LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

11th Meeting, 2017 (Session 5)

Wednesday 19 April 2017

The Committee will meet at 11.00 am in the James Clerk Maxwell Room (CR4).

1. Declaration of interests: Jenny Gilruth will be invited to declare any relevant interests.

2. Post-legislative scrutiny of the High Hedges (Scotland) Act 2013: The Committee will take evidence, in a roundtable format, from—

   Pat MacLaren, and Pamala McDougall, Scothedge;

   Roger and Catharine Niven;

   John Bolbot;

   Peter and Liz Grant;

   Dr Donald Brown;

   Donald Shearer.

3. Subordinate legislation: The Committee will consider the following negative instrument—

   The Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Amendment Regulations 2017 (SSI 2017/78).

4. Consideration of evidence (in private): The Committee will consider the evidence heard at agenda item 2.
The papers for this meeting are as follows—

**Agenda item 2**

Note by the Clerk LGC/S5/17/11/1

PRIVATE PAPER LGC/S5/17/11/2 (P)

**Agenda item 3**

Note by the Clerk LGC/S5/17/10/3
Local Government and Communities Committee

11th Meeting 2017 (Session 5), Wednesday 19 April 2017

Post-Legislative Scrutiny of the High Hedges (Scotland) Act – Note by the Clerk

Purpose

1. This paper provides background information on the Committee’s roundtable evidence session as part of its post-legislative scrutiny of the High Hedges (Scotland) Act 2013.

Background

2. At its meeting on 1 February 2017, the Committee agreed its approach to the work it wished to undertake as part of post-legislative scrutiny of the High Hedges (Scotland) Act 2017.

3. On 6 February 2017, the Committee launched a call for written views from all interested individuals and organisations on how they feel the Act is working. The call for views ran until 20 March 2017 and the Committee received 62 submissions in total. The written submissions can be viewed at the following link:


4. A summary of the written submissions received was also produced and can be found at the following link:


Local Government and Communities Committee Consideration

5. At its meeting on 29 March 2017, the Committee agreed to hold an evidence session with a number of individuals who had responded to the Committee’s call for views. At its meeting on 19 April 2017, the Committee will take evidence from Pat MacLaren and Pamala McDougall from Scotedge, Roger Niven, Catharine Niven, John Bolbot, Peter Grant, Liz Grant, Dr Donald Brown and Donald Shearer.

6. Written submissions from all the attendees at the roundtable on 19 April 2017 are attached at Annexe A.
Next Steps

7. Following the evidence session on 19 April 2017, the Committee will consider the evidence it received during the session and then take evidence from representatives from local authorities on 10 May 2017.
Annexe A

Written Submission from Scothedge

I submitted evidence to The Scottish Executive in 2015 showing what Scothedge believed were four areas where the Guidelines issued to Local Authorities (“LA “) were having a negative effect on the implementation of the Act.

These were:

1. The Shelter Belt
2. The Non Hedge
3. The Woodland
4. The Owners removing 50% of the Hedge.

These topics were discussed at length and Revised Guidelines were issued in May 2016 attempting to address these matters and improve the operation of the Act.

The Revised Guidelines would appear only to have helped those with a Shelter Belt.

We continue to have problems in the following areas and therefore the topics we would like to cover in this submission are:

1. The Non Hedge
2. The Woodland
3. The Owners removing 50% of the hedge &/or creating gaps
4. Fees

It is still apparent that some Local Authorities are continuing to find ways of evading implementation fairly, in the spirit, and in the meaning of the Act itself.
I will go on to explain and give examples.

It also appears reporters of the DPEA are applying the terms of the Act inconsistently. This comparison is made in the section where 50% of the hedge has been removed.

The Non- Hedge Hedge

These are cases where the applicant has a boundary treatment of trees, which falls squarely within Section 1 of the Act.

“Meaning of a high hedge”
That is;
(a) Is formed wholly or mainly by a row of 2 or more trees or shrubs
(b) Rises to a height of more than 2 meters above ground level, and
(c) Forms a barrier to light.

The applicants in these cases have all conformed to the pre application requirements of mediation and contact with their neighbours. They had included their fee, and their applications were not considered frivolous or vexatious. However, their applications were dismissed without registration or record because their LA decided their trees were not a hedge.

As their cases were dismissed in this way, the applicants have no right of appeal. This constitutes in my opinion a breach of natural justice. The LA’s have thereby wholly circumvented the intention and purpose of the Act and prevented any appeal upon their decision.

LA’s has given varying reasons as to why the trees before them do not qualify in their opinion, as a hedge and here are some of them.

The trees were not planted at the same time.
The original intentions were not that of planting a hedge.
The trees are ornamental, part of a larger landscaping feature.
The trees are what you would expect in a mature garden boundary.
The trees are a tree belt and landscape feature of a golf course.
The trees are not managed as a hedge.
The trees are individual tree specimens.
The spacing between the trunks is not what you would expect of a hedge.

None of these are included as exclusions in terms of the Act or the Guidelines. In many cases the definition of the Act I would contend was specifically intended to cover these situations.

Examples of Non Hedge Hedges

Perth and Kinross Council (P&KC)

P&KC wrote in their Site Assessment, “the 15 trees that have been detailed in the high hedge notice application have been planted as ornamental trees and whilst arbitrarily close to the garden boundary are not all so. It is the opinion of the council that the trees within this garden were not planted as a hedge whether formally or informally, but as individual specimens.”

In one sentence the report states that the trees “do not form a continuous barrier to light” and in the next paragraph goes on to say “I consider that whilst some tree
canopies may coalesce and form a barrier to light, and this barrier to light may impact on the enjoyment of neighbouring dwelling-house, fundamentally this application does not relate to a hedge or indeed a high hedge, but individual trees”.

It was not disputed in the report that “the trees blocked the sun when due south and west, the photographs produced by the applicant showed this”. P&KC continued, “that there was a barrier to light, resultant adverse impact on the reasonable enjoyment of the applicants property however the barrier to light is a consequence of trees and not a hedge”.

This application was dismissed without registration or record with no right of appeal to the DPEA

Surely, to acknowledge the applicant had a high hedge under the Act, Section 1, it formed a barrier to light and had an adverse effect on the enjoyment of their property, it should at the very least been allowed to move forward to be allowed to go to the DPEA as an appeal?

Highland Council Non-Hedges

Applicant 1

Applicant 1 is approx. 10m from the boundary, the trees are 15m + tall on what is a south facing garden. He gets no sunshine in his garden at any time of year and also suffers lack of daylight in all rooms to the south.

