spent a lot of time on making regular visits to both sites. We can probably work something out for you.

John Wilson: Did staff use specialist equipment when they were monitoring the barrier to light and other issues?

Colin Whiteway: The most advanced equipment was a 6m pole. No specialist equipment was used at all.

Stuart McMillan (West Scotland) (SNP): Is the legislation that has been passed on the Isle of Man popular with people or has there been any campaign to suggest that it is overly cumbersome and too much of a burden on the population of the Isle of Man, compared with the legislation that has been passed at Westminster?

Roy Corlett: The department feels that the legislation has worked well on the Isle of Man. The majority of people can access the information—[ Interruption.] The complainants and the hedge owners can mediate among themselves. The department would not necessarily hear much more about a particular case apart, perhaps, from a telephone call. People are advised to look at the website. They do their own research about the issue on the website and work out whether they have a case that they can take forward.

The legislation has gone down well on the Isle of Man. It certainly seems to have settled many cases that would previously have caused issues, but I am sure that my colleagues would like to expand on individual cases, which might be helpful to the committee.

The Convener: That would be useful.

Colin Whiteway: There are quite a number of complaints—perhaps six or seven a year. Boardman v Braddan commissioners is the only case that has got as far as going to court. It is a landmark case. In general, the legislation has worked well.

The Convener: Will you clarify that number? Did you say six or seven cases a year?

Colin Whiteway: Yes. We are only one authority, but we have six or seven a year.

The Convener: Is that for Braddan only?

Colin Whiteway: Yes. There are a couple of larger authorities. We do not have the figures for those—I think that we will do some work on that—but we certainly have six cases a year.

Stuart McMillan: It would be useful for our deliberations if, once you have undertaken your further work on the figures for the 24 authorities, you could send the information to us to provide us with a wider view of how much the legislation has been used.

Roy Corlett: We would be more than happy to assist the committee. I am sure that we can work out a figure from all the island’s 24 local authorities that would pinpoint the information that you require.

Stuart McMillan: That would be great. Would it be possible to break that information down by type of dispute—that is, into disputes about hedges or trees—and by the subject of the applications?

Roy Corlett: Yes, by all means. We will try to break the information down into whatever format is most helpful for you.

Stuart McMillan: That would be helpful.

Dr Simpson: Would it be possible to indicate not only whether the disputes were about single trees or hedges but whether they were about deciduous or evergreen plants? I know that you do not treat them differently in the Isle of Man.

Would it also be possible to show at what stage in the process the disputes were resolved? From what you have said, it appears that many disputes have been resolved because there is a website, information is available and people are more prepared to reach agreement because the legal underpinning means that, otherwise, a case would have to go on to a more complex approach. It would be useful to know how many cases have been resolved at an early stage.

Roy Corlett: Again, we will do what we can to assist.

The Convener: That is most appreciated.

We have had evidence that safeguards would have to be built in for wildlife and biodiversity in the case of action on a single deciduous tree. Are there such safeguards in your legislation? Have there been any difficulties on that aspect of the legislation?

Roy Corlett: Section 4(4)(b) of the Isle of Man Trees and High Hedges Act 2005 requires the enforcing authority to consult the department of environment, food and agriculture on “the extent to which” any tree “contributes to the amenity of the neighbourhood”.

In other words, on the Isle of Man, the enforcing authority is obliged to seek the professional advice of the forestry division. I am sure that my
colleague Peter Keenan will be able to provide further details on that point.

Peter Keenan: All trees are assessed individually for biodiversity and amenity value. We consider that and take on board any questions or queries that are raised.

The Convener: We have with us Mark McDonald, who is the proposer of the bill. He will ask you some questions.

Mark McDonald (North East Scotland) (SNP): Thank you very much, convener. Good morning, gentlemen. Most of the issues have been teased out, but I have a supplementary on biodiversity and amenity impact. Have local authorities been required to bring in external consultancy or external expertise on that, or is it all dealt with by central Government departments?

Roy Corlett: I can confirm that that is all dealt with through Government departments. The local authorities and the department of infrastructure work with the department of environment, food and agriculture. Peter Keenan will explain what qualifications the forestry officers have.

Peter Keenan: All foresters are trained to degree level. We also have trained arborists and wildlife officers in the department. We have a whole team that can be drawn on to give its views on any issues that may be raised.

Mark McDonald: In discussions that I had before I introduced my bill, a point was made quite strongly by local authorities about the need for an element of cost neutrality. It appears from your evidence that the legislation in the Isle of Man is not cost neutral, in that the fees that are charged do not cover the costs that are incurred. When Government advice is required on biodiversity and amenity impact, are those costs factored into the local authority’s costs or are they factored into central Government costs? Could you provide us with that information?

Roy Corlett: At the moment, the costs are covered by central Government, but it is probable that the department will look to undertake a review of the fees in the near future, in the light of experience.

Colin Whiteway: The fees do not cover our costs, but absorbing that is part of our function as a local authority.

Mark McDonald: You mentioned that Braddan parish had about six cases per annum as a result of the legislation. To put that in context, will you tell us what the population of Braddan parish is?

Colin Whiteway: There are just over 2,000 registered voters in the parish, but the parish is quite a large rate income producer, because it includes a lot of businesses.

Stuart McMillan: Your legislation has been in operation since 2005. Do you feel that any parts of it could be amended or adjusted to make the system smoother and to allow it to work better? Is your legislation the best that it can be?

Roy Corlett: The department may wish to consult on that issue, or some local authorities may wish to draw issues with the legislation to our attention. The department would certainly be prepared to review any elements of the legislation if it received a request from a local authority. We would undertake due consultation to seek the views of all 24 local authorities on the island. Our colleagues from the department of environment, food and agriculture would be involved, too.

Stuart McMillan: Thus far, have you had any requests to review the legislation?

Roy Corlett: Not at the moment but, in the light of recent developments, I suspect that that could happen in the next few weeks.

Stuart McMillan: If that happens, it would be useful if we could be kept informed.

Roy Corlett: By all means. However, the emphasis in any proposed change is likely to be along the lines of reviewing the appeal process rather than the definitions that are in place. Perhaps my colleagues may be able to help on that.

10:30

Paul Parker: From a local authority point of view, it might be beneficial to look at the definition, but it would not prove conclusive. Personally, I think that the issues that arose in the Boardman v Braddan commissioners case related more to the guidelines, which we might need to consider adjusting—I hope that we will be able to discuss that with the department in the near future. That issue, which has come out of the recent court case, has come to light since our discussions with the Scottish Government.

In my opinion as a local authority enforcement officer, it has proven to be beneficial to include deciduous trees in the legislation. Of the six cases a year that on average we have dealt with since the act came into place, 75 per cent have included a deciduous tree of some sort, whether in a hedge or a row of trees or as a lone tree. Of those, 50 per cent have included a single deciduous tree that was situated within 5m to 10m of a property. As you can imagine, a tree within that distance might dwarf the property and block out as much light as, if not more than, an evergreen hedge.

Stuart McMillan: In that final example, is the tree or the property there first?
Paul Parker: It is hard for me to say, as I have not been here for very long. Probably the tree is established first and is inherited by the property after the property is built. As my colleague Peter Keenan may confirm, due to the mild weather conditions on the island—we get very little frost—we get rapid growth of some trees. 

Peter Keenan: Yes, in some locations.

Paul Parker: In the cases that we have dealt with, it is probably 50:50 about whether the tree was established first.

Margaret Mitchell: Gentlemen, I have a final question. Are there tree preservation orders on the Isle of Man? If so, how have those worked in relation to the legislation?

Peter Keenan: There are no tree preservation orders as such, but areas of trees and individual trees are registered under the Tree Preservation Act 1993. We monitor and supervise those as part of that legislation.

Margaret Mitchell: Have you covered the scenario where one piece of legislation might affect, or need to take precedence over, another?

Peter Keenan: We have had no such cases, to be honest, because everything has been sorted at the initial stages. As an authority, we are the Government body that issues felling licences for trees. We are unique in a way, in as much as home owners need to apply to us for a felling licence to remove any trees from their property. Obviously, that is not the case in the United Kingdom. We can deal with any cases that might crop up before they come under the Trees and High Hedges Act 2005. We can assess problems as and when they come up, and many of them are resolved by a site visit from us.

The Convener: Gentlemen, we have no further questions, so I thank you very much for agreeing to give evidence. I am glad that we have got through this videolink evidence session without any problems. I thought that I had put the hex on the entire thing earlier, but obviously my luddite ways were proven wrong by the technology working all the way through.

I suspend the meeting for 10 minutes.

10:34
Meeting suspended.

10:44

On resuming—

The Convener: The clerks have corrected me on what I said under item 1, because my briefing note was a little bit wrong. We had already agreed to take in private item 5, but do members also agree to take in private item 3?

Members indicated agreement.

The Convener: I welcome our next panel of witnesses. They are Robert Paterson, who is a land services officer at Clackmannanshire Council and a member of the Scottish tree officers group; Eric Hamilton, who is a forestry officer at Dundee City Council and treasurer of the Arboricultural Association’s Scottish branch; and Graham Phillips, who is a forest manager for Bell Ingram Ltd.

I will ask you the same question as I asked the panel from the Isle of Man. What are your views on the statutory definition of a hedge in section 1 of the bill?

Graham Phillips (Bell Ingram Ltd): I feel reasonably comfortable with the definition of a high hedge. It is tight enough to deal with the specific problems that the bill wants to address without giving too much scope for capturing individual trees and woodland trees.

As a result of that, Scots pine would almost always elude the definition. However, I would certainly support any extra guidance on the definition that would reduce the amount to which it was open to interpretation.

Eric Hamilton (Dundee City Council): As far as we and people to whom I have spoken are concerned, the high hedge definition must cover just high hedges and not any trees of any type. A high hedge must have been planted as and grown as a hedge. Provisions on trees being introduced to a bill on high hedges would lead to tremendous problems.

Robert Paterson (Clackmannanshire Council and Scottish Tree Officers Group): I agree entirely with my colleague Eric Hamilton.

Margaret Mitchell: You will have heard the last questions that we asked the Isle of Man witnesses, which were about tree preservation orders. You will be aware that the bill provides that, although local authorities can have regard to TPOs, they should not be constrained by TPOs in carrying out their duties under the bill. What is the panel’s view on that provision? We can start with Mr Paterson and work in the opposite direction from before.

Robert Paterson: The tree officers group has a specific view. Trees are protected because
they provide amenity or landscape value or because of their intrinsic beauty in the area in which they grow. Secondary to that is the point that, if two evergreen trees were to come under the bill’s auspices, the bill would affect a few semi-evergreen trees, with the odd exception—their appearance and physiological condition could be ruined if pruning were undertaken to abate what was termed a nuisance under the bill.

**Eric Hamilton:** I am aware of no cypress hedges or other hedges in Scotland that are the subject of tree preservation orders. Such orders can include hedges, but they have been used mainly for trees.

**Margaret Mitchell:** You will be aware that we are looking at the possibility of extending the bill to cover deciduous trees, so the question pre-empted your assumption.

**Eric Hamilton:** I would ask Parliament to remove altogether from the bill any contact with tree preservation orders.

**Graham Phillips:** I support that view. If the bill is kept essentially to leylandii and similar hedges, the TPO section will be unnecessary. If the definition was broadened to cover single and deciduous trees, that could lead to valuable trees being damaged or lost.

**Margaret Mitchell:** So you would in no circumstances favour looking at the issue on a commonsense basis, with the passage of time. The Isle of Man seems to look at the particular circumstances and I understood from the Isle of Man witnesses’ evidence that trees that are covered by tree preservation orders are monitored regularly through site inspections. The Isle of Man witnesses thought that they had almost pre-empted problems by doing that.

**Graham Phillips:** The issue should be dealt with more through a review of TPOs rather than through the bill. If a tree became dangerous, that would not preclude a TPO. The commonsense approach is valid, but it should be taken at the TPO stage rather than under the bill.

**Margaret Mitchell:** The question is particularly relevant to the other two panellists. I am not sure whether trees that are the subject of TPOs are regularly inspected in each local authority area in Scotland; perhaps you can tell me.

**Eric Hamilton:** Parliament has given us a get-out clause in the current TPO legislation, because it does not define the length of time between each review of an order. My authority is undertaking a 10-year review after 30 years of not reviewing anything.

**Robert Paterson:** Similarly, Clackmannanshire Council has not had the resources or the time to review the existing tree preservation orders. We have produced three new orders in the past five years and have a total of about 27 orders, most of which are area orders that cover more than one tree. One order is specific to a Sequoiadendron giganteum that is a specimen tree in the village of Devonside. All the other orders are area orders.

**Margaret Mitchell:** Clackmannanshire Council is the smallest local authority, so I imagine that the resource problem would be much worse for larger authorities.

**Robert Paterson:** I agree.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** In engaging with the issue, the bill was able to take one of two approaches. The approach that the bill takes is to have a tight definition of what will be caught. An alternative approach could have been to lay out the objectives and have guidance that led more to a judgmental situation in which officers would look at a case and decide whether there is a problem. What are your views on the relative merits and disadvantages of those two approaches to deciding when the law would apply?

**Robert Paterson:** Every application or complaint needs to be dealt with on its merits. I noted that your colleague Anne McTaggart MSP mentioned nuisance vegetation, on which our colleagues at Scothedge have actively campaigned for many years. However, the definition in the High Hedges (Scotland) Bill needs to be about what the title says—it needs to relate to hedges, as my colleague Eric Hamilton said.

In a horticultural sense, a hedge is formed by individual plants that have been planted no more than 1m apart—sometimes, there are four or five plants to the metre; if the row is staggered, there can be up to nine plants to the metre. The intention is to form a hedge or a screen—I notice that the bill does not use the word “screen”. The bill should be specifically about hedges and no other nuisance vegetation, on which there are already statute law, precedents in previous court cases and common-law rights.

**The Convener:** Does Mr Hamilton want to respond?

**Eric Hamilton:** No. The issue has been covered.

**Stewart Stevenson:** The evidence that we received from the Isle of Man, which works on a different definitional basis, suggested a much higher frequency of cases. Six or seven cases a year in a parish with 2,000 electors is perhaps more than we might have expected.

Given the relatively tight and quite specific definition to which we are currently working, and given that any of the options to open it up would still leave it quite tight and specific, do you have...
any sense—it would have to be a judgment, because I do not think that you could actually answer the question—of what you would expect the number of cases to be in a typical Scottish local authority, if there is such an animal, or in Scotland as a whole? I make the distinction between the backlog that might be dealt with in the first year or couple of years and what the steady state might be once you have dealt with the backlog, because I recognise that those are two distinct situations.

Eric Hamilton: If the bill sticks to hedges, I will be able to deal with that comfortably. If trees are introduced to it, I will be taking early retirement.

Stewart Stevenson: What are the numbers, if I may ask that? I am a mathematician. I just cannot help it.

Eric Hamilton: I would think that, in my urban environment, once all the hoo-ha had died down, I would be looking at 10 cases a year, or perhaps fewer.

Stewart Stevenson: Do you mean in Dundee?

Eric Hamilton: Yes.

The Convener: Mr Paterson, do you want to comment?

Robert Paterson: Yes. The mere fact that acts exist in England and Wales and, from a later period, in the Isle of Man has given some members of the public in Clackmannanshire the opinion that a high hedges act exists in Scotland. I get six to eight inquiries a year, a couple of which are repeat inquiries. In the case of three current inquiries, people are waiting for the High Hedges (Scotland) Bill to be enacted before they consider their individual situations further.

As Eric Hamilton suggested, when the bill is enacted, there will be an initial flurry of complaints. That has already been anticipated in the background papers to the bill. We hope that we will deal with that at the inquiries stage and that the number of cases in which there is a need for a notice will be few, but it is difficult to ascertain that because such legislation is a new beast for us in Scotland.

The Convener: Do you have any comments, Mr Phillips?

Graham Phillips: I do not have any numbers based on local authority areas. I am aware of six cases in the past two years that would probably be subject to the legislation if it had a broader definition. They relate to four separate properties, rather than areas, and they all involve individual deciduous trees.

In one area in particular, I would expect the number of cases to snowball if the definition was broadened to include deciduous trees.

John Wilson: Good morning. On inclusion of trees in the bill, Mr Hamilton said that his option would be to take early retirement. The issue for us is that there is a demand to widen the scope of the bill to include deciduous trees.

I note that the final paragraph of the submission from the Scottish tree officers group mentions trees that have been in place for longer than properties or for longer than a conservatory or sun room. How many complaints do you think would emanate from people who decided to build a conservatory or sun room and then decided that a tree next door, which has been there for 50 or 100 years, is a barrier to light and to their enjoyment of that conservatory or sun room?

Eric Hamilton: I could not put that into numbers. There would be too many—we would be inundated. My switchboard and emails would light up.

John Wilson: You think that a substantial number of complaints would emanate from that if we extended the definition.

Eric Hamilton: The number would be very substantial.

11:00

John Wilson: The bill defines a high hedge as being more than 2m high. In last week’s evidence and in the preceding evidence today from witnesses from the Isle of Man, we heard about examples of hedges that are more than 2m high in respect of which an element of local discretion might be applied or in which, because of privacy or other issues, the 2m limit might not even be appropriate. For example, a hedge might sit on a slope and overlook a garden or house. Is the 2m height limit appropriate or should there be more discretion in the bill with regard to the height of hedges that form a barrier to light?

Robert Paterson: As was described in the Isle of Man case, the topography of the land on which the vegetation is growing is given a great deal of weight in any such judgment. As I have suggested, each case has to be judged on its own merits. Obviously some calculation will be provided as a guide to take the matter further.

John Wilson: Do you wish to respond, Mr Phillips?

Graham Phillips: I support Robert Paterson’s comments.

John Wilson: On the barrier-to-light issue, the Isle of Man witnesses told us that the only measuring tool they use is a six-foot pole. Should more technical equipment be used in order to determine and define appropriate measurements
when someone complains that a particular hedge is a barrier to light in their amenity or garden?

**Eric Hamilton:** As far as I recollect, most of my complaints are about hedges that have been allowed to grow only 2m or 3m from windows or buildings. There is software to determine shade that could be applied to hedges that are further away and concerns about which relate to garden ground, but a pole would do for high hedges that are only 2m or 3m away from a property.

**John Wilson:** That is interesting. A high hedge might be only 2m or 3m away from a property, but surely it all depends on where the property lies in relation to sunlight or daylight. If the hedge sat to the west of a property, for example, would it be appropriate for someone to complain about its being a barrier to light if the main part of the building faced south? After all, we know where the sun rises and sets and the only time that that hedge might be a barrier to light would be in the late evening.

**Eric Hamilton:** That is a problem. People work during the day and might come home expecting to see sunlight in their garden; instead, they find their garden shaded by the hedge. That certainly happens with trees, but hedges can be managed and controlled. As I have said, there is software to determine how much shade will come from a hedge of a particular height.

**John Wilson:** In the previous evidence session, Paul Parker, who is a community warden in the Isle of Man, said that throughout the year they carry out extensive surveys on the impact of the hedges or trees that have been complained about and how much of a barrier to light they actually are. Would local authorities in Scotland have to carry out the same due diligence and the same monitoring of the barrier-to-light issue for at least 12 months to ensure that any decision for lopping a hedge or tree was justified?

**Robert Paterson:** The case that our Isle of Man colleague Paul Parker cited went to court, and the situation was monitored for a full year to allow judgments to be made on what happened in the different seasons. I doubt very much that such an approach will be necessary in every case. If something like the “Hedge height and light loss” document that the Office of the Deputy Prime Minister issued for the England and Wales legislation were to be made available in Scotland specifically for hedges, making a calculation and a judgment would be a straightforward process.

**John Wilson:** Let me just clarify that, Mr Paterson. In your opinion, that would be specific to hedges.

**Robert Paterson:** Yes.

**John Wilson:** It would not include trees or other vegetation.

**Robert Paterson:** No. As I stated earlier, deciduous trees have never been the subject of precedence or successful court cases with regard to loss of light. Light would have to be totally excluded from a property for the entire year and for a significant number of years before a civil action would even be considered. I strongly suggest that the same would apply to individual deciduous trees and groups of trees and that they should be excluded from the bill.

**John Wilson:** I thank the witnesses for their evidence.

The Convener: I have Anne McTaggart and Stuart McMillan on my list. I wonder whether you would mind if I let Mark McDonald in. He has to go to the Finance Committee. Do you mind?

**Stuart McMillan:** No.

**Anne McTaggart:** That is fine.

**Mark McDonald:** I thank committee members for their forbearance. Mr Hamilton, in your written evidence you suggest that there should be a standard fee across all Scottish local authorities. Is it your view or the view of your organisation that the costs that would be borne by local authorities would be of a similar or equal value?

**Eric Hamilton:** The policy would be easier to apply if there were one price for all. I do not know how much everybody else gets paid, but most local authority tree officers are on the same salary—it is when lawyers and everybody else gets involved that the price goes up.

**Mark McDonald:** Does the tree officers group have a view on that?

**Robert Paterson:** Aye. The fee will vary depending on the local authority that takes the case and the number of different departments that are involved—the legal advisers and others that Eric Hamilton mentioned. From the initial meeting that I had with my service manager at Clackmannanshire Council, I know that she takes the view that we should deal with such issues as we deal with planning applications and should apply the same fee. That may be the way in which Clackmannanshire Council will take the matter forward.

**Mark McDonald:** Although the definition in the bill may not deal with all the cases that Scot Hedge raised, do you feel that it would address the majority of cases that exist in your local authority areas in high-hedge or vegetation-related matters?

**Robert Paterson:** If the definition remains that of a hedge, I think that it will.
Eric Hamilton: If the definition means a hedge and not trees, the bill will do what it says on the tin.

Mark McDonald: I have no further questions at this stage, convener. Thank you for your time.

Anne McTaggart: Mark McDonald just asked the questions that I was going to ask about fees, convener, so they have been covered.

Stuart McMillan: Good morning, gentlemen. Mr Paterson, you just referred to planning.

Robert Paterson: I am sorry.

Stuart McMillan: I know. In the evidence that we heard today from the Isle of Man, the question was posed: what came first, the tree or hedge or the house? By the time that we got to the end of the answer, there was a 50:50 split. In some of the information that we have heard from you today, there has also been debate about what existed first.

My question does not relate to the bill per se but addresses the wider planning context. It appears that this type of issue has not been considered in the past when planning applications have been made to build new housing developments. With that in mind, do you think that it would be useful if, when a planning application was made, there were a condition, thought process or understanding relating to existing high hedges, deciduous trees or whatever, so that we could try to plan out any such issues and prevent them from arising further down the line?

Robert Paterson: When construction is concerned and planning consent is required, such as for an extension to a house, the advice note BS5837—the amended 2012 version—takes cognisance of trees in relation to the proposed development. Advice would be given to our development team on how the application should be processed in view of that issue.

Stuart McMillan: Is that just in relation to an extension?

Robert Paterson: No, that would be for any type of construction, but you mentioned a conservatory or something like that. For anything that requires planning consent, if there are trees involved there should be a consultation process whereby the tree officer is asked to give advice to the development team on the relationship of the proposed building to the tree and whether there would be any adverse effects on the residents—the occupants—or indeed on the tree.

Stuart McMillan: What happens if there is going to be a new housing development?

Robert Paterson: The same thing applies.

Stuart McMillan: That is helpful. Thank you.

Margaret Mitchell: Mr Paterson, your written submission refers to what could be described as an original-intention-of-planting test. It says:

“if the row of trees is a feature of the wider landscape of a garden or park then it could be unreasonable to consider these as a ‘hedge’ if the original intention was not to form a hedge but to form a row of trees.”

How feasible, relevant or realistic is the point about the original intention?

Robert Paterson: It is realistic. As we said in the submission, in such a situation we have to take into account the intention at the time of planting and how the trees have been managed. Lawson cypress trees, for example, are often planted as a hedge but they are also often planted as ornamental trees because there are so many different variants of them, including golden, green and blue types. It is not uncommon for them to have been planted as ornamental trees around large houses and estates that have then had houses built around them. At large houses such as Balloch castle, cypress trees are a feature of the landscape—there is a formal double row of cypress trees either side of a path leading to Balloch castle.

If properties are built adjacent to such planting and then become affected, they could be captured under the legislation. Theoretically it could be acceptable for a notice to be served in such a situation. If those trees were 100 to 150 years old, pruning them would be to their severe detriment—it would damage them irreparably. In such situations, each individual case has to be taken into account, first to ascertain the precedence and whether the trees existed prior to the complainant moving into the property. If so, there has to be an element of acceptance of that and the fact that trees grow.

Margaret Mitchell: In the example that you cite there might be some documentation—something written down about why the trees were planted—but in the vast majority of cases it would be one person’s word against the other’s: “No, no, I didn’t mean to form a hedge”. Regardless of that, the fact of the matter is that something might look like a hedge and have the effect of a hedge. How relevant is the original intention if someone is faced with something that is doing everything that a hedge does?

Robert Paterson: In almost all such circumstances, you would find that there would still be some tree shape to the plantation. There would be little or no evidence of any trimming. That would give the tree officer the opportunity to decide what the intention had been.

Let us take Glebe Terrace in Alloa, for example. It is a conservation area—the buildings there go back to the 19th century, when trees and hedges
such as yew and holly were planted. When the houses became flatted, different owners started maintaining the plantings differently, either by allowing them to continue as the original planter had intended or by managing the planting as a trimmed hedge rather than as individual trees. There are a lot of different individual circumstances, which should be judged on their own merit at the relevant time.

11:15

Margaret Mitchell: Do you think that there could be a blanket provision, or should it be tailored to certain circumstances?

Robert Paterson: As we said earlier, the definition in the bill has to relate to hedges. A tree officer would know immediately if two or more trees in a row had been intended to be planted as a hedge. A hedge is generally maintained at some stage in its existence, if not by every owner of the property over the years.

Margaret Mitchell: Forgive me but, again, I do not see the relevance of the intention, other than in very specific circumstances such as for historical or cultural reasons, in which case it would not be a blanket provision.

Robert Paterson: Yes, you are correct in that sense.

John Wilson: I want to examine that further. Mr Paterson, you talked about a row of cypress trees that were planted 100 to 150 years ago when there were no adjacent properties but which are now adjacent to land on which a developer wants to build houses. Is your fear that whoever moves into those houses could say, under the legislation, that they want those cypress trees to be cut down to 2m because they are a barrier to light getting to the newly built house into which they have just moved?

Eric Hamilton: Surely a developer, a local authority or whoever moves into the house should take the fact of the trees’ existence into account before they build or buy the house.

The Convener: If only common sense applied across the board. The other week, I talked about someone who moved next door to a playground and then campaigned for the removal of the playground. Mr Wilson’s point is extremely relevant. We should forget about what common sense would normally suggest and deal with the question as is.

John Wilson: My concern is to do with the urban growth areas. Last week, the Scottish Wildlife Trust gave an example of the occupiers of a new development that had been built next to a woodland glen complaining about the larch trees that someone had planted at the edge of the glen 30 or 40 years ago, which led to the Scottish Wildlife Trust stepping in to take remedial action. That situation arose because there were no houses there when the trees were planted.

As the convener says, things would be better if common sense applied. However, our job is to assess whether the bill, as it is written and as it will be applied, guarantees protection to trees and hedges in spite of any development that might take place or any conservatories and so on that might be built on to nearby properties. We are trying to find out the level of protection that you would like there to be for trees such as those in an established avenue of cypress that was planted long before any developer thought about building houses.

Robert Paterson: I think that I have already covered this, but I would have thought that a row of cypress trees such as you describe would have some impact on the landscape, as it provides a feature within the estate on which properties are built.

You alluded to trees being reduced to 2m in height. As it stands, the bill suggests that no action will be taken on any hedges or row of two or more trees that exceed 2m in height. However, it does not give guidance on the calculation that would have to be carried out to determine the height to which the hedge or trees should be reduced.

That goes back to what I previously stated: if a row of 30-foot cypress trees had to be reduced by two thirds, the trees would no longer be viable. They would become brown at the top, snow would gather on them and eventually they would go into decline. If the act applied to such a situation, the trees would be better removed because, otherwise, we would be left with something unsightly and unviable.

John Wilson: Section 1(1) says:

“This Act applies in relation to a hedge (referred to in this Act as a “high hedge”) which ...

(b) rises to a height of more than 2 metres above ground level”.

I am assuming that an interpretation of that provision could be that, if someone had a hedge that is higher than 2m, it could be argued that that hedge should be brought down to 2m.

Robert Paterson: That would be the general opinion of the public, but it is not how the legislation works in reality. That is not how it works in England and Wales. If an evergreen hedge is involved, it is reduced to a height that allows the optimum amount of light while retaining the hedge.

The Convener: Mr Hamilton was desperate to come in on that point.
Eric Hamilton: I would not class an avenue of mature Lawson cypresses as a hedge. If the trees had been planted significantly far apart—4m, 5m or 6m apart—and they matured, I would not class that as a hedge. It is an avenue of trees.

John Wilson: I refer you to section 1(1)(a), which says that a hedge “is formed wholly or mainly by a row of 2 or more evergreen or semi-evergreen trees or shrubs”.

The difficulty seems to be in the definition and the interpretation of the definition.

Mr Paterson talked about the general purpose of the bill and the public’s interpretation of the bill. Lawyers make a lot of money out of interpreting legislation. We heard about some costs earlier from the Isle of Man, and I am concerned about the cost to a local authority of defending its decision not to take action in favour of a complainant who says that a hedge is more than 2m high and therefore causing a barrier to light.

A local authority might say that a hedge is not causing a barrier to light and that it has decided that a hedge can be anything up to 5m—that height is an example; I am not saying that it will do that. The complainant might then say, “The hedge is a severe detriment to my property. It causes a barrier to light and I want the local authority to take appropriate action.” We might end up with local authorities in the Court of Session, trying to defend decisions that were taken with the best intentions, based on their knowledge and understanding of what would form a barrier to light.

Robert Paterson: My understanding of section 1 is clear, which is that it applies to a hedge or two or more trees growing closely together. We would seek to have the latter part of the provision removed because it could relate to a couple of mature yew trees that are 3,000 years old. If, as you suggest, those trees are reduced to 2m high, we will no longer have yew trees that look individual. However, in no way does section 1 suggest that the resultant height of the hedge should be 2m. It merely expresses that action will not be taken unless the hedge is more than 2m high.

John Wilson: As I said, it will be down to interpretation. If the bill is passed, an interesting development will be the public’s interpretation of the act as opposed to that of local government officers in the field. I thank the witnesses for their evidence.

Margaret Mitchell: Mr Phillips, you say in your submission that yew hedges should be excluded. Will you put on record why you consider that to be the case?

Graham Phillips: In the majority of cases where I find yew hedges or avenues of yews that have grown together, they tend to form part of a historic landscape. Churchyards are the prime example, and there are also policy grounds of old houses. That is one reason why I would want extra protection for that type of hedge or row of trees.

The other reason is that yew is generally a fairly slow-growing species. My interpretation of the bill is that it intends to capture neighbourly disputes in which people have planted leylandii as a weapon, as I believe Scothedge described it. Yew would not be used for that purpose. It would not grow fast enough to cause problems in the same kind of timeframe.

Margaret Mitchell: Would it be sufficient for the legislation to include a presumption against the inclusion of yew hedges while allowing for the odd, random case in which a yew hedge could be unacceptable?

Graham Phillips: I think that I would be content if there was a written presumption in the bill against action being taken on yew hedges.

The Convener: I turn to Mr Hamilton’s submission, which was very concise—I like concise. To the question that asked whether there are “any aspects of the systems used in other jurisdictions which should be included within this Bill” your response was an emphatic no. If we were to amend the bill, are there any aspects of the system in other jurisdictions that we should definitely leave out of the bill?

Eric Hamilton: We should leave out any reference to TPOs and leave it at high hedges.

Robert Paterson: I absolutely concur.

Graham Phillips: I would agree.

The Convener: I thank you for your evidence, gentlemen.

11:27
Meeting continued in private until 12:04.
SUPPLEMENTARY SUBMISSION FROM ERIC HAMILTON, FORESTRY OFFICER,
DUNDEE CITY COUNCIL

All three witnesses yesterday were in agreement that separate tree issues should be left out any High Hedge Bill including references to TPO’S. While our resources will be stretched initially to deal with high hedges, to include nuisance trees would increase our workload ten plus fold and cause a huge burden on local authority budgets and resources. The parliament needs to remember it is a tree officers job to ensure the safety of public trees and we can’t spend the majority of time mediating with feuding neighbours over falling leaves etc, nuisance trees can be dealt with in civil law. Let Councils deal with worst hedges that come forward first over 10 years, then review.

During this period we could look at new legislation to deal with hazardous /dangerous trees on private land. In England, the Miscellaneous Powers Act ,allows Local Authorities, powers to intervene on private land to remove not only dangerous trees, but buildings other structures and items, this has been in statute for very many years and appears to work well, or this this to simple? In Scotland we have legislation to deal with dangerous buildings but this act excludes trees perhaps this could be amended?

Eric Hamilton
13 December 2012
<table>
<thead>
<tr>
<th>Question 1</th>
<th>Question 2</th>
<th>Question 3</th>
<th>Question 4</th>
<th>Question 5</th>
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</thead>
<tbody>
<tr>
<td>Details of No. of cases where Authority has taken official action since having received delegated powers to enforce Act. (Cases where Authority has received a complaint under S.4(1) and received a fee).</td>
<td>Details of any action taken to informally investigate the complaint or complaints (e.g. site visits, remedial notices, court action etc).</td>
<td>What stage complaint(s) was resolved?</td>
<td>Details of any cases where Authority sought professional advice from the Forestry Division at DEFA</td>
<td>Details of other cases dealt with informally (i.e. referred to website, issued with information etc)</td>
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<tr>
<td>Breakdown of complaint(s) according to whether case related to:-</td>
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<tr>
<td>(a) Single tree (detail type of tree &amp; whether deciduous or evergreen)</td>
<td>There has been an average of 6 cases per annum since the delegated powers came about in 2007. These have all been resolved informally by site visits and full explanations of the Act which then allowed for the two parties to resolve the issue without cost.</td>
<td>All but one complaint has been resolved in the early stages. Parties have agreed resolution through compromise or through understanding what reasonably constitutes a problem hedge. Most complaints refer to a deciduous tree or row of deciduous trees within 5 – 10 metres of a domestic property and involve light or toppling issues.</td>
<td>In the case of Boardman V Braddan Commissioners</td>
<td></td>
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<tr>
<td>(b) An evergreen or semi evergreen hedge of trees and/or shrubs</td>
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<tr>
<td>(c) A deciduous hedge of trees and/or shrubs</td>
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</table>

**Andreas**
Nil

**Arbory**
Nil

**Ballaugh**
Nil

**Braddan**
Boardman V Braddan Commissioners; this included a number of deciduous trees and shrubs and evergreen shrubs

**Douglas**
1. (b) row of evergreen trees
2. Multiple complainants - 2 land owners: -
   - (a) 2 single, separate deciduous trees
   - (c) row of deciduous trees with (b) evergreen hedge
3. (c) row of deciduous trees
4. (c) deciduous trees (small wooded area)
5. (c) row of deciduous trees

| No. 1 - site visits, Remedial Notice, Variation of Remedial Notice, Summons issued | No’s 2 to 4 - site visits | No. 5 - letter to complainant | 1 - Trees removed prior to Court date | 1 - No 2 to 4 - site visits with DEFA |
| No. 1 - site visits, Remedial Notice, Variation of Remedial Notice, Summons issued | 2 - Remedial action agreed by both land owners - one not yet completed | 3 - Remedial action agreed - not yet completed | 4 – Awaiting response from land owner | 5 – Complaint rejected – owner of trees promised remedial action |

1 - evergreen hedge; complainant advised about legislation but not willing to pay fee.
2 - evergreen garden boundary hedge; information pack forwarded. Complaint expected.
3 - evergreen hedge; information pack forwarded. No further contact.
4 - evergreen hedge in neighbour’s garden. Site visit – complaint unlikely to succeed for view only – information pack forwarded. No complaint received, but hedge cut down.
5 - deciduous trees – site visit – information pack forwarded.
6 - single deciduous tree – neighbour’s garden – site visit and advice given; future problem.
7 - single deciduous tree – enquiries made regarding ownership (new estate built near existing trees) – no further contact.
8 - single deciduous tree – site visits – ownership enquiries ongoing
9 - single deciduous tree – site visit – information pack forwarded and advice about contents of letter to owner.
11 - Council tenant - 2 deciduous trees either side of garden - resolved
<table>
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<tr>
<th>Jurby</th>
<th>Nil</th>
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<tbody>
<tr>
<td>Laxey</td>
<td>(b) one case has been dealt with whereby a fee was paid.</td>
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<td></td>
<td>The matter was fully investigated including interviewing both parties, site visits and advice. The cost of work involved to arrive at this conclusion was in the region of £3,500.00</td>
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<td>The matter was resolved immediately prior to the services of formal notices.</td>
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<td></td>
<td>The matter was referred to DEFA to establish the maximum amount of height reduction that could be made without killing the trees.</td>
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<td>One matter is currently under consideration involving two single trees. One matter is currently under consideration in respect of an evergreen hedge.</td>
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<td>Lezayre</td>
<td>See answer to Question 5</td>
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<tr>
<td>Lonan</td>
<td>Six cases (all dealt with without formal action)</td>
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<td></td>
<td>1 of which was a single tree (coniferous)</td>
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<td></td>
<td>The remaining 5 cases were hedges (mainly cupressus)</td>
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<td></td>
<td>All sites were visited and photographed and the parties to the complaint spoken to directly. The legislation was found to be unhelpful and the cost of taking action far exceeded the fee received, and can run into thousands of pounds. The legislation is ambiguous.</td>
</tr>
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<td></td>
<td>Prior to commencement of the formal process.</td>
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<td></td>
<td>None</td>
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<tr>
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<td>Six matters have been dealt with under the provisions of this Act, but no fees were received. All of the matters were either resolved amicably or are on-going. All prior to commencement of a formal complaint.</td>
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<td>Statistics:</td>
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<td>(a) 3 matter still on-going;</td>
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<td>(b) 1 whereby the owner cannot be found, but it is tenuous whether the Act applies;</td>
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<td>(c) 3 have been resolved amicably;</td>
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<td>(d) 1 did not qualify under the Act.</td>
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<tr>
<td>Malew</td>
<td>Nil</td>
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<tr>
<td>Marown</td>
<td>Two cases; one single tree and one hedge (both evergreen)</td>
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<td>Full procedure followed. Court action not necessary as the one resulting in a determination to trim resulted in compliance.</td>
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<td>Determination.</td>
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<td>DEFA contacted in both cases.</td>
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<tr>
<td>Maughold</td>
<td>One case; an evergreen hedge</td>
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<tr>
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<td>The site was visited. Initial letters were exchanged which caused a compromise agreement to be made between the parties.</td>
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<td></td>
<td>Following the issue of the letters. There was no court action.</td>
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<td>We sought and received advice from an Officer at DEFA. This was most useful and underpinned the compromise which the parties reached.</td>
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<td></td>
<td>We have issued information on one other occasion, but the issue was resolved by the two parties before we were called in to assess the validity of the case.</td>
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<tr>
<td>Onchan</td>
<td>Onchan District Commissioners Community Officer has provided a detailed analysis, and this has been copied below</td>
</tr>
<tr>
<td>Patrick</td>
<td>No cases since having accepted the delegation</td>
</tr>
<tr>
<td>Port Erin</td>
<td>One case - deciduous tree</td>
</tr>
<tr>
<td></td>
<td>A number of site visits with representatives of DOI and DEFA. It was agreed formal action was not warranted but Still not resolved and will require to be revisited.</td>
</tr>
<tr>
<td></td>
<td>Just this case.</td>
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<td></td>
<td>No specific records kept, but Clerk recalls perhaps a couple of enquiries.</td>
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One recommendation was made. This to date has not been acted upon.

The site was visited and photographed and the parties to the complaint spoke to directly. The Legislation process appeared to be helpful and was resolved on that occasion prior to any additional costs of taking action.

After the formal process was started but according to the file, took around 15 months to resolve.

One, DEFA were written to, as the complaint regarded a row of leylandi asking for their comments on the complaint along with their view that some of the trees were believed to be protected under the Tree Preservation Act 1993.

Two matters have been dealt with under the provisions of this Act, but only one £150 fee was received.

Statistics:
(a). 0 matter still on-going,
(b). 0 whereby the owner cannot be found, but it is tenuous whether the Act applies.
(c). 1 have been resolved before any court action required.
(d). 1 did not qualify under the Act.

Two formal complaints have received official action since September 2007:
(1) TH1007
   Complaint File No. TH1007 (05/09/07) involved a high evergreen hedge of massive leylandi trees
   Hedge 1: Comprised mainly deciduous hawthorn with sycamore suckers and briars.
   Hedge 2: Comprised evergreen leylandi
   Single Tree: Sycamore split into several large and tall trunks
   High hedge of massive leylandi. Site visit confirmed very large and heavy branches overhanging complainant's garden and the height of the hedge was spoiling the complainant's reasonable enjoyment of his garden.
   Calculations indicated a minimum action height of 2.5 metres. The complainant could not reasonably be expected to cut overhanging branches in excess of 2.5 metres from ground level and those at lower levels were massive and would require expert attention.
   A site visit to the neighbour's property revealed an elderly lady who could not manage her garden properly, whose husband had died some years before and who was trying to sell her property to go live with her daughter. The property had several large trees including the offending hedge. A pond was completely dead and full of green algae and the rear of the property dark with grass growth almost non-existent. She had reduced the price of the house as she was unable to sell it. She eventually saw that by improving the property she would not have to reduce the price of the house continually as the premises would be more appealing.
   On seeing the remedial report she agreed to take positive action to remove the hedge and several other trees in her garden which were overpowering the lawn and landscaped areas. The result of this action was that two days following the removal of the trees she sold the house and was able to move on. No remedial notice was required.
   The complainant was refunded £35 from the initial fee of £150.

(2) TH1008
   Complaint File No. TH1008 (15/08/12) involved two hedges and one tree separate from hedges.
   Hedge 1: Comprised mainly deciduous hawthorn with sycamore suckers and briars.
   Hedge 2: Comprised evergreen leylandi
   Single Tree: Sycamore split into several large and tall trunks
   A number of site visits were made to the complainant's garden as the effect of both hedge and tree differed throughout the course of the day. Site visits were also made to the plaintiff's garden that was kept fully appraised of all correspondence and actions. Advice concerning the tree and hedges was also provided on request.
   The first hedge did not require a remedial notice as it was just below 2 metres. The leylandi hedge was required to be reduced as did the sycamore tree.
   In the course of visits, following the provision of a remedial report and a meeting with the plaintiff the neighbour indicated that she may not reduce the height of the hedges or tree. A Remedial Notice was issued and is in process at present. It is hoped that the plaintiff will
Have had another case where a stand of trees was causing problems for a house owner as it was on one of their boundaries and they felt it was oppressive. The Case Officer and Commissioner made a site visit and took measurements, spoke to the owner of the trees and decided there was no case under the Legislation as they were far enough away from the house not to cause unacceptable shading. It was also obvious that the owner would never cut them down as his late mother had planted them and they were of sentimental value to him. The owner would never cut them down as his late mother had planted them and they were of sentimental value to him. The back some branches which were overhanging their garden. Not a very satisfactory conclusion. They have now moved out of the house. The new occupants have not been in contact with the Commissioners. No fee was charged.

Another case which did not develop - involved a hedge of Leylandii type trees which formed the boundary of a garden and the road. The owners of the house on the other side of the road complained that these trees were spoiling their view of the sea and were oppressive. They had had tenants in the house but it was empty and they were trying to sell it. They said that the trees were preventing the sale. The Case Officer and Commissioner informed the owner and took measurements and agreed that there was no case under the High Hedges Legislation. No fee was charged. All cases were referred to the Legislation initially and advise given when requested. It was felt that it was best to visit the sites and take measurements before advising on whether there was a case or not. This was done before any fees were paid.

In our experience this Legislation is not clear cut – or cannot be used in a clear cut manner. If the owner of the hedge/trees will not comply, or makes themselves unavailable until time limits have expired, or if a compromise cannot be reached, then the only option is to lodge an Order at the Registry with the Deeds of the property.

Case 1:-
This was a long row of Leylandii on the boundary of a garden with a public road. This had been allowed to grow into tall trees and caused shading on the windows of the house on the other side of the road. They also interfere with the cables of mains electricity supply.

The complaintant had, on a number of times, spoken to the owner and asked them to lower the height and even offered to do it for them. He also approached an independent mediator but the owners would not agree to meet them. They refused to do anything so Rushen Parish Commissioners were asked by the complainant to act. Under the Trees and High Hedges legislation and he paid the fee.

Case 2:-
This case involved a hedge of Griselinia which had been allowed to grow into a high hedge which surrounded the whole of the large plot where there is a large house. The part which adjoined the complainant’s neighbour caused shading in the garden and the patio next to the house. The complainants had spoken with and written to the owner and he had refused to cut back the hedge, citing his need of ‘privacy’ although he had moved out of the house and it was empty. (He has moved to a house where he can be overlooked by people on the top deck of buses which stop at the bus shelter only a few yards from his house – therefore his need for ‘privacy’ must be regarded as a ‘red herring’).

Rushen

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<td>This was a long row of Leylandii on the boundary of a garden with a public road. This had been allowed to grow into tall trees and caused shading on the windows of the house on the other side of the road. They also interfere with the cables of mains electricity supply.</td>
<td>Upon being formally requested to take action the Clerk, as Case Officer, and one of the Commissioners with experience of trees and hedges, paid a site visit and took measurements before agreeing that there was a case under the Legislation and the fee was paid. The requisite letters were sent and both parties spoken to. Finally a site meeting was arranged by the Case Officer of all parties and they were left to talk to each other and come to a compromise. The final written agreement was that the owners would fell three of the trees and cut the top off a fourth to the attic window of the complainant. The complainant agreed to keep the fourth tree cut back to the height agreed. This was a compromise and seemed to be the only way forward.</td>
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Santon

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<td>Both gardens were visited and both parties spoken to. A visit between all parties was arranged. No agreement could be reached on this as the owner disagreed with the Case Officer and the Commissioner regarding the measurements and did not agree that it complied with the requirements under the Act. He said he had consulted with experts and legal people although he gave no written evidence from them. He was given the requisite time to cut the hedge, allowing for the possibility of nesting birds, but he went to South Africa for 6 months and nothing was done by him. The Commissioners eventually had no other recourse but to lodge at the Registry an Order under the High Hedges Legislation with the Deeds of this property which would remain valid whilst the hedge is in existence. The owner is now hoping to sell the property and is angry that this Order may blight the sale of the house. He has been told that it will remain and not be revoked. He has said he will cut the hedge but ‘the weather prevented this’. No compromise has been reached and the whole thing is felt by RPC to be unsatisfactory. As the shading caused by the hedge is only on the garden and patio next to the house it was felt that the Commissioners should not go down the route of taking action to have the hedge cut down and to charge the owner for this. He was also unlikely to pay it and the charge would have had to have been lodged at the Registry with his property Deeds.</td>
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| All response to all questions |

* Marown Parish Commissioners:* Clerk to Marown also commented that one issue not raised and which he encountered in the determination that a hedge should be trimmed, is the registration of a charge on the property. The Act states that such determinations become a charge on the property. Explained the “Type of charge is one that cannot be entered onto the Land Registration Certificate without the approval of the landowner”. The Clerk commented that “this is not useful: it is a little difficult perhaps to persuade a less than scrupulous landowner to agree for a caution or charge to be placed on his land registration where he is not required to do so. It is considered therefore that the type of caution should be amended to allow the Local Authority to enter the charge without the co-operation of the landowner and for the benefit of any prospective new owner. Whilst it is true that a local authority search by advocates could reveal the issue, they do not seem to be alive to the need to ask”.

Onchan District Commissioners:

Following a request from Roy Corlett, Manager, Legislation and Policy Unit Management Services Division Department of Infrastructure for information regarding the implementation of this act by this local authority the following report has been compiled. The format has been deliberately set in this manner so that the researched data can also be made available to the Board of Commissioners at a later date if required.

The aforementioned statute received Royal Assent and was announced to Tywnald on June 22nd 2005. In addition to this in April 2007 (18) an order entitled “The Trees & High Hedges (Fees) Order 2007 was sanctioned by the then Minister for Local Government and the Environment - J O Smurro Esq. (Reference: Statutory Document No: 331/07) The fee applicable was to become operational from July 1st 2007 and set at £150 with the proviso of 25% reductions depended on three stages in the progression of the complaint if withdrawn prior to any official conclusion. (Article 2 of the previously described statutory document refers).
It was prior to the introduction of the fees that this office was inundated with complaints from members of the public obviously wishing to gain a pecuniary advantage in not being subjected to the fees in trying to get their perceived problems resolved some of which were distinctly vexatious against their immediate neighbours. Moreover a number of complainants were under the impression and quite wrongly that the Act provided a “definitive” and “uniform” hedge height that everybody had to comply and adhere to.

This misnomer was soon dispelled with those complainants under this illusion when the provision of the act and The Guide “Hedge Height & Light Lost” (issued through the Office of The Deputy Prime Minister (UK) revised edition – October 2005) Consultant Editor – Paul J Littlefair BRE was explained to them in more depth. Another aspect was to guide some complainants away from their confusion in respect of the provisions of the Highways Act 1986 and the differing offence. Property covenants also came into question at times, which were precluded when it was established that there was not a prima facie case under the act.

Suffice to say being the 'first point of contact' for the Commissioners a lot of these matters were dealt with by way of protracted telephone calls; site visits and dialogue with potential respondents in trying to find an amicable way forward for all parties concerned.

**Up to June 2007:**

I have on record five reports of complaints whereby four complainants have lodged a complaint but have not then proceeded, these being classified 'no further action.' The fifth complaint resulted in a full survey with the Surveyor Brian Price – whereby it was established that the respondent's trees were just within the prescribed height limit worked out from the equation in the guide.

The complainant was informed of this fact and written notice being served on the respondent that he was to implement a regime whereby he was not allow to let the trees grow any higher.

**June to December 2007:**

During the course of this period seven enquiries / complaints were received. In most cases dialogue and site visits were involved. In all cases no further action was taken by O.D.C. on the following grounds:

- Three complainants did not take the matter any further other than site visits and dialogue on how to progress a case. No further reason given or pursued.
- Two complainants refused outright to contemplate paying the prerequisite fees.
- One complainant had not complied with the requirement of trying to mediate with the respondent.
- One other was successful in mediating with his neighbour and resolving the matter without any further O.D.C. involvement.

**2008:**

Overall 16 inquiries or complaints were dealt with during this period.

- One complainant who had the previous year refused to pay a fee pursued his campaign by referring this case to his MHK and Government Minister. Matter passed to Mr. Roy Corlett for further investigation. No further action for ODC at this juncture.
- Two enquiries regarding the provisions of legislation – dialogue and site visit made – résumé of guidelines furnished.
- Eight cases whereby advice was given to the complainant (and the respondent in some matters) the former choosing to either attempt to or resolve the matter between them. No further action by this local authority.
- One telephone call, whereby a potential complainant was given advice. Literature sent by post. No further action taken.
- One case of making a site visit to the complainant's property and precluding it from any further enquiry due to it not being in compliance with the Act.
- Another complainant from last year made further contact. Advice again given and further dialogue pursued – but matter not taken any further by them.
- A complaint was received where it was necessary for ODC to intervene early on to ascertain the ownership of the land in question. It transpired after the respondent unwittingly denied ownership that the land was actually in his name. Complainant and respondent chose to resolve the matter between them without any further assistance from this local authority.

**2009:**

By the years end 10 enquiries /complaints had been received by the Authority.

- Two cases, one a protracted telephone call enquiry were automatically precluded one on the grounds that the complainant's motive revolved around a "view" and not the loss of natural light and the other that the complainant was not an immediate land owner or occupier.
- Four cases were dealt with by way site visits and advice given however the potential complainants failed to get back to me after giving an opportunity of deliberation and further negotiations with the alleged offending party.
- A further four potential complainants were given the same advice including the literature but decided to pursue their grievance by continued negotiations with their neighbours.

**2010:**

Nine enquiries were received and processed during the course of this period five of which could be classified as re-visits whereby previous complainants from other years felt that their personal grievances should be reviewed or looked at more thoroughly.

- In one instance the complainant being an elderly lady had elected to have her son-in-law, a former high profiled civil servant, to act on her behalf. Further dialogue did take place especially as the land in question was in dispute. Suffice to say that this authority was not prepared to look at the matter until the ownership of the land had been established.
• The four other potential complainants had the case guidelines reiterated to them – but declined to get back to me.
• Another complaint was received by e-mail. The complainant in this matter taking umbrage at the fact that she had to try and mediate with the respondent and pay a fee for the local authority to become involved.
• A further three potential complainants were given advice, literature and the opportunity of a site visit for a further discussion. These people did not get back to me and it therefore presumed they have mediated with the other parties directly involved.

2011:
Although there are only six cases logged for this year – two official complaints were received accompanied by the prerequisite fees. All parties in these matters were formerly interviewed with the necessary evidence collated and full surveys being carried out.

Case 1: Involved a previous complainant who after years of advice decided to make the official complaint.
Conclusion: Established that the alleged offending trees were under the prescribed limited as ascertained during the course of the survey.
Action: Complainant informed of result along with that of respondent who were served with copies of the report. Respondent recommended keeping a maintenance regime in order not to allow the tree to grow outside of the prescribed limit.

Case 2: Involved a new complainant who was backed by a local M.H.K
Conclusion: Full survey carried out which was found in favour of the complainant. Complainant and Respondent served with copies of a report with recommendation that the offending tree be severely limbed.
Action: With the respondent being a single mother a time frame was established with her in order that she could make the necessary arrangement and get the wherewithal together for the work to commence. Work subsequently carried out to the satisfaction of the complainant and ODC.

Out of the four other cases the potential complainants were again given advice, and the opportunity of a site visit this being backed up by the issuing of literature.
Suffice to say nobody thereafter made further contact with me although I am lead to believe that another local MHK did become involved in one case and mediated a resolution.

2012 (to date):
To date eleven cases have been processed as follows:

Case 1: As in the previous year this matter involved a previous complainant who after years of advice decided to make an official complaint.
Conclusion: Established that the alleged offending trees were under the prescribed limited as ascertained during the course of the survey.
Action: Complainant informed of result along with that of respondent who were served with copies of the report. Respondent recommended keeping a maintenance regime in order not to allow the tree to grow outside of the prescribed limit.

Case 2: A new complainant lodged the necessary documentation and prerequisite fee which was accepted in good faith that a prima facie case existed.
Conclusion: After a full survey had been carried out the result of this was found to be in favour of the respondent.
Action: Documentation to this effect served on both parties. Complainant decided to appeal the ODC decision in summary court before Stipendiary Magistrate.
Judgement: Complainant’s case dismissed - ODC decision upheld.

Out of the other nine cases – one case was automatically dismissed on the grounds that there was no prima facie evidence regarding the loss of light and the complainant could not established the precise owner of the land to negotiate. A further case was also discharged as the potential complainant was trying to put forward land subsidence as his case.

In relation to remaining cases, all potential complaints have been given advice, literature and offered the occasion of a site visit which was taken up in most cases. Five parties have failed to respond to further any further progression whereas two have put matters on hold, depending on the outcome mediation with the alleged offending parties.

Laxey Cases:
For the information of those who are not aware, by mutual agreement Onchan District Commissioners sub-contract my professional services to Laxey Village Commissioner for bye-law enforcement duties.

During the course of this agreement I can recall one case being dealt with under this legislation. A full survey was carried out and it was found that the respondent would have to limb the trees. At this juncture I am unable to comment further as the full file is in the possession of Laxey Village Commissioners.

Enforcement of Legislation:
Currently Local Authorities are encouraged to participate in the enforcement of this legislation most of who utilize their bye-law enforcement officers in this role.
Although mediation is strictly not recommended within the guidelines I feel as first point of contact for the Commissioners with the general public at large – time is needed to explain the situation as clearly as possible to any potential complainant. This observation can be extended to some respondents as again they should be clear on their ultimate obligations should the matter progress into a formal complaint. This element can in itself be time consuming.

A survey in the simplest form is labour intensive just by the fact that it needs two to use a measuring tape.
High Hedges (Scotland) Bill: Stage 1

The Convener: Agenda item 4 is on the High Hedges (Scotland) Bill. This will be the third day this month that we have taken oral evidence as part of our examination of the bill, and today we will hear from two panels of witnesses. First, we will hear once more from the Minister for Local Government and Planning, Derek Mackay, who is joined for this session by Gery McLaughlin, head of community safety law, and Norman MacLeod, a senior principal legal officer in the Scottish Government’s legal directorate. I had thought that we might be joined by the member in charge of the bill, but we can probably expect him to arrive in the course of the session.

Minister, would you like to make some brief opening remarks?

Derek Mackay: I welcome the opportunity to provide the Government’s views on the High Hedges (Scotland) Bill, which is being promoted by Mark McDonald MSP. I am happy to reaffirm the Government’s support for the bill and for Mr McDonald. In doing so, I pay tribute to Mr McDonald for all his efforts in taking forward the legislation. The written submissions to the committee and the evidence that has been heard in person, in particular from Scothedge, have made clear the serious impacts that high hedges have in the most serious cases. The Government welcomes the positive impact that the bill will have on the lives of those affected.

The Government’s views on the bill are set out in our memorandum of 30 October 2012. We recognise that Scotland is the only part of the United Kingdom without high hedges legislation and that the bill fulfils our manifesto commitment to provide a legal framework for settling disputes related to high hedges. Our position remains as stated in the memorandum: we support the bill.

The Government has not been prescriptive about what the bill should contain or how it should work. It has been for Mark McDonald to identify and develop a solution and set it out in the accompanying policy memorandum and financial memorandum. Given that Mr McDonald will appear after me, I do not intend to go into the bill’s fine detail; however, I am keen to hear the committee’s views on one particular issue.

I am aware that there has been much discussion of the bill’s interaction with tree preservation orders. The Government’s memorandum makes it clear that we support the bill’s approach as it ensures that a local authority’s decision to issue a high hedge notice will not be frustrated by an inappropriate TPO. The committee will be aware that a similar issue arises in relation to conservation areas. The Government’s memorandum makes it clear that we are prepared to take forward regulations under the Town and Country Planning (Scotland) Act 1997 to ensure that high hedge notices are not adversely affected by conservation areas, and I would welcome the committee’s views on the proposal.

I know that stakeholders have raised a number of issues, including the bill’s definition of a high hedge, the fees that it sets out and its interaction with TPOs. Nevertheless, there appears to be broad support for legislating to tackle high hedges.

The Government welcomes that recognition and I will be interested in hearing Mark McDonald’s responses to stakeholders’ views and in finding out the committee’s conclusions and recommendations on the bill.

The Convener: Thank you, minister. What is your view of the statutory definition set out in section 1?

Derek Mackay: The Government’s view is that the definition is appropriate and in line with comments made by a number of other stakeholders. Broadly, it strikes the right balance and requires neither narrowing nor expanding.

The Convener: I open the questioning to members.

Stuart McMillan: The definition has been one of the two or three issues raised in the oral and written evidence that we have received. Indeed, most of those who made a written submission feel that the bill does not go far enough and that the definition is too narrowly drawn. For example, one particular individual has highlighted an equality element, pointing out that paragraph 111 of the policy memorandum says that the bill “does not unlawfully discriminate in any way with respect to any of the protected characteristics” and then goes on to state:

“The Bill promotes the resolution of disputes ... By doing so it promotes strong supportive communities for all people”.

However, if the bill continues as it stands, leaving out an opportunity for dispute resolution with regard to, say, deciduous trees and nuisance vegetation, it does not really support “all people”. In that respect, is the bill too narrowly drawn?

Derek Mackay: Not on the basis of your proposition. After all, equality legislation already exists to protect individuals and groups. People might be looking for equality with regard to other forms of vegetation, but I think that this particular conclusion has been reached for good reason.
The bill, which will put us on a par with other parts of the United Kingdom, has benefited from their experience, and if it acts as a deterrent and leads to the resolution of a number of disputes, it will serve a very useful function.

I suppose that if the committee wished the definition to be expanded, such a suggestion could be considered, but we feel that, based as it is on evidence from other parts of the UK, it strikes the right balance.

Again, to highlight the deterrence argument, I think that the bill sets a scene and a tone such that one would hope that others would not use vegetation or other such growth to upset their neighbours. Moreover, widening the definition in a way that satisfied everyone would come with its own particular difficulties and I am not sure that that could be achieved. However, as with all matters, the Scottish Government will listen to the views of the committee and other stakeholders.

We could go through other arguments about creating loopholes depending on definitions, but I am trying to argue the point as concisely as I can.

10:45

**Stuart McMillan:** The fact that there has been discussion around a potential bill for some years indicates the difficulty of dealing with the situation. The legislation in England and Wales and in the Isle of Man was passed some years ago. Clearly, this is not an easy thing to deal with and every situation and dispute that comes up will be different in some shape or form. I fully appreciate that any legislation will not deal with everything, but dealing with high hedges will deal with many of the issues that parliamentarians confront from their constituents.

On deciduous trees, we have received evidence from UK Mediation. Minister, you talked about looking at the experience from elsewhere. In its submission, UK Mediation said:

“home owners have been known to plant 3-4 broad leaved trees in amongst their evergreen hedge (usually Leylandii) and thereby to get around the English legislation which defines the hedge as being solely evergreen.”

Therefore, the experience elsewhere shows that some people use a loophole to create an opportunity for them to not have to act. If the bill proceeds as it is currently drawn, that type of situation might arise in Scotland as well.

**Derek Mackay:** Mr McMillan is absolutely correct that no legislation has been enacted here because there has never been agreement on what we should proceed with. I think it is sensible of Mr McDonald to begin with this definition and a proposition that—it is largely agreed—will resolve a majority of cases. It is a good starting position. That said, I understand that there is an enabling power in the bill to expand the definition—as long as it still refers to high hedges, because this is, at the end of the day, a high hedges bill. There are reasons why trees have not been considered, other than in the scenario that is outlined in the definition.

This seems a good starting position, although I understand the experience elsewhere and I acknowledge the point that there is no legislation to cover the issue at the moment. There is provision to expand the definition if that is the view of Parliament, based on the experience of the community.

**Stuart McMillan:** We heard some evidence last week about what happened on the Isle of Man. Its legislation is different as it includes deciduous trees and single trees. The evidence was very strong. The Isle of Man has some challenges—no legislation is perfect, which we accept—but there was some compelling evidence that its legislation appears to work and that it helps all of the Isle of Man.

A witness said that the proportion of complaints about hedges to the proportion of complaints about trees was probably around 50:50. If we extrapolate that to Scotland, if the bill as it is drawn is passed, 50 per cent of issues in Scotland might not be covered by it.

**Derek Mackay:** From the evidence that I have seen—perhaps Mr McDonald can go into more detail—the ratio would not be 50:50; a majority of cases would be resolved. That is based on analysis, and of course it is difficult to predict how this will be introduced in Scotland and what the reaction will be. The evidence that I have seen indicates that the bill will resolve a majority of cases, but you are correct: some cases that are not covered by the definition in the bill would still be outstanding. I would like to think that it will create the environment—excuse the pun—in which people want to address their issues.

My official has helpfully informed me that Scotchedge predicts that 92 per cent of cases would resolve themselves as a consequence of the bill. That is just one indicator or assumption, and I am sure that there are many, which are just views. I am therefore not sure that I would accept the contention that the proportion of evergreen to deciduous trees would be 50:50.

It would be a somewhat long-term strategy, of course, for someone to plant a single tree and get into a position of warfare with their neighbour because of it. I am not trying to undermine the point, but I am saying that doing that would be a somewhat long-term strategy, so we are talking about existing trees. On the definitions of hedges and semi-evergreens and wholly evergreens, our
view is the same as Mr McDonald’s, which is that they will capture much of the behaviour that causes so much angst across Scotland.

Anne McTaggart: Good morning, panel.

Minister, I have a few questions about the fees as stated in the financial memorandum to the bill. This morning, we have received evidence from the Finance Committee and some information on its concerns, which I will try to amalgamate, although probably not very well. The bill does not specify an upper limit or cap on fees. Do you have any concerns about that?

Derek Mackay: I do not have concerns, because the proposition is that the fee will reflect the cost of the local authority’s work. If that is applied proportionately, fairly and reasonably, that would not give us cause for concern. I have no reason to believe that if local authorities have the relevant power and people apply, local authorities will try to make a profit from that. Local government is a multibillion pound sector with a massive spend. Therefore, I am content that we do not require a cap, which would be an arbitrary figure that we would set, based on data that local authorities would provide.

The Scottish Government is fairly content as long as the approach is followed of local authorities recovering the costs by using the fee for the applicant and recovering the costs of any enforcement work from the so-called perpetrator. The fee will be fair and proportionate to the cost of the service, which is why we are content that we do not need to set a national cap on the fee.

Anne McTaggart: Might some people be concerned about applying because they do not know what the fee will ultimately be?

Derek Mackay: They would of course know the fee on application. We do not know just now what the fee will be, because local authorities have not determined that, as they do not have absolute clarity in that regard. As it stands, they do not know what the law or guidance will look like. However, once they know that and what system they will deploy, they will have a figure and they will then set the fee or charge. Before anyone makes an application under the power, they will understand what the fee is.

It could then be said that it was still too expensive, which is why, as I understand it, there are proposals in the bill for local authorities to have some discretion to waive the fee in particular circumstances or to set it at a level that is appropriate for them. For example, to follow on from the discussion that we had earlier, we might find that a local authority will see this as an area in which they would want to invest resource and it might therefore not go for full cost recovery or apply the full charge. However, it would be able to do so if it did not want to subsidise the service at the expense of other public services. Again, I think that the balance in the bill is correct; there will be flexibility for local discretion.

Anne McTaggart: Thanks, minister. You just answered my other questions.

John Pentland: Minister, so far your knowledge has been much appreciated. I believe that if “The Beechgrove Garden” ever comes back, you will be a prime candidate for fronting the show.

If the bill is passed, much of the work that will be associated with it will be done retrospectively. So, some people might wait to see where we go next. However, for the future, will existing trees in a new development be exempt? If a planning application is to be agreed, will a condition have to be inserted that no house should be able to have anything beyond 6 feet high?

The Convener: Minister? Or perhaps I should call you Renfrew’s answer to Jim McColl.

Derek Mackay: I thought that the highlight of my political year was the local government elections, but it might well now be the High Hedges (Scotland) Bill.

There are different procedures and processes in play. We will have a look at the TPO legislation and guidance, but we think that it can be complementary to the bill. In effect, the bill outlines how the issue would be tackled if a tree is subject to a TPO or an application for one.

The member asked about the planning system. Each planning application will continue to be developed on its merits. Issues about trees, hedges and the environment are already a consideration in any planning application. To take it a level further, perhaps local authorities will consider producing good practice guidance on being a good neighbour in relation to hedge growing and so on. We do not have a plan for new national guidance on the issue but, as people will want to understand and interpret the bill, we will want to produce guidance on it.

The planning system, however, will continue as at present, with each planning application being considered on its merits.

The issue is not necessarily just that someone is growing a hedge; it is that they are growing a hedge that is a barrier to light for their neighbours. Part of the issue is about how people plant things, how they grow things and how they care for their garden and environment, but there is the next stage of how we resolve disputes. The bill anticipates that and provides a function in enabling people to resolve such disputes, rather than have to go through formal channels.
I hope that that answers your question. The issue has different elements, which include TPOs, the planning system, mediation and good or neighbourly behaviour, and then what will be produced as a consequence of the bill.

**John Wilson:** Last week, we heard evidence from the Isle of Man. In one example, an appeal was taken forward by an individual against whom a complaint had been made. We were told that it cost about £30,000 to deal with that, £7,500 of which was legal fees. Given that the bill is supposed to be cost neutral, how will local authorities recover such fees for work of that nature? Who will be charged the £30,000?

**Derek Mackay:** I would want to understand how that figure was arrived at and whether the same definitions as those that we are deploying in the bill were used. Mr McMillan outlined that the approach in the Isle of Man is working fairly well. A £30,000 cost for an individual resolution does not feel particularly proportionate, so I would want to probe those figures further. That level of cost seems particularly high and we would want to avoid that. We would not want that level of cost to any individual or, frankly, to a local authority. We should be able to design a system that is as low cost as possible. Just because that is difficult does not mean that we should not proceed, because clearly there is a need for legislation to enable action to be taken where none has been taken in the past. We will want to design the legislation, regulations and guidance in a way that tries to keep costs down and avoids such figures.

11:00

**John Wilson:** I agree that any legislation that we introduce should be cost effective and, for local authorities, cost neutral in many respects. The difficulty is that the bill contains certain definitions and sets out certain processes. You referred to guidance, and I want to be clear that any bill that is introduced and agreed to by the Parliament is accompanied by clear guidance to local authorities to ensure that not only they but the general public understand the intention behind the legislation.

One of the major drivers in this debate has been Scotchedge’s consistent campaigning but, in its oral and written evidence, it has indicated that it is not content with the bill’s present definition and wants it to be extended to include single and mature trees that might be causing “a barrier to light”, which is set out in section 1(1)(c) as one of the definition’s three broad elements. A number of submissions that we have received have expressed concern about barriers to light caused not so much by high hedges as by single overarching trees with branches in full leaf. The “barrier to light” element of the definition will be applied throughout the year, but the question is: who will be able to decide that a high hedge is creating enough of “a barrier to light” on 31 December or 30 June to chop it down? Throughout Scotland, different light situations will arise. Who at the end of the day will determine what constitutes “a barrier to light”? Do local authorities have the skills and knowledge to make that determination at any time of the year?

**Derek Mackay:** In arguing with himself—quite successfully—Mr Wilson has made the point that this is a question of interpretation, application and assessment and that, sometimes, it will be difficult to reach a judgment.

I believe that the required environmental and planning expertise exists in local government. Every day, people in local government make determinations on planning applications; sometimes those applications cause conflict and come down to judgment and observation. That the skill set is largely there is certainly COSLA’s view on the proposals—and I note that it has commented only on the current proposals. In any case, local authorities will ultimately deliver this service.

The application of the definition will require a judgment call. The guidance can be as clear as we can possibly make it, but a human element will still be required to determine what constitutes “a barrier to light”. You described the difference between evergreens, whose very name suggests a permanence in their composition and the barrier to light that they form, and deciduous trees, which will be a different scenario. Judgment will be required in applying the definition. Having been in post for a year now, I have learned that however clear the legislation and regulations might be, it all comes down to local interpretation and application. Whatever legislation is passed should be applied proportionately and, as COSLA has suggested in its submission, the expertise to apply it already exists. The structure to deliver these proposals could also be established without any particular expansion, although local authorities might have to rely on one another for specific expertise on species and so on that might be required.

**John Wilson:** I welcome the minister’s confidence that the guidance to the bill will be right and that there will be a consistent approach to its implementation by 32 local authorities and, indeed, the various planning and tree officers employed by those authorities. I have to say that I thought that the Government’s role was to ensure that any legislation was applied in a standard way throughout Scotland instead of leaving it to local interpretation by 32 local authorities, the national park authorities or whoever else, and I want some confidence that the legislation will be accompanied by clear guidance that local authorities and
planning and tree officers can apply in a standard way throughout the country.

**Derek Mackay:** We aspire to as much consistency as possible. However, in a dispute there will be local circumstances and local application of the guidance. It will be a judgment call. To assist the standards, regulations and guidance, there will be the appeals mechanism, which, it is proposed, would be for the directorate for planning and environmental appeals, which is well versed in planning applications. It may feel as though there will be local variation, because the staff who are sent to a situation will use their judgment on the guidance. Any differences in the decisions that are made will be the inevitable consequence of the issue that we are dealing with.

**Margaret Mitchell:** Setting aside how the fee is calculated, the financial memorandum makes it plain that the fee will be paid by the complainant. The minister will be aware that in Northern Ireland, if a notice is served—in other words, if a complainant’s case has been upheld—the owner of the hedge should bear the fee or at least a percentage of the fee. Are you sympathetic to that approach?

**Derek Mackay:** We are interested to hear the committee’s views, and those of Mr McDonald, but we are content with the current proposition, which is, as Margaret Mitchell has described, that the complainant pays the fee, in effect to get a resolution. If the complainant is paying the fee to get a resolution and the owner cuts down the hedge and makes it a more reasonable height, I suppose that that is a resolution. While the complainant might be out of pocket, they have got what they sought.

There may be specific issues about fairness in that, having taken appropriate action, someone might still be charged. We are interested in the committee’s views, but we are content with the proposals, which seem like the right balance.

If the owner does not cut the hedge back, having been instructed to do so, and the local authority has to intervene, I dare say that that will not be cheap. The owner will have to pay the full costs of that. As the member says, how we arrive at the fee is an entirely separate issue.

**Margaret Mitchell:** I put it to you that charging the owner of the hedge may be a powerful deterrent that could lead to an early resolution, saving the local authority and all the participants quite a lot of money. If that approach were adopted, it could stop vexatious thwarting of a notice by an owner. If owners realised that they would be financially liable for some of the fees, it might make them much more amenable to mediation and to reaching a resolution.

**Derek Mackay:** I understand the rationale, and I can see how what you describe could be a deterrent. However, the system in which the complainant pays the fee works, too, and also serves as a deterrent. Rather than a free-for-all, in which people complain frivolously, it seems to encourage an appropriate use of the system. I understand the rationale for both approaches. The Government is content with the proposals and interested in the committee’s views.

**Margaret Mitchell:** The percentage probably strikes the right balance in that if the notice is upheld—or even if there is a threat that that will happen—the complainant and the owner will pay some of the fee.

**Derek Mackay:** I am happy to take those comments on board and I hear Mr McDonald’s views on the technical issues. We are content with either approach and we understand the rationale of both approaches. An argument can be made for both, but we get the logic that the complainant pays the fee to get a resolution, which is what we will try to achieve.

**Margaret Mitchell:** I will raise a point that other members have raised. You have given us a strong indication that you think that the legislation will solve the majority of cases. I would be interested to see all the evidence to support that. There is a strong body of anecdotal opinion that, if single trees and deciduous trees are not included in the bill, an opportunity will be missed.

That brings me to the Subordinate Legislation Committee’s report on the bill. Section 34 confers on ministers the power to alter the definition of a high hedge. The Subordinate Legislation Committee is concerned that that could allow a future Administration to change entirely the nature of the act that the bill will become and make it almost a different act, simply through subordinate legislation. Do you have a view on that?

**Derek Mackay:** On your first point, the only evidence that I have is the same evidence as the committee has, which has been comprehensive on the issue. My reading of the responses to the 2009 consultation and of the current evidence suggests that the majority of cases will be resolved and that a great many cases will be deterred. Of course, we can predict all we like, but we will not know the bill’s effect until it is implemented. If the definition does not cover everything, some issues will still be outstanding. I understand your point about taking the opportunity to address issues now.

We are listening to what this committee and the Subordinate Legislation Committee say is the appropriate vehicle for amending the definition that is in the bill. The bill is about high hedges and it is framed in that context. I understand that it would not be unreasonable for ministers to return to the
Parliament with a statutory instrument to change the definition.

If we wanted to change the height from 2m to 3m or whatever, subordinate legislation would feel like a proportionate way to amend the definition. If we wanted to amend the definition more drastically and to expand it beyond hedges to cover single trees and so on, members might well argue that that would be outwith the bill’s competency and would require primary legislation. That is a matter for the committee to give a view on. We are open minded about the route that the committee would like ministers to take.

Right now, we are saying that the bill is a good start on tackling the issues. We are asking what the best device for amending the definition would be if we had to return to it. What all members of the Parliament would be content with in allowing us to amend the definition is up for debate. We have no strong views on the vehicle that should be used.

Margaret Mitchell: The concern is that using subordinate legislation to change the bill’s nature completely in one fell swoop should not be encouraged.

Derek Mackay: Any subordinate legislation would be subject to the affirmative procedure, which is more involved than the negative procedure. The matter is for the committee. If the committee thinks that the bill is inadequate because it does not go far enough, and if the committee would like to have the safety net of the option of expanding the definition in the future, the more liberal or flexible the bill is, the easier it will be to make a necessary amendment. That is just a view that I give.

If the bill continues to have the definition that it has but the view is that we might want to expand that in the future, that could be done more easily and more quickly by statutory instrument than by primary legislation. That is for the committee to consider.

Equally, the committee might say that it would prefer such a change to be made in primary legislation and that it would not like such flexibility to be available through a statutory instrument. However, if a statutory instrument was used, I understand that it would be subject to the affirmative procedure and not the negative procedure.

Margaret Mitchell: Why should we not have a catch-all bill now that includes single trees and deciduous trees?

Derek Mackay: Some of the evidence has been that such a bill would have wider application and that the system could be more expensive to administer. The current definition captures the majority of issues. However, we are open minded about whether deciduous trees or single trees should be included.

We have the sense that the bill will capture the majority of issues.

If that was not to be the current definition, the views of COSLA and others would have to be sought because that presents a different scenario and it might have a cost implication.

11:15

Margaret Mitchell: On cost, if 92 per cent of cases would be resolved, 8 per cent are not covered. Surely the costs must be relatively small in proportion to the majority of trees that are being covered.

Derek Mackay: That is making the assumption that it would simply be a 92 per cent cost for hedges and that the 8 per cent would have been as straightforward as the 92 per cent. Those are just assumptions, but if the committee is leaning towards expanding the definition I am keen that we consult on that basis in order to understand the full implications of it—not least for local government, which would have to enact it.

COSLA’s current position is that it supports the definition and it supports the terms of the bill as it stands. It cannot offer the committee a view on a new definition without going back to council leaders on what a different bill would look like. If the committee was to suggest that we should look again at that, I would want to seek COSLA’s views because there are specific issues around cost and administration. I refer to Mr Wilson’s comment about the judgment that is required. Of course Mr McDonald may go into the technical detail as to why he has arrived at that decision, which we are quite content with in terms of definition.

Margaret Mitchell: Thank you.

John Pentland: Minister, my question is probably about an unlikely scenario, but it could happen. If a private individual has a dispute with the local authority about a high hedge, can the local authority issue a notice against itself?

Derek Mackay: My understanding is that the legislation is framed around domestic dwellings. Are you referring to someone who is a tenant in council property?

John Pentland: Someone in council property—anybody, if, for instance, a local authority is not maintaining its environment with regard to high hedges, if we go back to the part of the bill about when the light is not getting through.

The Convener: Minister, please feel free to bring your officials in to comment.
Derek Mackay: I am worried that they will give me contradictory advice.

The Convener: I am afraid that we cannot help you there, minister.

John Pentland: Minister, you could hedge your bets.

Norman MacLeod (Scottish Government): The simple answer is that if the hedge is on local authority land, the notice can be brought against the local authority and vice versa. There are no restrictions on local authority use and there is an option to appeal to ministers in the event that you do not like the decision that you get.

Derek Mackay: I may want to contradict my official now. I am sure that he is absolutely right in what he is saying, but we would want to check who would be responsible. If it was a council tenant, for example, they have probably signed a tenancy agreement that says that they are responsible for the maintenance of the garden. If the tenant has taken responsibility for the garden and the hedge and the hedge is a problem, it is not necessarily the local authority that would be charged by the tenant. Fundamentally, though, the issue would still have to be resolved. We are happy to look into the detail of that to ensure that we are absolutely accurate and to bring back a response through me or through Mr McDonald.

