

# High Hedges (Scotland) Bill

[AS PASSED]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

# High Hedges (Scotland) Bill

## [AS PASSED]

An Act of the Scottish Parliament to make provision about hedges which interfere with the reasonable enjoyment of residential properties.

### *Meaning of “high hedge”*

#### **1 Meaning of “high hedge”**

- 5 (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.
- 10 (2) For the purposes of subsection (1)(c) a hedge is not to be regarded as forming a barrier to light if it has gaps which significantly reduce its overall effect as a barrier at heights of more than 2 metres.
- (3) In applying this Act in relation to a high hedge no account is to be taken of the roots of a high hedge.

### *High hedge notices*

#### **2 Application for high hedge notice**

- (1) Where subsection (2) applies, an owner or occupier of a domestic property (referred to in this Act as the “applicant”) may apply to the relevant local authority for a high hedge notice.
- 20 (2) This subsection applies 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.

#### **3 Pre-application requirements**

- 25 (1) Before making an application under section 2(1), the applicant must take all reasonable steps to resolve the matters in relation to the high hedge which would otherwise be the subject of the application.

- (2) In complying with the duty imposed by subsection (1) the applicant must have regard to any guidance issued by the relevant local authority under section 31(2)(a).

#### **4 Fee for application**

- 5 (1) An application must be accompanied by a fee of such amount (if any) as the relevant local authority may fix.
- (2) An authority may fix different fees for different applications or types of application.
- (3) A fee fixed by an authority must not exceed an amount which it considers represents the reasonable costs of an authority in deciding an application under this Act.
- 10 (4) A fee paid to an authority may be refunded by it in such circumstances and to such extent as it may determine.
- (5) An authority must publish information on the circumstances in which and the extent to which it may normally be considered appropriate for a fee paid to the authority to be refunded under subsection (4).
- 15 (6) When publishing information in accordance with subsection (5), an authority must have regard to any guidance on the refund of application fees issued by the Scottish Ministers under section 31(1).

#### **5 Dismissal of application**

- (1) A relevant local authority must dismiss an application where the authority considers that—
- 20 (a) the applicant has not complied with the duty imposed by section 3(1), or
- (b) the application is frivolous or vexatious.
- (2) As soon as is reasonably practicable after dismissing an application, the authority must notify the applicant of—
- (a) its decision, and
- 25 (b) the reasons for its decision.

#### **6 Consideration of application**

- (1) This section applies where a relevant local authority does not dismiss an application under section 5.
- (2) The authority must give every owner and occupier of the neighbouring land—
- 30 (a) a copy of the application, and
- (b) a notice informing the person to whom it is given of the matters mentioned in subsection (3).
- (3) The matters are—
- (a) that the authority is required to make a decision under subsection (5),
- 35 (b) that the person has a right to make representations to the authority in relation to the application before the expiry of the period of 28 days beginning with the day on which the notice is given,
- (c) that the authority must give a copy of any such representations to the applicant,

- (d) that the authority has power to authorise entry to the neighbouring land under section 18(1), and
- (e) that it is an offence under section 21 intentionally to prevent or obstruct a person authorised to enter land from acting in accordance with this Act.
- 5 (4) If any representations are received by the authority during the period mentioned in subsection (3)(b), the authority must—
- (a) give the applicant a copy of those representations, and
- (b) take into account those representations in making its decision under subsection (5).
- 10 (5) After the end of the period of 28 days referred to in subsection (3)(b), the authority must decide—
- (a) whether the height of the high hedge adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and
- 15 (b) if so, whether any action to remedy the adverse effect or to prevent the recurrence of the adverse effect (or both) should be taken by the owner in relation to the high hedge (any action that is to be taken being referred to in this Act as the “initial action”).
- 20 (6) If the authority decides under subsection (5)(b) that initial action should be taken, the authority must—
- (a) specify a reasonable period of time within which the initial action is to be taken (the “compliance period”), and
- (b) decide whether any action to prevent the recurrence of the adverse effect should be taken by the owner in relation to the high hedge at times following the end of the compliance period while the hedge remains on the land (the “preventative action”).
- 25 (7) In making a decision under subsection (5)(b), the authority must have regard to all the circumstances of the case, including in particular—
- (a) the effect of the high hedge on the amenity of the area, and
- 30 (b) whether the high hedge is of cultural or historical significance.
- (8) Where the high hedge which is the subject of the application is situated on land which has been designated as a National Park, the authority must—
- (a) before making a decision under subsection (5)(b), consult the National Park authority for the National Park, and
- 35 (b) in making its decision under that subsection, take into account any representations made by that National Park authority.