Applied for a high hedge notice in July 2014, which was dismissed.

HC wrote, “having assessed the trees in question, please note we do not consider them as falling within the definition of a high hedge as prescribed by Section 1 of the high Hedge (Scotland) Act namely;

(a) Is formed wholly or mainly by a row of 2 or more trees or shrubs;
(b) Rises to a height of more than 2m above ground level; and
(c) Forms a barrier to light

The reason for this determination is as follows;

The trees in question do not appear to have been planted in a row as a hedge, nor do they take on the character of a hedge or have been maintained as a hedge. While tightly planted, they constitute woodland and form part of a woodland belt.”

They go on to say,
“While I can appreciate that the trees may form a **significant barrier to light** they do not form a hedge therefore do not fall within the ambit of the high hedges (Scotland) Act.”

**Case dismissed, no right of appeal to the DPEA.**

Why is this different?

**Applicant 2**

Applicant 2 is some 11m from the boundary, on what is a south facing garden, the trees are 15m + tall. He gets very little sunshine and also suffers from lack of daylight to all south facing rooms.

Applied for a high hedge notice at the end of 2016 on the basis the guidelines were revised. This was dismissed in Feb 2017.

**Highland Council wrote,** “The trees while closely planted, do not form any clearly recognisable linear feature that could be reasonably described as a hedge. AND the trees have not been planted in any clearly ordered linear fashion that would allow them to coalesce and form the solid wall type feature that is normally associated with a hedge. I appreciate that the lack of depth perception within the crowns may give rise to the impression that these trees were planted to form a hedge” HC continue, “That the coalescence of the crowns of the trees is not, in itself, sufficient for the trees to be considered a hedge. I appreciate that the trees will likely impact on the light available to you, however the trees do not form a hedge”

**Case dismissed, no right of appeal to the DPEA**

Applicant 1 and 2 are affected by the same boundary treatment of one house within a large garden. It is obvious from the aerial photograph that the trees have been planted along the boundary and are a boundary treatment, not woodland or a forest.

The previous owner of the house where the trees are planted, wrote to HC in support of the application of a HHN to say that he planted the trees originally to give privacy between his house and the new development of houses to the north of his plot back in the 60’s. He never intended it to be a woodland or forest and certainly never intended to block out the light or sunlight of his neighbouring houses.

**HC have chosen to ignore this letter of support.** The trees were clearly intended as a boundary treatment to separate plots, which have become a hedge in the meaning of the intention of the Act and Guidelines.
This application was dismissed with no registration or record and no right of appeal to the DPEA.

There are several houses along a street in Inverness all waiting on the outcome of this case. The householder here and many in the street have no sunshine in their gardens at all, summer or winter.

I refer you now to cases where LA’s have dealt with similar cases very differently.

HHA-350-6- reporter Michael Cuncliffe

Para 1, the reporter writes, “the trees alleged to form a high hedge are about 16 meters in height and are situated on the north east boundary of the back garden of the affected property. They are mature coniferous trees, of which the bottom 5 meters are so largely devoid of foliage, but which coalesce to form a dense canopy further up. They are located about 10 m from the rear wall of the original two –storey house and 6m from the single story extension. They give rise to morning overshadowing of the house and garden and their height and proximity result in a significantly negative effect on the amenity of the property”.

This Inverness applicant is some 10m from the boundary and his trees are 15m tall and his garden is south facing with overshadowing all day.

How can this not be accepted as a High Hedge application in the spirit of the Act?

HHA-350-6, para 3 the reporter goes on to say, “It appears to me that the trees form part of, and reinforce, the boundary between Woodend and the neighbouring properties. It is my opinion that, notwithstanding the presence of the rest of the woodland behind it, the row of trees which is subject to the notice does indeed, in this case, take the form of and have the effect of a high hedge”.

HHA -250-6 reporter John H Martin

Para 3, “The hedge in question comprises of a continuous row of mainly deciduous trees the highest being 12-13 m.”

In para 5, he continues, “bearing in mind the windows to the appellants bedrooms and kitchen are only 5.5m from the hedge, the overall impression from the house is one row of a dominant and oppressive wall of foliage extending well above the ridge height of the bungalow. I am therefore satisfied that, together these trees meet the description of a high hedge in the HHA ad the council was right to issue a High hedge Notice.”
Para 7 he continues, “I appreciate that the appellant has no legal right to a view but by allowing the trees to grow so high and dense in this rather un-neighbourly manner, the hedge owners have effectively diminished her right to reasonable levels of natural daylight.”

Para 8 he continues “While I can see the benefits of the new orchard to the east, with the extent of the land surrounding Gifford farm, neither of these need have been planted right on the boundary, so the high hedge gives the impression of a deliberate screen to separate two properties. This has clearly had little impact on the hedge owners enjoyment of their own property, but clearly it has considerably reduced the appellant’s enjoyment of her garden and the rooms on that side”

You can see that the trees have little effect on the owner but considerable effect on the High Hedge applicants.

How can HC deny the applicants access to an appeal when you see these DPEA reporters above have taken a very different view?

I submit that HC are wilfully seeking to avoid the issue of High Hedge notices and to refuse to register applications and thereby to deny any appeal of their view.

East Renfrewshire Council- (ERC)

Applicant -Newton Mearns

ERC wrote in their dismissal of this application that it “first must be a hedge as defined by the Oxford English dictionary”. (Although this definition has now been removed from the guidelines) The council went on to say that the” Act concerns hedges and is not designed to impact on woodlands and forests which as a general rule not planted as hedges” Again this paragraph in the revised guidelines has been changed since this decision was made by ERC.

However ERC go on to say that “the trees have been assessed by the council as not being a hedge but instead a tree belt which forms one of the landscapes features of the golf course. The trees would not appear to have been planted as a boundary treatment between the golf course and the site boundary and the planting is not in the form of a hedge.”

Application dismissed, no registration or record and no right of appeal to the DPEA.
“Tree belt” does not appear anywhere in the Act or the Guidelines but has been “made up” by ERC.

Aberdeen City Council (ACC)

Applicant 1

When the applicant advised his neighbour they intended applying for a High Hedge notice, there was a flurry of activity removing some of the understory planting along the boundary fence that gave both parties complete privacy at a low level. It of course made no difference to the light at a higher level and to the tree owner who is some 60m from the fence. Although this did create gaps at 2m and below none were sufficient to let light through to any great degree where it was required.

