About Scothedge

1. We submit this paper on behalf of Scothedge. We thank Mark McDonald and the Scottish officials on the launch of this bill which has our support.

2. Scothedge has campaigned for Scottish legislation since the inception of the Holyrood Parliament and our position is well known and fully set out in our 2009 publication ‘A Growing Problem’ which has been sent to every MSP. We believe that this Bill will go a long way to solving the majority of the problems but without amendment will still leave some dreadful cases unresolved.

3. Our position is that the bill as proposed can be cost-effectively improved in several areas and this submission explains how that could be done.

4. Before we do that we would like to say a few words about Scothedge and scotch some of the myths that have grown up around this issue over the last 13 years.
   - Our committee are all hedge victims and amongst us are engineers, health and public affairs professionals, a lawyer and an arboriculturalist. It is as sufferers that we bring the passion and enthusiasm to the debate, but it is as professionals that we offer researched and tested solutions. There is no other body in Scotland with the experience and understanding of all aspects of the ‘high hedge’ issue.
   - Scothedge has never been against trees. We simply stand against those who use trees and plants in an inappropriate and unreasonable way. The problem lies with a small but significant group of selfish individuals and the law must ensure that no one can continue to behave in a way that the vast majority our society finds unacceptable.
   - The overwhelming majority of trees and hedges, whatever their height, are a benefit to our environment and our society. Scothedge has never advocated that somehow ‘all trees should be cut down to six feet’. However we feel that this possibility still haunts some official thinking and has led to an unjustified fear that legislation will somehow require the authorities to embark on a nationwide tree survey with a mass cull of rogue plants.
   - We have always advocated a system based on individual complaints which specifically addresses individual problems.
   - The Scothedge requirements of any legislative solution have always been that
     1. It should be cost effective and impose a minimum burden on public resources
     2. It must offer the possibility of an affordable solution to all sufferers and specifically not make matters worse for any individual.
   - MSPs have changed since the start of the Scottish Parliament, and we have responded to private member and ministerial proposals to use planning regulations, ASB legislation and sheriff court actions.
• Scothedge has always maintained that legislating against a hedge defined in terms of the species, numbers or arrangement of plants is likely to cause confusion, offer many legal loopholes and leave some of the worst cases unaddressed. In our view a more mature approach to legislation would set the goal of ‘maintaining vegetation such that it never adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’.

5. However ‘we are where we are’ and we will address comments to the bill as currently proposed

The Suffering of ‘High Hedge’ Victims

6. ‘I do think he is being incredibly selfish. I would be so ashamed if I thought I was causing such unhappiness to my neighbours and was able to act but didn’t.’

7. This short statement from a victim summarises perfectly the real problems that lie behind the so called ‘Hedge Wars’. This is a problem caused by a small number of people who are happy to abuse and victimise their neighbours. They use trees and hedges to inflict that abuse because the law uniquely allows them to be used as weapons for that purpose. By default the law makes any dispute interminable. The law needs to change and needs to make sure that all victims are helped. This is a very serious problem for those who suffer but it is not a serious problem in terms of what it would take to fix it.

8. It remains legal in Scotland for one neighbour, in a dispute over any issue, to take advantage of the relative position of their property and use trees and hedges as a unilateral weapon of punishment to spoil a neighbour’s enjoyment of their home.

9. With many of the victims being elderly and confined to their homes as their final sanctuary, such inconsideration is especially hurtful and intolerable and the injustice becomes even more traumatic as their home is, little by little, devalued and turned into nothing at all.

The Causes of the Problems

10. Scothedge surveyed its members in 2005 and 2009 and there was a public consultation in 2009. Our surveys showed that 78% of cases featured evergreens and around 20% identified deciduous species as being the problem. 49% of all cases involved a single inappropriate tree. The Holyrood public consultation reported ‘many respondents highlighted the limitations of the (Westminster) definition including ‘being restricted to evergreens and semi-evergreens’’

11. This spread of cases shows that any attempt to define the problem in terms of
species, numbers or arrangement of plants is bound to deny justice to significant groups of sufferers. At the same time it would offer vengeful hedge owners legal alternatives to allow them to continue their unreasonable behaviour.

