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. 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, reduced wind speeds resulting in reduced heat loss from housing stock, noise reduction, carbon sequestration, improved air quality, and

---


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)

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.

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