The Convener: I can throw something else into the ring on the scenario that has been painted by the minister and by Mr Pentland. As regards hedging in flatted properties, nobody is sure who is responsible for the hedge and it may fall to the council’s housing revenue account rather than to anyone else. Such issues have exercised the committee to a degree because the guidance will have to be particularly specific around certain points such as those. They may seem like foibles to some but they are likely to occur.

John Wilson: The bill makes reference to appeals to Government ministers. The minister quite rightly said that the directorate for planning and environmental appeals would be the body that would deal with those appeals. Just for clarification, would those appeals also be subject to an individual taking an appeal to the Court of Session—or would it be the sheriff court or the High Court?

Derek Mackay: I imagine that the only way to do that is through judicial review.

John Wilson: Such a route would be open to someone who felt aggrieved enough to take a case that far.

Norman MacLeod: Yes, on the legality of the decision, rather than on its merits.

John Wilson: Yes.
narrow—although evidence suggests that it is not as narrow as some stakeholders would like—but it mirrors the definition that is used elsewhere, which evidence suggests would ensure an effective and straightforward decision-making process.

The mere presence of legislation will ensure that the vast majority of high hedge disputes resolve themselves—a point well made by the Scothedge representatives who gave evidence on 5 December—and I understand that an email from Scothedge suggests that some cases are already resolving themselves simply as a result of the current bill process. Evidence from England shows that what starts as a large number of inquiries quickly becomes a small number of formal applications, on which the need for enforcement action by local authorities is extremely rare. I am keen that the existing definition is used rather than risk introducing a more complicated decision-making process, as several stakeholders, including RSPB Scotland and the Scottish Wildlife Trust, have highlighted in evidence to the committee. A more complex process might also mean less certainty on fee levels for members of the public.

My view is that we should go forward on the current basis and see how the definition works in a Scottish context. We already know that the bill will solve a significant percentage of the problems—92 per cent, according to Scothedge’s evidence to the committee on 5 December—and we should also bear in mind that section 34, which I am sure we will discuss, provides a power to modify the definition, if ministers feel that to be necessary at a later stage.

Secondly, turning to the issue of fees, I am keen to ensure that the costs of providing the service can be recovered by local authorities. I believe that my bill provides the ability to do that while giving local flexibility on the fee-setting process. The bill provides that, in setting the fees, a local authority

“must not exceed an amount which it considers represents the reasonable costs”

to the authority of making that decision. That is a key point. Although there will be no cap on fees, in effect the bill provides a form of capping by ensuring that the service cannot be a revenue raiser while simultaneously providing flexibility to take account of local circumstances.

Finally, let me briefly turn to tree preservation orders. Section 11 provides that a TPO has no effect if a tree with a TPO forms part of the high hedge under consideration. However, section 6(6) ensures that the same test that is applied to tree preservation orders is made at the point of assessing whether any action is required to be taken in relation to a high hedge notice. That ensures that, once a high hedge notice has been issued, there does not need to be a separate process to vary the TPO in relation to the high hedge, thereby making the process more streamlined and straightforward. The bill therefore enables high hedges to be dealt with through a pragmatic approach, which will not be frustrated by other legislation and will ensure that protections for valuable trees are kept in place.

For the reasons that I set out, my bill should go forward with the narrow definition that I proposed. I think that the two officers who gave evidence to the committee last week said that there would be many more cases if the definition were widened, and other stakeholders pointed out that the decision-making process would have to become more complex.

Local authorities should have the flexibility to set fees to take account of their circumstances. That is important, to ensure that the costs of making a decision are covered and that the approach is not regarded as a revenue-raising exercise.

My bill addresses the issue of valuable trees that might form part of a high hedge in a pragmatic way, which reduces bureaucracy and ensures that decisions can be made.

I am happy to take questions from the committee.

The Convener: I have asked all witnesses about their view of the proposed statutory definition in section 1, which you went over in depth. A number of folk are unhappy with the limited definition and want to expand it. Why do you think that the approach in section 1 strikes the right balance?

Mark McDonald: The fact that Scotland is in many ways behind the rest of the UK on high hedges legislation has brought a benefit, in that we have been able to learn from experience elsewhere. Experience suggests that a definition along the lines that I proposed allows for quick and effective decision making.

I think that witnesses from the Isle of Man told you that the decision-making process around deciduous trees can be extremely lengthy and complex and inevitably gives rise to difficulties in the context of challenges—you heard about the case in which the Braddan parish commissioners’ decision was challenged. My proposed approach will facilitate quick and effective decisions, which give rise to minimal challenge.

There will no doubt be people who appeal—that is in the nature of things. The option to appeal is open to people. However, for the reasons that I set out, the proposed definition is the best one.

The Convener: The Isle of Man does not appear to have tree preservation legislation such
as we have in Scotland. If we expanded the definition, would the fact that we have TPOs reduce our risk of facing issues like those that Braddan parish faced?

Mark McDonald: I do not think so. The bill makes provision for vegetation that has “cultural or historical significance.” I think that you heard that such things are taken account of in the Isle of Man, too. In effect, it has a tree preservation order process, although that is not what it is called. Our having TPO legislation does not necessarily mean that the process would be less complex if single trees were included in the definition.

Of course, deciduous trees will be covered by the bill if they are part of a high hedge that is mainly formed of evergreen or semi-evergreen plants. Deciduous trees are not, by definition, completely off the agenda. However, in our view, the real problem in the context of barriers to light is the semi-evergreen or evergreen hedge.

Margaret Mitchell: Given that the bill’s objective is to ensure that no one is unreasonably deprived of light, is there not an overwhelming case for the bill to apply to single trees, which can block out light?

Mark McDonald: I take the view that a single tree is not a hedge. I understand your point but, as the minister said, the intention behind the planting is an issue. Long-standing neighbour disputes are often continued or escalated through the use of a high hedge to block off a neighbour. It would take a considerable amount of time to make a deciduous tree mature to the stage at which it would create that problem, so it is difficult to argue that a deciduous tree could be deployed as part of a dispute in the same way that a leylandii hedge might be.

My view is that there is a difficulty to do with whether there is a constant barrier to light. We heard from the Isle of Man that all-year-round checking was necessary to see what the light issues were. I think that that would add a layer of complexity to the process; it would certainly add a cost. Given the evidence that we have provided on the fees, it might lead to a much higher fee than the one that is anticipated in the financial memorandum.

Margaret Mitchell: Given that someone might deliberately plant a tree to obstruct light to be vexatious, are you supportive of looking at the loser-pays argument, which is used in the Northern Ireland legislation? It says that if a notice is served and the complainant’s case is upheld, a proportion of the fee, or the whole fee, should be attributed to the owner.

Mark McDonald: When your colleague Gavin Brown raised that with me at the Finance Committee, I was not as well versed on the Northern Irish situation as I ought to have been. I have since had a look at the system there, and I am interested in the committee’s view on the matter.

I have two initial reactions. First, I do not think that we have a sufficient body of evidence from Northern Ireland to tell us how that system is working in practice, so that we can be sure that difficulties are not arising as a result of it.

Secondly, I have a practical concern. Let us say that I am in dispute with my neighbour about my neighbour’s high hedge and I make an application and pay the fee. If the local authority adjudicates, says to my neighbour that they must take remedial action and my neighbour complies with that notice, in my view it would not be very helpful from the point of view of the dispute resolution process for the local authority to thank them for complying with the notice and ask them to pay it the £300 or £400 that I have paid. That is likely to lead to a grievance.

If the neighbour refuses to pay the money, the local authority will be in the position of having to pursue them for a few hundred pounds, which may end up being disproportionately costly to recover, whereas if the neighbour does not take the remedial action and the local authority has to take it, it will be more cost effective for the council to pursue that cost than it would be to pursue the initial fee.

Margaret Mitchell: I think that the cost is applied only once the notice has been served—in other words, once the complainant’s case has been upheld.

Mark McDonald: Absolutely, but the point—

Margaret Mitchell: Is the point not that the prospect of having to pay the complainant’s fee would be quite a deterrent? As your bill stands, there is no deterrent for the owner of a high hedge and no incentive for him to do anything until the very last minute. The loser-pays principle could be a powerful incentive for early resolution and could result in huge cost savings for local authorities in administration and in avoiding escalating costs were the process to continue.

Mark McDonald: I will make two points. Both the examples that I cited relate to the situation in which the local authority finds in favour of the complainant. The difference is that, in one example, the neighbour takes the action and pays for it through getting a contractor in to lop the hedge or do whatever else needs to be done. In the second example, they refuse to do so. In one of those cases, the local authority will be pursuing a few hundred pounds to recover the fee that has been paid; in the other, it will probably be pursuing several thousand pounds’ worth of costs. My issue there is about cost effectiveness.
As far as your point about deterrence is concerned, I think that the committee has had fairly compelling evidence from Scothedge on the issue. In addition, there is fairly compelling evidence from south of the border that the mere presence of legislation will resolve a large number of cases. People will modify their behaviour because such legislation exists. The other day, Pamala McDougall told me that there is a case in Airdrie in which one of Scothedge’s members has said that the hedge next door has been dealt with simply as a result of the bill going through the parliamentary process.

The mere presence of legislation will modify behaviour, but we will be left with a number of intractable cases that will require adjudication by local authorities. That has been borne out by the evidence from south of the border.

11:45

Margaret Mitchell: I certainly did my part in publicising the committee’s work in the Airdrie & Coatbridge Advertiser, so perhaps the person saw that.

Mark McDonald: It could well have been all down to your efforts, Ms Mitchell.

Margaret Mitchell: You raised the point about costs escalating and the authorities pursuing complaints. If that is a factor just now, are we not sending out entirely the wrong message by suggesting that, if the cost becomes too prohibitive, we just will not bother? The legislation has to be very robust.

Mark McDonald: I do not want to sound as if I am passing the buck but, in many respects, it is for local authorities to make their own decisions. It may be that a local authority will decide to charge a fee of a few hundred pounds but, rather than having that fee paid all at once up front, it may allow it to be paid in stages, as long as it is recovered over the course of a financial year. Local authorities may take that decision and I will not dictate to them how they should pursue things. However, if I were a councillor and constituents were saying to me that they were having trouble accessing a particular process at the local authority level, I would ask questions about how that process could be made more accessible. I am sure that councillors will ensure that their constituents have access to the process and that it is not cost prohibitive.

Margaret Mitchell: Will you reflect on that at stage 2?

Mark McDonald: Absolutely, and I am more than happy to listen to the committee’s views on ways by which the bill could be improved. I am in listening mode—I think that that is the term.

Margaret Mitchell: That is very helpful. Thank you.

John Wilson: Good morning, Mr McDonald, and welcome to the other side of the table. Over the past couple of weeks, you have joined us on the members’ side.

I noted that, in your comments on the definition of “high hedge”, you referred to “a constant barrier to light”—

I am sure that that will be reflected in the Official Report. However, the current definition in the bill refers to “a barrier to light”.

My understanding of the evidence of our witnesses from the Isle of Man, which we heard last week, is that they had estimated costs of £30,000 because they had to visit a particular site for more than 10 months in a year to determine whether there was an infringement of someone’s rights.

The difficulty is that the definition of “high hedge” in the bill states that a high hedge is one that “forms a barrier to light”. Could you be specific? Do you mean “a constant barrier to light” or “a barrier to light”? Someone’s definition of “barrier to light” could be that they have a barrier to light over the months of November, December and January, but for the other nine months of the year they have sunlight. How do local government officers determine that there is sufficient barrier to light to take action?

Mark McDonald: When I used the word “constant”, I was simply referring to the fact that an evergreen or semi-evergreen will form the same barrier to light in June as it will in December, because it does not shed its live foliage. That is the point from which I am coming at this.

John Wilson: I seek clarification because my understanding from the Isle of Man case is that light is not constant. How sunlight approaches and accesses a property shifts throughout the year. How light is shed on a property or garden in November, December and January could be different from how it is shed during the other nine months of the year. We need to be clear that we are not taking action in situations in which there is a barrier to light at a specific time of the year but there is no infringement for the other nine months of the year.

In one piece of evidence that we received, someone had included an aerial photograph. The submitter claimed that they have to use their lights throughout the year because of a high hedge behind them. When you first look at the
photograph, you see that the house faces the sun to the south, and the house itself casts a shadow. The owner on the other side of the hedge could argue that it is not their hedge that is causing artificial lighting to be used throughout the year, but the way in which the house is positioned—the front of the house faces south and the back faces north.

Mark McDonald: There is guidance south of the border, and there are industry standards on hedge height and so on. At the end of the day, the decisions will be for the individual local authority officers who make the assessment. Each case will be judged on its merits. I do not want to talk about the specific examples that the member raises, because I do not want to prejudge cases. In some cases, the officer will find in favour of the complainant and in other cases the complaint will not be upheld. That is just how it will go. However, the right of appeal will exist.

The bill is an enabling bill. The guidance will look to draw on best practice elsewhere. I believe that documents have been drafted on taking account of issues such as the height of the hedge and the effect of light when making an assessment. We put our trust in the professionalism of the officers who will make the decisions.

John Wilson: I welcome those remarks. I hope that we can get a solution to the problem, but my fear is that many people will see the bill as the solution to their problem when it might not be. Scothedge and others have raised issues about single trees and barriers to light from leaf formation on trees at particular times of the year. We need to be careful not to present the bill as something that will encompass everybody who has a complaint against a neighbour who is growing a tree or a high hedge.

For clarification, will the bill affect single trees that are covered by a TPO and which are part of a high hedge, meaning that they could be cut down if action was taken on that hedge?

Mark McDonald: That is a possibility. A mechanism is already in place whereby TPOs can be subject to review. In essence, the section of my bill that deals with TPOs encompasses that process as part of the high hedge assessment. Any case will be looked at holistically and in the round, taking account of the decision-making process that would have been gone through in applying a TPO. If the criteria no longer apply, that might result in the tree being dealt with, if that is the decision of the officer who adjudicates on the case.

John Wilson: In that situation, when would action be taken against such a tree? At certain times of the year, trees are a habitat for wildlife such as birds. If someone makes a complaint in January and the complaint is upheld, do you envisage that action would be taken in February or March, which would be during the breeding season for some species?

Mark McDonald: During the process of piloting the bill, I have become an expert on many things, but I do not claim to have the professional expertise to address that question. It would be for the professionals who are dealing with the case to adjudicate on that matter. We have heard evidence that there is professional expertise out there that can answer such questions on a case-by-case basis.

Stuart McMillan: Good morning. For me, definition is one of the key issues. You will have heard my questions over the past few weeks about that. During the past five years, many constituents have contacted me with issues involving individual trees or trees in general, as opposed to hedges. As drafted, the bill will help a large number of people around the country but it will not affect others. My concern follows on from Mr Wilson's comment. In the first few years after enactment, the bill might create further animosity or disputes between neighbours because folk might have the impression that it will be a panacea and will fix all issues. I know that section 34 says that ministers can amend the definition, but do you foresee any future opportunity to widen the definition? Would you consider widening it as the bill goes through Parliament?

Mark McDonald: I have not developed the ability to see into the future, and I do not want to put myself into a purely hypothetical situation. We have included the power in the bill so that if, after the legislation has been enacted and we have seen it in practice, it is determined that the definition requires amendment, that can be done. Let me be clear that only the definition of a hedge, including its height, can be amended. As I understand it, the provision will not allow for a statutory instrument to bring single trees into the picture at a later stage. The definition could be amended to include, for example, deciduous hedgerows as opposed to evergreens or semi-evergreens. That might well happen. However, I am not going to give a yes or no answer to the question. Who knows what the future holds? Who knows what is going to happen tomorrow, never mind in a few years’ time?

Stuart McMillan: The suggestion has been made in some of the written evidence that we have received that the age of a tree should be considered, and a tree that has been there for X number of years should be protected. Last week, we discussed the issue of whether a tree or a property was there first. What happens when an individual who moves into a property does not like
the tree that has been there for many years? It is difficult to legislate for what should happen in such cases, and I fully accept that legislation, including the bill, cannot legislate for every eventuality, irrespective of parliamentarians’ desires.

Although I support what you are trying to do through the bill, I feel that neighbour disputes will not go away but will continue in perpetuity because of the narrowness of the definition in the bill.

Mark McDonald: To answer your point about the chicken-and-egg scenario, the bill essentially provides for a cold analysis of a situation, and the simple criterion is whether there is a barrier to light. The question who planted what first, or who built what first, does not enter into it. There is a simple assessment of whether the hedge is a barrier to light.

You could move next door to a property that has a 2m high hedge already planted before you built your house or moved in. If the person next door allows it to grow to 30 feet so that it becomes a barrier to your light, and you are told that because you built your house after the hedge grew, there can be no adjudication, you are not going to get satisfaction. That is why the criterion of whether there is a barrier to light is in the bill.

12:00

On your second question, which was whether neighbourhood disputes will continue, I will not pretend that the legislation will resolve every dispute between neighbours. After all, there are times when the process will not find in the complainant’s favour. However, the bill allows for the introduction of a mechanism for resolving such disputes that exists in other parts of these islands but not in Scotland, and I believe that that is a key step forward. Given evidence from the main campaign group that more than 90 per cent of cases will be dealt with, I think that the vast majority of people will find satisfaction as a result of the bill.

Stuart McMillan: That response is a wee bit different from what it says in paragraph 111 of the policy memorandum, which states:

“The Bill promotes the resolution of disputes ... By doing so it promotes strong supportive communities for all people”.

Surely if the bill leaves out deciduous trees and nuisance vegetation it will not promote “strong supportive communities for all people”.

Mark McDonald: First of all, I am seeking the most cost-effective way of resolving disputes. At a time when local authorities do not have huge amounts of money to throw around, I do not want to make the process very complex, which is what I think would happen if we included single trees and deciduous vegetation. The vast majority of cases will be dealt with on their own terms; I am not claiming that the bill will deal with every dispute. The wider aim in the policy memorandum of having strong communities will be borne out in the legislation, which provides a dispute resolution mechanism that does not exist at the moment. I certainly think that it will be effective in that respect.

Stuart McMillan: I note that the definition in the Isle of Man legislation is wider than that in England and Wales and covers deciduous trees. In light of the research and preparation that you have done in introducing the bill and bearing in mind the evidence that we heard last week from witnesses from the Isle of Man, do you think that the Isle of Man experience has been successful and has worked well?

Mark McDonald: Indeed. However, I found the Isle of Man evidence interesting because although the witnesses thought that the legislation had worked well they also talked about a protracted and expensive case that they had had to deal with. Braddan parish is very small—it has fewer electors than in a former one-member council ward in one of our urban local authorities—and if you were to extrapolate the number of cases for that population to, say, an urban area you would be talking about several hundred. I do not think that that would necessarily be borne out in practice but the number of cases relative to the population is, I think, quite significant.

Moreover, as the Isle of Man witnesses’ evidence made clear, introducing that layer of complexity also introduces an element of cost, and the last thing that I want to do is to put on to local authorities a much more significant cost burden than has been envisaged under the current bill, which would then be transferred to individual applicants. I am open to the committee’s views on the matter but my view is that introducing single trees and deciduous vegetation into the bill at this stage would result in a layer of complexity that might have unforeseen consequences.

John Pentland: I am glad to hear you say that you will take on board the committee’s views. The issue that I want to raise relates, again, to the definition. In response to Margaret Mitchell, you said that individual trees sometimes take a long time to grow. However, such problems already exist. We have been talking about single trees proving a barrier to light but the fact is that they are also associated with organic litter, problems as a result of their deep bulb root, damage to property and so on. If you are reconsidering widening the definition, I hope that you will also seriously bear in mind that single trees do not just
form a barrier to light and that there are other issues to consider.

Mark McDonald: Sure. As part of the process of drafting and introducing the bill, I met a number of organisations and spoke to a number of different groups before composing the final draft. One such group was the Scottish tree officers group, which sent representatives to the committee last week. Their unanimous view was that single trees should not be included in the legislation.

I take on board your points about leaf litter and root damage. First, there are several means by which things such as root damage can be addressed at present, and secondly, people already have the right to deal with any encroachment of branches on to their property.

On the issue of trees being a barrier to light, I have put on record my views about the nuances and complexities that might arise in that regard.

The Convener: I will play devil's advocate on that one. The representatives said that there were difficulties in getting on to some private property to deal with the issues. I do not know whether that is a matter for this bill, or whether it should be taken up elsewhere. During discussions, you have probably come across a number of anomalies. Could any of those be resolved by the bill, or would they be better addressed by other means?

Mark McDonald: The bill gives rights on accessing property in order to take remedial action where that is required. There is an important point to put on record with regard to the situation in England after the legislation was introduced. We wrote to a number of local authorities, and the information that we received is laid out on page 15 in the financial memorandum. There is a table that shows the local authorities that responded, and the number of occasions on which those authorities have had to take enforcement action by going on to the property and cutting back the hedge.

The Royal Borough of Windsor and Maidenhead, Ashford in Kent and Sandwell in the West Midlands all had zero examples of that happening. Only in South Tyneside has there been one example, among all the local authorities that responded, of an authority having to go in and take enforcement action.

The evidence from south of the border is that, in instances in which a formal application is made and a notice is issued, the notice is complied with in almost every case. I accept that there will be a need to ensure that safeguards are in place to ensure that, where access to a property is required, it can be gained, and I take on board the committee's point in that regard. I am happy to look at whether there are other ways in which that could be addressed rather than simply through the measures that are in the bill. However, it is worth bearing in mind that the number of times that such action is likely to be required is very small.

The Convener: With regard to definitions, the Scottish Wildlife Trust has raised concerns that the bill as currently drafted will capture native evergreen species, which can provide a significant haven for wildlife. The trust suggested that the bill should refer specifically to non-native fast-growing conifers rather than using the term “evergreen”. How do you feel about that?

Mark McDonald: I understand the point that is being made, but the difficulty is that it would create a significant loophole, in that anyone who wished to pursue a neighbourhood dispute through the deployment of vegetation could simply shift from a non-native to a native species and they would no longer be captured by the legislation.

We should judge each individual case on its merits. Undoubtedly, there will be some requirement to look at the biodiversity impacts of any action that will be taken, but I do not view the inclusion of native species in the bill as a problem. It prevents the creation of an unnecessary loophole.

John Wilson: On the issue of biodiversity surveys being carried out before action is taken, will the cost of that be borne by the local authority or the complainant? Biodiversity studies can be fairly expensive—any developer would say that they cost thousands of pounds. I do not expect a large-scale survey to be done for a hedgerow, but the costs will increase if a survey or monitoring of the wildlife in a hedge and of various other aspects is carried out. Will the fees that local authorities set capture all the costs that they will bear, or might the costs for individual complainants rise substantially? One big issue that Scothedge raised was that, if the fees are too high, that might restrict the number of complaints. How do we achieve a balance and ensure that the bill is cost neutral to local authorities?

Mark McDonald: I have a few points on that. First, if the committee is minded to consider the possible inclusion of single or deciduous trees in the definition of a high hedge, it is worth bearing in mind that the RSPB, the Woodland Trust and the Scottish Wildlife Trust strongly made the point that there would be significant need for biodiversity assessments in those instances, and significantly more so than in the case of evergreens and semi-evergreens.

Secondly, I take on board Mr Wilson’s point about biodiversity surveys. Based on the evidence that we have heard, such surveys will probably be few and far between, but the costs would be factored into any costs that the local authority is
likely to incur. In essence, the bill says that a local authority must not charge a fee that is higher than the amount needed to recover its costs. However, it is up to each local authority to set its fees. A local authority might decide that, because the occasions on which a biodiversity survey is required will be few and far between, it will not factor those costs into the fee, but will just suck them up as and when they arise. That is a decision for the local authority to take.

On whether the cost will be prohibitive, I return to the point that it is for each local authority to determine how to levy the fees. The local authority officers who set the fees will be held to account by locally elected members through the local authority’s committees. If councillors are having their doors battered down by constituents who cannot gain satisfaction because the fees are prohibitive, I would suggest that those councillors will consider ways in which they can ensure access to dispute resolution for their constituents. There will be a self-regulating mechanism, if you will. There will be an onus on local authorities to set a fee that does not go above and beyond the costs that they are likely to incur, but that does not mean that they will have to set it on a cost-neutral basis; it simply means that, if they wish to do so, they have the ability to do so.

**The Convener:** I thank Mark McDonald for his evidence. I also thank all the witnesses who have given evidence on the bill and on every other issue that the committee has considered during 2012, and I wish everyone a merry Christmas and a happy new year.

**Mark McDonald:** Convener, I might have forgotten to add my thanks to the witnesses who gave evidence on the bill. I want to put my thanks to them on the record.

**The Convener:** Thank you.

As agreed, we move into private session.

12:14

*Meeting continued in private until 13:20.*
SUBMISSION FROM JIM PAXTON

1. I am writing in response to your request for views on the proposed High Hedges legislation.

2. With regards to my own situation, I have lived at the above address for 20 years. My house is in the country and adjoins land belonging to .

3. When the houses were built, planted Sitka spruce trees on the boundary with a view to screening the houses from his view.

4. These trees have grown at a fast rate, and consequently have caused us major problems.

5. First of all we no longer get winter sunlight resulting in the garden being permanently frosted in winter. My greenhouse is now redundant because there is no longer sufficient light to grow anything.

6. Worst of all I lost my TV signal because the trees blocked out the satellite signal. This lasted for 3 years. Satellite is the only way to receive television in my area.

7. Mediation was a waste of time I’m afraid. As were personal approaches.

8. The trees are not fully grown yet. If something is not done the situation could become dangerous as they are a matter of a few yards from my house, and bearing in mind the weather we have had this year they could well be blown over if they get bigger.

9. I read with dismay that deciduous trees were not being included in the equation. In my case the farmer could cut down the spruce and replace them with these trees and I would be back to square one, albeit a few years further down the line.

10. Legislation is needed as a matter of urgency. If legislation had existed a few years ago we would not be in this situation now.


12. Please feel free to visit my home any time to see the problem for yourself.

13. In fact, visit people who have suffered from this form of tyranny, it would be an eye opener.

14. I am investing in solar energy. If this legislation is not passed for some reason, the trees at the back of my house will eventually block out the sunlight rendering my investment useless.

15. No doubt I would then have to look to Human Rights Legislation.
1. I disagree with part of this new proposed legislation in that a hedge is formed by a row of two evergreen trees.

2. I was forced to grow a few large evergreen trees after my local council passed a neighbour's large extension. The neighbour's house at my back garden towers above my house due to a slope and despite the council stating there is a six foot fence and isolated conifer trees this extension looks straight into my kitchen and living room. The two evergreen trees I have obscuring the aforementioned windows are 3 metres high on my side but is only 2 metres or so high at their ground level. The trees are about a metre apart and are not a hedge as such but are vital to provide us with privacy.

3. Council are particularly bad for giving permission for ludicrous extensions therefore why should people not be allowed to grow trees to have some privacy from this? Do you propose not growing a couple of trees but build an extension instead - which is far more intrusive upon people's light!

4. The definition of a hedge should be changed to more than 2 evergreen trees for this very reason.
1. I wish to make one academic observation about the above Bill, in a wholly personal capacity.

2. Without wishing to doubt the practical advantages of proceeding as proposed, it should be noted in passing that in some ways it presents an unusual way to approach this issue. Disputes over hedges are in essence a conflict between the rights of neighbouring owners and as a matter of principle, the resolution of disputes over private rights is a judicial task, to be entrusted to a court rather than to a governmental body such as a local authority and the Scottish Ministers. The issue is one of private, not public amenity, and such matters are not usually the responsibility of public authorities.

3. In particular it seems unusual for appeals in such matters to be directed to the Ministers, not the courts (and indeed there may be scope for arguing that the outcome of the statutory procedure entails a determination of “civil rights” such as to invoke article 6 of the ECHR and thus the need for access to an “independent and impartial tribunal” at some stage in the proceedings).

4. The court system at present may not offer any wholly appropriate and proportionate mechanism for handling such disputes, but the recent Scottish Civil Courts Review and reforms to the tribunal system may open up new opportunities for such very local judicial tasks.
Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details;

1. I do not agree with the definition because trees other than those defined as “evergreen or semi evergreen trees or shrubs” can have the same effect of reducing light increasing shade etc. I suggest that the definition be simplified to “any obstructive hedge or planting that exceeds 2m in height” or similar. Consideration should also be given to restricting the height to which obstructive growth is allowed to reach after cutting e.g. if a hedge is cut to less than 2m it will normally within a year exceed that height again.

Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why?

2. Yes for the reasons given above and it would be perfectly possible to someone to plant beans or sunflowers to have the same effect as a hedge each summer.

Do you have any comments on the proposed approach to dispute resolution as set out in the Bill?

3. I think that after the legislation is enabled there will be far fewer problems and that the number of disputes requiring enforcement will be relatively small providing that the local authority makes it clear that the law will be enforced. It may be that a simple standard pro forma application with a copy to the authority and to the alleged offender by the complainer will in most situations solve the matter which in many cases will simply be a matter of poor communications between neighbours.

Do you have any comments on the enforcement procedures proposed under a high hedge notice?

4. Presumably a High Hedge Notice will remain in force for as long as growth may reasonably be expected to exceed the definition of a high hedge within a year?

Do you have any comments on the proposed fees and costs?

5. Where a High Hedge notice is issued the Authority should have the power to charge the offender for all the costs involved in their work plus a percentage and they should refund to the complainer any previous fees paid to the Authority by the complainer where the complaint is justified. I don’t think that this is however a “deal breaker”.

Are there any aspects of the systems used in other jurisdictions which should be included within this Bill?

6. Not sufficiently knowledgeable to comment.
Are there any aspects of this Bill which would impact positively or negatively on equality of opportunity?

7. Not as I understand it.

Any other issues relating to the Bill which you wish to bring to the attention of the Committee?

8. I think that the Bill is an excellent idea which will resolve many issues that adversely affect the enjoyment of properties. I hope that it is quickly enacted and well publicised with a 6 month grace period to allow those who own high hedges to take action before enforcement processes commence.

Note: Photographs of a private property were provided with the submission, but are not reproduced online.
SUBMISSION FROM HELEN SMITH

1. I do not agree with the definition of a high hedge as my garden is very small and 2 metres would still be too high. I think 5ft would be more appropriate.

2. I have no opinions on other forms of vegetation.

3. I agree with the proposals regarding the approach to dispute resolution as set out in the Bill.

4. There is an awful lot of time wasting open to abuse involved in the enforcement procedure. In cases where the council owns the properties involved it would seem to be a straight forward case and needn’t be time wasting unless the Bill makes it so.

5. Again I come back to council owned property which in my opinion should never have been allowed to grow a high hedge, so as a victim on benefits I would not be in favour of me paying any fees to the council whose job it is to look after their property anyway. I think it would be fairer for the council to pay me for having to put up with this monstrosity of a hedge for many years but that’s very unlikely to happen.

6. It seems to me that this bill has been made with home owners and land owners in mind, perhaps some more notice should be given to private or public rented accommodation where it seems to me that the owners or councillors are not particularly bothered and the inconvenience of taking action to get rid of the high hedge is not urgent. Having to live with the problem as a tenant makes it urgent.
1. I am writing in response to the article on ‘The High Hedges (Scotland) Bill’ featured in The Hamilton Advertiser dated 11.10.2012 inviting people to share their views.

2. I was delighted when I heard about the introduction of this bill and I hope it will put an end to the problem I have been having with my neighbour’s hedges. For some time now these hedges have been left to grow to an unacceptable height, not only do they overhang into my garden, but they block out any evening sun that we should be lucky enough to get.

3. The overall state of the garden at 46 Auchinraith Avenue, Whitehill, Hamilton is deplorable, and every year I complain to South Lanarkshire Council with regards to their tenant. As a result, the occupiers make a feeble attempt to tidy it by cutting the grass but fail to cut the hedges.
SUBMISSION FROM CAROLE WALKER

1. Defining what a hedge is would be a good starting point even before you consider how high is too high..... Is it more than one plant? Do they need to be inline? How much of one’s enjoyment needs to be curtailed before the ‘hedge' becomes a problem?

2. In many cases 1 tree planted too near a boundary can be of immense impact. I fifty foot high dense holly tree precludes me from using my greenhouse while the very dangerous sharp holly leaves which fall all year will not allow my granddaughter to play in my garden.

3. Please ensure single plants (trees) are covered by this legislation.
1. In response to a letter from Margaret Mitchell MSP published in my local paper today (10/10/12) I would like to describe the misery caused by an overgrown woodland area which abuts the southern boundary of the gardens of house nos. (postcode G74 3AA) I am aware that leylandii are generally accepted as being the major culprits in creating this nuisance/problem, but in our case the offending woodland consists of mature beech, ash, oak, sycamore, and maple which are undergrown with self-seeded ash trees along with hawthorn and some small beech trees. The impact of this dense growth is to block out virtually all sunlight in winter and most sunlight from 9:00 a.m. through to 7:00 p.m. in summer.

2. THE OVERSHADOWING IS PERFECTLY ILLUSTRATED BY GOOGLE EARTH – just type in our postcode!

3. The effect of this overshadowing is to encourage the growth of moss and algae’s on paths and walls, which becomes a serious health and safety hazard when walked on – especially when wet (which is most of the time ‘cos there is no sun to dry it out !!! ) – requires constant attention with bleach and other treatments – prevents beneficial warmth on the south facing walls and roofs and thus increases the usage of heating systems within the houses – and prevents the use of solar panels on what would otherwise be a perfect aspect for this type of green energy.

4. There is also a profoundly detrimental effect on the general “feel-good” aspects of residents lives caused by the overshadowing, interfering with our normal use and relaxation in our gardens.

5. In highlighting the other fundamental problem created by this woodland I must inform you that the majority of the residents affected are retired, some widowed, some in their 80’s and many in their 70’s, all with varying degrees of mobility and fitness – and all faced with the annual leaf-fall and the need to clear up the multitude of black-bags-full, produced by ankle-deep leaves in all our gardens!

6. We strongly support the approval of this Bill, and look forward to being able to (at last) get something done to attend to our frequent complaints. The irony is, the woodland is owned and neglected by Council!!
1. As a member of the public whose life has been blighted by high hedges for the last 10 years, I am delighted to have the opportunity to comment on them during this period of consultation.

2. At the back of my house, some 12 feet from the building, there is a row of leylandii, some 40 feet high. In spite of my best efforts to amicably discuss the problems that they create with their owner, I am, sadly no further forward in achieving a resolution to the issue.

3. I am well aware that I am not the only householder whose life has been blighted by these trees, but I should like to take the chance to bring some of the problems that these hedges create for owners and residents of adjoining properties.

   a) THE LACK OF LIGHT: In my own case, the back of my home has virtually no natural light whatsoever. I require to use electric light in every room on this aspect of my property every day & this includes my kitchen, family room, bathroom & bedroom in addition to bedrooms above the rooms mentioned. This obviously leads to very high fuel bills, most ironic at a time when energy conservation is considered to be a world-wide priority.

   b) BLOCKING of GUTTERS: At least once every two months, I have to ensure that the gutters around the house are cleared out of the debris shed by these trees. Failure to do this or have this done, results in underground drains becoming choked & obviously leads to very expensive remedial work involving lifting paving & ground excavation to resolve the problems created by them.

   c) DAMAGE to MY GARDEN FENCE: My previous neighbour & I, shared the very considerable cost of erecting a very attractive, substantial fence at the dividing line of our properties. This has now been ruined by these trees & has had to be shored up a number of times just to keep it standing.

   d) LACK of GROWTH in ADJACENT LAND: Before the planting of these trees, this area of the garden was densely planted with roses which thrived in the site. As these trees take more than their share of nutrients from the soil, sadly the majority of these plants have died & those remaining, are struggling to survive let alone flower.

   e) GENERAL GARDEN DEBRIS CAUSED BY SUCH TREES: The twigs & needles which these trees cast, create an incessant mess in & around the garden which has to be attended to. Lack of maintenance by me, even just for a couple of days, results in hour upon hour of work to maintain a tidy garden around my home.

4. I am a 77 year old man who lives alone & would love to spend time enjoying my garden. Unfortunately instead, I find myself involved in a most unenjoyable
situation of catch up with the mess created by them. I take a pride in my home & garden & find it extremely distressing that I have to undertake heavy work for a man of my years & realise that I am fighting a losing battle.

5. I would plead with the Scottish Government to protect citizens like myself by limiting the size of these hedges in Statute.
SUBMISSION FROM JANET AND HAZEL FINLAYSON

1. As advised by Scothedge I am writing to express my opinions about the necessity for a High Hedges Bill in Scotland. Having had neighbours who have caused my parents continuous problems about a mutual hedge for approximately 30 years I feel that they were never able to find a solution to the problem.

2. Now that my Mum is widowed the problem has become more serious with solicitor’s letters, concerned neighbours and police intervention. On many occasions the aforementioned neighbour has shouted in the street because she does not want to see the 12 feet+ hedge reduced.

3. It should be noted that on the other boundary with a hedge on my mother’s property there is a neatly trimmed hedge of about 4 feet and the other 2 boundaries have no hedging.

4. A 12 foot+ hedge causes problems in the Winter when branches bend with the snow and we have been unable to gain access into our drive and visibility on one side is marred when leaving the driveway onto a busy A road.

5. Our problems with high hedges have caused embarrassment, fear, stress and costly fees to solicitors. None of this would have been necessary if there had been a High Hedges Bill in place and a way of achieving resolution to the problem of a mutual hedge dispute. It would offer victims of, "Hedge Rage" a form of protection and put an end to the malicious planting of fast growing boundary hedges like leylandii which my Mum’s neighbour has recently planted.
1. My wife and I live in [redacted], our back garden is approximately 22 X 22 feet square, as are most of the rear gardens in the area. Our immediate neighbours to the rear have a Lendyii Hedge which is at least 15 feet high, it blocks all the winter sun from our garden, our neighbours to the right have to massive deciduous trees which block ALL our evening summer sun. We have discussed the issues with both of our neighbours especially about them have such massive trees (around 40-50) feet tall, in a small area, but they are selfish people and do not care about us not being able to enjoy the evening in our gardens, whereas, they can happily sit out until sundown!!!!

2. It is about time that issues like this have appropriate legislation to deal with people who do not care that their trees and or hedges affect others, ensuring that all everyone has the right of light in their garden.

3. We cannot wait for this bill to come into effect. If deciduous trees can be included, especially those in smaller gardens, the better.
Definition of High Hedge

1. I do not agree with the definition of a high hedge as set out in the bill because it does not meet the principal policy objective to provide a solution for Scotland. To do that deciduous hedges and trees need to be included. A neglected deciduous hedge becomes a solid block of high trees just like evergreens. A barrier to light is not the only problem. Obscuring a neighbour’s treasured view is also a interfering with the reasonable enjoyment of domestic property. The definition in my view should be ‘defining a high hedge as one which is formed by a row of two or more trees or shrubs over two metres in height and interferes with the reasonable enjoyment of domestic property’.

Other Forms of Vegetation - Why

2. Research shows that shorter days and dull light in winter means that as a nation we suffer a Vitamin D deficiency due to the lack of it. Deciduous trees block light in the months when we have it, in the West of Scotland the cloud cover is such that even in March dry days can be dark. What actually happens to the plant depends on temperature, and also wind. Last year evergreens here lost their leaves to wind, our colder weather has the same effect. In short, it is no difference having a deciduous problem rather than an evergreen one. It’s a technicality. In the months we have light, the leaves are on creating a barrier, in winter its dark by nature!

3. A row of large deciduous trees produces massive leaf drop which certainly interferes with reasonable enjoyment of domestic property.

4. By not including deciduous trees you are leaving a door open for people to trim evergreens and plant a row of fast growing deciduous trees. You can buy them ready grown at heights of over 2 metres.

5. My problem consists of a mixed row of neglected conifers and deciduous which are now becoming massive trees. I had hoped the bill would set ‘fair rules’ for such a situation but as it currently stands my life just becomes more miserable and my house devalues or becomes unsellable. Surely that qualifies as ‘interfering with reasonable enjoyment’ just as if they were all conifers.

6. I believe that including deciduous trees would set out a ‘community code of conduct’ and it’s very likely that there would be little issue between neighbours when people have this norm to judge themselves by.

Questions 3 – 8

7. Everything seems to have been well thought out. I think it should be well publicised that it would cost the owner a lot more if the council have to do the work, that may put them off deliberately delaying the work, or thinking the council would be cheaper than a Tree Surgeon.
SUBMISSION FROM ALLAN WRIGHT

1. I have concerns that the bill as set out in the draft form will not in fact be sufficiently wide ranging and robust as to help with the problems we have faced for the past 7 years. Our main concern is that we have neighbours who intend to keep their offending commercial plantation of grossly overgrown conifers, hardwoods and towering poplars. This plantation is contiguous with our garden and has a severe impact on our environment and enjoyment etc.

2. My question is will the bill be all encompassing enough to be able to address our problem or will the trees status as "private commercial forestry" offer our unreasonable neighbours a "let out clause"?
Submission 1

1. My name is Elaine Smith. My address is Quarryside Kinnaird Inchture Perthshire PH14 9QY. I am a member of Scothedge.

2. I have seen a copy of the proposed legislation to deal with the problem of high hedges and nuisance vegetation.

3. I would suggest the following amendments to the draft legislation:

4. The legislation should be couched in such a way that "all proprietors whose properties are affected by high trees, hedges or nuisance vegetation are empowered to seek a high hedge notice. The legislation as proposed mentions "neighbouring land". If the offending trees are bounded by a public road the proprietor of the "neighbouring-land" will be the Roads Authority. As the Local Authority is to be the "Enforcing Authority" this would put the Local Authority in a conflict of interest. An amendment to the legislation to overcome this problem is therefore imperative otherwise many of those affected by this problem will be denied a legal remedy. A legal remedy for all of those affected by this problem is surely the reason for the legislation.

5. The cost of an application has yet to be set. I would suggest that the "Offending Proprietor" should pay the same fee as the applicant to enter the process.

6. There should be a definitive timeframe for each part of the process. Terms such as "as soon as reasonably practicable and "within a reasonable time" should be eliminated from the proposed legislation.

7. Once granted enforcement of the High Hedge Notice should be driven by Applicant.

8. The grounds for applications should be widened to include loss of view.

9. Consideration should be given to extending the legislation to cover single deciduous trees and hedges if they block light etc.

Submission 2

10. Please note that where there are large plantations of trees affecting neighbouring proprietors’ light it may be necessary to apply for a Tree Felling Licence.

11. I respectfully request that the proposed legislation includes a right to waive the need for a Tree Felling Licence or alternatively state that the Tree Felling Licence must be granted within 28 days of the High Hedge Notice being granted. This will deal with any issues of procrastination by the landowner.
12. There may be cases where the felling of the offending trees require a Tree Felling Licence.

13. In these circumstances the need for a Tree Felling Licence should be waived in the legislation or alternatively granted within 28 days of the High Hedge Notice being granted.

14. The need for a Tree Felling Licence can be used by the landowner as a means of delay in dealing with the offending trees and this possibility should be addressed in the final Draft of the proposed legislation.

15. The obtaining of any Tree felling Licence should be Applicant driven. The cost of obtaining the Tree Felling Licence if any shall be the responsibility of the landowner.

16. Fear of tree-fall and loss of view should also be a valid ground for the granting of a High Hedge notice.

17. I trust the above proposals are given due consideration.
SUBMISSION FROM ANDREW MACLEAN

1. I would urge the committee to seriously consider the inclusion of deciduous trees to be incorporated into the High Hedges Bill. The weather has drastically changed in my life time and torrential rain and gale force winds are now quite frequent. I am most concerned that my life and that of my family are at risk from some very large sycamore trees damaging my property. These trees are protected by a blanket tree protection order which in itself is ridiculous as any tree with a trunk diameter of 4 inches appear to be included.

2. Sycamores are the arboricultural equivalent of that most pernicious weed Rose Bay Willow Herb. I fully accept that certain trees require to have special protection but I consider human life to be more important.
1. I applaud the draft high hedge bill, but would like to alert you to the following weaknesses in its wording pertaining to loss of view, as part of the bill's intention to safeguard an individual's reasonable enjoyment of their domestic property: Loss of view is a widespread problem, with, according to a Scothedge survey, 68% of disputes involving this issue.

2. Loss of view from a property that is obviously planned and built to maximise a view/views most certainly detracts from one's reasonable enjoyment of that property. Consider a lounge with a large glazed patio door unit onto a patio, with lounge furniture arranged facing the views beyond this patio. Block this view with a high hedge, and all former enjoyment of that extensive area of the property is lost. The whole 'reason for being' of the patio and large windowed area of the lounge is lost. Furthermore, the loss of view could adversely affect the value of the property.

3. Such loss of view needs to be specified in the bill, as the current wording is not specific enough to include this element of loss.

4. Further to the above note re. loss of view, regard is needed to each individual case, as proximity of hedge to view point (in this case patio and lounge) together with 'lie of land' both affect the point at which the view is lost. Reducing a nuisance hedge to a fixed height of 2 metres may or may not restore the lost view. In the case cited above, the nuisance hedge is just 5 metres from the patio, and the land encompassed in the view is downward sloping. Therefore the view is lost when the hedge exceeds just 1.5 metres. Ergo, the bill needs the flexibility to allow hedge height to be set particular to each individual case, otherwise the stipulated 2 metres becomes a nonsense.
1. With regard to your current consideration of the proposed bill I would like to bring to your attention an area which the bill does not appear to properly reflect. This relates specifically to when the “hedges” as defined in the Bill were in existence prior to any use of adjacent parties land. An example would be where hedges or trees border a house and adjacent open land. Should the land be rezoned for development commercial or residential then the new owners according to the current wording of the Bill have the right to ask for an order to be raised to remove the “hedges” even though they may have existed for many years prior to the new development and whose existence would have been known before any purchases were made. I believe the Bill should be amended to reflect the case where the Hedges predate the building of a parties residential or commercial property where it was obvious the Hedges existed.
SUBMISSION FROM DONALD CRAIG

1. As a person who suffers the effect of a high hedge I welcome the opportunity of expressing my views to the committee.

2. It is, perhaps, unfortunate that the bill is restricted to dealing with high hedges and not the more general problem of what can best be described as "wilderness gardens" which are prevalent in many areas and a source of annoyance to many.

3. Turning to the question of "high hedges" I am of the opinion that no hedge should exceed 8 feet in height, at any time, as this would allow neighbours to trim the branches on their side without too much trouble and still maintain any privacy sought by the hedges owner. However height should not be the only criteria as hedges which encroach onto footpaths, roads etc. can restrict use and can affect drivers line of sight. This should be covered by the legislation.

4. The problem who should be responsible for maintaining the hedge may not be straightforward. In the majority of cases it should be the occupier but in some tenancy agreements the owner may be responsible e.g. blocks of flats, sheltered housing etc.

5. Consideration should also be given to whether or not the same rules should apply where a mixture of commercial / industrial and domestic properties are involved.

6. The bill should be broad enough to cover individual trees which can in some cases be a bigger nuisance than hedges.

7. The Local Authority should be empowered to take action where a hedge owner refuses or ignores a written request from a neighbour to maintain his hedge at a height determined by the bill without the neighbour having to resort to legal action. In such cases the Local Authority should write to the hedge owner giving him say 60 days to comply with the legislation. If the hedge owner still takes no action the Local Authority should arrange for the hedge to be cut and bill him accordingly together with a fixed penalty of say £50 to cover expenses.
1. I am writing to you to give supporting evidence towards the cause of the Hedges Bill that is currently going through the Scottish parliament procedures. I have been actively trying to get my neighbour for many years to agree to a solution and suitable hedge height that would be agreeable to both parties unsuccessfully, to the point that when I tried to cut it away from my house the police were called to alleviate the tensions.

2. Originally when the hedge was planted some 25 years ago, a gentleman’s agreement had been made with the previous owner of the neighbouring property allowing the height to be kept below an agreed level, but when the new owner moved in the hedge has not been cut since now stands at approximately 40 foot high and less than 5 ft from my house. The height that the hedge has grown and now depletes my property of any natural light. Even on a bright sunny day I still need to use artificial light in at least 3 rooms in the house. As you can see in the first picture the hedge top is so high that the owner cannot actually reach the top thus the hedge is leaning over my house which raises a great concern for a serious fire hazard. (he regularly has a bonfire lit within close proximity).

3. The 3 photo’s I have provided have been copied from actual Google map images and have not been doctored in any way. Further images can be obtained using Google earth using the above address.

4. I would be grateful for any assistance that you and your team will be able to offer me and look forward to the forthcoming hedge law introduction.

5. 

Note: Photographs of a private property were provided with the submission, but are not reproduced online.

6. Google Map aerial view of the overgrown row of leylandii trees. This row of trees blocks all natural light into the house requiring the use of indoor lighting at all times of the year through the day.

7. Google Map aerial view showing the distance from the owner of the trees and his own house marked at point “A” to the row of trees and the extreme proximity of the hedge to my house.

8. Google map view of the house from the front. Note the leylandii trees have grown above the apex of the house.
1. I've been waiting for this Bill for many many years and look forward to the Act to come. Our neighbours hedge mainly Laylandii has also got weed trees that have grown up with the hedge and are now so large they dump their cones and winged seeds into my garden. So I have looked at the draft Bill and hope you can consider the following:-

Comments

Definition of Hedge
2. ADD (1) (d) This Act also applies to individual pine trees and sycamore holly and other weed trees that have been allowed to grow unattended in and with the hedge; that have become so high or mature that the annual heavy fall of pine cones and other aerial seeds and leaves causes considerable debris and nuisance requiring much time consuming manual work often by elderly home owners to prevent damage to gardens and machinery.

Fee for Application
3. Where there are several applicants pursuing the same owner and occupier of the neighbouring land the local authority will apportion the fee between the applicants. Alternatively a group application with one fee would be acceptable. (It seems inequitable to demand 6 fees from six neighbours pursuing the same owner of the hedge)

Interpretations
4. (1) “domestic property”
ADD (c) a business premises occupying a building that formerly was “domestic property” defined in (1) (a) (b) above
1. I write to make a simple but major point regarding The 'High Hedges Bill' (2/10/12).

2. It appears to show no logic that such a bill and eventual legislation would be limited to evergreen or semi-evergreen trees or shrubs, when a variety of vegetation types can disrupt reasonable enjoyment in residential properties.

3. I note the Scottish Ministers have powers to modify the definition of 'High Hedges', and I would expect them, with fairness and rationality, to do so.
SUBMISSION FROM JENNIE GIBSON

1. I am Jennie Gibson of Denhead, Kinnaird, Inchture, Perth, PH14 9QY and, together with my neighbours, have been in dispute with an adjacent landowner regarding High, diseased and dangerous trees for 10+ years and I am therefore delighted that there is now an end in sight to our long-running problem.

2. I have read with interest the 'High Hedge Bill' and would like to request that the following issues be considered and the Bill subsequently amended:

3. Adjoining property could be amended to read 'Any proprietor whose property is affected by the offending trees' - in our case, we are on the opposite side of a public road and are therefore not 'the adjoining property' and although we experience the same nuisance we could be denied a legal remedy.

4. The cost of an application has not yet been set but I would respectfully request that both parties in the dispute should pay the same fee (application/contesting).

5. With regard to timescales, these should be clearly defined as statements such as 'within a reasonable time' and 'as soon as possible' can cause problems with excessive delays.

6. Finally, I would ask that one final item could be considered for inclusion in the Bill

7. Trees that are adjacent to power lines or are in danger of falling due to disease or lack of proper maintenance. In the Roads Act (Scotland) 1984 it states that the roads authority can serve a notice on the owner of the hedge, tree or shrubs requiring them to remove same within 28 days but we find (through experience) that this is not the case because they cannot, by law, take further steps to enforce this if the landowner chooses to ignore the notice. Surely the Bill should be amended to give the Road Authority the right to enforce their Act of 1984??
1. I would like to applaud this initiative and hope it will help people like me who have suffered for some years from light and view loss not to mention the mess left in my garden. I do think having read through the bill that more could be mentioned about ‘view loss’. I live in one of the most beautiful parts of Scotland overlooking the and my view is completely spoiled because my neighbours have planted 40+ foot conifers and single trees so that my house cannot be seen at all from their property. Thanks again and I hope the bill is passed and helps everyone achieve a better standard of living.
1. I have now had a high hedge dispute with my neighbour for the past few years, despite asking, indeed even offering to cut the trees under my neighbours guidance he has continued to ignore my request and the impact to my property. Over one third of my garden is in the shade of his trees including our greenhouse which is now permanently in the shade, gardening is no longer the enjoyable past time it once was. My local MSP also viewed this situation when he last visited the village ( ) recently.

2. I wish to point out that the current description of "High Hedges" in the draft High Hedges (Scotland) Bill draft 1.1 is currently inadequate for the purpose of the said bill. My current "high hedge" problem is being created by deciduous trees in a single row and double row, however coppicing of the said trees in the past has ensured that there is more canopy spread than would otherwise be normal for the tree species. Given our geographical position in a narrow valley, sunlight is limited in coming from the south, the high hills to the east and west limit the full power of the sun, and with the shade from our neighbour’s trees it is causing real issues of property maintenance and using our garden for recreation and relaxation.

3. It is therefore of vital importance that the proposed bill includes in the description single deciduous trees and more importantly deciduous trees whether in single or double rows.
Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details:

1. Response: We agree with the definition as stated but would also add that in addition to barrier to light it also includes prevention of enjoyment of previously available views and where the hedging causes devaluation of the property.

Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why:

2. Response: Individual Christmas trees which when put in the garden after Christmas can grow to an enormous height and spread in as little as 10 years.

Do you have any comments on the proposed approach to dispute resolution as set out in the bill?

3. Response: Provided that light barrier, view enjoyment and devaluation of property are included in the deliberations that is fine. I would like to see proper advice on what is reasonable steps taken to resolve disputes before applying for a resolution. i.e. What if the grower says he never received any approach or letter of complaint, how can that be proved?

Do you have any comments on the enforcement procedures proposed under a high hedge notice?

4. Response: Where a notice has been served and remedy carried out by the grower or the council, it should be incumbent on the grower to keep the height at the agreed level and not have the complainer in a position to go through the complaints procedure again and again year after year and once agreed there should be no further costs to the complainer should further breaches on the same complaint occur.

Do you have any comments on the proposed fees and costs?

5. Response: We feel it is right to have a fee to recover some of the costs of applying for resolution to discourage timewasters but feel it should be capped at £200 or should be a one off fee which would not have to be paid again if a complaint has to be lodged in future situations over the same hedging dispute.

Are there any aspects of the systems used in other jurisdictions which should be included within this bill?

6. Response: We are not aware of other systems.

Are there any aspects of this Bill which would impact positively or negatively on equality of opportunity?
7. Response: The appeals procedure is a concern to us, if the grower would be able continue to appeal decisions indefinitely prolonging the serving of a notice to comply. There should be a limit on the number of appeals and a time limit for decisions.

Any other issues relating to the Bill which you wish to bring to the attention of the Committee?

8. Response: If a grower is causing dispute which affects multiple homeowners is it possible to enter a shared application for resolution ie: Our problem grower affects all 6 occupants of our building and also some surrounding houses on 3 sides of the offending property.
SUBMISSION FROM BILL AND ANNE DUNCAN

1. We are pleased that the “High Hedges Bill” is being introduced and fully support the Bill. High hedges often detract severely from a neighbour’s property.

2. The approach to dispute resolution is a difficult one, and all parties will require a degree of sensitivity in this. This will undoubtedly cause difficulties with neighbours, but unfortunately I do not have an alternative suggestion.

3. The procedural costs should be kept at a reasonable level and Local Authorities should consider meeting part of these costs as a service to the public; even in these difficult financial times.
1. I am responding to your request for written evidence as part of its Stage 1 consideration of the High Hedges (Scotland) introduced Tuesday 2 October 2012.

2. I am one of six households suffering the consequence of our neighbour’s high hedge. This has destroyed our outlook onto the beautiful Clyde estuary and reduced light particularly entering four of the flats. I had a House Estate agent provide me with an estimate on what my flat would be worth with my view maintained, and evaluated this would be an increase of 12 to 15 percent in the property value.

3. Without this Bill we will not be able to have our quality of life as it was before our neighbour’s Leylandii hedges grew way above what a high hedge should be, as stated in this Bill, (the hedge in question is now three storey’s high, and still growing). Our neighbour has not responded to our numerous requests to reduce his hedge’s height. We have even involving the good office of our MSP to write on our behalf. Therefore our neighbour has made it clear he will not comply to our request to have this hedge lowered without being forced to by having to face the Legal consequences as outlined in the High Hedges Bill.

4. I recommend this Bill as the only means to find a solution and therefore give my full support for this Bill on High Hedges to go through Parliament to be implemented thereafter.
SUBMISSION FROM CAROL GLOVER

1. I have for several years complained to my MSP - Kenny MacAskill - regarding the issue of trees within the next door garden.

2. I have attached a letter which I sent to MSP which gives an idea of the position of my house within the trees, and the problems with the trees.

3. I have also attached correspondence from March 2012 where I felt let down as the new legislation would possibly not help my case.

4. I fully understand trees are important to the environment - but what good are trees that are dangerous to neighbouring properties?

5. Please also note I have questioned my neighbour if his insurance would cover any damage to my home - as one of the offending trees could be deemed not suitable for a domestic garden but only suitable for a park or woodland area.

6. My neighbour could not answer me and has never got me back to say he has looked into this.

7. Surely in cases similar to mine there should be a law to protect me?

8. There must be other vegetation that could be planted by the owner of the offending trees that would not in any way block my view, sun, light and potentially cause major damage.

9. Please note the points below I wish taken into account regarding my plight - my neighbours also have the same concerns and have complained:
   - The trees in question have blocked my view of the Firth of Forth and Lammermuir Hills from my kitchen window and other windows are also affected.
   - Loss of sunlight in the garden in the morning
   - Loss of light
   - Loss of value to my home if trying to sell as a surveyor/home report would mention the problem of the roots and potential damage to foundations/drains
   - Loss of value to my home due to lack of sunlight in the garden and light in my kitchen.
   - Drains to the back of the house could be affected by tree roots and damage caused
   - Foundations of Lismore Crescent could also be affected by tree roots which would cause major damage
   - Issue of Health & Safety regarding falling trees due to high winds
   - House Insurance cover by the house owner may not cover damage/major damage caused by the offending tree/s (see note above)
Mess from falling leaves and pine needles which I or my retired husband have to sweep up, bag and carry upstairs then deal with in the appropriate manner.

Note: Copies of correspondence were provided with the submission, but are not reproduced online.
1. I am an arboriculturalist and tree surgeon with a reasonable degree of experience and knowledge in plant physiology, high hedge management and neighbor dispute resolution. I would like to contribute my thoughts on this matter to the Committee's deliberations.

2. If even a small number of parties have no other way to resolve the misery that can be experienced by living in the permanent shadow of a high evergreen hedge, the Bill is to be welcomed, supported and made to work as legislation in the most pragmatic arrangements possible. The following are my comments and suggestions in that last regard. They cannot be neatly categorized to answer the list of questions in the 'Call for Evidence', so I will also try and answer those questions in a way that covers my comments and suggestions.

3. (a) It should be borne in mind that what the Bill would do is to create a legal right to light for the first time, a right that is currently enjoyed only by a few through rare servitudes and wayleaves or through enforceable ongoing planning conditions. The corollary of that right is that under the proposed legislation the neighbour's property will be burdened by that right in all time coming. All land owners are of course entitled, under the Human Rights Act, to the peaceful enjoyment of their property and to respect for their private and family life and their home; the right to property cannot be taken away except in the public interest. One can envisage situations (indeed, we encounter them regularly) where a hedge that is blocking light has been put there by the neighbor to protect his privacy. These are matters between individuals, not matters of public interest. The Bill as drafted seem too offer no compensation, comfort or protection to the neighbor who may find his property burdened forever by the loss of that privacy, purely for the benefit of one person and for no public benefit. One must tread carefully in deciding if the Bill serves any public interest and if not a fair balance of rights and burdens must be struck.

4. A suggestion about how this might be achieved would not so much be to curtail an application being served by a person whose light is deprived but to ensure that the Local Authority in arriving at a decision to issue a Notice must strive to achieve that balance. The Bill (s.6(4)(b)) already says that that (quite properly) Local Authority must take into account any representations made to it, but ultimately its statutory obligation will be to ensure that the owner has light and not that the neighbor has privacy. I believe it would be fairer, more just and more in accordance with property rights to state somewhere (perhaps as a new s.6(7)(c)) that the Local Authority mush explicitly have regard to the privacy of the neighbour.

5. (b) The wording of the existing English legislation relates to the matter of whether the "reasonable enjoyment of … property is being adversely affected by the height of a high hedge". The Bill on the other hand says relates to where a high hedge "adversely affects the enjoyment of the … property which an occupant of that property could reasonably expect to have". It is fundamentally important that
the legislation will cater for the expectations of a reasonable person and not necessarily of the specific expectations of the applicant. Within the normal distribution of views among people, some would have the hedge away completely and some would allow it to flourish to afford protection, biodiversity, bird shelter etc. A reasonable middle line must be drawn. I wonder if the Bill’s wording does that anywhere as near as the English Act. The words “to have” in the Bill are superfluous and ungrammatical. ‘Adverse’ can mean simply ‘unfavourable’. Surely what is intended is that there is likelihood of a Local Authority upholding an application if a high hedge “unreasonably affects the enjoyment of the … property which an occupant of that property could reasonably expect.”?

6. (c) I am pleased to see acknowledgement of the conflict that could arise with a Tree Preservation Order. Where such an Order exists it is an offence to top or lop trees except with the consent of the planning authority, and even then subject to conditions. The Bill makes no mention of Conservation Areas, where the penalties for contravention are the same. Whereas I can see what s.11(2) of the Bill is trying to achieve, it would be clearer and more comprehensive if s.11 was titled Tree Preservation Orders and Conservation Areas, added a s.(11(2)(c) “includes a tree or trees which are in a Conservation Area.” and said that any work carried out to trees affected by the Notice are deemed to have the consent of the Local Authority. This would also cover the situation where a hedge has been planted and must be maintained to comply with ongoing planning conditions.

7. (d) I believe that it would be prudent to go a little further than the current draft of s.3(1) (applicants must take all reasonable steps to resolve the matter before applying) by making it a requirement for the applicant to state as part of the application the steps he/she has taken. This would avoid some vexatious or frivolous applications and would spare the Local Authority the inevitable researching into what steps had been taken and whether those steps have been all that were reasonable. This would keep application fees down, would speed the process up and would generally encourage pre-application resolutions. This is consistent with the Policy Memorandum which says the applicant ‘must be able to demonstrate that they have taken all reasonable steps to resolve the matter’. s.31 does not help because any Local Authority ‘guidance’ (if and when it is issued) can only guide on how to get pre-application resolution but cannot impose a new duty to have applicants state what steps to resolve have been taken.

8. (e) For similar reasons of speed and ease of reference and to avoid ambiguity I would suggest the application should require the name and address of the neighbour and the extent of the hedge affected. It may also be beneficial to require applicants to state what actions would satisfy the reasonable enjoyment of their property.

9. (f) The actions specified in a Notice ought to include the time of year (to avoid the neighbor having to cut during bird nesting season and running the risk of contravening the Wildlife & Countryside Act), and should allow for phased height
reductions so that, as recommended by British Standard BS3998 *Recommendations for Tree Work* and wider authorities on tree health, the trees do not suffer uncontrollable lateral growth, death or unnecessary health damage by excessive topping.

10.g) From what I have read, although the question has been raised of what happens when the Local Authority owns the hedge, it hasn’t yet been answered. Could it be resolved by allowing the application to be made to the Scottish Ministers? After all, there is no fairness in exempting one class of landowner from the rigours of the legislation. There could then of course be no right of appeal by the Local Authority.

Julian Morris B Sc, Dip Surv, Cert Pub Sect Man, Tech Cert Arb, PTI

**Answer to questions**

1. Yes.

2. No, the crucial point is that non-evergreen vegetation gives affected owners some degree of relief in winter when light is at its lowest. The inclusion of deciduous trees would raise issues about plant physiology that would require a much more considered debate, and would be beyond the scope of the Bill which has been presented on the basis of the argument that no further consultation is merited.

3. See comments at (d), (e) and (g) above.

4. No.

5. No, except insofar as my suggestions at (d), (e) and (g) above will make it easier for Local Authorities to fix a realistic fee.

6. I am not clear on the question, but my comments at (c) above relating to Tree Preservation Orders, Conservation Areas and other Planning legislation may be what is meant here. If so, yes.

7. None known.

8. (a) above, proper and fair reflection of the rights of the neighbouring proprietor (b) above, a better and clearer ‘reasonability’ test (f) above, measures to protect habitats, bird nesting and tree health (g) above, application to Ministers where Local Authority is neighbour
1. Regarding the definition of a high hedge being "...over 2 metres high and forms a barrier to light" leaves open the argument that while being over 2 metres it is not a barrier to light. Perhaps "full or partial barrier to light" in the definition would negate this argument. Further problems can occur not just in a row of 2 or more, a single evergreen can grow to a height and width that it is a barrier to light.

2. Decisions regarding high hedges should also include the problems with the overhanging branches of the said hedges. While there is a right to cut overhanging branches onto your property the cost can be prohibitive.

3. Other forms of hedging can grow to heights that affect the light and should be included as it is the same problem that is being caused by them.

4. Approaches should be able to be made through the Local Authority, where such a hedge exists, for a sharing of costs between the hedge owner and affected neighbours to remedy the situation.
Elderly or physically disabled members of the public

1. I am pleased to have the opportunity to express my views to the Committee.

2. I would expect that a clear majority of householders would agree that an eight-foot hedge is ample to maintain privacy. They would also consider it acceptable to trim their side of a neighbour's garden hedge provided the hedge height does not exceed around eight feet. I believe an eight-foot hedge could be maintained by a householder without raising any unreasonable safety issues. However, beyond about eight feet I believe hedge maintenance becomes potentially dangerous without specialist equipment which it would be unreasonable to expect the ordinary householder to have. The potential dangers are heightened should an elderly or physically disabled person attempt to control a neighbour's high hedge. Since it is predicted that an increasing number of elderly or disabled people can expect to continue living on in their own homes, I believe the Committee should give special thought to this aspect of the bill.

3. Generally, the bill should specify the acceptable height for hedges. The specification of this height should in part reflect safety issues and in particular issues relating to elderly or disabled people. The Bill should give powers to a Local Authority to act where a hedge owner refuses to maintain their hedge at this height. In such cases the Local Authority should notify the hedge owner giving them say 60 days to comply. If the hedge owner fails to act the Local Authority should arrange for the hedge to be cut and bill the owner accordingly together with a fixed penalty of say £100. Where a hedge owner is unable to maintain their hedge because of safety issues, such as those noted above relating to elderly or disabled people, then the Local Authority should arrange for the hedge to be cut and the hedge owner sent a perhaps modified bill without penalty.
Scothedge Position Paper

1. Scothedge today met with Mark MacDonald MSP and officials to discuss the upcoming 'High Hedges Bill'.

2. Mark said that the bill was likely to be published and start its passage through Parliament in mid-September this year. This was welcomed by Scothedge.

3. Mark also said that it was anticipated that under the legislation Local Authorities were likely to charge a fee in the region of £200-300 for each case they were asked to consider. Scothedge expressed concern that this fee may prove too expensive for many sufferers but it was pointed out that detailed discussions with local authorities might reveal their willingness to offer discounts and special rates to those in genuine need.

4. Scothedge however remain disappointed that the bill scope is likely to deny a solution to those cases which result from inappropriate use of deciduous trees or single trees. The Scothedge position has long been that whilst deciduous trees are less of a problem than evergreen or semi-evergreen trees, they still constitute a significant problem which causes considerable distress to many people.

5. Scothedge remains of the opinion, based on the experience and evidence of its members, that there is no difference between the negative effects of a deciduous hedge compared to one formed from evergreens. Scothedge believes that media sensationalism using headlines such as 'Leylandii Wars' has led to the perception, even amongst politicians and professionals, that the problem is uniquely one of evergreen hedges. The Scothedge publication 'A Growing Problem' fully examines and explains this situation, with verifiable case studies, and Scothedge feels that those who seek to influence this debate should at the very least have studied this evidence.

6. Scothedge pressed Mark and the officials for a clear explanation as to why they remain reticent on the question of deciduous trees and the answer appears to lie in concerns raised by local authority tree officers, under the umbrella of COSLA. Scothedge requested sight of the minutes of the relevant meetings and said that they intended to approach the local authority representatives directly. Scothedge wishes to understand COSLA's concerns about the inclusion of deciduous and single trees and offer suggestions which might ease these concerns. It was agreed that the relevant minutes would be released to Scothedge.

7. These concerns seem to be as follows:
   - Inclusion of deciduous trees and single trees in the legislation would escalate the number of cases to a point where action required of local authorities would be prohibitively expensive for them.

Scothedge response:
8. The public consultation responses and Scothedge's own data, clearly show that growers of deciduous and single trees are responsible for a significant proportion of the problems in Scotland, but that these cases are in the minority compared to the evergreen cases. There is simply no evidence which justifies omission of a remedy for these cases on the grounds that there would be an overwhelming increase in the number of cases requiring intervention by local authorities. Scothedge continues to be frustrated by the paradoxical assertion by officials that whilst on one hand deciduous and single tree cases are a significantly lesser problem, dealing with them would overwhelm any remedial system!

9. It is widely accepted (based on experience in England and Wales) that the mere presence of legislation would cause many inconsiderate growers to capitulate. It is estimated that somewhere in the region of 95% of cases would simply evaporate once a legislative solution was available. The reality is that the remaining number of the already smaller volume of deciduous cases would probably place no significant burden on local authorities.

10. Scothedge suspects that COSLA members are concerned about their own liability for deciduous and single trees on public land, but Scothedge can find no evidence of any significant number of such cases. The public should not be denied access to the proposed remedy because of COSLA's perception and one possible suggestion is an exemption for COSLA members from any liability whilst allowing cases resulting from action by private individuals to be addressed. It could however be argued that if COSLA members are aware of any genuine problems then they perhaps should be prepared to address them and hence that any exemption should be time limited.

11. The effects caused by improper use of deciduous trees are less significant and somehow more difficult to define, quantify and address than those caused by evergreen species.

Scothedge response:

12. In over ten years of campaigning and case study, Scothedge has seen no difference in the overall effects of a poorly maintained hedge specifically because of the species employed. Scothedge is advised is that there is absolutely no difference in the legal position of species of plants unless such a difference were to be specifically created in the proposed legislation. Scothedge believes that the creation of any such distinction would foster confusion and offer opportunity for wasteful and costly legal dubiety and should be avoided.

13. Scothedge rejects suggestions that legal enforcement of any remedial action should be in any way dependant on the species involved. The more severe effects of evergreens were often the result of their rapid growth but over time deciduous species have caught up and proved equally problematic. Scothedge also rejects any notion that deciduous trees should be exempt from the legislation on the grounds of their increased vulnerability to justifiable control measures. (See 4 below)
14. Scothedge is not 'anti tree' and has never favoured attempts to define good and bad species, preferring to lay the blame on the action of growers rather than on the plants. Distinguishing between good and bad species also exposes the legislation and its administrators to ridicule if growers are able to perpetuate the distress caused to neighbours by merely switching to mature specimens of 'good' plants after any remedial order.

15. Scothedge believes that any species which is vulnerable to reasonable control measures is by definition inappropriate for hedging etc. and the default position should be removal rather than protection. There is no justification in denying remedial action in cases where such action might result in the tree or hedge being killed. The Westminster law remains flawed by this provision which allows lawyers etc. to play on 'the risk of killing plants subjected to remedial work' and tree surgeons being unwilling carry out work because they cannot absolutely guarantee the survival of such plants. Another unacceptable effect of this provision is that it offers increased protection to the worst cases (whether an inappropriate deciduous tree or a thirty foot leylandi) which because of years of neglect have become bigger plants and more likely to be vulnerable to appropriate and justifiable control measures. The authorities can easily avoid protracted challenges on the grounds of 'remedial action may kill the plants' by making sure that no such provision is included in the legislation.

16. Over time Scothedge has offered many suggestions and procedures which would help authorities assess the detrimental effects of improperly managed vegetation, including the publication ‘A Growing Problem’ and the issue of draft guidelines. Scothedge accepts that at the end of any legal process a decision has to be made which is bound to have a degree of subjectivity and that there is always a possibility that cases seen as 'worthy' end up being rejected by that process. As the final arbiters, local authorities will have a high degree of control over which cases proceed to the enforcement phase and hence there seems little justification in denying access at the beginning of the process to the relatively low number of people who suffer the effects of single or deciduous trees. Attempt to deny access to the process, purely based on the species of plant seem somewhat superfluous and arbitrary.

17. Scothedge has suggested that any remedial process should consist of several phases, each one of which would see cases being resolved as all parties involved became increasingly aware of their position. This would not only encourage growers to take appropriate action but would also discourage those inclined to create spurious and vexatious cases; the latter being further discouraged by any 'up front' fees. Early phases should include issue of guidelines and mediation with local authority arbitration and enforcement needed only in the most contentious cases.

Derek Park
Scothedge Policy Officer
14th June 2012
SUBMISSION FROM ANDREA BROOKES

1. It is not just hedges that cause significant loss of amenity trees are a significant problem too. I unfortunately have a neighbour whose idea of gardening is to simply let their garden run wild which has resulted in every sort of tree, shrub and weed run a muck. They have a maple which had grown so large directly opposite our and extremely close to our sittingroom window and so close to the boundary that it's branches prevented us opening windows in the rear of our house and were battering off the roof every time there was any wind. It was so dense that throughout the house we had to have electric lighting on all day every day. After pleading for four years the tree was trimmed two years ago which was brilliant for a few months but this has simply resulted in it growing more densely than ever and we are now back to living in constant artificial light. The regrowth is not yet in contact and damaging our property but will not be long before it is. Their trees seed and because part of the structure of the gable of our house forms the boundary wall embed under our house foundations and damage them.

2. I am resolved having just paid a substantial bill to have stonework thus damaged repaired that any future damage due to this neighbours complete disregard to any pretence at neighbourliness and I will simply claim my house insurance and let them take her to court to recover the cost to them of claims brought about by her complete disregard to keeping her 'wild' garden within her own property.

3. Some people might think that having your property blocked from natural light and air by enormous shrubs and trees many 20-30ft and dozens double that and more is not a serious problem but once you have been forced to live in near complete darkness and have roots constantly damaging your house foundations and branches damaging your walls, roof, windows and drainage, day in day out, year in year out as we have been, it seriously affects your physical and mental health. The neighbours garden is so dense that a highways official who was investigating complaints of their unkempt trees causing a hazard on the main trunk road (complainant was the local bus company who's deckers were being regularly damaged by branches) did not believe me that our house was there he had been unable to see it from the helicopter he had been in doing an arial survey. Only when he came and did an on the ground survey of the problems did he realise that our house was here.

4. Any legislation which might prevent neighbours letting plants grow to heights that cause deprivation of daylight has to be taken seriously but please do not limit it to a hedge.

5. I love trees but in proximity to housing some species are not appropriate unless they are managed. Perhaps a duty of management would be more appropriate.
Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details.

1. It is my opinion that the definition of high hedge is too strong. I disagree that 2 trees or shrubs planted closely together should constitute a hedge. Instead this number should be greater – i.e. 3 or more. Also a hedge of 2 metres is a reasonable height as this creates privacy within a property. It is unreasonable to have a hedge of 2 metres to be included. This should be extended to 3 metres.

2. Alternatively a simple formula could be used which takes into account the height of the hedge and the distance from a neighbouring property e.g. a 2 metre hedge which is 1 metre from a property is likely to be more of an issue than if it were 15 metres from the property. However there is no room for this distinction in the current bill.

Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why?

3. No, the bill should be limited only to hedges, with the specific focus on people who deliberately use cypress or other evergreen hedges to intimidate or generally make life difficult for neighbours. Native coniferous hedges made up primarily of Yew and Juniper should be exempt as these are rare and provide important biodiversity and habitat. The definition of ‘semi-evergreen’ is confusing and must be clarified or removed altogether. As I understand it, this can refer to: species which shed their leaves less often than once per year, hedges which are made of a mix of evergreen and deciduous trees or shrubs (but not a majority of deciduous trees). This definition is confusing to say the least.

Do you have any comments on the proposed approach to dispute resolution as set out in the Bill?

4. The powers of local authorities should only come into play if the mediation and conflict resolution has failed and this is satisfactorily demonstrated by the person making the application to the local authority.

Do you have any comments on the proposed fees and costs?

5. The freedom to charge fees and costs should remain with the local authority. Costs charged should be reasonable in covering the costs of the operation.

Any other issues relating to the Bill which you wish to bring to the attention of the Committee?

6. I am wary of this change in legislation. In several of the situations where I have worked in, the fact that neighbouring properties do not have a right to light that is shaded out by adjacent tree growth has been a key argument in preserving tree
cover and biodiversity. Currently working in a local authority, I receive a number of complaints per week from people who want otherwise healthy trees cut back or removed in order to allow more light into their garden/property/conservatory, often in a situation where the trees have been there longer than the property.

7. A common situation is for a proprietor to build a conservatory or sun room and then complain about adjacent trees shading out light. This is unacceptable and there should be provision within legislation that if trees or shrubs predate adjacent property or dwelling place then the owner of the trees or shrubs should have less obligation. Are Scottish Ministers prepared to introduce a ‘right to light’ for residential properties as this bill seeks to do. This could have potential repercussions for other situations and this right to light applied to situations that the bill has little relevance to.

Neil White
Trees and Woodlands Officer, Stirling Council
Scottish Tree Officer Group member
Associate member of the Institute of Chartered Foresters, Institute of Chartered Foresters South Scotland Regional Committee member
SUBMISSION FROM PAMELA CAMERON

1. I am delighted that Scotland is moving forward on the ‘High Hedge (Scotland) Bill’.

2. My property is bounded on one side by twenty leylandii trees and I have an active interest in this legislation. Having read through the proposed Bill (October 2012) and the additional Explanatory Notes and Policy Memorandum, the following are of concern to me:

View Blocking

3. Will the Bill prevent vindictive or careless blocking of asset views?

4. My property did have open views across many fields in the Fife countryside, all the way to the northern Scottish hills and mountains. My neighbour has not maintained his twenty leylandii which now block the north side of my ground and these views have been removed. (I now have to go into my loft via a ladder to catch sight of these views over the offending trees).

Hedge Removal

5. Will the Bill authorise removal of a high hedge if trimming is likely to damage it?

Fees for Inspection

6. I have suffered the behaviour of the hedge owner for many years. Why should I alone pay for relief?

Pre-application requirements

7. What will be deemed to be all reasonable steps to resolve the matter before making an application?

8. As a Widow and Older Person on my own dealing with a neighbour is not easy. On at least three occasions in previous years, I approached the owner of the trees, asking that the trees be maintained, without resolve. I felt very vulnerable.

9. I trust the above concerns will be addressed within this Bill.
Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details;

1. Response: - Yes, the Council agrees with the definition of a high hedge. The definition as detailed within the Bill is specific enough that it leaves no room for doubt. The definition is clear for the purpose of the Bill. Part of the definition is that the hedge ‘forms a barrier to light’ but should the definition also include the other general nuisance caused by a high hedge. For example, the effect of visual domination caused by the sheer scale of the hedge maybe enough to prevent the reasonable enjoyment of a private garden.

Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why?

2. Response: - No. To include other types of vegetation further confuses the issue. There is also a risk that if this legislation included individual trees for example, then it could be used to require inappropriate works to trees covered by a Tree Preservation Order.

Do you have any comments on the proposed approach to dispute resolution as set out in the Bill?