12. Section 2.3 of ‘A Growing Problem’ looks in detail at how people’s lives are affected by high trees and hedges but to summarise:

- We use the term ‘loss of garden amenity’ to summarise a range of effects, the most obvious being light blocking (81% of cases) but it also covers unreasonable amounts of leaf deposition etc., especially in deciduous cases.
- Direct impact on property include loss of light to windows (66% of cases) and the danger of damage to property (and people) from toppling.
- Loss of views from a property is a common problem (68% of cases) especially in a country as beautiful as Scotland. We often see cases where a grower is happy to deprive a neighbour of a view to over protect their own privacy whilst continuing to enjoy the view themselves.
- Subsidence and land heave are problems cause by planting large and inappropriate trees close to buildings, particularly in closer packed housing developments and in areas of clay soil.
- Relatively new problems involve the blocking of light to solar panels and we now have a case involving a purpose built ‘solar house’ being deliberately deprived of sunlight by stands of deciduous trees. These cases can only increase with climate change and the drive towards renewables.
- Other effects include blocking of TV signals, particularly to satellite dishes and there are cases of insect infestation, water shedding and even health effects such as depression caused by light deprivation and atmospheric effects of living in close proximity to an overwhelmingly dominant hedge.

13. Needless to say the effects and the mere existence of a problem hedge can devastate the value and marketability of an affected property, especially when disputes with a neighbour must be declared to a buyer.

14. In section 5.3, ‘A Growing Problem’ offers guidance on how these effects could be assessed and quantified to help authorities judge if a tree or hedge ‘adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’. There is a wide range of standards and codes of practice available from professional bodies, for example the Royal Institute of Chartered Surveyors, the Royal Horticultural Society and the Building Research Establishment. These all explain the dangers of inappropriate tree cultivation and offer ways for responsible growers to avoid them.

15. Root and branch encroachment (66% of cases) causes damage to gardens, buildings, roads and driveways and perhaps most worryingly to underground services. We accept that these effects can be addressed using current remedies but the reasoning in paragraphs 102 & 103 of the Policy memorandum apply equally to
these effects and we suggest that the opportunity is taken to consolidate other pieces of legislation into the High Hedge Bill. As we have seen, most cases suffer from a variety of effects and the complexities of using different pieces of legislation to address a single case could be avoided especially when the existing provisions could involve large legal expense.

16. The Scotchedge cases show that the effects of the tree or hedge on a neighbour usually far outweigh any benefits to the grower. Many are driven by an unreasonable expectation of privacy, especially in modern housing developments. We rarely see high screening hedges on the south side of a grower’s property but see many grown to the north which block sunlight from a neighbour. We see large hedges which are distant from the grower’s property but which because of geography are literally on top of a neighbouring house. We see trees in large gardens which might seem appropriate but which totally dominate the smaller gardens of more modest neighbouring properties. We never see trees planted to block a grower’s view but often see them planted with no regard to a neighbour’s ability to enjoy the same outlook. Ivy growing on a single deciduous tree has the same result as an evergreen hedge.

17. Problems arise when a tree or hedge is selected which is not suitable for its location or is not properly maintained. The point is that over time, all species of plant can become a nuisance and in some cases a danger. The problems are not species specific and do not arise because of the plants themselves. Owners must take responsibility for their trees regardless of cost and the excuse that ‘we can’t afford to trim’ is unacceptable.

What We Can Learn from the Rest of the UK

18. The currently proposed hedge definition is based on the Westminster legislation of 2003. This bill was weakened by a group of back benchers, motivated largely by a dislike of private members’ bills, who moved multiple amendments in an attempt to kill it. Although the bill was eventually passed it was much diluted, resulting in the narrow definition of a hedge. It does not represent an ideal template for Scotland because the definition is more the result of Westminster filibustering than a straightforward response to the situation in England and Wales.

19. As Scotland prepares its own legislation we can do much better. The Holyrood process is much more ‘mature’, there is real data available about the situation here and we can draw on the experience of England and Wales.