This first application in Oct 2014 was dismissed on the basis the hedge did not comply with the “Oxford English Dictionary Definition” of a hedge. Despite ACC acknowledging the trees in question fell squarely within Section 1 of the Act. They also made reference to the fact that the trees adversely affected the enjoyment of the property and south-facing garden that the applicant would otherwise would have had.

Application dismissed, no registration or record, no right of appeal to the DPEA.

The second application was made in Oct 2016 when the reason for refusal of their first application had been removed from the Guidelines in terms of the Revised Guidelines.

This application was also dismissed. ACC quoted pg 12 para 2 of the revised guidelines “that well-spaced treelines were not considered a hedge”. This sentence was taken out of context as the Guideline goes on to say “it is not normally expected that trees planted between properties would be classified as either woodland or forests so local authorities should consider whether trees and shrubs were planted with the intention of forming a boundary between two gardens in order to separate neighbouring properties.” However ACC chose to ignore this.

After discussion with Head of Legal Services for ACC, he advised the applicant to reapply for a third time. This time the application was dismissed on the basis that ACC use their own criteria.

ACC wrote, “The Planning Authority considers an number of criteria in assessing whether the vegetation is a hedge. This is the criteria that a number of Scottish Authorities apply. The following tests are used in determining this point;
1. The original intention at the time of planting
2. The spacing of trees and shrubs
3. The past and current management of trees and shrubs

ACC dismissed the case under section 5 of the Act, which, in itself is incorrect. Section 5 of the Act allows dismissal if the applicant has not conformed to the duty imposed by;

Section 3(1)

(a) Which is mediation and contact with neighbours trying to resolve the situation,
(b) Whether the application is frivolous or vexatious.

Neither of which apply.

Equally, each of the reasons given does not stand real scrutiny. Why can a LA choose its own criteria when the meaning of a High Hedge is clearly laid out in the Act itself?

Again because this application is dismissed, without registration, there is no right of appeal to the DPEA.

Neighbours either side of this applicant are significantly affected by this boundary too and had been awaiting a successful outcome before applying themselves.

One neighbour has failed to sell her house because of the boundary trees.

Further up and down the street neighbours in the same situation have had no problem removing or reducing in height their boundary treatments as their neighbours had taken a sensible approach to the problem.

The evidence of HHA cases contrary to ACC approach can be found in my personal submission.

These cases present very different views of DPEA reporters compared to ACC arguments of the above.

See cases
HHA-320-2
HHA-390-22
HHA390-21
HHA-350-3
HHa280-1
HHA250-4
HHA-220-4 para 17

Applicant 2 Aberdeen

This applicant has been advised in pre-application discussions and correspondence with ACC that his hedge is not a hedge per the Act. He is currently going through due process to make an application but has been told his application will be dismissed.

The applicant’s garden is small, measuring 5.5m along the boundary with the tree owner, 6m from the boundary to his kitchen window and back door. He is east facing and could only enjoy the morning sunshine. However, his biggest concern is the lack of light at all times of the day. He requires artificial lights at all times. The tree owner has also a fairly small garden but within it contains 5 trees. The canopies all pretty much coalesce into what one could describe as one single canopy covering the whole of his back garden. The trees range in height from 10-20m.

ACC advised on a site visit that even if he should lose 100% of natural light to his house, they would NOT issue a High Hedge Notice.

Was this not precisely what this Act was brought in to give the LA’s power to stop?

Why is Aberdeen not embracing this law with the intention it was brought in to achieve?

I submit that ACC are also wilfully seeking to avoid the issue of High Hedge Notices and refuse to register applications to deny any appeal of their view.

For the Act to be effective in any form at all, action must be taken to have this approach and attitude changed.

The Non-Hedge Hedge Conclusion

As you can see from the cases above that each case is different but similar in their dismissal.

Each and every one of the cases falls squarely within the Section 1 of the Act.

Each applicant has followed the pre application requirements and their applications were not frivolous or vexatious.
However, their LA’s have denied their applications and thereby denied them a chance of access to the Appeals Process, their right to natural Justice and their basic human rights.

I submit that further revision to the Guidelines at the very least is necessary to ensure that, should your trees fall under the Section 1, of the Act, meaning of a “high hedge”, you have undertaken all the pre application requirements of trying to resolve the situation with your neighbour, your application isn’t vexatious or frivolous, then you should at the very least be entitled to demand registration of your application and then depending on the decision of the LA the applicants would then at the very least have access to the Appeal process.

The Woodland

The Woodland issues have mainly been covered by the Highland Council cases.

The Revised Guidelines May 2016 state that, “It is not normally expected that trees planted between properties would be classified as a woodland or forest, so local authorities should consider whether the trees and shrubs were planted with the intention of forming a boundary between two gardens in order to separate neighbouring properties”.

This paragraph was altered to provide clarification but clearly LA’s have not embraced the intention of the revised guidelines.

This paragraph requires clarification so that LA’s are in no doubt.

With that in mind and the aerial Google Earth photographs, on what grounds can HC still maintain this is woodland?

The Tree Owner Removes 50% of the hedge.

This has resulted in LA’s and the DPEA in some cases dismissing the application, as it was no longer a High Hedge.

Applicant 1

Angus Council

The applicant here applied as soon as the Guidelines to Councils were first issued in 2014. AC made a site visit but took 5 months to give them a decision. In the meantime the tree owner had removed every alternate tree.
The refusal letter from the LA stated they no longer had a High hedge as per the Act, (although at the time of the site visit it was!)

Due to personal health issues and devastation of the decision the applicants did not have the energy to appeal.

The applicant paid £250 at the time and now faces a further fee as the trees have grown into the gaps and her hedge is becoming an ever-higher hedge again.

Applicant 2

Moray Council HHA300-1

MC issued a High Hedge Notice.

Again in the time between the notice being issued and the DPEA site visit the tree owner removed sufficient trees to create gaps. As it was no longer a high hedge the DPEA reporter quashed the LA’s decision.

Applicant 3

Fife Council HHA-250-3

Fife Council – Issued a High Hedge Notice but between the LA’s decision and the DPEAs visit, the tree owner had removed every second tree. As such the reporter deemed it no longer a high hedge. The height and over shadowing still remains although there are gaps. With new side growth the trees are coalescing again.

Applicant 4

Fife Council HHA-250-1

This applicant applied for and was granted a high hedge notice. However, after the decision was granted by the DPEA, the owner removed every other tree. Fife Council wrote to the applicant to say the order had been largely complied with, and no further action was to be taken against the tree owner.

Surely this attitude of the LA condones bad behaviour from the Hedge Owner who now believes his actions are now sanctioned by the Law.