3. Response: - In preparing guidance the Scottish Ministers (reference section 31 sub-section (1) for the Bill) should make clear the due process an applicant has to have gone through before an application is made to the local authority. The use of examples must be considered as part of the guidance as to when is an appropriate time to contact the Council. The form of the dispute resolution should be detailed as part of any application to the Council and must include a level of detail that demonstrates applicants has taken any necessary steps to resolve the matter before approaching the Council. Any guidance note also needs to make it clear as to the role of the Council in resolving the dispute. This is to ensure that both the applicant and the hedge owner are clear as to the level of and reasons for the involvement of the Council.

Do you have any comments on the enforcement procedures proposed under a high hedge notice?

4. Response: - It is right that if the decision notice is not complied with then local authority has the right to carry out the works and recover the costs. It is also right that in issuing a ‘notice of liability for expenses’ this is a burden on the land. This is more likely to ensure that if the Local Authority does have to carry out the
required works then they can be sure of recovering the costs. It is hoped that this will be a sufficient deterrent to avoid high hedge disputes going this far.

**Do you have any comments on the proposed fees and costs?**

5. **Response:** - The Council agrees with the Bill that each individual Local Authority has the right to set their own fees. There is no doubt that dealing with a high hedge application will require additional resources and therefore it is right that local authorities can determine the level of fee required to carry out this duty. The effectiveness of individual local authorities to determine high hedge applications will vary between local authority areas and this will be reflected by the level of fee charged.

6. The costs recovered should vary based on the nature and the scope of the work that was carried out. It is important that the local authority should be able to recover all costs. It may be that the work is carried out by an appropriate contractor and that the costs are just recharged from the council with a surcharge for officer time and administration.

7. Any fee chargeable by the Local Authority and payable by the applicant should be paid by the owner/s of the high hedge if the complaint is upheld by the Local Authority.

**Are there any aspects of the systems used in other jurisdictions which should be included within this Bill?**

8. **Response:** - In determining an application the guidance note to be prepared by the Ministers should include details of a formula or mechanism for helping to work out the final height of the hedge such as they have in England, Wales and Northern Ireland. The high hedges and light loss guidance prepared by the Department for Communities and Local Government introduces a formula for determining the height hedge should be to prevent the blocking of light. Details of a similar formula / mechanism in Scotland can then be used as part of the reasons for the decision. By having a standard formula or mechanism that can be used by all local authorities in Scotland will ensure a fair and transparent system across the country. This would also allow for a fair and transparent appeals process.

**Are there any aspects of this Bill which would impact positively or negatively on equality of opportunity?**

9. **Response:** - No
Any other issues relating to the Bill which you wish to bring to the attention of the Committee?

10. Response: - In order to protect against damage or disturbance of protected species the cutting down or reduction in height of a high hedge should be done with careful consideration of the timing of the proposed works. For example no works to be carried out from March to August during the bird nesting season. Prior to works being carried out a survey should be done to establish the extent of any protected species present in the hedge and the timings of the works adjusted to prevent damage or disturbance.

Aberdeen City Council
SUBMISSION FROM JAMES ROBERTSON

1. I have been following this process with high hopes for quite a few years now. I am very disappointed that the bill will not help us at all since it only includes evergreen hedges. Our house and garden is blighted by high deciduous trees which severely block our sunlight and which are also now a tree fall hazard to our house. The bill for some reason, which I cannot understand, does not take account of this type of problem which is fairly common and often more severe than evergreen high hedges. I would also note that applying to the local council to have the trees dealt with may not be ideal since it is often trees on Council land which are the problem.

2. I believe that the bill as it stands will only deal with part of the issue and will still leave a major problem which will not go away. There is an opportunity to include deciduous trees and single trees of all types in the bill. I believe that the bill should do a complete job instead of a partial one.

3. Perhaps too much account has been taken of local authority concerns, maybe because they own many of the problem deciduous trees and do not want the bother of dealing with them, no matter what problems they cause to their constituents.

4. I also believe that too much weight has been given to the views of tree experts who, in my opinion, are always biased towards retaining problem deciduous trees rather than removing them or reducing their height to alleviate the severe problems they cause to people.

5. The most weight on this issue should be given to the opinions of people whose lives are blighted by high trees of all types.

6. I would therefore urge the Committee to reconsider the wording of the bill to include single trees of all types and deciduous hedges.

7. I sincerely hope that the Committee will support the amendments to the bill which I have requested.
1. I am writing to give my support to the High Hedge (Scotland) Bill introduced by Mark McDonald. I am an architect who has professional experience of the effects of high hedging on domestic properties both in Scotland and England. High Hedge legislation is well overdue in Scotland but the Bill as drafted has a number of issues that need to be addressed. These issues come mainly from the fact that the Bill is a copy of the Westminster High Hedge legislation and without amendment is not suitable for Scotland. These amendments are:

2. The Action Hedge Height calculations used in the Westminster High Hedge legislation are based on the southerly latitude of England and are therefore unsuitable for Scotland. When a high hedge inspector assesses the action height of a hedge he uses the calculations given in the Office of the Deputy Prime Minister: Hedge Height and Light Loss document [1]. These calculations have been formulated based on sun angles in England. As Scotland is located in a more northerly latitude the effects of a hedge are amplified because the sun is lower in the sky throughout the year. Consequently the hedge height calculations need to be adjusted for the latitude of Scotland.

3. Figure 1.1 shows the effect a hedge would have on a house in both London and Edinburgh on the 21\textsuperscript{st} December (the shortest day of the year). The angle of the sun at midday in London is 15.1 degrees but only 10.7 degrees in Edinburgh. This would give the house full sunshine in London but leave the house in the shade in Edinburgh.

4. This angle becomes less the further north the hedge is located as shown in Figure 1.2. The sun is always lower in the sky in Scotland regardless of the time of year.

<table>
<thead>
<tr>
<th>Location</th>
<th>Angle of Sun on 21\textsuperscript{st} December</th>
</tr>
</thead>
<tbody>
<tr>
<td>London</td>
<td>15.1 degrees</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>10.7 degrees</td>
</tr>
<tr>
<td>Inverness</td>
<td>9.1 degrees</td>
</tr>
<tr>
<td>Kirkwall</td>
<td>7.6 degrees</td>
</tr>
<tr>
<td>Lerwick</td>
<td>6.5 degrees</td>
</tr>
</tbody>
</table>
5. Scotland should therefore have lower Action Hedge Heights than England. A better method for defining Action Hedge Heights in the Scottish Bill would be to use the latitude of the hedge location in the calculation. This system is used in the Westminster legislation, but only for solar features. A description of this system and the formula used for calculating the Action Hedge Height using the latitude of the hedge can be found in Annex 4 of the Hedge Height and Light Loss document.

6. With the importance of renewable energy and the Government’s ambitious targets on solar energy, the use of solar features such as solar panels and passive solar houses utilising large areas of glass to absorb sunlight heat are more essential than ever. There is increasing pressure on architects to build evermore energy efficient houses by utilising solar features and by positioning houses to obtain the greatest sunlight. As an architect I am very aware of the devastating effects a high hedge can have on these solar features, many of which are very expensive to install. I have seen a number of instances where vindictive hedge owners use hedging to deliberately block sunlight from these solar devices. This behaviour will only increase as more energy efficient houses are built and new solar features are installed on existing houses.

7. The Westminster High Hedge legislation has addressed this issue to some extent in Annex 4 of the Hedge Height and Light Loss document and goes some way to define lower hedge heights for solar features. It is very important that the Scottish Bill also includes this amendment to the hedge height calculations. As solar features are more important now than when the Westminster Bill was drafted a decade ago, I believe this area needs to be given greater emphasis in the Scottish Bill.

8. The definition of a high hedge in the Scottish Bill is too narrow and will allow many high hedge cases to escape the legislation. Specifying that only evergreen or semi-evergreen trees and shrubs are included will allow vindictive hedge owners whose hedges are caught by the narrow legislation to simply switch to a different species such as beech or hornbeam. These hold onto their dead leaves throughout the winter and have the same light blocking properties as evergreens. In winter even bare deciduous hedging can block considerable light due to the intertwined matting of their branches.

9. The Isle of Man adopted the Westminster bill in 2005 but modified the description of a hedge to prevent this from occurring. Their definition of a hedge is:

In this Act “high hedge” means so much of a barrier to light as -

(a) is formed wholly or predominantly by a row of 2 or more trees or shrubs; and

(b) raises to a height of more than 2 meters above ground level.
10. This Isle of Man definition is more suitable to Scotland than the definition proposed in the Scottish Bill. It would be left to the discretion of the high hedge inspector to decide whether action should be taken on a high hedge complaint regardless of species. This would bring deciduous hedging under the control of the legislation and leave no loopholes for hedge owners to exploit.

11. As previously stated deciduous hedging should be included in the Scottish Bill. There is no evidence to suggest that bringing deciduous hedging into the bill will lead to a large increase in the number of high hedge actions being taken.

12. The legislation in the Isle of Man has worked extremely well in this respect. However in the Scottish Bill Policy Memorandum paragraph 110 on page 20, Mark McDonald states:

“My view is that extending legislation to include trees and deciduous hedges increases the complexity and difficulty of decision-making in considering such cases in comparison with evergreen hedges. In my view, those difficulties – and the consequent additional expense for all involved – are demonstrated by the recent appeal case of Boardman versus the Braddan Commissioners heard by the High Bailiff’s Court sitting at Douglas on the Isle of Man which relates to a deciduous hedge. The decision itself extends to 18 pages and the High Bailiff noted that the —amount of paperwork generated by this appeal has been somewhat large”

13. The Isle of Man Boardman versus Braddan Appeal [3] decision extending to 18 pages is by no means unusual for a Court heard appeal. Most of the transcript is simply describing the history of the case, explaining the findings of expert witnesses and recounting the complexity of the hedging.

14. The legislation in the Isle of Man differs in that appeals are not delegated as they would be in Scotland, but instead are heard in Court and therefore generate more paperwork. The High Bailiff explains this in Paragraph 6 of the Appeal [3]:

“The amount of paperwork generated in this appeal has been somewhat large. As with boundary disputes, disputes regarding trees and hedges are often emotive which perhaps explains the energy with which the parties involved have addressed matters. The legislation I suspect was designed to provide a simple local remedy whereby local authorities could adjudicate on matters and reach a decision. Unlike in the UK where similar legislation allows an appeal to the Secretary of State only on the papers, here the rules do not restrict how appeals are determined which has resulted in the case being dealt with on a rather adversarial basis requiring a day in court. That said the case has not been as costly, lengthy and confrontational as a High Court civil action might have been.”

15. I therefore believe using this case to justify not including deciduous hedging to be erroneous.
16. Obscuring a view is a very important issue to many property owners. A view is sometimes the first target a vindictive hedge owner will wish to remove from a neighbour while protecting the view for himself. This action will have a financial impact on the value of the property as well as causing distress to the owners. I believe the Scottish Bill should assess this fact when determining Action Hedge Heights.

Summary of changes that should be made to the Scottish High Hedge Bill

17. The Action Hedge Height calculations should be lower than those used in the Westminster legislation due to Scotland’s northerly latitude.

18. Emphasis should be given to the effects of high hedging on solar features such as solar panels and passive solar houses.

19. The Scottish Bill should adopt the more appropriate hedge definition used in the Isle of Man Act 2005.

20. Deciduous hedging should be included to prevent loopholes.

21. Loss of views should be taken into account when setting Action Hedge Heights.

References


In November I submitted written evidence on the High Hedges bill and have since been following the oral evidence sessions with interest. I am an architect who has experience of high hedging on properties in rural areas and noted a couple of points made by witnesses that could lead to deficiencies if written into the bill.

1. In the oral evidence session on 5th December it was stated by Angus Yarwood of the Woodland Trust Scotland and Aedan Smith of the RSPB that people who buy a property next to commercial land do so in the full knowledge of what they are purchasing and therefore commercial land could be excluded from the bill. Although they were referring to commercial woodland it would be important that any exclusion in the bill did not extend to commercial farmland.

In my experience it is not unusual for a house to be built in open countryside or on the edge of a village adjoining farmland only to have the neighbouring commercial landowner plant trees around the house to remove the building from his view. The problem is augmented because the landowner has the space to plant a substantial hedge and does not have to experience the adverse affects, as he will live some distance away. The hedge will very often be left unmaintained to grow to full tree height causing substantial problems for the property owner. I notice written evidence HH1 from Jim Paxton is characteristic of this kind of problem. This situation can even occur where the commercial landowner sells the plot on which the house is subsequently built. The number of these cases will only increase with the escalating demand for new housing.

It would therefore seem unjustified that this group of property owners are excluded from the scope of the bill just because the hedge is growing on commercial land and where the hedge didn't exist before the house was built. If commercial land was excluded in the bill then perhaps there could be a sub-clause which states that if the house was built before the hedging was planted the high hedges law would still apply.

The Westminster Act (and the Scottish Bill as currently drafted) make no distinction between domestic and commercial land on which the hedge grows, only that the hedge must affect a domestic property. This seems the most sensible solution and treats each case on its own merits.

2. Both Dr Maggie Keegan of the Scottish Wildlife Trust and Angus Yarwood of the Woodland Trust Scotland stated that they wanted the definition of a hedge to be "non-native evergreen or semi-evergreen". They also stated this in their written submissions. Their intentions are to protect native juniper, yew and holly. However this would also make Scots pine exempt from the legislation. This native evergreen conifer grows up to 36m (120 feet), is used extensively in forestry, has dense foliage when grown as a hedge and has a moderate growth rate. I believe Scots pine would quickly become the preferred choice for replacing species such a leylandii and because of it's larger root
system would cause more problems for underground services and building/wall foundations. Scots pine is widely available in nurseries and can be purchased from around £0.90 per bare root tree.

Please consider these two points and I look forward to a well defined Scottish High Hedges legislation.

Peter Robinson

January 2013
1. I would urge consideration:
   1. To include deciduous trees in this bill.
   2. To include obstruction of street lighting into neighbours gardens thus reducing security.
Local Government and Regeneration Committee  
Stage 1 scrutiny of the High Hedges (Scotland) Bill  
December 2012

SUBMISSION FROM TOM PYEMONT

1. I would like to seek that the definition is to include single species of trees, not restricted to semi or evergreen.

2. My reason is clearly illustrated in the attached photograph/drawing, this single tree causes overshadowing all year round but considerably worse in summer.

3. The neighbour appreciates that this tree causes nuisance and did lop some branches, giving the tree a surrealistic appearance but has not reduced the overshadowing by very much.

4. I had planned to install solar water panels to help with rising costs of oil - we live far from mains gas and have no other form of heating - but the overshadowing of the tree prevents an efficient installation.

5. Now past retiring age and with a heart condition I find that the additional stress caused is very debilitating.

6. Please expand the definition to include single trees/deciduous trees.

7. With regard to Fee payable to Local Authority I seek that there is a relaxation for those over retirement age.

Note: Photographs of a private property were provided with the submission, but are not reproduced online.
1. I write from the perspective of having communicated over the years with hundreds of Scottish families facing devaluation of their homes by inconsiderate or vindictive High Hedge and other Nuisance Vegetation owners.

2. The rationale is that should a man made structure adversely affect a residence, then it will be subject to planning regulations. Nuisance vegetation should be no different. We have several cases where fences have been refused only to have them replaced by a far worse growing hedges or trees (Gretna Case) or to have hedges and trees planted simply as a vindictive act (Largs Case). After drawing attention to this issue over the entire life of the Scottish Parliament, two Public Petitions and three Consultancies it would be presumptuous of me not to credit MSPs with a comprehensive understanding of this issue although realisation perhaps came late that the reason for the vicious and interminable disputes was the immunity of grower’s of plants from any regulation within private property.

3. My Public Petition of 2006, PE984 demonstrated that the devaluation was caused by factors such as loss of light, loss of asset view and many other problems such as causing gas boilers to become unsafe, loss of T.V. signals cessation of solar heating and many other significant reductions in the value of a home home as a residence. Again MSPs are well aware of constituents suffering such problems.

4. It has been demonstrated that many if not all of these problems are not specific to a definition of a hedge or vegetation species and that therefore any Scottish solution should deal directly with the effect rather than any uncertain definition of a plant. PE984 led through to the collaboration with Fergus Ewing and the Community Safety Unit which drafted the 2009 High Hedges and Other Nuisance Vegetation Consultation. Great effort went into this first SNP session where the Scothedge Team were invited to compile comprehensive “Guidelines” against which the problems could be judged and adjudicated.

5. The main aim was to replicate a planning type process where the reality of a claimed problem was inspected by an impartial third party team. In cases where friendly resolution was not forthcoming, the independent inspection would take over the contentious situation and be empowered to require or to implement a remedial solution. In the main, neighbours are happy to co-habit the residential lands with their neighbours in a reasonable and constructive manner but because the party causing the problem is immune from any sanction, this leaves the door wide open for the long history of interminable disputes which in some 15% of cases require police attendance. The High Hedge or other Vegetation owner can be vindictive without redress. Unfortunately too many people are just happy to take advantage of this.

6. It has frequently been stated that there is no right to light or view in Scotland which presents legislators with a problem should they perceive that this is the fundamental “missing link”. But the approach might simply be to require a duty of care which recognises that loss of light or loss of view adversely affects the
reasonable enjoyment or value of a home and garden within appropriately drawn up guidelines. By making available inspection by an independent body, the “reasonableness” can be judged without requiring the vested interests to confront each other as winners and losers should this not be an equitable option.

7. The Fergus Ewing Antisocial Behaviour study in the last Parliament quite rightly could not find a home in Appendix L for the issue. It was stated by Cathy Jamieson (Justice Minister) previously that this was not an antisocial issue. John Home Robertson (2006) stated that it required greater authority than a Member’s Bill to legislate. There is no desire to make criminals out of hedge and tree growers but rather ensure that they behave reasonably within the interests of neighbouring land dwellers. This is surely a function of Local Government.

8. The trauma faced by residents suddenly finding themselves powerless to maintain their properties and falling into bitter strife with their neighbours should not be underestimated. Nor should it be underestimated just how nasty such disputes can turn and the stresses which they invoke even to the detriment of health. The victim is locked in to a deteriorating situation and very probably cannot even sell to get out.

9. The Scottish Parliament is now dealing with this matter with many MSPs having years of experience of the issue. Personally I have always believed that Holyrood can address the problem without the awful anomalies of the ill thought out anomalies of the Westminster salvaged amendment, to their 2003 Antisocial Behaviour Bill. The failings of this Bill are largely hidden from the terms of the Bill and it might have been helpful to ask victims comments who have been left high and dry by this Bill.

10. My experience of meetings with MSPs has been both enjoyable and constructive and whilst I naively thought Scott Barrie was going to launch his Bill in 2005, it actually required this long gestation period to illuminate the real problem of neighbour immunity from a reasonable duty of care. Although Leylandii are frequently involved they are merely a press icon latched on to by those entering the topic at a inexperienced level. The Third Estate yearns for bloody battle which can certainly come, but that all results from a single vested party in a dispute holding all the cards. The independence of a inspection process playing to sensible rules and without emotional baggage, but having a last resort recourse appears the favourable solution which by its very existence will encourage the unreasonable party to go homeward and think again.

11. Since this is a personal submission, I would like to thank the many MSPs to have offered me good advice over the years and for the helpful and constructive collaboration with Fergus Ewing and his excellent Community Safety Unit Staff over the last Session, when the SNP majority was inhibitably narrow. I have sat through many Public Petition hearings over the last decade and fully appreciated the support and quality of this process.
SUBMISSION FROM NEIL SMITH

1. “The Bill enables local authorities to recover the costs of any such enforcement from the hedge-owner and to charge a fee for applications for a high hedge notice. “

2. Fees for application of a high hedge order should be set at percentage total costs, ideally 50%, of any imposed solution. This would be fairest to both parties.

3. This is completely subjective problem. The only moral imperative is to address your neighbours concerns. Any fixed application fee would ignore very extensive costs incurred by a neighbour who may have inherited the vegetation when they bought the property.

4. While it is fair that any neighbour who will not address their neighbours concerns could have a solution imposed on them. But this must cut both ways and costs should be fairly shared. A fixed fee could result in them paying only a small fraction of the total costs. This would represent a transfer of ownership without responsibility.
SUBMISSION FROM IAN KIRTON

1. Meaning of High Hedges minimum of 2 or more evergreen trees. Some individual trees can extend to widths of 5 metres or more which is as bad as a hedge.

2. The proposed charges to the complainant can be prohibitive to OAPs.

3. Some cannot sell their houses and move as nobody wants to buy their house.

4. In my own case:
   In SUMMER We cannot get any sunlight into our garden until after 4.30/5pm.
   In WINTER We do not see any sun at all due to the height of the trees and the lower height of the sun at that time.

5. Approaching the owner of the trees has had no effect.

6. If the law is passed and the defendant refuses to cut the trees and the Council has to enforce a compulsory order to deal with the matter it would seem only fair that the defendant should also pay the legal costs of the complainer.

7. Constantly looking into high trees can become very depressing and affect health.

8. We shall be very pleased to see an end to this situation.
Re Leyland Cypress Hedge at

It may be a worthwhile exercise to lay out the principal facts relating to the above.

The hedge was planted 27 years ago.

It is no longer a “hedge” but has grown into a row of trees bordering on ten houses.

The trees have now grown higher than the houses which is totally out of proportion to the small gardens they overlook, approximately 25 – 30ft.

The trees therefore have a very detrimental effect on the houses and gardens, drying out soil and blocking out light and several hours of sunshine, not to mention a view to the hills. Trimming overhanging branches is no longer a possibility due to the height.

The owner of the trees, who planted them herself, appears to be a lady who has adamantly refused all requests to reduce the height or remove the trees.

At this stage of their growth there is no sensible alternative to felling them. The cost of this is obviously very high, approximately £150 per tree has been estimated. The action suggested clearly has to be covered by new legislation, and would have to be enforced as considerable physical objection is envisaged by the owner. It is hoped that those concerned in introducing the necessary legislation can produce the results needed to end this very unsatisfactory situation without further delay. The trees continue to grow, month by month, which only exacerbates the problem for the residents. The longer it takes, the more difficult will be the task of removal. Those concerned have already endured this annoying and disturbing situation for a very long time and it can only get worse.

Therefore your urgent and forceful support in the Scottish Parliament is the only way that a normal state of affairs can be restored to those living in the shadow of the trees.

22 August 2011

Note: Photographs of a private property were provided with the submission, but are not reproduced online.
1. We wish to submit the following comments in response to the committee’s call for evidence:-

2. It is our experience in England that the definition of a high hedge worked in most circumstances. However, home owners have been known to plant 3-4 broad leaved trees in amongst their evergreen hedge (usually Leylandii) and thereby to get around the English legislation which defines the hedge as being solely evergreen. There may be similar issues in Scotland, where a resident is taken to task over their Leylandii hedge and then plants a few trees of different variety in order to avoid enforcement action.

3. The forms of vegetation that usually give rise to neighbourhood disputes are mostly Leylandii and related species.

4. The principle approach to dispute resolution should be for the neighbour to consider the use of mediation. In our experience this is an excellent remedy, although neighbours are often reluctant to pay, or even share the cost of mediation. There should be some consideration given to who funds mediation.

5. The enforcement procedures would appear to be entirely appropriate provided earlier stages of dispute resolution have been exhausted.

6. Should a neighbour be considered to have behaved unreasonably especially by refusing to comply with a notice, it is reasonable that they should have to fund when work is undertaken by the local authority. It would however, potentially compromise a neighbour’s right to the enjoyment of their garden if they have to pay for a high hedge notice.

7. It would appear that the system used in the English jurisdiction is mostly included within the Bill, and this should be sufficient.

8. The factor of financial hardship may deny an equal opportunity to people who cannot afford to apply for a high hedge notice, similarly an appeal against a high hedge notice would need to be funded and we would need to be sure the neighbour could afford this.

9. As well as the unbroken “green wall” that Leylandii hedges tend to grow into, there can be problems on the ground up to a distance of about one meter from the trunk of the trees. Very little will grow in this ground. Consideration should be given to cuttings from the Leylandii, issues with branches growing over a neighbour’s fence or up against a neighbour’s property, as well as to considering how to dispose of cutting and branches when a tree is trimmed or removed. Our experience is that removal and disposal of cuttings can be as contentious as the issue of the moving of the hedge in first place.

UK Mediation
1. I very much hope that legislation will be brought in to alleviate the problem of high hedges as my properties are affected by two high hedges. The first one is over 2.5 metres high and the other is 6 metres high. That is after this year's cut.

2. My neighbour also has a pine tree which could be 20 metres high which drops its needles all over my garden and house and we are constantly sweeping them up. The tree is approximately 3 metres from my house but their house is not affected by the needles.
HEDGING FOR PRIVACY

Introduction

1. The Bill appears to envisage two metres in height as an appropriate height for a hedge, should the local authority determine for reduction, but does not directly address the use of hedging for privacy, which may require further height in certain circumstances. It is such circumstances which I wish to draw to your attention together with experience of a local authority which suggests introducing some further detail into the Bill.

Discussion

2. Presumably taken from planning legislation “Amenity” is given as an appropriate consideration for a local authority to employ when determining an application for a Notice, but as shown below, when used in a planning context, this term has proved insufficient security for safeguarding privacy.

3. The following comes from experience.

4. We had neither wish nor need of a hedge until our neighbour built an extension some 8.5 metres distant from our house wall, erecting two windows and door to face our kitchen and family room with a clear view into both, then through into our dining area. A bright external light was also placed high beside the new door. Both his and our floors are raised 2 feet above ground level and the effect is therefore to afford occupants both houses an average vision height of seven feet and several inches above ground level ie a two metres barrier – a fence that height was put in place -could not provide privacy or shield us from our neighbours’ very bright exterior light, the latter making it difficult to work at the kitchen sink and surround.

5. We have therefore put in a hedge which has now grown high enough to eliminate these problems. To require a reduction to two metres would again face us with the intrusion noted above.

6. We do understand that a difficulty with legislating in this sort of context is that any detailed specification must lead to anomalies in practice and civil legislation therefore usually leaves such decisions to an adjudicating body, in this proposed instance the local authority. Guidance is provided in the expectation that adjudicators will take this on board when considering cases. In planning “Amenity” is already a necessary consideration.

7. I cannot speak for others, but our own local authority is Council, which in determining our neighbour’s planning application paid scant regard to either issues of amenity in the sense of privacy or to guidance issued by the Scottish Government. The question of “Amenity” was not seen as relevant to our request for maintaining privacy, including shielding from bright light, while our reference to
Scottish Government planning guidance was met with the bald assertion that there was no obligation on the local authority to observe that guidance.

8. To restrict the Bill's address of privacy issues within the context of “Amenity” would therefore allow this local authority and perhaps others to continue with the same lack of concern and appropriate consideration which characterised their approach to that planning decision.

Conclusion

9. We suggest that the Bill would provide some safeguard for the useful and necessary role of hedging above two metres height by expanding the section giving “amenity” to include “privacy” and “shielding from artificial light” as factors which the local authority are required to take into account when considering the height of a hedge under legislation.
Local Government and Regeneration Committee
Stage 1 scrutiny of the High Hedges (Scotland) Bill
December 2012

SUBMISSION FROM ROSEMARY MEYERS

1. I do not agree with the definition. It should be .... one which is mainly formed by **one**
or more evergreen, semi evergreen or **deciduous** trees or shrubs which is over 2
metres.........
SUBMISSION FROM MELANIE CHAMBERS

1. My neighbour has a very large dense Cedar tree with three trunks making it a very wide tree (wide as a hedge) which completely blocks my view and blocks the light to my garden. Would this sort of problem of single tree be covered by the new bill or is there to be a width measurement? Will a tree with 3 trunks be counted a one tree or three trees?

2. How will the new bill be enforced?
1. I wrote to my regional MSP about the problem I have with several extremely high trees bordering my garden on the south side and she told me that the Committee is asking for views from public. She also told me that trees are not as yet included in the proposed legislation.

2. I would like to make a case for people who have neighbouring trees blocking the light from their property. I have tried to reason with the neighbour explaining that her very high trees prevent light coming into all my rooms facing south (unfortunately my house faces south) and in 2001 we offered to contribute to pollarding the trees.

3. The neighbours were very unco-operative and refuse even to discuss it. Recently their next door neighbour was selling his house. He was told that the prospective buyers were put off by the trees next door. He then had to pay for his neighbours’ trees to be cut in order to sell the house.

4. I would like to make a plea that the legislation should make provision for banning certain types of trees that grow extremely high and are too near the neighbouring property.

5. The European Human Rights law provides for so many rights, some of them quite controversial, yet I have no right to light in my own house. How does this make sense? I am in my seventies, my eyes are not as good as when I was young and all I am asking for is to have what I think should be rightfully allowed me, namely light and sunshine (when we get it). So please consider including any obstruction to light be they hedges or trees.
SUBMISSION FROM ALISON BRYCELAND

1. My husband and I live in on the same side and 2 houses down from , who has been very active for some time now on the issue of an extremely high fir tree behind our houses in the garden of , whose garden borders onto the gardens of the entire block.

2. This fir tree has been growing steadily for the last 30 years, since we moved into our house, along with quite a few other trees along the back of all our garden walls. They were all planted extremely close to the wall and, as our gardens are all pretty small, the roots of the trees are all potentially a danger, not only to the wall itself, but also to the drains and the foundations of our properties.

3. The fir tree itself is enormous- at least one and a half times the height of and is also almost touching one of their walls and part of their roof. Certainly not suitable for a town garden of this size.

4. The other factors which are causing ourselves and the other neighbours on this side of the street considerable angst are the potential danger of huge branches falling down in the stormy weather, which we are experiencing ever more frequently and also the lack of sunshine reaching our gardens.

5. This fir tree is not only extremely high, but also very wide and from late summer onwards now we hardly get any sunshine at all in our garden and it's a similar story for all the other residents.

6. This obviously detracts from the enjoyment which we can all expect to have from our gardens and also has a detrimental effect on the plants and shrubs. I hope this will back up any other complaints, which you have received on this issue, before the high hedges bill comes up in parliament.
1. We, Pedro Gajardo and Evelyn Love-Gajardo, own our property at 104 Howden Hall Drive, EH16 6UX, Edinburgh. We have been living there for over eight years.

2. Since we moved in, we have been asking our neighbour Ms. Sandra Pollock to have her hedge cut. Unfortunately, she has not done anything about it; her hedge now measures at least 3.75 metres from the ground and continues to grow. As a result, the sunlight is blocked from our garden by this high hedge and we are denied this domestic right and enjoyment. The hedge blocks light to the garden, so plants are denied light, washing does not dry and the paving stones are damp for days after rain. We have to have our kitchen light on most of the day in winter due to lack of light. Please see our photographs showing the hedges in question.

3. Consequently, we are full agreement with the terms of the bill, as set out in the consultation document and feel that it is justified provide you with our evidence to help this Bill to become Law.

Note: Photographs of a private property were provided with the submission, but are not reproduced online.
1. In relation to the consultation process currently underway I would like to submit the following:

2. There appears to be an anomaly in relation to what the bill seeks to achieve. In consultation documentation the intent is to allow the peaceful enjoyment of property. Para 38 of the published material states:

"The Bill gives home owners and occupiers a right to apply to local authorities for a high hedge notice to prevent high hedges from interfering with the enjoyment of their property."

3. I concur with this objective and believe that it is the correct objective based on the actual problem and wider ECHR considerations. However, I do not believe that the definition achieves this aim and in particular it fails to address the following issues:

4. Problems with single trees and deciduous species as per the views expressed by Scothedge and with which I concur.

5. The peaceful enjoyment of property covers more areas than the reduction of light which is included in the definition. Reduction of light is in itself a very subjective matter and one that is open to opinion and difficult to correctly measure until the offending barrier is removed? How would this be measured in practice?

6. In my own experience I have had situations where the barrier i.e. trees reduced the temperature of the affected rooms by about 1 1/2 - 2 degrees centigrade. These trees were not on my boundary but about 10 feet in but they were about 50 feet tall and had a material affect on my home. In these difficult times solar gain from the suns energy is an important consideration and selfish neighbours who remove that opportunity also remove the opportunity to peacefully enjoy your property.

7. Similarly, high hedges that are not immediately on your boundary but grow to such an extent that they remove your views and feeling of space are just as much of a nuisance for those affected, particularly if you are housebound. Again, the definition does not address this issue, particularly for very large trees/hedges allowed to grow unfettered within towns.

8. Single trees and deciduous varieties. I have personal experience of this and the situation is that this single tree has grown so large that it affects the light in my home on two stories and blocks out a once beautiful view. As the tree is on the opposite side of the street it does not adjoin my boundary and I will be powerless to do anything about it using this bill. I have watched this bill with interest for this very reason.
9. I note COSLA’s remarks "COSLA supports a narrow and focused Bill as the experience of its implementation elsewhere provides comfort that costs will not be significant and numbers will not be unmanageable." It is my view that the Bill’s primary aim should be to address the problems based on actual experience of those affected. The Bill should not be drafted in such a way as to keep costs low and numbers manageable? Is the policy outcome not to deal with the problem rather than define it so narrowly that significant numbers of affected people remain affected by anti-social neighbours with no right to legal redress? If I cannot peacefully enjoy my property due to badly drafted legislation are my human rights not affected and if so with whom do I seek redress?

10. There should be provision for a general review of any obstruction/hedge/fence etc. on application to the Local Authority where the affected person resides and considers that the obstruction prevents the peaceful enjoyment of their property. In such cases, trees, hedges and other barriers whether immediately on the boundary, or not, could be challenged and those affected would have some opportunity to address the problem.

11. Overall, it is my view that any boundary within a built environment or bordering property should be limited to 1.8m unless authorised by the Local Authority and/or agreement of the neighbours. There should be no need to distinguish between fences and trees and types of trees as this makes no logical sense to me. It seems clear that planning laws would not allow a fence to go higher than 1.8m without permission so surely the starting point is about the size/scale of the obstruction affecting a person’s property and not what it actually is? In the Bill’s case the focus is on hedges but for the reasons stated above the obstruction i.e. hedge/tree etc. may not always meet the definition or be placed directly on the boundary. Despite this these hedges/trees cause the same problems that this Bill seeks to address but won’t.

12. In conclusion, the Bill is a welcome step in the right direction but it will not address single trees on boundaries, or hedges and trees left to grow wild that are not directly on a boundary. On that basis I would urge some consideration to point ‘g’ above and the removal of such a tight definition that excludes single trees or deciduous varieties.

13. I hope you can consider the points above as I am currently directly affected by such issues and locked in dispute with neighbours. For that reason I prefer to remain anonymous.
1. We are writing to make representations in relation to the above Bill. We are not members of Scothedge or any similar group, but are writing in an independent capacity as persons whose property is currently adversely affected by a high hedge. There are four matters on which we wish to comment.

The meaning of high hedge (clause 1)

2. We have no objection to the meaning of “high hedge” in clause 1 of the Bill, but we are somewhat concerned that the Policy Memorandum (para. 41) and the SPICe Briefing (p.7) both comment that the Bill is intended to “capture the commonly perceived problem of fast growing conifers in suburban areas.” It would be unfortunate if the perception arose that the Bill was intended to address the problem of high hedges only in suburban areas and if local authorities were to treat applications concerning rural areas with less seriousness than those from suburban areas. In practice, high hedges can be as much of a problem in rural as suburban areas. We hope, therefore, that in any future official commentary on the Bill/Act the reference to high hedges being a suburban problem will not appear.

The definition of an applicant (clause 2)

3. We are pleased that under clause 2 an owner/occupier of a property, the enjoyment of which is adversely affected by a high hedge, may be an applicant without it being necessary that his/her property adjoin the land on which the high hedge is situated; and that this is expressly spelt out in paragraphs 8 and 67 of the Explanatory Notes on the Bill. However, we regard it as undesirable that the land on which the high hedge is situated is referred to in the Bill as “neighbouring land” (see the definition of “neighbouring land” in clause 33(1)). This may give the erroneous impression that the applicant’s property must adjoin the land on which the high hedge is situated. It would be particularly unfortunate if that is how local authorities in future came to interpret and apply the Act. We therefore urge the Scottish Parliament to replace the term “neighbouring land” with a more neutral expression, e.g. “the land on which the high hedge is growing”, even if that is a bit of a mouthful.

The making of an application (clauses 2-7)

4. The Bill appears to envisage applications being made only by single applicants. But several properties may be adversely affected by the same high hedge. In such situations it would be desirable, both for would-be applicants and for the local authority considering the matter, if the owners/occupiers of all properties adversely affected by the same high hedge were able to make a joint application to the local authority, for which only a single fee would be payable. We urge the Scottish Parliament to amend the Act to this effect.
Bringing the Act into force (clause 37(2))

5. Clause 37(2) empowers Ministers to decide when the bulk of the Act is to come into force. We do not believe that this is desirable. It is not unknown, at least with Westminster legislation, that where ministers are empowered to bring Acts into force, such Acts do not come into force for several years. We appreciate that local authorities require a period of time to introduce the necessary administrative structures to deal with applications once the Bill has been enacted. But we do not think that this should be an open-ended period. We would therefore like to see clause 37(2) amended to provide that the Act will come into force a specified number of months after receiving the Royal Assent.
1. In regard to the High Hedges Bill I would like to make a few points that affect me and probably many others.

2. Why is a high hedge only deemed a high hedge because it is evergreen or semi-evergreen?

3. I have six sycamores bordering my property fifty to sixty feet high some of which are less than ten feet from my gable end. Last year I had a new roof put on because of damage by moss over the years. This year I paid £720 to get overhanging branches trimmed. The reason for trimming back the branches apart from protecting my roof was bird droppings, the branches were overhanging that much we could not hang washing out or sit on our patio because of constant bird droppings. The money I spent on trimming the trees back still does not give us any sunlight as it is just a solid wall of leaves and branches. I have approached my neighbour many times and have offered to pay for the trees to be topped off to a reasonable height only to be met with refusal after refusal. There is now no communication at all.

4. I ask the panel to please include deciduous trees as a High Hedge.
1. I am writing to you with regards to High Hedges and Other Nuisance Vegetation. It is not a problem I face in my own residence but it has been a long battle for my parents, who live next to a 17 foot hedge and many deciduous trees which have not been controlled. This has resulted in my 69 year old father up ladders cutting down overhanging hedges. Their house is constantly dark with virtually no natural light, and the garden, where my parents enjoy growing vegetables, does not yield well.

2. My professional background is geographical, planning, and policy so I feel I am able to critique other aspects of the current situation: firstly that of climate change – high vegetation must pose a threat to safety with high winds not necessarily during winter months when leaves are still on the trees (e.g. May 2010); secondly, I would have thought that hedges and nuisance vegetation should be subject to planning regulations if it affects someone else’s personal space; finally, there are obvious health implications with regards to the stress of dealing with the situation with neighbours. For this reason I feel that it is time that Scotland follows England and Wales with regards to policy, and that owners of nuisance vegetation are responsible and accountable for keeping vegetation (whether high hedges or otherwise) under control. Finally, I believe neighbours who have a problem with nuisance vegetation should not have to pay for attempting to get the problem sorted, even if this results in court action.

Margaret Currie (PhD)
1. DEFINITION - There are instances of a high hedge consisting of just one unmanaged tree, a mature conifer, the branches and trunk of which may extend to a total of say 10 ft or more across at the base or side of a property's garden and which - depending on compass point and density - keeps a small garden in dark shade throughout the year.

2. Deciduous trees should be included. Unmanaged, they not only create a light barrier during seasons when the light is strongest and most beneficial to health, they may grow to considerable heights; their weighty branches may be torn off during storms and demolish nearby property and may even threaten the life of anyone in the vicinity of a falling tree/branch. As has happened in my area several times in the past two years.

3. The 'high hedge' may consist of trees which are dying or dead and may thus prove a danger to nearby property(ies) even without the prompting of a storm, so it is not necessarily just a question of being a 'barrier to light' and/or height.

4. ROOTS - If no account is to be taken of the roots of a high hedge, how may this be addressed? Tree roots may be intrusive and dangerous to surrounding properties and would certainly affect the enjoyment of a property so threatened. In stormy conditions tree roots may be seriously weakened, particularly after a long period of wet weather; such roots going under property might tear up the foundations as the tree falls. Would a separate Bill need to be involved?

5. I note in your Section 34 there is power to modify the meaning of 'high hedge'.

6. FEE - It is hoped that an application fee would not be such a stinger that it would bar those with justifiable cause from making application. The Law may be open to all, but justice may be prevented by its cost.

7. With reference to your 6 (6) (a) - what would a 'reasonable period of time' be? Within 6 months? A year? Presumably if constituent(s) of a hedge proved dangerous (e.g. about to fall at the next puff of wind) then urgency would demand swift resolution.

8. Your 8 (2)(g) - the high hedge owner may fail to comply with the notice knowing that the authority may be unwilling to become involved in the legal cost of recovering expenses. Are there any specific penalties for failure to comply on the part of the high hedge owner other than interest accruing on authority expenses?

9. Thank you for giving me the opportunity to comment on this Bill.
1. Following the Committee’s call for evidence this submission addresses the following questions as outlined in the committee document;

1. The definition of high hedge
2. Other forms of vegetation to be considered
7. Impact on equality of opportunity

Definition of High Hedge

2. The Act, Section 1 (1) a, b, c, defines a high hedge in a much too narrow way. Deciduous trees are completely ignored.

3. It would appear that deciduous trees are ignored because of 1 (1) c which suggests the hedge must form a barrier to light. This assumes that the barrier to light is the only component that “adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have”, Section 2 (2).

4. This could not be further from the truth. While deciduous trees may not completely form a barrier to light all year round they can have an extremely detrimental effect on “the enjoyment of the property”.

5. Unmaintained deciduous trees can grow to huge heights dwarfing the nearby properties. They block sunlight in the summer, particularly where the trees themselves are striving for light and the trees compete with each other and just continue to grow to achieve that light.

6. The self seeding saplings then block light at the ground floor level and cause the covering to become even more dense.

7. Currently there is no mechanism available to neighbours to force owners to manage these trees and the unmaintained ground they grow on.

8. Even when a Tree Preservation Order, TPO, is in force the local authority has no power to force owners to manage their woodland even if it is adjacent to domestic property.

9. This leads to an impasse which the Bill does not begin to address, unmaintained, unmanaged deciduous trees growing to 10, 11, 12 metres high, considerably higher than most high hedges.

10. There is also a cost to the neighbour in terms of continually having to lop overhanging branches, annually having to clear gutters blocked with leaves, sometimes having to clear moss from roofs which has built up due to lack of sunlight as well as paying more for electricity to light darkened rooms.
11. In the 2009 Consultation 18% of the correspondence was concerning deciduous trees. That alone shows it is not an insignificant problem.

12. The argument against including deciduous trees seems to rest on one court case in the Isle of Man (Policy Memorandum Section 109, 110). I would submit that is not a sufficient basis for excluding deciduous trees. Indeed the Isle of Man Trees and High Hedges Act 2005 does not define a tree in any way, which must, of itself, leave that Act open to misinterpretation. (It is important to note that the complexity of the case has nothing to do with the fact that it is deciduous. This is a complex case which happens to be deciduous; it is not a complex case because it is deciduous. The complainant got back his daylight and that is what he asked for.)

13. The Policy Memorandum, Section 27, accompanying the Bill also notes “the deterrence value in simply having legislation in place and how this could hopefully solve many of the issues”. There is no reason to suppose this would be any less effective for deciduous trees.

14. The Policy Memorandum, Section 11, also admits “there is no such restriction on planting trees or shrubs to form a hedge”. That confirms that trees can “form a hedge”.

15. Section 34 of the Bill allows Scottish Ministers to “modify the meaning of high hedge”.

16. While this may be a necessary inclusion to allow future change it also admits to there being doubt about the current definition of “high hedge”.

Other forms of Vegetation

17. The Consultation undertaken in 2009 was “on High Hedges and other Nuisance Vegetation”.

18. It was the expectation of those taking part that the ensuing Bill would include “Nuisance Vegetation”.

19. Research Findings No.18/2010 states “nearly half of all respondents supported the definition of high hedges and nuisance vegetation being set down in legislation”.

20. “Many highlighted the limitation of the definition used, with some suggesting it should be based on the impact of the hedge rather than trying to define the hedge itself”.

21. The full analysis is shown below.

Question 6(a)
If you believe the above definition is not appropriate, why not, and – if you think a definition is required – what should it be instead?

3.61 A total of 246 respondents answered this question. Many highlighted the limitation of the definition including:

• the lack of definition of what constitutes a hedge;
• being restricted to evergreens and semi-evergreens;
• location and topography being as important as absolute height;
• the impact of root systems not being taken into account; and
• not taking account of the potential impact of individual trees.

3.62 However, trying to frame a suitable definition of a high hedge was recognised by most respondents as being extremely difficult to encompass the wide range of situations found – or as one respondent put it “…is like outwitting squirrels!” For this reason many favoured leaving the matter for an adjudicator to judge each case on its merits.

3.63 A number of those who provided alternative definitions suggested that the definition should be based on the effect the hedge has on a neighbour rather than the hedge itself.

“The potential “nuisance” caused by a hedge is a function of its height, density and its proximity to neighbouring properties, also the effect on that property’s amenity. The dimension of two metres is meaningless as it may cause a “nuisance” if very close to a neighbouring downstairs window, but 6 metres may be perfectly acceptable if a sufficient distance is maintained from a first floor window.” (Private individual)

3.64 Alternative suggestions included:

"Any vegetation greater than two metres in height from ground level which infringes any neighbour’s right to light, access of peaceful enjoyment of their property.”
(Private individual)

“The shadow the hedge throws on the neighbour’s property should not cover more than 40% for more than 3 hours of any day from 30th April to 30 September. The shadow of the hedge should not cover more than 60% of the neighbour’s property for more than 3 hours on any day between the 1st Oct and the 31st March inclusive in any year.” (Private individual)

“Part or all of a line of two or more trees or shrubs which:
1) Exceeds 2m in height from ground level or,
2) Unreasonably excludes natural light or,
3) By encroaching, causes, or is likely to cause, damage to neighbouring buildings.”
(Private individual)

A number of the arguments for deciduous trees outlined in [Definition of High Hedge] above can also be applied to “Nuisance Vegetation”.

Equality of Opportunity

22. The Policy Memorandum, Section 111, states the Bill does not unlawfully discriminate in any way with respect to any of the protected characteristics. That is without doubt correct.

23. The Section goes onto say, The Bill promotes the resolution of disputes. “By doing so it promotes strong supportive communities for all people”.

24. By leaving out deciduous trees and nuisance vegetation the Bill does not support strong supportive communities for all people.

25. Therefore there is not an equality of opportunity. Owners of domestic policy with problem deciduous trees and nuisance vegetation have no redress as the Bill now stands.

Conclusion

26. The Bill as currently constituted does not address the legitimate concerns of people affected by deciduous trees and other nuisance vegetation.

27. Parliament has an opportunity to show some real leadership on this matter, not just take the “easy” solution. The lack of a deciduous element seems to be based on an incorrect interpretation of an Isle of Man case and that anything other than evergreen would “render it (the bill) ineffective by creating such a grey area”.

28. Omitting deciduous trees and nuisance vegetation renders the Bill ineffective for many constituents.
SUBMISSION FROM PETER MCGLONE

1. The Scottish Government is to be applauded for its aim to put in place legislation that should, at long last, allow the hundreds if not thousands of people affected, to take action against neighbours whose indiscriminate planting of trees and other vegetation, prevents them from fully enjoying their properties and the benefits arising.

2. Regrettably the Bill in its present form falls far short of achieving this.

3. The supporting Policy Memorandum indicates that the objective was “...a tightly defined Bill that concerns specifically, High Hedges...” the reason for this being to avoid “…running the risk of creating unwieldy legislation that was difficult to enforce.”

4. However the apparent logic for this, is not difficulties in interpreting the legalities and conditions of whether a person was being prevented from enjoying their properties and associated benefits, but the potential workload and costs faced by the authorities who would be required to implement and enforce the Act.

5. As concluded by the Memorandum, a tightly defined Bill “…provides comfort that costs will not be significant and numbers will not be unmanageable.

6. In reaching this conclusion, consultations and views expressed by organisations such as COSLA, The Royal Society for the Protection of Birds, the Woodland Trust and the Scottish Woodlands Group, (who by their very nature would be biased in favour of trees and hedges), were given weight, whereas the concerns and views expressed by Scothedge who represent the public at large affected by the problem and who know the issues involved, were largely ignored.

7. The consequence is the creation of an extremely limited and weak definition of what is to be considered as preventing people from enjoying their properties and a range of subjective conditions that will allow Applications for action, to be ignored or dismissed.

8. Overall this means that chance of success is limited and taking the cost implications for submitting an Application into account, many people will be deterred and suffer in silence as before, which possibly explains the limited numbers in England and elsewhere that were actioned.

9. Moreover the objective as set out i.e. “...provision about hedges which interfere with the reasonable enjoyment of residential properties” is limited. No mention or account is taken in the Bill of the benefits as well as enjoyment that people get from their property due to views or open outlooks which are of considerable value and can be obliterated or diminished by trees or hedges.
10. This is a fundamental requirement and one of the main sources of complaint. The objective should be expanded to read “... which interfere with the reasonable enjoyment and benefits arising from residential properties.”

11. Against this background I would address the specific questions raised in the invitation for submissions as follows:-

**Do you agree with the definition of a high hedge as set out in the Bill?**

12. No. This makes the objective of the Bill simply to prevent loss of enjoyment due to the overshadowing effect or blocking out light (which should include views and outlook) by vegetation.

13. There is no logic in the condition that requires “...two or more trees or shrubs...in a row.” A single tree can grow to substantial height and have a width of several metres.

14. In addition there is no need to include only evergreen vegetation or gaps. What is a gap?

15. At the end of the day it should be the planning officers visual inspection that will determine whether the conditions of reasonableness have been breached taking into account a range of factors including what conditions or benefits existed before the vegetation was above 2M in height.

16. This should be similar to the considerations used by the Land Tribunal who consider the reasonableness of the benefits lost by the Applicant against the burden being placed on the neighbour who has planted the vegetation. This would greatly simplify matters.

**Do you consider that other forms of vegetation should be covered by the provisions in the Bill?**

17. Again the issue is the overshadowing, blocking of light or loss of views or outlook, not the type of vegetation causing it. There is no logic or common sense that includes evergreens vegetation and trees but excludes deciduous because they lose leaves in winter. Effectively it is saying yes your outlook is blocked for 7 months of the year particularly the important summer months but you can peer through the branches for the remainder so there is no reasonable grounds for complaint. An unnecessary complication.

**Do you have any comments on the proposed approach to dispute resolution as set out in the Bill?**

18. No. It is reasonable to expect every effort to be made between neighbours to resolve the issues prior to any application being made.
Do you have any comments on the enforcement procedures proposed under a high hedge notice?

19. No.

Do you have any comments on the proposed fees and costs?

20. Fees are required to offset costs of the authorities who will manage and enforce the system. However the estimated costs both for the initial Application (£325-£500) and subsequent enforcement work (£500 - £700) seem high.

21. These should be compared to the Land Tribunal fees which are approx. half this level and also allow for the site inspection visit which is the key to determination of the Application.

22. The danger is as previously stated above, given the limitations of the definition and the exclusions within the Bill, the limited chance of success will put many people off who can ill afford to risk this level of outlay.

Are there any aspects of the system used in other jurisdictions which should be included in this Bill?

23. While the Application and enforcement best lie with the Local Authority, as indicated, consideration should be based on the principles used by the Land tribunal which takes into account both the enjoyment and benefits lost by the Applicant against the possible burden of the Neighbouring properties who may have to comply with any instructions to remove or reduce the offending vegetation or tree(s).

24. In particular is the loss of the benefit through reduction in value to a property where magnificent views and outlooks are obliterated or diminished. This can be substantial.

25. To put this into context, in a recent Land Tribunal case involving myself and two neighbours objecting to the construction of a property in adjacent land, which would have reduced or obliterated our views across the Clyde coast, the tribunal ruled in our favour but added that if they had approved the construction they would have awarded approx. £80,000 to us due to the loss of outlooks and subsequent reduction in value of our properties.

26. While it may not be necessary for the Planning Authority to value the impact on properties, they should at least consider whether there is loss of benefits as well as the enjoyment of the property.

27. The Bill as it stands is extremely limited and does not consider views and outlooks which are the sole reasons which many people buy their properties in the first place.
Are there any aspects of this bill which would impact positively or negatively on equality of opportunity.

28. Yes. Due to the limitations on the objectives within the Bill and subsequent definitions that have been arrived at to avoid “creating unwieldy legislation”, the purpose of the bill tends to favour the neighbour who will plant trees or allow vegetation to grow uncontrolled for their own reasons and benefit at the expense of others.

29. This cannot favour equality of opportunity and the bill should be amended as stated above.

Any other issues relating to the Bill

30. No. As stated the Bill should be amended to have as its objective “to provide a solution to the problem of high hedges, trees and vegetation which interferes with the reasonable enjoyment and benefits arising from residential properties.”

31. This should cover all types of trees and vegetation above 2M in height.

32. As well as shading and light, it should cover loss of views and outlook and other benefits arising from the property.
Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details:

1. The Bill provides a very narrow definition of a high hedge. It could, for example, include two yews or Scot’s pines which have aesthetic, historic, cultural and/or biodiversity value and may be growing in close proximity as open-grown trees and not intended to be or managed as a hedge. General guidance will be necessary to ensure that this definition is consistently and correctly interpreted.

Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why?

2. No. More guidance on what type of vegetation the Bill aims to control would be useful. It should specifically exclude native evergreen species.

Do you have any comments on the proposed approach to dispute resolution as set out in the Bill?

3. Loch Lomond and The Trossachs National Park Authority is the planning authority for the geographical area it covers and therefore has the same powers as any other planning authority under the Town & Country Planning (Scotland) Act 1997 to make new and administer existing TPO’s within the National Park; consider notices of intention to remove trees in conservation areas and; attach conditions to planning permissions to protect trees/require new planting. While we agree that the most suitable body to administer the high hedge legislation would be the relevant local authority we think it’s necessary that the relevant National Park Authority is a statutory consultee for any proposed high hedge notice within its area. This should ensure that any notice affecting a protected tree or other trees considered to contribute to the special qualities of the National Park can be carefully considered. In this regard we consider it appropriate to: (1) include consultation with the NPA’s in section 6 (2) and to amend Section 6 (7) to include “(c) comments from any relevant National Park Authority”. Section 7 (3) should include “(c) any relevant NPA”.

4. General guidance is needed on what is meant by “...take all reasonable steps...” in Section 3 (‘Pre-application requirements’) and referred to in Section 5(1) (b) (Dismissal of application) to ensure the law is consistently and fairly applied across Scotland. The Explanatory Notes, for instance, note that the local authority may require applicants to have tried mediation before making an application. Unless nationally applied this would be an unfair requirement and it may put off potential applicants for reasons of cost (approximately £50 + VAT / hour) or for other reasons including that they may be intimidated or confused by the process.
Do you have any comments on the enforcement procedures proposed under a high hedge notice?

5. Subsection 16 (2) should include “(d) any relevant NPA”.

Do you have any comments on the proposed fees and costs?

6. The provision in the Bill to allow local authorities to charge a fee to consider applications has the potential to discriminate against potential applicants who cannot afford to pay the set fee. It is not normal practice to charge members of the public for the right to lodge what is effectively a complaint.

Are there any aspects of the systems used in other jurisdictions which should be included within this Bill?

7. The application based process being proposed is a novel one. There may be issues in its implementation but at this point it’s difficult to foresee what other aspects of other enforcement systems may be pertinent.

Are there any aspects of this Bill which would impact positively or negatively on equality of opportunity?

8. Yes, we believe the requirement to pay a fee would impact negatively on equality of opportunity (see answer to question 5 above).
SUBMISSION FROM LIVINGSTON VILLAGE COMMUNITY COUNCIL

1. On behalf of Livingston Village Community Council committee we submit written evidence as requested in the letter of 12th October 2012 from the office of Angela Constance.

2. These are the collected comments from the committee members not as a result of a blanket survey throughout our Community Council area and thus cannot be taken as fully representative of each and every resident from that area. We reviewed the document entitled High Hedges(Scotland) Bill – Policy Memorandum

3. Using the given 8 questions we respond as indicated.

Do you agree with the definition of a high hedge as set out in the Bill?

4. Paras 40 to 46 of memorandum. Yes

Do you consider that other forms of vegetation should be covered by the provisions of the Bill?

5. Again paras 40 to 46. No

Comments on proposed approach to dispute resolution.

6. Paras 38 to 39 & 47 to 52 & 56 to 65. We support that local authorities take powers to address hedge disputes rather than the alternative court based solution of paras 100 to 106. We also support that there is a dismissal of application route for items that could be deemed to be “time wasting”. We ask that the fourteen day period of para 60 be reconsidered for a longer notice time to allow some time for hedge owner last minute resolution action.

Comments on enforcement procedures proposed under a high hedge notice.

7. Paras 73 to 80 & 81 to 83. We ask if the notice compliance period for action raised in para 77 could be prescribed as X weeks or is it to be left to the official raising the order to quantify this by calendar dates?

Comments on proposed fees and costs.

8. Paras 53 to 55 & 84 to 90. Would it be more relevant to a potential applicant to know when applying what the likely application fee amount would be. An indicative fee cost should thus be noted within the application documentation. We agree that the authority should attempt by all means to recover enforcement costs.

Are there any aspects of the systems used in jurisdictions which should be included?
9. We do not have an adequate understanding of what is required for this point so add no comments.

Are there any aspects of this Bill which would impact positively or negatively on equality of opportunity?

10. Paras 111 to 114. We consider this a neutral issue with regard to equal opportunities so no qualifying remarks.

Any other issues?

11. We would reinforce that any local authority shall be guided to be fair and reasonable at all stages throughout the process from application to conclusion.

Brian D Johnstone
Chair
Livingston Village Community Council
SUBMISSION FROM WOODLAND TRUST SCOTLAND

1. The Woodland Trust Scotland welcomes the opportunity to respond to this call for evidence. We are part of the UK’s leading woodland conservation charity. Our vision is a UK rich in native woods and trees enjoyed and valued by everyone. We have three aims: to enable the creation of more native woods and places rich in trees; to protect native woods, trees and their wildlife for the future; to inspire everyone to enjoy and value woods and trees. We own over 1,000 sites and have 300,000 members and supporters.

General comments

2. The Woodland Trust Scotland is broadly content with the draft bill as it has been laid. There are four areas we have made comments on. In summary they are the:

- Definition of a high hedge – adding the words ‘non-native’ before evergreen and semi-evergreen in Section 1;
- Other forms of vegetation – not widening the definition and maintaining focus on non-native evergreen and semi-evergreens;
- The relationship between high hedge orders and tree preservation orders; and
- The power to modify the naming of a high hedge.

Do you agree with the definition of a high hedge as set out in the Bill?

3. The draft bill sets out the meaning of a ‘high hedge’ in Section 1 of the bill. It states:

(1) This Act applies in relation to a hedge (referred to in this Act as a “high hedge”) which—
(a) is formed wholly or mainly by a row of 2 or more evergreen or semi-evergreen trees or shrubs,
(b) rises to a height of more than 2 metres above ground level, and
(c) forms a barrier to light.
(2) For the purposes of subsection (1)(c) a hedge is not to be regarded as forming a barrier to light if it has gaps which significantly reduce its overall effect as a barrier at heights of more than 2 metres.
(3) In applying this Act in relation to a high hedge no account is to be taken of the roots of a high hedge.

4. The Woodland Trust Scotland understands that this bill seeks to address a well documented need for a mechanism to enable neighbours with troublesome hedge disputes, to be able to conclude them. It is our view that the definition of a high hedge needs to be carefully and narrowly defined. The wording above achieves this in part but could be improved.

5. Our concerns relate to the words ‘evergreen’ and ‘semi-evergreen’. Whilst these terms suitably describe fast growing non-native conifers such as the commonly
known Leyland cypress (x Cupressocyparis leylandii) and Western red cedar (Thuja plicata), evergreen also describes native species including holly (Ilex aquifolium), yew (Taxus baccata) and juniper (Juniperus communis).

6. We believe the bill would be improved by stating ‘…a row of 2 or more non-native evergreen or semi-evergreen trees or shrubs’. Native species in Scotland are easily defined and well established. This is an important distinction because native trees and shrubs provide more valuable wildlife habitat than non-native varieties. Maintaining this habitat helps wildlife adapt and survive in pressured urban and rural environments.

7. In addition, we wish to avoid the accidental inclusion of mature, veteran or ancient trees that may have been incorporated into younger ‘wholly or mainly’ evergreen hedges. Section 6(7) allows for the provision of the cultural or historical significance of the hedge to be considered, however it is not clear if this also applies to individual trees within the hedge, or only to a whole hedge which has cultural and historical value, such as the Meikleour Beach Hedge in Perthshire. If the words ‘non-native’ were added to the definition, this issue would be addressed.

Do you consider that other forms of vegetation should be covered by the provisions of the Bill?

8. The Woodland Trust Scotland does not consider that other forms of vegetation should be included in this bill. The bill has been introduced to address a specific issue and it is our view that the bill should not creep outside its intended scope. Other trees, groups of tree and woods are legislated for, to varying degrees, in other legislation, notably the Forestry Act 1967 (as amended) and the Town and Country Planning (Scotland) Act 1997 as amended. Our view is that by widening the forms of vegetation included to beyond non-native evergreens and semi-evergreens, or to include individual trees or shrubs outside hedges in the domestic setting, then the scope of the bill potentially encroaches on the remit of other legislation.

9. Native trees and shrubs offer a wide range of valuable benefits to urban and residential areas\(^1\). For example, as well as providing much needed habitat for wildlife such as nesting birds, they also provide ecosystem services such as reducing water runoff\(^2\), reduced wind speeds resulting in reduced heat loss from housing stock\(^3\), noise reduction, carbon sequestration, improved air quality\(^4\), and

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\(^2\) Woodland actions for biodiversity and their role in water management, [http://www.woodlandtrust.org.uk/SiteCollectionDocuments/pdf/woodswater26_03-08.pdf](http://www.woodlandtrust.org.uk/SiteCollectionDocuments/pdf/woodswater26_03-08.pdf)

Local Government and Regeneration Committee  
Stage 1 scrutiny of the High Hedges (Scotland) Bill  
December 2012

places rich in trees tend to have higher property values. Recent evidence has again show the value of trees to living healthy and fulfilled lives.\(^4\)

10. It is our view that the High Hedges (Scotland) Bill should legislate to address the identified need, without negatively impacting other important trees and shrubs, and the benefits they provide. If there is a demonstrated problem with other trees or shrubs, not related to fast growing non-native evergreen hedges, then consideration of amendments to 1967 and 1997 Acts above would be more appropriate. The Woodland Trust Scotland is not aware of any such need.

Any other issues relating to the Bill which you wish to bring to the attention of the Committee

Tree Preservation Orders

11. In a case where a high hedge notice relates to a tree, part of a group of trees or woodland that is subject to a tree preservation order, Section 11(2) of the bill states that: ‘The tree preservation order has no effect in relation to the initial action or any preventative action specified in the high hedge notice.’

12. The Woodland Trust Scotland is concerned that this clause over-writes the tree preservation order legislation set out in the Town and Country Planning (Scotland) Act 1997. Under normal circumstance, once a tree preservation order has been made it is only removed if the order is revoked, either following a review of the order, or as part of a planning consent.

13. Whilst we understand that it is useful from an administrative perspective for the high hedges order to supersede the tree preservation order (no tree preservation order revocation would be necessary), we are concerned that this does not afford these trees suitable protection. The draft bill does not require the authority to consider the presence of a tree preservation order in its own right, when making a decision under Section 6(7). The subsection refers to the impact on amenity of the area and the cultural or historical significance, but not whether it is currently protected by a tree preservation area.

14. We are of the view that a high hedge order should not automatically provide the option for the removal of a tree subject to a tree preservation order. There are three reasons for this. First, these trees are not likely to be of the type defined in Section 1 of this bill, so they should not be covered by clauses in this bill.


15. Secondly, tree preservation orders are the only protection individual trees or groups of trees have, outside conservation areas or woods. Most trees within woods are protected from felling by the need for a felling licence, but individual trees are only protected, a) to some degree when in conservation areas, although not absolutely, or b) when they are subject to a tree preservation order.

16. Thirdly, we are concerned that if Section 11(2) remains, with no addition clause in Section 6(7), there is potential for trees protected by tree preservation orders to be felled either by the owner or an authorised person, when the high hedges order is being fulfilled. Our understanding of the draft bill is that an owner could fell or cut to the height of two metres, a tree that was previously protected by a tree preservation order, without risk of prosecution, if it is part of the hedge.

17. It is our view that given the importance of trees with preservation orders upon them, and the fact that careful assessment has already taken place, there is a need to maintain appropriate protection for these trees. We would like to see the following words added to Section 6(7)(c):

6  Considerations of application

(7) In making a decision under subsection (5)(b), the authority must have regard to all the circumstances of the case, including in particular—
(a) the effect of the high hedge on the amenity of the area,
(b) whether the high hedge is of cultural or historical significance, and
(c) whether a tree preservation order forms part of all of the high hedge.

18. By adding Section 6(7)(c) there would be an explicit reference to tree preservation orders in the consideration of a hedge and justification for specific provisions for the preservation of the effected trees in the high hedge order.

Section 34: Power to modify meaning of “high hedge”

19. The Woodland Trust Scotland would prefer that there is no provision to modify the meaning of a high hedge. There are two reasons for this. First, we wish the bill to be narrowly defined and clear – we would like to avoid future mission creep. And secondly, we wish to avoid the future inclusion of native trees and shrubs, if the bill is amended to specify non-native evergreens in the definition.

20. If the power to modify the meaning of high hedge remains however, we are strongly supportive that the regulations under this section are subject to the affirmative procedure.

Woodland Trust Scotland
1. Firstly, we would like to praise Mark McDonald and the Scottish Parliament for addressing this matter which we’re sure is a common area of dispute between neighbouring properties. There is a fine line to privacy for one party and intrusion for the other.

2. Secondly we’re not anti-tree, indeed we are very firmly pro tree, as apart from enjoying their aesthetic, environmental and wildlife benefits, John Knowles works for a company which only converts pulp based products so we appreciate that national and global management of trees is essential.

3. We are however very disappointed and confused to learn that under the current definition of a High Hedge, that deciduous trees which can grow to similar or greater heights of evergreen trees, are not currently being considered under legislation. After all, for the sunniest months of the year they both create similar problems.

4. For instance Beech is a very common plant used for hedging, indeed the famous Meiklour Hedge uses this deciduous tree, so will it no longer be considered a hedge?

5. From correspondence with Mark McDonald’s office, it would seem that deciduous trees have been dropped from the definition because of issues with similar legislation in the isle of Man. In our view changing the definition is not a satisfactory solution and it would be better to establish the root cause and correct in our new Bill.

6. Trees grow from natural seeding or can be planted as saplings. In either case, we suggest that little or no attention is given to the species selected and to the effect they will have as they reach maturity. Once planted, the clock starts ticking and we are then in the control of others as to how they attend these and the lack of management mean they often end up intrusions to others.

7. The reasons that we should continue to include two or more deciduous trees are exactly the same as evergreens for the majority of the year

   - the stress and frustration that is brought when an unreasonable third party has so much undisputable legal power over you quality of life and there being no route for mediation.
   - the obstruction of sunlight reducing the enjoyment of neighbouring properties.
   - lack of sunlight reducing the opportunity to grow preferred crops or plants.
   - lack of direct and ambient light with the resultant use of artificial lighting that uses power at increased environmental and monetary expense. A real problem for many of us with continually increasing costs.
• lack of heat from natural sources with the resultant use of artificial heating that uses artificial power at increased environmental and monetary expense. A real problem for many of us with continually increasing costs.
• doubt about a households ability to make use in the future of natural energy resources such a solar power due the time trees can take to reach maturity. Only then can you be sure of their final height and effect they would create.
• the potential threat of physical and property damage during the increasingly more frequent storms.
• general well being that comes from sensible exposure to sunlight.

8. We would not think that our view of problematic deciduous trees is unique and would ask that you reconsider the definitions in the proposed High Hedges Bill so we have legislation that covers all concerned areas.
1. I am emailing to register my support for the High Hedge Bill that was recently introduced to the Scottish Parliament by Mark McDonald MSP.

2. I am a private individual who is unfortunate to have neighbours who, each year, completely refuse to cut more than 1½ inches off the Leylandii hedge that runs the full length of the back gardens. It now stands at over 9 feet and is 4-5 feet in width even though their agreement with the previous owner was this row of trees would not ever exceed 6ft 6 inches. At the height of summer a large portion of my garden is in permanent shade and winter is much worse.

3. I agree with the definition of high hedge and think that the Leylandii species of vegetation should be specified individually in the Bill. These plants grow around a foot per year, are very dense and cause a particular problem for many people. Being evergreens they effectively form a wall, stopping light, sunshine and air circulation.

4. With regard to the approach to resolve disputes, I would like to think that the process would not be a long, drawn out one.

5. With regard to costs, I agree some payment will be necessary but would hope that local councils are not given a free rein to decide the upper limit. I consider the possible cost of around £500 to be quite high and feel this cost would make it difficult for some private individuals to pursue the service.

6. I am very hopeful that this Bill will pass the 3rd stage quickly so Scotland can get up to speed with possibly resolving ‘hedge’ matters in a similar way to the rest of the UK.
SUBMISSION FROM RSPB SCOTLAND

1. RSPB Scotland is part of the RSPB, which speaks out for birds and wildlife, tackles the problems that threaten our environment and promotes the conservation of wild birds and their habitats. We are supported by nearly 90,000 members in Scotland, with a strong membership base in rural areas as well as in towns and cities. We have practical experience of managing terrestrial, aquatic and coastal habitats for conservation, farming, forestry and other enterprises, of providing advice to land managers and first hand experience of the regulatory regimes that impact on these sectors. RSPB Scotland manages more than 68,000 hectares of land, much of it in management agreements with local farmers, crofters and graziers. Our land management interests cover a wide range of habitats and geographic areas within Scotland. We undertake biological and economic research to underpin our policy analysis and advocacy. When development threatens our most important places for wildlife, we engage with developers through the planning and other regulatory systems to try and ensure damage to wildlife is avoided. We also have experience of environmental education and training for all ages. The RSPB is the BirdLife International partner in the UK.

Response to questions

Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details;

2. We recognise that high hedges can be a cause of neighbour dispute and can cause loss of amenity and distress to those affected in some instances. RSPB Scotland is primarily concerned to ensure that the Bill, if progressed, would not result in any significant adverse impact on birds or other wildlife. Hedges and trees in domestic and non-domestic settings can provide important habitats for a range of species. The current definition of a high hedge is tightly defined and would be likely to exclude the possibility of many hedges and trees of relatively higher biodiversity value being affected as a result of the Bill. This is because hedges of higher biodiversity value are often (although not exclusively) made up of deciduous species. If there were to be any change to the definition of a high hedge proposed in the Bill, it would be important to ensure that other safeguards are put in place to ensure that there are not greater impacts on biodiversity.

Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why?

3. As explained above, RSPB Scotland’s primary concern is that the Bill does not result in adverse harm to Scotland’s biodiversity. The currently proposed, relatively tight, application of the Bill means that the risk of harm to biodiversity is minimised. If the scope of the Bill were to be extended to cover other vegetation, it would be
particularly important to ensure that this did not increase the risk of harm to biodiversity.

Any other issues relating to the Bill which you wish to bring to the attention of the Committee?

4. The risk of harm to wild birds as a result of works to trees and hedges is greatest during the nesting season for breeding birds. In addition to the direct harm to wildlife, cutting hedges during this period can be a cause of real concern to neighbours and others interested in the protection of wildlife. The RSPB recommends that hedge cutting is not carried out between March and August. If works are carried out when it is known that there is an active nest present, and that work damages or destroys the nest, it could result in an offence. It will therefore be important for Ministers to issue clear guidance on this before any provisions relating to the Bill come into force.

5. Section 1 of the Nature Conservation (Scotland) Act 2004 places a duty on “...every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.” The application of measures proposed in the Bill by public bodies would therefore also need to comply with this biodiversity duty.

6. As currently proposed, Section 6(7) of the Bill states: In making a decision under subsection (5)(b), the authority must have regard to all the circumstances of the case, including in particular— (a) the effect of the high hedge on the amenity of the area, and (b) whether the high hedge is of cultural or historical significance.

7. In order to ensure that the biodiversity significance of high hedges is also considered, we recommend that a specific reference to biodiversity value is added to this section. This addition would be particularly important should there be any increase in the scope of the Bill.

Aedán Smith
Head of Planning and Development
RSPB Scotland
About Scothedge

1. We submit this paper on behalf of Scothedge. We thank Mark McDonald and the Scottish officials on the launch of this bill which has our support.

2. Scothedge has campaigned for Scottish legislation since the inception of the Holyrood Parliament and our position is well known and fully set out in our 2009 publication ‘A Growing Problem’ which has been sent to every MSP. We believe that this Bill will go a long way to solving the majority of the problems but without amendment will still leave some dreadful cases unresolved.

3. Our position is that the bill as proposed can be cost-effectively improved in several areas and this submission explains how that could be done.

4. Before we do that we would like to say a few words about Scothedge and scotch some of the myths that have grown up around this issue over the last 13 years.
   - Our committee are all hedge victims and amongst us are engineers, health and public affairs professionals, a lawyer and an arboriculturalist. It is as sufferers that we bring the passion and enthusiasm to the debate, but it is as professionals that we offer researched and tested solutions. There is no other body in Scotland with the experience and understanding of all aspects of the ‘high hedge’ issue.
   - Scothedge has never been against trees. We simply stand against those who use trees and plants in an inappropriate and unreasonable way. The problem lies with a small but significant group of selfish individuals and the law must ensure that no one can continue to behave in a way that the vast majority our society finds unacceptable.
   - The overwhelming majority of trees and hedges, whatever their height, are a benefit to our environment and our society. Scothedge has never advocated that somehow ‘all trees should be cut down to six feet’. However we feel that this possibility still haunts some official thinking and has led to an unjustified fear that legislation will somehow require the authorities to embark on a nationwide tree survey with a mass cull of rogue plants.
   - We have always advocated a system based on individual complaints which specifically addresses individual problems.
   - The Scothedge requirements of any legislative solution have always been that
     1. It should be cost effective and impose a minimum burden on public resources
     2. It must offer the possibility of an affordable solution to all sufferers and specifically not make matters worse for any individual.
   - MSPs have changed since the start of the Scottish Parliament, and we have responded to private member and ministerial proposals to use planning regulations, ASB legislation and sheriff court actions.
Local Government and Regeneration Committee
Stage 1 scrutiny of the High Hedges (Scotland) Bill
December 2012

- Scothedge has always maintained that legislating against a hedge defined in terms of the species, numbers or arrangement of plants is likely to cause confusion, offer many legal loopholes and leave some of the worst cases unaddressed. In our view a more mature approach to legislation would set the goal of ‘maintaining vegetation such that it never adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’.

5. However ‘we are where we are’ and we will address comments to the bill as currently proposed

The Suffering of ‘High Hedge’ Victims

6. ‘I do think he is being incredibly selfish. I would be so ashamed if I thought I was causing such unhappiness to my neighbours and was able to act but didn’t.’

7. This short statement from a victim summarises perfectly the real problems that lie behind the so called ‘Hedge Wars’. This is a problem caused by a small number of people who are happy to abuse and victimise their neighbours. They use trees and hedges to inflict that abuse because the law uniquely allows them to be used as weapons for that purpose. By default the law makes any dispute interminable. The law needs to change and needs to make sure that all victims are helped. This is a very serious problem for those who suffer but it is not a serious problem in terms of what it would take to fix it.

8. It remains legal in Scotland for one neighbour, in a dispute over any issue, to take advantage of the relative position of their property and use trees and hedges as a unilateral weapon of punishment to spoil a neighbour’s enjoyment of their home.

9. With many of the victims being elderly and confined to their homes as their final sanctuary, such inconsideration is especially hurtful and intolerable and the injustice becomes even more traumatic as their home is, little by little, devalued and turned into nothing at all.

The Causes of the Problems

10. Scothedge surveyed its members in 2005 and 2009 and there was a public consultation in 2009. Our surveys showed that 78% of cases featured evergreens and around 20% identified deciduous species as being the problem. 49% of all cases involved a single inappropriate tree. The Holyrood public consultation reported ‘many respondents highlighted the limitations of the (Westminster) definition including ‘being restricted to evergreens and semi-evergreens’’.

11. This spread of cases shows that any attempt to define the problem in terms of
species, numbers or arrangement of plants is bound to deny justice to significant groups of sufferers. At the same time it would offer vengeful hedge owners legal alternatives to allow them to continue their unreasonable behaviour.

12. Section 2.3 of ‘A Growing Problem’ looks in detail at how people’s lives are affected by high trees and hedges but to summarise:
   - We use the term ‘loss of garden amenity’ to summarise a range of effects, the most obvious being light blocking (81% of cases) but it also covers unreasonable amounts of leaf deposition etc., especially in deciduous cases.
   - Direct impact on property include loss of light to windows (66% of cases) and the danger of damage to property (and people) from toppling.
   - Loss of views from a property is a common problem (68% of cases) especially in a country as beautiful as Scotland. We often see cases where a grower is happy to deprive a neighbour of a view to over protect their own privacy whilst continuing to enjoy the view themselves.
   - Subsidence and land heave are problems cause by planting large and inappropriate trees close to buildings, particularly in closer packed housing developments and in areas of clay soil.
   - Relatively new problems involve the blocking of light to solar panels and we now have a case involving a purpose built ‘solar house’ being deliberately deprived of sunlight by stands of deciduous trees. These cases can only increase with climate change and the drive towards renewables.
   - Other effects include blocking of TV signals, particularly to satellite dishes and there are cases of insect infestation, water shedding and even health effects such as depression caused by light deprivation and atmospheric effects of living in close proximity to an overwhelmingly dominant hedge.

13. Needless to say the effects and the mere existence of a problem hedge can devastate the value and marketability of an affected property, especially when disputes with a neighbour must be declared to a buyer.

14. In section 5.3, ‘A Growing Problem’ offers guidance on how these effects could be assessed and quantified to help authorities judge if a tree or hedge ‘adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’. There is a wide range of standards and codes of practice available from professional bodies, for example the Royal Institute of Chartered Surveyors, the Royal Horticultural Society and the Building Research Establishment. These all explain the dangers of inappropriate tree cultivation and offer ways for responsible growers to avoid them.

15. Root and branch encroachment (66% of cases) causes damage to gardens, buildings, roads and driveways and perhaps most worryingly to underground services. We accept that these effects can be addressed using current remedies but the reasoning in paragraphs 102 & 103 of the Policy memorandum apply equally to
these effects and we suggest that the opportunity is taken to consolidate other pieces of legislation into the High Hedge Bill. As we have seen, most cases suffer from a variety of effects and the complexities of using different pieces of legislation to address a single case could be avoided especially when the existing provisions could involve large legal expense.

16. The Scothedge cases show that the effects of the tree or hedge on a neighbour usually far outweigh any benefits to the grower. Many are driven by an unreasonable expectation of privacy, especially in modern housing developments. We rarely see high screening hedges on the south side of a grower’s property but see many grown to the north which block sunlight from a neighbour. We see large hedges which are distant from the grower’s property but which because of geography are literally on top of a neighbouring house. We see trees in large gardens which might seem appropriate but which totally dominate the smaller gardens of more modest neighbouring properties. We never see trees planted to block a grower’s view but often see them planted with no regard to a neighbour’s ability to enjoy the same outlook. Ivy growing on a single deciduous tree has the same result as an evergreen hedge.

