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 landowners 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 neighbour 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 must 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. 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.

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**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...