Contrary to the cases above

HHA-220-4 Reporter Trudi Craggs
East Renfrewshire Council

ECR issued a High Hedge notice but the hedge owner had cut the trees to 15ft before the DPEA got there.

The reporter wrote para 11, "Not withstanding that the hedge has been cut down to what I agree appears to be 15ft in height, and no longer forms a barrier to light given the lack of growth and foliage, I have to determine this appeal against the context of what was there at the time that the high hedge application was made and determined".

She continues in para 12, “In order to do this I relied on the evidence before me and in particular photographic evidence provided with the application”

Photographic evidence was available in Fife, Moray and in Angus but their outcomes and treatment by the DPEA and LA was very different. Had their photographic evidence of how their hedges had looked like at the time of application, there seems little doubt a high hedge decision would have been made in their favour.

Conclusion

The tree owner removing 50% of the hedge.

Photographic evidence prior to application should be considered as there needs to be consistency in dealing with tree owners whose aim to thwart the Act.

Removal of part of the hedge should not be allowed without enforcement of the removal of the height too as it is quite clear what the tree owners intentions are.

By enthusiastic enforcement of a few cases like these, this type of action would quickly stop.

Fees

It is apparent that the huge variance in fees from £192 to £500 is a barrier to many people applying in the first instance. It gives the message that to gain access to the law you must have money.

I think it more appropriate that those on low incomes, benefits and pensions should be allowed to apply but pay fees on a sliding scale according to their incomes.

This is intimated in the Guidelines to Councils but has not been adopted.
I also suggest that should the tree owner have a High Hedge Notice placed upon him, he should have to pay the fee.

By applying this strategy, tree owners who know they will possibly incur even more costs (if they lose their case or are simply putting their neighbour to aggravation of applying in the first instance) may cooperate at a much earlier stage.

Conclusion

On one hand you could argue that the Act and Guidelines need stronger and clearer definition. However it does seem that currently certain Authorities are collectively or individually are seeking every excuse and reason to refuse not only the issue of a High Hedge Notice but more worryingly even to allow registration of an application in anything other than with respect to a simple straightforward Leylandi Hedge. This approach thereby denies access to an appeal and this being contrary to the principles of natural Justice.

By dismissing applications in this way, the LA’s are giving their endorsement to the hedge owners to allow their hedges/trees call it what you may, to carry on growing even taller, knowing that their actions are now sanctioned by the Law.

When processing cases, LA’s often seem to prioritise and protect the rights of the hedge owner over the rights of the neighbour who is suffering the effects of the hedge. I’m certain this is not what the Scottish Parliament had in mind when the Act was introduced.

I would contend on behalf of all parties suffering at the hands of unreasonable neighbours that a short period of more enthusiastic application of High Hedge Notices would soon bring such bad neighbours to heel and would over time would reduce applications made.

This must surely be the ambition of all those who supported the passing of the Act.

To date The Act is not working for the very many people who after years of suffering and patience had very high hopes.
Written Submission from Colin and Pat MacLaren

Has the definition of a High Hedge as set out on the Act provided helpful?

The definition as set out in the Act in Section 1, page 1 meaning of a “High Hedge” Points (1) (2) and (3) are quite clear, however there are councils who circumvent this by applying their own definition and criteria. By dismissing an application without registering, even if your trees fall squarely within the Act, you have no right of appeal, and no access to justice or the Law. This is a basic denial of my human rights and cuts across the spirit and intentions of the Act and the Scottish Parliament.

Detail of why I believe this to be the case.

Background

We moved into our new house in 2000 unaware that there had been a furor prior to the granting of planning permission of 3 new houses to the North of our neighbours where a single house had stood. It was evident that the trees running along our southern boundary had historically been pollarded but there had been a distinct lack of maintenance for some time. It became obvious very quickly that none of my neighbours were going to reduce the height of their trees so we did the only thing available to us and cut the overhanging branches back to the boundary. The overhang in places was 6m in what was now a 16m deep garden.

The neighbours applied for and got TPO status despite the Council stating that “the trees were of little merit and not in good health!”

Given that the trees now had TPO status we were not allowed to cut back to the boundary above 2m for some 13 years.

We awaited the introduction of the new legislation for 14 years as finally we thought we had some chance of improving our situation.

We first applied to the Council for a High Hedge Notice in October 2014. Our first application was dismissed on the basis that the Guideline definition at that time stated, “For trees and shrubs to be considered a hedge they first must be a hedge as defined by the Oxford English Dictionary”, and as such the Council never considered this was a low hedge first.

The Council wrote, “They did not dispute that the line of trees fell squarely within the Acts definition of a hedge, it was a barrier to light and above 2 metres.” The Council official also agreed that “it adversely affected the enjoyment which we could reasonably expect to have”. However their refusal letter stated, “the trees along our southern boundary were mixed age and mixed species. They considered the trees to
have accumulated over time rather than having been planted at one period of time with the intention of being a hedge”. They also added that “this type of mixed and understory planting was to be considered commonplace in a peri-urban area within large gardens and landscaping schemes”.

By dismissing nor registering our application we had no right of appeal to the DPEA. During various subsequent letters by our MSP, the Council wrote that “our trees showed no evidence of being maintained as a hedge and did not accept they were a hedge”. He went on to say that “to be considered a hedge the spacing between the trees would be typically 30-50 cms”. The girth of some of the trunks of these trees is more than that. It would be impossible to have trees of some 25 metres high with 30cms spacing. The placing of the TPO on the trees did not allowed us to maintain our side as a hedge and the owners certainly had no intentions of such.

We reapplied to the Council in August 2016 as the revised guidelines now omitted the barrier that had dismissed our first application.

This was also dismissed in October 2016, however the TPO was removed.

The Council wrote, “I refer you to the High Hedges (Scotland) Act - Revised guidelines to local authorities pg. 12, Para 2 which clearly outlines that, the Act applies to hedges and that well-spaced tree lines are not generally considered as a hedge”.

This however does not recognize the further qualification that this paragraph goes on to say “it would not normally be expected that trees planted between properties would be classified as either a woodland or a forest so local authorities should consider whether the trees and shrubs were planted with the intention of forming a boundary between two gardens in order to separate two neighbouring properties.”

**Which ours clearly does.**

**By taking their own interpretation of this paragraph the Council have totally ignored the Act and as such denied us yet again access to the law.**

They did not accept as evidence that the title deeds of all the properties of the tree owners show back in the 1930’s that in order to gain title they had to build a stone wall and **plant a hedge inside it.**

We approached the Head of Legal Services in the Council to discuss how we felt our application fell squarely within the definition of the Act and that we were being denied access to the appeals procedure. He asked us to reapply. We did this in November 2016.
Ten weeks later they dismissed our 3rd application.