17. Problems arise when a tree or hedge is selected which is not suitable for its location or is not properly maintained. The point is that over time, all species of plant can become a nuisance and in some cases a danger. The problems are not species specific and do not arise because of the plants themselves. Owners must take responsibility for their trees regardless of cost and the excuse that ‘we can’t afford to trim’ is unacceptable.

What We Can Learn from the Rest of the UK

18. The currently proposed hedge definition is based on the Westminster legislation of 2003. This bill was weakened by a group of back benchers, motivated largely by a dislike of private members’ bills, who moved multiple amendments in an attempt to kill it. Although the bill was eventually passed it was much diluted, resulting in the narrow definition of a hedge. It does not represent an ideal template for Scotland because the definition is more the result of Westminster filibustering than a straightforward response to the situation in England and Wales.

19. As Scotland prepares its own legislation we can do much better. The Holyrood process is much more ‘mature’, there is real data available about the situation here and we can draw on the experience of England and Wales.

20. The authorities in Scotland seem nervous about the potential number of cases and this has led COSLA to favour the narrow definition which excludes deciduous species and single trees because ‘data elsewhere provides comfort that costs will not be significant and numbers will not be unmanageable’ (section 44 Policy Memo). ‘Data elsewhere’ means the situation in England and Wales where it is true that
costs have not been significant or numbers unmanageable. But this is not evidence that the inclusion of deciduous species and single trees in Scotland would *add significantly to the costs or make numbers unmanageable* and it is not acceptable to infer this from the experience and data available from other parts of the UK and from Scotland itself.

21. **LET’S BE CLEAR; THERE IS NO EVIDENCE SUPPORTING THE THEORY THAT INCLUSION OF DECIDUOUS SPECIES AND SINGLE TREES SIGNIFICANTLY ADDS TO THE NUMBER OF CASES OR TO THE COSTS TO LOCAL AUTHORITIES.**

22. This fear, particularly shown by COSLA, has hovered in the background throughout this campaign. We have challenged MSPs and officials to provide details of any issue so that it might be addressed, but we have yet to see any. We have been provided with minutes of meetings involving COSLA but they show that the issue was simply not enough of a concern to be recorded. However the current position still seems to be that *‘COSLA will accept evergreens and semi evergreens but don’t ask them to widen the definition or they will withdraw their support’.*

23. Why might this be? We can only speculate that there is an irrational fear based on the 40,000 cases that were estimated by Hedgeline for England and Wales prior to legislation in 2003. This figure was still being reported by (amongst others) the *Mail on Line* website in May 2009, less than 3 months before the launch of the Scottish public consultation. **COSLA should accept that the actual number of cases requiring any action by local authorities in England and Wales were less than 10% of the feared 40,000 and spread over 7 years. This was simply because once the legislation was enacted; the vast majority of unscrupulous growers simply cut their hedges.**

24. Let’s look in detail at section 37 of the Policy Memorandum and consider the 6 English authorities which have complete data; Windsor, Croydon, Hillingdon, South Tyne, Hartlepool and Sandwell. According to 2011 census information (Wikipedia) the total population of these authorities is 1,335,600. The data covers a period of 7 years, 2005-11.

<table>
<thead>
<tr>
<th>6 Sample English Authorities</th>
<th>Enquiries</th>
<th>Formal Complaints</th>
<th>Direct Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-2011</td>
<td>1,220+</td>
<td>100</td>
<td>1.0</td>
</tr>
<tr>
<td>Average per Year</td>
<td>174</td>
<td>14</td>
<td>0.1</td>
</tr>
</tbody>
</table>

25. **Enquiries** are when a local authority is approached by a member of the public with a hedge issue. Often these are not recorded so the number of enquiries could be higher than this. The authority takes no action other than issuing information and the whole process could be done online at virtually zero cost to the local authority.
26. **Formal Complaints** occur when a member of the public initiates the process in accordance with the legislation. The figures confirm Scothedge’s (and others’) long held belief that the number of formal complaints are around 10% of earlier enquiries. The most likely reason for this is that following the enquiry, both parties to the dispute are aware of the legal position and the case is resolved with no further involvement of the local authority.

27. **Direct Action** occurs when, under the provisions of the legislation, the local authority takes direct action to cut back the hedge because the grower refuses. In the data supplied there is only a single case of this over the 7 years (South Tyneside). Although probably statistically incorrect this analysis has assumed that direct action will occur once in seven years for a population of 1,335,600. Suffice to say occurrences are extremely rare and should be of no concern to local authorities in Scotland.

28. We can now extrapolate this data to give a picture for the whole of England and Wales using the 2011 population (56,113,000). Interestingly this shows that the number of enquiries, 51,000, is of the same order as the approx. 40,000 estimated by Hedgeline prior to the 2003 Westminster Bill. According to this analysis 50,000 enquiries result in only 4,200 formal complaints over 7 years for the whole of England and Wales, proof if it were needed that the mere presence of the legislation is the biggest factor in the resolution of problems.

<table>
<thead>
<tr>
<th>England &amp; Wales</th>
<th>Enquiries</th>
<th>Formal Complaints</th>
<th>Direct Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-2011</td>
<td>51,256</td>
<td>4,201</td>
<td>42.0</td>
</tr>
<tr>
<td>Average per Year</td>
<td>7,322</td>
<td>600</td>
<td>6.0</td>
</tr>
</tbody>
</table>

29. We can also use the English data to predict the likely outcome of legislation here. In the table below we have again used 2011 population figures (5,222,100) to predict the likely number of Scottish cases requiring local authority intervention. We have also examined how sensitive the outcome is to various % increases, such as might follow from the inclusion of deciduous and single tree cases, using real data from Scothedge case files and member surveys.

30. 18% uplift has been highlighted because this is the latest Scothedge estimation of the increase in cases that would result from including deciduous species in the Scottish hedge definition.

31. It can be seen from this that the inclusion of deciduous trees in the definition of a hedge will result in the annual number of enquiries, across the whole of Scotland, rising from 681 to 804. **But crucially this will only mean the number of formal complaints rising from 56 to 66, an increase of 10 per year for the entire country.**
32. The impact of this on the average of Scotland’s 32 local authorities would be

<table>
<thead>
<tr>
<th>Average Scottish Local Authority</th>
<th>Enquiries</th>
<th>Formal Complaints</th>
<th>Direct Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average per Year</td>
<td>21</td>
<td>1.75</td>
<td>0.02</td>
</tr>
<tr>
<td>10% uplift</td>
<td>23</td>
<td>1.92</td>
<td>0.02</td>
</tr>
<tr>
<td>18% uplift</td>
<td>25</td>
<td>2.06</td>
<td>0.02</td>
</tr>
<tr>
<td>30% uplift</td>
<td>28</td>
<td>2.27</td>
<td>0.02</td>
</tr>
<tr>
<td>40% uplift</td>
<td>30</td>
<td>2.44</td>
<td>0.02</td>
</tr>
<tr>
<td>100% uplift</td>
<td>43</td>
<td>3.49</td>
<td>0.03</td>
</tr>
</tbody>
</table>

33. To emphasise the point we have looked at the sensitivity of a 100% uplift in cases. In other words, what the outcome would be if the inclusion of deciduous species and single trees doubled the number of cases seen in reality south of the border.

34. It can be seen that even if deciduous and single tree cases doubled the number of cases in Scotland the average Local Authority would still have to deal with less than four cases per year as opposed to two.

35. Scothedge holds that on the basis of real data, COSLA should reconsider their position of supporting ‘a narrow and focussed Bill as the experience of its implementation elsewhere provides comfort that costs will not be significant and numbers will not be unmanageable’.

36. Experience of implementation elsewhere provides nothing of the sort. This is speculation based on misinformation. The evidence of implementation elsewhere provides that even a much wider definition of a hedge would not result in the numbers becoming unmanageable.

37. The Westminster legislation also prohibits the trimming of a hedge to a reasonable height if this would risk killing the plants. This nonsensical provision protects the worst cases and in Scotland would reward those who have done least to relieve the suffering of their neighbours whilst we have waited for Holyrood to act. No such provision should be included here.
Why Not Deciduous Trees?

38. Section 26 of the Policy Memorandum states that the bill does ‘not intend to include deciduous trees, because there are loopholes to do with whether trees that shed their leaves could be considered to form a constant barrier to light in the same way that evergreens and semi evergreens can.’ (We note that the wording of the bill in this respect under 1 (1) (c) is ‘forms a barrier to light’.)

39. Irrespective of whether the intention is to specify ‘a barrier to light’ or ‘a constant barrier to light’ this parameter does not distinguish between evergreen, semi-evergreen or deciduous species. All species form a barrier to light whether in full leaf or bare branch condition, the only difference being one of degree between different species at different times of the year. The Building Research Establishment (BRE) Digest 350 [6.1.3] contains the table below which shows the transparency of the crowns of different species when in full leaf or bare branch condition. This is measured in terms of ‘% radiation passing’ where 0% would represent a blackout barrier and 100% represent total transparency.

40. Common evergreen species allow only 10% of radiation to pass at any time of year, but it can be seen from the table that common deciduous species also form a considerable barrier to light, even in ‘bare-branch’ condition. In full leaf there is virtually no difference between evergreen and deciduous species, this being during the summer months when light is more important for garden growth and enjoyment of a domestic property.

<table>
<thead>
<tr>
<th>Common Name</th>
<th>Full Leaf</th>
<th>Bare Branch</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sycamore</td>
<td>25</td>
<td>65</td>
</tr>
<tr>
<td>Silver Maple</td>
<td>15</td>
<td>65</td>
</tr>
<tr>
<td>Horse Chestnut</td>
<td>10</td>
<td>60</td>
</tr>
<tr>
<td>European Birch</td>
<td>20</td>
<td>60</td>
</tr>
<tr>
<td>European</td>
<td>10</td>
<td>80*</td>
</tr>
<tr>
<td>English Oak</td>
<td>20</td>
<td>70</td>
</tr>
<tr>
<td>Lime</td>
<td>10</td>
<td>60</td>
</tr>
<tr>
<td>Elm</td>
<td>15</td>
<td>65</td>
</tr>
</tbody>
</table>

* The beech tends to retain dead leaves for much of the winter, reaching bare branch condition only briefly before new leaf growth in the spring. This data applies to individual tree crowns; multi row belts or blocks let virtually no radiation through when in leaf, and very little when in ‘bare-branch’ condition.

41. In reality all species, at all times of the year are a significant barrier to light,
 whilst no species, at any time of the year are a constant barrier to light.

42. The Westminster legislation refers to the ODPM ‘Hedge Height and Light Loss’ documentation based on sun angles for England and would need to be adjusted to take account of lower sun angles in Scotland.

43. Scothedge maintains the view that attempts to distinguish between species used is an unfair and unnecessary complication and rejects the arguments in sections 42 and 43 of the Policy Memorandum which, far from avoiding the ‘risk of creating complex and unwieldy legislation’ in fact do just that. The bill under section (2) does a good job in defining a case as being where ‘the applicant considers that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’. This is simple and unambiguous. Why complicate things with a woolly and unproven distinction between different species?

44. The Scothedge advice remains that there is absolutely no difference in the legal position of species of plants used as a hedge or screen unless such a difference was to be specifically created by the proposed legislation.

45. The term semi-evergreen is likely to prove even more ambiguous and add even more complexity. Common hedging species such as beech and hornbeam all retain leaves (dead or alive) for 11 months of the year but are classified as deciduous species and any attempt to classify them as something else is again bound to lead to confusion and ambiguity. Hawthorn sheds it leaves but the density of the branches means the effects on light are virtually the same in summer and winter.

46. We have already addressed the concerns raised by COSLA in section 44 of the Policy Memorandum, but this section also highlights concerns raised by other bodies. We would respond to the concerns of the Scottish Tree Officers Group in the same way as we addressed the concerns of COSLA above; our belief being that they are unaware of the true scope of the problem and especially of the low numbers of cases that will require intervention.

47. The Royal Society for the Protection of Birds (RSPB) also supports a hedge definition which excludes deciduous species because ‘deciduous plants generally have a greater wildlife value than conifers’. We have the utmost respect for the RSPB and amongst Scothedge members are fellows and members of the Society. However in this case we consider that their view should be given little weight because, once again, we suspect that they have not been made aware of the scale of the problem. We are sure that it is not the intention of the Society to endorse the poor behaviour of a small number of hedge growers who inflict such distress and suffering on people. Trimming of Scotland’s rogue deciduous trees and hedges would be a ‘drop in the ocean’ of the total deciduous stock and the impact on wildlife would be negligible. The vast majority of domestic deciduous hedges are already
trimmed by responsible owners and as far as we know, the Society has never campaigned against them and we are sure they do not wish to support a small number of uncaring growers. On balance, wider society must look for a remedy which helps a small, but significant and proven number of human sufferers rather than one offering a speculative and unquantifiable benefit for a tiny number of birds.

48. In England they avoid remedial trimming during the nesting season and Scothedge fully supports this policy.

49. The Policy memo does not explain why The Woodland Trust supports a narrow definition but we assume their concerns are similar to those of the other bodies and should be similarly addressed.

The Isle of Man Experience

50. We now turn to sections 109 & 110 of the Policy Memorandum concerning the Isle of Man. The independent Manx government passed the ‘Trees and High Hedges Act 2005’ which includes single trees and deciduous species and where the only test a tree or hedge has to meet is whether it is affecting a person’s reasonable enjoyment of property.

51. It is our view that the Isle of Man provisions are much better than those in England and Wales and would serve Scotland much better than the current proposals.

52. The Policy Memo refers to the appeal judgement in the case of ‘Boardman versus the Braddan Commissioners’ as a demonstration of the difficulty ‘of decision-making in considering such cases in comparison with evergreen hedges’.

53. **In our opinion this interpretation is plainly wrong.**

54. This is indeed a complicated case, as are some in Scotland, but the complexity comes from the geography of the boundary area between the properties and not the species involved. The hedge itself is wide and multi-layered and consists of a variety of species including ash, laurel, alder, birch and sycamore. **It is a large and complicated hedge that happens to be mainly deciduous, not a large and complicated hedge because it is deciduous!**

55. The appeal mainly challenged the setting of the action heights on the grounds that the hedge should have been treated as a single entity with a single action height. The High Bailiff largely rejected the appeal on the grounds that the original remedial order allowed sufficient daylight into the affected property whilst affording a reasonable degree of privacy to the hedge grower. Scothedge considers that this was a fair judgement and applauds the actions of the Isle of Man authorities. The order to cut the hedge was entirely justified and a reasonable and pragmatic solution was devised.
56. Under current Scottish proposals the appeal process would not involve court proceedings and should be more straightforward in any case.

57. Scothedge entirely rejects the inferences in section 110 of the Policy Memo that
   - **Being a deciduous hedge added complexity to the case which a similar evergreen hedge would not.**
   - **A narrower definition of a high hedge (would) provide a more straightforward decision-making process which (would) limit costs both to the public purse and to the parties involved in the dispute …**

58. **It is of great concern that this case would not have been addressed in Scotland under the current ‘evergreen only’ proposals. This was a justifiable case, fairly and pragmatically handled by an open minded authority, unconstrained by poorly devised legislation which was copied from Westminster.**

Conclusions

59. There is no justification for excluding deciduous species or single trees from the definition of a hedge. Removing such limitations will not add significantly to the number of cases requiring local authority intervention, nor to the complexity or the costs of finding a remedy.

60. The proposed hedge definition states (section 2.2) that an application for a high hedge notice can be made where the ‘applicant considers that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’. This alone should be the requirement for making an application for a remedial order under the new legislation. It is unacceptable to discriminate between sufferers and deny them access to the remedial process, because of unproven and largely speculative differences concerning the species of plants involved.

61. One of the worst consequences of the proposed definition is that ‘de facto’ some of the nastiest cases will be confirmed as legal and the associated poor behaviour will be endorsed and encouraged by the law. This is a totally unacceptable outcome and we would expect the Scottish Parliament to feel a duty of care to people who could find themselves in this situation. To create a situation where, given two similar cases, one is resolved whilst the other is protected is frankly nonsense.

62. Under the current proposals there is nothing to prevent the ‘spirit’ of any remedial order being frustrated by unscrupulous growers who switch to readily available deciduous species or create a nominal gap between the plants to turn a hedge (as defined) into a row of ‘untouchable’ single trees. When this happens the government
will not only have failed the sufferer but will have created a law which is wide open to abuse by determined growers and which will be seen by the public as poorly thought out and ineffective.

63. With the exception of section 1 and some reservations regarding fees (section 3), Scothedge supports the remainder of the proposals. We are happy with the powers given to local authorities to administer the process and prevent frivolous or vexatious claims, and those given to ministers to make modifications. Given these safeguards we can see no reason to restrict access to those affected by deciduous species or single trees. In the unlikely event that these cases ‘swamp’ the system, the authorities will have the power they need to make changes.

64. There is overwhelming evidence, particularly from England and Wales, that the passing of legislation will result in massive ‘capitulation’ by unreasonable hedge growers without any action by the authorities or any expense to the taxpayer. This ‘one off’ effect will be boosted by the media coverage which will accompany any announcement of legislation. Scothedge considers that not only would it be unfair to deciduous and single tree sufferers for the government to deny them the benefits of this ‘honeymoon period’, but it would throw away a government opportunity to resolve a significant number of cases at no cost to the taxpayer.

65. For example this Scottish deciduous case will not be addressed under current proposals

Here is what it means to the sufferer.

- ‘Even on the sunniest of days I need full electric lights on. It is heart-breaking, on a sunny morning to have your kids say to you “Please put the light on Mummy” before they can eat their Rice Krispies!’
- ‘The plumber inspecting my boiler would not sign off the boiler as having passed until he had cut down some branches that overhang my external gas flue’
- ‘We are on a low income and just don’t have the funds to spare to pay for the luxury of having a tree surgeon visit our property every year to trim back a hedge that doesn’t even lie within our property’
- ‘The trees substantially interfere with my television reception. I have had a new rooftop aerial mounted on a 10 foot pole. Even with this, once it starts raining I hardly receive any channels apart from BBC1 and BBC2. I have no alternative but to consider arranging for my aerial to be mounted onto a 20 foot pole on top of my roof.’

Should this be allowed to continue?

Requests

66. Scothedge therefore asks the committee to amend the current proposals so that
sufferers are not discriminated against purely because of the number, species or arrangements of plants involved. As a general principle Parliament should frame legislation which considers the *effects* on the reasonable right to enjoy a property, rather than trying to define and legislate against the possible *causes*.

67. We commend the practice of the Isle of Man authority which is a big improvement on Westminster. We ask that similar practice is adopted here rather than copy the limited and compromised legislation in place in England and Wales.

68. Scothedge requests that the legislation is set as wide as possible so that the maximum number of cases can be resolved for the least cost to individuals and the taxpayer. No one should be excluded from applying for a remedial order because they cannot afford to pay a fee.

69. The provisions in the Bill provide plenty of protection for the authorities in the unlikely event that the number of cases become unmanageable. Parliament should give the benefit of any doubt to those who sufferer rather than to those who inflict suffering on others.

70. Finally … 3 similar cases which will be treated very differently under current proposals……
71. After 13 years of waiting for the Scottish Parliament to act – Let’s do it right!

For and on Behalf of Scothedge
Edinburgh
November 2012
SUBMISSION FROM ANONYMOUS

1. With reference to the high hedge bill, I have read it over several times and although I realise that it is intended to allow this issue to be debated openly in parliament and possibility as a media and votes exercise.

2. Where are the Green party, are they in favour of cutting down trees? the loss of habitat to all the birds and animal that live in and around the trees I’m deafened by their protest and words of condemnation for taking such drastic action.

3. This bill precludes the owners of Trees from their privacy, enjoyment and freedom to enjoy their gardens without constantly being overlooked from high flats next door or whatever.

4. It may also infringe on their “Human Rights” i.e. their right to Privacy. I will discuss this later.

5. There is no mention of the owners “reasonable enjoyment of domestic property” hence where is the protection for the owners? This bill seems only to satisfy one side of this debate or lobbyist groups like “Scot hedge”.

6. Or as I’ve stated earlier is this a P R Campaign? It would appear that it’s a waste of time writing to parliament with regard to this bill.

7. The bill totally excludes the hedge owners, no where in the bill does it ask the question: “Why do some owner’s feel the need to have a high hedge?”

8. I cannot speak for all owners, but in my case and I expect that it will apply to a large number of the owners, that it’s mostly for privacy, and enjoyment of their gardens.

9. By privacy I mean, that we can use/enjoy our garden as “we see fit” without curtain twitchers watching our every move or bottles, cans and other rubbish being thrown into our garden. Or individuals running through our property (without permission). Where we can walk/talk/play and just enjoy being outside with others and the enjoyment of the animals that also live there.

10. My trees have been there longer than any of my neighbours and I mean years, they were there when they bought their flats. It did not stop them buying them, so why do they now have a problem.

11. Because a particular neighbour has a problem, we must conform to their wishes or else.

12. Within the bill, should there not be provision that if the trees/vegetation have been there for 10 years or X years then it’s too late to remove them. Instead of when someone appears and wants everyone to conform to their wishes we all must change.
13. Within the bill there are no distinction where the trees grow i.e., north/south side etc. with relationship to light into the property, the sun rises in the east and sets in the west. If the trees are on the north side, there is no or very little chance of trees on the north side of a property being a hindrance to light. What happens then is it then up to the Local Council to decide? or should the parliament not have made provision for this in the bill?

14. Or should it be decided by a light meter, with a plus and minus scale would there be any distinction if the hedges are at the front or rear of a house/flat, i.e. therefore maybe obscuring the views from lounges, or from bedrooms would that make a difference, would this be down to the person on the ground? (Council Employee)

15. Or as the planning departments would tell us we are not entitled to a view.

16. Also the distance the high hedges are from the property, will this be three meters or thirty meters it will make a massive difference to “Reasonable Enjoyment” or “Barrier to light.” Or does this not matter just cut them down.

17. The statement “Reasonable Enjoyment” How can this be quantified?

18. Is my Reasonable Enjoyment less than my neighbours? The bill only seeks to provide for one course of action to have hedges cut down, we enjoy our privacy, now it will disrupted/ruined and never be the same again. So where is my justice, where are my MSPs doing their duty looking after the minority?

19. Surely I can expect the same “Reasonable Enjoyment” from my property as next door, not more or Less just equal to.

20. If my trees are to be cut down as the bill hopes to achieve “through amicable resolution.” With local council as adjudicators. Will it make me feel good towards my neighbour? ask yourself truthfully, when they are forcing my trees to be cut down, will this help neighbourhood unification? or “Reasonable Enjoyment” of domestic property” or will one side of the “Hedge” be giving the other side the proverbial two fingers.

21. Although this may read that we have issues with our neighbours, this is not the case. We have enjoyed great relationships with the vast majority of then throughout the years (and still do) but.

22. I believe this bill started out to curtail the use of Leylandii but now it has grown to cover “other form of vegetation” why? was it as a result of pressure from where? We have so few evergreens in this country to brighten up our long dark winter months, now they will be cut down along with the leylandiis.

23. I believe we must keep all the evergreens to enlighten and enrich our lives during the winter( and summer.)
24. As a habitat for our animals that inhabit this planet along with us not destroying it as a matter of course or expedience to satisfy a small but loud group.

25. As to the fees, that would apply (Approximately £500 to £1000) I would like to see a fee that would make time wasters, “frivolous and vexatious” think twice. It should be enough money to prohibit this type from ever contemplating taking this action without due consideration of the consequences.

26. Later if this is found to be the case (any of the above) then it should preclude them from taking up this type of activity ever again. After all if the bill is prepared to allow councils to cut down trees and be reimbursed by the owners, then why should the bill not allow reimbursement to the (Tree owners) for the stress/time caused by time waster etc. and possibly their legal fees.

27. Within the bill, the emphasis is on neighbours who have problems with adjoining property with reference to high hedges. Is it enshrined in the bill that groups of individuals will not be allowed to march around the country demanding that property owners cut down their trees or give financial support to individuals (who may or not be neighbours) to further their cause?

28. There are several issues that are encompassed within the “Human Rights U.K.

29. That are being conveniently overlooked within this bill below are some examples.

30. **Right to Property.** Protection of the right to own and **enjoy their property**
    **Privacy.** The right to **Privacy.** (Article 8) **Right to respect.** For **private and family life**

31. Other areas that apply to this bill i.e. **Dignity, Equal Justice.**

32. Three Generations: Third solidarity: Right to peace, right to a clean environment. (From **Karel Vasak**)

33. From **Phillip Alston**, urges caution with priorisation of rights. “The call for priorisation is not to suggest that any obvious violation of rights can be ignored.

34. Some human rights are said to inalienable rights, i.e. Fundamental rights are not awarded by human power and cannot be surrendered.

35. I would say that according to my rights several of the above are being denied and squashed to allow this bill to progress.

36. Perhaps if owners were allowed the same media coverage as the groups protesting then this bill would not have been contemplated.
37. I have asked for anonymity for my submission. However I will be available to discuss my reply should the committee wish to have further explanation of some of the points that I raised.
Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details:

1. No, the group does not agree with the definition of high hedges.

2. Two evergreen trees could be planted 5m apart, the lower branches come together and form a barrier to light. However the original intention was the establishment of two individual trees, not for a ‘hedge’ to form after many years growth. For example, Sitka spruce trees grown for commercial reasons are typically planted in woodlands at 2m or 3m spacing. Their canopies meet. Is this a hedge? Likely ‘no’ but it could be regarded as a ‘hedge’ or ‘barrier to light’ under this legislation where the woodland backs on to a private garden. Two yew trees or Scot’s pines could have been planted for aesthetic, historic, cultural and/or biodiversity value reasons and may be growing in close proximity as open-grown trees but were never intended to be or managed as a hedge.

3. It is understood that the Bill has been drafted principally in relation to issues associated with tall cypress, or similar species, hedges. It is however recognised that for cypress it is not uncommon for plants to be planted as individual trees in a row, and remain untrimmed or only partially trimmed. Through time the row of trees will exhibit what many regard as the characteristics of a ‘hedge’ and form a barrier to light. In this regard, including a line of evergreen trees within the scope of the legislation may not be unreasonable. However if the row of trees is a feature of the wider landscape of a garden or park then it could be unreasonable to consider these as a ‘hedge’ if the original intention was not to form a hedge but to form a row of trees.

4. The group’s principal concern is that some may seek to interpret the legislation as relating to 2 or more tall trees growing closely together which cause a barrier to light but which were not planted originally as a hedge. They could be park, garden or woodland edge trees, or species whose growth characteristics are not consistent with being a hedge. For the avoidance of doubt, it is not considered appropriate that the legislation apply to these circumstances.

5. The bill refers to ‘high hedges’ and therefore the original intention of the planting should have been to form a hedge. Whilst there is no absolute definition of hedge in common usage, it is generally regarded as being one or more lines of woody plants planted at a spacing which is likely to lead to relatively rapid coalescence of canopy. Plants are usually trimmed (on sides and top) to encourage bushy growth more or less to ground level to form a physical barrier to movement. It is custom and practice for hedge plants to be planted in a row or rows – straight, zig-zag, multiple rows – at 1 or more plants per linear metre. The definition of a hedge should incorporate reference to the distance between plants and/or to the original purpose of the plantings.
6. It is considered desirable that clear guidance on the interpretation of the legislation be provided in advance of the legislation being enacted. In this regard, the Explanatory Notes are not considered sufficient for the purpose and we would wish that supplementary guidance be produced. To provide weight of consideration, it is considered that such guidance would be specifically referred to within the primary legislation. In particular we would find it helpful that statutory guidance:

- Provides further clarification on the specific circumstances to which the legislation relates. It would help if the statutory guidance describes examples of trees, tree lines, woodland edges, shelterbelts and wildlife corridors which are outwith the scope of the legislation.
- The term ‘semi evergreen’ is confusing and contradictory. If reference is being made to Beech (Fagus sylvatica) then this should be stated, otherwise an explicit statement that the term semi-evergreen does not include species, which can hold on to desiccated foliage beyond autumn (e.g. beech or hornbeam) should be made. The definition of ‘semi-evergreen’ should be clarified or removed altogether.

7. A hedge of 2 metres is a reasonable height as this creates privacy within a property. It is unreasonable to have a hedge of 2 metres to be included. This should be extended to 3 metres.

8. Alternatively a simple formula could be used which takes into account the height of the hedge and the distance from a neighbouring property e.g. a 2 metre hedge which is 1 metre from a property is likely to be more of an issue than if it were 15 metres from the property. However there is no room for this distinction in the current bill.


**Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why?**

10. No. However more guidance on what type of vegetation the Bill aims to control would be useful.

11. Trees are an important contributor towards visual amenity and often contribute significantly towards the landscape setting of settlements and other development. Proposals to extend the Bill to include all trees would not be supported.

12. The bill should be limited only to hedges, with the specific focus on people who deliberately use cypress or other evergreen hedges to intimidate or generally make life difficult for neighbours. Native coniferous hedges made up primarily of yew and juniper should be exempt as these are rare and provide important biodiversity and habitat. Other hedge species are more manageable and may successfully be topped and reformed. Cypress or similar species are not.
Do you have any comments on the proposed approach to dispute resolution as set out in the Bill?

13. The Bill appears to allow the local authority to exercise significant levels of discretion in determining applications. It is however noted that there is a process of appeal to the Scottish Ministers. It is therefore considered desirable that clear guidance on the interpretation of the legislation be provided in advance of the legislation being enacted. In this regard, the Explanatory Notes are not considered sufficient for the purpose and we would wish that supplementary guidance be produced and this is specifically referred to within the primary legislation.

14. Section 6(7) of the Bill provides examples of matters to which the authority must have regard. Given that the legislation would apply to trees, it would be appropriate that “good arboricultural practice” be included on the list. Good arboricultural practice is significantly informed by BS3998: 2010, Tree Work – Recommendations. In terms of the approach to dispute resolution it is considered desirable that the statutory guidance:

- Provides hypothetical examples of what is understood to be either “frivolous or vexatious” (para 5(1)(b)) applications, in order that the circumstance is clear as to when a local authority “must dismiss” an application.
- Provides guidance on what is considered “….reasonable steps to resolve the matters in relation to the high hedge” (para 3(1)) before making an application”) This would help ensure the law is consistently and fairly applied across Scotland. For example the Explanatory Notes note that the local authority may require applicants to have tried mediation before making an application. Unless nationally applied this would be an unfair requirement if only applied locally and it may put off potential applicants for reasons of cost (approximately £50 + VAT / hour) or for other reasons including that they may be intimidated or confused by the process. The guidance could usefully include hypothetical examples of acceptable (and unacceptable) reasonable steps.
- Clarifies whether there is a general right to light under Scottish law and makes it explicit that this legislation is not intended to address all light issues which may result from vegetation. It would also assist if guidance made it clear that the legislation relates to daylight rather than sunlight.
- Provides guidance in relation to hedge height and light loss which take account of a number of factors including hedge height, window position, distance and aspect. This is considered highly desirable to provide a level of national consistency in applying the legislation. It is noted that the BRE has prepared a guidance note for DTLR in England on “Hedge Height and Light Loss” which provides guidance in this regard.
- Clarifies the procedure where a local authority is either the applicant or the owner of a hedge under the definition in the legislation is the applicant.
Do you have any comments on the enforcement procedures proposed under a high hedge notice?

15. Subsection 16 (2) should include reference to the National Park Authority.

Do you have any comments on the proposed fees and costs?

16. The freedom to charge fees and costs should remain with the local authority. Costs charged should be reasonable in covering the costs of the operation.

Are there any aspects of the systems used in other jurisdictions which should be included within this Bill?


18. The application based process being proposed is a novel one. There may be issues in its implementation but at this point it’s difficult to foresee what other aspects of other enforcement systems may be pertinent.

19. The 2001 DTLR ‘Hedge height and light loss’ calculator for ‘action height’ could/should be adopted to assist with the ‘forms a barrier to light’ bit of the bill.

Are there any aspects of this Bill which would impact positively or negatively on equality of opportunity?

20. No

Any other issues relating to the Bill which you wish to bring to the attention of the Committee?

21. The main item that perhaps could be withdrawn from the proposed Bill is Section 11, Tree Preservation Orders. We would consider Clause 2 could have detriment to say, a couple of mature Scots Pine or Cedars, which by virtue of a TPO have some landscape or intrinsic value but could be ruined by the effects of works emanating from a potential HH Notice.

22. The fact that neighbouring properties do not have a right to light where a property is shaded out by adjacent tree growth has been a key argument in preserving tree cover and biodiversity in many situations encountered by local authority officers. Complaints are regularly received from people who want otherwise healthy trees cut back or removed in order to allow more light into their garden/property/conservatory, often in a situation where the trees have been there longer than the property. A common situation is for a proprietor to build a conservatory or sun room and then complain about adjacent trees shading out light. This is unacceptable and there should be provision within legislation that if trees or shrubs predate adjacent property or dwelling place then the owner of the
trees or shrubs should have less obligation. Are Scottish Ministers prepared to introduce a ‘right to light’ for residential properties as this bill seeks to do. This could have potential repercussions for other situations and this right to light applied to situations that the bill has little relevance to, particularly where two or more mature trees closely growing together but not planted as a hedge are concerned.
1. I am writing on behalf of the forestry department of Bell Ingram Ltd. in response to the call for evidence for the High Hedges (Scotland) Bill.

2. We manage trees and woodlands on behalf of our clients, frequently liaising with neighbouring property owners regarding trees close to boundaries adjoining residential properties. In many instances house owners wish for trees to be removed from woodland edges for a variety of reasons, most commonly due to a perceived risk to property, the effect of trees on light levels, leaf fall into gardens or occasionally poor television reception. In such cases we assess whether there is a risk to safety or property and instruct remedial works accordingly. However, we generally resist removing healthy trees unless required for safety reasons or woodland management.

3. Trees are an extremely valuable part of our rural and urban landscapes, and in many areas are already under pressure from development, damage or disease. Our experience suggests that there would be a high demand for the removal of trees in gardens and along woodland edges if there was a stronger statutory basis for this. This Bill is clearly targeted at the specific issue of leylandii hedges, as demonstrated by the very narrow definition of what constitutes a “high hedge”. However, if this definition were to be broadened to include deciduous trees and/or individual trees this could result in the unnecessary loss of trees to the detriment of urban landscapes and the environment.

4. We therefore strongly support the retention of the definition of a high hedge in section 1 of the High Hedges (Scotland) Bill [as introduced]. We feel that this adequately addresses the problems sometimes caused by conifer hedges without creating a legal basis for the forced removal or reduction of trees for reasons other than risk to safety or property.

5. I understand that high hedge notices under this legislation would take precedence over any Tree Preservation Orders covering the trees in question. We feel that this is unnecessary under the current scope of the bill, as leylandii hedges would be unlikely to be covered by TPOs. If the bill were to include other trees, this would potentially reduce the level of protection for valuable amenity trees.

6. We would also suggest that yew hedges should be specifically excluded from the scope of this bill, as these are slow growing, and where they exist tend to form part of historically valuable sites such as churchyards and old policy grounds.

7. Subject to the definition remaining unchanged, we have no specific comments regarding enforcement, costs and fees or dispute resolution.
8. I would be happy to discuss any of the points above in more detail if you wish for clarification or further evidence.

Graham Phillips
Forest Manager
Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details;

1. No. It does not fully describe what constitutes a high hedge. It is vital that it is clear that the original intention of the planting was specifically for the purpose of establishing a hedge, rather than two or more evergreen trees being planted (or even naturally regenerating) at close spacing which are not intended to be a hedge; closely planted evergreen trees could be interpreted by some people as a hedge under the currently proposed definition. An improved definition of ‘High Hedge’ would be important. The power to modify the definition of ‘high hedge’ in the future is therefore an important provision regardless of whether the current definition is amended. It should be noted that many complaints are received about trees / shrubs which are in a row of 2 or more, but which are not evergreen or semi-evergreen and there is already a public misunderstanding that local authorities can take action in these situations.

Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why?

2. No. It is vital that the bill applies to hedges only.

Do you have any comments on the proposed approach to dispute resolution as set out in the Bill?

3. This would appear to be a reasonable approach. Clear guidance from the Scottish Government on implementation would be essential. The responsibility of the potential applicant to take all reasonable steps to resolve the high hedge dispute prior to an application is welcomed. However, there is no definition of the level of evidence that the potential applicant would need to provide to the local authority that all reasonable steps to resolve the dispute have been taken; there could be some ambiguity between authorities the level of information required and further guidance on this aspect would be welcomed.

4. It is noted that the owner of the high hedge has ample opportunity to take remedial action at a number of stages.

Do you have any comments on the enforcement procedures proposed under a high hedge notice?

5. No, but it must be acknowledged that this could be a process involving staff resources (landscape officers / arboriculture officers / environmental health, solicitors, enforcement officers).

Do you have any comments on the proposed fees and costs?

6. No. Fees must be reasonable to cover council’s costs.
Are there any aspects of the systems used in other jurisdictions which should be included within this Bill?

7. No comments.

Are there any aspects of this Bill which would impact positively or negatively on equality of opportunity?

8. Not aware of any.

Any other issues relating to the Bill which you wish to bring to the attention of the Committee?

9. Standard explanatory guidance for use of the public would be essential for clarification. This should be provided centrally by the Scottish Government, rather than being left to each local authority to provide their own guidance, which could lead to discrepancies in interpretation.

10. Whilst there is provision to recover costs in the Bill, there remains a concern about the additional workload placed upon existing officers as a result of the legislation; once the legislation comes into force, there will inevitably be increased public expectation that the local authority can take immediate action and some public misunderstanding of the provisions of the legislation, particularly in relation to the current definition of ‘High Hedge’. This will result in officer time dealing with initial queries and site visits, as well as processing eligible applications, application dismissals, decision notices and serving of any high hedge notice.
1. High hedges must also consider all types of trees affecting people's property.

2. Enforcement procedures need to ensure swift action can be taken in an agreed time period. Owners fob off dates/ waiting on the right weather etc.

3. Fees should be refunded by the land owner.

4. What is deemed reasonable steps to resolve matters?

5. Ongoing work - trees grow. Owners should have responsibility. If they are asked to action something there should be a further date for ongoing maintenance expectations etc.

6. Consideration of impact to people's lives - possible financial fine?!!
1. I refer to the request for written evidence in response to the publication of the High Hedges Bill. The representations contained within this letter are submitted on behalf of myself, and my client Mr John Harkiss, of Torley House, Southfield Road, Troon.

2. In response to the specific questions set out in the call for evidence I would like to make the following observations specifically in relation to the proposed definition of a hedge.

3. The committee should be aware that Scotland boasts the world record-holding high hedge at Meiklour, Perthshire. This is comprised entirely of beech. It is perplexing that the proposed definition of a hedge within the Bill should exclude beech, and other deciduous plants that are commonly used as hedging. Beech is one of the most commonly-used plants for domestic hedging, and as demonstrated at Meiklour it has the potential to reach enormous heights. Furthermore, when left unmanaged, beech hedges will usually comprise multi-stemmed plants that have structurally weak forks, often leading to stem breakage and safety issues. Beech is not evergreen, although it will hold onto dead leaves throughout the winter and will cast significant shade year-round as a result.

4. The dictionary definition of a hedge is “a close row of bushes or small trees serving as a fence.” It would seem sensible to ensure that the proposed Bill encompassed all types of vegetation that are grown closely in a row to form a fence or screen. As currently proposed, the Bill does not address issues where trees have been planted to form a screen and have then been left unmanaged. In the case of Mr Harkiss, his property is blighted by a close row of poplar trees deliberately planted as a screen and now some 14m in height, with the potential to reach 20m within a relatively short space of time. This is interfering with the normal use of his property, and has the consequential effect of preventing the installation of solar panels due to the excessive shade.

5. In general, I am in broad agreement with the remaining sections of the bill.

Alan R Motion BScFor, FICFor, CEnv, MArborA
Chartered Forester
1. I write in connection with the proposed high hedge bill currently sitting in parliament.

2. I am writing to highlight a couple of points which I would like considered in the process.

3. I have lived in a property for about 6 years with neighbouring high hedges which have been left to grow out of control. The property was originally owned by an elderly lady who sadly passed away a few years ago. Since then it has changed ownership and although we have tried numerous times to liaise with the new owner to get the trees dealt with, they have not wanted to do anything. The trees have not been trimmed since I have lived here and they are now the same height as our building. I would like to just highlight that our building is not an ordinary house but in fact a list conversion ( ) with 4 floors so you begin to get an idea of the scale. I have attached a number of photos to illustrate. A couple of years ago, we cut back the overhanging branches on our side using a 3 story scaffolding construction and 3 metre long chain saw. We were however unable to reach the top branches.

4. The points I would like to have taken in to consideration is in relation to the fact that these trees have the potential to damage a listed property which is protected. As owners of the church, we are unable to change the appearance of the property yet our neighbours trees have the potential to greatly damage it. Shouldn't there be a clause regarding listed or protected properties?

5. We have had damage to the dividing wall due to the roots of the trees and this is my other concern, although related. The encroachment of these trees roots has the potential for great damage and so I do not see how this could possibly be excluded from any bill. Roots can potentially be more damaging than the trees themselves and as they are one entity, surely it would be wiser to include the treatment of these within the bill as well?

6. Photos I have enclosed are as follows:

   1. Wall damage in March 2012 (roots)
   2. Wall damage in Sept 2012 (roots)
   3. Trees in question are on left of the church building (note the height)
   4. During the bad storms this year, part of one of the smallest trees broke and fell on our property. Luckily it feel just short of the building but it is worrying as this tree is extremely small compared to the largest ones. I believe it is only a matter of time before one of the large ones.
   5. Although this was the small tree that fell, you will see the potential for damage
   6. A view of the trees to illustrate the height and darkness caused
7. Another view of the trees to illustrate the height and darkness caused
8. Although the property is south facing, you will see that little grows due to the lack of light and it is mostly mossy

7. I am very grateful to those involved in pursuing this bill as it greatly affects so many of us in Scotland and look forward to hearing the good news that the bill has been passed in the not too distant future.

8. Many thanks and please do get in touch if you need anything else from me.

Note: Photographs of a private property were provided with the submission, but are not reproduced online.
SUBMISSION FROM GEORGE DONNACHIE

1. With regard to the proposed Bill, can I urge The Scottish Parliament to improve on the poor legislation passed by England and Wales regarding nuisance vegetation. Merely restricting the legislation to hedges and evergreens will only solve a part of the problem, the legislation must cover all types of nuisance vegetation, does it really matter if the nuisance vegetation is green brown or yellow? Other aspects which must be included are; a right to a view, blocking of TV and Satellite signals and leaves falling on property.

2. This is the opportunity for Scotland to get this Bill right first time, let's show England how it's done!
SUBMISSION FROM HANNAH ROSS

1. I wanted to email to lend my support for the proposed High Hedges Bill. I see that there is no MSP from the Lothian region, where I live, on the committee so I hope you'll forgive me emailing you as convener in place of a local representative.

2. I live with my family in a flat with a reasonably small garden. Although we have a very open outlook from the front of the flat, the rear of the property and the garden is blighted by a row of very high Leylandii trees planted in the back of the gardens to the rear of our property. Although my neighbours and I have approached the owners of the properties to the rear of us on numerous occasions to ask them to remove, or lop, the trees, they have always refused. It is a real shame as the trees don't add anything aesthetically and while both we and our neighbours at the rear of our property are entitled to privacy quite honestly I think a fence would do that job.

3. I do have hope that this Bill will be enacted and give us a resolution to this problem.
Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details;

1. YES

Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why?

2. NO

Do you have any comments on the proposed approach to dispute resolution as set out in the Bill?

3. NO

Do you have any comments on the enforcement procedures proposed under a high hedge notice?

4. YES, are SG going to use the extensive OPDM literature or are they going to produce a Scottish version.

Do you have any comments on the proposed fees and costs?

5. YES, Why can’t we have a Scottish standard price for LA’S to charge and list of any reasons for potential refunds.

Are there any aspects of the systems used in other jurisdictions which should be included within this Bill?

6. NO

Are there any aspects of this Bill which would impact positively or negatively on equality of opportunity?

7. NO

Any other issues relating to the Bill which you wish to bring to the attention of the Committee?

8. NO
Dear Sir,

High Hedges Bill: Call for evidence

I attach a letter concerning the nuisance caused by dense planting of deciduous trees in proximity to property boundary lines.

I hope the letter is self explanatory.

I would like the Committee to consider it, along with this covering letter, as evidence of the distress caused by densely planted deciduous trees forming a barrier to light.

I understand that the Bill as it stands excludes deciduous trees and would ask the committee to consider that it is the impact of dense planting of tall trees that causes the problem. For this reason I would ask them to consider including deciduous trees which have an impact on light for a long growing season in the wording of the final legislation.

Yours faithfully

Carol Walsh (Mrs)
28 October 2012

Dear Sir and Madam,

Tree Planting to the rear of

I am the owner of , which lies within the development at . Ground to the rear of my property, and that of several of my neighbours, is zoned for structured woodland planting.

I am writing to you both as I understand that retains a controlling interest in the amenity grounds in this area and were responsible for drawing up the planting scheme in conjunction with Council as the relevant planning authority. My purpose in writing is to appeal to you to bring some common sense to a situation which is causing me much concern

Scottish Woodlands has planted a small forest of approximately 40 Alder trees directly at the foot of my garden. I understand that these trees can grow to a height in excess of 20 feet.

I have approached Scottish Woodlands about the reasonableness of the chosen planting scheme in such close proximity to my house and have been informed by them that it is part of the planting scheme for the area and they are powerless to do anything to vary it.

Having examined the deeds of my house I find that woodland areas can be planted such that trees are 2 meters from fence lines and 1 meter apart. Scottish Woodlands have chosen to plant at this maximum density and with a species of very large and fast growing trees. I find it hard to believe that , and Council, intentionally designed such a planting scheme so that it would severely impact on my back garden. I have been informed that the trees will basically form a high, green barrier at the foot of my garden. They will block sunlight and be oppressive when viewed from my rear windows and back garden. Scottish Woodlands have advised me that the trees will be thinned, but that this is simply to accommodate ‘canopy closure’. In summary the tree thinning will have little impact on my concerns.

The plan of the area included with my deeds gives no indication that this area was zoned for woodland and the house was sold to me partly on the basis of the open outlook and the fact it was impossible to build to the rear because of the nature of the land.

For several years after I moved in the area was planted with what I would describe as low lying scrubland. When the Alder trees were planted, I believe a couple of years ago, it was not immediately apparent to me that they were anything other than replacement shrubs. It is only this year that I have become aware of the potential height and density of the planting.

As and Council appear to be the main parties able to influence the nature of the planting in this area I would ask you to review the situation with a view to reaching a compromise arrangement. The planting scheme as it stands appears to have some flexibility as some places within the zoned area have been left free from trees and some of the species planted appear to be of a less spreading variety. The trees in fact appear to be peculiarly crowded in front of my property, and also part of my neighbours’ property.
In considering this matter I would draw your attention to section 7.4 of Council's Supplementary Planning Guidance on Trees and Development which states: 'problems with shading caused by blocks of trees can be avoided by careful siting and keeping an area of open ground between the woodland and properties.' Clearly that has not been applied in this case.

You will also be aware that the Scottish Parliament will shortly be considering a bill to address the nuisance caused by high hedges. I am copying this letter to the committee responsible for considering evidence to inform the final drafting of the legislation, to draw attention to this particular case.

I have spoken to the neighbours in whose properties are adjacent to the woodland planting and they share the concerns I have expressed in this letter regarding shading and the proximity of the trees to the property boundaries.

I am sorry to write to you at such length on this matter but I have been left feeling rather powerless in the face of Scottish Woodlands' intransigence.

Yours faithfully

Carol Walsh (Mrs)
Clerk to the Local Government and Regeneration Committee  
Committee Office  
Room T3.60  
Scottish Parliament  
Edinburgh  
EH99 1SP  

Dear Sirs

High Hedges/Vegetation Bill

Further to recent correspondence regarding the issue with high hedges and vegetation we respond as follows.

We are in total agreement that something has to be done about this matter, and the hope of this dispute being addressed will be great news for many.

For many years we have lived next door to a family who have a 60-70 ft high Copper Beech tree on the boundary between their house and ours. The tree is a canopy over our back garden and in the summer months our garden is void of sunlight after 1pm, and in the autumn the leaves are a menace clogging gutters and drains which we are continually clearing away from garden and pathways. The tree is also a danger because should it ever be blown down by wind etc it would probably flatten most of our house it is so close. We live in fear every time there is a gale that large branches will break off and damage our property or ourselves. They also have several other smaller trees on the boundary and are getting bigger every year and starting to cause problems of their own.

We have asked our neighbours many times over the years about the dangers of the tree, only to be ignored. We have taken the matter up with our Local Council, sought legal advice, even offering to share the costs of removal, all to no avail, finally approaching our local MSP who has given us and many others hope that matters may be resolved by the passing of the Bill on High Hedges and Vegetation.

I am enclosing a number of photographs showing our plight.

Yours faithfully

Mr & Mrs Alexander Rutherford
26th November 2012

Clerk to the Local Government & Regeneration Committee

Committee Office

Room T3.60

Scottish Parliament

Edinburgh EH99 1SP

Dear Sir/Madam,

HIGH HEDGES (SCOTLAND) BILL

In 2005, while we were on holiday in Australia, the owner of a new-build adjacent to our property planted 90+ Cypress trees on his side of our communal fence. No prior consultation was held with us, and the saplings were planted between 10 and 30 centimetres from the fence (I can supply photographs of this). These trees have not been maintained on either side of the fence by the owner of the hedge and are now from 4 to 4.5 metres in height.

Last summer the lateral branches of the hedge protruded onto our drive and car park so much, that cars were swept on passing and we found that we could not tow our caravan down our drive. I spent 4 days lopping those lateral branches on our side. In doing so I dislodged two discs in my spine, for which I am still receiving hospital treatment.

My husband and I are both in our seventies and cannot continue this arduous task. Although we are in favour of a neat evergreen hedge between the properties, the present hedge has been planted too close to the communal fence and has not been maintained by the owner. He has told us twice that the hedge
I have downloaded your material on the High Hedges (Scotland) Bill and now present evidence/comment briefly on two sections:

1) THE MEANING OF "HIGH HEDGE"

and

2) HIGH HEDGE NOTICES.

1. MEANING OF "HIGH HEDGE"

1. a) There are approximately 90 trees planted in a continuous line along the communal fence at a distance of 10 to 30 centimetres from that fence - far too close!

The Bill makes no mention of how far a hedge should be planted from a communal fence. Surely that is important for the health of the hedge, maintenance and damage to adjacent property.

b) The trees are now 4 metres+ in height and are not being maintained.

c) The trees do form a barrier to light. At night the light from the street lamp on the road is totally obliterated, leaving the approach to our house, a distance of 60 metres, in complete darkness. The lack of sunlight causes moss to grow on my drive, green algae on our caravan and has an adverse effect on plants in my garden.

3) We feel that account should be taken of the roots of a high hedge. In our case, because the hedge has been planted so close to the communal fence, the roots are causing the tarmac on our drive to bulge and crack.
2. HIGH HEDGE NOTICES

2) This hedge adversely affects the enjoyment of our property because –

a) It restricts access to vehicular traffic on our side if not trimmed twice per year.

b) It reduces the security of our property because it conceals from our neighbours the entrance to our property, in fact a view of the whole ground floor of our house, car park and garden. They can no longer “keep an eye” as we have done for one another over the years. Similarly our view has also been greatly restricted.

c) Maintenance of this hedge is a huge task for us which we are no longer able to do or feel we should pay for. The owner maintains the hedge will

d) The hedge reduces the amenity value of our property because it is so unkempt and obliterates the approach to our house enclosing our drive.

All of these points affect the “reasonable enjoyment” of our property.

We look forward to the progress of this Bill through Parliament and would be very grateful for any advice you could offer us as a way forward.

Yours sincerely

(Elizabeth A. Brunton)  (Ian S. Brunton)
of written evidence to Stage 1 of consideration of the
High Hedges (SCOTLAND) Bill.

We feel that 2m. is perhaps, generally acceptable and
helpful in an urban situation, but in a more rural
situation (as in our case) where landowners have a "set aside"
agreement, states that hedges must be a specific distance from
a boundary, and hedging only allowed to grow inward. Hedges
must be trimmed regularly to a height of 3 or 4 feet to stop
branches spreading into an adjoining property. We fully endorse
the Committee's approach to dispute resolution. We also agree with
the enforcement procedures set out in the Bill.
The cost of correction of faults must be those created in the first place by the landowner responsible.

The aspects of this Bill, as we see it, would have no positive or negative effects on equality.

Thank you for inviting us to comment and we would like to think our responses have been positive.
MR R. HOPKINS
Bought house council estate. Two metre hedges do not stop most thrown bottles three metre do.

Broken windows are a fact. Do we hide behind curtains and hope they go away or like my neighbour go out and end up in southern and general critical. Police will not respond unless you are beaten, stabbed, murdered.

Houses less than 50 meters apart, curtains never opened. You can look straight into neighbours window, hence trees and hedges to give some privicey.

Example
Planning consent block of flats two meters from boundary objections overruled. Yet under this ruling adjoining properties can be forced to cut down trees and hedges adding insult to injury.

Wild life
Has any though been given to birds and squirrels. Nests and roosting birds are easy prey under this ruling.

Councils
Enclosed two pictures of hedge cutting after years of neglect council finally cut their side of the hedge. The fencing my attempt to block the damage. It has taken a year to replace the hedge. While waiting I received in July a letter telling me to cut my hedge, it had been cut twice.
Perhaps you can explain why such high costs when councils pay very low wages to their workers.

Please forgive the poor handwriting. I am elderly and my hands shake.
16th November. 2012-11-09 Dear Sir,

I enclose my letter which I have already sent to the Parliament ---- It will make my reason for writing clear!

In answer to your requests for submissions to the provisions of the “High Hedges Bill”

1 Why only “High hedges”? Deciduous trees planted in the wrong place can be as much if not more of a problem.

2 As you can see from the enclosed letter the answer would be definitely “Yes”!

3 No.

4 I appreciate the fact that it is difficult to legislate for trees already planted but why not bring in a law which supports the fact that ‘A tree should not be planted nearer to a house or boundary wall/fence than its eventual full-grown height’?

Another problem which is going to arise is the fact that trees may in time cut out light from solar panels on roofs. Perhaps this would be a good time to deal with this problem also. It actually looks as if this will happen to our house within a year or two. What is the legal answer?

5 No

6 Not that I know of.

7 Not that I know of.

8. There seem to be very little that can be done even although a tree may be causing damage and/or distress to neighbours. The issue of fairness comes in here ---- see enclosed letter!

Yours sincerely,

Muriel G Thompson
Dear Mr McDonald,

I have just read in the newspaper of your intention to bring in a Bill controlling the height of evergreen hedges bordering neighbouring properties. Wonderful! There are so many selfish neighbours who simply ignore requests for consideration of their neighbours that a Bill is sorely needed.

BUT why stop at evergreen Leylandii?
Let me put you in our picture (I say “our” because this affects more than one neighbour.)

We live in a small street --- formerly a lane where the houses have been built in what was the end of the gardens of larger houses. Our gardens are small but very well cared for (mine is a prize winning garden, being twice “Best in Inverclyde” at our local Show.) --- with ONE exception. One of the houses is a large house, divided into two flats with no garden at the front. At the back, which is shared, there is a long strip only about 1and1/2 metres wide by approximately 10 metres long (this runs along our fence) and belongs to the upstairs neighbour. The family downstairs look after the communal area as well as their own part.

This “strip” has always been left as a weed and snail farm. Except for one thing. The owners planted a Silver Birch tree in it some years ago! They refuse to do anything at all with it and the result is that now, it is about 15mtrs high, has roots going under all our properties (we have been warned that they might interfere with sewage and water pipes, gas, electricity and television cables but they still turn a deaf ear.

The upstairs couple never use the garden area as they go away in the summer but now the tree is this height our gardens are in shade for a great part of the day --- which is a real shame considering how little sunshine we get. In the Autumn we spend every day removing leaves etc and disposing of them. As I am now 75yrs old this is becoming more and more arduous.

The recommended area for planting a tree is a distance equal to the final height of the tree away from houses or boundary walls/fences. The word “recommended” means nothing to people who don’t care. We need a law to prevent this happening again and a law which will help people like us to exert some pressure on people like this to remove a tree which has a potential height of 30mtrs and should be in a forest!

One way would be to put the responsibility on to the garden centres to inquire where such a monster is to be planted and tell the prospective buyer of the law.

I very much look forward to hearing from you and any law which will help to improve our lives!

Yours sincerely,

Muriel G Thompson.
DEAR SIR
I HOPE YOU CAN HELP ME I HAD THE SPSO REFUSE MY CASE ON TWO OCCASIONS THE FIRST WAS THAT HE WAS BLOCKED BY LEGAL ACTION THE SECOND WAS AFTER THE ADJUDICATORS OFFICE ASKED ME TO GO BACK TO THE SPSO AND SINCE A SHERIFF STATED THAT THERE WAS FRAUDULENT ACT, BY COUNCIL WE ALSO HAVE M.P. THE PARLIAMENTARY OMBUDSMAN BACKING THE ADJUDICATORS OFFICE THAT THE COUNCIL TOOK A DEBT THAT WAS NOT THERE, THIS COUNCIL HAVE COMMITTED FRAUD, BENEFIT-FRAUD, AND THEFT I ASK YOU TO GET THE SPSO TO TAKE MY CASE IF THEY REFUSE THIS THEN THEY SHOULD BE SHUT DOWN AS THEY WERE SET UP TO HELP THE PUBLIC IN THESE CASES, IF YOU WANT MORE INFORMATION YOU CAN SPEAK TO M.S.P. WE ALSO HAVE A LETTER FROM THE LORD PRESIDENT'S PRIVATE OFFICE THAT STATES IF YOU WISH TO APPEAL TAKE LEGAL ADVICE BUT WE CAN'T GET LEGAL ADVICE AND THE CAB SAY IT IS NOT IN THERE REMIT. WE WILL CONTACT ALL MEMBERS OF THE COMMITTEE ON THE SPSO TO ASK THE SAME THING AND RIGHT TO THE SPSO TO GIVE THEM THE CHANCE TO TAKE THIS CASE. THE LETTER FROM THE SPSO DATED 22/10/2010 REF.NO STATES FURTHER TO THE LARGE BUNDLE OF DOCUMENTS WE RECEIVED FROM ME 7 OCTOBER 2010 MY PAPERWORK HAS NOT BEEN PRESENTED TO US IN A WAY WHICH WOULD ALLOW THEM TO MAKE IT INTO A COMPLAINT FILE AND GIVE FURTHER CONSIDERATION AT THIS TIME BUT THE SAME PAPERWORK WENT TO THE ADJUDICATORS OFFICE AND THEY SORTED IT OUT THIS IS THE SPSO NOT DOING THERE JOB THAT THE PUBLIC PAY THEM FOR, WE ARE ASKING FOR YOUR HELP. ARTICLE 8 OF THE HUMAN RIGHTS ACT STATES EVERYONE HAS THE RIGHT TO AN EFFECTIVE REMEDY BY THE COMPETENT NATIONAL TRIBUNALS FOR ACTS VIOLATING THE FUNDAMENTAL RIGHTS GRANTED HIM BY THE CONSTITUTION OR BY LAW. AS THE TRIBUNAL STATES A LACK OF JURISDICTION THEN THEY ARE BRAKING MY HUMAN RIGHTS, I COULD BE EVICTED AT ANY MOMENT I HOPE YOU WILL CONTACT THE SPSO AND COUNCIL TO STOP THIS TILL THE SPSO LOOK AT MY CASE THANK YOU
SUBMISSION FROM MR DONALD MACSWEEN

I am keen to see the bill should include deciduous trees. My neighbour planted a silver birch tree that has not been cut for around 8 years, and which I estimate is 50ft high.

I would be grateful if my concerns could be taken into consideration.

Mr Donald Macsween
The Scottish Wildlife Trust welcomes the opportunity to submit evidence to the Local Government and Regeneration Committee regarding the High Hedges Bill.

The Scottish Wildlife Trust’s central aim is to advance the conservation of Scotland’s biodiversity for the benefit of present and future generations. With over 32,000 members, several hundred of whom are actively involved in conservation activities locally, we are proud to say we are now the largest voluntary body working for all the wildlife of Scotland. The Trust owns or manages over 120 wildlife reserves across Scotland and campaigns at local and national levels to ensure wildlife is protected and enhanced for future generations to enjoy.

We have concentrated our evidence on the two questions which could impact on wildlife. In addition, we have provided evidence of our experience of tree/woodland management in urban areas.

1. Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details:

The definition in the Bill, of what constitutes a high hedge is: one formed wholly or mainly by a row of two or more evergreen or semi-evergreen trees or shrubs, exceeding two metres in height and forming a barrier to light.

The Scottish Wildlife Trust recognise that this definition is primarily aimed to capture fast growing non-native conifers such as Leyland cypress (x Cupressocyparis leylandii) and Western red cedar (Thuja plicata), but the Committee should also bear in mind that the definition ‘evergreen’ also captures native species such as juniper (Juniperus communis), holly (Ilex aquifolium) and yew (Taxus baccata). Not only do these native trees have great cultural significance (possibly the oldest tree in Europe is the ‘Fortingall Yew’) but they are also a haven for wildlife which has evolved with, adapted to and exploited these trees since they colonized after the last glaciations.

For instance regarding holly, birds such as song thrush, blackbirds, fieldfares and redwings eat the red berries in the winter of the female trees, butterflies and bumblebees feed on the nectar and pollen produced in the spring/summer and small mammals, hedgehogs and amphibians such as toads hibernate in the winter in the thick leaf litter. Holly’s dense leaves and prickly foliage also provide a good nesting site for native birds. Although non-native evergreens are not so attractive to Scotland’s wildlife they do provide nest sites for breeding birds, because of the protection afforded by the dense foliage. Therefore, any removal/reduction of such hedges to accord with the Bill must be conducted outwith the bird breeding season to comply with the Wildlife and Countryside Act 1981 (W&CA) and the subsequent amendments found in the Nature Conservation (Scotland) Act 2004. Section 1 of the W &CA states:
Protection of wild birds, their nests and eggs.

(1) Subject to the provisions of this Part, if any person intentionally or recklessly—

(a) kills, injures or takes any wild bird;

(b) takes, damages, destroys or otherwise interferes with the nest of any wild bird while that nest is in use or being built; or

(ba) at any other time takes, damages, destroys or otherwise interferes with any nest habitually used by any wild bird included in Schedule A1;

(bb) obstructs or prevents any wild bird from using its nest;

(c) takes or destroys an egg of any wild bird,

he shall be guilty of an offence.

It should also be noted by the Committee that some urban hedges may have been planted by gardeners to encourage wildlife and may be composed of a mixture of native broadleaved trees/shrubs and native conifers. Conservation organisations such as ourselves, RSPB Scotland, Buglife and Bumblebee Conservation advocate increasing the biodiversity value of urban gardens by planting hedges with native species. Such species-rich hedges contain a variety of native trees/shrubs such as hawthorn, blackthorn, hazel, wych elm holly, wild privet (*Ligustrum vulgare*) and have high biodiversity value because of the variety of niches provided for wildlife, the invertebrate life associated with such them and the complexity of food chains that evolve.

Therefore we are pleased that the Bill’s proposed definition includes the words *wholly or mainly by a row of two or more evergreen or semi-evergreen trees or shrubs*, otherwise such hedges as described above, which would be mainly composed of deciduous trees, affording light in the winter, could be cut down/removed because they contain a limited proportion of evergreen (e.g. holly) or semi-evergreen (wild privet) species. In addition, inclusion of such species-rich hedges in the Bill could be contrary to Section 1 of the Nature Conservation (Scotland) Act 2004 which states:

It is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.

To conclude, we recognise that the Bill wants to capture in the definition of high hedges that such hedges are composed of fast growing non-native conifers but using the term evergreen and indeed semi-evergreen also includes some native tree species which are valuable to wildlife. Our only alternative would be to specifically refer to non-native fast growing conifers in the definition rather than the term ‘evergreen.’

2. Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why?

General points
The Scottish Wildlife Trust does not want to see the scope of the Bill broadened to include single trees or groups of trees. Scotland has over 20 species of native trees/shrubs which are attractive to wildlife. Broadening the scope of the Bill to include groups of trees could pose a threat to urban woodlands which are promoted through the Scottish Government’s Woodlands In and Around Towns (WIAT) initiative. Since the launch of WIAT in 2006, Forestry Commission Scotland has made a major investment of over £50 million in this programme.¹

Furthermore, native trees such as ash and oak are already under threat from novel pathogens (ash dieback and oak decline respectively) which have gained a foothold in the UK because of global trade, climate change and lack of strict biosecurity measures. Inclusion of single trees/groups of trees in the Bill could give the green light to the destruction of more trees and be contrary to The Scottish Forestry Strategy.²

In urban settings, native broadleaved trees - including single trees in gardens, increase the diversity of habitats for urban wildlife and can provide important nest sites for breeding birds such as tawny owl and song thrush and maternity roosts for bat species such as common pipistrelle which is an Annex 1 species in the EU Habitats Directive. Native broadleaved trees are attractive to insects³; oak (Quercus spp.) has been found to have 284 insects associated⁴; birch (Betula spp.) 229; hawthorn 149. Non-native species usually have less associated insects: sycamore 15; horse chestnut 4.

In addition, urban trees provide ecosystem services such as carbon sequestration, air pollution reduction, aesthetic appeal, noise attenuation and reduction in flood risk through slowing of water movement after a rainfall event.⁵ It has been estimated that the local trees in a small town provided ecosystem services worth over £1 million per annum (air pollution removal) and £172,000 per annum of carbon storage.⁶

The Scottish Wildlife Trust owns or manages over 120 reserves in Scotland; over 40 of which are woodland sites and at least 20 sites contain trees that are adjacent to urban development and infrastructure. The Trust has nearly 50 years of expertise in tree management and I have summarised the comments made by our Reserves Managers regarding woodland reserves adjacent to property/infrastructure and what the implications would be of broadening the scope of the Bill.

**Cumbernauld greenspace – c. 300 ha of woodland**

The Trust had requests from property owners adjacent to the Cumbernauld Glen reserve in Cumbernauld who were concerned that a stand of larch was close to their property. The Trust’s Greenspace Manager met with the neighbours, listened to their safety concerns and agreed to fell the larch (which is a non-native conifer) and plant with shrubs. The Trust obtained a WIAT grant to restock with more appropriate and native trees away from the houses. As a conservation organisation, we would have been more concerned if the trees had been native and had a high biodiversity value - luckily this was not the case and

¹ See: http://www.forestry.gov.uk/pdf/WIAT-Policy.pdf
⁵ Data collected from trees in woodlands- urban trees are likely to have less insects associated, but this does give an indication of the biodiversity value
⁷ See: http://www.torbay.gov.uk/index/yourbay/parks/arboriculture/itree.htm
it gave us the opportunity to add value to Cumbernauld’s urban wildlife by planting native trees/shrubs.

The Committee should be aware that the problem with the larch arose because of a combination of factors: at the time of the housing development being planned, it was decided to plant larch close to the houses to provide a screen to a nearby road. There was no consideration given to what the future implications would be of planting a stand of relatively fast growing non-native conifers immediately adjacent to housing. (At the time, the Trust did not have ownership of the wood). Conflict would have been minimised if the layout of the woodland/housing development had created a suitable buffer zone between the adjacent housing development and the trees. In addition, more thought should have been given to the species of tree planted. It is a question of the right tree in the right place.

We also have experience at our Northside Wood Reserve of a developer, building houses immediately adjacent to our woodland reserve. Householders have contacted our Greenspace Manager requesting trees/limbs should be removed where they are perceived to encroach on their property; removal obviously creates a cost to the Trust. On the other hand, other neighbours in this area like the proximity of the trees. Potential conflicts could have been avoided if the houses were built at an appropriate distance from the already established woodland reserve.

We do believe that where houses are being developed close to urban woodlands, developers should have guidance over what is a suitable/safe distance to build houses. We also believe to avoid future conflict, the Government/local authorities should provide guidance on what are ‘suitable trees’ for gardens, street trees or groups of trees that are being designed into development. The onus should be on developers to consider the implications of future growth of trees in their housing design layout. Local authorities should insist on adequate buffers between woodlands and new build and not give planning permission to developments that immediately back onto established woodlands. In addition, long-term forest plans, in an urban setting, should account for future urban development and infrastructure expansion when deciding to expand woodland networks.

Listed below are other examples of where there have been ‘disputes’ regarding trees on our reserves.

**Montrose Basin** is an enclosed estuary of the river South Esk covering 750 hectares, home to over 50,000 migratory birds.

The Trust’s Reserves Manager has had residents from a new housing development raising concerns about the height of neighbouring trees – the problem would not have arisen if the planning authority had insisted on a larger buffer between the development and the Trust’s reserve.

**Shewalton Wood** covers over 100 hectares and is made up of a mixture of woodland, grassland and wetland, with a network of water-filled channels and two large ponds. Native woodland regeneration is replacing former conifer shelter-belts.

A property borders the reserve boundary, trees crowd light to a degree but this is not a problem with current owners, however it might be if the house changes hands.

**Southwick Coast** is a fascinating stretch of coastline with wooded cliffs (over 40 m high) and extensive saltmarsh.
A neighbour of the reserve is complaining that his view of the Solway is starting to get blocked by trees from the reserve. The Trust’s Reserve Manager has agreed to remove the high “hedge like” aspen tree nursery but will not take the down native oak trees which are key component of the site.

**Fountainbleau Ladypark** contains low-lying wet birchwood on the site of the old Black Loch. Good bird population including woodpeckers, willow tits and willow warblers.

A new development on the outskirts of Dumfries is being built very close to the reserve. The Committee should be aware that the Reserves Manager worked closely with planners, developers and neighbours to inform the original masterplan which identified potential buffer zones and potential linkages to similar habitats outwith the reserve. Unfortunately the actual development has not lived up to expectations and in fact there has been a breach in that the main woodland corridor which has become more fragmented. The Reserves Manager anticipates a lot of potential conflict in the future from home owners. A bigger buffer around the reserve would have helped resolve this.

**The Miley** is part of the disused Newtyle to Dundee railway, within easy walking distance of the city centre. It was originally an impassable, mile-long rubbish tip, but now supports grassland, tall herb communities, scrub and trees - habitats that birds, mammals and insects thrive in.

Development surrounds the reserve on all sides, some of which predates the reserve and some of which is new. There are frequent issues with landowners requesting trees be cut down.

**Conclusion**

To conclude, the Scottish Wildlife Trust does not want to see the scope of the Bill broadened to include single trees or rows of trees. We believe this would be detrimental to urban wildlife, have an economic cost - in terms of removing ecosystem services provided by urban trees, conflict with the Scottish Government’s WIAT and Forest strategy and increase the amount of trees lost from urban wildlife reserves that are adjacent to housing. We also believe that by including ‘stand of trees’ this would have the unintended consequence of giving the green light to some developers of ‘squeezing in’ more houses close to mature woodlands - in the knowledge that it will be the responsibility of the landowner of the woodland to remove trees if homeowners complain.

The way forward is for guidance to be provided regarding ‘the right tree in the right place;’ for property developers to work with adjacent woodland landowners to design masterplans that anticipate and avoid future tree conflicts and for long term urban forest plans to account for future urban housing and infrastructure expansion.

**For further information please contact:**

Dr. Maggie Keegan  
Head of Policy  
Scottish Wildlife Trust
John Brownlie has been in contact over the evidence given by ScotHedge in connection with the High Hedges Bill at your Committee. I think there has been a misunderstanding, which I can’t identify the source of.

All COSLA has been asked about is if it was in favour of the bill, which we had confirmed that we were. COSLA supports the Bill as it was proposed, and was only concerned about the proportionality of it, and the fees and enforcement arrangements. My recollection is that Cllr Harry McGuigan has been neutral on the scope of the Bill with respect to Deciduous vs Evergreen, and believed that the approach being taken by Mark McDonald MSP is proportionate and correct. In our spoken discussions with the Bill sponsor the possibility of extending the current Bill at a later stage was always there, but we agreed that it doesn't need to be entertained at this stage.

As far as I know there hasn't been any written communications between us and any others on the Deciduous vs Evergreen since I took up post on May 2011. I have no idea about where the attributed policy position(s) to COSLA have come from. Executive Group Reports since I have been in post, only offer updates on where the Bill’s progress had got to and were approved with little comment, and were principally about the intention of the Bill and the fee structure.

As far as extending the Bill to go beyond evergreens, we would have to consult our members as we don’t have a position, and have not been asked for one in the past. It would not be possible to give you a position before late February.

From the 15 March 2012 meeting.

High Hedges (Scotland) Bill.
2. One of the legislative proposals from the Scottish Government was to bring forward measures providing a framework to deal with complaints about ‘high hedges’. These are being progressed by Mark McDonald MSP as a non-executive Bill. It will enable fees to be charged by local authorities in investigating these and for remedial action costs to be recovered.

3. The Local Government and Regeneration Committee has considered and approved the MSPs Statement of Reasons over why no further consultation is required in advance of the High Hedges (Scotland) Bill.

4. A concern from those pushing for the Bill has been that the there is a potential for local authorities to use fee income as a “revenue raising” provision, or to
put people off using the new arrangements. To prevent this, the fee charged for progressing a complaint would be limited on the face of the Bill to meet the costs of essentially providing that service. Given the experience in England and Wales with a small number of complaints this would at worst only ever have been a theoretical possibility. The draft Bill approach to charging is likely to reflect the fee provisions for registering properties in the Houses in Multiple Occupation (HMO) legislation. It is a combination of primary legislation, regulations and statutory guidance.

5. Another matter is the recovery of costs that are incurred in enforcing a remedial notice. The Scottish Government are looking into the detail and how charges are recorded, to make sure that the owner is liable, what happens when ownership changes.

6. Lastly a meeting is taking place between the MSP and the Scottish Tree Officers Group on 14 March, to update them on current thinking and the progress being made on the draft Bill and to get their views. A factual briefing on the current position is being prepared. If Executive Group members are interested in receiving a copy, please let the COSLA Community Resourcing Team know.

From the August 2012 meeting

The High Hedges (Scotland) Bill

46. The Bill is a Members Bill that has Scottish Government support. The final proposal for the Bill was lodged in March 2012 and gained the support of 30 MSPs. The detail of the proposals can be found here. The next step is the introduction of the Bill, expected shortly, and it should conclude the Parliamentary processes next year. There has been ongoing engagement with COSLA through Anil Gupta, Chief Officer, Community Resourcing, and John Morrison, Legal Manager at Glasgow City Council. Recently the Scottish Government have sought advice on the Financial Memorandum with a note being prepared and circulated to local authority Finance Directors.

47. The Bill will enable individuals to apply to the local authority for a high hedge notice, to address the interference caused by certain high hedges. A fee will be payable by the applicant for the cost to the authority of making the decision. A high hedge notice, if issued, will advise what action is to be taken. This will be at the hedge owners cost. If this is not done, the local authority can do the work and recover costs from the owner. Despite the level of correspondence the issue of
high hedges might generate, experience shows this translates into only a small number of applications and very few enforcement actions.
Subordinate Legislation Committee

58th Report, 2012 (Session 4)

High Hedges (Scotland) Bill

Published by the Scottish Parliament on 11 December 2012
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) 
   (i) subordinate legislation laid before the Parliament;

   (ii) any Scottish Statutory Instrument not laid before the Parliament but classed as general according to its subject matter;

and, in particular, to determine whether the attention of Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Nigel Don (Convener)
Jim Eadie
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
Euan Donald
Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 27 November and 11 December 2012, the Subordinate Legislation Committee considered the delegated powers provisions in the High Hedges (Scotland) Bill at Stage 1 (“the Bill”)\(^1\). The Committee submits this report to the Local Government and Regeneration Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF THE BILL

2. The High Hedges (Scotland) Bill is a Member’s Bill introduced by Mark McDonald MSP on 2 October 2012. Mr McDonald was assisted in introducing the Bill by the Scottish Government.

3. The Bill introduces a dispute resolution mechanism in relation to high hedges.

4. Mr McDonald has provided a Delegated Powers Memorandum (“DPM”)\(^2\) setting out the need for the delegated powers, how they may be exercised and the choice of procedure applicable to their exercise.

5. In the consideration of the memorandum at its meeting on 27 November, the Committee agreed to write to Mr McDonald to raise questions on the delegated powers. This correspondence is reproduced in the Annex.

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\(^1\) High Hedges (Scotland) Bill available at: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/55315.aspx

\(^2\) High Hedges(Scotland) Bill Delegated Powers Memorandum available at: http://www.scottish.parliament.uk/S4_Bills/High%20Hedges%20Bill%20(Scotland)%20Bill/DPM_.pdf
6. The Committee considered each of the delegated powers provisions in the Bill.

7. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in sections 31 (Guidance) and 35 (Ancillary provision).

8. The Committee’s comments and, where appropriate, recommendations on the other delegated powers are detailed below.

**Section 34 – Power to modify meaning of “high hedge”**
- **Power conferred on:** the Scottish Ministers
- **Power exercisable by:** regulations
- **Parliamentary procedure:** affirmative procedure

**Background**

9. Section 34(1) enables the Scottish Ministers to make regulations which modify the meaning of “high hedge”, as set out in section 1 of the Bill. As the Bill will only apply to hedges which are high hedges within the meaning of section 1, this power enables the Scottish Ministers to vary the applicability of the Bill by making subordinate legislation.

**Comment**

10. The Committee was concerned about the breadth of the power being conferred by this section, particularly as modifying the meaning of “high hedge” will modify the scope of the entire Bill. It appeared to the Committee that the examples of possible modification mentioned in paragraph 9 of the DPM could all be achieved by means of a less-expansive power simply to vary the conditions in paragraphs (a) to (c) of subsection (1) of section 1. It accordingly asked the Member to explain why the wider power to modify section 1 as a whole was considered necessary.

11. The Member, in his response, indicates that in his view a power simply to modify paragraphs (a) to (c) would be insufficient to achieve all of the changes which might be necessary. He suggests that it might be necessary to add further conditions. The Member indicates that he does not envisage the power being used to remove in its entirety any of the conditions in paragraphs (a) to (c). While this explanation is helpful, the Committee observes that neither the Member nor the present administration is in a position to bind any future administration as to how these powers would be exercised. It has made this point in relation to a number of Bills recently, for example the Social Care (Self-directed Support) (Scotland) Bill.

12. In principle, the Committee accepts that it is reasonable to delegate power to modify the meaning of high hedge given the competing views on just how far the Bill should extend. In doing so, however, it recognises that this is potentially a matter of substantial interest to stakeholders. It continues to have concerns over the conferral
of power to modify the definition without any real restriction on the terms of that modification. That wide discretion could allow a future administration to amend the definition and so to alter the scope of the Bill very substantially, so that it would operate in a manner which was quite different to the one which the Parliament agreed to (assuming that the Bill successfully completes its Parliamentary passage).

13. The Committee notes that the exercise of this power will be subject to the affirmative procedure. It considers that, as the exercise of this power is likely substantively to affect the application of the Bill, the affirmative procedure provides an appropriate opportunity for Parliamentary scrutiny, given that the Parliament will have expressly to approve any draft regulations made under this power.

14. The Committee draws the power in section 34 to modify the definition of high hedge in section 1 to the attention of the lead Committee as it considers it to be particularly broad in its scope, and observes that it appears to be possible for that power to be used in the future so as significantly to alter the scope of the Bill (either by narrowing the definition to the point that it defeats the ends of the Bill, or by widening the definition so that it extends beyond anything that may have been considered by the Parliament).

