Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details:

1. No, the group does not agree with the definition of high hedges.

2. Two evergreen trees could be planted 5m apart, the lower branches come together and form a barrier to light. However the original intention was the establishment of two individual trees, not for a ‘hedge’ to form after many years growth. For example, Sitka spruce trees grown for commercial reasons are typically planted in woodlands at 2m or 3m spacing. Their canopies meet. Is this a hedge? Likely ‘no’ but it could be regarded as a ‘hedge’ or ‘barrier to light’ under this legislation where the woodland backs on to a private garden. Two yew trees or Scot’s pines could have been planted for aesthetic, historic, cultural and/or biodiversity value reasons and may be growing in close proximity as open-grown trees but were never intended to be or managed as a hedge.

3. It is understood that the Bill has been drafted principally in relation to issues associated with tall cypress, or similar species, hedges. It is however recognised that for cypress it is not uncommon for plants to be planted as individual trees in a row, and remain untrimmed or only partially trimmed. Through time the row of trees will exhibit what many regard as the characteristics of a ‘hedge’ and form a barrier to light. In this regard, including a line of evergreen trees within the scope of the legislation may not be unreasonable. However if the row of trees is a feature of the wider landscape of a garden or park then it could be unreasonable to consider these as a ‘hedge’ if the original intention was not to form a hedge but to form a row of trees.

4. The group’s principal concern is that some may seek to interpret the legislation as relating to 2 or more tall trees growing closely together which cause a barrier to light but which were not planted originally as a hedge. They could be park, garden or woodland edge trees, or species whose growth characteristics are not consistent with being a hedge. For the avoidance of doubt, it is not considered appropriate that the legislation apply to these circumstances.

5. The bill refers to ‘high hedges’ and therefore the original intention of the planting should have been to form a hedge. Whilst there is no absolute definition of hedge in common usage, it is generally regarded as being one or more lines of woody plants planted at a spacing which is likely to lead to relatively rapid coalescence of canopy. Plants are usually trimmed (on sides and top) to encourage bushy growth more or less to ground level to form a physical barrier to movement. It is custom and practice for hedge plants to be planted in a row or rows – straight, zig-zag, multiple rows – at 1 or more plants per linear metre. The definition of a hedge should incorporate reference to the distance between plants and/or to the original purpose of the plantings.
6. It is considered desirable that clear guidance on the interpretation of the legislation be provided in advance of the legislation being enacted. In this regard, the Explanatory Notes are not considered sufficient for the purpose and we would wish that supplementary guidance be produced. To provide weight of consideration, it is considered that such guidance would be specifically referred to within the primary legislation. In particular we would find it helpful that statutory guidance:

- Provides further clarification on the specific circumstances to which the legislation relates. It would help if the statutory guidance describes examples of trees, tree lines, woodland edges, shelterbelts and wildlife corridors which are outwith the scope of the legislation.
- The term ‘semi evergreen’ is confusing and contradictory. If reference is being made to Beech (Fagus sylvatica) then this should be stated, otherwise an explicit statement that the term semi-evergreen does not include species, which can hold on to desiccated foliage beyond autumn (e.g. beech or hornbeam) should be made. The definition of ‘semi-evergreen’ should be clarified or removed altogether.

7. A hedge of 2 metres is a reasonable height as this creates privacy within a property. It is unreasonable to have a hedge of 2 metres to be included. This should be extended to 3 metres.

8. Alternatively a simple formula could be used which takes into account the height of the hedge and the distance from a neighbouring property e.g. a 2 metre hedge which is 1 metre from a property is likely to be more of an issue than if it were 15 metres from the property. However there is no room for this distinction in the current bill.


**Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why?**

10. No. However more guidance on what type of vegetation the Bill aims to control would be useful.

11. Trees are an important contributor towards visual amenity and often contribute significantly towards the landscape setting of settlements and other development. Proposals to extend the Bill to include all trees would not be supported.

12. The bill should be limited only to hedges, with the specific focus on people who deliberately use cypress or other evergreen hedges to intimidate or generally make life difficult for neighbours. Native coniferous hedges made up primarily of yew and juniper should be exempt as these are rare and provide important biodiversity and habitat. Other hedge species are more manageable and may successfully be topped and reformed. Cypress or similar species are not.
Do you have any comments on the proposed approach to dispute resolution as set out in the Bill?