This time the Council wrote, “They and a number of other Local Authorities consider a number of criteria in assessing whether vegetation is a hedge. The following tests are used in determining this point;

1. The original intention at the time of planting
2. The spacing of trees and shrubs
3. The past and current management.

Surely some LA’s cannot be allowed to make up their own rules when the Act is quite clear?

I will now show examples of HHA cases, which reached the DPEA and clearly show that the Council are not following the legislation the way it is intended and in a manner other LA’s do.

HHA-320-2 Lanark Council: John Martin writes of a similar newer development to the North.

Para 7, “Although the trees may not have been planted as a hedge as defined in the Act, they are close enough together and to the boundary to give that effect.”

He continues Para 8, “As a result, I find that these mixed conifer and broadleaf trees are acting as a high hedge and in screening the applicants garden from sunlight from the South and it forms a barrier to light to the detriment of their reasonable enjoyment of their property”

This applicant is 8.5m from the boundary and their trees were 8-10m high. We are 16m from the boundary and our trees are 25m high, higher in places.

HHA-390-22 Stirling Council: reporter David Buylla wrote,

Para 8, “planted closely and well-spaced are clearly subjective and it is more helpful we suggest to consider the function that these trees were intended to perform when planted and whether there has been any change since then. In this regard the trees were planted to follow the boundary between two gardens and were intended to provide a degree of screening between them. They continue to provide this function. We contend therefore they can reasonably be described as a hedge”.

This is clearly the same as our boundary treatment.

HHA-390-21 Stirling Council: John Martin wrote in his summation

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“The appellants house lies within a residential area on generous south facing plots. Her house lies 22.5 m from the boundary of the more recent development to the North. The gardens to the north are only 13-15m from the trees.”

My neighbours are 60m from the boundary. I am 16m from the boundary, the same north/south direction.

HHA-390-21, John Martin continues, Para 6 “being on the southern side of the boundary, the over 16m high hedge clearly overshadows the applicants garden due to the distance from the hedge. With no other buildings or obstructions contributing to light loss, the gardens might have otherwise enjoyed much more daylight and sunlight from the south. Even though the submitted photos indicate some dappled sunshine penetrating the lower branches of the trees, some of the garden ground would be in shadow on most days particularly in winter months, whilst the applicant complains that her garden odes not dry out through lack of sunlight.”

This is clearly similar situation I find myself in.

HHA-350-3 Renfrewshire Council: Reporter Robert Seaton

Para 9, the reporter mentions that there are a number of gaps of 3m and two gaps of 6.3m.

Para 10, “Whether the trees form a hedge is a question of their proximity, relative position, context and form as trees. The row of trees is clearly one element of a boundary treatment.” He goes on “their trunks are relatively close to each other given their height. Their crowns generally run together, although as the council says there are gaps. They form a row even if there is not complete alignment. In view of this, I fins the trees does form a hedge”

This makes a mockery of the Council’s suggested spacing of 30-50 cms in their recent dismissal.

HHA-280-1 Inverclyde Council: Reporter Mike Croft

Para 2, “The appellant makes a number of procedural points. He says the trees that constitute what the Council regards as a high hedge are more than three feet apart and do not fall within the scope of the Act. However, I accept the councils response on this point: the Act does not specify any minimum separating distance for trees that constitute a high hedge and I agree with the council that the trees covered by this notice do constitute a high hedge which satisfies the definition in the Act”.

Again making a mockery of the Council suggested spacing of 30-50 cms.
Finally Case HHA-250-4 Fife Council: John Martin writes>

Para 7, “I acknowledge that the appellant has a right to privacy from overlooking which, as has been pointed out in submissions, is often secured by a 2m high fence or hedge so planting and encouraging a hedge to grow to 8-9 m in height far exceeds what would normally be expected.”

The trees in question in my garden could be 1/3 their current height and there would be no privacy issues at all. The top 2/3 of their trees serves no purpose other than cutting out light and sunlight.

Do you have any comments on the enforcement procedures under a High Hedge notice?

We are unable to comment as the Council have consistently refused to allow us access to the Appeals procedure.

Do you have any comments on fees and costs?

There is a wide variation in costs.

Overall, are there any aspects of this Act that has had a positive or negative impact on your life?

Having spent 14 years waiting for the Act to go through parliament it raised hope of help. However it has substantially failed us by the Council’s ability to refuse us access to justice via the appeals procedure. Seeing successful cases in other LA’s and the Council’s ability to act as Judge and Jury, which is just not right, causes further upset.

Any other issues relating to the Act which you may wish to bring to the attention of the committee?

I hope I have provided enough evidence for you to be interested in looking into my case further. I have some photographic evidence from the cases I have quoted here but not all the photos are available on the DPEA website.

I also know I am not the only one who has been treated in this manner. I have also ran out of space to include my own photographs here.

Colin and Pat MacLaren
Written Submission from Pamala and James McDougall

Preamble

As founder members of Scothedge, a campaigning group set up in 2000 to highlight the plight of hedge victims and to seek redress in law, we have been involved in presenting the problems to the Public Petitions Committee of the Scottish Parliament and assisting various politicians, latterly Mark McDonald MSP, with his Private Member’s Bill, in shaping the law.

None of us envisaged the loopholes within the law at the time, and although many nuisance high hedge victims have benefitted from the law, we now we have the chance to plug those loopholes with this Review and we are very grateful, especially to the committee, for this opportunity.

1. Has the definition of a High Hedge as set out in the Act proved helpful? If not please provide details.

Only partially helpful as our neighbour had alternative leylandii trees which formed a high hedge removed, which has left unsightly gaps with little, and in some places no extra light. (see photographs). The height of the leylandii remains the same to this day, and the spirit of the law was violated. From the date of the application for a High Hedge Notice, 17th June 2014, to the letter advising us that the Council had decided not to issue a High Hedge Notice on 10th November 2014, was almost 5 months which we consider to be excessive and proved to have a devastating effect. We twice asked for updates on progress without satisfaction as we were told they were ‘too busy’. Had the report by the Council been written and issued ‘in a timely way’ after we had paid the fee and the first site visit completed, we are convinced that a High Hedge Notice would have been issued. We saw no need for a second site visit as our complaint was concerning the situation when we applied for and paid for a High Hedge Notice.