15. The Committee is content that the exercise of the power in section 34 is subject to the affirmative procedure.

Section 37 – Commencement

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

Background

16. Section 37(2) allows the Scottish Ministers to appoint a day for the coming into force of certain provisions of the Act. By virtue of section 37(3), such an order may contain transitional, transitory or savings provisions.

Comment

17. The Committee observes that it is not unusual for powers to be conferred so that the Scottish Ministers may by order appoint a day for the coming into force of a new enactment. Nor is it unusual for powers to be conferred so that such an order may contain transitional, transitory or savings provisions. The Committee is in principle content that it is appropriate to confer the powers found in section 37 of the Bill. In principle, it is also content that orders made using the section 37 power be laid before the Parliament, but are not subject to any further Parliamentary procedure.

18. However, the DPM indicates at paragraph 25 that “[i]t is intended to use the power in subsection (3) to make the necessary transitory provision amending section 12 of the Land Registration (Scotland) Act 1979 […]”. It appeared to the Committee
to be unusual that a power which is not subject to any Parliamentary procedure apart from laying could be used to amend primary legislation. The Committee accordingly asked the Member to explain whether he considered that the section 37(3) power permitted the modification, and the basis for that view.

19. The Member’s response shortly indicates that it is not intended to use this power in order to textually amend section 12 of the Land Registration (Scotland) Act 1979. He advises that stand-alone provision would instead be made which would modify the application of legislation for a limited period. He states that this is considered to be within the scope of section 37.

20. The Committee accepts that it may be possible to achieve the intended modification to section 12 of the Land Registration (Scotland) Act 1979 without textual amendment. However, it seems clear to the Committee that this will necessarily involve the disapplication in part of that section. It is concerned by the suggestion that the modification of primary legislation would only attract Parliamentary scrutiny were it to require textual amendment. The Committee considers that the effect to be achieved – disapplication of section 12 – is the same regardless of what drafting technique is used to achieve it. It does not consider that adequate Parliamentary scrutiny can be given to an instrument modifying primary legislation when it is laid but not subject to further Parliamentary scrutiny. The Parliament would not have to agree to such an order, and it would have no power to annul it.

21. In consequence, the Committee does not consider that it is appropriate for the power in section 37 to be used in the way which is suggested in paragraph 25 of the DPM. It observes that, if provision of this nature were made using the stand-alone ancillary powers provision in section 35 of the Bill, it would be subject to the negative procedure, and to the affirmative procedure if it textually amended primary legislation. It considers that this would be a more appropriate route to achieved the intentions specified in paragraph 25 of the DPM.

22. Subject to the following recommendation, the Committee finds the powers in section 37 to be acceptable in principle, and is content that they are laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 but are not subject to any further Parliamentary scrutiny.

23. So far as the proposed modification of section 12 of the Land Registration (Scotland) Act 1979 is concerned, the Committee does not consider that it would be appropriate to exercise the powers in section 37(3) for this purpose, given that this entails the modification of primary legislation. It observes that such provision would more appropriately be made under the powers in section 35 of the Bill, in order that the resulting instrument would be subject either to the negative procedure or (if it textually amends that Act) the affirmative procedure.
ANNEX

Correspondence with the Scottish Government

On 27 November 2012, the Subordinate Legislation Committee wrote to Mark McDonald MSP as follows:

High Hedges (Scotland) Bill at Stage 1

1. The Subordinate Legislation Committee considered the above Bill on Tuesday 27 November and seeks an explanation of the following matters:

Section 34 – Power to modify meaning of “high hedge”
Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure

2. Section 34(1) enables the Scottish Ministers to make regulations which modify the meaning of “high hedge”, as set out in section 1 of the Bill. As the Bill will only apply to hedges which are high hedges within the meaning of section 1, this power enables the Scottish Ministers to vary the applicability of the Bill by making subordinate legislation.

3. The Committee asks for an explanation as to:
   - why it is considered necessary to take a power to modify section 1 as a whole? This appears to include the possibility of removing entirely the conditions in paragraphs (a) to (c) of subsection (1), when a power simply to modify those conditions would appear to be sufficient to achieve the changes envisaged in the DPM; and
   - whether the power could be used to modify the definition of “high hedge” in such a way that it extends to include individual trees or shrubs, and – if so – why this is considered to be appropriate in a Bill relating to hedges?

Section 37 – Commencement
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

4. Section 37(2) allows the Scottish Ministers to appoint a day for the coming into force of certain provisions of the Act. By virtue of section 37(3), such an order may contain transitional, transitory or savings provisions.

5. In relation to the power in section 37(3) to make transitional, transitory or saving provision in consequence of that commencement, the Committee asks for clarification on:
• whether – standing the example in paragraph 25 of the delegated powers memorandum – it is considered that the power in section 37(3) permits the modification of primary legislation?

• if so, the basis for that view?; and

• if not, how it is proposed to deliver the amendment to the Land Registration (Scotland) Act 1979 referred to in that paragraph of the delegated powers memorandum?

Mark McDonald MSP responded as follows:

Section 34 – Power to modify meaning of “high hedge”

You ask why it is considered necessary to take a power to modify section 1 as a whole and whether a power simply to modify the conditions in paragraphs (a) to (c) of subsection 1 would be sufficient to achieve the changes envisaged in the Delegated Powers Memorandum. My view is that a power simply to modify conditions (a) to (c) is not sufficient to achieve the changes envisaged.

Section 1 is all about what the meaning of a high hedge is. Therefore the power taken to modify is the power to modify the meaning of a high hedge. For example, it may be that other conditions require to be added - for example, to include a high hedge which forms a barrier to access. While that power could be used to add to the list of conditions or modify them, it is not envisaged that it would be used to remove entirely the conditions in paragraphs (a) to (c) of subsection (1).

You also ask whether the power could be used to modify the meaning of “high hedge” in such a way that it extends to include individual trees or shrubs. My view, is that it does not. The power is to amend the meaning of a high hedge. The power would only be capable of capturing hedges, not single trees.

Section 37 – Commencement

You ask whether these powers permit the modification of primary legislation. The power in section 37 will not be used to modify primary legislation by textual amendment but rather the power will be used to make stand-alone provision which would modify the application of legislation for a limited period. The view taken is that this is within the scope of the power in section 37 to make transitory and transitional provisions.
Dear Kevin,

The Finance Committee took oral evidence from Mark McDonald MSP and Scottish Government officials on the Financial Memorandum (FM) on the High Hedges (Scotland) Bill at our meeting on 12 December 2012. The Committee raised a number of issues in relation to the FM and agreed to refer the Official Report of the evidence session and the submissions which we received to the lead Committee for your consideration. The Official Report is due to be published on 13 December and the submissions are attached.

Yours sincerely

Kenneth Gibson MSP, Convener
FINANCE COMMITTEE CALL FOR EVIDENCE

HIGH HEDGES (SCOTLAND) BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM ANGUS COUNCIL

Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. No

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

2. N/A

Did you have sufficient time to contribute to the consultation exercise?

3. Yes

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

4. Not fully. It is noted that, based on experience in England and Wales, there is no expectation that additional staff will require to be recruited. The FM recognises that there will be a cost to authorities in dealing with the initial application and in recovering expenses from land owners but there is no recognition of the cost to authorities of serving, monitoring and enforcing notices. Where appropriate staff have adequate capacity within current workloads, then the expectation that enquiries and applications can be dealt with within existing staff resources is realistic. However, within Angus there is limited spare capacity and any additional duties placed on the authority could have a significant impact on current priorities and outcomes.

Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

5. The projected costs and timescales associated with making a decision appear to be reasonable and are a good starting point. However, authorities must have the ability to monitor actual costs over time and amend the fee levels accordingly. As stated above, there is no recognition of the costs associated with the serving of a notice etc.
If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

6. There is clearly an expectation that authorities will be able to absorb staff costs within existing structures. The ability to recover expenses from land owners including administrative expenses and interest is welcomed but this should also include all other costs to the authority e.g. legal costs. It is acknowledged that “land check” is included in the application fee but, as authorities will be required to notify every owner and occupier, the cost allocated to this may not be adequate if more detailed title searches are required. Authorities must have the ability to recover this additional cost from the applicant and/or owner.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

7. Yes

Wider Issues
Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. See the responses to Q 5 & 6 above.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. No comment.
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. COPFS were aware of the consultation exercises but did not submit a response to them. Accordingly no comments were made on the financial assumptions

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

2. Not applicable

Did you have sufficient time to contribute to the consultation exercise?

3. Yes

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

4. The provisions of the Bill will affect COPFS in respect of the new offences created by sections 21 and 24. The Financial Memorandum makes no mention of these provisions. Having considered the figures provided within the Memorandum on the impact of similar legislation in England and Wales COPFS do not expect to receive a large number of reports concerning these offences and accordingly COPFS anticipate that any financial impact will be minimal and can be absorbed within current COPFS budgetary levels.

Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

5. As noted above the estimates in the Financial Memorandum are not applicable to COPFS.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
6. Yes

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

7. As noted above the estimates in the Financial Memorandum are not applicable to COPFS.

Wider Issues

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. Not applicable

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. It is not anticipated that subordinate legislation would impact COPFS costs.
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

No.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

N/A

Did you have sufficient time to contribute to the consultation exercise?

N/A

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The Council considers that the main financial impacts have been reflected in the Financial Memorandum but that the acrimonious nature of the issue has been underestimated and that the actual costs may result in an application fee that would be prohibitive to many applicants. The cost estimate set out in the table of £325-£500 has made no provision for time spent dealing both during and post decision making with applicants and hedge owners. It is recognised with planning applications that some contentious applications for minor householder developments can be very time consuming and it should be remembered that all high hedge applications will be contentious for the very reason that they only arise where agreement between applicant and hedge owner has not been possible.

Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

See answer to question 4 above. The nature of the Bill is that applications will only be received where there has been a dispute between neighbours. In these circumstances it can be expected that both applicants and hedge owners will contest decisions at every point, utilising the appeal process and possibly judicial review in extreme cases. It is understood that Councils will not normally be able to recover costs once a decision has been made. The Council does not consider that there is currently any significant cost attributable to high hedge issues as those involved
know that there is no remedy available and do not pursue issues beyond a very brief initial inquiry.

*If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?*

The Council will need to charge an application fee that fully covers the cost of this work. For reasons already explained, it is considered that this fee may well be unaffordable for many applicants.

*Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

It is very difficult to predict the initial take up of cases when new legislation is enacted. The Council will not be in a position to recruit new staff to deal with these applications and therefore if a significant new workload is created, this will impact on other areas of service provision. In particular proactive work in designating Tree Preservation Orders and monitoring of works to trees will suffer if resources are transferred to dealing with high hedges.

Wider Issues

*Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?*

The Memorandum captures the areas where costs will be incurred but underestimates the level of these costs.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

It is not considered possible to predict what these costs might be.
1. No

2. NA

3. NA

4. The implementation of this new legislation shall impact on the existing Council Services particularly within the Enforcement Section of the Planning Service should the Bill be approved. For any new legislation to be successful it must practically deal with the enforcement objectives and be self-financing, otherwise Councils will not be able to resource the new processes. The bill aims to introduce fees for submitting the application to the Council and the fees for this process must set to cover the registration, administration and consultation costs along with the associated site visits and any appeal process. However, in a number of cases where the legislation potentially would be utilised there is the issue of the traceability of owner of the building or land which is a similar challenge associated with debt recovery in dangerous buildings progressed under Section 29 and 30 of the Building (Scotland) Act 2003. In these cases the Council could facilitate the process and sanction the works and have no owner to recoup the expenditure against. The system should be designed to minimise the risk to Councils. Costs can be reduced where there is a standardised documentation and guidance to minimise costs and increase national consistency.

5. Yes

6. See 4 above

7. Yes

8. The council in introducing this process must utilise the skills and experience of an Arboriculturist to ensure that the enforcement assessment is based on competent advice. This consultants cost requires to be included within the original fee.

9. NA
FINANCE COMMITTEE CALL FOR EVIDENCE

HIGH HEDGES (SCOTLAND) BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM EAST RENFREWSHIRE COUNCIL

I refer to your request for consultation responses on the above High Hedges (Scotland) Bill. Please find enclosed the response of East Renfrewshire Council Environment Department. Thank you for the opportunity to respond to this consultation.

Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

No.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

N.A.

Did you have sufficient time to contribute to the consultation exercise?

N.A.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

No. The Financial Memorandum (FM) suggests that “some local authority staff are already engaged on high hedge issues with members of the public”. This authority has not engaged itself with such issues. Members of the public have simply been advised that the Council has no remit to become involved in such disputes. Individuals have been advised to seek private legal opinion address. There has thus been minimal costs to the Council to date in staff time or resources. The Bill cannot do other than increase the staff time and resources involved. The conclusion detailed in the Bill that “The expectation is that the introduction of new powers will assist local authority handling and resolution of such cases and that it will be largely cost neutral for local authorities. Savings may actually accrue…..”, is at best somewhat misleading. The cost to date has been minimal. If implemented the Bill is likely to result in increased staff costs (including training and staff time) equipment costs (e.g. light meters) and transport costs. The more protracted enquiries are likely to entail legal costs, including time and Title searches.

The FM states “Most local authorities in Scotland already employ staff dealing with tree issues as they have parks and gardens to maintain, and have the responsibility
for the protection of certain trees. In light of experience of the level of applications to local authorities across England and Wales under largely similar legislation, there is no expectation that additional administrative or technical staff will require to be recruited to implement the Bill's provisions."

There are many instances of “high hedges” in this local authority area. There are in addition many households with the necessary budget to meet the costs of application. It is thus anticipated that this local authority will receive a disproportionate number of applications to the number of households and that there will a disproportionate impact on Council budgets and staff resources if the financial implications of the Bill are underestimated.

**Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?**

No. Paragraph 97 of the FM suggest a General Administration time of 1 hour. Is this time intended to include time writing to and responding to the various letters and emails which are often associated with enforcement matters as either party seeks to argue their position or indeed question whether the Local Authority is acting in a reasonable manner. If so a figure of at least 3 hours would appear more reasonable. The above costs to not appear to reflect the time involved in preparing (2 hours) and serving (1 Hour) a notice. The costs that Local Authorities can charge should be ‘index-linked’ in some manner.

**If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?**

No, other than meeting any cost from existing budgets which will by necessity be to the detriment of other Council services. Any costs encountered which cannot be recovered should be met by the Scottish Government.

**Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**

Only time will tell.

**Wider Issues**

**Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?**

No. Primarily, additional training, staff, equipment, and legal costs.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**
Only if subordinate legislation is required which would seem unlikely?
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. No

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

2. N/A

Did you have sufficient time to contribute to the consultation exercise?

3. N/A

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

4. Associated costs & methods of recovery are covered within the financial memorandum with no caps on costs implied. However, the proposal does not take account of the costs of dealing with enquiries to local authorities, whether the planning services or not, on whether a particular proposal can be dealt with under the proposed legislation, e.g. what constitutes a hedge, site visits to determine – there is no fee proposed for making such an enquiry.

5. The proposal to enable the local authority to carry out the works and recover the costs places the local authority in the same situation as it is with other types of direct action where the recovery is difficult and protracted and in a number of cases the debt is written off. Although a charging order is proposed so that the money can be recovered when the property is ultimately sold, this can be a very long time.

Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

6. Yes, administration costs of up to £500 look adequate considering there is no current charge for any time spent on this currently.
If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

7. Yes, in part as the fees will be required to be paid prior to an application being considered, therefore there should be a neutral impact on cost. The Financial Memorandum gives indicative fees, ranging between, £325 - £500.

8. In addition any costs associated with enforcement works required to be carried out, will be recoverable with the added benefit of a “notice of liability for expenses” in the land Register of Scotland or the Register of Sasines as appropriate against the land on which the hedge is situated. This will safeguard against sale of the property as any new owner will become liable. However, also refer to Q4 above in terms of resources to deal with the enquiries.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

9. Yes.

Wider Issues
Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

10. Yes, however there will be associated costs involved in preparing guidance on pre-application requirements, etc., however it is anticipated that these will be relatively low.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

11. N/A
Consultation
1. Yes, we took part in three public consultations, 2000, 2006 and 2009. We did not specifically address costs other than suggesting that the party who loses an inspection decision pays the fee. This was to prevent a vindictive hedge grower simply holding out for inspection and then trimming without any penalty whatsoever. It is also the case that a number of complainants could be prevented from using the legislation if they had insufficient funds.

2. Yes, reasonably at this stage.

3. Yes, plenty of time.

Costs
4. Yes

5. Reasonable

6. Scothedge will not have any costs. Our members simply call for a reasonable and fair Fee policy.

7. We believe so

Wider Issues
8. Reasonably captures costs.

9. If this Bill is widened to cover more problems, then future subordinate legislation should not be required.

Very many thanks for dealing with this issue which has been before the Parliament for very many years.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. South Lanarkshire Council responded to the ‘Proposed High Hedges (Scotland) Bill – A Consultation’, proposed by Scott Barrie MSP in November 2006, but did not respond to the Scottish Government’s 2009 ‘Consultation on high hedges and other nuisance vegetation’ document. Some comments were made by South Lanarkshire Council in response to the question in the 2006 consultation on ‘What should be the basis for setting fees and who should pay them?’

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

2. SLC comments on the basis for setting costs and who should pay them has been partly reflected in the Financial Memorandum. SLC stated that a fee should be payable by the complainant, based on the costs to the local authority of investigating and adjudicating on the complaint. This was qualified by stating that some consideration should be given to this cost being borne by the owner of the hedge if the complaint is upheld, or of a percentage refund to the complainant if upheld. It was also suggested that concessions should be made available to certain categories of people on lower incomes.

3. The Financial Memorandum certainly sets out that the complainant will pay the fee, based its anticipated costs of handling such applications up to and including the point where a decision regarding the application for a high hedge notice is made. However, there is no inclusion within the Bill of some type of refund to the applicant. As suggested by SLC the ‘High Hedges (Fee Transfer) Regulations (Northern Ireland) 2012)’ are a good example of how this could be implemented in practice. In Northern Ireland, a percentage of the application fee is transferred to become the responsibility of the hedge owner, if the Council agree to serve a high hedge notice. This existence of such a regulation may also possibly act as an incentive for agreement to be reached between the hedge owner and the neighbour prior to an application having to be submitted, if the hedge owner was aware that the extra requirement to pay part of the fee if they do not voluntarily come to agreement with the neighbour and if they are subsequently required to carry out works as the result of a notice.

4. Nor does the Financial Memorandum promote a reduction in fees for certain categories of applicant. While SLC is in full agreement that the costs of carrying out the application should be paid for by a fee and not borne by the Council, it is still of
the opinion that the complainant will be significantly financially disadvantaged in cases where a high hedge notice is served.

*Did you have sufficient time to contribute to the consultation exercise?*

5. Yes.

**Costs**

*If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?*

6. SLC consider that the financial implications for the Council have been reflected in the Financial memorandum ie costs for determining the application and costs recoverable if the Council has to carry out work where a high hedges notice has not been complied with.

*Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?*

7. Largely, yes, agreed. Some concern exists that there may be cases where difficulties arise is determining land ownership, leading to protracted investigation costs in trying to establish in whose ownership the hedge lies.

*If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?*

8. The main concern is if a large number of notices are served and are not complied with, resulting in SLC having to carry out the required works themselves. Procedures for recovery of costs can be lengthy, although it is accepted that interest on the initial cost is helpful. The Council would wish to avoid the costs associated with having to take direct action, hence the need to emphasise the importance of the applicant having to demonstrate that all efforts have been taken to negotiate with the hedge owner. Similarly, as mentioned in the response to question 2, if the Northern Irish system of transferring part payment of the application fee to the hedge owner in cases where a notice is served, then the hedge owner may be more inclined to negotiate rather than risk the additional cost that that would incur.

*Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

9. Yes.
Wider Issues

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

10. Not aware of any additional costs.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

11. No comment.
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. No.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

2. N/A

Did you have sufficient time to contribute to the consultation exercise?

3. N/A

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?


Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

5. N/A.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

6. N/A.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

7. Could take many years to recoup costs, if land owner doesn't respond to High Hedge Notice, or has financial difficulties. There will initially be a one off hedge reduction, but there could also be a requirement for annual maintenance of hedges.
thereafter. If Council's Land Services undertake the maintenance, then they could be taking on long-term maintenance costs, until property has a new owner.

Wider Issues
Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. Costs involved with appeals.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. Not aware of any at this stage.
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

33rd Meeting, 2012 (Session 4)

Wednesday 12 December 2012

Present:
Gavin Brown Kenneth Gibson (Convener)
Jamie Hepburn John Mason (Deputy Convener)
Elaine Murray Jean Urquhart

Apologies were received from Michael McMahon.

High Hedges (Scotland) Bill: The Committee took evidence from—

Mark McDonald MSP; John Brownlee, Senior Policy Adviser, and Gery McLaughlin, Head of Community Safety Law, Scottish Government.

The Committee agreed to refer to the Local Government and Regeneration Committee the Official Report of the evidence session and the submissions received.
High Hedges (Scotland) Bill: Financial Memorandum

The Convener: Item 3 is to take evidence as part of our scrutiny of the financial memorandum to the High Hedges (Scotland) Bill. I welcome Mark McDonald MSP back to his old stomping ground on the Finance Committee, albeit that he is in the hot seat today. Mark McDonald is the member in charge of the bill. He is accompanied by John Brownlie and Gery McLaughlin from the Scottish Government bill team.

Mark, do you want to make a brief opening statement?

Mark McDonald (North East Scotland) (SNP): Convener, I have no opening statement. We will just go straight to questions.

The Convener: I will start the questions, all of which will be specifically on the financial memorandum.

We have had a number of issues raised with us about local authorities being able to fix different levels of fees. What is your thinking behind that?

Mark McDonald: Sorry, can you repeat that? I did not quite catch the question.

The Convener: Some local authorities have raised concerns about the ability to fix different levels of fees for different applications. What is your thinking behind having that flexibility for local authorities to fix different levels of fees?

Mark McDonald: As part of the initial stages of proposing the bill, I consulted with local authorities in England and Wales, where similar legislation has already been enacted. The evidence from there shows that the fee level varies from authority to authority and is based on each authority’s calculation of the costs that will be incurred from enforcing the legislation. Those costs can potentially vary from authority to authority depending on, for example, the rate of pay for individual officers, the number of officers who might be involved and other factors that might be included. I have tried to encapsulate a broad range of where the fee levels might sit, but the financial memorandum is not prescriptive in any sense.

The Convener: Might not some people who have a problem with high hedges find the fee a bit onerous?

Mark McDonald: Undoubtedly, some people may view the cost for accessing dispute resolution as being difficult to bear. I simply reiterate that the bill is essentially an enabling measure, which will
provide powers for local authorities to use. It will be for a local authority to decide what fee to charge and how it wishes to administer that fee. For example, a local authority might choose to offer a discounted rate to pensioners, or it might offer the ability for the fee to be paid in stages as opposed to all in one go at the beginning. It is really for local authorities, first, to determine and decide the best way to ensure that the effects of the bill are cost neutral to them and, secondly, to ensure that they do not put in place unnecessary or unjustifiable barriers to people who want to access the process.

The Convener: Some local authorities do not believe that the bill would be cost neutral. For example, Angus Council states:

“there is no recognition of the cost to authorities of serving, monitoring and enforcing notices.”

Mark McDonald: Sure, I note that a number of the local authorities say that, but the financial memorandum is indicative rather than prescriptive. If local authorities consider that other costs need to be factored in, obviously that is a decision for them to take as part of their fee-setting process. Undoubtedly, elected members at local authority level will receive reports to their committees that say, “Here is the cost and here is why we believe that such costs will arise.”

The principle behind the fee-setting provisions is that the measure should wash its face in terms of the costs. I looked at the houses in multiple occupation legislation, where it is very clear that the HMO licence fees must cover the administrative costs but cannot be used as a revenue-raising mechanism. I approached the issue using that sort of principle.

The indicative fees are a result of discussions with local authorities in Scotland and in England and Wales. Some local authorities might consider that they have particular difficulties or individual circumstances that have not been captured within that. They will be free to factor that in when they set their fees.

11:30

The Convener: None of the responses has said that the bill will be revenue neutral—they all suggest that it will create an additional burden on local authorities. For example, East Renfrewshire Council, when asked whether the financial implications are accurately reflected in the financial memorandum, stated:

“No ... The Bill cannot do other than increase the staff time and resources involved.”

It continued:

“The more protracted enquiries are likely to entail legal costs, including time and Title searches.”

When asked what other costs might be incurred, the council said that there will be

“additional training, staff, equipment, and legal costs”

of pursuing people who might simply refuse to pay or who might be difficult to trace. In my constituency, where about 37 such cases are on hold, some owners just cannot be traced. Nobody seems to know who owns the properties.

Before you respond, I must point out in defence of the proposal that North Lanarkshire Council has said that

“administration costs of up to £500 look adequate considering there is no current charge for any time spent on this currently.”

I do not want to give the impression that everyone is being negative, but there are concerns. Even though South Lanarkshire Council was not as opposed as East Renfrewshire Council—which thinks that it will have a disproportionate number of cases—it states:

“the proposal does not take account of the costs of dealing with enquiries to local authorities”.

Mark McDonald: On this week’s “Sunday Politics”, Vincent Waters, the environment convener of East Renfrewshire Council, said first that the council welcomes the bill and believes that there will be a drastic drop in the number of complaints—he said that they will drop to a “tiny trickle”. From the elected member perspective, that local authority certainly seems to think that the bill will be helpful.

The English example bears scrutiny and perhaps gives us an indication of what is likely to happen. For example, the Royal Borough of Windsor and Maidenhead, which we would expect to be a fairly leafy area where hedges might be prevalent, had 300 plus inquiries when the legislation first came into effect. In the period from 2005 to 2011, it has had 20 formal applications to have disputes adjudicated on, but has had to take enforcement action on zero occasions. That means that, when notices are served, the owners comply with them.

That is borne out in almost all the local authorities that we spoke to, which are listed in the financial memorandum. South Tyneside Council had one case in which it had to take enforcement action but, beyond that, those local authorities gave no evidence of cases in which they had to take action. Such action is an option in the legislation south of the border, but it seems clear from the evidence that that does not happen as standard practice.

The Convener: I have one final point before I open out the discussion to colleagues.

Paragraph 81 of the financial memorandum states:
“the costs will ultimately fall on those involved in the dispute; both the applicant and the hedge owner.”

That will cause concerns. Some people will take the view that, although their next-door neighbour has unilaterally decided to allow his hedge to grow 20 feet high in front of their windows, they will possibly have to pay £400 or £500 to get the council to pursue him to get the hedge cut. Would it not be better if the person who has grown the hedge and decided not to participate in the dispute mechanism had to refund the costs of the application? It seems that whether someone is innocent or guilty—if we can use those expressions in this context—they will be out of pocket. If my next-door neighbour decided to grow a hedge, I would have to pay a few hundred quid to get it cut. An element of fairness is absent.

Mark McDonald: A complexity would be introduced if we tried to deal with that. Let us take a made-up example in which two individuals live next door to each other and there is a dispute over a hedge. If neighbour A applies to have neighbour B’s hedge dealt with, the local authority agrees and serves a remedial notice, and neighbour B then complies with the notice and gets the work done, the local authority will not have to recover any costs of hedge maintenance or lopping. If the burden of the fee shifted, the local authority would have to pursue costs of a few hundred pounds, rather than a few thousand pounds, and that would perhaps be a less cost-effective use of time.

I am wary of getting into a situation in which councils might have to pursue costs of a couple of hundred pounds simply because we have decided that the burden of the fee should shift.

The Convener: The opposite of that is that someone whose next-door neighbour is a pensioner and cannot afford a £500 fee can just decide not to cut their 20-foot high hedge because they will not have to refund the money. Alternatively, if they had to refund the money, they might decide that they do not want to involve the council and that they might as well cut down the hedge now because, ultimately, they will have to do so. That avoids the entire process having to be gone through.

Mark McDonald: The thing to bear in mind is that the vast majority of cases will probably deal with themselves once the bill comes into effect. The evidence from south of the border indicates that the vast bulk of cases are dealt with once such legislation comes into effect, without the need for formal complaints. A small number of intractable cases will have to go to some form of adjudication. I made it clear that it is for local authorities to determine what they do with fees, such as how they are structured; what discounts, if any, they offer, depending on individual circumstances; and whether to offer payment by stages, to allow people to access the process.

The bottom line is that, if I were a local councillor whose local authority was responsible for administering the scheme, and I was receiving complaints from constituents who could not afford to access the process, I would consider ways in which my local authority could make the process more affordable to access. The bill is an enabling one that gives the power to local authorities. I think that they will look carefully at how to deal with the situations that will arise and how they can avoid unnecessarily preventing people from accessing the process.

The Convener: I will open up the discussion to questions from other members.

John Mason: The convener has grabbed many of the obvious questions, so the rest of us are probably struggling.

The responses from East Renfrewshire Council and North Lanarkshire Council are different. I realise that they are both mixed areas, but many of us might think that East Renfrewshire is a better-off area so there might be more disputes and that North Lanarkshire would be the opposite. Will the situation be patchy across the country? I hate the term “postcode lottery”, but that could be used in this situation.

Mark McDonald: There will be variations from local authority to local authority. I do not imagine that there will be too many complaints in places such as Orkney and Shetland, for example. There will be variations, depending on the circumstances in local authority areas. The evidence from the campaign group Scotshade indicates that complaints are more prevalent in some local authority areas than in others.

John Mason: You said that individual local authorities will have freedom to come up with charging regimes. One local authority could decide that the average cost is £300 and everybody will pay that, but another could decide that the average cost is £300 and it will charge some people £200 and some £400, depending on their circumstances. Would that be possible under the bill?

Mark McDonald: The evidence from down south is that one charge is levied. I do not imagine that local authorities would look to charge people different fees based on individual cases.

John Mason: One argument has been that poorer people might not be able to afford the fee. If a council wanted to help poorer people, that would mean charging better-off people more.

Mark McDonald: It does not necessarily mean charging better-off people more than the fee that is set; it means considering ways in which the fees can be charged. A local authority might wish to offer a discount to those who demonstrate an inability to pay. That is not the same as having a
higher fee above the standard one. Councils might also wish to consider ways in which payments can be staged. I am not being prescriptive on how local authorities levy the fees. It would be difficult if we got into charging higher and lower fees as standard.

**John Mason:** Some local authorities have suggested that the investigative process and finding out who owners are could take ages and therefore cost a lot of money. I presume that, if a council could not find the owner, it would in some cases be cheaper for it just to cut down the hedge.

**Mark McDonald:** The evidence from south of the border is that the number of times that councils have had to take enforcement action because a hedge owner has not taken action is miniscule. In the example that you described, the local authority would still need to recover its costs. The number of cases in which a local authority would have to take action would probably be virtually nil.

**Jamie Hepburn:** The possibility of asking my good friend Mr McDonald searching questions is too good to pass up. I am delighted to have the opportunity. I was intrigued to see that he had been in discussion with NATO, until I realised that it was the National Association of Tree Officers.

In the evidence that you have gathered from England, the fees vary quite a lot among the local authorities. I see that Sandwell Council has no fee for applications, whereas the Royal Borough of Windsor and Maidenhead charges £600. It is clear that the council with no fee has decided to soak up the costs. Of the councils that levy a charge, the lowest fee is £150, which Hartlepool Borough Council charges. I do not understand why the council with no fee has decided to soak up the costs, whether or not it chose to remove a hedge.

The evidence from professional tree officers is that they would not advise taking the approach of complete removal of a hedge, but a local authority would still need to find ways to recover its costs. The number of cases in which a local authority would have to take action would probably be virtually nil.

**Mark McDonald:** The test that I have put in the memorandum that, where there has been no fee, there have actually been fewer applications than there have been in the place with the highest fee on the list that you have provided. Are you expecting a proportionally similar number of applications over a similar timeframe in Scotland?

**Jamie Hepburn:** I do not suppose that that would plug the funding gap that they are talking about.

I was surprised by how few applications there have been. It is also interesting to note that the cost that is levied does not seem to influence the amount of applications. I see in the financial memorandum that, where there has been no fee, there have actually been fewer applications than there have been in the place with the highest fee on the list that you have provided. Are you expecting a proportionally similar number of applications over a similar timeframe in Scotland?
Do you have any evidence about how many applications are likely?

Mark McDonald: We have some anecdotal evidence. I do not have it before me, but I would be happy to write to the committee with it after the meeting.

My colleagues might be able to say something about the matter.

Gery McLaughlin (Scottish Government): The Local Government and Regeneration Committee took evidence on the bill this morning and asked tree officers the same question. Their rough estimate of anticipated numbers in their local authority area is 12 cases.

Mark McDonald: We can provide the committee with evidence about the number of cases Scothedge has said it is dealing with. That might give a rough indication of the numbers at the initial stage, and what the numbers might look like later on.

The Convener: As I mentioned earlier, I have 37 cases, but only 12 of those are known to Scothedge—we compared lists—so the cases that you know about from Scothedge might just be the tip of the iceberg. As you said, there will be a big flurry of cases at the beginning. The real issue is how many there are later on.

Jamie Hepburn: As has been said, the costs might put folk off. Was there any investigation of capping of fees?

Mark McDonald: We considered the evidence. Wales has a fee cap. It seems that most people just charge the maximum possible, rather than take account of people’s ability to cover costs. We are, therefore, unconvinced that capping fees would provide the level of protection that one might think it would.

Jamie Hepburn: It is clear that recovering costs from the owner has not been a big issue, but it could become one. The deputy convener identified circumstances in which it could be an issue. If the owner could not be found, and the local authority was struggling to recover the costs, what mechanisms will the legislation make available to local authorities to recover costs? Do you think that it will be a big problem?

Mark McDonald: I do not anticipate its being a huge problem. However, obviously, we have to factor in the possibility that it might be.

Various options are open to local authorities. Obviously, there is the use of the courts to pursue costs, which would involve the recovery of not only the costs of the work that had been undertaken but the legal costs. There is also the option of attaching a land debt to a property, where that debt sits on the property and must be repaid at the point at which the property is sold or the person vacates the property. Those options would be available to local authorities in England as well.

Jamie Hepburn: That is interesting. I do not have as many cases as the convener, but my experience is that the problem tends to arise in situations in which people do not know who the owner of the adjacent property is.

There is a provision for an appeal to Scottish ministers, and a cost to the Scottish Government is associated with that. You very usefully set out what the costs are. Would both parties have that right of appeal?

Mark McDonald: That is correct.

The Convener: Your constituency does not have the lovely sea views that mine has, Jamie. That is the real issue.

Jamie Hepburn: It has the Forth and Clyde canal, which is very nice.

Gavin Brown: In its written submission, South Lanarkshire Council raised an issue that I want to explore. What is your view on the High Hedges (Fee Transfer) Regulations (Northern Ireland) 2012?

Mark McDonald: I will be honest; I do not know about the fee transfer regulations for Northern Ireland in detail. My colleagues might be able to assist me.

John Brownlie (Scottish Government): I would be happy to comment. We are aware of the existence of the fee transfer mechanism whereby the person who has complained has their fee refunded if the case is found against the owner of the hedge. From our most recent discussions with colleagues in Northern Ireland, though, the national body in Northern Ireland does not have any information about how successful that has been. You will be aware that the Northern Ireland legislation is the most recent piece of legislation on the issue in the United Kingdom. It was passed in 2011 so we do not yet have any information about how effective it has been or how it has worked in practice.

Gavin Brown: I have the regulations here. They came into force only in March this year, after the initial high hedges legislation. It says in the explanatory note:

“Once the remedial notice takes effect, after processing of any appeals, the council will refund the complainant’s fee (if any has been charged) and may then levy a fee on the owner/occupier of the neighbouring land.”

It struck me that that might deal with the point that the convener raised. Although it is early days in Northern Ireland, I wonder whether it is something on which Mark McDonald might reflect.

Mark McDonald: I gave my initial thoughts on the issue of a recovery mechanism. As I outlined,
there is the option in the legislation for fees to be refunded or part refunded where the authority deems that to be necessary. Although we do not yet have enough evidence to go on, I am happy to look at the Northern Irish example between now and stage 2 to see whether it might apply to the bill. However, I do not want to get into a situation in which a local authority has to pursue fairly small sums at what might be a disproportionate cost burden to the authority.

Jean Urquhart: Will the act apply after a reasonable investigation of the circumstances? In other words, rather than the start of the process being that the complainant is expected to pay a fee for this service, in the first instance the council would be expected to write to the neighbour reminding them of the act and saying that there is concern.

Mark McDonald: The initial stage of the process is that any individual who applies has to demonstrate that they have taken steps to resolve the dispute through other means, for example by writing to the neighbour. We are not explicit about this, but if they have been through mediation, as some people have, the option of last resort is to take an application to the authority. I would expect that most authorities would advise people of the process that they have to go through and the fee that would be levied.

The evidence from south of the border is that there is a checklist, and that if people do not meet all the criteria that need to be met in order for the matter to hit the application process, it goes no further so no fee is charged.

The Convener: That appears to have exhausted the questions from the committee. No, Elaine Murray has one.

Elaine Murray: Just because I am leaving the committee, I am being ignored.

The Convener: There was no indication that you had asked to speak.

Elaine Murray: You did not see me. That is because I am so short.

You have covered most of my points anyway. I had a question on the possibility of a fee transfer. The legislation in England has been fairly successful, and awareness of the legislation has resolved a lot of issues. I hope that it will work in a similar way here. If somebody is aware of the legislation and has continued not to bother to do anything about their hedge, it is a little unfair if the complainant, who has been unable to get a resolution from the neighbour, ends up being several hundred pounds out of pocket. Perhaps you would look at whether the Northern Ireland example would give extra impetus for people to resolve issues.

Mark McDonald: I am happy to do so. The Northern Irish example does not yet have the weight of evidence behind it due to its still being in its infancy.

It is worth putting on record that not every case that goes to a complaint will be found in favour of the complainant. There will be people who pay an application fee and go through the process, and the case will not be found in their favour. It is worth bearing that in mind. I am often accused by some of having a bill that is entirely anti-hedge. It is not anti-hedge; it is first and foremost about resolving disputes.

The Convener: I have a case in which a person feels that their neighbour has raised a spurious complaint, so I appreciate your comments on that.

In response to a question from John Mason you said that a council may decide to reduce the fee for pensioners and so on, and that it would not put the fee up for other people. How can that be cost neutral? The local authority would be out of pocket.

Mark McDonald: I probably did not explain myself very well. It is for local authorities to decide on the fee that they will charge to deal with the case load that they face. Each case will have to be assessed on its individual merits, and there will be some cases that are more difficult to assess. I am not suggesting that the fee would necessarily capture every single case. It will probably be an aggregation of the average amount of time that will be spent, and there will be variations within that. It may be that taking the approach that I suggest will still allow it to be a cost-neutral method, but that is for local authorities to determine.

The Convener: There are no further questions. We thank you for coming along.

Mark McDonald: It is good to be back.

The Convener: Are members content for me to write to the Local Government and Regeneration Committee, attaching a copy of the Official Report of today's discussion and the submissions that we have received?

Members indicated agreement.

The Convener: At the beginning of the meeting, the committee agreed to take the next item in private.

11:56 Meeting continued in private until 12:01.
HIGH HEDGES (SCOTLAND) BILL – RESPONSE TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE STAGE 1 REPORT

I am writing in response to your Committee’s Stage 1 Report on the High Hedges (Scotland) Bill. I am grateful for your detailed and careful consideration of the Bill. This Member’s Bill is being taken forward with the Government’s full support and I welcome the Committee’s support for the general principles of the Bill.

Your report makes two recommendations for Government. The first is that the Government should examine the feasibility of establishing a central tree officer to provide a core of expertise to local authorities. I am happy to confirm that my officials will discuss this with local authorities as part of their preparations for the legislation coming into force.

The second recommendation is that Government should examine the issues raised, such as residential development in proximity to woodlands, as part of the on-going review of Planning Policy. Again, I am happy to confirm that my officials will ensure that this is considered as part of the review of Scottish Planning Policy.

I hope that this response is helpful to the Committee.

DEREK MACKAY
Note: (DT) signifies a decision taken at Decision Time.

The meeting opened at 2.00 pm.

High Hedges (Scotland) Bill: Mark McDonald moved S4M-05535—That the Parliament agrees to the general principles of the High Hedges (Scotland) Bill.

After debate, the motion was agreed to (DT).
High Hedges (Scotland) Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-05535, in the name of Mark McDonald, on the High Hedges (Scotland) Bill. I call Mark McDonald, who is the member in charge of the bill, to speak to and move the motion.

14:21
Mark McDonald (North East Scotland) (SNP): Thank you very much, Presiding Officer. I welcome you back to your place. It is good to have you back in the Parliament with us.

I am pleased to open the debate on the High Hedges (Scotland) Bill. I thank the Local Government and Regeneration Committee for its detailed and thorough consideration of the bill, in which it was supported by the Subordinate Legislation Committee and the Finance Committee.

I am also grateful for the support that ministers have given me in taking the work forward. It is the furthest that any high-hedge proposals have got in the history of the Parliament, and a great deal of work has gone into the bill to get us this far.

I and those supporting me have met a number of people and organisations from throughout Scotland and elsewhere. Tony Dixon from Hartlepool Borough Council and Simon McGinnety from South Tyneside Council, both of whom I met in December 2011, were able to give me a great deal of assistance in understanding how high-hedges legislation has worked elsewhere.

Ian Edwards, Elspeth Forsyth, Steve Milne, Robert Paterson and Eric Hamilton from the Scottish tree officers group provided me and the officials supporting me with much expertise and advice—I hope that they will continue to do so.

I thank Joe McIndoe, the owner of the Mill Garden Centre in Armadale, West Lothian, who kindly allowed me to use his garden centre as an excellent venue for the launch of the bill last October.

I am also grateful to Scothegde, which has campaigned for such legislation for many years and which has engaged positively with me throughout the process.

I make it clear at the outset that the bill is not an attempt to define the height of every hedge in Scotland. Many people who own, or live adjacent to, a high hedge will have no issue at all. I seek not to create disputes were none exist but to resolve existing ones.

It is clear that a number of intractable disputes revolve around the presence of a high hedge. The problem is that there is no way to resolve them if there is no willingness to do so amicably. By introducing the bill, I have sought to provide a mechanism to remedy that.

The Scottish Government consulted on the matter in 2009. That consultation gave an indication of the extent of the problem. There were more than 600 responses, 93 per cent of which were from private individuals, many of whom described themselves as being in dispute.

The bill aims to provide an effective means of resolving disputes about the adverse effects of a high hedge where the issue has not been amicably resolved between neighbours. It acknowledges that the individuals involved should have primary responsibility for resolving such disputes.

The bill defines a high hedge. The definition largely mirrors the one that is used elsewhere, and I am pleased that, in the stage 1 report, the majority of the committee agreed with the definition. I will refer to that report a little later.

The bill gives home owners and occupiers a right to apply to a local authority if it is considered that a high hedge adversely affects the reasonable enjoyment of property. However, although the bill provides a mechanism for resolving disputes, it also provides that pre-application requirements must be met. That means that applicants must have taken all reasonable steps to attempt to resolve the dispute beforehand. Recourse to the local authority should be the last, not the first, resort.

The bill empowers local authorities to make and enforce decisions about high hedges. It gives them powers to assess the situation and act as an independent and impartial adjudicator of whether a high hedge is affecting the reasonable enjoyment of property. We must bear it in mind that that means that local authorities will seek to strike a balance between neighbours’ competing rights. Authorities will also need to consider a hedge’s effect on an area’s amenity and whether the hedge has any cultural or historical significance.

Bruce Crawford (Stirling) (SNP): I thank Mark McDonald for introducing the bill, which I think will help a significant number of my constituents in Stirling. He will be aware that I wrote to him earlier this week about people’s concerns about trees being cut back illegally, about trees being unintentionally impacted on and killed, and about trees being too high to be covered by his bill. Will he comment on that? I found his letter helpful.

Mark McDonald: I received the letter that Bruce Crawford sent me. It is worth stressing that any decision about action that is to be taken will be the
based on the recommendation in the committee's report that the system should be reviewed within five years of any act coming into force, if that act contains the narrow definition that is in the bill?

Mark McDonald: I am just about to talk about the committee’s report. I would be absolutely happy to accept such an amendment if Mr McMillan was minded to lodge one; otherwise, I would have done so. I would also be happy to discuss with him how best to frame that amendment.

I am pleased that a majority of the committee was content with the definition of a high hedge as set out in section 1, and I am even more pleased now that Mr McMillan has indicated his willingness to lodge an amendment that would satisfy some of his concerns. I am aware that a number of people who responded to the committee’s call for evidence addressed that point. Some evidence suggested that the definition should be broader and some evidence suggested that it should be narrower.

I think that the committee’s majority conclusion is the right one and that the bill strikes the right balance. On the basis of my discussions with local authorities in Scotland and elsewhere, I think that the definition should mean that the costs that are associated with implementing the bill should not be excessive and that the numbers should not be unmanageable.

In its report, the committee asked for clarification of instances

"where a local authority is considering an application where one or more of the properties concerned in the application for a high hedge notice are owned by the local authority."

I am happy to confirm that the bill requires only that a high hedge must be on land that is owned or occupied by someone other than the applicant for a high-hedge notice. Otherwise, there are no such restrictions on the location of the hedge. The hedge could be situated on land that is owned by the local authority. Nothing in the bill prevents a high-hedge notice from being issued against a local authority. Indeed, the appeal process builds in a further safeguard, should there be dissatisfaction with the outcome of any adjudication in that regard.

I am happy to agree with the committee’s recommendation that the bill should be amended to include the national park authorities as statutory consultees. That request was made by one of the national parks and was supported by the Scottish tree officers group in its written submission.

The committee also recommended that a review provision be included, on which Mr McMillan helpfully suggested that he would seek an amendment. I am happy to take that forward.
I noted the committee’s conclusions in respect of the provision in section 34, the intention of which is to allow the current meaning of a high hedge that is contained in section 1 to be amended by regulation. I also noted the Subordinate Legislation Committee’s different interpretation of the width of the power in section 34. It expressed the view that

"it appears to be possible for that power to be used in the future so as significantly to alter the scope of the Bill".

I am keen to hear the members’ views on that provision in the debate, following which I will consider what action might need to be taken. As part of that process, I will assess how addressing the points that the committees have made might impact on the bill. I will give further consideration to the matter and will contact both committees to confirm my intentions ahead of stage 2.

The Local Government and Regeneration Committee noted the concerns that were expressed in evidence about how the bill’s provisions relate to tree preservation orders. I said in my evidence that in circumstances in which a tree preservation order might be in place, high hedges would be

"dealt with through a pragmatic approach, which will not be frustrated by other legislation and will ensure that protections for valuable trees are kept in place."—[Official Report, Local Government and Regeneration Committee, 19 December 2012; c 1570.]

I am glad that the committee is satisfied with that approach. That is welcome.

The committee is also content with the provisions that require local authorities to set fees at a reasonable level. As drafted, those provisions mean that a fee that is fixed by the local authority

"must not exceed an amount which it considers represents the reasonable costs of an authority in deciding an application".

That gives local authorities sufficient flexibility while still allowing them to recover costs.

I thank Scothedge for its campaigning work in bringing about the bill. I welcome the attendance of so many MSPs and members of the public for the debate, which demonstrates the strength of feeling that exists on the issue.

I am delighted to say the words that so many people have waited to hear being said in the Scottish Parliament:

I move,

That the Parliament agrees to the general principles of the High Hedges (Scotland) Bill.

The Presiding Officer: I call Kevin Stewart to speak on behalf of the Local Government and Regeneration Committee.

Kevin Stewart (Aberdeen Central) (SNP):
Thank you, Presiding Officer. I, too, am glad to see you back.

The High Hedges (Scotland) Bill came before the committee in October 2012. We received 90 submissions to our call for evidence. The overwhelming majority of the people from whom we heard wanted legislative action to address the irresponsible actions of a very small minority.

As part of our consideration of the bill, we held three oral evidence sessions. I thank everyone who responded to our call for evidence and all those who gave oral evidence. It did not come as a surprise to me or to other members of the committee that it was a debate that generated quite a lot of heat. There is probably not a member in the chamber whose constituency mailbag has never had a high-hedge case in it.

I also thank the clerks, the Scottish Parliament information centre and the official report for their support and assistance, and put on record my thanks to all the members of the committee, who were extremely assiduous during the course of our discussions. Members should note that I said “assiduous” and not “deciduous”. I am sorry for that very bad joke, Presiding Officer.

The key issue was the definition of a high hedge. Some people wanted the bill to become the high trees and hedges bill; some people wanted specific trees—generally native evergreens and others such as holly, juniper and yew—to be exempt; and some people wanted anything that constituted a barrier to be included, regardless of type, origin or species, and did not see a difference between deciduous trees and evergreen or semi-evergreen hedges. We had some sympathy, but we were warned by, and agreed with, the majority that keeping it simple was best.

We accept that care is needed to avoid adverse impacts on wildlife or biodiversity, which could have a number of unintended consequences, not least for costs and workload for local authorities. A majority of the committee supports the simple definition in the bill, which follows the tried-and-tested approach taken in England and Wales. During our evidence sessions, we heard from the Isle of Man, where there have been difficulties in extending a similar bill to include other species and trees. We also heard about some of the associated costs—particularly the legal costs—of adding such provisions. Unfortunately, I cannot give definitive figures, because we do not have them.

Evidence was received on the link with tree preservation orders. Some favoured that link, but others did not like the connection. The committee
agreed that the test local authorities must apply is similar to the test for the making of a TPO, and that it therefore made sense for the two to live together. If an authority decides that a high-hedge order is appropriate and action requires to be taken against a tree that is part of the hedge, it is implicit in that determination that the continued existence of a TPO is not appropriate.

There was a considerable amount of evidence on who should pay the local authority's costs and on how much the costs could and should be. Perhaps unusually, local authorities had little to say on that, provided that the bill's impact on them was cost neutral. Those affected by high hedges were adamant that the hedge owner should pay all costs incurred. Such a scheme is possible, but it would increase complexity and, paradoxically, costs. Under the bill's proposals, the owners of high hedges will have to pay and will be liable for the costs of action taken to reduce the height of a hedge. The committee agreed that, ultimately, the intention was not for action to be required but for parties to reach a mutually acceptable agreement. Under the bill, there is a financial incentive for both parties to reach agreement. The committee hopes that many disputes will be resolved amicably—indeed, it accepts that that will be the case. We have anecdotal evidence that some disputes have already been resolved because of the bill's introduction.

Other areas that the committee considered and made recommendations about include concern that the body of expertise available to local authorities about trees and hedges is diminishing rapidly. The committee suggests that the Government should consider establishing a central tree officer so that a core of expertise is available to all local authorities. We understand that such an officer already exists in Wales. It will do no harm to see how Wales is getting on with the way in which the body of expertise available to local authorities is diminished. That is implicit in that determination that the continued existence of a TPO is not appropriate.

Another concern is that we must ensure that where the local authority is a party to an application, either as the applicant or the landowner, sufficiently independent and transparent arrangements are in place to ensure that justice can be seen to be done. Such an apparent conflict is not novel; it also occurs in planning, for example, and is successfully addressed there.

We should take advantage of the current review of planning guidance to ensure that future problems with hedges and plants are avoided. The committee recently visited Cumbernauld where we saw some woodland that the Scottish Wildlife Trust had cut back after talking to local residents. Some such disputes would not happen if they were dealt with by a planning authority at the outset. There are lessons to be learned in that regard.

We recommend that the national park authorities be made statutory consultees in all applications for high-hedge notices made within their park areas.

We believe that the legislation should undergo a full review after it has been in operation for not more than five years. That will allow the questions around the definition and fees to be looked at, and it will present an early opportunity for amendments in the light of operational experience.

Our conclusions are that the committee supports the bill's general principles and agrees with the approach that it takes to the definition of high hedges. We have made recommendations that relate to having a central tree expert and reviewing planning policy in the area, with the national parks authorities included as consultees. We would also like to see a reasonably early review of the operation of the legislation.

14:39

The Minister for Local Government and Planning (Derek Mackay): I also welcome you back, Presiding Officer.

I am pleased to participate in today's debate and to reiterate the Government's support for Mark McDonald MSP and his High Hedges (Scotland) Bill. Our 2011 manifesto committed us to introducing a bill to provide a legal framework for settling disputes relating to high hedges. I hope that today we will move that commitment on a step.

I pay tribute to the Local Government and Regeneration Committee for its work and, in particular, the thoroughness of its report. In its consideration of the bill, it has been supported by the Subordinate Legislation Committee and the Finance Committee.

I also acknowledge the hard work and efforts of all those who gave evidence to the Local Government and Regeneration Committee during the oral evidence sessions in December, and of those who responded to the committee's call for evidence. I know that the committee had to consider a wide range of views and talk to many experts—and not just from Scotland. There has been discussion of the effectiveness of the legislation in England and Wales, how aspects of the recent legislation in Northern Ireland might work and the slightly different legislative approach taken by the Isle of Man.

The Government recognises the need for action to be taken in the area, especially following our 2009 consultation, which attracted more than 600 responses. That indicates the extent of the issue,
which members will know about from correspondence. Members will also know about the frustration that the issue can cause constituents. The responses to the committee’s call for evidence and the evidence from ScotHedge in particular made clear the serious impact that high hedges can have in the most serious cases.

We recognise that Scotland is the only part of the United Kingdom that does not have legislation to deal with the problem of the height of hedges. That, of course, presents us with the opportunity to learn from elsewhere. The bill learns from the experiences of others—that is also evident in the accompanying documents. The work that Mark McDonald undertook, which is set out in the policy memorandum, shows that although councils can receive a lot of inquiries at the outset, those tend to be followed by a low level of formal complaints and an even lower level of necessary enforcement action by a local authority. That suggests that the very presence of legislation encourages the resolution of disputes between neighbours, as has been mentioned. Providing members of the public with mechanisms to resolve disputes about high hedges must be the way forward.

Ministers have supported the bill from the outset. Mark McDonald announced his intention to introduce the bill on 8 September 2011. Ministers announced their support for him at the same time, and have continued to support his work through public pronouncements, particularly in the Government’s memorandum of 30 October 2012. We have also provided practical assistance.

I welcome the Local Government and Regeneration Committee’s thorough and detailed report. It is clear that no stone has been left unturned. The oral evidence sessions were informative and in depth.

I do not intend to go into the detail of the bill; that is for Mark McDonald to do. However, I will discuss a number of the key conclusions that the committee reached, including those that will be for the Government to implement. When I gave evidence on 19 December, I said that I considered that the definition in the bill was appropriate, and I am pleased that a majority of the committee members agree. I indicated then that I felt that the definition struck the right balance and needed neither narrowing nor expanding. I am also pleased that the Convention of Scottish Local Authorities supports the bill as drafted.

I also note that the committee is content with the fee provisions as set out in the bill. As they stand, those provisions allow local authorities to set a fee at a level that reflects the cost of making a decision about a high hedge. That approach gives local authorities the flexibility to set a fee at a level that reflects their circumstances, while making sure that fees cannot be used to raise revenue. The bill also provides that local authorities can set different fee levels for different applications and can refund fees in circumstances that they will determine.

The committee also considered the interaction between tree preservation orders and the bill, which takes a pragmatic approach to such orders. The bill will ensure that a high-hedge notice will not be frustrated by the TPO process, while recognising the protection that such orders give trees.

The committee recommended that

“the Scottish Government examine the feasibility of establishing a central tree officer to provide a core of expertise to local authorities”.

I am happy to confirm that my officials will discuss the recommendation with local authorities as part of their preparations for the legislation’s coming into force.

Of course, the committee has drawn from its detailed work a number of other conclusions and recommendations, some of which I have referred to and many of which will no doubt be discussed in today’s debate.

Having set out the Government’s intentions in respect of the committee’s stage 1 recommendations, I am happy to reaffirm that the Scottish Government will continue to support the bill as it moves forward. I am aware that many of us are keen to resolve these issues, so I look forward to an interesting and enthusiastic debate. As has already been highlighted in the opening speeches, the bill itself is being informed and shaped by the on-going dialogue, and I commit the Government to continuing that dialogue as the bill progresses through Parliament.

14:46

Sarah Boyack (Lothian) (Lab): Given that, as has already been pointed out, the bill has been a long time coming, it is crucial that we get it right. It builds on the previous work of and discussions held by former MSP Scott Barrie, who had two goes at getting a member’s bill through Parliament. I very much welcome the fact that Mark McDonald has picked up the issue in his own bill.
I also welcome Mr McDonald’s helpful opening comments, which have given the chamber a sense of how he will respond to some of the committee’s recommendations. It is always useful to have a sense before stage 2 of what the member in charge of a bill is happy to negotiate over.

I agree that we can learn from and build on the experience of similar legislation in the rest of the UK. The issue that stood out for me was that of best practice guidance, and we need to build on experience in that respect to ensure that the bill has a decent chance of having the positive impact that we all want it to have in providing a framework for resolving disputes.

Crucially, the bill also offers the prospect of assisting both members of the public and local authorities, which are charged with implementing its provisions. The issue is not limited to a particular part of Scotland; indeed, it is a source of conflict for many members of the public. Like other members, I have had a certain amount of casework on the subject although, interestingly, it has related not to hedges but to matters that I suspect the bill will not cover.

Another interesting development is that the introduction of and debate over the bill has been enough to settle some of those conflicts in advance of the new powers being introduced. My experience is that disputes that have been going on for some time and have become established are by their nature difficult to resolve, and anything that pushes people to concentrate their minds and reflect on the fact that not resolving matters amicably with their neighbours will have consequences and costs will be good. Many of us have such direct knowledge. Given the importance of reaching a fair resolution, a right of appeal and clarity about the process, too, will be important.

The bill’s laudable aim, as has been well summarised elsewhere, is to identify a means to address the problem of disputes between neighbours where high hedges have become a point of issue and one set of neighbours form the view that the aforementioned high hedge has interfered with their reasonable enjoyment. Whether the bill gets it right when it is implemented will be the test, but the Labour Party has no hesitation in signing up to the principle behind the bill, alongside the very many people who responded to Mark McDonald’s consultation.

Nevertheless, we need to look at the detail. There has already been discussion about whether the definition in the bill gets the balance right. I encourage the committee to spend a good bit of time on that issue at stage 2; after all, this is our chance to get right a piece of legislation that has been hanging around for some time now. Even if it is difficult and even if people are not happy with where it ends up, we should still have that discussion in a bit of depth. The discussions that have been had so far have been helpful, but the definition is an absolutely crucial issue. The Scottish Government’s involvement is central to getting the matter right, so I welcome the minister’s confirmation that discussions will be held.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): On the definition being crucial, I am somewhat concerned about the proposal that it could be changed through secondary legislation. Does the member share my concern that that may be ultra vires?

Sarah Boyack: Among the final points that I intended to make is that the committee will need to consider the Subordinate Legislation Committee’s comments on that very carefully. People on both sides of the argument will want to know that the issue has been settled one way or the other. That is why I encourage the committee to feel free to take its time at stage 2 on that because I predict that, regardless of where the committee ends up, the matter will come back for years to come. Let us make the most of the chance to discuss it.

As I was about to say, I welcome the minister’s commitment to enter into discussions on whether to have a central tree officer. Arguably, that will be fundamental to the success of the bill in the early years. Therefore, I hope that the minister will firm up his comments by the time that we reach stage 3. Given that the principle of cost recovery regimes is that they encourage people to agree in principle, if the fees are to reflect the costs of action, a central resource could be cost effective for everyone, particularly if it allowed local authorities to seek expertise. That would make a lot of sense because it would keep down costs across the country. The evidence suggests that, although authorities have tree officers to deal with TPOs, the number of tree officers has been cut back—they have been hard hit by staffing cutbacks over the past few years. The provision of new expertise, new information and a central resource would be money well spent, particularly in the early years to ensure that the legislation got off to a good start.

Let me briefly cover the definition—

The Deputy Presiding Officer (John Scott): You have 20 seconds remaining.

Sarah Boyack: Witnesses on both sides of the debate were concerned about the issue of definition. Let me give a flavour of a couple of the comments that I received. One respondent noted that leylandii that are too high will not be covered, because existing Scots law states that, if any damage would result from trimming, one may not trim. Somebody else commented that the trees that the neighbour has in her garden grow 50ft tall,
but although there are more than 17 of them, they would not be covered under narrow proposals in the bill. Another person commented that we should not leave the same loophole as exists in the English high-hedges law.

It is crucial that we debate the issue at stage 2 because people are waiting in the hope that we will come down on one side of the argument or the other.

The Deputy Presiding Officer: I would be grateful if you would draw your remarks to a close, please.

Sarah Boyack: The Subordinate Legislation Committee’s comments also need to be taken on board.

I welcome the fact that we are at stage 1. The relationship with TPOs and Scottish planning policies will also be important, and I hope that this afternoon’s debate will explore that.

14:52

Margaret Mitchell (Central Scotland) (Con): Let me begin by congratulating Mark McDonald on achieving the not inconsiderable feat of progressing his member’s bill to a stage 1 debate and of doing so with the general support of the Local Government and Regeneration Committee. It certainly makes a pleasant change for members of the committee to be more or less of one mind on the legislation before us, given that the previous bill that we considered was the somewhat more contentious Local Government Finance (Unoccupied Properties etc) (Scotland) Bill.

The high-hedges issue has been debated in this Parliament for nearly a decade. As other members have stated, few MSPs will not have had constituents coming to them to complain about the height of neighbouring hedges. As such disputes tend to be on-going for a number of years, they can adversely affect the health and wellbeing of both parties.

For many years, the Scottish Conservatives have campaigned to change the law on high hedges in Scotland. As far back as 2006, when the Parliament considered the Planning etc (Scotland) Bill, we submitted amendments in an attempt to introduce a similar scheme to the one that exists in England. I, too, remember that Scott Barrie made valiant attempts to get a similar bill on the statute book when he was an MSP. Therefore, I am pleased that legislation has now been introduced that aims to provide a solution for those whose enjoyment of their property is impeded by high hedges.

The bill has the potential to establish a Scottish system for resolving disputes over high hedges. I thank both the witnesses who submitted evidence—sorry, that sounds as though there were only two, but I thank all the witnesses—and the Local Government and Regeneration Committee clerks for their hard work in producing the stage 1 report.

I will restrict my opening remarks to commenting on the main provisions and objectives of the bill. At the outset, it is important to state that the bill is intended to provide an option of last resort. Section 3 makes it clear that, to make an application under the bill, the applicant must first have taken “all reasonable steps” to resolve the matter. In other words, the bill is designed to discourage trivial claims.

The bill defines a nuisance hedge as one that “is formed wholly or mainly by a row of 2 or more evergreen or semi-evergreen trees or shrubs”, is more than 2m high and “forms a barrier to light.”

The Local Government and Regeneration Committee thoroughly debated the definition, taking into account several factors. The first was the issue of single trees. A number of those who gave evidence to the committee, including Scothedge, expressed disappointment that the bill does not cover single trees, which represent 49 per cent of all Scothedge cases. The committee decided against extending the bill in that way at this stage, having heard evidence that that not only would have significant biodiversity implications but could result in a flood of applications, at great administrative and financial cost to local authorities.

Other witnesses, including the Scottish Wildlife Trust and Bell Ingram, suggested that the definition should exclude native species of evergreen and semi-evergreen plants because of their greater biodiversity value compared with that of non-native species. However, native species can cause as much misery to the lives of home owners as non-native species can and although biodiversity is important, it must be balanced against other objectives that the bill seeks to achieve, such as the right to light and enjoyment of property free from the distress that high hedges can cause. The definition in the bill seems to strike that balance appropriately.

On fees, the main questions were whether there should be a cap on fees and whether a loser-pays principle should be applied. On balance, we considered that fees should be set at an appropriate level that discourages petty complaints but which is not so expensive as to prohibit legitimate applications. That means that the fees should reflect the cost of the work that the local authority undertakes but should not be unreasonable. Although charging the losing owner
fees could act as a deterrent, it was recognised that those owners will make a realistic contribution to the cost of carrying out the works. The committee considered that that would be a deterrent in itself and that it would be disproportionate to impose an additional cost through fees.

The Scottish Conservatives welcome the bill at stage 1. In my closing remarks, I will cover the few areas that might need further consideration and clarification.

14:57

Graeme Dey (Angus South) (SNP): I have never personally been a victim of a high-hedges dispute as defined by the proposed legislation. However, I have enormous sympathy with the aim of tackling the issue and with those who find themselves on the wrong end of such situations because, for a number of years, I had to contend with a nearly high hedge that bounded part of my property. I say “nearly high hedge” because the offending structure reached a maximum height of 5ft and, much as it annoyed me, could not be described as forming a barrier to light. The issue was more that it was a thick hedge rather than a high hedge. It had been planted many years earlier by a previous neighbour inadvisably close to the boundary, which meant that getting in and out of vehicles that were parked in our driveway became a problem, owing to an at times 18-inch incursion on to our property.

In my case, a resolution was arrived at only with the sale of the neighbouring property and the arrival of a new owner, who helpfully hauled out the source of our irritation. Therefore, when I say that I welcome the bill, I really do welcome it, even if it will not necessarily assist someone who finds themselves in the same position as I did.

Some people outside the chamber might question our parliamentary priorities in introducing proposed legislation on the subject. However, I congratulate my colleague Mark McDonald on introducing the bill, because it gives deserved respect to people whose quality of life has been impacted on by the selfishness of others. That said, I support entirely the safeguard that is built into the bill that requires applicants for a high-hedge notice to have taken “all reasonable steps” to resolve the issue before they make an application to the local authority and that enables councils to reject applications if such steps have not been taken.

People who have never been involved in a high-hedge dispute might not understand how acrimonious such fall-outs can be and how entrenched the positions of the warring factions can become. In legislating on the matter, we must recognise that, whatever the initial rights and wrongs, the victim might ultimately have become almost as unreasonable in their behaviour as the high-hedge owner.

I accept the logic behind excluding single trees from the scope of the bill, as the bill is about high hedges and it is right that the views of the Scottish Wildlife Trust, the RSPB and the Woodland Trust should inform the direction that we take, because we must not act in a way that has the potential to compromise wildlife and biodiversity.

Any deliberations on whether it would be right to broaden the proposed definition of a high hedge should also be informed by the view of Eric Hamilton, who is a forestry officer with Dundee City Council. He stated that including “any trees of any type ... would lead to tremendous problems.”—[Official Report, Local Government and Regeneration Committee, 12 December 2012; c 1522.]

All of that said, I welcome the consensus that has developed on having a mechanism in the bill for review within five years, so that we can determine whether, given the experience of application, we have in fact got the legislation right.

I note the prediction that more than 90 per cent of disputes will be settled without local authorities being actively involved, simply because the legislation exists. We may encounter far fewer cases of wide hedges also. It is a fact that many such situations do not have their roots in a deliberate act. People do not, by and large, plant bushes as close as they have done to boundaries or boundary fences in order to create a problem. Invariably, it is a thoughtless act that is based only on a desire to avoid a seeming waste of garden space at the time of planting. They will not have thought about 10 or 20 years hence, when that wee bush will have completely taken over a boundary, much to the upset of a neighbour.

Hopefully, the passing of the bill will bring into focus every aspect of hedge planting and maintenance and will even help to alleviate that wide hedge issue, which it is not designed to address. For those reasons and for all the other reasons that have been articulated in the debate, I encourage colleagues to agree to the general principles of the bill.

15:01

Anne McTaggart (Glasgow) (Lab): As a member of the Local Government and Regeneration Committee, I welcome the opportunity to scrutinise the Government’s proposals in the High Hedges (Scotland) Bill. It is clear that the bill aims to address what can often be a major source of anti-social behaviour in our communities and intends to provide individuals
with a course of action to address the problem of overhanging or intrusive hedges on a neighbouring property.

It is an unfortunate reality that a dispute over an overgrown hedge can quickly escalate into an issue that impacts on families’ quality of life and encourages the breakdown of communities. As a result, it is in the interests of public authorities to have the power to intervene and to offer remedies in cases in which disputes between neighbours cannot be resolved through independent negotiation.

However, we must ensure that the provisions that are contained within the High Hedges (Scotland) Bill are fit for purpose and can deliver the outcomes that organisations such as Scothedge have been campaigning for. Scothedge has campaigned to raise awareness of the problems that are faced by victims of the nuisance of high hedges and has already identified a number of potential problems with the bill.

Principally, the exclusion of deciduous hedges and problematic single trees means that the bill could fail to tackle instances of neighbour disputes that are prevalent across Scotland. The current definition of “a row of 2 or more evergreen or semi-evergreen trees or shrubs” is clearly restrictive and will require amendment if it becomes clear that too many high-hedge disputes are not covered by that narrow description.

Further analysis of that provision is necessary; the Scottish Government can learn lessons from the Anti-social Behaviour Act 2003, which contains statutory authority on cases of high hedges and nuisance vegetation in England. The Scottish Government should reflect on the application of the 2003 act and perhaps seek to amend the bill provisions to make the legislation as effective and comprehensive as possible.

We must acknowledge that high hedges that result in neighbour disputes are a real and serious problem that too many Scottish families face. High hedges do not just act as a barrier to light; they can restrict views, lower property values, obstruct boiler flues and block television cables. It is right that the Scottish Government is taking positive action to tackle those problems, but in order to achieve that, the legislation must fully address the complex and difficult nature of the issue.

We know that a number of campaigners are already concerned that the definition of “high hedges” is too narrow and I anticipate the bill as it currently stands being satisfactory in only a proportion of problem cases, failing to improve the situation of many who are affected by these issues. I urge the Scottish Government to reflect on the speeches by members of Opposition parties in the chamber and to work towards a consensus that is in the best interests of families and individuals across Scotland.

15:05
Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): For almost as long as I have been in the Parliament—bar a month or so—high hedges and how to cut them down to size has been an issue. I therefore welcome the movement through—my dreadful puns might well end here—a much-needed privet member’s bill. Privet is apparently not an offending hedging plant, but more of that later.

Of course, high hedges are no laughing matter. They have caused much distress and dispute between neighbours and have been a problem for many of our constituents over the years. I think that the first parliamentary question on the subject was from Maureen Macmillan in circa January 2000. In question S1W-03655, she asked when there would be a consultation on high hedges. I think that it was a planted question because almost immediately Jim Wallace answered that he was issuing a consultation. Twelve years later, after the petition and the bill proposal that Scott Barrie lodged, we are getting somewhere. Some of the hedges that might have been a problem then are certainly a bigger problem now.

It is unfortunate and a pity that no Liberal Democrat member is here to take part in what really is a cross-party debate.

Why the delay? In part, it was due to uncertainty about whether to seek a solution through planning law, abatement notices, the law of nuisance or the law of antisocial behaviour. There was also a problem with defining what is and is not a hedge, let alone whether the hedge had to be deciduous, coniferous or mixed. That is the perennial problem with legislation. We all know a hedge or indeed an elephant when we see one, but defining it is quite another matter.

The definition in the bill is about as good as it can get. To extend it to include individual trees would be to redefine the bill and make it a high trees and hedges bill. However, I note that the bill applies only to hedges formed of “evergreen or semi-evergreen trees or shrubs” with live foliage. I might have thought that it would include, for example, beech, which retains its foliage although it is not technically live, and the ubiquitous privet. The test is that the hedge interferes with “reasonable enjoyment”. I feel an amendment coming on.
While I am on the subject of amendments, I refer to section 34 of the bill, which is no small matter. To allow the definition of “high hedge” in the bill to be changed, extended or modified through subordinate legislation seems rather bizarre, because the whole purpose of having a definition in a bill is for it to be secure. If nobody else is going to dabble in that, I may well do it.

That said, I welcome the push for early resolution, which should be assisted by the threat of ultimate statutory intervention. I agree with the proposal to charge a fee for applications, which will certainly act as a deterrent to vexatious applications. On the other hand, where all reasonable steps have been taken pre-application by the party that ultimately secures resolution through enforcement, why should there not be a recovery of the fee from the offending neighbour? That might add complications, but I would like to see flexibility on recovery of the fee. There would be a further element of justice in that.

The issue of developers or indeed subsequent occupants seeking to have pre-existing hedges reduced or indeed removed altogether, particularly when it could be foreseen that they would increase over the year, should be dealt with at the application for planning stage. I note what the minister said about planning law.

That said, I commend Mark McDonald and all those who went before him—not least Scott Barrie—for pursuing the issue. However, most of all, I commend the campaigners—Scotchedge and others—who have rightly been determined to find a remedy for this wrong.

The Deputy Presiding Officer: I thank the evergreen Ms Grahame for that contribution.

15:09

Colin Keir (Edinburgh Western) (SNP): I thank Mark McDonald for introducing his bill, and I thank the Local Government and Regeneration Committee for its work, as well as the campaigners such as Scotchedge. The bill is one of those that cause people to think, “Is this frivolous?” In this case, it certainly is not. Believe it or not, the issue was one of the biggest problems that I had as a councillor—forget about the budget negotiations or anything like that. Representing a ward in Edinburgh that happened to be made up mostly of low-rise homes, I saw a lot of problems with high hedges.

I received a telephone call one day from an irate woman who said, “Councillor Keir! Get down here very quickly, please, or my husband might kill the next-door neighbour!” They were arguing over a high hedge—the lighting issues, the irritation, the antisocial behaviour and the whole shooting match that comes with neighbours’ disputes. By the time I got down to the place, the two men were literally fighting in the garden. It is no joke. This is a big issue for people in such areas.

We can blame all sorts of things—such as the planners who, in their wisdom, allow houses to be built extremely close together, and those who plant leylandii, which sprout up at a rate of knots and soon reach heights of 30ft, rather than the 6ft that the person was expecting—but the issue is important to people who live next to each other and end up in a dispute. I welcome this bill. If it clears its third stage, people who live in areas where a lot of houses are crammed together will have a collective sigh of relief—as will their councillors.

The bill introduces a clear process for dealing with a dispute after the preamble, which involves neighbours talking to each other—something that Sarah Boyack talked about. These disputes can go on for a long time and the bill gives people a way of sorting them out.

Not a lot of people will want to go down this road. There are cost implications, and I am not sure how happy the councils will be to put extra officer time into the measures.

Mark McDonald: The evidence from down south is that, although many councils thought that they would have to appoint specific high-hedge officers, they discovered that the officers who were already in the local authorities could deal with the work and that there was no need to bring in additional resource. I hope that that gives the member some comfort.

Colin Keir: I am glad about that and, if it is the case, I welcome it. Councils have knowledgeable professionals who deal with these matters and who might be able to help people who live in areas such as I have described to understand what sort of shrubs and plants should be planted.

I realise that I have run out of time, but I want to address one issue before I close. As Derek Mackay said, planners need to think carefully about the issue and plan areas sensibly. Hopefully, people will talk to each other and we will not need to use this legislation.

15:13

Helen Eadie (Cowdenbeath) (Lab): I congratulate Mark McDonald on his success in bringing the bill to the Parliament. As others have said, it has taken over a decade to get here. The issue has formed a great part of my caseload, as a councillor and as an MSP, as it has that of others. That is why I have followed those who have been involved in the issue over the years and have appreciated their professionalism. In that regard, I
congratulate Scott Barrie on his part in getting us to this point.

I share the concerns about the definitions that Sarah Boyack and Kevin Stewart mentioned. I hope that those concerns are listened to and that attention is paid to the example of the Isle of Man and how it managed to deal with them. I also point out that Denmark, France and Bulgaria already have sound legislation in this regard.

I am pleased to hear what the minister says about planning, as that is at the heart of some of the issues that must be tackled.

Previously, there was no final-resort mechanism to secure fair and impartial exit from what are often interminable and stressful disputes. Colin Keir’s description of that was spot-on—I would disagree with very little of what he said.

We should not dismiss Fergus Ewing’s work, following petition PE984, by Dr Colin Watson, of Scothedge. When Fergus Ewing took the consultation forward, he did not change the name of the bill; rather, he talked about high hedges and other nuisance vegetation. Fergus Ewing is always a great man for compromise, so we should perhaps listen to his wisdom in that regard. Flattery will get you everywhere.

The consultation recognised that the problems faced by those affected were not restricted to evergreens blocking out light but, as demonstrated in PE984, could be diverse and produced by almost any inappropriate large plant.

I note that Mark McDonald agreed with Scothedge that a last-resort intervention would cause the unreasonable party to withdraw the vast majority of submissions for help. There would be no such incentive on those whose vegetation is deciduous and excluded from this narrow bill. Widening the scope appropriately would ensure that the capitulation effect would be extended to a greater number of cases without significant additional workload for local council staff.

Derek Mackay: We will all come back to the issue of definition. I look for a bit of clarity. At committee, the Labour Party supported the current definition. Has the position changed from what was agreed at committee and submitted in the report?

Helen Eadie: I refer to what Margaret Mitchell and Sarah Boyack said. Labour members wanted to explore the issue further. We should have regard to the fact that the SNP’s own minister recognised that point as well.

Making the bill more inclusive would send a general message that inconsiderate or vindictive deployment of all large plants is a risky and unacceptable activity. Throughout Scotland, every time that a law has appeared to be imminent, the spontaneous reaction to the anticipation of a penalty has been voluntary resolutions. I do not have time to go into the detail, but other members have given recent examples of capitulation in long-standing disputes.

There is surely no justification for exempting deciduous or single trees from the provisions of the bill, although the choice of the title, High Hedges (Scotland) Bill, may preclude the single tree option.

I hope that the bill gets a fair wind. There are many points that I would like to have raised. This work is vitally important. I agree with my colleague across the chamber who said that we should deal with this issue as a priority. It is right that it be a priority. It is so important to many families.

15:18

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): My congratulations to Mark McDonald on his progress on this issue so far.

Much of the detail of the bill and of the committee report has already been covered, so I will address one or two wider issues that relate to the subject, in which there may be a need for a change of behaviours consequent on the passage of the bill.

The bill is relatively simple and is informed by legislation elsewhere in these islands of which we are a part. The message from the evidence that the committee received from the Isle of Man is to keep it relatively simple and not to try to solve every possible issue that may arise with shading vegetation, because that is probably impossible. England’s example tells us that behaviours start to change relatively rapidly and that after a short settling-in period people stop creating monster hedges that cause disputes.

Does that mean that naturally—although not necessarily consciously—disputatious people will simply find something else to argue with their neighbours about? The jury does not seem to have much evidence to suggest that. There is certainly little evidence that the creation of a law such as this can make things worse by making new casus belli—new battle fronts on which antagonistic neighbours can engage. The evidence appears to lead in a different direction, towards a general lowering of the temperature of neighbour disputes.

So what more could be done to capitalise on the opportunity for reasonable debate on issues between neighbours? Firstly, perhaps planners and architects—whom Colin Keir referenced—should have in their approach to their job a greater emphasis on design choices that will reduce the potential for tensions. For example, they could
include sightlines from windows and conservatories that make little impact on what others see as their privacy. Perhaps we could have fewer straight lines of houses and a little bit of a wiggle so that windows are less likely to look into other people’s properties. Perhaps there could be cleverer use of facing blank walls close to each other so that there is genuine space on the other side of the house plot. I am sure that there could be much more. The real point is that the professionals should be thinking about this.

Very few house purchases happen without a lawyer being party to them. Perhaps lawyers should consider advising their clients—a simple leaflet produced by the Scots Law Society might suffice—on behaviours that will avoid tensions with neighbours and could draw attention to the act. Indeed, in many housing developments, a simple inclusion in the title deeds to restrict some behaviour and define how boundaries may be delineated would be helpful in certain circumstances.

Christine Grahame: In some developments, conditions, called deeds of conditions, already are put in that prohibit certain fencing and barriers.

Stewart Stevenson: I am aware of that from personal experience, which is why I think that there is a case for looking at how we can use experiences here to help with the bill.

When council officials are in an area to deal with this kind of problem they could look for potential issues and then help.