20. The authorities in Scotland seem nervous about the potential number of cases and this has led COSLA to favour the narrow definition which excludes deciduous species and single trees because ‘data elsewhere provides comfort that costs will not be significant and numbers will not be unmanageable’ (section 44 Policy Memo). ‘Data elsewhere’ means the situation in England and Wales where it is true that
costs have not been significant or numbers unmanageable. But this is not evidence that the inclusion of deciduous species and single trees in Scotland would *add significantly to the costs or make numbers unmanageable* and it is not acceptable to infer this from the experience and data available from other parts of the UK and from Scotland itself.

21. **LET'S BE CLEAR; THERE IS NO EVIDENCE SUPPORTING THE THEORY THAT INCLUSION OF DECIDUOUS SPECIES AND SINGLE TREES SIGNIFICANTLY ADDS TO THE NUMBER OF CASES OR TO THE COSTS TO LOCAL AUTHORITIES.**

22. This fear, particularly shown by COSLA, has hovered in the background throughout this campaign. We have challenged MSPs and officials to provide details of any issue so that it might be addressed, but we have yet to see any. We have been provided with minutes of meetings involving COSLA but they show that the issue was simply not enough of a concern to be recorded. However the current position still seems to be that ‘COSLA will accept evergreens and semi evergreens but don’t ask them to widen the definition or they will withdraw their support’.

23. Why might this be? We can only speculate that there is an irrational fear based on the 40,000 cases that were estimated by Hedgeline for England and Wales prior to legislation in 2003. This figure was still being reported by (amongst others) the ‘Mail on Line’ website in May 2009, less than 3 months before the launch of the Scottish public consultation. **COSLA should accept that the actual number of cases requiring any action by local authorities in England and Wales were less than 10% of the feared 40,000 and spread over 7 years. This was simply because once the legislation was enacted; the vast majority of unscrupulous growers simply cut their hedges.**

24. Let’s look in detail at section 37 of the Policy Memorandum and consider the 6 English authorities which have complete data; Windsor, Croydon, Hillingdon, South Tyne, Hartlepool and Sandwell. According to 2011 census information (Wikipedia) the total population of these authorities is 1,335,600. The data covers a period of 7 years, 2005-11.

<table>
<thead>
<tr>
<th>6 Sample English Authorities</th>
<th>Enquiries</th>
<th>Formal Complaints</th>
<th>Direct Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-2011</td>
<td>1,220+</td>
<td>100</td>
<td>1.0</td>
</tr>
<tr>
<td>Average per Year</td>
<td>174</td>
<td>14</td>
<td>0.1</td>
</tr>
</tbody>
</table>

25. **Enquiries** are when a local authority is approached by a member of the public with a hedge issue. Often these are not recorded so the number of enquiries could be higher than this. The authority takes no action other than issuing information and the whole process could be done online at virtually zero cost to the local authority.
26. **Formal Complaints** occur when a member of the public initiates the process in accordance with the legislation. The figures confirm Scothedge’s (and others’) long held belief that the number of formal complaints are around 10% of earlier enquiries. The most likely reason for this is that following the enquiry, both parties to the dispute are aware of the legal position and the case is resolved with no further involvement of the local authority.

27. **Direct Action** occurs when, under the provisions of the legislation, the local authority takes direct action to cut back the hedge because the grower refuses. In the data supplied there is only a single case of this over the 7 years (South Tyneside). Although probably statistically incorrect this analysis has assumed that direct action will occur once in seven years for a population of 1,335,600. Suffice to say occurrences are extremely rare and should be of no concern to local authorities in Scotland.

28. We can now extrapolate this data to give a picture for the whole of England and Wales using the 2011 population (56,113,000). Interestingly this shows that the number of enquiries, 51,000, is of the same order as the approx. 40,000 estimated by Hedgeline prior to the 2003 Westminster Bill. According to this analysis 50,000 enquiries result in only 4,200 formal complaints over 7 years for the whole of England and Wales, proof if it were needed that the mere presence of the legislation is the biggest factor in the resolution of problems.