2. Do you have any experience of the appeals procedure as set out in the Act?

We would have appealed against the decision but at the time we were elderly, and both ill, no doubt exacerbated by the stressful situation of the culmination of 20 years attempting to find a solution by attempting to communicate with our neighbour which was rejected, including mediation which was also rejected. In fact we were shocked and dismayed at this result and feel the Council acted in an uncaring and irresponsible way, especially the length of time taken between our application and resultant report which clearly affected the decision taken.
3. Do you have any comments on the fees and costs?

Compared to planning costs the fees are unfairly high e.g. the planning fee set by Angus Council for an extension to a house is £202. To have lived without redress for over 20 years and then to seek legal redress after the Act was introduced with the costs prohibitive to many hedge victims was, to say the very least, disappointing. In contact with many other hedge victims as founders of Scothedge, we know that many who would seek legal redress cannot afford to pay the fees. This is an injustice. Because Councils are allowed to set their own fees it is noticeable that fees across Scotland vary widely and is unfair, from £192 to £500. Fees should be reassessed, should be consistent throughout Scotland and with a sliding scale of fees taking account of the ability to pay and making allowances for those on benefits, pensioners and the low paid.

4. Overall, are there any aspects of this Act which has had a positive or negative impact on your life?

The lack of professionalism from Angus Council in dealing with the ACT has affected our lives in a negative way due to the low priority given to the High Hedges Act and length of time taken to assess and make a decision on our application for a High Hedge Notice. This led to a different decision by the Council to our application. Had the decision been given after the first site visit after we had made the application, paid the fee and met all the criteria, there was no doubt a High Hedge Notice would have been served and could have made a very positive impact on our lives.

To sum up –

1. A definite time limit should be set from the application of a High Hedge Notice to the decision by the Council. The phrase used in the Guidelines ‘in a timely way’ is being used by Councils to extend the time unreasonably.

2. Fees to apply for a High Hedge Notice should be set, not by the different local authorities, but be universal, set lower so that they are not prohibitive and a sliding scale applied. Justice is not being served by making the fees impossible for some to make application for a High Hedge Notice. The hedge grower should pay all costs if an application is successful.

3. The right to light in house and garden has been denied us for 20 years due to selfish neighbours with no redress in law. With the High Hedges (Scotland) Act 2013 we expected , along with many others, to correct this anomaly. This Review is an opportunity to address the loopholes in the law and correct them.
4. The law agrees that we have a right to ‘reasonable enjoyment’ of our property which, under present law is denied us.

5. We now find ourselves in a position of considering another application for a High Hedge Notice with another fee along with the lengthy information, maps and measurements required for the application due to a loophole in the law, and the Council’s procrastination and failure to comprehending and interpreting the law as it stood.

Pamala and James McDougall
Written Submission from Roger and Catharine Niven

We wish to submit evidence on the working of the above Act, based on our own experience with our neighbour, the owner of the hedge, and The Highland Council. We would have no problem with our response being made public.

- Has the definition of a high hedge as set out in the Act proved helpful? If not, please provide details.

The definition in the Act implies that action will be taken on vegetation that fits the description of a High Hedge. However, in practice, the guidelines used to interpret the Act are contrary to the spirit of the Act. In our view, they have been used by our local authority, The Highland Council, to save their having to take action. The phrase causing the problem is: ‘A row of bushes or young trees …. planted closely to form a boundary….’ The Highland Council refused to consider our application under the Act on the grounds that the hedge does not form the boundary between our property and our neighbour’s. The hedge is planted parallel to the boundary, but between one and two metres away from the fence, which technically delineates the boundary between our land and his. In practice, almost all urban hedges are planted inside a fence or wall.

We followed the requirements of the application process to the letter, and we have a letter from the previous owner of the adjacent property, clearly stating that he planted the vegetation as a hedge.

In our view, if an appellant can prove, as we can, that the vegetation was planted as a hedge, then no further test should be required.

- Do you have any experience of the appeals procedure as set out in the Act?

No, because the Council refused to consider our application. They offered us only a judicial review and a refund of our fees. We felt we had to pursue this response and, in doing so, incurred substantial solicitor’s fees. We were advised that a judicial review would be extremely expensive and unlikely to succeed. The right of appeal should be extended to cover the failure of a local authority to consider an application.

- Do you have any comments on the enforcement procedures under a high hedge notice?

We have no experience of this but we would expect our Council to be reluctant to be active in enforcement because it frequently pleads lack of resources and appears to take the line of least resistance.
• **Do you have any comments on fees and costs?**

The fees applied by The Highland Council are too high, at £450 and may deter applications.

• **Overall, are there any aspects of this Act which has had a positive or negative impact on your life?**

The hedge is causing us unhappiness because our house is completely overshadowed, even in the height of summer, and because we cannot enjoy our garden at any time because of this high hedge. It is also costing us hundreds of pounds annually to clear the roof of our house of moss generated by the shade of the hedge. Overall, this situation is continuing to cause us considerable stress and a feeling of helplessness. We had waited for the Act and watched its slow progress through the Scottish Parliament in eager anticipation that it would resolve our problem. We are extremely disappointed that it has failed to do so and we have high hopes that this consultation will give us a positive result and a sense that justice can be done.

It is hard to fully describe the effect that this hedge is having on our lives, and we would actively encourage a site visit by the Committee so that members can fully appreciate the impact of the hedge and our disappointment that the legislation has so far drastically failed us.

Roger and Catharine Niven
Written Submission from John Bolbot

The High Hedges Act isn’t working because it has no teeth.

All details are on Clackmannanshire Council website. My neighbour’s Leylandii hedge has about 40 trees, 12-13 metres high and is 44 metres long. It horrifies passers-by. A first High Hedge Notice was served on him on 22 February 2016 (15/00002/HH) but excluded one large tree, I appealed against this exclusion and second High Notice (including the tree) was served on 8 June 2016 (HHA-150-3). This second notice became effective 7 July 2016 with an 8-month compliance period (expired 7 March 2017). Therefore he has had a total of one year and two weeks to comply. He has not.

I have been emailing the Clackmannanshire Council Officers in charge of the case since the beginning of February, first alerting them to the approaching compliance deadline and subsequently asking them what there are going to do now that it has expired and my neighbour is consequently in breach of the law. What I am receiving back is just vacillation and indecision. The High Hedges Act provides for a Council to send workmen to a non-complier’s property to cut a hedge, subsequently recovering costs from him, but Clackmannanshire Council seems frightened to do this.