Issues with the power to modify the meaning of “high hedge” through subordinate legislation could perhaps be resolved by picking up what is in the ancillary provision in the bill, which talks about making provisions “in consequence of” and relating to the act. If that was put into the section on the power to modify the meaning of “high hedge”, some of the concerns about the use of subordinate legislation would likely be addressed.

The issue appears to be largely urban and affects areas of greater rainfall, where things grow faster, but the regionality of the impact is not an excuse for inaction. I may be the only member who cannot recall ever having been approached on the issue, but in my constituency people have large plots in rural areas, which is quite different. However, from the evidence that I heard in committee, I absolutely recognise that this is precisely the kind of bill that we should progress, on precisely the kind of issue that a member should pursue.

I welcome Government support for the bill, I look forward to its passage and I am happy to support it.

15:23

Stuart McMillan (West Scotland) (SNP): I welcome the opportunity to debate the Local Government and Regeneration Committee stage 1 report on the High Hedges (Scotland) Bill. I, too, want to express my thanks to Mark McDonald MSP for bringing the bill to Parliament, and to the Scottish Government for its extensive work prior to the introduction of the bill, and for working with Mark McDonald to assist him in its introduction.

When I was elected in 2007, I knew that high hedges was an issue that had been around for some time and to which people had tried to bring some type of resolution through Parliament. Unfortunately, previous attempts to introduce legislation did not succeed, but I am thankful that we are here now and I hope that we can pass the bill.

The bill has not come about overnight and I welcome its introduction, but it will not, as currently drafted, with the narrow definition of a high hedge, solve every issue that confronts MSPs. I am sure that if the scope of the bill were to be extended to include deciduous trees and single trees, it would still not solve every issue. My task, as an MSP who has constituents who are dealing with issues relating to the aforementioned categories, is to ensure that legislation is workable, affordable, enforceable and easily understood.

As members will know, I was the sole committee member who dissented from the definition in the bill. The definition is narrow and focuses purely on high hedges. If the definition were to be altered to include other categories, it is reasonable to assume that the bill would have to be altered. However, it is possible that such an alteration would be too great and would thereby, as Christine Grahame said, render the bill a vastly different document from what has been introduced.

As we know, the bill, which follows on from the legislation that is in use in England, Wales and Northern Ireland, focuses on high hedges. As we have also heard, the Isle of Man’s Trees and High Hedges Act 2005 is different in that it encompasses trees in the title and throughout the act.

My reasoning in dissenting from the definition in the stage 1 report was simple. I could have accepted the narrow definition, while knowing that there would be some unsatisfied constituents of mine, and of all colleagues—apart from Stewart Stevenson—or I could look to work with Mark McDonald to amend the bill, where possible. I do not get the impression—certainly from discussions that I have had with MSPs outside the chamber and committee members—that there is an appetite to increase the scope of the bill. Although all bills
are amended in some shape or form, I do not think that any proposals to amend the definition will progress through the committee, although that is entirely up to committee members to decide.

The bill can be used as a platform when reviewing the act in the future. I therefore thank Mark McDonald for accepting my amendment that called for a review of the legislation within five years of commencement of the system, which is something that the committee recommended, too. Sarah Boyack talked about the importance of the definition. That is why a review is important; having it written into the legislation will ensure that outstanding issues will not be forgotten and that the legislation can be refined and amended, as required. The review will also achieve something that all members know we do not always manage to achieve: post-legislative scrutiny. We are usually caught up in issues of the day and post-legislative scrutiny sometimes takes a back seat.

I am conscious of the time, Presiding Officer, so I will make one final point. I welcome COSLA’s desire to implement the bill, and I welcome its collaborative approach thus far, which I am sure will continue. I am sure that when the bill—in whatever shape or form it takes—is passed, local authorities will be able to manage the work well and work well with others. High hedges might be an area for a possible future shared service, once the initial excess of cases is dealt with by local authorities.

I welcome Mark McDonald’s bill and the assistance that the Government has provided on it. I look forward to further scrutiny of the bill at stage 2.

15:28

**Margaret Mitchell:** A few provisions in the bill are worthy of further consideration at stage 2. The first is accessibility. When Mark McDonald came to the Local Government and Regeneration Committee to answer questions, I raised the issue of escalating costs and the importance of robust legislation to ensure that the cost of high-hedge orders does not become so prohibitive that local authorities and applicants will not use them. Ensuring access to the orders in important, and I was encouraged that Mark McDonald stated that he would reflect on that at stage 2.

On the definition, as members in the debate have, the Local Government and Regeneration Committee has reservations about the section 34 provision that will give ministers the power to modify the definition of a high hedge. It is entirely appropriate that stage 2 will provide the opportunity to revisit that issue.

As stated earlier, the bill will create a system of last resort with the provision that all other reasonable options for dispute resolution must have been exhausted before an application is made. However, clarification at stage 2 of what constitutes “all reasonable steps” would be helpful and would strengthen the bill’s objective of discouraging trivial applications.

Constituents have expressed concern about the possibility of a local authority having to act as a judge in a case in which it is a party. In other words, there is a potential conflict of interest if a hedge that is subject to a high-hedge notice is on local authority-owned land. The issue was raised in committee and the expectation that councils will judge applications by objective standards seems to be bit weak. Notwithstanding that there is a right of appeal to the Scottish ministers on any decision of a local authority, and notwithstanding Mark McDonald’s comments today, consideration should be given at stage 2 to the possibility of issuing guidance to councils and ministers.

Tree preservation orders were considered at length. Their role in the bill is clear and appropriate, but questions were asked about how councils use and enforce them. I urge the Government to consider the matter in the future.

The need for collaborative working and forward planning in the context of new developments around existing trees, hedges and woodland was discussed in some depth. I am reassured by the minister’s confirmation that the issue will be reviewed in the context of the Scottish Government’s review of Scottish planning policy.

High hedges might not be the most exciting topic in politics, but that in no way diminishes the need for and importance of the bill. I welcome this debate on a bill that represents a major step forward in tackling the blight of nuisance high hedges.

15:32

**Sarah Boyack:** The committee wanted to focus on the definition because once the bill has been passed and enacted it will be with us for quite a few years. We wanted to reflect on comments that we received after the draft bill was published, during the stage 1 committee discussions and after the committee’s report was published.

We have no revising chamber in the Scottish Parliament, so Stuart McMillan’s comments about the need for review are spot on; we will need to review the legislation. We need to set the parameters for review at the outset. It is about acknowledging that not everyone agrees on the definition. We need that discussion up front, so that we are clear that we are not just monitoring the legislation for the sake of it. Whatever the committee decides on the detail, which will be hugely significant for other members at stage 3,
The introduction of the bill has been much driven by people’s right to privacy and to a living environment that they value. There are lessons in that for the planning of developments. It is necessary to think through what a development will look like in 20, 30 or 40 years. Most people do not think about that; they think about where the grass is and what kind of plants are there initially, but landscaping, trees and hedges are fundamental. I hope that the discussion that we are having can be fed back further up in the planning process, not only to planners but to developers, too. Those matters are crucial to our built environment. That point links to biodiversity. When a new development is created beside an existing woodland, the woodland provides a backdrop and quality to the housing, but it must be a compatible backdrop.

The bill highlights the need for a bit of joined-up thinking early doors when developments are being planned. The residents 30 or 40 years later are the ones who will live with those calculations and the decisions of the local authority planning committee, the planners or the developers. That is why the definition is important. What we put in the bill in a few weeks’ time will shape the debate for years to come. It has taken us so long to get to the stage that we must ensure that we test it out to the best of our ability at stage 2 so that, when we come to stage 3, the amendments that are lodged are easy to deal with and are not fundamental to the bill.

15:37

Derek Mackay: I thank Sarah Boyack for those helpful comments on the Labour Party’s position, because I was a bit unclear about where the party was going. It goes to show that the bill is a member’s bill and members within political parties can take different views. There is disagreement, diversity of opinion and dissent on how to take it forward—and that is just the Scottish National Party group. That shows that a listening group, a listening Government and a listening Parliament will help to shape the bill.

I know that the planning system has made it when it features in this debate and has its own television programme on a Thursday night, “The Planners”—reality TV for the planning system. I am waiting for the first single tree or high hedge to feature in that programme.

Christine Grahame: Is it on at 3 o’clock in the morning?

Derek Mackay: No, it is on in the evening.

High hedges are a significant issue. If Parliament was not legislating on them, people would rightly ask us why because, as I said, Scotland is the only part of the United Kingdom
where there is no legislation covering the issue. Therefore, as many members have said, it is appropriate that we debate it and get the legislation right at the outset.

I will focus on the definition and the options that are open to Parliament. The Government has taken quite a relaxed view on that. We have given evidence and given our position but have said that we will listen to what Parliament thinks is the appropriate way forward.

The options that are now on the table, as has been outlined throughout the debate, include the review process—a sunset clause whereby we revisit the definition and other matters. If that option is chosen, I suggest and encourage our being as flexible as possible. The definition would be a question for Parliament to return to if the review process was chosen.

Another option is secondary legislation. Members might say that I would, as a Government minister, want the ability to amend the legislation. The reason why I think that that could be helpful is that it would give us the ability to change the definition in the light of circumstances.

However, it is for Parliament to choose which option it prefers: whether to expedite changes through secondary legislation or to prefer the review process, which could return us to primary legislation.

Sarah Boyack: I am not trying to tease out just the process by which a review would be carried out. Mark McDonald said:

"The definition could be amended to include, for example, deciduous hedgerows as opposed to evergreens or semi-evergreens."—[Official Report, Local Government and Regeneration Committee, 19 December 2012; c 1576.]

Other people have mentioned the inclusion of trees. Is not it important to narrow down why some things are being suggested for inclusion and why other things have been explicitly excluded? After doing that, we can get to the best process for amending the definition in the future.

Derek Mackay: That is a fair point. I am trying to tease out the amount of flexibility that Parliament wants to provide for reconsidering the position in the future, if it thinks that the current definition might require to be revisited.

Christine Grahame: My comment is on the same point. If we start with a definition that means that some people are committing an offence, for example, and we later extend that definition, we will say that people are committing an offence that did not exist previously under the same legislation. People must be secure in the knowledge that what the definition says is what it does, and that that will not change.

Derek Mackay: Circumstances might change in the light of how the act beds in, what the public make of it and how Parliament, the Government and local authorities respond. The debate is about the amount of flexibility that Parliament wants to provide.

The Government does not have a strong view on whether Parliament should choose the review process or secondary legislation. As I have said, we are flexible and open minded about that. However, we should look closely at the evidence that we have received about the definition that is in the bill and at what happens in England, in Northern Ireland—where the legislation is relatively new—and in the Isle of Man, which has been referred to. If we were to propose changing the definition substantially at this point, I would want to return to local government to consult it on the change, because local government will execute the provisions in practice and it is working on the assumption that the definition will be as outlined in the bill.

A number of other matters have been raised, including Government involvement in Scottish planning policy—that relates to the committee’s recommendation that we should consider the proximity of developments to woodlands—and having a central resource of expertise, which is a sensible suggestion that we are happy to explore with local authorities.

I am not quite sure how to encapsulate Stewart Stevenson’s “little bit of a wiggle” in the planning system, but we can certainly try to express that through our planning advice notes. Colin Keir helpfully suggested that the matter is not frivolous, but serious. Like many members, Anne McTaggart focused on how the definition might in the first instance get better behaviour from residents. Graeme Dey explained that his issue was not necessarily with height but with width, and the hope is that the bill will create the right attitude of being a reasonable and responsible neighbour.

We have not spent much time on focusing on appeals and how the directorate for planning and environmental appeals will take that forward—perhaps that will feature in the debates at stages 2 and 3. I am satisfied that the DPEA has the capacity to deal with appeals.

As for fees, the important point is that the provisions are not about income generation by local authorities but are about early resolution of such antisocial behaviour matters. A soft cap will be placed on fees, so local authorities will not be able to generate more income through the bill; the fees will relate to the cost of taking the necessary action.
Like every other member, I hope that we will, on a cross-party basis, continue to explore the bill, get the definition right and ensure that it has the impact that we all seek. The Government will continue to take a constructive and positive approach in the bill process.

15:43

Mark McDonald: The debate has been fairly constructive. I found myself cringing at the number of hedge puns that were made—who knew that we had so many comedians in the chamber?

We heard from Colin Keir and Helen Eadie that the issue was prevalent in their time as councillors. One of my motivations for pursuing the bill came from having been a councillor and having felt the frustration that there was no point of last resort for many such disputes.

Let us consider some of the issues that have been raised in the debate. The first one that we should spend some time on is the definition that is used in the bill. Some members asked why I did not widen the definition. Kevin Stewart and Stewart Stevenson helpfully referred to the experience in the Isle of Man. Its system is not entirely analogous to the one that I have proposed—the Isle of Man has pursued the issue in a different way—but we should look at the experience there. The assessments that are required for deciduous vegetation are often highly complex. The fact that a 12-month inspection process is necessary to establish the impact of a particular tree or group of trees must be built in as a cost factor. That could be recoverable by the local authority, so it could lead to the attachment of a substantial fee. My view is that we need to allow the legislation to bed in and to look at how the fee system works in practice before we can look at the possibility of widening the bill’s scope. I will come to that later in my speech.

I am grateful for Stuart McMillan’s having expressed his willingness to look at how a review mechanism could be incorporated in the bill. I think that that is entirely sensible for the reason that I have outlined. It is not just the definition that we would look to review. We have spent some time talking about the definition, but there are other aspects of the bill—for example, those to do with the fee system and the appeals process—that it would be worth looking at to ensure that they are working in the way that we envisaged.

I say to Christine Grahame that it is my understanding that privet would be captured by the bill, by virtue of its being evergreen or semi-evergreen, depending on where it is, but I am happy to look into that further on her behalf. Beech has characteristics that led me to feel that it should not be included in the scope of the bill, but I will be happy to reflect on that, to talk to her and perhaps to write to her after the debate to provide her with a little more detail.

In listening to some of Anne McTaggart’s and Helen Eadie’s comments, I was concerned that the position that Labour had taken in committee to back the proposed definition seemed to be changing substantially. I have outlined why I drafted the definition in the way that I did. I will listen to members’ points, but they must accept that a change to the definition will have a knock-on effect on other aspects of the bill. The definition cannot simply be viewed in isolation. The fee element—which I am about to come on to—is a big part of that.

Margaret Mitchell: I think that the comments by the members whom Mr McDonald mentioned reflected the fact that the committee said in its report that it was content with the definition “at this stage”. In other words, we left it open to look at the issue again at stage 2.

Mark McDonald: I take Margaret Mitchell’s point, but that leads me on to the issue of fees. The minister was quite right when he said that the mechanism for which the bill provides was not intended to be a revenue-raising mechanism for local authorities. Indeed, the evidence from south of the border is that it would be particularly foolish for any local authority to assume that it could use it as a revenue-raising mechanism, because the experience there has been that an initial flurry of inquiries leads to a much smaller number of formal applications, which, in turn, leads to an even smaller—a minuscule—number of occasions on which the local authority requires to take action.

I think that that bears out the comments by Colin Keir and Graeme Dey that the bill, simply through its existence as a piece of legislation, will regulate people’s behaviour. It will mean that, when an assessment is required and a remedial notice is served by an authority, people will take it seriously, will take the necessary action and will not seek to frustrate the process.

I have made it clear that I believe that it is for local authorities to determine what fees they will apply. The bill simply gives local authorities the ability to recover their costs. Some local authorities might choose not to do that; they might choose to structure their fees differently, depending on factors such as people’s incomes. That will be for local authorities to determine. In my time as a local councillor, if I had constituents beating down my door because they could not afford to access a particular council service, that would have led me to ask questions of the authority. There is that element, too. Council committees and councillors will ensure that any fee system that is put in place does not prohibit their constituents from accessing the process.
On the fee-transfer argument, I acknowledge the comments of Christine Grahame. Margaret Mitchell and her colleague Gavin Brown pursued the issue with me at the Local Government and Regeneration Committee and at the Finance Committee. We looked at the Northern Irish example, but it is still very much in its infancy and there are not a lot of data to establish whether the scheme has succeeded. I still retain a concern that with a fee-transfer mechanism we run the risk of adding to a dispute; for example, a neighbour would receive a remedial notice and comply in full with it, but would then be asked to pay a surcharge to cover the fee that their neighbour had paid. There is a potential risk of animosity being created in that circumstance. Again, though, I have said that I would look at the fee-transfer issue. If members want to lodge amendments in that regard, I will consider them. However, at the moment, I remain unconvinced about a fee-transfer system.

Christine Grahame: If someone was warned in a legal letter in that respect, they could be told that if they did not comply they might be liable for the fee costs. I think that that is another point that could be put at the beginning. It would be like the sword of Damocles, in that people could be told not only that they would be charged for cutting down the hedge or reducing its height, but that they may be liable for the fee costs as well. I do not see why that would be a problem.

The Deputy Presiding Officer: I will give you a little extra time, Mr McDonald, to compensate for the interventions that you have taken.

Mark McDonald: I am very grateful for that, Presiding Officer.

I take on board Christine Grahame’s point, but my earlier remarks in relation to how cases break down south of the border imply that local authorities never have to do that. We managed to find only one example of a local authority’s having to do the work and recover the costs. In Christine Grahame’s example, that would have kicked in a fee transfer.

On the subordinate legislation recommendations, I take on board the points that were made by Sarah Boyack, Christine Grahame and Stewart Stevenson, who made a helpful and constructive suggestion in his speech. I have said that I will take a further look at subordinate legislation, particularly in the light of the issue around a review clause, and I will consider how those two elements of the bill would interact with each other. I am happy to reflect on that.

Finally, a couple of myths need to be busted. There is no such thing, under the bill, as a too-tall hedge. Anybody who remarked that a hedge would be too tall to be tackled as a result of the bill has got the wrong end of the stick. There is a 2m trigger height, at which point any dispute can be considered, but I have made no stipulations beyond that. My colleague Bruce Crawford made a point in his earlier intervention about the notion that there is a provision down south that they can trim only to a certain height or that they cannot take action that might lead to the removal or destruction of the hedge. I want to leave it to the expertise of the professionals; if the only way to deal with an issue is to remove the hedge, it should be open to the individual tree officer to recommend that option in his assessment.

The debate has been constructive and I have much to reflect on for stage 2. I am sure that members will be more than happy to offer input to that process. I look forward to the continuing debate on the bill.
SUBORDINATE LEGISLATION COMMITTEE

5th Meeting, 2013 (Session 4)

Tuesday 5 February 2013

High Hedges (Scotland) Bill

Response from Mark McDonald MSP – Member in charge of the Bill

Background

1. The Subordinate Legislation Committee reported on the delegated powers in the High Hedges (Scotland) Bill on 11 December 2012 in its 56th report of 2012.

2. The response from Mark McDonald MSP to this report is reproduced in the appendix.

3. The Stage 1 debate is due to take place on Tuesday 5 February 2013.

Scottish Government response

Section 34 – Power to modify meaning of “high hedge”

4. In its Stage 1 report, the Committee drew this power to the attention of the lead committee as it considered it to be particularly broad in scope. The Committee also observed that it appeared possible for the power to be used in the future so as to significantly alter the scope of the Bill by substantially narrowing or widening the definition of a “high hedge.”

5. In his response, Mr McDonald noted the Committee’s comments and invited Members to express such views at the stage 1 debate on the Bill. Mr McDonald has undertaken to consider the matter further and write to the Committee again to confirm his views on the matter in advance of Stage 2.

Section 37 – Commencement

6. The Committee did not consider that it would be appropriate for the powers in Section 37 to be used to amend section 12 of the Land Registration (Scotland) Act 1979. It observed that such provision would more appropriately be made under the powers in section 35 of the Bill, in order that the resulting instrument would be subject either to the negative procedure or (if it textually amends that Act) the affirmative procedure.

7. The report stated that, if the above recommendation was accepted, the Committee would find the powers in Section 37 to be acceptable and would be content that the powers are laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 but are not subject to any further Parliamentary scrutiny.
8. Mr McDonald responded that the appropriate power will be determined by Ministers, if such a choice is available to them.

9. With particular regard to the Committee’s views relating to section 12 of the Land Registration (Scotland) Act 1979, Mr McDonald stated that as the section is likely to be repealed by the Land Registration etc. (Scotland) Act 2012, any modification to section 12 would be transitory at most and may not be used at all.

Conclusion

10. In light of Mr McDonald’s offer to write to the Committee again prior to Stage 2, we may consider the Bill again. However, if no amendments affecting the delegated powers provisions are made to the Bill at Stage 2 it may not be necessary for the Committee to look at the Bill again. Members are therefore invited to make any comments they wish on the Bill at this stage.

Recommendation

11. Members are invited to note Mr McDonald’s response to the report and to make any comments they wish at this stage.
APPENDIX

Correspondence Mark McDonald MSP dated 31 January 2013

I note the Subordinate Legislation Committee’s different interpretation of the width of the power as drafted. I am keen to hear the views of members on this provision in the Stage 1 debate and, following this, will consider what action might need to be taken including how addressing the points made by your Committee and the Local Government Committee on this issue might impact on the Bill. I will therefore look to give further consideration to this matter following stage 1 and will write to the Committee to confirm my intentions ahead of stage 2.

I am pleased that the committee found the powers in section 37 acceptable in principle. In relation to the committee’s recommendation on using section 37(3) to modify primary legislation, it will of course be for Ministers to determine the appropriate power, should they have a choice in which power to exercise when making ancillary provisions. I would not expect to see section 37 used to avoid appropriate Parliamentary scrutiny. In relation to the specific example of section 12 of the Land Registration (Scotland) Act 1979, that section is of course prospectively repealed by the Land Registration etc. (Scotland) Act 2012. Therefore any modification of that would be transitory in nature at most, and may not actually be needed.
SUBORDINATE LEGISLATION COMMITTEE

EXTRACT FROM THE MINUTES

5th Meeting, 2013 (Session 4)

Tuesday 5 February 2013

Present:
Nigel Don (Convener)   Jim Eadie
Mike MacKenzie   Hanzala Malik
John Pentland   John Scott
Stewart Stevenson (Deputy Convener)

High Hedges (Scotland) Bill: The Committee noted the response of Mark McDonald MSP, the Member in charge of the Bill, to its Stage 1 report.
High Hedges (Scotland) Bill:  
Stage 1

10:53

The Convener: Agenda item 5 gives us an opportunity to consider the response to the committee’s stage 1 report on the High Hedges (Scotland) Bill from Mark McDonald MSP, who is the member in charge of the bill. Members will have seen the briefing paper and the response from Mr McDonald.

In the light of Mr McDonald’s offer to write to the committee again prior to stage 2, we may consider the bill again, but if no amendments that affect the delegated powers provisions are made to the bill at stage 2, it might not be necessary for us to look at the bill thereafter. Therefore, members are invited to make any comments that they wish to make on the bill at this stage.

Do members have any comments?

John Scott: My only comment is that I am very pleased that the bill has been introduced. I am certain that the Parliament and the committee to which it has been allocated will consider it fully. I wish it every success.

The Convener: I am sure that every constituency MSP around the table is looking forward to the bill being passed.

Stewart Stevenson: High hedges have never been an issue for me. It is because of the weather—the west of Scotland is more affected by high hedges than the east.

The Convener: Are we content to note the response and, if necessary, to reconsider the bill once we have received further correspondence from the member in charge of the bill or if any relevant amendments are made to the bill at stage 2?

Members indicated agreement.
High Hedges (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 38

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Anne McTaggart
Supported by: Christine Grahame

1 In section 1, page 1, line 7, after <more> insert <deciduous,>

Christine Grahame

2 In section 1, page 1, line 8, leave out <or shrubs> and insert <, shrubs or plants>

Section 4

Margaret Mitchell

13 In section 4, page 2, line 10, at end insert—

<(5) An authority must publish information on the circumstances in which and the extent to which it may normally be considered appropriate for a fee paid to the authority to be refunded under subsection (4).

(6) When publishing information in accordance with subsection (5), an authority must have regard to any guidance on the refund of application fees issued by the Scottish Ministers under section 31(1).>

Section 5

Margaret Mitchell

14 In section 5, page 2, line 14, after <3(1),> insert—

<( ) the application is without merit,>

Section 6

Mark McDonald

3 In section 6, page 3, line 24, at end insert—
Where the high hedge which is the subject of the application is situated on land which has been designated as a National Park, the authority must—

(a) before making a decision under subsection (5)(b), consult the National Park authority for the National Park, and

(b) in making its decision under that subsection, take into account any representations made by that National Park authority.

Section 7

Mark McDonald

4 In section 7, page 3, line 38, at end insert—

Where the high hedge which is the subject of the application is situated on land which has been designated as a National Park and subsection (1)(b) applies, the authority must notify the National Park authority for the National Park of its decision.

Section 8

Mark McDonald

5 In section 8, page 4, line 29, at end insert—

Where the high hedge to which a high hedge notice relates is situated on land which has been designated as a National Park, the authority must give the National Park authority for the National Park a copy of the high hedge notice.

Section 10

Mark McDonald

6 In section 10, page 5, line 22, at end insert—

Where the high hedge to which a high hedge notice relates is situated on land which has been designated as a National Park, the authority must—

(a) where it withdraws the high hedge notice under subsection (1)(a), give the National Park authority for the National Park notice of the withdrawal,

(b) where it varies the high hedge notice under subsection (1)(b), give the National Park authority for the National Park a copy of the revised notice.

Mark McDonald

7 In section 10, page 5, line 23, leave out <(7)> and insert <(7A)>

Section 15

Margaret Mitchell

15 In section 15, page 7, line 3, at end insert—

The Scottish Ministers must not appoint a person under subsection (1) unless that person appears to them to have—
(a) knowledge of the law of Scotland, including the law relating to land, planning and environmental matters,
(b) experience of dealing with land boundary disputes, and
(c) experience of hearing and deciding appeals.

Section 17

Mark McDonald

8 In section 17, page 7, line 33, leave out <varied> and insert <revised>

Section 20

Mark McDonald

9 In section 20, page 9, line 6, after <and> insert <if necessary>

Section 25

Margaret Mitchell

16 In section 25, page 11, line 8, after <expenses,> insert—

<( ) any amount refunded to the applicant under section 4(4),>

Section 26

Mark McDonald

10 In section 26, page 11, leave out lines 29 and 30 and insert—

<( ) in the case where the title to the land (or a larger area containing the land) is derived from a deed recorded in the General Register of Sasines, identify the land by reference to that deed.>

Section 29

Mark McDonald

11 In section 29, page 12, leave out lines 25 and 26 and insert—

<( ) in the case where the title to the land (or a larger area containing the land) is derived from a deed recorded in the General Register of Sasines, identify the land by reference to that deed.>

Section 31

Margaret Mitchell

17 In section 31, page 12, line 38, after <may> insert <, after consulting such persons as they consider appropriate,>
In section 31, page 13, line 1, after <may> insert <, after consulting such persons as the authority considers appropriate,>

After section 31

Stuart McMillan

After section 31, insert—

<Report on operation of Act>

(1) The Scottish Parliament must make arrangements for one of its committees or sub-committees to report to the Scottish Parliament on the operation of this Act during the review period.

(2) In this section, the “review period” means the period—

(a) beginning on the day on which section 2 comes into force, and

(b) ending 5 years after that day or on such earlier date as may be determined by the committee or sub-committee making the report under subsection (1).

(3) A report under subsection (1)—

(a) may be made in such form and manner as the committee or sub-committee considers appropriate, but

(b) must be made no later than 18 months after the end of the review period.

(4) The Scottish Parliament must publish a report made under subsection (1).>

Section 34

Margaret Mitchell

In section 34, page 14, line 33, at end insert <by—

(a) adding a type of tree or shrub to, or removing a type of tree or shrub from, section 1(1)(a),

(b) increasing or reducing the height above ground level specified in section 1(1)(b) and (2),

(c) modifying or adding to the effect of a hedge specified in section 1(1)(c).>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Meaning of “high hedge”**
1, 2, 19

**Refund of application fee**
13, 16

**Dismissal of application**
14

**Procedure on applications and notices where hedges situated in National Parks**
3, 4, 5, 6, 7

**Persons appointed to determine appeals**
15

**Minor and technical amendments**
8, 9, 10, 11

**Consultation before issuing guidance**
17, 18

**Report on operation of Act**
12
High Hedges (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 13, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18 and 19.

Amendment 12 was agreed to (by division: For 6, Against 0, Abstentions 1).

The following amendments were moved and, no member having objected, withdrawn: 1, 14 and 15.

Amendments 2 and 16 were not moved.

The following provisions were agreed to without amendment: sections 1, 2, 3, 5, 9, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 23, 24, 25, 27, 28, 30, 32, 33, 35, 36, 37 and 38, and the long title.

The following provisions were agreed to as amended: sections 4, 6, 7, 8, 10, 17, 20, 26, 29, 31 and 34.

The Committee completed Stage 2 consideration of the Bill.
The Convener: Good morning. I welcome everyone to the seventh meeting in 2013 of the Local Government and Regeneration Committee. As usual, I ask everyone to ensure that they have switched off mobile phones and other electronic devices.

Item 1 is stage 2 consideration of the High Hedges (Scotland) Bill. I welcome Mark McDonald, the member in charge of the bill, Derek Mackay, Minister for Local Government and Planning, who has portfolio responsibility for the bill’s subject matter, Christine Grahame, who will speak to and move an amendment in her name, and Sarah Boyack.

Before we consider the amendments, it might be helpful if I set out the procedure at stage 2. Everyone should have a copy of the bill as introduced, the marshalled list of amendments that was published on Monday and the groupings paper, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in that group to speak to and move that amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the usual way.

If they have not already spoken on the group, I will invite the minister and then the member in charge to contribute to the debate before I move to the winding-up speech. The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wants to press it to a vote or to withdraw it. If they wish to press the amendment, I will put the question on that amendment. If they want to withdraw their amendment after it has been moved, they must seek the committee’s agreement to do so. If any committee member objects, the committee must immediately move to the vote on the amendment.

If a member does not want to move their amendment when I call it, they should say, “Not moved.” Please remember that any other member may move the amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote at stage 2. Voting in a division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed each section of the bill, so I will put a question on each section at the appropriate point.

Section 1—Meaning of “high hedge”

The Convener: Amendment 1, in the name of Anne McTaggart, is grouped with amendments 2 and 19.

Anne McTaggart (Glasgow) (Lab): Thank you, convener. Although I welcome the bill, I am concerned that the exclusion of deciduous species will leave some of the worst long-standing disputes and many people who suffer from high hedges on a neighbouring property without a resolution. Scothedge conducted a survey in 2009, and almost a fifth—that is, 20 per cent—of respondents suffered from deciduous hedges such as beech or rows of deciduous trees.

The argument that deciduous species should not be included is unsatisfactory. In the months that we have light, the leaves are on, so views from neighbouring properties are blocked during summer. It was argued in evidence to the committee that cloud cover can be so dense in the west of Scotland that dry days can be dark even in March. What happens to the plant depends on the temperature and the wind, so we cannot be certain that deciduous trees will not be a problem in winter.

Evergreens can also lose their leaves in certain conditions. The difference between evergreen and deciduous species is minimal in practice, and it is not logical to offer remedies for evergreen but not deciduous species. To do so is merely a technicality, which will frustrate many innocent home owners who are suffering in neighbour disputes.

It would be grossly unfair if deciduous species were excluded from the protection in the bill. Where vindictive intent or delight in bullying is involved, an evergreen hedge could simply be replaced by a deciduous one to escape a remedial order requiring removal of the hedge. The English legislation that the committee studied was limited
to evergreen hedging in the belief that local authorities would be swamped by complaints about high hedges, but that has proved not to be the case. I therefore ask the member in charge of the bill to consider including deciduous species in the bill's intent.

I move amendment 1.

The Convener: I call Christine Grahame to speak to amendment 2 and other amendments in the group.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): We appreciate that the genesis of the bill was the growth of leylandii and probably the fact that we have smaller gardens now, with more house units packed together, and a culture of people wanting their garden as an outdoor space. We have moved on from it just being about leylandii, which I am pleased about, but I have concerns about limiting the bill to "shrubs". I may bore the committee, but I will give the definition of "shrub", which is a woody perennial plant, smaller than a tree, with several major branches arising from near the base of the main stem.

I note that during the stage 1 proceedings on the bill in this committee, the word "plant" was frequently used, and I am not quite sure why that was ditched for the word "shrubs".

I can see that the committee is intensely interested in this; I feel as if I am on "Gardeners' World".

Members will note that the word "shrubs" does not deal with, for example, Russian vine, which is a very fast-growing plant that is, if I may say so, ugly; ivy, which has its moments; or clematis montana rubens. Those are all vigorous growers, and I have experience of the latter two. The ivy was not my fault, but it is now meandering through my garden and at least two or three gardens nearby; it can grow to some height, gets everywhere and is difficult to remove. It is dark, green and evergreen, but it is not covered by the bill. The clematis montana rubens is my fault. I planted it, but forgot to look at it for a couple of years and it is now in everybody's trees. Although I am pleased about, but I have concerns about limiting the bill to "shrubs". I may bore the committee, but I will give the definition of "shrub", which is a woody perennial plant, smaller than a tree, with several major branches arising from near the base of the main stem.

I note that during the stage 1 proceedings on the bill in this committee, the word "plant" was frequently used, and I am not quite sure why that was ditched for the word "shrubs".

I can see that the committee is intensely interested in this; I feel as if I am on "Gardeners' World".

Amendment 1 would restrict ministers' ability to vary the definition of a high hedge to one or more "plants". I support this amendment as it addresses the clear purpose of the bill to consider including deciduous species in the bill's intent.

The Convener: I support Anne McTaggart's amendment 1. I said at stage 1 that I felt an amendment coming on, and Anne McTaggart obviously felt it coming on faster than me. I am very sympathetic to amendment 1. In the west or south-west of the country, such as in Dumfries and Galloway, beech does not lose its leaves. In fact, I know of a big beech hedge in Edinburgh that never lost its leaves and remained a great wall to the outside world. I think that the issue should be considered.

I am sympathetic to Margaret Mitchell's amendment 19. At stage 1, I was concerned about the power of ministers to vary the definition of "high hedge". I called that ultra vires, but I was informed that it was competent. However, I still have concerns in that regard, so I am sympathetic to making it clear that the bill's definition of "hedge"—the "2 or more" plants—cannot be tampered with and that what was intended was the mix of evergreen, deciduous, and, as I have said, plants.

The Convener: Thank you, Ms Grahame. When you started by talking about genesis, I thought that you were going to bring reptiles into the equation as well as plant life.

Christine Grahame: The tree of knowledge.

The Convener: It was a tree and a serpent, if I remember rightly.

I ask Margaret Mitchell to speak to amendment 19 and the other amendments in the group.

Margaret Mitchell (Central Scotland) (Con): Amendment 19 would restrict ministers' ability to exercise the power under section 34 to alter the definition of a high hedge. The amendment would specifically confine the power to allow regulations under section 34 to change only the content of the regulations under section 1(1) and not rewrite them completely.

The Subordinate Legislation Committee and the Local Government and Regeneration Committee both noted that the power that section 34 would confer on ministers is very wide ranging in its ambit—I would venture to say unusually so. In its report on the bill, the Subordinate Legislation Committee noted that the section 34 power could be used to amend the definition of a high hedge to such an extent that it would fall outside the clear purpose of the bill. It could also allow amendment by ministers that would contravene the powers
granted to the Government by the Parliament to make reasonable adjustment to the law without the need to return to the Parliament.

Both the minister and the member in charge said that that was not the intention of the power granted under section 34 and the minister gave the example of using it to change the height of a high hedge from 2m to 3m. I note that the member in charge said that he will include an explanatory note on that, but amendment 19 would further and provide more clarity, in that the extent to which the power is intended to be used would be restricted.

I have some sympathy with Anne McTaggart’s amendment 1, although I think that the bill will go far enough in addressing the problem of high hedges. Having said that, I will keep an open mind. It is a shame that we will not get the opportunity to hear what Stewart Stevenson—I mean Stuart McMillan—has to say before voting on amendment 1. The timing of the review is crucial. We will get on to that subject later and we need to make sure that the review will not be left too long. If it will be left too long, I would be inclined to support amendment 1.

Christine Grahame’s amendment 2 makes a valid point and I am inclined to support it.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I listened carefully to what Anne McTaggart said and I was interested in it. However, it was slightly optimistic. I noted that she used the phrase “vindictive intent”, which I recognise and associate with, because we are all likely to have had experience of neighbours using any excuse to pursue arguments.

I am slightly less optimistic that this measure, however narrowly or widely drawn, will end some of the most egregious examples of neighbour disputes. I am not persuaded that including “deciduous” will make a substantial difference. The English experience of restricting the definition in a way that excludes “deciduous” appears to be delivering the kind of value that was sought and is likely to be proportionate.

I await with interest the debate on amendment 12, which our colleague Stuart McMillan lodged, on the review. That debate will be the right time to think about whether we extend the definition.

Light is seasonal, just as leaves are seasonal. Excluding deciduous trees, which in general allow through a bigger proportion of available light in winter, compared with in the summer, is probably correct.

Christine Grahame’s contribution to the debate was fascinating, but not necessarily persuasive.

I will listen carefully to what the member in charge and, perhaps, the minister say before coming to a final conclusion on Margaret Mitchell’s amendment 19. I can see where Margaret Mitchell is coming from and amendment 19 certainly seems to make sense, but I would like assurance that it would not damage the intent of the act. If the debate shows that it would not, I certainly think that amendment 19 is perfectly supportable.

10:15

Stuart McMillan (West Scotland) (SNP): When we produced the stage 1 report, I was the only committee member who had reservations about the definition, so I am glad that the amendments have allowed that to be debated. Members will know my thoughts about the definition.

I am not sure whether what Christine Grahame proposes in amendment 2 would be so encompassing that all plants would be covered. If that was the case, how many additional houses would be affected? I seek a wee bit of clarification from her on that. I genuinely do not know how manageable her proposal would be.

Christine Grahame: Given that I will not sum up, because my amendment is not the first in the group, am I allowed to intervene to answer the question that Stuart McMillan has posed?

The Convener: You can do so if Mr McMillan agrees.

Stuart McMillan: Sure.

Christine Grahame: The word “plants” would not mean all plants: the plants would have to fulfil the other criteria of reaching the specified height and blocking light. The plants could not be pansies or forget-me-nots, for instance, because they do not grow tall enough—I am sure that you know that.

Stuart McMillan: Absolutely. That was a helpful comment from Christine Grahame.

I am keen to hear the views of the member in charge and the minister on Anne McTaggart’s amendment 1, which would add the word “deciduous”. If that amendment is not agreed to, it could come back at stage 3.

I genuinely think that Margaret Mitchell’s amendment 19 is helpful. I am keen to hear the views of the member in charge and the minister on it.

John Wilson (Central Scotland) (SNP): We all await with interest Christine Grahame’s appearance on “The Beechgrove Garden”. She referred to ivy and other growers, such as clematis, which must grow against something. If they grow against a fence or tree, the difficulty is in dealing with that—would the tree or structure that the plant was growing against be taken down?
A favourite plant of mine is buddleia, which is known as the butterfly plant because it encourages butterflies to feed and lay their eggs. I know that I am getting into technical aspects, but the committee heard evidence from wildlife organisations that they were concerned that, if the bill’s scope was too wide, it could have an impact on the ecology of areas.

Christine Grahame: I am sorry—can I intervene again? There was a mistake in what the member said.

The Convener: You can do so if Mr Wilson allows you to—and he does.

Christine Grahame: Buddleia is a shrub, so it already falls within the bill’s ambit.

John Wilson: We will look at the definitions. I am sure that, when the bill becomes an act, there will be many interpretations. We will leave it to experts to interpret the legislation.

I have serious reservations about Anne McTaggart’s amendment 1, because of the concern—which witnesses raised on a number of occasions—about the impact that including deciduous plants or trees in the definition could have.

Margaret Mitchell is correct to refer to the review period, which I await with interest. I am sure that local authorities and others will gather evidence in that period that will indicate whether the bill has succeeded in dealing with the majority of cases. The issues that Scothedge raised suggest that the bill will not address the majority of the issues that its members face—Scothedge talked about single trees and other problems involved in neighbour disputes.

The Convener: This is certainly a horticultural education for me. I call Sarah Boyack.

Sarah Boyack (Lothian) (Lab): I might not go into quite as much depth as previous speakers. The heart of the bill, which I think we all support, is to give residents the opportunity for dispute resolution. That does not automatically mean that all those disputes will be resolved satisfactorily for the disputes will continue to fester. There is a cost to that, as we all know from representing our constituents.

The arguments against change need to be weighed against the unintended consequences of not including deciduous hedges. If only some types of hedge are covered, it could leave people who are required to take down evergreen hedges with the option of replacing them with deciduous hedges. That would leave us in a worse position than where we started; it would be a real kick in the teeth. That potential unintended consequence of not acting now has been raised with me.

Amendment 1 is not disproportionate. The evidence from south of the border is not that it would lead to huge increases in cases. Scothedge, the campaign group behind this change in the law, has a reasonable estimate of the potential numbers from its own cases, which should guide us today.

If we decide not to change the bill today and to tell our constituents that a review would be happening at some point, I do not think that that will give them much comfort, because they will know that having a review two or five years hence basically means that there will be no change in the meantime and that they will have no right to ask somebody to take an objective view of the dispute between them and their neighbour, which has no prospect of resolution. That would be a disappointing outcome of a bill that the member in charge has been right to bring to the Parliament. He has put in a huge amount of work. The bill could be improved by amendment 1.

John Wilson: I am interested in Sarah Boyack’s comments. This matter has been before the Parliament in various guises almost since 1999, and we are now proceeding with a bill that will, we hope, become an act. It is interesting that it has taken this long to get to where we are, given that both Scottish Executives between 1999 and 2007 rejected the bills that were proposed at that time. It is a bit disingenuous of Sarah Boyack to say that we need to amend the bill, because it has been around in various guises for a number of years and finally a Government has taken it on board. The minister is here today to support it.
We need to be careful about the numbers, because we will not know the numbers affected. We get estimates from Scothedge and perhaps, in her summing up, Anne McTaggart can put some figures on the 20 per cent of neighbour disputes that Scothedge claims will not be covered if the bill is enacted with the existing definition. We are considering how many people would be affected.

It was mentioned that vexatious individuals could decide to plant a deciduous hedge, but one of the reasons why action is being taken against leylandii is the speed at which it can grow. Deciduous hedging takes a lot longer to grow. As a colleague said to me earlier, the issue is that the time lapse between the rate at which a deciduous hedge grows and at which a leylandii grows can be many decades, never mind years.

There are real issues with including the word “deciduous” in the definition. As I said, I am minded not to include it until we get an opportunity to review the bill.

Sarah Boyack: I accept that the Parliament has not legislated on the issue. That is because it is tricky. It never got high enough up the agenda for legislation to be supported. That is why we should seize the day and try to get it right at this point.

I take John Wilson’s point that this is our first chance to do that, but that is not an argument against Anne McTaggart’s amendment 1. It is a good political argument, but it is not a technical argument against her proposal.

John Wilson: If we want to go into technical debate on the issue, the 10-year delay in introducing the bill has meant that some leylandii have grown 20 feet or more. The reality is that, if the review period for deciduous trees or bushes was within two to five years, it would allow us to address the issue in much less time than it has taken us to get to this stage. Deciduous trees and bushes would take a lot longer to reach 30 feet.

The Minister for Local Government and Planning (Derek Mackay): I am happy to continue the Government’s support for the bill. John Wilson is correct that we should take the opportunity to get it right. Sarah Boyack is also correct that, given the lack of legislation, we start with a blank page. That is all the more reason why we should take the most consensual approach that we can.

Anne McTaggart’s amendment 1, supported by Christine Grahame, proposes widening the definition of a high hedge to include deciduous trees and shrubs. Christine Grahame’s amendment 2 proposes extending the definition of a high hedge beyond trees and shrubs to include all plants.

At stage 1, I said about the definition:

“The Government has taken quite a relaxed view on that. We have given evidence and given our position but have said that we will listen to what Parliament thinks is the appropriate way forward.”

I went on to say:

“If we were to propose changing the definition substantially at this point, I would want to return to local government to consult it”. — [Official Report, 5 February 2013; c 16391-2.]

Given the fact that amendments 1 and 2 propose such a change, I have written to local authorities to seek their views on the potential impact of widening the definition of a high hedge in the ways proposed. Although it is not possible to obtain local authorities’ views in time to inform our discussions today, I have asked them for a response in good time for stage 3, when we can revisit the issue, so that it can be properly considered then.

I hope that the committee agrees that that is a sensible approach to take, given the fact that the bill imposes new obligations on local authorities. We are sympathetic to the desire to capture as many reasonable cases as possible, but I would not want to pre-empt local government.

Therefore, I ask Anne McTaggart to withdraw her amendment 1 and Christine Grahame not to move her amendment 2. I also ask them not to press the issue until we have had the views of local government.

Amendment 19, from Margaret Mitchell, also relates to the bill’s definition of a high hedge. It appears to respond to the committee’s concerns about the clarity of the powers provided by section 34 to alter that definition.

The Government’s view is that section 34 does not require to be amended. It is clear that the modifying powers provided by the section could be used to modify the meaning of a high hedge only within the context of the bill. However, the Government accepts that amendment 19 may help to address some of the concerns that were raised at stage 1 and does not oppose it. Therefore, we are prepared to support it.

10:30

Mark McDonald (North East Scotland) (SNP): I am grateful to the members who have lodged amendments, which allow us to have some discussion and debate on this matter.

Anne McTaggart’s amendment 1 seeks to widen the meaning of “high hedge” beyond “evergreen or semi-evergreen trees or shrubs” to include deciduous species.

Christine Grahame’s amendment 2 would broaden the definition beyond trees and shrubs to
include other plants. Amendment 19 from Margaret Mitchell seeks to clarify the extent to which section 34 can be used to modify the meaning of “high hedge”. Members raised that issue at stage 1.

On amendment 1, I have been convinced during our scrutiny of the bill that evergreen and semi-evergreen trees and shrubs are the main problem, and I think that the figures bear that out. However, I have heard what other members have said and I have received significant levels of correspondence and representations from members of the public. Many of them are happy with the current definition, which they believe will solve their problem. I accept, however, that other people have high hedge problems that the bill will not solve. By definition, those people who are least happy with a proposed piece of legislation are the most likely to contact members about it.

Amendment 2 would result in a significant broadening of the bill. It would cause problems with how the bill might be understood and interpreted, and there is a potential for loopholes and inconsistencies to emerge. We would require the views of the experts who would implement the legislation—and the committee did hear from a number of experts at stage 1.

I noted John Wilson’s point about ivy with interest. If someone sets ivy against a fence and it reaches the height that is required for the provisions of the bill to come into effect, that fence would itself require planning permission and the planning process would be involved.

I am happy to learn that the Government has written to local authorities to consult them on the potential impact of the amendments. It is important that we all consider their responses before reaching a conclusion on the issue, as they are the bodies that will have to implement the provisions. I suggest that we revisit the issue at stage 3, so I ask Anne McTaggart to withdraw amendment 1 and I ask Christine Grahame not to move amendment 2. I continue to consider all aspects of the issue, and I would be happy to have further discussions with both those members on the matter following stage 2.

As regards amendment 19, I set out my view on section 34 at stage 1 and in my written response to the committee’s stage 1 report. I made it clear in that response and in my parallel letter to the Subordinate Legislation Committee that I did not intend to lodge an amendment in respect of section 34. I remain of the view that the section as drafted is clear and that an amendment is not necessary. However, although I believe that the clarification that was sought by this committee could be provided by way of the explanatory notes, I do not intend to oppose Margaret Mitchell’s amendment 19. The view of committee members is that the amendment is helpful, and I would be happy enough for the committee to accept it.

Anne McTaggart: Having heard the minister and the member in charge of the bill, I welcome the further consultation with local authorities and the request for their expert advice. It is hugely important for us to receive that. I am unclear, however, as to whether we are able to return to the matter before stage 3. Is that a possibility?

The Convener: I see the minister nodding.

Derek Mackay: Yes, it is possible.

Anne McTaggart: On the understanding that that will happen, I am willing to withdraw amendment 1, so that consultation can take place with the member in charge and the minister before stage 3.

Amendment 1, by agreement, withdrawn.

The Convener: Amendment 2, in the name of Christine Grahame, was debated with amendment 1. Christine, do you want to move or not move the amendment?

Christine Grahame: I note the minister’s undertaking to the member in charge that the matters that we have been discussing will all be examined prior to stage 3, including horticultural advice, which I think is very relevant. People can put ivy up chicken netting and posts, which is not the same as a fence that requires planning permission. I put that on the record—any further advice will come after the meeting.

Given the minister’s undertaking, I will not move the amendment.

Amendment 2 not moved.

Section 1 agreed to.

Sections 2 and 3 agreed to.

Section 4—Fee for application

The Convener: The next group is on refund of application fee. Amendment 13, in the name of Margaret Mitchell, is grouped with amendment 16.

Margaret Mitchell: Amendment 13 requires local authorities to publish guidance on the circumstances in which they would normally consider it appropriate to make a refund under section 4. At present, local authorities will have absolute discretion over whether to issue a refund to an applicant under section 4. In the interests of certainty and to ensure that refunds are awarded or not awarded consistently, it is highly desirable for councils to publish guidance to state the circumstances in which they would normally consider it appropriate to issue refunds. That will still leave councils with discretion, but it will ensure
that applicants know when they can or should receive a refund for their application fee.

Amendment 13 also requires local authorities to consider any guidance that is issued by ministers on when it might be appropriate or desirable to issue refunds under section 4, should the Government decide to issue such guidelines under the power in section 31 to issue guidelines on the legislation.

Amendment 16 would allow local authorities to recover from a hedge owner the amount of an application fee that has been refunded to an applicant when the local authority has exercised its power under section 22 to enter and enforce a high hedge notice. Under section 25, councils can recover, among other things, any expenses that have reasonably been incurred in taking action under section 22, which allows them to enter land and enforce high hedge notices. However, there is no provision in section 25 to allow councils to recover the applicant’s application fee from a high hedge owner where a refund has been given. Amendment 16 would therefore expressly give that power to councils, but only where they have to enforce a high hedge notice.

As a matter of principle, if a hedge owner has been obstinate or persistently stubborn in complying with a high hedge notice, causing unnecessary additional distress and frustration to neighbours and requiring the council to enter the land and do the work, it is reasonable and appropriate that the applicant should be refunded their application fee and the hedge owner charged. Furthermore, the threat of an additional cost if a high hedge order is not implemented is a valuable additional tool to encourage swift compliance with decisions.

I move amendment 13.

Stewart Stevenson: I have a little technical point about amendment 16. I am slightly uncertain why it would be necessary for the council to recover the money only when it has been refunded to the applicant. I am sympathetic to what the member seeks to achieve, but I just wonder why it is necessary for the money actually to have been refunded for that to be included in the expenses under section 25(1) that

“A relevant local authority may recover from any person”. In other words, it seems to me that the member’s intention is that the council should be able to retain the money as well as recover it when it has not been refunded, and to apply it. I might be misunderstanding, so perhaps the member could address that in summing up. I am broadly sympathetic to the intention. The member might want to intervene now, if the convener allows.

The Convener: Ms Mitchell, you can address that point now.

Margaret Mitchell: Thank you, convener. Clearly, if the application fee has been paid, the council has received that money. If the council refunds the application fee to the applicant, it is out of pocket by that amount. The amendment seeks to allow the council to recoup that money if the owner is not complying and is being obstinate and the council has to go in and do the work itself.

Stewart Stevenson: Convener, I might be making a mountain out of a molehill. The circumstance that I envisage is where the council has determined that the correct circumstances for a refund exist but it has not yet exercised that refund, and the circumstances that are sought to be caught of entry to the grounds exist. In other parts of the bill, the requirement to refund exists. I am simply concerned to ensure that there is not a little gap in the provisions.

I would be comfortable were we to agree to the amendment today, subject to what the member in charge and the minister say, but I suspect that we might have to look at the matter further to ensure that we are not creating a wee gap that might reduce the intended effect. I will consider the matter further.

John Wilson: I ask Margaret Mitchell to clarify when she sums up how amendment 16 differs from section 25(1)(a) and 25(1)(b), on the recovery of expenses by local authorities. How does the amendment materially alter those provisions? Section 25(1)(a) mentions “any expenses reasonably incurred by the authority in taking action under section 22”.

I seek clarification of what difference amendment 16 would make to the powers that are already in the bill for local authorities to recover any costs associated with action that they take. I assume that that would include the repayment of any fees that were originally charged.

Derek Mackay: Amendment 13 requires local authorities to publish information on the circumstances in which application fees for high hedge notices will be refunded and it requires them to have regard to any guidance that ministers issue on the matter. That is a helpful addition to the bill’s provisions and the Government is happy to support the amendment.

Amendment 16 would enable hedge owners to be charged any amount of an application fee for a high hedge notice that a local authority has decided to refund to an applicant. During the stage 1 debate, I said that we were interested to hear the committee’s views but that we were content with the current position. I also noted that there might be issues about fairness in that, having
taken appropriate action, someone might still be charged. It is clear from the experience in England and Wales that the system in which the applicant pays the fee works well and serves as a deterrent. For those reasons, I urge the committee to oppose amendment 16. Mark McMillan—sorry, Mark McDonald will go into greater depth.

The Government supports amendment 13 but opposes amendment 16.

Mark McDonald: We appear to be rotating surnames this morning, having had Stuart McMillan incorrectly identified as Stewart Stevenson earlier.

I agree with Margaret Mitchell that transparency in issues relating to fees is important, so I am grateful to her for lodging amendment 13. It is helpful and I am happy to encourage the committee to support it.

The purpose of amendment 16 appears to be to enable a fee transfer mechanism that is akin to that which operates in Northern Ireland. I said at stage 1 that I had issues with the effectiveness of such provisions, as local authorities could pursue hedge owners for small amounts even when they have complied with a high hedge notice. I note that Ms Mitchell talks about the issue in terms of those hedge owners who are obstinate and stubborn and who do not comply with a notice. However, the amendment makes no reference to that. I assume that Ms Mitchell hopes that that would be reflected in guidance. Also, in the evidence from local authorities south of the border, we can find only one example in all the time for which the legislation has been in place in which action has had to be taken by a local authority. I therefore question the scale of the problem that Ms Mitchell seeks to address.

It remains my view that when a hedge owner has complied with a high hedge notice at their own expense, it is neither fair nor cost effective for the local authority to send them a bill for an amount that the applicant paid originally. It is important to remember that the bill is not about punishing owners of high hedges but about resolving disputes between individuals. Amendment 16 errs too far in the direction of punishment rather than dispute resolution.

10:45

We will discuss amendment 12, which would insert a review clause, later. I do not want to prejudge what the committee might decide on amendment 12, but I suggest that the issue that gave rise to amendment 16 might be better dealt with as part of a review, when we are in a better position to assess the effectiveness of such a provision in Northern Ireland, where the system is still very much in its infancy.

For those reasons, I urge the committee to oppose amendment 16. I am happy to support amendment 13.

Margaret Mitchell: I welcome the comments on amendment 13, which I hope will improve the bill by adding certainty and consistency to the guidance that follows the bill.

On Stewart Stevenson’s point about refunding the fee, it is all a question of timing. As he said, there might be a gap, depending on how long it takes for the council crew to come in and do the work, if the applicant has been refunded—if there has been no refund, there is no issue.

On John Wilson’s point, section 25 covers recovery of the cost of work that is undertaken by the local authority under section 22, but the application fee at the beginning of the process is a separate issue. I understand that section 22 is about what the council must do to make good the notice, should the hedge owner be obstinate. However, I take on board what he said about spelling out the circumstances in amendment 16.

I do not agree that amendment 16 is too punitive; I think that it might aid compliance. However, I am happy to reflect on the comments of members and the minister and not move the amendment at this stage. I might bring the issue back at stage 3 if I consider that there is merit in doing so. I press amendment 13.

Amendment 13 agreed to.

Section 4, as amended, agreed to.

Section 5—Dismissal of application

The Convener: Amendment 14, in the name of Margaret Mitchell, is in a group on its own.

Margaret Mitchell: Amendment 14 would amend section 5 by adding to the reasons for dismissal of a high hedge notice. Under section 5, an application for a high hedge notice can be dismissed if it is considered that the applicant has not complied with pre-application requirements in section 3 or that “the application is frivolous or vexatious.”

However, some applications that are without merit might not fall into either category. An application might not be frivolous, that is, not serious, and it might not be vexatious, that is, raised habitually or persistently without reasonable grounds. Amendment 14 therefore would ensure that applications that are neither frivolous nor vexatious but which are without merit could be rejected.

Stewart Stevenson: Can you give an example of such an application?
Margaret Mitchell: I cannot give you an example off the cuff. However, there is precedent for the approach in the Legal Profession and Legal Aid (Scotland) Act 2007, section 2(4) of which contains provision for dismissal of a complaint that is “without merit”. The bill would be improved if that precedent were followed.

I need time to think about an application that might be without merit as opposed to frivolous or vexatious. Clearly, a one-off application is not an habitual application, so it cannot be vexatious, and frivolousness is perhaps subjective to an extent, so it might help to include “without merit”.

I move amendment 14.

Derek Mackay: The Scottish Government does not support amendment 14. In relation to the sifting of applications for a high hedge notice, a balance is struck in section 5, which contains appropriate provision for the dismissal of applications at a preliminary stage without the local authority being required to investigate further. I expect that Mark McDonald will give more detail on the issue and, if Margaret Mitchell is persuaded by what he says, I ask her to withdraw amendment 14. The Government is content with the existing provisions.

Mark McDonald: Amendment 14 is similar to an amendment that the Law Society of Scotland suggested. I was happy to meet the Law Society before stage 2 and I am grateful to it for the interest that it has taken in the bill. The Law Society suggested that it would be helpful to include an application being “totally without merit” as a reason for a local authority dismissing an application, in addition to an application being frivolous or vexatious.

I have had the opportunity to consider the proposal, and my view is that such amendment is not necessary. “Frivolous” covers cases that are totally without merit. Section 5 is drafted in a way that is similar to the drafting of provisions in many Scottish acts and will give local authorities the opportunity, at a preliminary stage, to sift out applications that do not deserve full consideration.

The word “frivolous” gives a low threshold for applicants to overcome, as would the words “totally without merit”. However, amendment 14 would allow summary dismissal of an application that was “without merit”, rather than “totally without merit”. I am concerned that such a provision would give applicants a much higher hurdle to get over before their case could be considered on its merits under section 6.

Section 5 also allows for dismissal of an application at the preliminary stage if the applicant has not complied with the pre-application requirements. I think that the balance is appropriately struck in section 5. I ask Margaret Mitchell to withdraw amendment 14; if she is not minded to do so, I ask the committee to vote against it.

Margaret Mitchell: In many ways amendment 14 was a probing amendment, and it has been useful to hear the comments of members and the minister. I realise that an example of an application that is without merit but not frivolous or vexatious would help us to ascertain whether amendment 14 is necessary. I am happy to withdraw the amendment and consider whether there would be merit in lodging a similar amendment at stage 3.

Amendment 14, by agreement, withdrawn. Section 5 agreed to.

Section 6—Consideration of application

The Convener: The next group of amendments relates to the procedure in applications and notices when a hedge is in a national park. Amendment 3, in the name of Mark McDonald, is grouped with amendments 4 to 7.

Mark McDonald: Amendments 3 to 7 relate to hedges that are within the boundary of a national park. In its written submission to the committee, the Loch Lomond and the Trossachs National Park Authority proposed that national park authorities should be statutory consultees in relation to proposed high hedge notices that relate to hedges in their areas. The Scottish tree officers group supported the proposal.

I am grateful to the Loch Lomond and the Trossachs National Park Authority for raising the issue. As I said during the stage 1 debate, I am happy to agree with the Local Government and Regeneration Committee’s recommendation that “the Bill be amended to include reference to National Park Authorities as statutory consultees” when a local authority is considering issuing a high hedge notice that relates to a hedge in a national park. Amendment 3 will ensure that national park authorities are consulted in that regard and that local authorities take account of their representations in considering whether action should be taken to address the adverse effect of a high hedge.

Amendments 4 to 6 ensure that national park authorities are informed of the outcome of local authorities’ decisions on hedges in their area and provided with a copy of newly issued or varied high hedge notices, as well as being informed when a notice was withdrawn. Amendment 7 is consequential on amendment 6 and ensures that the new consultation requirement applies to any withdrawal or variation of a revised high hedge notice.
I move amendment 3.

Stewart Stevenson: This is a simple point. Can you assure us that the amendments adequately cover hedges that are on ground that is owned or controlled by a national park authority?

The Convener: Mr McDonald can deal with that just now, if he wishes.

Mark McDonald: I will save it for my summing up, if that is okay.

The Convener: Okay. I invite the minister to respond.

Derek Mackay: The Government is happy to support amendments 3 to 7, which are not totally without merit. The Government agrees that the amendments are a useful addition in response to concerns that were raised in written evidence at stage 1. It is right that the relevant national park authority should be notified of decisions that affect high hedges that are situated on land within its area and be able to make representations in relation to such decisions.

Mark McDonald: On Stewart Stevenson’s point, a similar situation would arise when a local authority owned land and would be adjudicating on itself. I believe that the conflict of interest test that would apply in that context, with which the committee is satisfied, would apply equally in the circumstances to which Stewart Stevenson referred. In any case, were it considered that the conflict of interest had caused an issue, there would be the right to appeal. I therefore believe that the safeguard that Mr Stevenson raised has been factored in.

Stewart Stevenson: Can the member confirm that a national park would not be a decision maker on the matter but merely a consultee?

Mark McDonald: I am happy to confirm that the decision would rest with the local authority and that a national park would merely be a consultee.

Amendment 3 agreed to.

Section 6, as amended, agreed to.

Section 7—Notice of decision where no action to be taken

Amendment 4 moved—[Mark McDonald]—and agreed to.

Section 7, as amended, agreed to.

Section 8—High hedge notice

Amendment 5 moved—[Mark McDonald]—and agreed to.

Section 8, as amended, agreed to.

Section 9 agreed to.

Section 10—High hedge notice: withdrawal and variation

Amendments 6 and 7 moved—[Mark McDonald]—and agreed to.

Section 10, as amended, agreed to.

Sections 11 to 14 agreed to.

Section 15—Person appointed to determine appeal

The Convener: Amendment 15, in the name of Margaret Mitchell, is in a group on its own.

Margaret Mitchell: Section 15 will empower Scottish ministers to appoint a person to determine an appeal under section 12. Amendment 15 would give guidance on what kind of person ministers should appoint. The rights of appeal in the bill are of considerable importance to applicants, so any appeal must be determined by properly qualified persons who are trained in the law and have adequate experience of dealing with disputes and of hearing appeals. Amendment 15 simply seeks to ensure that the person appointed by ministers to hear an appeal has such qualifications.

I move amendment 15.

Stewart Stevenson: Can Margaret Mitchell say in her summing up—or now, if she wishes—how many people in Scotland might meet amendment 15’s very specific set of requirements? The amendment would require someone to have “experience of hearing and deciding appeals”, coupled with “experience of dealing with land boundary disputes” and “knowledge of the law”. That seems to be extremely constraining.

11:00

Margaret Mitchell: I think that Stewart Stevenson knows that he is asking the impossible. However, it is entirely reasonable that we should consider people with necessary experience, which they might have gathered through working in planning, horticulture or a number of fields. It would not be impossible to get people with the relevant experience, as indicated in amendment 15.

Stewart Stevenson: I will consider the issue in the light of the rest of the debate.

Derek Mackay: I am just reflecting on the fact that the only person whom I know who is qualified to cover all three areas is the member who has left the room, Christine Grahame; she has experience of the law and of horticulture. I am not entirely sure about her planning prowess, although she touched...
on that in her contribution. However, I expect that she is the exception and not the norm.

Amendment 15 relates to the knowledge and experience of people who would be appointed by ministers to undertake appeals on high hedges. The Government intends that the directorate for planning and environmental appeals will deal with such appeals. Of course, it has considerable experience of dealing with planning and other appeals, but I know that there are, under planning law, no statutory requirements that set out required knowledge or experience for dealing with planning appeals. The amendment is therefore unnecessary. It would be disproportionate to impose such requirements in relation to high-hedge appeals, which is something that we should seek to avoid. All necessary guidance should be in place, and professionalism should be exercised.

Amendment 15 is unnecessary and is not proportionate, so I urge the committee to resist it. Mark McDonald will explain further.

Mark McDonald: Amendment 15, in the name of Margaret Mitchell, seeks to require a person who is appointed by Scottish ministers to have specific knowledge of Scots law and experience of other specified matters. Although I agree with Margaret Mitchell that persons who are appointed to deal with the appeals process should have appropriate experience, I believe that that is already covered by the fact that appeals will be dealt with on behalf of ministers by the directorate for planning and environmental appeals, which will appoint a reporter to deal with each individual case.

The directorate’s reporters already deal with planning appeals, which can, of course, be massively complex, and the impact of developments under such appeals are often enormous—certainly much further-reaching than a dispute between neighbours over a high hedge. All of the directorate’s reporters are experienced in dealing with many types of analogous cases. They have the relevant knowledge and experience. There is no need to impose a statutory requirement. Indeed, there is no statutory requirement relating to the knowledge and experience of reporters who are considering planning appeals. I therefore suggest to the committee that it would be disproportionate to impose such requirements in respect of people who will deal with high-hedge appeals.

I note that amendment 15 would require that it “appears” to ministers that those who are appointed to deal with appeals “have—knowledge of the law of Scotland”.

I presume that some legal qualification would be required in order for them to demonstrate that. However, reporters who deal with the complex landscape of planning law do not usually have legal qualifications but are, normally, professional town planners. It would be odd potentially to exclude them from dealing with high-hedge appeals.

The requirements could raise a risk of challenge on procedural, rather than substantive, grounds, on the basis that there is a question about whether the person who would hear an appeal would have the specified knowledge or experience. On that basis, I urge the committee to resist amendment 15.

Margaret Mitchell: As I said, amendment 15 is a probing amendment; the comments that it has elicited have been useful. There is still an important issue, which I will not dismiss as easily as the minister and the member in charge of the bill appear to have done. However, I shall reflect on their comments and see whether the amendment can be improved so that it can address what I think is still an issue around the need to ensure that a properly qualified or experienced person is put in charge of an appeal. I therefore seek to withdraw the amendment.

Amendment 15, by agreement, withdrawn.

Section 15 agreed to.

Section 16 agreed to.

Section 17—Period for taking initial action following appeal

The Convener: Amendment 8, in the name of Mark McDonald, is grouped with amendments 9 to 11.

Mark McDonald: Amendments 8 and 9 are minor technical amendments that will ensure consistency in the terminology that is used in sections 10, 16, 17, 20 and 23.

Amendments 10 and 11 are also minor technical amendments to sections 26 and 29 of the bill, which deal with registration of notices in the register of sasines. The register of sasines includes all properties that have changed hands since 1617, but a very small number of properties are likely to be unregistered, such as properties that are owned by Scotland’s ancient universities. The amendments will, as a result of discussions with Registers of Scotland, make technical changes. They will, because some property exists that has not been registered, remove the general requirement, in relation to notices to be recorded in the general register of sasines, to identify land by reference to a deed that is recorded in the general register of sasines. The amendments will also ensure that notices of liability and discharge can be registered in the general register of sasines in respect of land containing a high hedge where that land is part of a larger property, the title to
which is recorded in the general register of sasines.

I move amendment 8.

Derek Mackay: Amendments 8 to 11 are minor technical amendments. The Government agrees that it is helpful that amendments 8 and 9 will ensure that the wording of sections 10, 16, 17, 20 and 23 is consistent. The Government also agrees that the bill should make provision to enable notices of liability of expenses and notices of discharge to be recorded in the general register of sasines in relation to properties that have not changed hands since the time of the act of union. The Government is therefore happy to agree to amendment 10 and to amendment 11, which provides clarification in relation to larger plots of land.

Amendment 8 agreed to.

Section 17, as amended, agreed to.
Sections 18 and 19 agreed to.

Section 20—Warrant authorising entry
Amendment 9 moved—[Mark McDonald]—and agreed to.

Section 20, as amended, agreed to.
Sections 21 to 24 agreed to.

Section 25—Recovery of expenses from owner of land
Amendment 16 not moved.

Section 25 agreed to.

Section 26—Notice of liability for expense of local authority action
Amendment 10 moved—[Mark McDonald]—and agreed to.

Section 26, as amended, agreed to.
Sections 27 and 28 agreed to.

Section 29—Notice of discharge
Amendment 11 moved—[Mark McDonald]—and agreed to.

Section 29, as amended, agreed to.
Section 30 agreed to.

Section 31—Guidance

The Convener: Amendment 17, in the name of Margaret Mitchell, is grouped with amendment 18.

Margaret Mitchell: Amendments 17 and 18 would require the Scottish ministers to consult on guidance that will be issued under section 31, which will enable the Scottish ministers to issue guidance on the eventual act. Any guidance that they issue will have an impact on the way in which property owners, local authorities, solicitors, advisers in a high-hedge dispute and persons appointed to hear appeals will interpret the legislation. Therefore, the guidance will be very important and should be consulted on widely prior to its publication, so that stakeholders can comment on what is proposed. The amendments would ensure that such consultation takes place.

I move amendment 17.

Derek Mackay: Amendment 17 would place on the Government an obligation to consult relevant persons before issuing any guidance on the eventual act. That is our normal practice for such guidance, which aims to ensure that the proper professionals are consulted and that the guidance is as informed as it can be. We therefore do not regard the amendment as being strictly necessary. However, given that it is our usual practice, the Government has no strong objections to the bill’s placing the requirement on the Government. The Government is therefore happy to support amendment 17 and amendment 18, which would place a similar obligation on local authorities.

Mark McDonald: Like the minister, I have no strong objections to either amendment 17 or amendment 18, and I am therefore happy to support both of them.

Margaret Mitchell: I thank the minister and the member in charge for their comments.

Amendment 17 agreed to.

Amendment 18 moved—[Margaret Mitchell]—and agreed to.

Section 31, as amended, agreed to.

After section 31

The Convener: We move to the group of amendments that is headed “Report on operation of Act”. Amendment 12, in the name of Stuart McMillan, is the only amendment in the group.

Stuart McMillan: Amendment 12 will add a new section. In its stage 1 report, the committee agreed in principle to have a review, and the matter was discussed during the stage 1 debate. The committee suggested that the review period last no more than five years, and we were unanimous on the matter. The committee was keen to ensure that any review process that took place under the eventual legislation would be measured. The committee noted, however, that it was not possible to be too prescriptive regarding future actions—whether responsibility would lie with the Government or with a committee during a future parliamentary session.
The purpose of the review is simply to determine whether the eventual act is operating as it should. I imagine that the review would provide an opportunity for outside interests to have their say as to whether or not they thought that the act was fully operational and was doing what it should in helping our constituents and our communities.

There is another reason for lodging amendment 12 and inserting an additional section. An issue that has been raised in Parliament time and again is the lack of post-legislative scrutiny; such a review being written into the bill would allow that to happen. There is no criticism here against parliamentarians, the Government or the Parliament regarding the lack of post-legislative scrutiny, which is due to time constraints, as we fully appreciate, but inclusion in the bill of the provision in the amendment would ensure that the eventual act will not drop off the political agenda and that it will return to Parliament in the future.

I move amendment 12.

Stewart Stevenson: I very much support amendment 12. Perhaps Stuart McMillan can comment on this when summing up—the minister and member in charge may also wish to comment—but the amendment makes no provision for a minimum period for the review. Would it be appropriate to consider a minimum period, so that there is sufficient evidence of the operation of the eventual act for the review to be meaningful? The absence of that will not cause me to consider that I should not support amendment 12, but it is a matter that we might consider further.

11:15

The Convener: I think that subsection (2)(b) in the amendment covers that issue.

Stuart McMillan: I am happy to deal with the point in summing up.

Margaret Mitchell: I would be grateful if Stuart McMillan would clarify whether amendment 12 means that it could be six and a half years after the act’s implementation before a report about the review period was forthcoming.

John Wilson: I welcome Stuart McMillan’s amendment 12. I agree with its aim—of ensuring parliamentary scrutiny of the act’s operation—but I hope that ministers will keep the act under constant review, to assess its importance and effect. That relates particularly to our earlier discussion about issuing guidance to local authorities and others that might implement the eventual act’s provisions day to day. Any decision by a committee to incorporate a review period in legislation does not remove the Government’s responsibility to keep that legislation under constant review and to update it when appropriate.

Derek Mackay: I will answer Mr Wilson’s point straight off. He is absolutely correct: it is the duty of the Government and all parliamentarians to monitor the impact of legislation. If further action is required, it should be taken in good time. Amendment 12 provides a device to reflect on the views of committee members and others and to ensure that we get the definition and other matters right and return to them if they are not right.

Timescales are entirely a matter for the committee—we just have to be pragmatic. I imagine that the committee would not want to be bound by a timescale that provided no flexibility.

Amendment 12 is unprecedented. Despite what I said, post-legislative scrutiny is not necessary for every piece of legislation that we produce. If it was, that would suggest that we did not have confidence in the legislation that we considered and enacted. However, it is important to get legislation right. We have discussed returning to the definition and other issues at stage 3.

Stuart McMillan’s amendment 12 responds to the committee’s recommendation that a review provision be included in the bill. I do not believe that a mandatory review provision is a necessary feature of legislation, but I note the committee’s recommendation and I am aware that Mark McDonald has said that he will support the amendment. In the circumstances, the Government is prepared to support it, too.

Mark McDonald: Amendment 12 requires that a review of the bill’s operation be undertaken no later than five years after the substantive provisions are commenced—and earlier if Parliament so decides. It is important to state on the record that five years would be the maximum period.

I will respond to Stewart Stevenson’s comments about a minimum period. A degree of pragmatism needs to be applied. How long after the act comes into force would it be reasonable to expect to have lessons that could be learned and applied? Rather than stipulate a minimum period, it would be far better to take a pragmatic approach.
In the stage 1 debate on 5 February, Stuart McMillan asked me whether I would support an amendment to add a review provision, based on the recommendation in the committee’s stage 1 report, and I said that I would be happy to do so. Amendment 12 meets the committee’s recommendation

“that the Bill include a mechanism for a review”

and that

“Such a review should take place within a reasonable timeframe”.

Stuart McMillan’s comments about Parliament rather than the Government reviewing the situation were well founded. That will allow a wider range of inputs than might be the case if the Government—of whatever colour—were to review the legislation.

Amendment 12 will ensure that we actively learn from local authorities’ experience of implementing the act, and the provision will be vital in order to inform Parliament’s consideration of how the act should operate in the future. It will also provide the opportunity to draw on examples from elsewhere.

Earlier, I mentioned the fee-transfer mechanism in Northern Ireland, which is very much in its infancy. The review period might allow for more detailed consideration of the operation of that mechanism in Northern Ireland and whether such a system could be applied readily in Scotland. It will ensure that any proposed changes are informed by evidence of the realities of implementing high hedges legislation in Scotland and elsewhere.

Stuart McMillan’s amendment 12 will give effect to the committee’s recommendation on a review provision and I hope that the committee will support it.

Stuart McMillan: I will go through the points that have been raised.

Stewart Stevenson raised the issue of specifying a minimum period. Although his point might well be valid, I do not think that it is necessary to specify a minimum period. I do not think that parliamentarians on the future committee or sub-committee that reviews the operation of the bill will want to do so—in for argument’s sake—two years’ time rather than in three or four years’ time. We must allow the bill to pass, to be implemented and then to bed in. At that point, we can start to gather information. A minimum period might not allow a full and thorough review to take place at some point in the future, so I do not think that there is a requirement for that.

In relation to Margaret Mitchell’s point, there is the potential for it to take up to six and a half years for a report to be produced, but the review would have to take place no later than five years after the day on which section 2 comes into force. Depending on its workload, the committee concerned might want to start the review period a wee bit later, but I do not envisage that being the case. We all fully appreciate that the issue is one that affects many people across Scotland and on which there is no legislation at the moment. Given the bill’s importance, I do not envisage what Margaret Mitchell suggests being the case.

The minister answered John Wilson’s point. It is absolutely correct that the ministers and the Government need to keep an eye on what happens. The minister dealt with post-legislative scrutiny. I whole-heartedly agreed that there is no need to have a post-legislative scrutiny provision written into every bill, because I do not think that that would be efficient or effective. However, having such a provision written into the High Hedges (Scotland) Bill represents a measured approach to an issue on which there is, at present, no legislation. High hedges are a highly contentious issue across the country, so having a post-legislative scrutiny provision written into the bill is worth while.

Mark McDonald spoke about reviewing operations elsewhere. By allowing Parliament to hold a review in the future, we will certainly allow the experiences in other parts of these islands and the expertise of people there to be fully considered. Enabling the Parliament to review the bill will be beneficial for the bill and for the country.

I press amendment 12.

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McMillan, Stuart (West Scotland) (SNP)
McTaggart, Anne (Glasgow) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 0, Abstentions 1.

Amendment 12 agreed to.

Sections 32 and 33 agreed to.

Section 34—Power to modify meaning of “high hedge”

Amendment 19 moved—[Margaret Mitchell]—and agreed to.
Section 34, as amended, agreed to.
Sections 35 to 38 agreed to.
Long title agreed to.

The Convener: That ends stage 2. I do not know whether members believe in the luck of ladybirds, but I note that one has been flying around this room all morning.

Members should note that the bill will now be reprinted as amended and will be available on Parliament’s website tomorrow morning. Although Parliament has not yet determined when stage 3 will take place, members can lodge stage 3 amendments with the legislation team at any time and will be informed of the deadline for amendments once that date has been determined. I thank members for their participation and suspend the meeting.

11:25

Meeting suspended.
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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

High Hedges (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about hedges which interfere with the reasonable enjoyment of residential properties.

Meaning of “high hedge”

1 Meaning of “high hedge”

(1) This Act applies in relation to a hedge (referred to in this Act as a “high hedge”) which—
   (a) is formed wholly or mainly by a row of 2 or more evergreen or semi-evergreen trees or shrubs,
   (b) rises to a height of more than 2 metres above ground level, and
   (c) forms a barrier to light.

(2) For the purposes of subsection (1)(c) a hedge is not to be regarded as forming a barrier to light if it has gaps which significantly reduce its overall effect as a barrier at heights of more than 2 metres.

(3) In applying this Act in relation to a high hedge no account is to be taken of the roots of a high hedge.

High hedge notices

2 Application for high hedge notice

(1) Where subsection (2) applies, an owner or occupier of a domestic property (referred to in this Act as the “applicant”) may apply to the relevant local authority for a high hedge notice.

(2) This subsection applies where the applicant considers that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have.

3 Pre-application requirements

(1) Before making an application under section 2(1), the applicant must take all reasonable steps to resolve the matters in relation to the high hedge which would otherwise be the subject of the application.
(2) In complying with the duty imposed by subsection (1) the applicant must have regard to any guidance issued by the relevant local authority under section 31(2)(a).

4 Fee for application

(1) An application must be accompanied by a fee of such amount (if any) as the relevant local authority may fix.

(2) An authority may fix different fees for different applications or types of application.

(3) A fee fixed by an authority must not exceed an amount which it considers represents the reasonable costs of an authority in deciding an application under this Act.

(4) A fee paid to an authority may be refunded by it in such circumstances and to such extent as it may determine.

(5) An authority must publish information on the circumstances in which and the extent to which it may normally be considered appropriate for a fee paid to the authority to be refunded under subsection (4).

(6) When publishing information in accordance with subsection (5), an authority must have regard to any guidance on the refund of application fees issued by the Scottish Ministers under section 31(1).

