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 21st 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.

![Figure 1.1: Angle of sun in London and Edinburgh on 21st December](image)

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 21st 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>
Figure 1.2: Angle of the sun at different locations on 21\textsuperscript{st} December

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 \cite{1}.

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 \cite{1} 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 \cite{2} but modified the description of a hedge to prevent this from occurring. Their definition of a hedge is:

\begin{quote}
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.
\end{quote}
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 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:

“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