Obviously if a precedent is set that a determined non-complier can simply ignore the law (or perhaps use the obvious excuse of ‘I can’t afford it’) and get away with it then word will quickly spread to other High Hedge Offenders and the High Hedges Act will be useless – a dead duck.

During my email correspondence with the Council regarding my neighbour’s non-compliance, they confirmed that they were contacting my neighbour to verify his position and his understanding of the Notice and the circumstances, and any plans he may yet have to comply with the initial steps. Given he was well aware that he had to comply, I did not understand this approach and asked the Council why they were not using their powers of enforcement contained in the Act. The reply stated that they were contacting the Scottish Planning Enforcement Forum to obtain information from other Scottish local authorities on their experience in dealing non-compliance.

This response, I believe could set a dreadful legal precedent such that High Hedge Offenders throughout Scotland will quickly realise that a Government High Hedge Notice is totally ineffectual, that the 'compliance period' can be ignored and that at its expiry, nothing whatsoever will happen to them, apart from perhaps some further inspections, some chats about 'circumstances' (obviously they will all say they ‘can't afford to act’) followed perhaps by a conciliatory 'reassessment' to clear them and the government of responsibility.
If this state of affairs should come about, the Scottish High Hedges act will be totally useless henceforth and the offenders will have good cause for celebration. To make myself very plain, with respect, vacillating indecision will potentially destroy the High Hedges Act.

I paid my fee (£401) and waited patiently for well over a year and it is now for the Council to implement the law on my behalf. This whole situation is becoming very stressful, I shouldn't have to fight like this.

John Bolbot
Written Submission from Peter and Liz Grant

Dear Sirs,

I refer to your call for evidence in relation to the operation of the High Hedge legislation.

I am the applicant concerned in the Newton Mearns “Non Hedge” case raised by Scothedge in their examples to you of the failure of the Act to provide for a review/appeal where the Local Authority state there is no hedge in existence.

The Act defines a hedge as:

1 Meaning of “high hedge”.

This section has no associated Explanatory Notes.

(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 trees or shrubs,
(b) rises to a height of more than 2 metres above ground level, and
(c) forms a barrier to light.

The trees on my boundary satisfy all the criteria laid down by the Act.

The hedge planted by a Golf Club on the boundary comprises 2 staggered rows of fast growing Sitka Spruce forming a classic impenetrable barrier hedge and the trees have been left to grow rampantly, with no action to alleviate the effect on our property despite years of requests.

My case was dismissed prior to the revised guidelines which removed the reference to the Oxford Dictionary definition of a hedge upon which East Renfrewshire Council placed reliance, however I did try to appeal as they had followed through their entire procedures, including neighbour notification of the affected houses in the road and seeking their responses within 28 days of copying the full application to them, then decided it was not a hedge after all. **If the Council had believed that to be correct then their subsequent actions in consultation etc are inexplicable.**

I tried to appeal however this was dismissed by the DPEA as “no remit”. This is a fatal flaw in the legislation.
I have been approached by 3 national newspapers to allow them access to the story here but have refused to do so thus far. Nonetheless I understand the case was reported in the Glasgow Herald and resulted in letters to the Editor calling for clarification and consistency in the application of the Act.

My MSP has been most supportive in trying to assist, however I have incurred both Local Authority and professional fees and cannot get this decision reviewed. There is no way forward other than your scrutiny of this and other aberrant decisions, which cost so much in time, stress and money.

I would urge you to add a Local Authority decision that a hedge is not a hedge to the grounds for appeal to the DPEA.

I would be happy for you to speak directly to my MSP to gain any further information and you are welcome to visit our property to enable you to form an independent view as to whether this decision was vexatious.

Yours sincerely

Peter Grant
Written Submission from Dr Donald and Mrs Anne Brown

The High Hedges (Scotland) Act 2013 is a well-intentioned piece of legislation which tries to deal with this. However it has too many loose definitions and statements open to interpretation which should have been obvious to those who initially drafted and those who scrutinised it.

This has allowed different interpretations of the act by different Local Authorities across the country as well as inconsistency in the decisions reached by Reporters during appeals. It has also allowed landowners to deliberately subvert the intentions of the act by altering the “hedge” during the action.

Background

In 2014 and after many years of trying to seek an amicable resolution we raised a High Hedges action against our neighbouring landowner involving a stand of mainly Sitka Spruce trees, some up to 100 foot high along our south west boundary.

The initial success of our action, courtesy of Moray Council, was appealed against by the landowner who thinned out but did not reduce the height of the trees prior to the site visit by the Reporter.

I raised this latter issue with the Reporter prior to her visit but it has never been addressed other than by her reversing the decision of Moray Council as she decided that the stand of trees no longer constituted a hedge.

It astonished us that a law officer would regard the landowner’s action as acceptable and penalise us by reversing the order and rendering our time and financial input wasted.

The result is that the “hedge” will continue to grow ever taller whilst infilling the gaps created by the thinning and we are faced with the possibility of having to fund and raise another action in a few years.

Issues

1. Definition of “Hedge”
   a. The term “Hedge” is unsuitable as it allows some officials to see sculpted privet or Leylandii as the only growth that can obstruct light whereas a mixed stand of trees, bushes or shrubs, like a vampire, casts no shadow.
   b. The quibble from some LAs that a “hedge” was not planted or maintained as a “hedge” or is of mixed species or has “wrong” spacing are spurious & ingenuous.
c. Perhaps it could be defined as “Any growth of hedge plants, shrubs or trees or a mixture of these over 2 metres in height which results in sufficient shadow to cause loss of heat, light and enjoyment to affected property”.

d. The Act needs to focus more on the effects rather than the definition of the cause.

2. The Initial application is at the mercy of local council officials’ interpretations of the act or possibly for other reasons thereby introducing variation across the country.

a. See 1 above, often used as a reason for refusing the action – “Not a hedge”.

b. Do some Council officials lack enthusiasm for getting involved in a confusing, complex and potentially costly process, reinforced if their decision is overturned on appeal?

c. It is unjust that there is no appeal if an initial application is rejected by an LA.

3. So much of the initial and appeal assessment is subjective and depends on the interpretation of the wording of the act, assessing the amount of shadow cast, amenity lost etc. We think that we are entitled to a view if we bought our house for its view before the “hedge” blocked the light.

4. Appeals: An application can fail at the final appeal stage.

a. Again over the definition of a “Hedge”.

b. Over the interpretation of the wording of other parts of the act.

c. If owner of the “Hedge” alters the height or density during the process or (as in my case) prior to the appeal site visit.

i. Why is “tampering with the evidence” permissible?

ii. Why is there no sanction against the landowner or recompense to the applicant if an appeal is lost based on tampering?