5 Dismissal of application

(1) A relevant local authority must dismiss an application where the authority considers that—

(a) the applicant has not complied with the duty imposed by section 3(1), or

(b) the application is frivolous or vexatious.

(2) As soon as is reasonably practicable after dismissing an application, the authority must notify the applicant of—

(a) its decision, and

(b) the reasons for its decision.

6 Consideration of application

(1) This section applies where a relevant local authority does not dismiss an application under section 5.

(2) The authority must give every owner and occupier of the neighbouring land—

(a) a copy of the application, and

(b) a notice informing the person to whom it is given of the matters mentioned in subsection (3).

(3) The matters are—

(a) that the authority is required to make a decision under subsection (5),

(b) that the person has a right to make representations to the authority in relation to the application before the expiry of the period of 28 days beginning with the day on which the notice is given,

(c) that the authority must give a copy of any such representations to the applicant,
(d) that the authority has power to authorise entry to the neighbouring land under section 18(1), and

(e) that it is an offence under section 21 intentionally to prevent or obstruct a person authorised to enter land from acting in accordance with this Act.

(4) If any representations are received by the authority during the period mentioned in subsection (3)(b), the authority must—

(a) give the applicant a copy of those representations, and

(b) take into account those representations in making its decision under subsection (5).

(5) After the end of the period of 28 days referred to in subsection (3)(b), the authority must decide—

(a) whether the height of the high hedge adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and

(b) if so, whether any action to remedy the adverse effect or to prevent the recurrence of the adverse effect (or both) should be taken by the owner in relation to the high hedge (any action that is to be taken being referred to in this Act as the “initial action”).

(6) If the authority decides under subsection (5)(b) that initial action should be taken, the authority must—

(a) specify a reasonable period of time within which the initial action is to be taken (the “compliance period”), and

(b) decide whether any action to prevent the recurrence of the adverse effect should be taken by the owner in relation to the high hedge at times following the end of the compliance period while the hedge remains on the land (the “preventative action”).

(7) In making a decision under subsection (5)(b), the authority must have regard to all the circumstances of the case, including in particular—

(a) the effect of the high hedge on the amenity of the area, and

(b) whether the high hedge is of cultural or historical significance.

(8) Where the high hedge which is the subject of the application is situated on land which has been designated as a National Park, the authority must—

(a) before making a decision under subsection (5)(b), consult the National Park authority for the National Park, and

(b) in making its decision under that subsection, take into account any representations made by that National Park authority.

7 Notice of decision where no action to be taken

(1) This section applies where—

(a) the relevant local authority decides under section 6(5)(a) that there is no adverse effect, or

(b) the relevant local authority decides under section 6(5)(b) that no action should be taken in relation to the high hedge.
(2) As soon as is reasonably practicable after making its decision the authority must notify the persons mentioned in subsection (3) of—
(a) the making of the decision,
(b) the reasons for it,
(c) the right to appeal under section 12(1).

(3) Those persons are—
(a) the applicant, and
(b) every owner and occupier of the neighbouring land.

(4) Where the high hedge which is the subject of the application is situated on land which has been designated as a National Park and subsection (1)(b) applies, the authority must notify the National Park authority for the National Park of its decision.

8 High hedge notice

(1) Where a relevant local authority decides under section 6(5)(b) that action should be taken, it must issue a high hedge notice as soon as is reasonably practicable after making that decision.

(2) A high hedge notice is a notice—
(a) identifying the high hedge which is the subject of the notice and the neighbouring land,
(b) identifying the domestic property in relation to which the authority has decided under section 6(5)(a) that an adverse effect exists,
(c) stating the date on which the notice is to take effect,
(d) stating the initial action that is to be taken by the owner of the neighbouring land and the compliance period for that action,
(e) stating any preventative action that is to be taken by the owner of the neighbouring land,
(f) informing the recipient that there is a right to appeal under section 12(2)(a),
(g) informing the recipient that the authority is entitled to authorise a person to take action under section 22 where there is a failure to comply with the notice and that the authority may recover the expenses of that action, and
(h) informing the recipient that it is an offence under section 24 intentionally to prevent or obstruct a person authorised to take action from acting in accordance with this Act.

(3) The date referred to in subsection (2)(c) must be at least 28 days after the date on which the notice is given.

(4) The authority must—
(a) give the persons mentioned in subsection (5) a copy of the high hedge notice, and
(b) notify those persons of the reasons for its decision.

(5) Those persons are—
(a) the applicant, and
(b) every owner and occupier of the neighbouring land.
(6) Where the high hedge to which a high hedge notice relates is situated on land which has been designated as a National Park, the authority must give the National Park authority for the National Park a copy of the high hedge notice.

9 Effect of high hedge notice
A high hedge notice is binding on every person who is for the time being an owner of the neighbouring land specified in the notice.

10 High hedge notice: withdrawal and variation
(1) After a relevant local authority issues a high hedge notice, it may—
(a) withdraw the notice, or
(b) vary the notice.
(2) Before withdrawing or varying a notice under subsection (1), the authority must have regard to all the circumstances of the case, including in particular—
(a) whether, after the proposed withdrawal or variation, the height of the high hedge would adversely affect the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and
(b) the matters mentioned in section 6(7).
(3) Where an authority withdraws a high hedge notice under subsection (1)(a), it must give the persons mentioned in subsection (4) notice of—
(a) the withdrawal,
(b) the reasons for the withdrawal, and
(c) the right to appeal under section 12(2)(b).
(4) Those persons are—
(a) every owner and occupier of the domestic property identified in the notice, and
(b) every owner and occupier of the neighbouring land.
(5) The withdrawal of a high hedge notice under subsection (1)(a) does not of itself prevent the issuing of a further high hedge notice in respect of the same hedge.
(6) Where an authority varies a high hedge notice under subsection (1)(b), it must—
(a) issue a revised high hedge notice stating the date on which the revised notice takes effect,
(b) give a copy of the high hedge notice to the persons mentioned in subsection (4),
(c) notify those persons of the reasons for its decision, and
(d) notify those persons of the right to appeal under section 12(2)(b).
(7) The date referred to in subsection (6)(a) must be at least 28 days after the date on which the revised notice is given.
(7A) Where the high hedge to which a high hedge notice relates is situated on land which has been designated as a National Park, the authority must—
(a) where it withdraws the high hedge notice under subsection (1)(a), give the National Park authority for the National Park notice of the withdrawal,
(b) where it varies the high hedge notice under subsection (1)(b), give the National Park authority for the National Park a copy of the revised notice.

(8) Subsections (1) to (7A) apply in relation to a revised high hedge notice issued by the authority under subsection (6)(a) as they apply in relation to a high hedge notice.

11 Tree preservation orders

(1) Subsection (2) applies where a high hedge notice issued by a relevant local authority, relates to a high hedge which—

(a) includes a tree which is subject to a tree preservation order, or

(b) forms part of a group of trees or woodland which is subject to a tree preservation order.

(2) The tree preservation order has no effect in relation to the initial action or any preventative action specified in the high hedge notice.

Appeals

12 Appeals

(1) The applicant may appeal to the Scottish Ministers against—

(a) a decision by a relevant local authority under section 6(5)(a) that there is no adverse effect,

(b) a decision by a relevant local authority under section 6(5)(b) that no action should be taken in relation to the high hedge.

(2) A person mentioned in subsection (3) may appeal to the Scottish Ministers against—

(a) the issuing by a relevant local authority of a high hedge notice, or

(b) the withdrawal or variation of a notice by a relevant local authority under section 10(1).

(3) Those persons are—

(a) every owner and occupier of the domestic property identified in the high hedge notice, and

(b) every owner and occupier of the neighbouring land.

(4) An appeal must be made before the end of the period of 28 days beginning with—

(a) in the case of an appeal under subsection (1), the date of the notification given by the authority under section 7,

(b) in the case of an appeal under subsection (2)(a), the date of the notification given by the authority under section 8(4),

(c) in the case of an appeal under subsection (2)(b), the date of the notification given by the authority under section 10(3) or (6).

13 Effect of appeal

(1) This section applies during the period beginning with the making of an appeal and ending with its final determination, withdrawal or abandonment.

(2) Where the appeal is made under section 12(2)(a), the high hedge notice has no effect.
(3) Where the appeal is made under section 12(2)(b)—
   (a) the high hedge notice has no effect, and
   (b) the withdrawal or variation has no effect.

14 Determination of appeal

(1) Where an appeal is made under section 12(1), the Scottish Ministers may—
   (a) confirm the decision to which the appeal relates, or
   (b) quash the decision of the authority under section 6(5)(a) or (b), with or without
       issuing a high hedge notice.

(2) Where an appeal is made under section 12(2), the Scottish Ministers may—
   (a) confirm the high hedge notice or decision to which the appeal relates,
   (b) quash the high hedge notice or decision, or
   (c) vary the high hedge notice issued under section 8(1) or, as the case may be, 10(6)(a).

(3) A high hedge notice issued or varied under this section is to be treated as if issued or
     varied by the relevant local authority.

15 Person appointed to determine appeal

(1) An appeal may be determined by a person appointed by the Scottish Ministers for that
     purpose instead of by the Scottish Ministers.

(2) An appointed person has, in relation to the appeal, the same powers and duties as the
     Scottish Ministers have under this Act.

(3) Where an appeal is determined by a person appointed by the Scottish Ministers, the
     decision is to be treated as if it were a decision of the Scottish Ministers.

16 Notice of determination

(1) As soon as is reasonably practicable after determining an appeal the Scottish Ministers
     must—
     (a) where they have made a determination in accordance with section 14(1)(b) and
         are to issue a high hedge notice—
         (i) issue the high hedge notice,
         (ii) give a copy of the high hedge notice to the persons mentioned in subsection
              (2), and
         (iii) notify those persons of the reasons for their decision,
     (b) where they have made a determination in accordance with section 14(2)(c)—
         (i) issue a revised high hedge notice,
         (ii) give a copy of the revised notice to the persons mentioned in subsection
              (2), and
         (iii) notify those persons of the reasons for their decision,
(c) where they have made any other determination, notify the persons mentioned in subsection (2) of their decision and the reasons for their decision.

(2) Those persons are—

(a) the relevant local authority,

(b) every owner and occupier of the domestic property identified in the high hedge notice or, as the case may be, the revised high hedge notice, and

(c) every owner and occupier of the neighbouring land.

17 Period for taking initial action following appeal

(1) This section applies where an appeal under section 12(2) is—

(a) determined, or

(b) withdrawn or abandoned by the person making the appeal.

(2) The compliance period for the initial action specified in the high hedge notice or revised high hedge notice is to be taken as beginning on—

(a) the day on which the appeal is determined, or

(b) such later day as is specified in the revised notice issued under section 16(1)(b).

(3) Where the appeal is withdrawn or abandoned, the compliance period for the initial action specified in the high hedge notice is to be taken as beginning on the day on which the appeal is withdrawn or abandoned.

Powers of entry

18 Power to enter neighbouring land

(1) A person authorised by a relevant local authority may enter the neighbouring land for the purpose of—

(a) obtaining information required by that authority to carry out the authority’s functions under section 6 or 10,

(b) determining whether initial action or preventative action set out in a high hedge notice has been carried out.

(2) A person may enter the neighbouring land for the purpose of obtaining information required to determine an appeal under section 14 if—

(a) the person is authorised to do so by the Scottish Ministers,

(b) the person is appointed under section 15(1), or

(c) the person is authorised to do so by a person appointed under section 15(1).

(3) A person authorised to enter land by virtue of this section may enter a building which is for the time being occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

19 Supplementary powers

(1) A person authorised to enter land by virtue of section 18 (referred to in this section as an “authorised person”) may—
(a) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the authorised person to fulfil the purpose for which entry is taken,

(b) take samples of any trees or shrubs that appear to the authorised person to form part of the high hedge,

(c) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.

(2) A person mentioned in subsection (3) must give every owner and occupier of the land at least 14 days’ notice of the intended entry by the authorised person.

(3) Those persons are—

(a) in the case of a person authorised by virtue of section 18(1), the relevant local authority,

(b) in the case of a person authorised by virtue of section 18(2)(a), the Scottish Ministers,

(c) in any other case, the person appointed under section 15(1).

(4) An authorised person must on request produce written evidence of the authorisation.

(5) On leaving neighbouring land which is unoccupied or from which all of the occupiers are temporarily absent, an authorised person must ensure that the land is as effectively secured against unauthorised entry as it was when the person entered it.

20 Warrant authorising entry

(1) The sheriff or a justice of the peace may by warrant authorise any person entitled to enter the neighbouring land under section 18 to enter the land and if necessary to use reasonable force in doing so.

(2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—

(a) that there are reasonable grounds for entering the land concerned,

(b) that—

(i) entry to the land has been refused,

(ii) such a refusal is reasonably expected, or

(iii) the land is unoccupied, and

(c) that the relevant local authority has or, as the case may be, the Scottish Ministers have complied with the notice requirements imposed by section 19(2).

(3) A warrant must not authorise—

(a) entry to a building which is for the time being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge,

(b) the use of force against an individual.

(4) A warrant expires—

(a) when it is no longer required for the purpose for which it is granted, or

(b) on the expiry of such period as may be specified in it.
21 Offence
(1) It is an offence intentionally to prevent or obstruct a person authorised to enter land under section 18 from doing anything which that person is authorised to do by virtue of this Act.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Local authority enforcement action

22 Power to take action
(1) A person authorised by a relevant local authority (referred to in this section as an “authorised person”) may—

(a) enter the neighbouring land,

(b) take any initial action or preventative action which—

(i) is required to be taken by a high hedge notice, and

(ii) has not been taken in accordance with the high hedge notice,

(c) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the authorised person to take the required action, and

(d) do anything else which is reasonably required for the purpose of taking the required action.

(2) The relevant local authority must give every owner and occupier of the neighbouring land at least 14 days’ notice of the intended entry by the authorised person.

(3) An authorised person may enter a building which is for the time being occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

(4) An authorised person must on request produce written evidence of the authorisation.

(5) On leaving neighbouring land which is unoccupied or from which all of the occupiers are temporarily absent, an authorised person must ensure that the land is as effectively secured against unauthorised entry as it was when the person entered it.

23 Warrant authorising entry by local authority
(1) The sheriff or a justice of the peace may by warrant authorise any person entitled to enter the neighbouring land under section 22 to enter the land and if necessary to use reasonable force in doing so.

(2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—

(a) that there are reasonable grounds for entering the land concerned,

(b) that—

(i) entry to the land has been refused,

(ii) such a refusal is reasonably expected, or

(iii) the land is unoccupied, and
(c) that the relevant local authority has complied with the notice requirements imposed by section 22(2).

3 A warrant must not authorise—

(a) entry to a building which is for the time being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge,

(b) the use of force against an individual.

4 A warrant expires—

(a) when it is no longer required for the purpose for which it is granted, or

(b) on the expiry of such period as may be specified in it.

24 Local authority action: offence

1 It is an offence intentionally to prevent or obstruct a person authorised by a relevant local authority under section 22 from doing anything which that person is authorised to do by virtue of this Act.

2 A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Expenses of enforcement action

25 Recovery of expenses from owner of land

1 A relevant local authority may recover from any person who is an owner of the neighbouring land—

(a) any expenses reasonably incurred by the authority in taking action under section 22,

(b) any administrative expenses (including registration fees) reasonably incurred by it in connection with recovering those expenses, and

(c) interest, at such reasonable rate as it may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

2 The date specified under subsection (1)(c) must be after the date on which a demand for payment is served by the authority.

3 Each owner of the neighbouring land is jointly and severally liable for the expenses and interest mentioned in this section.

26 Notice of liability for expense of local authority action

1 A relevant local authority may apply to register a notice (a “notice of liability for expenses”) specifying the matters mentioned in subsection (2).

2 The matters are—

(a) the amount of the expenses payable in accordance with section 25(1)(a) and (b),

(b) whether interest is payable under section 25(1)(c),

(c) the action taken under section 22 to which those expenses relate,

(d) a description of the neighbouring land in respect of which an owner is liable under section 25,
(e) the effect of section 27 in relation to a new owner of that land, and

(f) the name and address of the local authority.

(3) For the purposes of subsection (2)(d) the description must—

(a) in the case of land registered in the Land Register of Scotland, include the title number of the land,

(b) in the case where the title to the land (or a larger area containing the land) is derived from a deed recorded in the General Register of Sasines, identify the land by reference to that deed.

27 Recovery of expenses from new owner of land

(1) Subsection (2) applies where—

(a) a notice of liability for expenses is registered in relation to the land, and

(b) the notice was registered at least 14 days before the date on which a person (the “new owner”) acquires right to the neighbouring land.

(2) The new owner is severally liable with any former owner of the neighbouring land for any expenses and interest for which the former owner is liable under section 25(1).

28 Continuing liability of former owner

(1) An owner of the neighbouring land who is liable for expenses and interest under section 25 does not, by virtue only of ceasing to be such an owner, cease to be liable for the expenses and interest.

(2) Where a new owner pays any expenses and interest for which a former owner of the land is liable, the new owner may recover the amount so paid from the former owner.

(3) A person who is entitled to recover an amount under subsection (2) does not, by virtue only of ceasing to be the owner of the land, cease to be entitled to recover that amount.

29 Notice of discharge

(1) This section applies where liability for expenses and interest to which a registered notice of liability for expenses relates has been discharged.

(2) The relevant local authority must apply to register a notice (a “notice of discharge”) specifying the matters mentioned in subsection (3).

(3) The matters are—

(a) the date of registration or recording of the notice of liability for expenses to which the notice of discharge relates,

(b) the action taken under section 22 to which that notice of liability relates,

(c) a description of the neighbouring land in respect of which an owner was liable under section 25,

(d) that the liability for the expenses and interest has been discharged,

(e) the name and address of the local authority.

(4) For the purposes of subsection (3)(c) the description must—
(a) in the case of land registered in the Land Register of Scotland, include the title number of the land,
(b) in the case where the title to the land (or a larger area containing the land) is derived from a deed recorded in the General Register of Sasines, identify the land by reference to that deed.

(5) On registration, the notice of discharge discharges the notice of liability for expenses to which it relates.

30 **Receipt of notices by the Keeper**

(1) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in a notice of a type mentioned in subsection (2) which is submitted for registration is accurate.

(2) The notices are—

(a) a notice of liability for expenses,
(b) a notice of discharge.

31 **Guidance**

(1) The Scottish Ministers may, after consulting such persons as they consider appropriate, issue guidance about this Act.

(2) A local authority may, after consulting such persons as the authority considers appropriate, issue guidance on—

(a) the duty imposed by section 3(1),
(b) any other provision of this Act.

(3) A local authority must have regard to any guidance issued under subsection (1) when—

(a) issuing guidance under subsection (2),
(b) carrying out its functions under this Act.

31A **Report on operation of Act**

(1) The Scottish Parliament must make arrangements for one of its committees or sub-committees to report to the Scottish Parliament on the operation of this Act during the review period.

(2) In this section, the “review period” means the period—

(a) beginning on the day on which section 2 comes into force, and
(b) ending 5 years after that day or on such earlier date as may be determined by the committee or sub-committee making the report under subsection (1).

(3) A report under subsection (1)—

(a) may be made in such form and manner as the committee or sub-committee considers appropriate, but
(b) must be made no later than 18 months after the end of the review period.

(4) The Scottish Parliament must publish a report made under subsection (1).
32 Service of documents

(1) If, having made reasonable inquiries, a person is unable to ascertain the name or address of a person to whom a notice relating to land is to be given under this Act, the notice may be given by—

(a) addressing it to the person concerned by name or by a description of the person’s interest in the land, and

(b) delivering it by—

(i) leaving it in the hands of a person who is or appears to be resident on the land or employed on the land, or

(ii) fixing it to a building or object on, or to a conspicuous part of, the land (or, where that is not practicable, to a building or object near that land).

(2) Where a document is delivered as mentioned in subsection (1)(b)(ii) it is to be taken to have been given on the day on which it is fixed on or near the building, object or land, unless the contrary is shown.

33 Interpretation

(1) In this Act, unless the context otherwise requires—

“applicant” has the meaning given by section 2(1),

“compliance period” has the meaning given by section 6(6)(a),

“domestic property” means—

(a) any part of a building in Scotland which is occupied or intended to be occupied as a separate dwelling, and

(b) a yard, garden, garage or outhouse in Scotland which belongs to such a building or is usually enjoyed with it,

“high hedge” has the meaning given by section 1,

“high hedge notice” has the meaning given by section 8(2),

“initial action” has the meaning given by section 6(5)(b),

“neighbouring land”, in relation to a high hedge, means the land on which the high hedge is situated,

“new owner” has the meaning given by section 27(1),

“notice of discharge” has the meaning given by section 29,

“notice of liability for expenses” has the meaning given by section 26,

“office-holder in the Scottish Administration” is to be construed in accordance with section 126(7) of the Scotland Act 1998 (c.46),

“owner” in relation to any property, means a person who has right to the property whether or not that person has completed title; but if, in relation to the property (or, if the property is held pro indiviso, in relation to any pro indiviso share in it) more than one person comes within that description of owner, then “owner” means such person as most recently acquired such right,

“preventative action” has the meaning given by section 6(6)(b),
“register”, in relation to a notice of liability for expenses and a notice of
discharge, means register the information contained in the notice in question in the
Land Register of Scotland or, as the case may be, record the notice in question in
the General Register of Sasines; and “registered” and other related expressions are
to be construed accordingly,

“relevant local authority” means the local authority in whose area the high hedge
is situated,

“tree preservation order” has the meaning given by section 160(1) of the Town
and Country Planning (Scotland) Act 1997 (c.8),

“vary”, in relation to a high hedge notice, means—

(a) remove initial action or preventative action from the notice,

(b) amend initial action, the compliance period or preventative action in the
notice,

(c) add further initial action (with a compliance period) or preventative action
to the notice,

(d) correct a defect, error or misdescription in the notice.

(2) References in this Act to a high hedge include references to part of a high hedge.

(3) References in this Act to enjoyment of domestic property include references to
enjoyment of part of the property.

(4) Where domestic property is for the time being unoccupied, references in this Act to the
reasonable enjoyment of that property are to be read as if they were references to the
reasonable enjoyment of an occupant of the property if the property were occupied.

34 Power to modify meaning of “high hedge”

(1) The Scottish Ministers may by regulations modify the meaning of “high hedge” for the
time being in section 1 by—

(a) adding a type of tree or shrub to, or removing a type of tree or shrub from, section
1(1)(a),

(b) increasing or reducing the height above ground level specified in section 1(1)(b)
and (2),

(c) modifying or adding to the effect of a hedge specified in section 1(1)(c).

(2) Regulations under this section may—

(a) make different provision for different cases,

(b) include such supplementary, incidental, consequential, transitory or transitional
provision or savings as the Scottish Ministers consider appropriate,

(c) modify any enactment (including any other provision of this Act).

(3) Regulations under this section are subject to the affirmative procedure.
Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional or transitory provision or savings as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under this section may modify this or any other enactment.

(3) An order under this section containing provision which adds to, replaces or omits any part of the text of an Act, is subject to the affirmative procedure.

(4) Otherwise an order under this section is subject to the negative procedure.

Crown application

(1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(2) Despite subsection (1), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(3) The powers conferred by sections 18, 19 and 22 are exercisable in relation to Crown land only with the consent of the appropriate authority.

(4) For the purposes of subsection (3), land is “Crown land” if an interest in the land—

(a) belongs to Her Majesty in right of the Crown or in right of Her private estates,
(b) belongs to an office-holder in the Scottish Administration or to a Government department,
(c) is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department.

(5) In subsection (3) “appropriate authority” means—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners,
(b) in the case of any other land belonging to Her Majesty in right of the Crown, the office-holder in the Scottish Administration or, as the case may be, Government department having the management of the land,
(c) in the case of land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
(d) in the case of land belonging to an office-holder in the Scottish Administration or to a Government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department, the office-holder or Government department.

(6) Any reference in this section to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(7) If a dispute arises in relation to the meaning of “appropriate authority” in the case of any land—

(a) it is for the Scottish Ministers to determine the appropriate authority, and
(b) the Scottish Ministers’ decision is final.
(8) In this section “Government department” means a department of the United Kingdom Government.

37 Commencement

(1) This section and sections 33, 35 and 38 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may contain transitory or transitional provision or savings.

38 Short title

The short title of this Act is the High Hedges (Scotland) Act 2013.
High Hedges (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about hedges which interfere with the reasonable enjoyment of residential properties.

Introduced by: Mark McDonald
On: 2 October 2012
Bill type: Member's Bill
INTRODUCTION

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or part of a section, does not seem to require any explanation or comment, none is given.

3. These Explanatory Notes have been prepared by Mark McDonald MSP, with the assistance of the Scottish Government, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

SUMMARY OF THE BILL

4. The Bill provides for applications to be made to a relevant local authority where a high hedge on neighbouring land is considered to be having an adverse effect on the reasonable enjoyment of domestic property. The Bill gives the local authority powers to settle disputes between neighbours related to high hedges. If the local authority, having taken all views into account, finds that the hedge is having an adverse effect, it could issue a high hedge notice requiring the hedge owner to take action to remedy the problem and prevent it reoccurring. Failure to comply with such a notice would allow the authority to go in and do the work itself, recovering the costs from the hedge owner. There is a right of appeal to the Scottish Ministers against decisions of an authority and any high hedge notice issued by it.

COMMENTARY ON SECTIONS

Meaning of “high hedge”

Section 1 – Meaning of “high hedge”

5. This section defines a “high hedge” as being one which is being formed wholly or mainly by a row of two or more evergreen or semi-evergreen trees or shrubs which exceed two metres in
height and which forms a barrier to light. Semi-evergreens are trees or shrubs which generally have some live foliage during the winter, depending on weather conditions.

6. Subsection (2), however, makes it clear that the density of the hedge is relevant. It provides that a hedge is not to be regarded as forming a barrier to light when the row of trees or shrubs contains gaps, which significantly reduce its overall effect as a barrier to light at heights of over two metres.

7. Subsection (3) makes it clear that the roots of the hedge are not relevant.

High hedge notices

Section 2 – Application for high hedge notice

8. This provision allows an owner or occupier of a domestic property to apply to the relevant local authority for a high hedge notice, if that person feels that the occupier’s reasonable enjoyment of the property has been adversely affected by the height of the hedge on land occupied by another person. This land does not necessarily need to share a boundary with the domestic property affected by the hedge, nor does it exclusively refer to other domestic properties.

Section 3 – Pre-application requirements

9. This section places a responsibility on a potential applicant to take all reasonable steps to resolve the high hedge dispute before making an application for a high hedge notice. It also provides that in doing so, applicants must have regard to any guidance published by the relevant local authority on this issue. Guidance issued by the relevant local authority may, for example, require applicants to have attempted to resolve matters through mediation before making an application.

Section 4 – Fee for application

10. This section gives the local authority the power to charge a fee for applications. It provides that applications must be accompanied by any fee set by the relevant local authority. The fee must not exceed an amount which the local authority considers represents the reasonable costs of deciding an application. This would include administration costs.

11. Subsection (2) allows different fees to be charged for different types of applications. This ensures that the local authority has the scope to alter any charging regime according to factors it considers appropriate other than simply amending the price of all applications. The local authority is given the power in subsection (4) to refund fees as it may determine and subsection (5) provides that it must publish details of the circumstances in which and the extent to which it is considered appropriate for refunds to be made. When publishing this information, the local authority must, under subsection (6), have regard to any guidance on the matter issued by Scottish Ministers.
Section 5 – Dismissal of application

12. This section provides that the local authority must dismiss an application if it considers the applicant has not taken all reasonable steps to resolve the high hedge dispute without involving the authority, or if it considers that the application is frivolous or vexatious. Whether an application is frivolous or vexatious will turn on the particular circumstances, but may include the situation where someone has repeatedly applied (unsuccessfully) to the local authority without there being any change in circumstances which would affect the local authority’s decision.

13. If the local authority dismisses an application it must, under subsection (2), inform the applicant as soon as is reasonably practicable, giving reasons for its decision.

Section 6 – Consideration of application

14. This section applies where the local authority does not dismiss an application under section 5 and proceeds to consider the application. It must give a copy of the application to every owner and occupier of the neighbouring land. A notice must also be given informing such owners and occupiers of the matters set out in subsection (3).

15. Subsection (3) lists the matters that must be included in the notice provided in subsection (2)(b). These include informing such owners and occupiers of their right to make representations within a period of 28 days and letting them know that a copy of such representations will be given to the applicant.

16. Subsection (4) requires the local authority to take any representations made into account when making a decision in relation to the high hedge.

17. Subsection (5) requires that, after the period of 28 days, the local authority must take a decision on the application. It must decide in the first place whether the height of the high hedge is adversely affecting the enjoyment of the property that an occupant of the property could reasonably expect to have. The test, therefore, is an objective occupier’s enjoyment and not the enjoyment that the particular applicant has, or expects, if they were to live in the property. If the local authority concludes that there is an adverse effect, it must then decide what, if any, action should be required to be taken, and by when, in relation to the hedge in order to remedy the adverse effect or to prevent it recurring. This is referred to as “initial action”.

18. If a local authority decides that initial action should be taken, subsection (6) requires it to decide a reasonable period of time for this action to be taken, the “compliance period”. It must also decide whether or not any preventative action should be taken following the end of the compliance period so as to prevent the recurrence of the adverse effect. An example of “preventative action” would be annual maintenance of the hedge.

19. Subsection (7) makes it clear that in considering whether any action is required, the local authority must have regard to all the circumstances of the case, including in particular, the effect of the high hedge on the amenity of the area and whether the high hedge is of cultural or historical significance. This is to ensure protection for ancient trees and hedgerows, as well as any hedges that may have an effect on the amenity of the area.
20. Subsection (8) ensures that where a high hedge is situated on land which has been designated as a National Park, the local authority must, before making a decision under subsection (5)(b) consult the relevant National Park authority for that National Park, and take into account any representations made by that authority.

Section 7 – Notice of decision where no action to be taken

21. This section requires that, as soon as reasonably practicable after deciding there is no adverse effect, or that no action should be taken in relation to the high hedge, the local authority must notify the applicant and every owner and occupier of the land on which the high hedge is situated of its decision, giving reasons and notifying the recipients of the right to appeal.

22. Subsection (4) provides that where a high hedge is situated on land which has been designated as a National Park and the local authority has decided under section 6(5)(b) that no action should be taken in relation to the high hedge it must also inform the relevant National Park Authority of its decision.

Section 8 – High hedge notice

23. This section provides that where the local authority decides that initial action should be taken it must issue a high hedge notice. The high hedge notice should be issued as soon as reasonably practicable after the decision.

24. Subsection (2) lists what a high hedge notice must state. This includes identification of the hedge and the date on which the notice is to take effect. This must be at least 28 days after the date on which the notice is issued, so as to allow time for an appeal under section 12 to be made.

25. The notice must also specify the initial action and the compliance period for that action and any preventative action following that period required to be carried out.

26. The notice must also outline the right of appeal and the consequences of failure to comply with the notice. These are that the local authority has power to go in and take action itself, recovering the expenses of that action from the hedge owner.

27. Subsections (4) and (5) require the local authority to send a copy of the high hedge notice to the applicant and every owner and occupier of the neighbouring land, giving reasons for its decision.

28. Subsection (6) requires a local authority, where a high hedge is situated on land which has been designated as a National Park, to send a copy of the high hedge notice to the relevant National Park authority.

Section 9 – Effect of high hedge notice

29. This section provides that a high hedge notice is binding on every person who is for the time being an owner of the neighbouring land specified in the notice. This provision makes it
clear that a notice is binding not only on whoever is the owner at the time it is issued but also on subsequent owners.

**Section 10 – High hedge notice: withdrawal and variation**

30. This section provides that a local authority can, having regard to all the circumstances of the case, withdraw or vary a high hedge notice. “Vary” is defined in section 33(1). Before making any withdrawal or variation, regard must be had in particular to (a) whether, after the withdrawal or variation, the height of the high hedge would adversely affect the enjoyment of the domestic property that an occupant could reasonably expect to have and (b) all of the circumstances of the case, including the effect of the high hedge on the amenity of the area and whether it is of cultural or historical significance.

31. Under subsections (3) and (4), where a local authority withdraws a high hedge notice it must notify each owner and occupier of the domestic property identified in the notice and each owner and occupier of the neighbouring land of its action giving reasons for the decision and notifying the recipient of the right to appeal.

32. Subsection (5) allows the local authority to issue another high hedge notice if it has withdrawn a previous high hedge notice. A later application may be made in respect of the same hedge.

33. Subsections (6) to (8) relate to the issuing of a revised high hedge notice. Where a local authority varies a notice, it must issue a revised notice containing the date on which it is to take effect. This must be at least 28 days after the date on which the revised notice is given, so as to allow time for an appeal under section 12 to be made. The same notification requirements apply as in respect of a withdrawal of a notice. A revised notice can be withdrawn or further varied. Subsection (7A) provides that where a high hedge is situated on land designated as a National Park the local authority must, where it withdraws or varies a high hedge notice, give notice of such withdrawal or variation to the relevant National Park authority.

**Section 11 – Tree preservation orders**

34. This section applies where a high hedge notice relates to a high hedge which includes a tree or forms part of a group of trees subject to a tree preservation order. Section 33(1) provides that a tree preservation order has the meaning given by section 160(1) of the Town and Country Planning Act 1997. Such an order can be made by a planning authority providing for the preservation of trees or groups of trees or woodlands where it is expedient in the interests of amenity or that the trees, groups of trees or woodlands are of cultural or historical significance.

35. Subsection (2) provides that a tree preservation order has no effect in relation to any initial or preventative action done to any tree or group of trees specified in a high hedge notice. However, under section 6(7) the local authority must have regard (amongst other things) to the effect of the high hedge on the amenity of the area and whether the high hedge is of cultural significance in determining an application for a high hedge notice.
Section 12 – Appeals

36. This section provides rights of appeal to Scottish Ministers against decisions made by local authorities.

37. Under subsection (1), applicants may appeal against decisions made by the local authority that there is no adverse effect or that no action should be taken on the hedge.

38. Under subsections (2) and (3), owners and occupiers of the domestic property and owners and occupiers of the neighbouring land may appeal against the issue of a high hedge notice or a withdrawal or variation of a high hedge notice.

39. Subsection (4) provides that any appeal must be made before the end of the period of 28 days, beginning with the date of the notification by the local authority of the decision or the high hedge notice or the withdrawal of the notice or the revised high hedge notice as the case may be.

Section 13 – Effect of appeal

40. This section provides that, where an appeal has been made against a high hedge notice, the notice has no effect until the appeal is either determined, withdrawn or abandoned. The section also provides that where an appeal has been made against the withdrawal or variation of a notice, the withdrawal or variation has no effect until the appeal is either determined, withdrawn or abandoned.

Section 14 – Determination of appeal

41. This section sets out how Scottish Ministers may determine an appeal. It allows Scottish Ministers to confirm the decision or high hedge notice, quash the decision or high hedge notice, vary a notice or issue a high hedge notice, depending on circumstances.

Section 15 – Person appointed to determine appeal

42. As with appeals under the Town and Country Planning (Scotland) Act 1997, this section enables Scottish Ministers to appoint a person to hear and determine an appeal. Under subsection (2), the appointed person will have, in relation to the appeal, the same powers and duties provided for Scottish Ministers under the Bill. Under subsection (3), the decision of the appointed person is to be treated as that of the Scottish Ministers.

Section 16 – Notice of determination

43. This section sets out the notification requirements once an appeal has been determined.

Section 17 – Period for taking initial action following appeal

44. This section sets out the relevant time period in which the initial action must be taken (“the compliance period”), following appeals.
Powers of entry

Section 18 – Power to enter neighbouring land

45. Subsection (1) gives local authorities the power to enter neighbouring land for the purpose of obtaining information required to consider an application for a high hedge notice, or required to consider the withdrawal or variation of a notice or for determining whether a high hedge notice has been complied with.

46. The Scottish Ministers and any person appointed to determine an appeal under section 15 have a similar power under subsection (2) for the purpose of obtaining information required in relation to an appeal.

47. The power to enter land includes a power to enter buildings (including houses) by virtue of the definition of “land” in the Interpretation and Legislative Reform (Scotland) Act 2010, which includes buildings and other structures. This power may be used for entry where the building is occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

Section 19 – Supplementary powers

48. This section sets out what additional persons, materials and equipment can be taken onto the land in question and allows certain samples of trees or shrubs to be taken. It requires 14 days’ notice of intended entry to be given and requires unoccupied land to be left secured against unauthorised entry. Notice must be given, by either the local authority, the Scottish Ministers or the person appointed to determine an appeal under section 15, depending on who authorised the person to enter the land under section 18.

Section 20 – Warrant authorising entry

49. This section enables a sheriff or justice of the peace to grant a warrant to any person entitled to exercise a power of entry under section 18 to do so. A warrant allows the person authorised to use reasonable force if necessary but does not allow the use of force against individuals (see subsections (1) and (3)).

50. Subsection (2) describes the circumstances in which a warrant may be granted. These are (a) that there are reasonable grounds for exercising the right of entry, (b) that entry to the land has been refused or a refusal is reasonably expected or the land is unoccupied, and (c) that the local authority has complied with the 14 day notice requirements imposed under section 19(2). The warrant must not authorise entry to a building being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge.

Section 21 – Offence

51. Subsection (1) makes it an offence for a person to intentionally obstruct or prevent an authorised person from doing anything which that person is authorised to do by virtue of the Bill. The offence is punishable on summary conviction up to a maximum fine of level 3 (currently £1000) on the standard scale.
Local authority enforcement action

Section 22 – Power to take action

52. This section gives the local authority the power to enter neighbouring land and take the action specified in the high hedge notice, where the owner or occupier of the land fails to comply with the notice. The costs of this work can be recovered from the owner under section 25.

53. The section also sets out what additional persons, materials and equipment can be taken onto the land in question. When exercising these powers the local authority must give 14 days’ notice of its intended entry on to the land and must leave unoccupied land secured against unauthorised entry. This power may be used for entry where the building is occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

Section 23 – Warrant authorising entry by local authority

54. This section contains similar provisions to those found in section 20, but relates to the right of the local authority to enter land to take action. The warrant must not authorise entry to a building being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge.

Section 24 – Local authority action: offence

55. This section creates a similar obstruction offence (punishable in the same way) to that created in section 21 except it relates to the power to enter neighbouring property for the purpose of the local authority taking initial or preventative action required under a high hedge notice.

Expenses of enforcement

Section 25 – Recovery of expenses from owner of land

56. Subsection (1) enables the local authority to recover expenses incurred in taking the action required under a high hedge notice from the owner of the neighbouring land. The expenses can also be recovered from subsequent owners. Associated reasonable administrative expenses may also be recovered. Interest is also recoverable.

57. Subsection (2) provides that each owner of the neighbouring land is jointly and severally liable for the expenses. Each owner is equally liable for the full amount with a right of relief against the other owners.

Section 26 – Notice of liability for expense of local authority action

58. This section enables a notice of liability for expenses to be registered in the appropriate property register against neighbouring land. Subsection (2) sets out the information the notice must contain.

Section 27 – Recovery of expenses from new owner of land

59. This section deals with the liability of an incoming or “new” owner of the neighbouring land. It provides that a new owner, as well as the former owner, is liable for any expenses and
interest for which the former owner is liable, under the terms of section 25. However, this is only
the case where subsection (2) applies.

60. Subsection (2) provides that a new owner is liable only if a notice of liability for expenses
is registered in the property registers (on or before a date 14 days prior to the new owner
becoming the owner). If no such notice is registered then the new owner is not liable.

Section 28 – Continuing liability of former owner

61. This section provides that an owner of the neighbouring land does not cease to be liable if
they are no longer the owner of that land. If the new owner has paid the expenses and interest to
the local authority, the new owner may recover that amount paid from the former owner, if the
former owner is liable. This remains the case even if another person takes ownership of the land.

Section 29 – Notice of discharge

62. This section applies where the expenses and interest to which a registered notice of
liability for expenses relates has been discharged. It states that the relevant local authority must
register a notice (“a notice of discharge”) in the appropriate property register. Subsection (3) sets
out the information the notice must contain.

63. Subsection (5) provides that the notice of liability for expenses is discharged as soon as
the notice of discharge has been registered.

Section 30 – Receipt of notices by the Keeper

64. This section makes it clear that the Keeper of the Registers of Scotland is not required to
investigate or determine whether or not the information contained in either a notice of liability
for expenses or a notice of discharge is accurate.

General

Section 31 – Guidance

65. This section places a duty on local authorities to have regard to any guidance issued by
the Scottish Ministers when carrying out their functions under the Act and when issuing
guidance on the duty imposed under section 3 (relating to pre-application requirements) and any
other provision of the Act. Both the Scottish Ministers and the local authority must consult such
persons as considered appropriate before issuing guidance under this section.

Section 31A – Report on operation of Act

66. This section places a duty on the Parliament to make arrangements for a committee or
sub-committee of the Parliament to report to the Parliament on the operation of the Act during
the review period.

67. Subsection (2) provides that the review period begins when section 2 (relating to
applications for high hedge notices) comes into force and ends 5 years after that date, or on such
earlier date as either the committee or sub-committee may determine.
68. Subsection (3) provides that a report must be made no later than 18 months after the end of the review period and may be in such form and manner as the committee or sub-committee considers appropriate. Subsection (4) provides that the report must be published.

Section 32 – Service of documents

69. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 regarding service of documents will apply to notices sent under the Bill. The application of the 2010 Act enables those documents to be served either by person, by registered post, recorded delivery or by being sent by way of electronic communication (where agreed in writing with the recipient).

70. Section 32 supplements that with additional ways in which notices may be served when the name and address of the recipient is unknown.

Section 33 - Interpretation

71. Section 33 defines terms that are used frequently in the Bill. In particular, “domestic property” means any part of a building occupied or intended to be occupied as a separate dwelling, including a yard, garage or outbuilding belonging to or usually enjoyed with the building, and located in Scotland.

72. “Owner” means a person who has right to the property whether or not that person has completed title. This is someone who is entitled to take entry under a conveyance of the property. It will not be necessary for the person to have completed title by registering it in the property registers before a person is considered an owner. If more than one person comes within the description of an owner then the “owner” is the person who has most recently acquired that right to take entry under a conveyance.

73. “Neighbouring land” means the land on which the hedge is situated. There is no restriction on where the hedge is situated. The hedge does not have to be next door to the domestic property affected by the hedge. In addition, the hedge could be growing on commercial property or on parkland.

Section 34 – Power to modify meaning of “high hedge”

74. This section provides Scottish Ministers with a power to modify, by regulations, the definition of a “high hedge”, as defined by section 1 by adding or removing a type of tree or shrub from section 1(1)(a); increasing or reducing the height above ground level specified in section 1(1)(b) and (2); and modifying or adding to the effect of a hedge specified in section 1(1)(c). Subsections (2) and (3) specify that those regulations may also make other appropriate changes to this and other Acts and that they are subject to affirmative procedure.

Section 35 – Ancillary provision

75. This section provides Scottish Ministers with the power to make, by order, such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate. It provides that an order under this Bill may modify this, or any other, enactment.
76. Subsections (3) and (4) make it clear that an order made under subsection (1), which adds to, replaces or omits any part of the text of this Bill or another Act is subject to the affirmative procedure. Any other order is subject to the negative procedure.

**Section 36 – Crown application**

77. Under section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Bill applies to the Crown in Scotland. However, subsection (1) absolves the Crown of any criminal liability, should it be in contravention of the provisions of this Bill.

78. Subsection (3) provides that the powers in sections 18 (power to enter neighbouring land), 19 (supplementary powers) and 22 (power to take action) are exercisable in relation to Crown land, but only if the appropriate authority gives its consent.

**Section 37 – Commencement**

79. Section 37(1) provides for certain provisions of the Bill to come into force on the day after Royal Assent. Subsection (2) gives power to the Scottish Ministers to appoint a day for the coming into force of the other provisions of the Bill. Subsection (3) provides that a commencement order may include transitory, transitional or saving provision.
This document relates to the High Hedges (Scotland) Bill as amended at Stage 2 (SP Bill 16A)

HIGH HEDGES (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

PURPOSE

1. This Memorandum has been prepared by Mark McDonald MSP with the assistance of the Scottish Government to assist the Subordinate Legislation Committee in its consideration of the High Hedges (Scotland) Bill. It describes provisions in the Bill conferring power to make subordinate legislation which were amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2

Section 34 – Power to modify meaning of “high hedge”

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision

2. Section 1 defines a high hedge for the purposes of this Bill. Subsection (1) states that the Act only applies to a hedge which is formed wholly or mainly by a row of 2 or more evergreen or semi-evergreen trees or shrubs, which rises to a height of more than 2 metres above ground level and forms a barrier to light. Subsection (3) states that no account is to be taken of the roots of a high hedge in applying this Act.

3. Section 34 of the Bill confers on Scottish Ministers the power to modify by regulations the definition of a high hedge, as set out in section 1.

Reason for taking this power

4. As set out in the original Delegated Powers Memorandum, the intention is to give the Scottish Ministers flexibility to adjust the coverage of the Bill, given the competing arguments of what should be covered by the definition of a high hedge.
Stage 2 amendment

5. At Stage 2 (see amendment 19, Local Government and Regeneration Committee Official Report, 6 March, col 1805), section 34(1) was amended by specifying that modifications to the definition of a high hedge in section 1 are limited to:

- adding a type of tree or shrub to, or removing a type of tree or shrub from, section 1(1)(a);
- increasing or reducing the height above ground level specified in section 1(1)(b) and (2); and
- modifying or adding to the effect of a high hedge specified in section 1(1)(c).

Choice of procedure

6. The section 34 powers remain subject to the affirmative procedure, for the reasons given in the original Delegated Powers Memorandum.
HIGH HEDGES (SCOTLAND) BILL

I wrote to you on 31 January 2013 and indicated in my letter that I would write to the Committee once again to confirm my intentions ahead of the Stage 2 debate.

The Subordinate Legislation Committee, at paragraphs 14 and 15 of its report on the High Hedges (Scotland) Bill, made the following comments:

“14. The Committee draws the power in section 34 to modify the definition of high hedge in section 1 to the attention of the lead Committee as it considers it to be particularly broad in its scope, and observes that it appears to be possible for that power to be used in the future so as significantly to alter the scope of the Bill (either by narrowing the definition to the point that it defeats the ends of the Bill, or by widening the definition so that it extends beyond anything that may have been considered by the Parliament).”

15. The Committee is content that the exercise of the power in section 34 is subject to the affirmative procedure.”

I am pleased that the Committee agrees that affirmative procedure is an appropriate way to exercise the power in section 34 (Power to modify meaning of “high hedge”). As you know this would mean Parliament would need to approve by resolution an instrument or draft instrument, and where the lead committee shall decide whether to recommend that the instrument or draft instrument be approved.

Section 1 (Meaning of “high hedge”) concerns the meaning of a high hedge; the power taken in section 34 to modify is the power to modify the meaning of a high hedge. It therefore seems clear to me that the meaning of high hedge could only be modified within the overall context of the bill. For example, it may be that other conditions require to be added such as to include a high hedge which forms a barrier to access. While that power could be used to add to the list of conditions or modify them, it is not envisaged that it would be used to remove entirely the conditions in paragraphs (a) to (c) of subsection (1).
Furthermore, it is my view, this could not be used to modify the meaning of "high hedge" in such a way that it extends to include individual trees or shrubs. The power is to amend the meaning of a high hedge and the power would only be capable of capturing hedges, not single trees.

I hope that the Committee find this response helpful.

Yours sincerely,

Mark McDonald MSP
Subordinate Legislation Committee

22nd Report, 2013 (Session 4)

High Hedges (Scotland) Bill as amended at Stage 2

Published by the Scottish Parliament on 26 March 2013
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) Subordinate legislation laid before the Parliament;

 (i) any Scottish Statutory Instrument not laid before the Parliament but classed as general according to its subject matter;

and, in particular, to determine whether the attention of Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Nigel Don (Convener)
Jim Eadie
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)
Committee Clerking Team:
Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
Subordinate Legislation Committee

22nd Report, 2013 (Session 4)

High Hedges (Scotland) Bill as amended at Stage 2

The Committee reports to the Parliament as follows—

1. At its meeting on 26 March 2013, the Subordinate Legislation Committee considered the delegated powers provisions in the High Hedges (Scotland) Bill\(^1\), as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The High Hedges (Scotland) Bill is a Member’s Bill introduced by Mark McDonald MSP on 2 October 2012. Mr McDonald was assisted in introducing the Bill by the Scottish Government.

3. Mr McDonald has provided the Parliament with a supplementary delegated powers memorandum\(^2\) on the new provisions in the Bill.

Delegated Powers Provisions

4. At Stage 1 of the Bill, the Committee reported that it did not need to draw the attention of the Parliament to the delegated powers in sections 31 (guidance) and 35 (ancillary provision).

5. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the substantially amended powers in sections 31 (guidance) and 34 (power to modify meaning of “high hedge”).

6. The Committee welcomes the fact that section 34 has been amended in order to address its concerns, and the concerns of the lead Committee, as regards the scope of the power.

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\(^1\) High Hedges (Scotland) Bill as amended at stage 2 is available here: [http://www.scottish.parliament.uk/S4_Bills/High%20Hedges%20Bill%20(Scotland)%20Bill/b16as4-stage2.pdf](http://www.scottish.parliament.uk/S4_Bills/High%20Hedges%20Bill%20(Scotland)%20Bill/b16as4-stage2.pdf)

\(^2\) High Hedges (Scotland) Bill Supplementary Delegated Powers Memorandum is available here: [http://www.scottish.parliament.uk/S4_Bills/High_Hedges_SDPM_-_Final.pdf](http://www.scottish.parliament.uk/S4_Bills/High_Hedges_SDPM_-_Final.pdf)
Marshall List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 38

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Anne McTaggart
Supported by: Christine Grahame

5 In section 1, page 1, line 7, leave out <evergreen or semi-evergreen>

Section 31A

Margaret Mitchell

2 In section 31A, page 13, line 32, leave out <5> and insert <2>

Margaret Mitchell

3 In section 31A, page 13, line 37, leave out <18> and insert <12>

Margaret Mitchell

4 In section 31A, page 13, line 37, at end insert—

<( ) A report under subsection (1) must include an assessment of—

(a) the way in which local authorities have exercised their functions under this Act,

(b) the costs estimated to have been incurred by local authorities in exercising those functions,

(c) any issues arising from the meaning of “high hedge” for the time being in section 1, and

(d) whether the operation of this Act during the review period indicates that the meaning of “high hedge” should be amended to apply also to a row of two or more deciduous trees or shrubs.>
High Hedges (Scotland) Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. In this case, the information provided consists solely of the list of groupings (that is, the order in which the amendments will be debated). The text of the amendments set out in the order in which they will be debated is not attached on this occasion as the debating order is the same as the order in which the amendments appear in the Marshalled List.

Groupings of amendments

Note: The time limit indicated is that set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups must be concluded by the time indicated, although the amendments in the groups may still be moved formally and disposed of later in the proceedings.

Group 1: Meaning of “high hedge”
5

Group 2: Report on operation of Act
2, 3, 4

Debate to end no later than 35 minutes after proceedings begin
Business Motion: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-06124—That the Parliament agrees that, during stage 3 of the High Hedges (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 and 2: 35 minutes.

The motion was agreed to.

High Hedges (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

Amendment 5 was agreed to (without division).

The following amendments were disagreed to (by division)—

2 (For 42, Against 62, Abstentions 0)
3 (For 44, Against 62, Abstentions 0)
4 (For 43, Against 63, Abstentions 0).

High Hedges (Scotland) Bill - Stage 3: Mark McDonald moved S4M-06038—That the Parliament agrees that the High Hedges (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
High Hedges (Scotland) Bill: Stage 3

14:53

The Presiding Officer (Tricia Marwick): We now move early to the next item of business, which is stage 3 proceedings on the High Hedges (Scotland) Bill.

In dealing with amendments, members should have before them the bill as amended at stage 2, which is SP bill 16A; the marshalled list, which is SP bill 16A-ML; and the list of groupings, which is SP bill 16A-G.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after the debate.

Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group.

Section 1—Meaning of “high hedge”

The Presiding Officer: Amendment 5, in the name of Anne McTaggart, is in a group on its own.

Anne McTaggart (Glasgow) (Lab): I am pleased to begin the debate by speaking to my amendment 5. The amendment seeks to achieve the same effect as one that I proposed at stage 2 at the Local Government and Regeneration Committee and later withdrew on the strength of an undertaking from the minister that he would reconsider the issue in detail.

Amendment 5 seeks to expand the definition of a high hedge so that the bill will not be unnecessarily restrictive and will be able to offer remedies to those who suffer from high hedge disputes irrespective of the type of hedge or nuisance vegetation concerned.

The current definition of “a row of 2 or more evergreen or semi-evergreen trees or shrubs” in section 1(1)(a) is unnecessarily restrictive, and I am concerned that the exclusion of deciduous species will leave those involved in some of the longest-standing disputes without resolutions to the problems that they face.

Therefore, my amendment seeks to amend that provision by removing “evergreen or semi-evergreen” altogether and changing the definition of a high hedge to simply “a row of 2 or more trees or shrubs”. That approach will enable the inclusion
of deciduous species by default, as it will exclude no species of shrub, tree or hedge from the bill. That means that home owners who suffer from high hedge disputes would be more likely to achieve successful resolution to neighbour disputes and would not be restricted from achieving such an outcome as a result of a subtle technicality.

I move amendment 5.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): As Anne McTaggart knows, we have had a long discussion about this matter. We have been up hill and down dale trying to find a way to get “deciduous” into the bill. The simplest thing is to delete everything else and make the bill refer to shrubs or trees in groups of two or more. It seems frivolous, but it is not really.

I remember saying at stage 1 that I felt an amendment coming on. Anne McTaggart obviously felt it coming on faster. That is not a problem.

In our discussions at stage 2, it was mentioned that, in certain parts of the country, shrubs or trees that we might say are deciduous simply are not. In many parts of Scotland, beech trees retain their leaves. A thick beech hedge can be impenetrable to light and interfere with reasonable living next door.

Sometimes in life, but not often, the solution is simple. Amendment 5 is one such case. I am delighted to support it because, if we leave “evergreen or semi-evergreen” in the bill, mischievous people could simply plant—they know that sometimes it is vindictive—a deciduous hedge that does not do what the seed packet says it is supposed to do and does not drop its leaves at all.

I am happy to support—and I hope that the member in charge and the minister will support—this simple but important amendment.

Sarah Boyack (Lothian) (Lab): I am glad that the amendment has been put in front of us. We debated the issue at stage 1 and again at stage 2. My sense is that we could address it today or wait another five years. It is clear that, if we do not agree to the amendment, some of the deepest conflicts will remain. This is our opportunity to put in place a rigorous framework and ensure that things are done coherently.

I strongly support the amendment that Anne McTaggart has moved. It will not keep everybody happy, because high hedge disputes tend to be of long standing and involve deeply held views, but it will provide a resolution process. That is what the amendment is about and I hope that the minister will be able to support it.

The discussion at stage 1 and stage 2 was good. If the amendment was agreed to, it would strengthen the bill. Of course we would have to review it over time, but it is better to make the change at this stage rather than come back in five years’ time, wishing that we had done it and having to allocate more parliamentary time to the matter.

I support the amendment.

Margaret Mitchell (Central Scotland) (Con): The question of whether we should include deciduous trees in the bill was discussed at length in the committee. Scothedge presented compelling evidence for including them in the bill. In fact, it suggested that one in five cases in which quality of life and enjoyment of property were affected involved deciduous trees and that the definition should therefore be amended to include them in their own right. Equally, concerns were expressed by other organisations.

The issue is complex. However, having considered all the issues at length, the Scottish Conservatives are minded to support Anne McTaggart’s amendment.

15:00

Stuart McMillan (West Scotland) (SNP): I have a couple of comments to make.

I welcome Anne McTaggart’s amendment and am delighted that I dissented at stage 1 to keep the item on the agenda so that we could discuss it further at stage 2 and today.

I have a question that I hope that Anne McTaggart will be able to answer in summing up. Can she provide any information about an increase in cases that might be covered by the amendment so that, when we discuss issues with our constituents after today, we can perhaps provide a bit more clarity on the cases that they have?

Patrick Harvie (Glasgow) (Green): I apologise for coming to the chamber a wee bit late for the debate, given the early start.

The Deputy Presiding Officer (John Scott): That apology is noted.

Patrick Harvie: As a result, I may have missed something in Anne McTaggart’s initial comments. If she has covered this matter already, I hope that she will be able to reprise what she said in her closing remarks.

The Scottish Wildlife Trust and the RSPB have given evidence and argued against the amendment, particularly in relation to the possible impact on biodiversity. A constituent has written:

“Urban biodiversity is increasingly important both for birds and pollinators many of whom are suffering serious
decline. Green corridors through cities can be critical and large trees are essential for that to be viable for many species.”

Will Anne McTaggart respond to those criticisms from that constituent and from the two non-governmental organisations that gave evidence?

The Minister for Local Government and Planning (Derek Mackay): Anne McTaggart’s amendment 5 reflects the amendment that she lodged at stage 2, and it seeks to widen the bill’s definition of a high hedge to include all types of trees and shrubs by removing the words “evergreen or semi-evergreen” from section 1.

At stage 1, I said that the Government had quite a relaxed view of the definition in the bill and that it would listen to what members think is the appropriate way forward, but I made it clear that I would want to consult local government if we were to propose changing the definition substantially.

I therefore wrote to local authorities at stage 2 to seek their views on the potential impact of widening the definition of a high hedge in the ways proposed. I remain grateful to Anne McTaggart for agreeing to withdraw her amendment at stage 2 to enable the Government to consider the responses from local authorities on the proposed change before reaching a decision on the issue.

I have received a total of 18 responses from local authorities. There was a broad mix of views. One council welcomed the amendments and another council agreed that they should be made. A further council had no issues with them, and two councils had no comments. The remaining councils raised objections to them.

Those objections included concerns that the amendments would capture field hedgerows; concerns about the potential impacts on wildlife and the appearances of towns; and concerns that decisions would be more difficult, time consuming and costly to make. Some of those concerns also reflected representations that I have received from the Scottish Wildlife Trust and RSPB Scotland regarding the potential impact on biodiversity of widening the definition.

I have discussed those issues with Mark McDonald and considered how those concerns can best be addressed. I think that the key is to ensure that the Government’s guidance to local authorities makes it clear how those considerations should be taken into account in reaching decisions on high hedges, and I am satisfied that the bill will enable that to happen.

Patrick Harvie: Will the minister reflect on the biodiversity arguments as well as those that he has listed? Will biodiversity specifically be considered in guidance?

Derek Mackay: I am sure that that is a reasonable request and that those arguments can be considered when guidance is produced and issued in due course.

I have every confidence that local authorities will use the guidance appropriately and will be able to take proper account of all the concerns in reaching their decisions. I know that the first step in that process was taken on Monday this week, when representatives of local authorities across Scotland attended a meeting with Government officials in Edinburgh to discuss the implementation of the legislation.

I have confirmed to Mark McDonald that the Government would welcome the participation of the Scottish Wildlife Trust and RSPB Scotland in future meetings on the development of the guidance to ensure that their concerns are addressed. I am also content that the bill provides that local authorities can recover the costs associated with high hedges, although I am happy to keep that under review as part of the Government’s continuing dialogue with local authorities on the issue.

I can confirm that the Government will support Anne McTaggart’s amendment 5.

Mark McDonald (North East Scotland) (SNP): As I have taken the bill forward I have been keen to listen to the views and representations of members, interested organisations, professional bodies and members of the public. I know that many people are happy that the bill’s current definition of a high hedge will solve the vast majority of high hedge problems, the typical scenario involving fast-growing conifers.

Although the current definition includes hedges containing deciduous trees and shrubs as long as they do not form a majority of the hedge, I have been conscious that that definition would not deal with problems caused by high hedges that are wholly or mainly composed of deciduous trees or shrubs. Although wholly deciduous high hedges would typically pose less of a problem than coniferous hedges in respect of forming a barrier to light, I want to ensure that the bill solves as many problems as possible. I therefore have sympathy with people whom I have spoken to or who have written to me about problems with deciduous hedges.

For me, the question has been whether the bill can be extended in that respect without causing problems for its operation in practice. Some of the potential problems have been highlighted in correspondence, to which Patrick Harvie alluded and which members will have recently received, from the Scottish Wildlife Trust and RSPB. Their correspondence re-emphasises the points that they raised at stage 1 about the greater wildlife
and biodiversity value of deciduous trees in comparison with conifers, and it underlines their concerns about the potential for a wider definition to have a negative impact on biodiversity.

Those are important issues, which deserve serious consideration, and officials supporting me in relation to the bill met representatives of both those organisations at a very early stage in the bill’s development to ensure that my consideration has been fully informed. As a result of that, I am aware that there are already many measures in place to protect wildlife and biodiversity, ranging from legislation such as the Nature Conservation (Scotland) Act 2004 to local authorities’ biodiversity action plans. Local authorities will need to take all those protections into account in making decisions regarding high hedges, and I am satisfied that they are capable of doing so.

For that to happen in practice, it is important that the guidance that the Government is to issue on the operation of the legislation provides full details regarding those matters. I have discussed the issue with the minister, and he has agreed that the Scottish Wildlife Trust and RSPB will be invited to contribute to and comment on the guidance before it is published to ensure that it fully addresses their concerns. I have written to both organisations to confirm that, and I hope that they will accept the minister’s invitation to participate actively in the development of the guidance.

I have been keen to ensure that the bill provides local authorities with a means of resolving disputes without demanding that they find additional resources to do so. I was pleased that the Minister for Local Government and Planning wrote to local authorities at stage 2 to consult them on the potential impact of widening the bill’s definition. I believe that the majority of the issues that local authorities raised about that potential impact can also be addressed through the guidance that will be produced by the Government. I know that local authorities will be fully involved in that, and I welcome the minister’s confirmation that the initial meeting to discuss implementation earlier this week was a positive one.

The main issue that cannot be addressed by way of guidance relates to the concerns that were expressed by some authorities about the potential for additional costs to be incurred in dealing with deciduous hedges. I am satisfied, however, that the bill provides that local authorities can charge on a cost recovery basis, and that the flexibility exists for different fees to be charged for different types of case, should local authorities choose to do so. That should enable local authorities to address any issues around additional costs should that prove to be necessary in practice.

Taking all of that into account, I am happy to support Anne McTaggart’s amendment 5, and I urge all members to do likewise.

Anne McTaggart: I am pleased that the Minister for Local Government and Planning and Mark McDonald, the member in charge of the bill, have fully considered my amendment and will be supporting an expansion of the definition of a high hedge. I am grateful to have received cross-party support on the issue, and I thank all members who have made thoughtful contributions to the debate.

I recognise the importance of protecting biodiversity in all areas of Scotland, and I am reassured that the bill will not have a negative impact on local wildlife populations. I anticipate that the bill will only apply to a limited number of cases, where all other options have been exhausted. In those circumstances, it is right that we offer home owners a remedy to on-going disputes and an opportunity to remove intrusive trees and hedges from neighbouring properties.

Stuart McMillan asked about the financial impact of an increase in cases following the expansion of the scope of section 1. I reassure members that section 25 provides for local authorities to recover the costs of enforcement. It is clear that expansion of the definition will not vastly increase the financial burden on local government. The campaign group Scothedge says that only 20 per cent of its members are in dispute about a deciduous high hedge, and it anticipates that the increase in workload will be minimal.

I support the bill as a means of resolving community breakdown following disputes over hedges on neighbouring properties. The bill should be fit for purpose, offering a remedy to all who suffer from such issues. That is why I lodged amendment 5 and strongly believe that it will increase the bill’s scope and effectiveness.

Amendment 5 agreed to.

Section 31A—Report on operation of Act

The Deputy Presiding Officer: Amendment 2, in the name of Margaret Mitchell, is grouped with amendments 3 and 4.

Margaret Mitchell: Amendment 2 would reduce the maximum period after which a review must be carried out from five years to two years. The bill was amended at stage 2 to ensure that the legislation will be reviewed, but the amendment set an upper level of five years, which is potentially too long. The legislation will have bedded down sufficiently after two years. Particularly now that deciduous trees have been included in the bill’s scope, a review could and should be carried out as soon as possible.
Amendment 3 would reduce the period that is allowed for publication of the report on the act’s operation from 18 months to 12 months.

Mark McDonald: Does Mrs Mitchell agree that there is nothing in the current drafting of section 31A that would prevent a review from being carried out and a report from being published earlier?

Margaret Mitchell: I concede that, but it might be five years before a review is carried out and six and a half years before the report is published. There is nothing in the bill that would stop all that taking a very long time.

As the bill stands, the report on the operation of the act must be published within 18 months of the end of the review period. The point that I want to emphasise is that, if the review period remains up to five years, it might be six and a half years before a report is published, which is far too long.

Amendment 4 specifies four aspects that would have to be covered in a report on the operation of the act. Reports would not be limited to those areas but would have to include comment on them. The four areas are: how local authorities have exercised their functions under the legislation; what the costs to local authorities have been of implementation; what issues have arisen in relation to the definition of “high hedge”; and whether the act should be amended to include reference to deciduous trees and shrubs.

Given that Anne McTaggart’s amendment 5 has been agreed to, the third and fourth aspects are even more important. Deciduous trees are now included by default, but amendment 4 would ensure that consideration is given to whether the legislation should include specific reference to them.

Although it is to be expected that the four aspects that I set out would be covered in a report on the act’s operation, amendment 4 would ensure that they are considered.

I move amendment 2.

15:15

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): We very much welcomed the amendment in the name of Christine Grahame and moved by Anne McTaggart—

Christine Grahame: Other way round.

Stewart Stevenson: I am reminded that the amendment was moved by Anne McTaggart and supported by Christine Grahame.

The context of that amendment touches in many ways upon what Margaret Mitchell wishes to do with her amendments. My understanding of the last part of amendment 4 is that its context is the need for the definition of high hedges to be changed. Now that that is no longer part of what reasonably can be included in amendment 4, the whole rationale for this set of amendments falls.

I note that Margaret Mitchell has offered no specific arguments to support the reduction of the period after which a review must be carried out from five years to two or the reduction in the period that is allowed for publication of the report on the act’s operation from 18 months to 12. In a sense those figures are arbitrary, but I would argue in favour of the five-year period because this issue will touch 32 local authorities and, indeed, the two national parks.

The experience in different parts of Scotland will vary. The climate in north-east Scotland is very different from that in the south-west and the issue in the north-east—in so far as it exists at the same level as in the south-west—will be different. It is very unlikely that we will have anything approximating to complete understanding of the effect of the bill within a period of two years.

I will listen carefully to any arguments that say otherwise, but I am not minded to support any of the amendments in this group. The context for them has now been overtaken by events and the argument for the proposed new timescales has not properly been made.

Stuart McMillan: I lodged the original amendment that included section 31A in the bill because I thought that the five-year period would provide for a measured examination of the legislation. As Stewart Stevenson has said, much of the reasoning for the five-year period was to do with the definition of high hedges, because we were still deciding whether that definition should be widened. Stewart Stevenson is correct that events have overtaken this particular group of amendments.

It is also worth considering that, if the amendments in this group are accepted today, members will be looking at the issue of high hedges again towards the end of this session of Parliament. I do not think that the public would want us to do that or thank us for doing that, so I hope that Margaret Mitchell will consider withdrawing her amendments.

Derek Mackay: Amendments 2 and 3 seek to impose a tighter timeframe for the review period set out in section 31A and a tighter timeframe for when a report must be made by a committee or sub-committee of the Parliament. Amendment 4 details what should be scrutinised by that sub-committee.

Amendments 2 and 3 both provide for less time than was agreed at stage 2, when the Local Government and Regeneration Committee agreed...
to Stuart McMillan's amendment adding section 31A to the bill. Margaret Mitchell suggests that it might be six and a half years before a report on the review is forthcoming, but that is the absolute maximum time period.

At stage 2, I made the point that a future committee would not want to be bound by a timescale that provided no flexibility. —[Official Report, Local Government and Regeneration Committee, 6 March 2013; c 1830.]

I reiterate that point. Shortening the maximum review period to two years and the maximum reporting period to one year after that effectively gives no discretion to the future committee to determine its own priorities and set the appropriate timescales.

On amendment 4, post-legislative scrutiny is not necessary for every piece of legislation that we produce. If it was, that would suggest that we did not have confidence in the legislation that we considered and enacted. A mandatory reporting requirement such as that in section 31A needs particular justification. I understand that the Local Government and Regeneration Committee had particular concerns in relation to this bill and that that is why we have section 31A.

The review requirement was agreed by the committee at stage 2 to reflect particular concerns that were being expressed and to provide the comfort of post-legislative scrutiny on the bill. However, I have strong concerns about going further than section 31A goes. It is one thing to require a committee to report by a certain date; it is another to dictate in detail the terms of its report. Members can leave it up to a future committee to determine the content of its report.

For those reasons, I encourage members not to support Margaret Mitchell’s amendments.

Mark McDonald: Although I am grateful that Margaret Mitchell did not bring back some of the amendments that she withdrew at stage 2, I am nevertheless disappointed that she has sought to pursue these amendments. They seek to set a shorter timeframe for the review period that is set out in section 31A and for the period for making a report after review. They also seek to detail in the bill what should be scrutinised in that report.

Section 31A was added at stage 2 following a committee recommendation for post-legislative scrutiny, and the committee’s unanimous recommendation was a five-year period. That is in the amended bill, and the member should know that the provision introduced by Stuart McMillan’s amendment is flexible enough to allow that period to be shortened should a future committee wish it to be. Section 31A provides that the review period shall end five years after the date on which section 2 comes into force “or on such earlier date as may be determined by the committee or sub-committee making the report”.

It is therefore already the case that, if the future committee decides to do so, it may set a shorter timeframe for the review period.

Section 31A also provides that a report “must be made no later than 18 months after the end of the review period.” Again, that means that the committee or sub-committee can make the report earlier if it so wishes. I am satisfied that section 31A gives a sufficient balance between the certainty that the legislation will be reviewed within five years and the flexibility for the future committee to make a judgment on when best to conduct its business.

Amendment 4 seeks to ensure that any report on the operation of the legislation considers “the way in which local authorities have exercised their functions”, the costs that they have incurred in exercising those functions, “any issues arising from the meaning of ‘high hedge’” and whether the definition of a high hedge “should be amended to apply also to a row of two or more deciduous trees or shrubs.”

As we have amended section 1 to allow deciduous trees to be included, the requirement in amendment 4 for the report to assess whether deciduous trees or shrubs should be included does not appear to make sense. For that reason alone, I ask Margaret Mitchell not to move that amendment.

That also demonstrates the danger of trying to detail in legislation how a committee of the Parliament should go about its business. I am perfectly happy to leave the committee to determine for itself what should be in its report rather than impose prescriptive detail in legislation, as is suggested by Margaret Mitchell.

Section 31A is designed to guarantee post-legislative scrutiny of this new piece of legislation, and I am satisfied that it meets that purpose without any amendment. I therefore ask Margaret Mitchell to withdraw amendment 2 and not to move amendments 3 and 4. Otherwise, I urge members to resist amendments 2, 3 and 4.

Margaret Mitchell: The combination of the three amendments—especially amendment 4—ensures that there is clarity that deciduous trees are included rather than, as in the current situation, included merely by default. There is the opportunity to improve the bill in that way by including amendment 4.

Stewart Stevenson appears to ignore the fact that, under the provisions as they currently stand,
the report on a review’s findings could be delayed and could take up to six and a half years. I consider that far too long. There is an opportunity—which should be grasped—to ensure that the bill is operating as intended, and I see no reason why any committee scrutinising it would not want to ensure that local authorities have exercised their functions according to the bill. We do not want the bill to sit on the shelf and be ignored. Including the provision to look at how it has operated after three years would ensure that that would not happen.

Mark McDonald: Does Mrs Mitchell agree that amendment 4 would potentially set an alarming precedent of legislation prescribing what a committee of the Parliament should do as part of its workload?

Margaret Mitchell: If the member takes the time to look again at the provisions regarding what must be covered in the report, he will see that the report would not be limited to those areas but would have to include comment on them. I see no reason why those areas should not be commented on, and the amendment gives some guidance on the issues that the committee thought were important in scrutinising the bill. The amendment would ensure that those issues are included in the report, in order to determine whether they have been acted on and whether the bill is working properly when it is implemented.

Stuart McMillan: Will the member give way?

Margaret Mitchell: If the member does not mind, I will make some progress.

Secondly, amendment 4 looks at the cost to local authorities, which is germane—is that preventing them from going ahead and implementing the bill as it should be implemented? It looks at the whole definition and it provides an opportunity to include deciduous trees specifically in the legislation.

Stuart McMillan: I thank Margaret Mitchell for taking an intervention. Does she agree that, if the amendments were passed, the review would take place in this parliamentary session? Does she agree that that is probably not a good use of parliamentary time—to bring forward a bill, pass it and then have a review within the same parliamentary session?

Margaret Mitchell: If this Parliament has one failing, it is lack of scrutiny, and we have just found out why from Stuart McMillan. If anything, passing the amendments would set a precedent that when we pass legislation we look at how it works in practice and that we are serious about legislation and we pass it because we believe in its provisions.

I press amendment 2, and I intend to move amendments 3 and 4.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. I suspend the proceedings for five minutes.

15:26

Meeting suspended.

15:31

On resuming—

The Deputy Presiding Officer: We will now proceed with the division on amendment 2.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beanish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Eltwick, Roxburgh and Berwickshire) (Con)
Macintosh, Ken (Eastwood) (Lab)
Macik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Mline, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Morningside) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Edie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)

The Deputy Presiding Officer: There was a division.

Amendment 2 disagreed to.

Amendment 3 moved—[Margaret Mitchell].

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?
The Deputy Presiding Officer: The result of the division is: For 44, Against 62, Abstentions 0.

Amendment 3 disagreed to.

Amendment 4 moved—[Margaret Mitchell].

The Deputy Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Eltrick, Roxburgh and Berwickshire) (Con)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scallon, Mary (Highlands and Islands) (Con)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chie (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
McDonagh, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
High Hedges (Scotland) Bill: Stage 3

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-06038, in the name of Mark McDonald, on the High Hedges (Scotland) Bill.

Before I invite Mark McDonald to open the debate, I call the Cabinet Secretary for Finance Employment and Sustainable Growth, John Swinney, to signify Crown consent to the bill.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): For the purposes of rule 9A.13 of the standing orders, I advise Parliament that, having been informed of the purport of the High Hedges (Scotland) Bill, Her Majesty has consented to place her prerogative and interests in so far as they are affected by the bill at the disposal of the Parliament for the purpose of the bill.

The Deputy Presiding Officer: Many thanks. We can now begin the debate. I call Mr McDonald, if he is ready.

15:35

Mark McDonald (North East Scotland) (SNP): I am delighted to open the debate, Presiding Officer.

I am very pleased that Parliament has before it the High Hedges (Scotland) Bill, and I am delighted that we have this opportunity to put this new law in place to benefit people in Scotland.

I have found that taking forward the legislation has been very rewarding, but I am conscious that this is not the first time that Parliament has considered high hedges and that legislation on the matter has a long history. Indeed, proposals for member’s bills on the issue were launched on three previous occasions, without those ever proceeding to be considered as bills. I am therefore pleased to be completing a piece of unfinished business.

The then Scottish Executive consulted on the issue in 2000, although the number of responses was relatively small in comparison with the

The Deputy Presiding Officer: The result of the division is: For 43, Against 63, Abstentions 0.

Amendment 4 disagreed to.

The Deputy Presiding Officer: That ends consideration of amendments.
number received in response to a similar consultation in England and Wales the previous year.

The more recent consultation undertaken by the Scottish Government in 2009 attracted in excess of 600 responses, of which 93 per cent were from private individuals, the majority of whom described themselves as being “in dispute”. Not surprisingly, a significant majority of respondents—77 per cent—favoured a legal solution to the problem, and more than two thirds favoured replication of the English and Welsh legislation. I am grateful to Fergus Ewing, who had already done a substantial amount of work on the issue when he had ministerial responsibility for the area, not least that of leading the work behind the 2009 consultation. That gave me a strong basis on which to build my own proposals.

Both I and the officials working with me have met many people and organisations in the course of preparing for the bill and taking it forward, including the Scottish tree officers group, the Convention of Scottish Local Authorities, the Scottish Court Service, the Scottish Mediation Network and the Woodland Trust. I also visited South Tyneside Council and Hartlepool Borough Council for a first-hand account of how similar legislation works in England, and met with the campaigning organisation Scotedge a number of times. The officials supporting me have met a further range of organisations, including the Scottish Wildlife Trust, RSPB Scotland, Scottish Natural Heritage and the directorate for planning and environmental appeals.

We heard earlier that the Scottish Wildlife Trust and RSPB Scotland have recently written to MSPs to express their concerns about the inclusion of deciduous shrubs and trees in the bill, and I have acknowledged their concerns about the potential impact on wildlife and biodiversity. As I said earlier, I am satisfied that the guidance to be provided by the Government on the bill can address those issues and ensure that those potentially negative impacts do not arise in practice. I am therefore grateful that the minister has agreed that both the Scottish Wildlife Trust and the RSPB will be invited to participate in the drafting of guidance on the bill. I am happy, too, that Scottish Natural Heritage has already indicated a willingness to participate in developing the guidance, as it, too, has invaluable expertise to share. I am also grateful to the minister for ensuring that local authorities have been consulted on the potential impact of widening the bill’s definition of a high hedge. I know that many of the issues raised in response to that were considered at the Government’s meeting with local authorities on Monday to discuss implementation.

One of those issues is the impact of the bill on woodland or forests, which Stewart Stevenson raised at stage 1. The short answer is that this is a bill about high hedges, so it is not designed to impact on woodland and forests, which as a general rule are not planted as hedges. I confirm that the Forestry Commission has been consulted during the bill’s progress, and I am sure that the issue can be clarified in guidance to practitioners.

I now turn to the bill itself. It has become clear to me—I am sure that many members across the chamber will recognise this—that there are a number of apparently intractable disputes across Scotland that involve the presence of a high hedge, with no easy resolution in sight and no apparent willingness on the part of neighbours to resolve those disputes amicably. In my view, the bill is the best way in which to achieve a practical and sustainable resolution to a long-standing problem. I will now take a short time to explain the bill.

The bill enables those who consider themselves to be adversely affected by the height of a high hedge to apply to their local authority for a high hedge notice. It gives those people an opportunity to put their arguments to an independent body and to have their voices heard, which is an opportunity that they do not have at present. It is important to note that an application must specify all the steps that have been taken to resolve the dispute prior to the application, and local authorities will be able to dismiss applications if that has not been done. The local authority will decide whether the hedge is adversely affecting the reasonable enjoyment of the applicant’s property. In doing so, it will take account of the views of the owner of the hedge and all relevant factors, including the amenity of the wider area.

The bill’s definition of a high hedge has been the subject of much discussion. The bill as introduced mirrors the definition that is used elsewhere. It defines a high hedge as a hedge—that word is important in making it clear that the bill will not usually impact on forests or woodland—that “is formed wholly or mainly by a row of 2 or more evergreen or semi-evergreen trees or shrubs”, that “rises to a height of more than 2 metres” and that “forms a barrier to light.”

The amendment that the Parliament has agreed to today widens the definition to include deciduous trees and shrubs by removing the restriction.