<table>
<thead>
<tr>
<th>England &amp; Wales</th>
<th>Enquiries</th>
<th>Formal Complaints</th>
<th>Direct Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-2011</td>
<td>51,256</td>
<td>4,201</td>
<td>42.0</td>
</tr>
<tr>
<td>Average per Year</td>
<td>7,322</td>
<td>600</td>
<td>6.0</td>
</tr>
</tbody>
</table>

29. We can also use the English data to predict the likely outcome of legislation here. In the table below we have again used 2011 population figures (5,222,100) to predict the likely number of Scottish cases requiring local authority intervention. We have also examined how sensitive the outcome is to various % increases, such as might follow from the inclusion of deciduous and single tree cases, using real data from Scothedge case files and member surveys.

30. 18% uplift has been highlighted because this is the latest Scothedge estimation of the increase in cases that would result from including deciduous species in the Scottish hedge definition.

31. It can be seen from this that the inclusion of deciduous trees in the definition of a hedge will result in the annual number of enquiries, across the whole of Scotland, rising from 681 to 804. **But crucially this will only mean the number of formal complaints rising from 56 to 66, an increase of 10 per year for the entire country.**
Local Government and Regeneration Committee  
Stage 1 scrutiny of the High Hedges (Scotland) Bill  
December 2012

<table>
<thead>
<tr>
<th>Scotland</th>
<th>Enquiries</th>
<th>Formal Complaints</th>
<th>Direct Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 7 Years after</td>
<td>4,770</td>
<td>391</td>
<td>3.9</td>
</tr>
<tr>
<td>Average per Year</td>
<td>681</td>
<td>56</td>
<td>0.6</td>
</tr>
<tr>
<td>10% uplift</td>
<td>750</td>
<td>61</td>
<td>1</td>
</tr>
<tr>
<td>18% uplift</td>
<td>804</td>
<td>66</td>
<td>1</td>
</tr>
<tr>
<td>30% uplift</td>
<td>886</td>
<td>73</td>
<td>1</td>
</tr>
<tr>
<td>40% uplift</td>
<td>954</td>
<td>78</td>
<td>1</td>
</tr>
</tbody>
</table>

32. The impact of this on the average of Scotland’s 32 local authorities would be

<table>
<thead>
<tr>
<th>Average Scottish Local Authority</th>
<th>Enquiries</th>
<th>Formal Complaints</th>
<th>Direct Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average per Year</td>
<td>21</td>
<td>1.75</td>
<td>0.02</td>
</tr>
<tr>
<td>10% uplift</td>
<td>23</td>
<td>1.92</td>
<td>0.02</td>
</tr>
<tr>
<td>18% uplift</td>
<td>25</td>
<td>2.06</td>
<td>0.02</td>
</tr>
<tr>
<td>30% uplift</td>
<td>28</td>
<td>2.27</td>
<td>0.02</td>
</tr>
<tr>
<td>40% uplift</td>
<td>30</td>
<td>2.44</td>
<td>0.02</td>
</tr>
<tr>
<td>100% uplift</td>
<td>43</td>
<td>3.49</td>
<td>0.03</td>
</tr>
</tbody>
</table>

33. To emphasise the point we have looked at the sensitivity of a 100% uplift in cases. In other words, what the outcome would be if the inclusion of deciduous species and single trees **doubled the number of cases** seen in reality south of the border.

34. It can be seen that even if deciduous and single tree cases doubled the number of cases in Scotland the average Local Authority would still have to deal with less than four cases per year as opposed to two.

35. Scotedge holds that on the basis of real data, COSLA should reconsider their position of supporting ‘a narrow and focussed Bill as the experience of its implementation elsewhere provides comfort that costs will not be significant and numbers will not be unmanageable’.

36. Experience of implementation elsewhere provides nothing of the sort. This is **speculation** based on misinformation. The **evidence** of implementation elsewhere provides that even a much wider definition of a hedge would not result in the numbers becoming unmanageable.

37. The Westminster legislation also prohibits the trimming of a hedge to a reasonable height if this would risk killing the plants. This nonsensical provision protects the worst cases and in Scotland would reward those who have done least to relieve the suffering of their neighbours whilst we have waited for Holyrood to act. No such provision should be included here.
Why Not Deciduous Trees?

