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”.

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.