The bill gives local authorities powers to make and enforce decisions about high hedges. They will be able to assess situations and make independent decisions on whether high hedges
are affecting the reasonable enjoyment of properties. It is fair to point out, however, that the local authority’s decision will seek to strike a balance between the competing rights of neighbours, and the representations of both parties will be taken into account by the local authority. It must make a decision having taken all the circumstances into account, including the amenity of the wider neighbourhood, and if it finds that a high hedge is having an adverse effect, it must advise whether any action should be taken.

Where the local authority decides that action should be taken, it will issue a high hedge notice. The notice will set out what initial action is required to be taken to address the adverse effect and what preventative action is required to prevent the adverse effect from recurring. The high hedge notice will also set out the timeframe within which action should be taken.

The bill provides a right of appeal to the Scottish ministers against decisions by local authorities. In practice, appeals will be heard by the directorate for planning and environmental appeals, and it will issue full details of how that process will work in practice in due course.

If an owner of a high hedge does not take the action that is specified in the high hedge notice, the local authority will have the power to enter the property and undertake the work itself. It will then be able to recover the costs of doing so from the hedge owner. In summary, the bill provides a mechanism for resolution.

Recourse to the local authority is, however, to be used as a last resort. Primary responsibility for resolving disputes over high hedges should lie with the individuals concerned in the first instance. As I said, the bill requires that applicants for a high hedge notice must have taken all reasonable steps to resolve the matter before they make an application to the local authority.

The success of that approach is borne out by experience elsewhere. In England and Wales, what started off as a large number of inquiries became a number of formal applications, which quickly became a small number of formal complaints and almost no instances of enforcement action. It is important to emphasise that the application to the local authority should be the last resort, not the first.

The bill also provides for local authorities to charge for high hedge notice applications. In difficult financial times such as these, I consider it important to enable local authorities to recover the costs of making a decision. However, I made it clear at the outset that I do not intend the process to be a revenue raiser for local authorities, and the bill reflects my view. Fees must not exceed an amount that local authorities consider represents the reasonable costs of deciding on an application. Should a local authority undertake work in relation to a high hedge, it will be able to recover any costs in that regard as well.

As I said, it appears from the figures that we gathered in respect of England and Wales that a large number of initial inquiries became a small number of formal complaints and even fewer cases where action by local authorities was necessary. That experience shows that simply creating a formal mechanism for resolving disputes encourages the resolution of most cases without the need for local authority involvement. At stage 1, Scothedge said that, with the passing of the bill, 92 per cent of the cases of which it is aware will resolve themselves. Local authorities can therefore have some reassurance that the costs associated with the process should not be too high and that the number of cases involved should be manageable.

I was interested to hear all the evidence at stage 1. I took the opportunity to attend all the committee’s evidence-taking sessions. There was a lot of useful evidence from a number of organisations including Scothedge, the Woodland Trust Scotland, RSPB Scotland, the Scottish Wildlife Trust and Bell Ingram, and from officials from the Isle of Man, the Scottish tree officers group and Dundee City Council. We heard evidence that indicated that similar legislation is in daily use elsewhere and that there is no reason why the approach could not work in Scotland. The evidence also indicated that the existence of the legislation, rather than necessarily its enforcement, will resolve many of the problems associated with high hedges.

Much of the discussion at stage 2 centred on the meaning and definition of a high hedge. That discussion continued today, and I was pleased to support Anne McTaggart’s amendment this afternoon. That amendment will widen the scope of the bill to ensure that it can deal with all hedges that are impacting adversely on the reasonable enjoyment of domestic property.

At stage 2, members were also interested in the fee provisions, which I have described. I emphasise that the bill provides the flexibility for local authorities to set their own fee levels in accordance with local circumstances.

A significant collective effort has got us to this stage, and for those who will implement the bill, the hard work is just beginning. I am aware that the Government held an implementation meeting on Monday in Edinburgh with local authority representatives and others. The meeting considered crucial matters, such as when the bill will be implemented, when local authorities will be ready to work with the provisions, what guidance for members of the public might contain, how
members of the public might meet pre-application requirements, approach neighbours and make complaints and what the process would be thereafter. The meeting also considered what guidance for practitioners might contain, as it might also address the factors that a local authority might consider when making decisions.

The intention is that the guidance will be developed over the next six months or so to enable local authorities to make the necessary financial and organisational changes to implement the new powers in the next financial year. I look forward to the legislation being fully in place and used effectively.

I am therefore pleased—indeed, delighted—to move,

That the Parliament agrees that the High Hedges (Scotland) Bill be passed.

15:46

The Minister for Local Government and Planning (Derek Mackay): I am pleased to be here for the debate. A legislative framework to tackle high hedges was a manifesto commitment of this Government, and I am pleased to see it come to fruition.

Mark McDonald has outlined the parliamentary history of the issue, which I do not intend to rehearse. As he said, legislation on high hedges has been a long time coming, which highlights just how difficult the issue has been to resolve.

I thank Mark McDonald for introducing the bill. It was a significant undertaking that has nevertheless made speedy progress through Parliament. In February 2012, he explained to the Local Government and Regeneration Committee his reasons for not consulting on his proposal to introduce a bill, and here we are, slightly more than a year later, debating the bill at stage 3. Of course, that work could not have progressed so quickly without the work that my colleague Fergus Ewing undertook when the issue came under his portfolio, which was a strong foundation upon which Mark McDonald could build the bill.

I, too, offer my thanks to the Local Government and Regeneration Committee. I gave the Government’s views on the bill to the committee during its evidence session on 19 December, and followed the previous evidence sessions with great interest. I also thank the Finance Committee and the Subordinate Legislation Committee. The level of detailed consideration given by all committees of the Parliament ensures that legislation is as good as it can be.

The Government has supported the bill consistently during its progress through Parliament. We recognised that Scotland was the only part of the United Kingdom without high hedges legislation. Scotland has benefited in learning from other parts of the UK, and I hope that members will agree that we have before us a well-thought-out bill that will address high hedge problems across Scotland.

As well as giving evidence to the committee during its stage 1 consideration of the bill, I was happy to participate at stage 2, during which amendments that sought to widen the scope of the bill were considered. At stage 1, I said:

“The Government has taken quite a relaxed view on that ... we will listen to what Parliament thinks is the appropriate way forward.”—[Official Report, 5 February 2013; c 16391]

At stage 2, I advised that I had written to local authorities to seek their views on the potential impacts of widening the definition of a high hedge in the ways proposed. Earlier this afternoon, I outlined the responses that I received from local authorities in respect of an amendment at stage 2. I also advised that my officials, who have been supporting Mark McDonald, will work with local authorities to produce guidance that will address a number of their concerns, and I am satisfied that the flexibility within the bill will enable local authorities to address those and other concerns.

The first step in that work with local authorities took place earlier this week when representatives from a number of local authorities attended an implementation meeting with officials. I was pleased that representatives from Scottish Natural Heritage and the directorate for planning and environmental appeals also attended to provide their input. It will be helpful for members if I discuss some of the detail of that meeting. It was a positive meeting, at which those who attended engaged openly with my officials on how best to make the bill work as we move forward towards implementation.

Of particular interest was the guidance that will be produced to accompany the bill and what it needs to cover. As Mark McDonald suggested, there will be guidance for members of the public and for practitioners. Guidance for members of the public might contain examples of the pre-application requirements that local authorities might consider, how people might approach a neighbour who owns the high hedge, and what the process would be thereafter, should their approach have been unsuccessful. It would also detail how to make an application or appeal a decision.

There was also a discussion about guidance for practitioners and what that might contain. Issues that might be addressed include the factors that a local authority might consider in making its decision, whom it might consult in certain circumstances and the impact of all those things on fees. I was pleased that the meeting was also
attended by an official from the directorate for planning and environmental appeals, who was able to explain to those present the circumstances in which appeals could be made. The official also covered how appeals might work—for example, what advice might be required by those hearing the appeals and how that would be addressed.

Those at the meeting also discussed the committee’s recommendation in its stage 1 report that the Scottish Government

“examine the feasibility of establishing a central tree officer to provide a core of expertise to local authorities”.

Although the initial views of the local authorities my officials met on Monday suggested no great desire for the provision of such a post, they indicated their willingness to give the recommendation further consideration. It was also pointed out that it would be important to seek the views of the councils that were not represented at that meeting.

The committee also recommended that

“the Scottish Government take the opportunity of the on-going review of Scottish Planning Policy to examine the issues raised such as residential development in proximity to woodlands”.

I am happy to confirm that, as I indicated in my response to the Local Government and Regeneration Committee at stage 1, my officials will ensure that the issue is considered in the review of Scottish planning policy.

SPP sets out ministers’ priorities for how we plan for Scotland, while the national planning framework sets out where nationally important developments should take place. The existing SPP was published in 2010. In September 2012, I announced a review of it, highlighting three key drivers: bringing the policy up to date; sharpening the focus on planning’s role in supporting sustainable economic growth; and emphasising the importance of place. The review has been informed by a period of pre-draft engagement, in which stakeholders’ views have been sought on how the existing SPP works in practice and on any priorities for change.

With regard to place, we do not propose to change the policy, but the intention is to draw in existing policy from “Designing Places” and to set place-making at the heart of planning policy. The draft SPP will stress that, in order to create successful places, we must consider the relationships between buildings, natural resources, travel and other infrastructure. A draft will shortly be published for consultation and we expect the revised SPP to be in place by the end of 2013. It is also worth noting that the existing SPP contains policy on protection of woodland, the very point made by the committee in its consideration of the bill.

I am pleased to continue to offer the Government’s support beyond the bill process itself and into the implementation phases; indeed, as members have heard, that work has already begun. The meeting that my officials had on Monday with representatives from local authorities was simply the first step. That on-going and valuable engagement with councils will ensure that the bill is implemented as intended and will provide local authorities with tools to help them. Any such tools need to be practical and workable. Given that Parliament has now agreed that the bill should be broadened, that implementation work and the provision of guidance will be particularly important.

I welcome the bill and encourage members to support it at decision time.

The Deputy Presiding Officer: I call Sarah Boyack. You have a fairly exact five minutes, Ms Boyack.

15:53

Sarah Boyack (Lothian) (Lab): I take the hint, Presiding Officer.

Like other colleagues, I point out that this legislation has been a long time coming and builds on the work of many people; indeed, my former colleague Scott Barrie had two goes at promoting a bill on this issue in the Parliament. For all the reasons that others highlighted in the earlier debate on amendments, it is important that we get the detail of the bill right.

First, I thank Mark McDonald for picking up this issue and steering it to today’s concluding debate. I also thank the committee clerks, everyone who submitted evidence to the committee, MSPs more widely in considering the bill and the committee for its work in scrutinising it.

The bill’s crucial purpose is to put in place a process to resolve neighbour disputes about high hedges that people believe are interfering with the reasonable enjoyment of their domestic property. The process that will now be in place to enable applications to be made to the relevant local authority and to give it the power to settle disputes between neighbours about high hedges is a step welcomed by the many people who find their lives disrupted by the fact that they cannot get a resolution on a matter that is preventing them from enjoying their property.

The bill does not mean that everybody will be happy at the end of the day, because the process is about dispute resolution. The onus will be on the local authority to take everybody’s views into account and consider whether a hedge is having an adverse effect. The bill gives a local authority the opportunity to issue a high hedge notice to
require the hedge owner to remedy the problem and prevent it from recurring. There is also a big stick at the end of the process to enable the authority to do the work itself and recover the costs. I share Mark McDonald’s hope that the new framework will concentrate minds to the extent that some of the most long-standing disputes will be resolved through negotiation, without having to go through the process set out in the bill. Mark McDonald outlined the fact that the provisions are not free—that will also concentrate many people’s minds.

Although there is a relatively small number of disputes, a key part of the bill is that it will offer the prospect of dispute resolution and allow people to move on. Anyone who has taken representations or evidence from a constituent who is involved in such a dispute will be aware that it dominates their lives and prevents them from moving on. I hope that the bill will be of use to many of those people.

The fact that there is a right of appeal to the Scottish ministers against the decision of an authority on any high hedge notice makes sense and provides an effective check and balance to the system.

Labour signed up to the principles of the bill when it was introduced but, at the stage 1 debate, we argued for a close look at the detail of the bill, especially the definition. We were concerned that some of the most difficult disputes would not be addressed by the bill and that it would be years before the Parliament was likely to return to the issue. Our discussion on the amendments showed that there is no appetite among the majority of members in the chamber to come back to the bill early doors. I am therefore particularly glad that Mark McDonald and the minister were prepared to consider Anne McTaggart’s amendment and to work with her to agree wording that they could support during today’s stage 3 consideration.

The campaign group Scothedge conducted a survey in 2009 that concluded that almost one fifth of respondents suffered from the impact of deciduous hedges, such as beech or rows of deciduous trees, so I am very glad that we have been able to strengthen the bill. The worry that there would be a huge number of high hedge complaints and cases following the introduction of the legislation in England has not transpired. Although the bill must be monitored, adding the tree preservation order to the new process gives us a robust system all round.

The representations from the SWT and RSPB Scotland provide a timely reminder that the local Government staff who are responsible for implementing the dispute resolution procedure will need clear guidance from the Scottish Government on survey work and clear policy criteria so that a view can be reached on the issues that they will have to act on locally.

I very much welcome the Minister for Local Government and Planning’s January letter, which he followed up with useful information about the meeting that was held on Monday. I am glad that the SWT and RSPB Scotland will be involved in the process, because getting all the stakeholders round the table will be crucial to the success of the bill.

We look forward to voting in favour of the bill.

15:58

Margaret Mitchell (Central Scotland) (Con):

Once again, I congratulate Mark McDonald on bringing the bill to the Parliament. I also pay tribute to members past and present who have kept the issue alive in the Parliament over the years. I thank the Local Government and Regeneration Committee clerks for their support at all stages of the committee’s consideration of the bill. In particular, I thank the various witnesses whose evidence has aided the committee and helped it to shape the bill.

High hedges are an emotive issue that has over the past decade been debated frequently in the Parliament—not least, as the Local Government and Regeneration Committee heard in its evidence, because of the negative impact that such hedges can have on the health and wellbeing of both parties involved in any disputes.

The bill offers a solution to the issue, once all other reasonable avenues for settling a dispute have been explored. As a result of today’s stage 3 consideration and Anne McTaggart’s amendment, the bill will allow a high hedge notice to be issued against the owner of a property when a hedge is formed wholly or mainly by a row of two or more trees or shrubs, rises to a height of more than 2m above the ground and forms a barrier to light. If the property owner does not subsequently take any measures to reduce the height of the hedge, the bill makes provision for the local authority to take action to reduce its height.

It is arguable that the biggest topic of debate during the bill’s consideration has been whether to include single deciduous trees. Although deciduous trees are not specifically referred to in the bill, they are now covered. Cognisance has been taken of the compelling evidence from Scothedge that suggested that one in five cases in which quality of life and enjoyment of property were affected involved a deciduous tree and that, therefore, the definition in the bill should be amended to include deciduous trees in their own right.
That will be a disappointment to the Scottish Wildlife Trust, which argued against the inclusion of deciduous trees because of the detrimental impact that it thought that that would have on urban wildlife and biodiversity, the potential for trees in wildlife reserves adjacent to housing to be affected and the economic cost. I hope that it will be possible to prove that those concerns have not been realised.

Mark McDonald: I seek clarification, because I think that I heard the member suggest that single deciduous trees would be captured by the change of definition. That is not what will happen as a result of the change of definition.

The Deputy Presiding Officer: I can give you back the time for taking an intervention, Ms Mitchell.

Margaret Mitchell: I actually said that although there had been a lot of discussion about single deciduous trees, deciduous trees—but not single deciduous trees—were now included. I concede that I might not have been as clear as I could have been.

Earlier, I moved amendment 2, which would have reduced the review period from five years to two years, and amendment 3, which would have reduced the period in which a report must be produced from 18 months to 12 months. Those amendments would have meant that it would have taken three years rather than a possible six and a half years before the issue was revisited. I still believe that requiring an assessment to be carried out no later than three years after the bill’s introduction would have been preferable, given the anxiety that high hedges can cause.

Crucially, my amendment 4 would have included in the bill provision to ensure an assessment of whether deciduous trees should be referred to specifically in the bill, rather than being covered by default, as is presently the case. In addition—and perhaps more important—it would have covered any issues that arose from the meaning of “high hedge”, as the bill is currently drafted. Sadly, my amendments were not agreed to, so it could take up to six and a half years for an assessment to be undertaken of how the bill is working in practice.

In my winding-up speech, I will highlight some of the other aspects of the bill in more detail. For now, suffice it to say that I am very pleased to see the bill completing the final stage of the legislative process.

16:03

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): As I am sure that other members will do, I congratulate Mark McDonald on bringing home this important bill. To that, I add my congratulations to Scothedge. We are employed to legislate, but the volunteers in Scothedge who have campaigned on high hedges over a long period exemplify the strength and depth that there is in Scotland, beyond the small number of people who are in the Parliament, to engage in the political process in a way that ultimately delivers for the public good. I commend the members of Scothedge, whose campaign is an excellent example of a voluntary campaign and who have persisted over a long period to see their objective delivered.

I say that as someone who, as a north-east MSP, has never been approached on the subject of high hedges during my time in the Parliament. For climatic reasons and because of the relatively large areas of land on which houses are built in a rural area, high hedges have not—to my knowledge—been as much of an issue in my area as they have been in other parts of Scotland. However, through the work of Scothedge and others, we have heard compelling evidence about the utter misery that is caused to many people across Scotland by the issue that we are discussing.

I was delighted to hear Mark McDonald say that a consultation response from the Forestry Commission Scotland has identified one of the things that I previously raised in relation to urban woodland as an issue that can be addressed.

As a member of the committee that dealt with this issue, I should remind members of some of the things that that committee said. Paragraph 67 of our stage 1 report remains as true now, in relation to the amended bill, as it was when we wrote it. It says:

“The Committee believes it is desirable that the application of the Bill seeks to resolve as many disputes as possible, but considers it unrealistic to expect any single piece of legislation in this area to resolve 100% of cases. This Bill is the simplest way of addressing the majority of cases relating to disputes over high hedges.”

Of course, following the extension of the definition, we might say that it will address the overwhelming majority of cases. Apart from that, I think that that comment stands the test of time.

One or two things have emerged during the passage of the bill that I think are useful. We have clarified that it is perfectly possible for action to be taken against a local authority, even though local authorities are responsible for guarding the principles and practices that are encompassed in the bill. We included national parks—I am delighted that Mark McDonald saw fit to lodge amendments on that. Further, we learned many things of which we were previously ignorant. I congratulate Christine Grahame on the horticultural explanations that the committee received. I have now heard of Russian vine and...
clematis montana rubens. I remain relatively ignorant about what any of that means, but I am sure that members of the committee who are more engaged in these matters might be better informed.

I have flicked through the stage 1 report while sitting in the chamber this afternoon, and I believe that almost every recommendation that the committee made appears to have been addressed, which is unusual—I assume that Kevin Stewart will touch on that when he speaks. It is a model of good parliamentary process, and I commend the bill to all my colleagues.

16:07

Anne McTaggart (Glasgow) (Lab): As a member of the Local Government and Regeneration Committee, I welcome the opportunity to scrutinise once again the proposals of the High Hedges (Scotland) Bill. I fully support efforts to address the problem of neighbour disputes that result from overgrown vegetation and agree that local authorities should have the authority to intervene in those cases.

My amendment, which was supported by Christine Grahame, has sought to ensure that the bill applies as widely as is reasonable, and that no individual is excluded from achieving a resolution to a problem arising from intrusive hedging as a result of a subtle technicality that is contained within the provisions.

It is our responsibility, as parliamentarians, to ensure that the measures that are contained within the bill are fit for purpose, and to fully address the concerns that communities might have about local wildlife populations and biodiversity.

The current provisions in the bill allow local authorities to exercise discretion in their consideration of applications and to take into account the wider effects of a removal order on the environment. I do not believe that the expansion of the definition of a high hedge will compromise the ability of local government to protect areas of local and regional significance. Further, I anticipate that the addition of deciduous species to the definition of a high hedge will be of minimal impact in practice.

Garden trees represent around only 1 per cent of Scotland’s woodland assets and single trees will not be covered by the provisions of the bill. Overall, I believe that that represents a pragmatic approach to dealing with a wide range of local concerns while delivering a remedy to those families who have suffered disputes with neighbouring properties for too long.

We must acknowledge that high hedges not only act as a barrier to light, but lower property values, obstruct boiler flues and block television cables. Overgrown vegetation can cause a variety of problems that make life difficult for the adjacent properties and encourage community breakdown.

I support the aims of the bill and believe that it is right that families that, for too long, have been involved in unsuccessful negotiations will be provided with a resolution to achieve an end to their neighbour disputes.

I thank my colleagues for their cross-party support. I also thank Mark McDonald, the member in charge of the bill, and Derek Mackay, the Minister for Local Government and Planning, for their support. I also thank the clerks of the Local Government and Regeneration Committee for enabling the bill to be agreed to—I hope—at 5 pm tonight.

The Deputy Presiding Officer (Elaine Smith): I advise members that there is a little bit of time in hand at the moment—not much, but a bit—for interventions.

16:11

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I am usually told that there is no time in hand. This is a first.

All credit to Mark McDonald, because it is not as easy as it looks to pilot a member’s bill. I have done it myself. Colleagues on the committee can be quite tough on you. He has had enough jokes about a privet member’s bill and cutting it down to size, so he will be glad to know that there are no horrible puns coming in my speech.

Stewart Stevenson: Apart from those.

Christine Grahame: Apart from those that I have trailed.

I also pay credit to others who have gone before. Scott Barrie worked for a long time on the issue, as did Fergus Ewing as Minister for Community Safety when, if I recall rightly, he tried to pursue it under nuisance legislation. It was difficult to find a way to frame the legislation.

It was very important to keep the definition to two or more shrubs or trees. As I said at stage 1—I will repeat it—we know an elephant when we see one and we know a hedge when we see one, but just try to define an elephant. It took a long time to agree how to define a hedge.

It was tempting to move into the arena of single trees, but that would have been a big mistake. It would have opened up—if I may use a metaphor that does not really fit—a whole can of worms, although I appreciate that single trees can raise issues and, indeed, cause many disputes in our neighbourhoods.
At stage 2 I said that the problem has been exacerbated by higher-density housing, together with our expectations about the use of our gardens. My home, which is 100 years old, once had only clothes poles in the garden for drying lots of clothes every day, pre-washing machines and tumble dryers. By the way, this is not the story of my life; the clothes poles predate me. The only deviation at one point was chickens during the second world war. I hasten to add that that was also before my time. What do we do now? We have conservatories, patios, decking and barbecues. We go to B&Q or Dobbies Garden Centres and some people buy and plant leylandii. The garden is called our outdoor living space. And why not?

Of course, the genesis of the bill was the growth—quite literally—of the leylandii, which some people do not appreciate when they plant it. Undoubtedly, it is a bit of a monster if it is allowed to grow unfettered. Members who missed or, worse still, heard my perorations on plants, shrubs and trees at stage 2 in the Local Government and Regeneration Committee—Stewart Stevenson referred to them—will be pleased to know that I do not intend to reprise them. However, if they are really interested, they will find them in the Local Government and Regeneration Committee Official Report of 6 March 2013. It is quite the “Beechgrove Garden”.

My serious point was to emphasise the fact that deciduous trees and shrubs do not always drop their leaves. I was delighted to second Anne McTaggart’s amendment 5, as per my earlier remarks.

The bill is heavy-handed in places with notices and threats. Perhaps it will be enough to send the high hedges police van with big labelling on the outside of it to get the neighbour to do something. However, I hope that the passage of the bill will be a deterrent or, even better, an education to people. I hope that it will get them to think about their neighbours and get the balance right in the enjoyment of their own and their neighbours’ gardens in as much as they both seek a modicum of privacy.

I congratulate Mark McDonald and Scott Barrie. Most of all, I congratulate the campaigners from Scothedge. I say to campaigners outside the Parliament that it may take time to get there but, sometimes, we do get there and we do it in a collegiate and cross-party fashion.

Stuart McMillan (West Scotland) (SNP): I welcome the fact that the bill has got to this stage, and add my congratulations to Mark McDonald MSP and to the Scottish Government on assisting him in bringing it to the Parliament.

Agreeing to the bill at 5 pm will be the start of the process. It will help many of our constituents across the country. From correspondence that I have received over nearly six years and from what constituents I have met have said, I know that high hedges blight the lives of many people. As a consequence, they also hamper relationships between neighbours. Christine Grahame touched on that. I am fully aware that the bill will not fix every situation—we were very much aware of that on the committee—but I am sure that the extension of the definition of a high hedge that has been agreed today will help many more households and constituents across the country.

Those of us who are members of the Local Government and Regeneration Committee are fully aware that the main issue relating to the bill was the definition of a high hedge. We have heard today about the process that the Scottish Government undertook after stage 2 to further consult the local authorities. That highlights again the fully consultative approach and process that there have been thus far, going back to when Scott Barrie initially tried to introduce a bill to where we are now. I welcome the fact that my colleagues on the committee did not press some of their amendments at stage 2 to allow the Scottish Government to undertake that piece of work.

Stewart Stevenson: Does the member agree that the stage 2 process through which we put our bills can often provide a very useful way of testing the resolve of the promoter of a bill; of exploring issues; and of giving the Government and the member in charge of a bill the opportunity to consider what amendments might make sense at a later date and to re-engage with people who may be adversely or beneficially affected by the bill? Does he agree that that is an attribute of the Parliament that we should all very much welcome?

The Deputy Presiding Officer: Stuart McMillan can have the time for that intervention back.

Stuart McMillan: Thank you.

I absolutely and whole-heartedly agree with Stewart Stevenson’s comments on the parliamentary process. I am sure that there is a debate to be had on that process and that the convener of the relevant committee will want to consider Stewart Stevenson’s comments. The stage 2 process in which we considered the High Hedges (Scotland) Bill was extremely helpful and useful.

Another issue that has been raised is the review. I thank Mark McDonald for accepting my amendment to have a review within five years of the act coming into force. I also thank colleagues
on the committee for accepting my amendment at stage 2. That amendment represented a measured approach to ensure that the legislation will be scrutinised in the future and does not fall off the political radar. Doing that within five years rather than sooner—we discussed that earlier today—allows for a reasonable period of time to let the act be introduced, to settle and be fully utilised. I am therefore delighted that the shorter timeframe that was suggested in the amendments that were discussed earlier will not be pursued. Local authorities need to have the time to ensure that the act is working.

As all the members of the Local Government and Regeneration Committee know, we heard evidence that there will be a large increase in the demand that is placed on local authorities in the first couple of years of the legislation being passed. That happened elsewhere in these islands, but things then settled down. It was not wise to press the idea of having a review in the midst of potentially high demand on local authorities. I am therefore glad that members disagreed to amendments 2, 3 and 4.

To conclude, the bill is welcome. It will aid many of our constituents across the country. As a result, I certainly look forward to voting for it at 5 o’clock.

16:19

Jackie Baillie (Dumbarton) (Lab): I very much welcome the opportunity to contribute at stage 3 of the bill. Like many in the Parliament, I have been supportive of the bill’s intentions for much longer than I care to remember.

I acknowledge the effort that goes into taking a member’s bill through the Parliament. I have done it before, so I know the enormity of the task. It is not like being a minister, surrounded by an army of civil servants drafting and redrafting the bill, answering every question about whether the word should be “and”, “if” or “but” and providing copious explanatory notes and financial memoranda, with briefing notes coming out of your ears—and indeed the general hand holding that ministers sometimes need.

I know that Mark McDonald had assistance from the Scottish Government, which would have made life significantly easier, but that does not diminish the amount of work that he will have had to put in as the member in charge. On that, I congratulate him. The essence of any successful member’s bill is to hit on the right idea, which invites consensus across the chamber. Mark McDonald has done that, and he deserves our thanks for it.

I confess that it gave me unalloyed delight to listen to Christine Grahame’s gardening tips. I shall rush to the Official Report of the stage 2 discussions so that I can understand the level of interest and expertise that we have on this Parliament’s benches. I invite Christine Grahame to come and visit my garden and help me at some point in the future.

Christine Grahame: I shall attend only in an advisory capacity. Jackie Baillie will be the lady with the pruning shears.

Jackie Baillie: Oh, and I was getting excited for a moment. Clearly, I am to be disappointed.

This journey started a number of years ago with our former colleague Scott Barrie MSP, who has been mentioned by other members. Fergus Ewing, too, put in considerable work. I am sure that they will both be delighted when the bill is passed, as it hopefully will be this evening. I also acknowledge the work of Colin Watson, Derek Park, Pamala McDougall and all the members of Scothedge who have encouraged and cajoled us—frankly, they have told us to get on with it—and they will be equally delighted, not least because of the acceptance of an amendment today that will undoubtedly improve the bill, with the inclusion of deciduous trees and hedges.

I must confess that I never thought that I would get excited by trees, but constituent after constituent came to seek my assistance, and I began to understand just what difficulties trees and high hedges can cause. In fairness, it is not the trees and high hedges that are the difficulty; of course, it is to do with their owners and the neighbour disputes that arise when we do not think about the impact of our actions, or lack of action, on other people.

Let me share some stories. Mrs A from Shandon was concerned that her neighbour’s trees were overgrown and encroaching not just into her garden but into another neighbouring garden. Her neighbour refused even to discuss the matter with her. He even refused to discuss it with the local authority when it tried to help. That was back in 2007, and they have still not had a remedy. Mrs B from Helensburgh had a similar problem in 2008. She is surrounded on three sides by huge conifers and has been living virtually without daylight, with a neighbour who would not address the problem.

Another lady from Kilcreggan had a similar problem in 2008. She was told that she could prune back the branches and the roots that cross the boundary, but her neighbour threatened litigation if she even dared to enter his property. In the case of Mrs D from Arrochar, a 60ft pine tree was a potential hazard, swaying dangerously in any high wind—and we can acknowledge that there are lots of high winds in Scotland. The owner refused to do anything about it, and the local authority was unable to help.
Stewart Stevenson: Would the member agree that, in the kind of disputes that we get around high hedges, and indeed elsewhere, the parties tend to take an entrenched position that is psychologically difficult to get out of? By providing the intervention of another party to focus the minds of those in dispute, the High Hedges (Scotland) Bill is probably a model of how we should deal with many such interpersonal disputes, which can often be entrenched for decades, far less a few weeks.

Jackie Baillie: I am grateful for that intervention, and I could not agree with the member more. Some of those constituents approached me as early as 2003 or 2004, and somebody contacted me about a case just two weeks ago. The matters remain unresolved. I have probably had about 30 cases over the intervening period, which is a significant number.

The majority of people either resolve their disputes or suffer in silence. In all cases, the people concerned have come to my surgery because of inconsiderate neighbours. No remedy was available to any of them until now. I know that they will be delighted when the bill is passed tonight, because it will make a practical difference to their lives. A dispute resolution process will be in place, which will drive the majority to co-operate without involving the local authority, while providing an important safety net to deal with neighbours who are determined to be intransigent.

Stuart McMillan is right to say that passing the bill is only the start. Implementation is key and I look forward to the Government taking that forward.

16:25

Kenneth Gibson (Cunninghame North) (SNP): I thank Mark McDonald for introducing the bill and for the dedication and hard work he put into ensuring that the bill was coherent and could be delivered effectively. I am sure that the vast majority of members have dealt with high hedge cases. I am happy that the Government is backing this bill, which will provide a solution to a problem that has a serious impact on many Scots’ quality of life.

In my constituency, which has large scenic areas with beautiful views, high hedge disputes are an all-too-common occurrence. It is no coincidence that Jackie Baillie and I have had a number of those cases, while Stewart Stevenson has not. That reflects the beauty of the areas in the Firth of Clyde that Jackie and I represent, compared with Stewart’s area—I hope that Stewart will not remember that when I speak at his Burns night next February.

The Deputy Presiding Officer: Full names, please.

Kenneth Gibson: The effect of high hedge disputes cannot be downplayed. Friends and neighbours can become bitter opponents and home owners’ ability to enjoy their surroundings can be severely limited. Property prices can be affected and darkness and reduced natural light in the home are issues of concern.

I have dealt with about 50 disputes since 2007. I visited a number of constituents, who invited me to see the situation for myself. A number of times, I was genuinely shocked by the size of the hedge that was the subject of the dispute. When I visited a constituent in West Kilbride, I found that the hedge towered above windows and completely blocked out the light from one side of the house. A house that should have had beautiful views of Arran and the Firth of Clyde was completely shrouded in darkness, even in midsummer.

Many neighbours come to amicable agreements about the height of hedges and boundaries, but there is no doubt that resentment and bad feeling can arise when a situation gets out of hand. It was clear that some form of third-party enforcement was required.

I attended a number of meetings on the issue in this parliamentary session and the previous one, and I met Derek Park, Colin Watson and Pamala McDougall, from Scothedge, to talk about the matter and hear how it could best be addressed. It was clear from the information that Scothedge supplied, often passionately, that only a legislative approach would be effective. That view is shared by many; more than 90 per cent of respondents to the consultation backed the position.

I am pleased that the Local Government and Regeneration Committee thought that the bill as introduced would cover 92 per cent of current cases, which shows how robust the bill is. There is evidence to suggest that an understanding that the matter can be enforced should assist in smoothing out disputes without the need to apply the law.

I am pleased that deciduous hedges have been included in the scope of the bill, which will help many of my constituents. I pay tribute to Anne McTaggart and Christine Grahame for their work in that regard. Stuart McMillan’s amendment to the bill at stage 2 has ensured that the bill will be reviewed within five years, to ensure that it is as effective as we want it to be, which is encouraging. I am sure that that will put at ease the minds of many people who fear either that the bill will be ineffective or that it is too drastic.

I am optimistic that the bill will effectively tackle most, if not all, high hedge disputes, which impact on many of my constituents. I am delighted that the Scottish Government will support the bill. Such
legislation has been talked about in the Parliament since 1999, when Scott Barrie raised the issue. I will certainly support the bill at decision time.

I realise that one or two members were keen that single trees be included in the bill, but I note the committee’s recommendation that that should not happen, given the importance of heritage trees, the need for proper assessment of biodiversity and other issues. The bill might not cover every aspect that people wanted it to cover, but as far as most members are concerned, it is as robust a bill as we could have produced in the circumstances. It is a tribute to the Parliament that at last we have legislation that is deliverable and can be effectively enforced.

16:30

Kevin Stewart (Aberdeen Central) (SNP): Like colleagues, I take my hat off to Mark McDonald for his work during the passage of the bill. However, in all fairness, even he would recognise that his staff have played a great part, too, and they deserve recognition. I thank all the witnesses who gave evidence to the Local Government and Regeneration Committee, of whom there were many, including campaigners, organisations that are involved in biodiversity and many others. I also thank my clerking colleagues for their efforts during the passage of the bill.

To begin with, I was a little hesitant about adding deciduous hedges to the bill’s scope. However, the minister’s clear statement that sceptics such as RSPB Scotland and the Scottish Wildlife Trust will contribute to the guidance on the bill is helpful. For those who are slightly reticent, we also have the review period. That has been put in place to look at perhaps extending the bill later, but it might result in restricting the bill, if that is required. I hope that the guidance will help in dealing with all such matters.

We have heard today many of the jokes that have been made in the discussion of Mr McDonald’s proposals. We have heard about the trifid bill and Christine Grahame’s privet member’s bill—there have been puns galore. A laugh has been had to a degree in some of the fora in which the subject has been discussed. However, as we have heard from the cases that have come from across the country, this is no laughing matter for the huge number of people who have been affected for many a year.

The problem is worse in some parts of the country than in others, because of the climate. As Mr Stevenson said, he has had no cases. I must be honest and say that, as an urban, city centre MSP, I have had no cases either. However, as a councillor in the past, I saw many cases in which high hedges caused huge difficulties, and such problems were exacerbated into even greater problems. Anything that can be done to resolve the disputes is worth while.

We have heard that dispute resolution has already occurred in some places because the bill was introduced. If introducing the bill has such an effect, members can just think what will happen once it is passed and the guidelines are in place. Many local authorities will not have to take the required action, because common sense will, we hope, prevail and folk will take the action that should have been taken some time ago.

The committee heard evidence about new developments, where conflicts arise not between neighbours but between owners of woodland and new neighbours. The minister’s statement that he will look at Scottish planning policy is a good idea. The committee heard from Dr Maggie Keegan about problems that the Scottish Wildlife Trust had in Cumbernauld, and committee members saw that area for themselves. That shows how easy it could be for such conflicts to arise.

People must recognise where a property that they are buying is and what might happen if it is on the periphery of woodland, some of which might not be very old and might grow substantially. Any help that Scottish planning policy can provide on that would be useful.

This has been a long journey, particularly for some of the campaigners, and 5 o’clock will bring great relief for many folk here. However, as Stuart McMillan says, this is only the beginning. I hope that some people out there will take cognisance of this and will take action now without more severe action needing to be taken.

The Deputy Presiding Officer: We come to closing speeches. I ask members who have participated in the debate to be in the chamber for those speeches. I call Margaret Mitchell for a slightly generous four minutes.

16:35

Margaret Mitchell: In my opening speech, I covered in detail the complex and vexing issue of deciduous trees. As well as reducing the time for review, my amendments—had they been passed—would have specified two topics, aside from how the definition of “high hedge” was working, to be included in any report: how local authorities had exercised their functions under the bill and what implementing the bill’s provisions had cost local authorities. Those matters should, naturally, be considered by any review, but the amendments would have ensured their inclusion. I am disappointed that the amendments were not passed, given the vital role that local authorities will have in ensuring the effectiveness of the bill.
Derek Mackay: I know that the member is deeply disappointed that those amendments were not supported. Does she accept, though, that the flexibility still exists for the committee to determine its own agenda and timescale for reviewing the provisions of the bill?

Margaret Mitchell: Yes, I certainly accept that. However, it could take six and a half years for that review to be carried out. That is especially concerning when post-legislative scrutiny is not given the priority that it should be given in parliamentary business. If we are serious about wanting the measures to be used and to work well, the shorter timeframe would have been welcome.

Although the Scottish Conservatives supported the general principles of the bill at stage 1, we sought to improve it by lodging a number of amendments at stage 2, which met with varying success. Those included an amendment that sought to ensure that ministers would no longer have an unfettered power under section 34 to alter what constitutes a high hedge for the purposes of the bill. That amendment was also recommended by both the Subordinate Legislation Committee and the Local Government and Regeneration Committee, and it is to his credit that the member in charge of the bill accepted it.

Other amendments in my name were also accepted, which I confess was something of a novelty. Those included an amendment that places a statutory duty on ministers and local authorities to consult stakeholders before issuing guidance on the operation of the bill. Any such guidance that is issued will have an impact on the way in which property owners, local authorities, solicitors, advisers on high hedge disputes and persons appointed to hear appeals will interpret the legislation. I am heartened that the importance of certainty and to ensure that funds are spent on worthy causes will have been recognised. It is imperative that it is consulted on widely prior to publication to ensure that stakeholders can comment on what is proposed.

The bill as introduced left it to a local authority’s absolute discretion whether to issue an application fee refund to an applicant under section 4. In the interests of certainty and to ensure that funds are awarded or not awarded consistently, I lodged amendments requiring councils to publish guidance stating the circumstances in which they may normally consider it appropriate to issue refunds. Again, the amendment was accepted by the member in charge of the bill, which is to be welcomed. Councils will continue to retain discretion when considering whether to issue a refund, but guidance will ensure that applicants will know when they can or should receive a refund of their application fee.

I believe that those amendments have improved the bill. I sincerely hope that it will help to alleviate the problems and vexations that high hedges can cause, which each of us in the chamber knows all too well. The Scottish Conservatives look forward to supporting the bill at decision time this evening.

The Deputy Presiding Officer: Thank you. I call Sarah Boyack, again with a slightly generous four minutes.

16:40

Sarah Boyack: Thank you, Presiding Officer—that might be quite dangerous.

We will get a good result with the bill which, as everyone has said, has been a long time coming. We were able to carry out a good, thorough scrutiny of the bill as it was introduced to Parliament, which has been beneficial. At the end of the day, the bill as it is passed will be a lot stronger; it will relate to many more people who are involved in damaging, prolonged disputes. It will be of help to many constituents—that will not necessarily be in every constituency in Scotland but, where there are problems, it will be useful.

I welcome the fact that Mark McDonald, the member in charge of the bill, was prepared to take a fresh look at amendments from across the chamber, regardless of who they came from. He was prepared to think about the merits of the amendments and the long-term impact of the bill. It is good that we will all be broadly able to support the bill when the vote comes.

Along with Christine Grahame, I think that we were right not to go with single trees. It was right to extend the definition, but the process of tree preservation orders already exists and the bill will complement that process. Anne McTaggart made a comment about the detailed impact of the bill that was absolutely right: sometimes people not being prepared to maintain hedges—or to take responsibility for doing so—is part of the problem. It is about ensuring that people feel some sense of accountability and responsibility. Jackie Baillie’s list of problems that constituents have brought to her and other members’ comments highlight that for many people, these are real problems that are currently incapable of resolution. The bill will help with that.

We now need to focus on the implementation of the bill. There is much that we can learn from and build on in the experience of similar legislation in other parts of the UK, in particular how best-practice guidance works and how people might be encouraged to resolve a dispute before using the procedures that we are approving.

I am keen that the biodiversity issues that have been flagged up are factored in along with the other criteria that will be examined.
Expertise needs to be developed across our local authorities if the bill is to be implemented successfully, particularly bearing in mind that many of the people who will be responsible for that already have relatively heavy workloads. For that reason, I welcome the fact that the minister is discussing the idea of Scottish Government support to provide a core of expertise to local authorities. I do not see that support as involving somebody being in place for all time; it is about the early stages of implementing the bill. That is the key point when workshops or seminars or support about what is in the guidance will be critical and when people need to build their expertise. That is the point at which it will be most useful. I suspect that not all local authorities will draw on that expertise, but people should have that opportunity so that the bill is implemented successfully.

At stage 1, we had a lengthy debate that came out of exchanges across the chamber about the impact of suburban housing development, poor-quality design by developers and the lack of long-term consideration given to structural tree planting or landscaping, with nobody sitting down and thinking, “In 20 or 30 years, what will this community be like? What will be the impact of the landscape that we are putting in place now?”

I hope that the new Scottish planning policy that will address the place-making issues that the minister referred to will be of practical use to local authorities in scrutinising applications and also to developers in ensuring that we get strong, good-quality proposals that use natural heritage, tree planting and hedges in a constructive, practical way. I hope that they will think about the future practicalities for the people who live in those developments, to ensure that they remain high-quality and attractive developments to live in.

It has been a good debate. I hope that, although it is not a silver bullet, the bill will improve people’s lives. At the end of the day, that is why we are all here. For those reasons, I am delighted to support the bill.

16:45

Derek Mackay: As has been said before, the bill will act as a deterrent and will help to resolve cases across the country. What evidence do we have that the bill can bring people together in a harmonious way? Well, this afternoon’s debate has shown that. If the bill can bring together the politicians of Scotland to reach what appears to be a unanimous conclusion on high hedges, I am sure that it will be able to resolve cases across the country.

Perhaps the bill also provides us with lessons on how Parliament conducts itself, given the consensual and constructive amendments that were lodged by several members and which were accepted by the member in charge, and given the way in which the Government took forward suggestions from different places. That approach has left us with a robust bill. As Stewart Stevenson and Kenny Gibson mentioned, the bill will not solve every case in Scotland, but it gives us a great framework and foundation from which we will be able to resolve the great majority of cases by presenting the avenue that will now exist.

The bill deals with a very human issue. Legislation, regulation and guidance may be required, but there is a very human issue involved in looking at how we can solve some of the concerns that people have. I was struck by some of the evidence that was presented to the committee on issues that the bill will provide a mechanism to resolve. One witness said:

“Our problems with high hedges have caused embarrassment, fear, stress and costly fees to solicitors. None of this would have been necessary if there had been a High Hedges Bill in place and a way of achieving resolution to the problem of a mutual hedge dispute.”

Christine Grahame: As members know, passing the bill tonight, which I am sure will happen, will not actually bring its provisions into force. At royal assent, only the definitions will come into force, but the bringing into force of the other sections will be in the hands of ministers. Can the minister give us a broad timescale within which the provisions in the bill might become enforceable law? Can he comment on whether people are already being told about the direction in which things are going, regardless of whether its provisions are in force?

Derek Mackay: The ever-helpful back bencher, Christine Grahame, has asked a pertinent question. As soon as the bill receives royal assent, we will work immediately—work will have already begun—on the guidance, and we will make progress towards implementation as quickly as we possibly can. We will look at the guidance, take on board considerations and, following royal assent, lead on to commencement.

On Christine Grahame’s earlier speech, I recall that the Conservatives moved an amendment at stage 2 asking whether one single person could bring together legal expertise, planning expertise, horticultural expertise and casework expertise. Only one such person exists in this country, and that is Christine Grahame.

Christine Grahame: Thank you.

Derek Mackay: In progressing the bill, we have been able to rely on a range of professional and practitioner intelligence in order to provide a definition with which people are happy. I know that there has been among local authorities some concern about the bill’s implementation, which is
why we are working with them to address their concerns in the way that I described earlier.

Jackie Baillie pointed out the level of ministerial support that the member in charge enjoyed in taking the bill through Parliament. I asked officials to support Mark McDonald in progressing the bill, but Jackie Baillie’s description of how well a minister is supported now leaves me with deep and searching questions about what my civil servants have been doing over past months, given that Mark McDonald seems to be so well briefed. I am not sure that my horticultural expertise was up to the mark beforehand, but it certainly is now, in understanding the bill. However, I jest, because I know that the bill has achieved consensus among members. It will now provide a mechanism that can resolve issues in a very constructive fashion.

It is important that we will have the opportunity to review the bill’s provisions in the light of practical experience. I reiterate that the committee can review the bill’s implementation at any time—subject to the maximum time limit that was agreed earlier—and in any area.

The bill is a proportionate and appropriate response. It was right to go through the local government route as opposed to a judicial or criminal route to resolve matters; it was the right method to deploy in terms of a parliamentary response to the issues. It is no mean feat for Mark McDonald to have taken the bill through Parliament in such a timely and effective fashion, thereby succeeding where others—well intentioned though they were—were unable to progress a bill to this stage.

I am delighted that the Government has been able to support the bill. I know that the member in charge of the bill now wants to say more on the bill’s final stage before it is passed—I hope—this evening, with all members’ support. Again, the Government supports the bill and will ensure that its implementation assists people through guidance and its relationship to Scottish planning policy and TPOs. I thank all members for their engagement in the process.

The Deputy Presiding Officer: I call Mark McDonald to wind up the debate. You have until five o’clock, Mr McDonald.

Mark McDonald: I need to offer thanks to a number of people. First, I thank the members of the Local Government and Regeneration Committee, which was the lead committee on the bill and which provided robust and thorough questioning and scrutiny as the bill progressed through stages 1 and 2. I thank, too, the Finance Committee, which robustly questioned me on the bill’s financial aspects, mostly through questions from the convener, Mr Gibson. I also offer thanks to the Subordinate Legislation Committee, which diligently examined and considered the subordinate powers in the bill, which led to amendments that have been agreed to.

I thank all those who gave evidence to the committees—those who attended in person and those who took the time and trouble to write to the committees, often highlighting their own experiences. There are many people outside the chamber who perhaps did not submit evidence to the committees but who nonetheless showed a keen interest in the bill.

I thank my assistant, Aissa Watson—who was highlighted by Kevin Stewart—who has, since I announced my intention to introduce the bill, been regularly fielding inquiries and suggestions from many members of the public and, indeed, many members of the Scottish Parliament. At the start of the process, the queries that Aissa dealt with were about what would be in the bill and what it would cover. The queries that she deals with now are about when the bill will come into effect. It is clear from the case load that she has developed over time that there is a huge amount of interest in the bill.

I want to take this opportunity to thank to David McLetchie, who took an interest in the issue and was extremely supportive of my efforts at the outset, and who proved to be of great assistance in the early stages of considering the bill. It is appropriate that I put my thanks to him on the record. [Applause.]

The debate today has been constructive and consensual. Sarah Boyack made the point in her opening remarks that not everybody will be happy as a result of the legislation’s coming into force. However, the point that she made—and which I have made repeatedly during the bill’s process—is that the bill is not intended to be anti-hedge legislation; it is pro-dispute resolution. In the resolution of any dispute, or any high hedge dispute, the outcome will be that one party will be viewed as the winner and the other will be viewed as having lost. However, the point of the bill is to find a way to resolve disputes, and we hope that local authority action will lead to that.

I envisage that it is likely that the provisions will come into force—after local authorities’ guidance and implementation work has been undertaken—some time in early 2014. In essence, we are serving notice to those who are in dispute that there is, from now, a year for them to resolve their disputes amicably before the legislative remedy comes into force. I hope that that call will be heeded and that we will see many current disputes being resolved amicably.

I felt that it was important to intervene on Margaret Mitchell earlier just to make it clear that single deciduous trees are not included in the
revised definition, although the review section allows a future committee to examine the definition, should it so wish.

I am grateful to Anne McTaggart for her constructive engagement during the bill’s passage and for being willing to discuss the best way in which to frame the amendment, which she later lodged, to ensure that it had the most impact. I welcome the fact that we have been able to agree the amendment that she lodged.

Christine Grahame’s speech was as colourful as her speeches always are. In fact, we have been thinking about marketing her submission at stage 2 as a gardening book. We think that it could be a nice little sideline, given the expertise in horticulture that she demonstrated. However, she pointed out that I had a difficulty at the initial stages in weighing up which route to go down with the bill. Should I go down the route of the court-based solution that was mentioned during the debate, or should I go down the route of a local authority based solution? I felt that the latter would provide the best means of resolving disputes without their becoming snared up in legal process.

Christine Grahame also made the point that people often purchase leylandii as a focal point without necessarily understanding the impact that they can have. When I launched the bill at the Mill Garden Centre in Armadale, Joe McIndoe, its owner, made it clear to me that he wants people to be given sensible advice about the impact that such plants can have when they come to purchase them. I hope that one thing that might happen as a result of the bill is that people will consider what they plant in their gardens and the impact that it might have on their neighbours.

Stuart McMillan spoke about the review provision that he introduced. That was a sensible addition to the bill because it means that the efficacy of the legislation will be looked at, and that can include what has not been included but might be included in the future. As well as the issue of single deciduous trees, there are issues around the possibility of future fee-transfer mechanisms, which I know Margaret Mitchell wanted to talk about at various stages. It might be that we could learn from the example that exists in Northern Ireland. It will also be possible to look at what is in the legislation, how effectively it has worked in practice and whether changes or modifications are needed.

Jackie Baillie made an important point. There has been some cynicism out there—believe it or not—about the worthiness of our debating the bill. Both Jackie Baillie and Kenneth Gibson brought to the chamber stories of individual cases that highlight to us the impact that situations can have on individuals. Some people out there might suggest that the bill is not worthy legislation for us to debate, but I would say that before they seek to be cynical about it, they should talk to people such as the constituents who contacted me during the progress of the bill, listen to their concerns and hear how happy they are made by the passing of the bill.

I say to Kenneth Gibson that I was a bit worried when he started his speech that he might be heading towards a rather interesting editorial in the Buchan Observer, but I think that he managed to resolve the situation in that regard. [Interuption.] Stewart Stevenson is suggesting that he has already drafted a press release, so who knows? We might have some interesting discussions to follow.

It has been clear throughout the process that a lot of people have campaigned on the subject for a very long time. I thank those who engaged with me during the process, particularly the members of Scothedge; I see some of them up in the gallery today. Not everybody whom I engaged with has been able to make it to Parliament today, but a number are here. It has taken a deal of resolve for the campaigners to pursue the matter because, as we have heard, there have been a number of disappointments for them along the way. There were a number of moments during the campaign when they thought that they were not going to see legislation coming into force; there were a number of false starts.

The campaigners diligently kept pressing and kept coming back to try to ensure that Parliament not only took cognisance of their concerns but continued to pursue and advocate on their behalf, given the very real issues that they face. It is a great credit to Dr Colin Watson, who I see in the gallery today, and the members of Scothedge that they have continued to pursue the matter over a long time. I hope that they will be satisfied not just that the decision is being reached today, but by the way in which Parliament has conducted itself in coming to the decision, given the consensual nature of the process and the debate.

Sarah Boyack highlighted that consensual nature, and it has been reflected in amendments having been accepted. Because of how the numbers stand, I could have simply rejected amendments from Opposition parties, but I thought that the most important thing to do was to listen carefully to the arguments that lay behind those amendments. That is why I was able to accept some of Margaret Mitchell’s amendments at stage 2, and I was pleased to be able to accept Anne McTaggart’s amendment and Stuart McMillan’s amendment at stage 3. Amendments have been accepted from across the chamber.

The legislation has been a long time coming. Scothedge has always said that what it wanted to see in Scotland was better legislation than exists
elsewhere. I hope that, today, we have done them justice.
Decision Time

17:02

The Presiding Officer (Tricia Marwick): There is one question to be put as a result of today’s business. The question is, that motion S4M-06038, in the name of Mark McDonald, on the High Hedges (Scotland) Bill, be agreed to.

Motion agreed,

That the Parliament agrees that the High Hedges (Scotland) Bill be passed.

The Presiding Officer: I congratulate Mark McDonald on what is, of course, the first member’s bill to be passed in this session. I have great pleasure in declaring that the High Hedges (Scotland) Bill has been agreed to unanimously by Parliament. [Applause.]
# High Hedges (Scotland) Bill

[AS PASSED]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

High Hedges (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about hedges which interfere with the reasonable enjoyment of residential properties.

Meaning of “high hedge”

1  Meaning of “high hedge”

5  (1) This Act applies in relation to a hedge (referred to in this Act as a “high hedge”) which—
   (a) is formed wholly or mainly by a row of 2 or more trees or shrubs,
   (b) rises to a height of more than 2 metres above ground level, and
   (c) forms a barrier to light.

10 (2) For the purposes of subsection (1)(c) a hedge is not to be regarded as forming a barrier to light if it has gaps which significantly reduce its overall effect as a barrier at heights of more than 2 metres.

15 (3) In applying this Act in relation to a high hedge no account is to be taken of the roots of a high hedge.

High hedge notices

2  Application for high hedge notice

5  (1) Where subsection (2) applies, an owner or occupier of a domestic property (referred to in this Act as the “applicant”) may apply to the relevant local authority for a high hedge notice.

10 (2) This subsection applies where the applicant considers that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have.

3  Pre-application requirements

15 (1) Before making an application under section 2(1), the applicant must take all reasonable steps to resolve the matters in relation to the high hedge which would otherwise be the subject of the application.
(2) In complying with the duty imposed by subsection (1) the applicant must have regard to any guidance issued by the relevant local authority under section 31(2)(a).

4 Fee for application

(1) An application must be accompanied by a fee of such amount (if any) as the relevant local authority may fix.

(2) An authority may fix different fees for different applications or types of application.

(3) A fee fixed by an authority must not exceed an amount which it considers represents the reasonable costs of an authority in deciding an application under this Act.

(4) A fee paid to an authority may be refunded by it in such circumstances and to such extent as it may determine.

(5) An authority must publish information on the circumstances in which and the extent to which it may normally be considered appropriate for a fee paid to the authority to be refunded under subsection (4).

(6) When publishing information in accordance with subsection (5), an authority must have regard to any guidance on the refund of application fees issued by the Scottish Ministers under section 31(1).

5 Dismissal of application

(1) A relevant local authority must dismiss an application where the authority considers that—

(a) the applicant has not complied with the duty imposed by section 3(1), or

(b) the application is frivolous or vexatious.

(2) As soon as is reasonably practicable after dismissing an application, the authority must notify the applicant of—

(a) its decision, and

(b) the reasons for its decision.

6 Consideration of application

(1) This section applies where a relevant local authority does not dismiss an application under section 5.

(2) The authority must give every owner and occupier of the neighbouring land—

(a) a copy of the application, and

(b) a notice informing the person to whom it is given of the matters mentioned in subsection (3).

(3) The matters are—

(a) that the authority is required to make a decision under subsection (5),

(b) that the person has a right to make representations to the authority in relation to the application before the expiry of the period of 28 days beginning with the day on which the notice is given,

(c) that the authority must give a copy of any such representations to the applicant,
that the authority has power to authorise entry to the neighbouring land under section 18(1), and

(e) that it is an offence under section 21 intentionally to prevent or obstruct a person authorised to enter land from acting in accordance with this Act.

If any representations are received by the authority during the period mentioned in subsection (3)(b), the authority must—

(a) give the applicant a copy of those representations, and

(b) take into account those representations in making its decision under subsection (5).

After the end of the period of 28 days referred to in subsection (3)(b), the authority must decide—

(a) whether the height of the high hedge adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and

(b) if so, whether any action to remedy the adverse effect or to prevent the recurrence of the adverse effect (or both) should be taken by the owner in relation to the high hedge (any action that is to be taken being referred to in this Act as the “initial action”).

If the authority decides under subsection (5)(b) that initial action should be taken, the authority must—

(a) specify a reasonable period of time within which the initial action is to be taken (the “compliance period”), and

(b) decide whether any action to prevent the recurrence of the adverse effect should be taken by the owner in relation to the high hedge at times following the end of the compliance period while the hedge remains on the land (the “preventative action”).

In making a decision under subsection (5)(b), the authority must have regard to all the circumstances of the case, including in particular—

(a) the effect of the high hedge on the amenity of the area, and

(b) whether the high hedge is of cultural or historical significance.

Where the high hedge which is the subject of the application is situated on land which has been designated as a National Park, the authority must—

(a) before making a decision under subsection (5)(b), consult the National Park authority for the National Park, and

(b) in making its decision under that subsection, take into account any representations made by that National Park authority.

Notice of decision where no action to be taken

This section applies where—

(a) the relevant local authority decides under section 6(5)(a) that there is no adverse effect, or

(b) the relevant local authority decides under section 6(5)(b) that no action should be taken in relation to the high hedge.
(2) As soon as is reasonably practicable after making its decision the authority must notify the persons mentioned in subsection (3) of—
   (a) the making of the decision,
   (b) the reasons for it,
   (c) the right to appeal under section 12(1).

(3) Those persons are—
   (a) the applicant, and
   (b) every owner and occupier of the neighbouring land.

(4) Where the high hedge which is the subject of the application is situated on land which has been designated as a National Park and subsection (1)(b) applies, the authority must notify the National Park authority for the National Park of its decision.

8 High hedge notice

(1) Where a relevant local authority decides under section 6(5)(b) that action should be taken, it must issue a high hedge notice as soon as is reasonably practicable after making that decision.

(2) A high hedge notice is a notice—
   (a) identifying the high hedge which is the subject of the notice and the neighbouring land,
   (b) identifying the domestic property in relation to which the authority has decided under section 6(5)(a) that an adverse effect exists,
   (c) stating the date on which the notice is to take effect,
   (d) stating the initial action that is to be taken by the owner of the neighbouring land and the compliance period for that action,
   (e) stating any preventative action that is to be taken by the owner of the neighbouring land,
   (f) informing the recipient that there is a right to appeal under section 12(2)(a),
   (g) informing the recipient that the authority is entitled to authorise a person to take action under section 22 where there is a failure to comply with the notice and that the authority may recover the expenses of that action, and
   (h) informing the recipient that it is an offence under section 24 intentionally to prevent or obstruct a person authorised to take action from acting in accordance with this Act.

(3) The date referred to in subsection (2)(c) must be at least 28 days after the date on which the notice is given.

(4) The authority must—
   (a) give the persons mentioned in subsection (5) a copy of the high hedge notice, and
   (b) notify those persons of the reasons for its decision.

(5) Those persons are—
   (a) the applicant, and
   (b) every owner and occupier of the neighbouring land.
(6) Where the high hedge to which a high hedge notice relates is situated on land which has been designated as a National Park, the authority must give the National Park authority for the National Park a copy of the high hedge notice.

9 Effect of high hedge notice

A high hedge notice is binding on every person who is for the time being an owner of the neighbouring land specified in the notice.

10 High hedge notice: withdrawal and variation

(1) After a relevant local authority issues a high hedge notice, it may—

(a) withdraw the notice, or
(b) vary the notice.

(2) Before withdrawing or varying a notice under subsection (1), the authority must have regard to all the circumstances of the case, including in particular—

(a) whether, after the proposed withdrawal or variation, the height of the high hedge would adversely affect the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and
(b) the matters mentioned in section 6(7).

(3) Where an authority withdraws a high hedge notice under subsection (1)(a), it must give the persons mentioned in subsection (4) notice of—

(a) the withdrawal,
(b) the reasons for the withdrawal, and
(c) the right to appeal under section 12(2)(b).

(4) Those persons are—

(a) every owner and occupier of the domestic property identified in the notice, and
(b) every owner and occupier of the neighbouring land.

(5) The withdrawal of a high hedge notice under subsection (1)(a) does not of itself prevent the issuing of a further high hedge notice in respect of the same hedge.

(6) Where an authority varies a high hedge notice under subsection (1)(b), it must—

(a) issue a revised high hedge notice stating the date on which the revised notice takes effect,
(b) give a copy of the high hedge notice to the persons mentioned in subsection (4),
(c) notify those persons of the reasons for its decision, and
(d) notify those persons of the right to appeal under section 12(2)(b).

(7) The date referred to in subsection (6)(a) must be at least 28 days after the date on which the revised notice is given.

(7A) Where the high hedge to which a high hedge notice relates is situated on land which has been designated as a National Park, the authority must—

(a) where it withdraws the high hedge notice under subsection (1)(a), give the National Park authority for the National Park notice of the withdrawal,
(b) where it varies the high hedge notice under subsection (1)(b), give the National Park authority for the National Park a copy of the revised notice.

(8) Subsections (1) to (7A) apply in relation to a revised high hedge notice issued by the authority under subsection (6)(a) as they apply in relation to a high hedge notice.

11 Tree preservation orders

(1) Subsection (2) applies where a high hedge notice issued by a relevant local authority, relates to a high hedge which—

(a) includes a tree which is subject to a tree preservation order, or

(b) forms part of a group of trees or woodland which is subject to a tree preservation order.

(2) The tree preservation order has no effect in relation to the initial action or any preventative action specified in the high hedge notice.

Appeals

12 Appeals

(1) The applicant may appeal to the Scottish Ministers against—

(a) a decision by a relevant local authority under section 6(5)(a) that there is no adverse effect,

(b) a decision by a relevant local authority under section 6(5)(b) that no action should be taken in relation to the high hedge.

(2) A person mentioned in subsection (3) may appeal to the Scottish Ministers against—

(a) the issuing by a relevant local authority of a high hedge notice, or

(b) the withdrawal or variation of a notice by a relevant local authority under section 10(1).

(3) Those persons are—

(a) every owner and occupier of the domestic property identified in the high hedge notice, and

(b) every owner and occupier of the neighbouring land.

(4) An appeal must be made before the end of the period of 28 days beginning with—

(a) in the case of an appeal under subsection (1), the date of the notification given by the authority under section 7,

(b) in the case of an appeal under subsection (2)(a), the date of the notification given by the authority under section 8(4),

(c) in the case of an appeal under subsection (2)(b), the date of the notification given by the authority under section 10(3) or (6).

13 Effect of appeal

(1) This section applies during the period beginning with the making of an appeal and ending with its final determination, withdrawal or abandonment.

(2) Where the appeal is made under section 12(2)(a), the high hedge notice has no effect.
Where the appeal is made under section 12(2)(b)—
(a) the high hedge notice has no effect, and
(b) the withdrawal or variation has no effect.

### Determination of appeal

(1) Where an appeal is made under section 12(1), the Scottish Ministers may—
(a) confirm the decision to which the appeal relates, or
(b) quash the decision of the authority under section 6(5)(a) or (b), with or without issuing a high hedge notice.

(2) Where an appeal is made under section 12(2), the Scottish Ministers may—
(a) confirm the high hedge notice or decision to which the appeal relates,
(b) quash the high hedge notice or decision, or
(c) vary the high hedge notice issued under section 8(1) or, as the case may be, 10(6)(a).

(3) A high hedge notice issued or varied under this section is to be treated as if issued or varied by the relevant local authority.

### Person appointed to determine appeal

(1) An appeal may be determined by a person appointed by the Scottish Ministers for that purpose instead of by the Scottish Ministers.

(2) An appointed person has, in relation to the appeal, the same powers and duties as the Scottish Ministers have under this Act.

(3) Where an appeal is determined by a person appointed by the Scottish Ministers, the decision is to be treated as if it were a decision of the Scottish Ministers.

### Notice of determination

(1) As soon as is reasonably practicable after determining an appeal the Scottish Ministers must—
(a) where they have made a determination in accordance with section 14(1)(b) and are to issue a high hedge notice—
(i) issue the high hedge notice,
(ii) give a copy of the high hedge notice to the persons mentioned in subsection (2), and
(iii) notify those persons of the reasons for their decision,
(b) where they have made a determination in accordance with section 14(2)(c)—
(i) issue a revised high hedge notice,
(ii) give a copy of the revised notice to the persons mentioned in subsection (2), and
(iii) notify those persons of the reasons for their decision,
(c) where they have made any other determination, notify the persons mentioned in subsection (2) of their decision and the reasons for their decision.

(2) Those persons are—

(a) the relevant local authority,

(b) every owner and occupier of the domestic property identified in the high hedge notice or, as the case may be, the revised high hedge notice, and

(c) every owner and occupier of the neighbouring land.

17 **Period for taking initial action following appeal**

(1) This section applies where an appeal under section 12(2) is—

(a) determined, or

(b) withdrawn or abandoned by the person making the appeal.

(2) The compliance period for the initial action specified in the high hedge notice or revised high hedge notice is to be taken as beginning on—

(a) the day on which the appeal is determined, or

(b) such later day as is specified in the revised notice issued under section 16(1)(b).

(3) Where the appeal is withdrawn or abandoned, the compliance period for the initial action specified in the high hedge notice is to be taken as beginning on the day on which the appeal is withdrawn or abandoned.

**Powers of entry**

18 **Power to enter neighbouring land**

(1) A person authorised by a relevant local authority may enter the neighbouring land for the purpose of—

(a) obtaining information required by that authority to carry out the authority’s functions under section 6 or 10,

(b) determining whether initial action or preventative action set out in a high hedge notice has been carried out.

(2) A person may enter the neighbouring land for the purpose of obtaining information required to determine an appeal under section 14 if—

(a) the person is authorised to do so by the Scottish Ministers,

(b) the person is appointed under section 15(1), or

(c) the person is authorised to do so by a person appointed under section 15(1).

(3) A person authorised to enter land by virtue of this section may enter a building which is for the time being occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

19 **Supplementary powers**

(1) A person authorised to enter land by virtue of section 18 (referred to in this section as an “authorised person”) may—
High Hedges (Scotland) Bill

(a) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the authorised person to fulfil the purpose for which entry is taken,

(b) take samples of any trees or shrubs that appear to the authorised person to form part of the high hedge,

(c) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.

(2) A person mentioned in subsection (3) must give every owner and occupier of the land at least 14 days’ notice of the intended entry by the authorised person.

(3) Those persons are—

(a) in the case of a person authorised by virtue of section 18(1), the relevant local authority,

(b) in the case of a person authorised by virtue of section 18(2)(a), the Scottish Ministers,

(c) in any other case, the person appointed under section 15(1).

(4) An authorised person must on request produce written evidence of the authorisation.

(5) On leaving neighbouring land which is unoccupied or from which all of the occupiers are temporarily absent, an authorised person must ensure that the land is as effectively secured against unauthorised entry as it was when the person entered it.

20 Warrant authorising entry

(1) The sheriff or a justice of the peace may by warrant authorise any person entitled to enter the neighbouring land under section 18 to enter the land and if necessary to use reasonable force in doing so.

(2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—

(a) that there are reasonable grounds for entering the land concerned,

(b) that—

(i) entry to the land has been refused,

(ii) such a refusal is reasonably expected, or

(iii) the land is unoccupied, and

(c) that the relevant local authority has or, as the case may be, the Scottish Ministers have complied with the notice requirements imposed by section 19(2).

(3) A warrant must not authorise—

(a) entry to a building which is for the time being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge,

(b) the use of force against an individual.

(4) A warrant expires—

(a) when it is no longer required for the purpose for which it is granted, or

(b) on the expiry of such period as may be specified in it.
21  **Offence**

(1) It is an offence intentionally to prevent or obstruct a person authorised to enter land under section 18 from doing anything which that person is authorised to do by virtue of this Act.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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22  **Local authority enforcement action**

22  **Power to take action**

(1) A person authorised by a relevant local authority (referred to in this section as an “authorised person”) may—

(a) enter the neighbouring land,

(b) take any initial action or preventative action which—

(i) is required to be taken by a high hedge notice, and

(ii) has not been taken in accordance with the high hedge notice,

(c) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the authorised person to take the required action, and

(d) do anything else which is reasonably required for the purpose of taking the required action.

(2) The relevant local authority must give every owner and occupier of the neighbouring land at least 14 days’ notice of the intended entry by the authorised person.

(3) An authorised person may enter a building which is for the time being occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

(4) An authorised person must on request produce written evidence of the authorisation.

(5) On leaving neighbouring land which is unoccupied or from which all of the occupiers are temporarily absent, an authorised person must ensure that the land is as effectively secured against unauthorised entry as it was when the person entered it.

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23  **Warrant authorising entry by local authority**

(1) The sheriff or a justice of the peace may by warrant authorise any person entitled to enter the neighbouring land under section 22 to enter the land and if necessary to use reasonable force in doing so.

(2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—

(a) that there are reasonable grounds for entering the land concerned,

(b) that—

(i) entry to the land has been refused,

(ii) such a refusal is reasonably expected, or

(iii) the land is unoccupied, and
(c) that the relevant local authority has complied with the notice requirements imposed by section 22(2).

(3) A warrant must not authorise—

(a) entry to a building which is for the time being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge,

(b) the use of force against an individual.

(4) A warrant expires—

(a) when it is no longer required for the purpose for which it is granted, or

(b) on the expiry of such period as may be specified in it.

24 Local authority action: offence

(1) It is an offence intentionally to prevent or obstruct a person authorised by a relevant local authority under section 22 from doing anything which that person is authorised to do by virtue of this Act.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Expenses of enforcement action

25 Recovery of expenses from owner of land

(1) A relevant local authority may recover from any person who is an owner of the neighbouring land—

(a) any expenses reasonably incurred by the authority in taking action under section 22,

(b) any administrative expenses (including registration fees) reasonably incurred by it in connection with recovering those expenses, and

(c) interest, at such reasonable rate as it may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

(2) The date specified under subsection (1)(c) must be after the date on which a demand for payment is served by the authority.

(3) Each owner of the neighbouring land is jointly and severally liable for the expenses and interest mentioned in this section.

26 Notice of liability for expense of local authority action

(1) A relevant local authority may apply to register a notice (a “notice of liability for expenses”) specifying the matters mentioned in subsection (2).

(2) The matters are—

(a) the amount of the expenses payable in accordance with section 25(1)(a) and (b),

(b) whether interest is payable under section 25(1)(c),

(c) the action taken under section 22 to which those expenses relate,

(d) a description of the neighbouring land in respect of which an owner is liable under section 25,
(e) the effect of section 27 in relation to a new owner of that land, and
(f) the name and address of the local authority.

(3) For the purposes of subsection (2)(d) the description must—
(a) in the case of land registered in the Land Register of Scotland, include the title number of the land,
(b) in the case where the title to the land (or a larger area containing the land) is derived from a deed recorded in the General Register of Sasines, identify the land by reference to that deed.

27 Recovery of expenses from new owner of land

(1) Subsection (2) applies where—
(a) a notice of liability for expenses is registered in relation to the land, and
(b) the notice was registered at least 14 days before the date on which a person (the “new owner”) acquires right to the neighbouring land.

(2) The new owner is severally liable with any former owner of the neighbouring land for any expenses and interest for which the former owner is liable under section 25(1).

28 Continuing liability of former owner

(1) An owner of the neighbouring land who is liable for expenses and interest under section 25 does not, by virtue only of ceasing to be such an owner, cease to be liable for the expenses and interest.

(2) Where a new owner pays any expenses and interest for which a former owner of the land is liable, the new owner may recover the amount so paid from the former owner.

(3) A person who is entitled to recover an amount under subsection (2) does not, by virtue only of ceasing to be the owner of the land, cease to be entitled to recover that amount.

29 Notice of discharge

(1) This section applies where liability for expenses and interest to which a registered notice of liability for expenses relates has been discharged.

(2) The relevant local authority must apply to register a notice (a “notice of discharge”) specifying the matters mentioned in subsection (3).

(3) The matters are—
(a) the date of registration or recording of the notice of liability for expenses to which the notice of discharge relates,
(b) the action taken under section 22 to which that notice of liability relates,
(c) a description of the neighbouring land in respect of which an owner was liable under section 25,
(d) that the liability for the expenses and interest has been discharged,
(e) the name and address of the local authority.

(4) For the purposes of subsection (3)(c) the description must—
(a) in the case of land registered in the Land Register of Scotland, include the title number of the land,

(b) in the case where the title to the land (or a larger area containing the land) is derived from a deed recorded in the General Register of Sasines, identify the land by reference to that deed.

(5) On registration, the notice of discharge discharges the notice of liability for expenses to which it relates.

30 Receipt of notices by the Keeper

(1) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in a notice of a type mentioned in subsection (2) which is submitted for registration is accurate.

(2) The notices are—

(a) a notice of liability for expenses,

(b) a notice of discharge.

31 General

Guidance

(1) The Scottish Ministers may, after consulting such persons as they consider appropriate, issue guidance about this Act.

(2) A local authority may, after consulting such persons as the authority considers appropriate, issue guidance on—

(a) the duty imposed by section 3(1),

(b) any other provision of this Act.

(3) A local authority must have regard to any guidance issued under subsection (1) when—

(a) issuing guidance under subsection (2),

(b) carrying out its functions under this Act.

31A Report on operation of Act

(1) The Scottish Parliament must make arrangements for one of its committees or sub-committees to report to the Scottish Parliament on the operation of this Act during the review period.

(2) In this section, the “review period” means the period—

(a) beginning on the day on which section 2 comes into force, and

(b) ending 5 years after that day or on such earlier date as may be determined by the committee or sub-committee making the report under subsection (1).

(3) A report under subsection (1)—

(a) may be made in such form and manner as the committee or sub-committee considers appropriate, but

(b) must be made no later than 18 months after the end of the review period.

(4) The Scottish Parliament must publish a report made under subsection (1).
32 Service of documents

(1) If, having made reasonable inquiries, a person is unable to ascertain the name or address of a person to whom a notice relating to land is to be given under this Act, the notice may be given by—

(a) addressing it to the person concerned by name or by a description of the person’s interest in the land, and

(b) delivering it by—

(i) leaving it in the hands of a person who is or appears to be resident on the land or employed on the land, or

(ii) fixing it to a building or object on, or to a conspicuous part of, the land (or, where that is not practicable, to a building or object near that land).

(2) Where a document is delivered as mentioned in subsection (1)(b)(ii) it is to be taken to have been given on the day on which it is fixed on or near the building, object or land, unless the contrary is shown.

33 Interpretation

(1) In this Act, unless the context otherwise requires—

“applicant” has the meaning given by section 2(1),

“compliance period” has the meaning given by section 6(6)(a),

“domestic property” means—

(a) any part of a building in Scotland which is occupied or intended to be occupied as a separate dwelling, and

(b) a yard, garden, garage or outhouse in Scotland which belongs to such a building or is usually enjoyed with it,

“high hedge” has the meaning given by section 1,

“high hedge notice” has the meaning given by section 8(2),

“initial action” has the meaning given by section 6(5)(b),

“neighbouring land”, in relation to a high hedge, means the land on which the high hedge is situated,

“new owner” has the meaning given by section 27(1),

“notice of discharge” has the meaning given by section 29,

“notice of liability for expenses” has the meaning given by section 26,

“office-holder in the Scottish Administration” is to be construed in accordance with section 126(7) of the Scotland Act 1998 (c.46),

“owner” in relation to any property, means a person who has right to the property whether or not that person has completed title; but if, in relation to the property (or, if the property is held pro indiviso, in relation to any pro indiviso share in it) more than one person comes within that description of owner, then “owner” means such person as most recently acquired such right,

“preventative action” has the meaning given by section 6(6)(b),
“register”, in relation to a notice of liability for expenses and a notice of discharge, means register the information contained in the notice in question in the Land Register of Scotland or, as the case may be, record the notice in question in the General Register of Sasines; and “registered” and other related expressions are to be construed accordingly.

“relevant local authority” means the local authority in whose area the high hedge is situated,

“tree preservation order” has the meaning given by section 160(1) of the Town and Country Planning (Scotland) Act 1997 (c.8),

“vary”, in relation to a high hedge notice, means—

(a) remove initial action or preventative action from the notice,

(b) amend initial action, the compliance period or preventative action in the notice,

(c) add further initial action (with a compliance period) or preventative action to the notice,

(d) correct a defect, error or misdescription in the notice.

(2) References in this Act to a high hedge include references to part of a high hedge.

(3) References in this Act to enjoyment of domestic property include references to enjoyment of part of the property.

(4) Where domestic property is for the time being unoccupied, references in this Act to the reasonable enjoyment of that property are to be read as if they were references to the reasonable enjoyment of an occupant of the property if the property were occupied.

34 Power to modify meaning of “high hedge”

(1) The Scottish Ministers may by regulations modify the meaning of “high hedge” for the time being in section 1 by—

(a) adding a type of tree or shrub to, or removing a type of tree or shrub from, section 1(1)(a),

(b) increasing or reducing the height above ground level specified in section 1(1)(b) and (2),

(c) modifying or adding to the effect of a hedge specified in section 1(1)(c).

(2) Regulations under this section may—

(a) make different provision for different cases,

(b) include such supplementary, incidental, consequential, transitory or transitional provision or savings as the Scottish Ministers consider appropriate,

(c) modify any enactment (including any other provision of this Act).

(3) Regulations under this section are subject to the affirmative procedure.
35 **Ancillary provision**

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional or transitory provision or savings as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under this section may modify this or any other enactment.

(3) An order under this section containing provision which adds to, replaces or omits any part of the text of an Act, is subject to the affirmative procedure.

(4) Otherwise an order under this section is subject to the negative procedure.

36 **Crown application**

(1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(2) Despite subsection (1), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(3) The powers conferred by sections 18, 19 and 22 are exercisable in relation to Crown land only with the consent of the appropriate authority.

(4) For the purposes of subsection (3), land is “Crown land” if an interest in the land—

   (a) belongs to Her Majesty in right of the Crown or in right of Her private estates,

   (b) belongs to an office-holder in the Scottish Administration or to a Government department,

   (c) is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department.

(5) In subsection (3) “appropriate authority” means—

   (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners,

   (b) in the case of any other land belonging to Her Majesty in right of the Crown, the office-holder in the Scottish Administration or, as the case may be, Government department having the management of the land,

   (c) in the case of land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,

   (d) in the case of land belonging to an office-holder in the Scottish Administration or to a Government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department, the office-holder or Government department.

(6) Any reference in this section to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(7) If a dispute arises in relation to the meaning of “appropriate authority” in the case of any land—

   (a) it is for the Scottish Ministers to determine the appropriate authority, and

   (b) the Scottish Ministers’ decision is final.
(8) In this section “Government department” means a department of the United Kingdom Government.

37 Commencement

(1) This section and sections 33, 35 and 38 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may contain transitory or transitional provision or savings.

38 Short title

The short title of this Act is the High Hedges (Scotland) Act 2013.
High Hedges (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about hedges which interfere with the reasonable enjoyment of residential properties.

Introduced by: Mark McDonald
On: 2 October 2012
Bill type: Member's Bill