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.