13. The Bill appears to allow the local authority to exercise significant levels of discretion in determining applications. It is however noted that there is a process of appeal to the Scottish Ministers. It is therefore considered desirable that clear guidance on the interpretation of the legislation be provided in advance of the legislation being enacted. In this regard, the Explanatory Notes are not considered sufficient for the purpose and we would wish that supplementary guidance be produced and this is specifically referred to within the primary legislation.

14. Section 6(7) of the Bill provides examples of matters to which the authority must have regard. Given that the legislation would apply to trees, it would be appropriate that “good arboricultural practice” be included on the list. Good arboricultural practice is significantly informed by BS3998: 2010, Tree Work – Recommendations. In terms of the approach to dispute resolution it is considered desirable that the statutory guidance:

- Provides hypothetical examples of what is understood to be either “frivolous or vexatious” (para 5(1)(b)) applications, in order that the circumstance is clear as to when a local authority “must dismiss” an application.

- Provides guidance on what is considered “….reasonable steps to resolve the matters in relation to the high hedge” (para 3(1)) before making an application”) This would help ensure the law is consistently and fairly applied across Scotland. For example the Explanatory Notes note that the local authority may require applicants to have tried mediation before making an application. Unless nationally applied this would be an unfair requirement if only applied locally and it may put off potential applicants for reasons of cost (approximately £50 + VAT / hour) or for other reasons including that they may be intimidated or confused by the process. The guidance could usefully include hypothetical examples of acceptable (and unacceptable) reasonable steps.

- Clarifies whether there is a general right to light under Scottish law and makes it explicit that this legislation is not intended to address all light issues which may result from vegetation. It would also assist if guidance made it clear that the legislation relates to daylight rather than sunlight.

- Provides guidance in relation to hedge height and light loss which take account of a number of factors including hedge height, window position, distance and aspect. This is considered highly desirable to provide a level of national consistency in applying the legislation. It is noted that the BRE has prepared a guidance note for DTLR in England on “Hedge Height and Light Loss” which provides guidance in this regard.

- Clarifies the procedure where a local authority is either the applicant or the owner of a hedge under the definition in the legislation is the applicant.
Do you have any comments on the enforcement procedures proposed under a high hedge notice?

15. Subsection 16 (2) should include reference to the National Park Authority.

Do you have any comments on the proposed fees and costs?

16. The freedom to charge fees and costs should remain with the local authority. Costs charged should be reasonable in covering the costs of the operation.

Are there any aspects of the systems used in other jurisdictions which should be included within this Bill?


18. The application based process being proposed is a novel one. There may be issues in its implementation but at this point it’s difficult to foresee what other aspects of other enforcement systems may be pertinent.

19. The 2001 DTLR ‘Hedge height and light loss’ calculator for ‘action height’ could/should be adopted to assist with the ‘forms a barrier to light’ bit of the bill.

Are there any aspects of this Bill which would impact positively or negatively on equality of opportunity?

20. No

Any other issues relating to the Bill which you wish to bring to the attention of the Committee?

21. The main item that perhaps could be withdrawn from the proposed Bill is Section 11, Tree Preservation Orders. We would consider Clause 2 could have detriment to say, a couple of mature Scots Pine or Cedars, which by virtue of a TPO have some landscape or intrinsic value but could be ruined by the effects of works emanating from a potential HH Notice.

22. The fact that neighbouring properties do not have a right to light where a property is shaded out by adjacent tree growth has been a key argument in preserving tree cover and biodiversity in many situations encountered by local authority officers. Complaints are regularly received from people who want otherwise healthy trees cut back or removed in order to allow more light into their garden/property/conservatory, often in a situation where the trees have been there longer than the property. A common situation is for a proprietor to build a conservatory or sun room and then complain about adjacent trees shading out light. This is unacceptable and there should be provision within legislation that if trees or shrubs predate adjacent property or dwelling place then the owner of the
Local Government and Regeneration Committee  
Stage 1 scrutiny of the High Hedges (Scotland) Bill  
December 2012

trees or shrubs should have less obligation. Are Scottish Ministers prepared to introduce a ‘right to light’ for residential properties as this bill seeks to do. This could have potential repercussions for other situations and this right to light applied to situations that the bill has little relevance to, particularly where two or more mature trees closely growing together but not planted as a hedge are concerned.