## 7 Notice of decision where no action to be taken

- (1) This section applies where—
- 40 (a) the relevant local authority decides under section 6(5)(a) that there is no adverse effect, or
- (b) the relevant local authority decides under section 6(5)(b) that no action should be taken in relation to the high hedge.

- (2) As soon as is reasonably practicable after making its decision the authority must notify the persons mentioned in subsection (3) of—
- (a) the making of the decision,
  - (b) the reasons for it,
  - (c) the right to appeal under section 12(1).
- (3) Those persons are—
- (a) the applicant, and
  - (b) every owner and occupier of the neighbouring land.
- (4) Where the high hedge which is the subject of the application is situated on land which has been designated as a National Park and subsection (1)(b) applies, the authority must notify the National Park authority for the National Park of its decision.

## 8 High hedge notice

- (1) Where a relevant local authority decides under section 6(5)(b) that action should be taken, it must issue a high hedge notice as soon as is reasonably practicable after making that decision.
- (2) A high hedge notice is a notice—
- (a) identifying the high hedge which is the subject of the notice and the neighbouring land,
  - (b) identifying the domestic property in relation to which the authority has decided under section 6(5)(a) that an adverse effect exists,
  - (c) stating the date on which the notice is to take effect,
  - (d) stating the initial action that is to be taken by the owner of the neighbouring land and the compliance period for that action,
  - (e) stating any preventative action that is to be taken by the owner of the neighbouring land,
  - (f) informing the recipient that there is a right to appeal under section 12(2)(a),
  - (g) informing the recipient that the authority is entitled to authorise a person to take action under section 22 where there is a failure to comply with the notice and that the authority may recover the expenses of that action, and
  - (h) informing the recipient that it is an offence under section 24 intentionally to prevent or obstruct a person authorised to take action from acting in accordance with this Act.
- (3) The date referred to in subsection (2)(c) must be at least 28 days after the date on which the notice is given.
- (4) The authority must—
- (a) give the persons mentioned in subsection (5) a copy of the high hedge notice, and
  - (b) notify those persons of the reasons for its decision.
- (5) Those persons are—
- (a) the applicant, and
  - (b) every owner and occupier of the neighbouring land.

- (6) Where the high hedge to which a high hedge notice relates is situated on land which has been designated as a National Park, the authority must give the National Park authority for the National Park a copy of the high hedge notice.

## 9 Effect of high hedge notice

5 A high hedge notice is binding on every person who is for the time being an owner of the neighbouring land specified in the notice.

## 10 High hedge notice: withdrawal and variation

- (1) After a relevant local authority issues a high hedge notice, it may—

(a) withdraw the notice, or

10 (b) vary the notice.

- (2) Before withdrawing or varying a notice under subsection (1), the authority must have regard to all the circumstances of the case, including in particular—

(a) whether, after the proposed withdrawal or variation, the height of the high hedge would adversely affect the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and

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(b) the matters mentioned in section 6(7).

- (3) Where an authority withdraws a high hedge notice under subsection (1)(a), it must give the persons mentioned in subsection (4) notice of—

(a) the withdrawal,

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(b) the reasons for the withdrawal, and

(c) the right to appeal under section 12(2)(b).

- (4) Those persons are—

(a) every owner and occupier of the domestic property identified in the notice, and

(b) every owner and occupier of the neighbouring land.

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- (5) The withdrawal of a high hedge notice under subsection (1)(a) does not of itself prevent the issuing of a further high hedge notice in respect of the same hedge.

- (6) Where an authority varies a high hedge notice under subsection (1)(b), it must—

(a) issue a revised high hedge notice stating the date on which the revised notice takes effect,

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(b) give a copy of the high hedge notice to the persons mentioned in subsection (4),

(c) notify those persons of the reasons for its decision, and

(d) notify those persons of the right to appeal under section 12(2)(b).

- (7) The date referred to in subsection (6)(a) must be at least 28 days after the date on which the revised notice is given.

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- (7A) Where the high hedge to which a high hedge notice relates is situated on land which has been designated as a National Park, the authority must—

(a) where it withdraws the high hedge notice under subsection (1)(a), give the National Park authority for the National Park notice of the withdrawal,

(b) where it varies the high hedge notice under subsection (1)(b), give the National Park authority for the National Park a copy of the revised notice.