38. Section 26 of the Policy Memorandum states that the bill does ‘not intend to include deciduous trees, because there are loopholes to do with whether trees that shed their leaves could be considered to form a constant barrier to light in the same way that evergreens and semi evergreens can.’ (We note that the wording of the bill in this respect under 1 (1) (c) is ‘forms a barrier to light’.)

39. Irrespective of whether the intention is to specify ‘a barrier to light’ or ‘a constant barrier to light’ this parameter does not distinguish between evergreen, semi-evergreen or deciduous species. All species form a barrier to light whether in full leaf or bare branch condition, the only difference being one of degree between different species at different times of the year. The Building Research Establishment (BRE) Digest 350 [6.1.3] contains the table below which shows the transparency of the crowns of different species when in full leaf or bare branch condition. This is measured in terms of ‘% radiation passing’ where 0% would represent a blackout barrier and 100% represent total transparency.

40. Common evergreen species allow only 10% of radiation to pass at any time of year, but it can be seen from the table that common deciduous species also form a considerable barrier to light, even in ‘bare-branch’ condition. In full leaf there is virtually no difference between evergreen and deciduous species, this being during the summer months when light is more important for garden growth and enjoyment of a domestic property.

<table>
<thead>
<tr>
<th>Common Name</th>
<th>Full Leaf</th>
<th>Bare Branch</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sycamore</td>
<td>25</td>
<td>65</td>
</tr>
<tr>
<td>Silver Maple</td>
<td>15</td>
<td>65</td>
</tr>
<tr>
<td>Horse Chestnut</td>
<td>10</td>
<td>60</td>
</tr>
<tr>
<td>European Birch</td>
<td>20</td>
<td>60</td>
</tr>
<tr>
<td>European</td>
<td>10</td>
<td>80*</td>
</tr>
<tr>
<td>English Oak</td>
<td>20</td>
<td>70</td>
</tr>
<tr>
<td>Lime</td>
<td>10</td>
<td>60</td>
</tr>
<tr>
<td>Elm</td>
<td>15</td>
<td>65</td>
</tr>
</tbody>
</table>

* The beech tends to retain dead leaves for much of the winter, reaching bare branch condition only briefly before new leaf growth in the spring.

This data applies to individual tree crowns; multi row belts or blocks let virtually no radiation through when in leaf, and very little when in ‘bare-branch’ condition.

41. In reality all species, at all times of the year are a **significant** barrier to light,
whilst no species, at any time of the year are a constant barrier to light.

42. The Westminster legislation refers to the ODPM ‘Hedge Height and Light Loss’ documentation based on sun angles for England and would need to be adjusted to take account of lower sun angles in Scotland.

43. Scothedge maintains the view that attempts to distinguish between species used is an unfair and unnecessary complication and rejects the arguments in sections 42 and 43 of the Policy Memorandum which, far from avoiding the ‘risk of creating complex and unwieldy legislation’ in fact do just that. The bill under section (2) does a good job in defining a case as being where ‘the applicant considers that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’. This is simple and unambiguous. Why complicate things with a woolly and unproven distinction between different species?

44. The Scothedge advice remains that there is absolutely no difference in the legal position of species of plants used as a hedge or screen unless such a difference was to be specifically created by the proposed legislation.

45. The term semi-evergreen is likely to prove even more ambiguous and add even more complexity. Common hedging species such as beech and hornbeam all retain leaves (dead or alive) for 11 months of the year but are classified as deciduous species and any attempt to classify them as something else is again bound to lead to confusion and ambiguity. Hawthorn sheds it leaves but the density of the branches means the effects on light are virtually the same in summer and winter.

46. We have already addressed the concerns raised by COSLA in section 44 of the Policy Memorandum, but this section also highlights concerns raised by other bodies. We would respond to the concerns of the Scottish Tree Officers Group in the same way as we addressed the concerns of COSLA above; our belief being that they are unaware of the true scope of the problem and especially of the low numbers of cases that will require intervention.

