PROPOSED HIGH HEDGES (SCOTLAND) BILL

REVISED STATEMENT OF REASONS ON WHY NO FURTHER CONSULTATION REQUIRED

Proposal

1. My proposal is for a Bill to create a new right to apply to the local authority to prevent certain high hedges from interfering with neighbouring property, and to give that local authority power to determine rights in a case of dispute, subject to an appeals mechanism.

Background to proposal

2. Providing a local authority solution to the issue of high hedge disputes was a specific option contained in the recent consultation on “High Hedges and other Nuisance Vegetation”, which was published by the Scottish Government on 14 August 2009. The consultation, responses to the consultation, and analysis of those responses can be found on the Scottish Government website at:

- Consultation
  http://www.scotland.gov.uk/Publications/2009/08/14122714/0
- Responses
  http://www.scotland.gov.uk/Publications/2009/12/11111246/0
- Analysis
  http://www.scotland.gov.uk/Publications/2010/03/25102917/10

3. This consultation was publicised widely with a link to the relevant area in the Scottish Government's website and a full list of consultation recipients which included: COSLA; the Scottish Court Service; the Crown Office and Procurator Fiscal Service; the Lands Tribunal for Scotland; the Scottish Land Court; and Scothedge. The list of consultation recipients is available at annex one of the analysis. Responses were invited until 13 November 2009 and a total of 617 responses were received, of which 575 (93%) were from private individuals. Over 77% of respondents supported the introduction of a legal solution to this issue. The overwhelming majority of responses supported Government intervention.

4. The proposal for my Bill can be found at:
   http://www.scottish.parliament.uk/parliamentarybusiness/Bills/12419.aspx

Statement of Reasons

5. In relation to my proposal for this Bill, I did not undertake further consultation for the following reasons.

6. The consultation document referred to above considered the practical, operational, legal and financial considerations associated with the likely measures required to address the issue of high hedges in Scotland. This was
achieved through posing a number of questions on the main themes of this issue including: the creation of a legal right to be introduced in relation to high hedges; where such legal responsibility arising from a right might rest; how a high hedge might be defined in legislation; the factors to be considered when determining if or when action is required to address disputes surrounding high hedges; the methodology that might be used to resolve such disputes; the costs associated with such actions; and the role of Government in this matter. Support for a legislative solution was justified by respondents on the grounds that without a legal remedy, voluntary measures were less likely to be successful.

7. The issue surrounding the problems which can be caused by high hedges is not a new one and presents difficulties to home owners. There was ample opportunity for the public, key stakeholders (particularly Local Authorities) and trade and representative bodies to express their opinion on the subject. Members will also know the extent to which the public makes its views known on this issue from the post that they receive in constituency offices.

8. At a Parliamentary briefing held on 16 September 2009 the then Minister for Community Safety (Fergus Ewing MSP) sought to gather support from elected members for taking action on the high hedge issue. The briefing was attended by elected members from all the main political parties. Following the election in May 2011 and the significant number of new Members in the Parliament, I held a Parliamentary briefing on 26 October 2011. The four main political parties were represented.


10. Views expressed to me, as part of my ongoing engagement with a number of bodies, the public and others with an interest in this proposal, confirmed those views expressed during the formal consultation process from August to November 2009. I therefore believe that the views of stakeholders and the public submitted during that period have not materially changed.

11. It is also relevant to note that there is currently legislation in England and Wales in the “Anti-social Behaviour Act 2003”; in the Isle of Man’s “Trees and High Hedges Act 2005”; and in Northern Ireland the “High Hedges (Northern Ireland) Act 2011”. Links to all are below

12. The issue of how any right created is to be enforced was a key issue in the Scottish Government consultation. Since lodging the draft proposal, I am now minded to proceed on the basis of a local authority solution, as is the case elsewhere in the UK. The 2009 consultation showed a large number of respondents suggesting that replicating or modifying the English and Welsh legislation was the appropriate way of creating a new right. The views of local authorities themselves were more diverse, however.

13. Given this, further discussion is necessary with local partners, in particular local authorities, in order to finalise the details by which rights will be enforced in my forthcoming Bill. I have met with officials of COSLA and engaged with elected members. My discussions with local authorities in England have indicated that this modest power of last resort does not mean an onerous burden. What can start as lots of enquiries very quickly becomes just a handful of complaints, and an even smaller number of remedial action being undertaken by the local authority. This arguably shows that the very existence of effective powers that can be exercised is sufficient to bring disputing parties together, with resolution more likely. Despite this, there will also require to be an appeal mechanism allowing decisions to be challenged.

14. I also intend to continue dialogue with other partners, including those in the arboricultural industry, to assess impacts upon business of my proposal for a Bill.

Conclusion

15. I considered that no further consultation was required on my proposal for a Bill for the reasons set out above.

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