- (8) Subsections (1) to (7A) apply in relation to a revised high hedge notice issued by the authority under subsection (6)(a) as they apply in relation to a high hedge notice.

## 11 Tree preservation orders

- (1) Subsection (2) applies where a high hedge notice issued by a relevant local authority, relates to a high hedge which—
- (a) includes a tree which is subject to a tree preservation order, or
  - (b) forms part of a group of trees or woodland which is subject to a tree preservation order.
- (2) The tree preservation order has no effect in relation to the initial action or any preventative action specified in the high hedge notice.

### *Appeals*

## 12 Appeals

- (1) The applicant may appeal to the Scottish Ministers against—
- (a) a decision by a relevant local authority under section 6(5)(a) that there is no adverse effect,
  - (b) a decision by a relevant local authority under section 6(5)(b) that no action should be taken in relation to the high hedge.
- (2) A person mentioned in subsection (3) may appeal to the Scottish Ministers against—
- (a) the issuing by a relevant local authority of a high hedge notice, or
  - (b) the withdrawal or variation of a notice by a relevant local authority under section 10(1).
- (3) Those persons are—
- (a) every owner and occupier of the domestic property identified in the high hedge notice, and
  - (b) every owner and occupier of the neighbouring land.
- (4) An appeal must be made before the end of the period of 28 days beginning with—
- (a) in the case of an appeal under subsection (1), the date of the notification given by the authority under section 7,
  - (b) in the case of an appeal under subsection (2)(a), the date of the notification given by the authority under section 8(4),
  - (c) in the case of an appeal under subsection (2)(b), the date of the notification given by the authority under section 10(3) or (6).

## 13 Effect of appeal

- (1) This section applies during the period beginning with the making of an appeal and ending with its final determination, withdrawal or abandonment.
- (2) Where the appeal is made under section 12(2)(a), the high hedge notice has no effect.



- (3) Where the appeal is made under section 12(2)(b)—
- (a) the high hedge notice has no effect, and
  - (b) the withdrawal or variation has no effect.

#### 14 Determination of appeal

- 5 (1) Where an appeal is made under section 12(1), the Scottish Ministers may—
- (a) confirm the decision to which the appeal relates, or
  - (b) quash the decision of the authority under section 6(5)(a) or (b), with or without issuing a high hedge notice.
- (2) Where an appeal is made under section 12(2), the Scottish Ministers may—
- 10 (a) confirm the high hedge notice or decision to which the appeal relates,
- (b) quash the high hedge notice or decision, or
- (c) vary the high hedge notice issued under section 8(1) or, as the case may be, 10(6)(a).
- (3) A high hedge notice issued or varied under this section is to be treated as if issued or varied by the relevant local authority.
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#### 15 Person appointed to determine appeal

- (1) An appeal may be determined by a person appointed by the Scottish Ministers for that purpose instead of by the Scottish Ministers.
- (2) An appointed person has, in relation to the appeal, the same powers and duties as the Scottish Ministers have under this Act.
- 20 (3) Where an appeal is determined by a person appointed by the Scottish Ministers, the decision is to be treated as if it were a decision of the Scottish Ministers.

#### 16 Notice of determination

- (1) As soon as is reasonably practicable after determining an appeal the Scottish Ministers must—
- 25 (a) where they have made a determination in accordance with section 14(1)(b) and are to issue a high hedge notice—
- (i) issue the high hedge notice,
  - (ii) give a copy of the high hedge notice to the persons mentioned in subsection

30 (2), and

  - (iii) notify those persons of the reasons for their decision,
- (b) where they have made a determination in accordance with section 14(2)(c)—
- (i) issue a revised high hedge notice,
  - (ii) give a copy of the revised notice to the persons mentioned in subsection

35 (2), and

  - (iii) notify those persons of the reasons for their decision,

(c) where they have made any other determination, notify the persons mentioned in subsection (2) of their decision and the reasons for their decision.

(2) Those persons are—

(a) the relevant local authority,

(b) every owner and occupier of the domestic property identified in the high hedge notice or, as the case may be, the revised high hedge notice, and

(c) every owner and occupier of the neighbouring land.

## 17 Period for taking initial action following appeal

(1) This section applies where an appeal under section 12(2) is—

(a) determined, or

(b) withdrawn or abandoned by the person making the appeal.

(2) The compliance period for the initial action specified in the high hedge notice or revised high hedge notice is to be taken as beginning on—

(a) the day on which the appeal is determined, or

(b) such later day as is specified in the revised notice issued under section 16(1)(b).