47. The Royal Society for the Protection of Birds (RSPB) also supports a hedge definition which excludes deciduous species because ‘deciduous plants generally have a greater wildlife value than conifers’. We have the utmost respect for the RSPB and amongst Scothedge members are fellows and members of the Society. However in this case we consider that their view should be given little weight because, once again, we suspect that they have not been made aware of the scale of the problem. We are sure that it is not the intention of the Society to endorse the poor behaviour of a small number of hedge growers who inflict such distress and suffering on people. Trimming of Scotland’s rogue deciduous trees and hedges would be a ‘drop in the ocean’ of the total deciduous stock and the impact on wildlife would be negligible. The vast majority of domestic deciduous hedges are already
trimmed by responsible owners and as far as we know, the Society has never campaigned against them and we are sure they do not wish to support a small number of uncaring growers. On balance, wider society must look for a remedy which helps a small, but significant and proven number of human sufferers rather than one offering a speculative and unquantifiable benefit for a tiny number of birds.

48. In England they avoid remedial trimming during the nesting season and Scothedge fully supports this policy.

49. The Policy memo does not explain why The Woodland Trust supports a narrow definition but we assume their concerns are similar to those of the other bodies and should be similarly addressed.

The Isle of Man Experience

50. We now turn to sections 109 & 110 of the Policy Memorandum concerning the Isle of Man. The independent Manx government passed the ‘Trees and High Hedges Act 2005’ which includes single trees and deciduous species and where the only test a tree or hedge has to meet is whether it is affecting a person’s reasonable enjoyment of property.

51. It is our view that the Isle of Man provisions are much better than those in England and Wales and would serve Scotland much better than the current proposals.

52. The Policy Memo refers to the appeal judgement in the case of ‘Boardman versus the Braddan Commissioners’ as a demonstration of the difficulty ‘of decision-making in considering such cases in comparison with evergreen hedges’.

53. **In our opinion this interpretation is plainly wrong.**

54. This is indeed a complicated case, as are some in Scotland, but the complexity comes from the geography of the boundary area between the properties and not the species involved. The hedge itself is wide and multi-layered and consists of a variety of species including ash, laurel, alder, birch and sycamore. **It is a large and complicated hedge that happens to be mainly deciduous, not a large and complicated hedge because it is deciduous!**

55. The appeal mainly challenged the setting of the action heights on the grounds that the hedge should have been treated as a single entity with a single action height. The High Bailiff largely rejected the appeal on the grounds that the original remedial order allowed sufficient daylight into the affected property whilst affording a reasonable degree of privacy to the hedge grower. Scothedge considers that this was a fair judgement and applauds the actions of the Isle of Man authorities. The order to cut the hedge was entirely justified and a reasonable and pragmatic solution was devised.
56. Under current Scottish proposals the appeal process would not involve court proceedings and should be more straightforward in any case.

57. Scothedge entirely rejects the inferences in section 110 of the Policy Memo that
   - Being a deciduous hedge added complexity to the case which a similar evergreen hedge would not.
   - A narrower definition of a high hedge (would) provide a more straightforward decision-making process which (would) limit costs both to the public purse and to the parties involved in the dispute …

58. *It is of great concern that this case would not have been addressed in Scotland under the current ‘evergreen only’ proposals. This was a justifiable case, fairly and pragmatically handled by an open minded authority, unconstrained by poorly devised legislation which was copied from Westminster.*

Conclusions

59. There is no justification for excluding deciduous species or single trees from the definition of a hedge. Removing such limitations will not add significantly to the number of cases requiring local authority intervention, nor to the complexity or the costs of finding a remedy.

60. The proposed hedge definition states (section 2.2) that an application for a high hedge notice can be made where *the ‘applicant considers that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have’*. This alone should be the requirement for making an application for a remedial order under the new legislation. It is unacceptable to discriminate between sufferers and deny them access to the remedial process, because of unproven and largely speculative differences concerning the species of plants involved.

61. One of the worst consequences of the proposed definition is that ‘de facto’ some of the nastiest cases will be confirmed as legal and the associated poor behaviour will be endorsed and encouraged by the law. This is a totally unacceptable outcome and we would expect the Scottish Parliament to feel a duty of care to people who could find themselves in this situation. To create a situation where, given two similar cases, one is resolved whilst the other is protected is frankly nonsense.