5. An action or appeal should be based on the case as put forward at the outset and not on the situation after the landowner has cynically altered the “Hedge” in question, doing enough to change the case but not resolving the problem raised in the action thereby undermining the whole process.

6. Enforcement: As we lost our action on appeal, we have no experience of enforcement.
7. Costs:

a. The LA fee was reasonable but the total cost to us was around £1500 including legal & LA fees, too much for many to contemplate and a loss to us given the result.
b. As these cases only arise after years of attempts to find a resolution, landowners should face costs if they lose as they have ample opportunity to avoid or settle the action
c. There is wide variation in fees from one authority to another – why?

8. Effects on us: We had hoped, after some years that the Act would bring a resolution to our problem. Like many, we were to be disappointed.

We were relieved when the Council made an order on the “hedge” but shocked when the Reporter allowed the appeal based on the altered “hedge”. Such gross injustice and waste of our time, effort and money still rankles.

During high winds we live with the fear that further trees will be blown down, causing disruption, damaging our property and harming ourselves and others.

I am also left with the feeling that having money & property results in better legal protection than those less fortunate receive, a situation that sits badly with The Scottish Government’s claim to be “building a fairer Scotland”.

9. Other Issues: Perhaps understandably, no account is taken of danger to life or property in the Act. We raised this issue with the landowner and included it in our submission but it was denied & ignored respectively. Shortly after submitting our application at least twenty of the trees adjacent to and beyond our boundary blew down as I predicted, blocking our access road and damaged our property. Fortunately no-one was injured.

Finally, I would like to see a review of all past decisions taken by Local Authorities to refuse applications and a review of all appeals that reversed the LA’s order especially where the landowner altered the “hedge”.

There needs to be an oversight of LA actions and Reporters decisions, everything else we do in the public sector is audited and scrutinised, why not this?

Previously unsuccessful applicants should not have to fund further actions under any revised Act.
Summary

1. Redefine a “Hedge” but focus on effects rather than the cause
2. Ensure consistency at LA level
3. Allow appeals against LA decisions not to accept applications
4. Cases must be judged on the state of the “hedge” at the time of the application
5. Landowners should be informed of 4 above and warned not to alter the “hedge” once an action is initiated
6. Landowners should have to pay at least all costs if they alter the “hedge” at any point during the process
7. Landowners should have to pay some of the costs if they lose
8. Ensure a consistent appeals process
9. Review previous application outcomes and amend where appropriate
10. Publish an annual online report on actions and outcomes under the Act

Dr Donald Brown
Mrs Anne Brown
Written Submission from Donald Shearer

I applied to Midlothian Council for a High Hedge ruling in June 2014 as the boundary to the West of my house is lined by more than 28 trees some of which are 20 metres high. The Council rejected my application on the grounds that the trees appeared to comprise irregular groups of trees and advised me that I had no right of appeal.

I believe that the main reason for the rejection of my application was that the Government’s Guidance to Local Authorities at that time erroneously advised that a High Hedge must first be a hedge and also gave a very abbreviated and misleading definition of a hedge from the Oxford English Dictionary. If the full definition in the OED including the 3rd definition which reads:

“said of any line or array of objects forming a barrier, boundary or partition”

Had been included then the Act would have been correctly interpreted in the manner Parliament intended. Alternatively, if the definition of a High Hedge given in the Act is taken as standing on its own feet the broad interpretation that common sense requires would have been adopted.

Recent changes to the guidance will improve the interpretation but local authorities should be advised of the very wide definition of a hedge in the OED so they are aware that any barrier to light caused by trees or bushes fall within the Act. I believe this is very important in order to counteract the previous misinformation provided to local authorities on this point.

The Act itself is reasonably fit for purpose with the exception that it should allow appeals against any decision of a Local Authority. It is not reasonable that they should be able to reject or otherwise decide on an application with no right of appeal.

D. F. Shearer
Overview of instruments

1. The following instrument, subject to negative procedure, is being considered at agenda item 3 today’s meeting:

   • The Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Amendment Regulations 2017 (SSI 2017/78);

Procedure

2. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

3. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Background

The Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Amendment Regulations 2017

4. These Regulations amend the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995. The policy note for this instrument is attached at Annexe A.

5. An electronic copy of the instrument is available at:


6. There are no associated impact assessments for this legislation.
7. There has been no motion to annul this instrument.

**Delegated Powers and Law Reform Committee Consideration**

8. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 28 March 2017 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

**Committee Consideration**

9. The Committee is **not required** to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2017/78 is **10 May 2017**.

10. **The Committee is invited to consider the above instrument and whether it wishes to report on any issues to the Parliament in relation to them.**
POLICY NOTE

THE VALUATION APPEAL COMMITTEE (PROCEDURE IN APPEALS UNDER THE VALUATION ACTS) (SCOTLAND) AMENDMENT REGULATIONS 2017 SSI 2017/78

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 15(2) of the Local Government (Financial Provisions) (Scotland) Act 1963 and all other enabling powers. The instrument is subject to negative procedure.

Purpose of the instrument

This instrument amends various procedures in respect of valuation appeals relating to valuation rolls coming into force on or after 1 April 2017, as follows:

- electronic communications are to be more widely enabled;
- the notice period for a hearing is to be extended from 70 to 105 days;
- details of hearings are to be shown online (rather than at specified premises);
- the Assessor’s statement to an appellant is to be provided within 28 days of receipt of the appellant’s statement and no later than 21 days before the hearing (rather than within 14 days of receipt of the appellant’s statement);
- any requirement for the appellant to confirm intent to proceed with the appeal is to be notified by the Assessor no later than 21 days before the hearing (rather than within 14 days of receipt of the appellant’s statement); and
- at a hearing a party is only to be allowed to found on grounds specified in its statement, unless the other party consents or the Committee exercises its discretion.

Valuation appeals relating to valuation rolls in force up to 31 March 2017 will not be subject to these procedural amendments.

Background

As part of its response to the Supporting Business, Promoting Growth consultation on non-domestic rates, the Scottish Government in September 2013 committed to a separate review of the valuation appeals system.

Under the Tribunals (Scotland) Act 2014, the functions of Valuation Appeal Committees are to transfer to the Scottish Tribunals at a future date.

Policy objective

The policy objective is to improve the valuation appeals process for all parties.
Consultation


Business and Regulatory Impact Assessment

No Business and Regulatory Impact Assessment has been carried out.

Financial Implications

There are no direct financial implications.

Local Government & Analytical Services Division
March 2017