62. Under the current proposals there is nothing to prevent the ‘spirit’ of any remedial order being frustrated by unscrupulous growers who switch to readily available deciduous species or create a nominal gap between the plants to turn a hedge (as defined) into a row of ‘untouchable’ single trees. When this happens the government
will not only have failed the sufferer but will have created a law which is wide open to abuse by determined growers and which will be seen by the public as poorly thought out and ineffective.

63. With the exception of section 1 and some reservations regarding fees (section 3), Scothedge supports the remainder of the proposals. We are happy with the powers given to local authorities to administer the process and prevent frivolous or vexatious claims, and those given to ministers to make modifications. Given these safeguards we can see no reason to restrict access to those affected by deciduous species or single trees. In the unlikely event that these cases ‘swamp’ the system, the authorities will have the power they need to make changes.

64. There is overwhelming evidence, particularly from England and Wales, that the passing of legislation will result in massive ‘capitulation’ by unreasonable hedge growers without any action by the authorities or any expense to the taxpayer. This ‘one off’ effect will be boosted by the media coverage which will accompany any announcement of legislation. Scothedge considers that not only would it be unfair to deciduous and single tree sufferers for the government to deny them the benefits of this ‘honeymoon period’, but it would throw away a government opportunity to resolve a significant number of cases at no cost to the taxpayer.

65. For example this Scottish deciduous case will not be addressed under current proposals

Here is what it means to the sufferer.

- ‘Even on the sunniest of days I need full electric lights on. It is heart-breaking, on a sunny morning to have your kids say to you “Please put the light on Mummy” before they can eat their Rice Krispies!’
- ‘The plumber inspecting my boiler would not sign off the boiler as having passed until he had cut down some branches that overhang my external gas flue’
- ‘We are on a low income and just don’t have the funds to spare to pay for the luxury of having a tree surgeon visit our property every year to trim back a hedge that doesn’t even lie within our property’
- ‘The trees substantially interfere with my television reception. I have had a new rooftop aerial mounted on a 10 foot pole. Even with this, once it starts raining I hardly receive any channels apart from BBC1 and BBC2. I have no alternative but to consider arranging for my aerial to be mounted onto a 20 foot pole on top of my roof.’

Should this be allowed to continue?

Requests

66. Scothedge therefore asks the committee to amend the current proposals so that
sufferers are not discriminated against purely because of the number, species or arrangements of plants involved. As a general principle Parliament should frame legislation which considers the effects on the reasonable right to enjoy a property, rather than trying to define and legislate against the possible causes.

67. We commend the practice of the Isle of Man authority which is a big improvement on Westminster. We ask that similar practice is adopted here rather than copy the limited and compromised legislation in place in England and Wales.

68. Scotedge requests that the legislation is set as wide as possible so that the maximum number of cases can be resolved for the least cost to individuals and the taxpayer. No one should be excluded from applying for a remedial order because they cannot afford to pay a fee.

69. The provisions in the Bill provide plenty of protection for the authorities in the unlikely event that the number of cases become unmanageable. Parliament should give the benefit of any doubt to those who suffer rather than to those who inflict suffering on others.

70. Finally … 3 similar cases which will be treated very differently under current proposals……

<table>
<thead>
<tr>
<th>Adversely affects the enjoyment of the domestic property?</th>
<th>✓</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 or more trees?</td>
<td>✓</td>
</tr>
<tr>
<td>Evergreen?</td>
<td>✓</td>
</tr>
<tr>
<td>REMEDIAL ORDER</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adversely affects the enjoyment of the domestic property?</th>
<th>✓</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 or more trees?</td>
<td>X</td>
</tr>
<tr>
<td>Evergreen?</td>
<td>✓</td>
</tr>
<tr>
<td>NO REMEDIAL ORDER</td>
<td></td>
</tr>
</tbody>
</table>
71. After 13 years of waiting for the Scottish Parliament to act – Let’s do it right!

For and on Behalf of Scothedge
Edinburgh
November 2012