(3) Where the appeal is withdrawn or abandoned, the compliance period for the initial action specified in the high hedge notice is to be taken as beginning on the day on which the appeal is withdrawn or abandoned.

### *Powers of entry*

## 18 Power to enter neighbouring land

(1) A person authorised by a relevant local authority may enter the neighbouring land for the purpose of—

(a) obtaining information required by that authority to carry out the authority's functions under section 6 or 10,

(b) determining whether initial action or preventative action set out in a high hedge notice has been carried out.

(2) A person may enter the neighbouring land for the purpose of obtaining information required to determine an appeal under section 14 if—

(a) the person is authorised to do so by the Scottish Ministers,

(b) the person is appointed under section 15(1), or

(c) the person is authorised to do so by a person appointed under section 15(1).

(3) A person authorised to enter land by virtue of this section may enter a building which is for the time being occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

## 19 Supplementary powers

(1) A person authorised to enter land by virtue of section 18 (referred to in this section as an "authorised person") may—

- (a) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the authorised person to fulfil the purpose for which entry is taken,
- (b) take samples of any trees or shrubs that appear to the authorised person to form part of the high hedge,
- (c) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.
- (2) A person mentioned in subsection (3) must give every owner and occupier of the land at least 14 days' notice of the intended entry by the authorised person.
- (3) Those persons are—
- (a) in the case of a person authorised by virtue of section 18(1), the relevant local authority,
- (b) in the case of a person authorised by virtue of section 18(2)(a), the Scottish Ministers,
- (c) in any other case, the person appointed under section 15(1).
- (4) An authorised person must on request produce written evidence of the authorisation.
- (5) On leaving neighbouring land which is unoccupied or from which all of the occupiers are temporarily absent, an authorised person must ensure that the land is as effectively secured against unauthorised entry as it was when the person entered it.

## **20 Warrant authorising entry**

- (1) The sheriff or a justice of the peace may by warrant authorise any person entitled to enter the neighbouring land under section 18 to enter the land and if necessary to use reasonable force in doing so.
- (2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—
- (a) that there are reasonable grounds for entering the land concerned,
- (b) that—
- (i) entry to the land has been refused,
- (ii) such a refusal is reasonably expected, or
- (iii) the land is unoccupied, and
- (c) that the relevant local authority has or, as the case may be, the Scottish Ministers have complied with the notice requirements imposed by section 19(2).
- (3) A warrant must not authorise—
- (a) entry to a building which is for the time being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge,
- (b) the use of force against an individual.
- (4) A warrant expires—
- (a) when it is no longer required for the purpose for which it is granted, or
- (b) on the expiry of such period as may be specified in it.

**21 Offence**

- (1) It is an offence intentionally to prevent or obstruct a person authorised to enter land under section 18 from doing anything which that person is authorised to do by virtue of this Act.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Local authority enforcement action***22 Power to take action**

- (1) A person authorised by a relevant local authority (referred to in this section as an “authorised person”) may—
- (a) enter the neighbouring land,
  - (b) take any initial action or preventative action which—
    - (i) is required to be taken by a high hedge notice, and
    - (ii) has not been taken in accordance with the high hedge notice,
  - (c) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the authorised person to take the required action, and
  - (d) do anything else which is reasonably required for the purpose of taking the required action.
- (2) The relevant local authority must give every owner and occupier of the neighbouring land at least 14 days’ notice of the intended entry by the authorised person.
- (3) An authorised person may enter a building which is for the time being occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.
- (4) An authorised person must on request produce written evidence of the authorisation.
- (5) On leaving neighbouring land which is unoccupied or from which all of the occupiers are temporarily absent, an authorised person must ensure that the land is as effectively secured against unauthorised entry as it was when the person entered it.

**23 Warrant authorising entry by local authority**

- (1) The sheriff or a justice of the peace may by warrant authorise any person entitled to enter the neighbouring land under section 22 to enter the land and if necessary to use reasonable force in doing so.
- (2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—
- (a) that there are reasonable grounds for entering the land concerned,
  - (b) that—
    - (i) entry to the land has been refused,
    - (ii) such a refusal is reasonably expected, or
    - (iii) the land is unoccupied, and

(c) that the relevant local authority has complied with the notice requirements imposed by section 22(2).

(3) A warrant must not authorise—

(a) entry to a building which is for the time being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge,

(b) the use of force against an individual.

(4) A warrant expires—

(a) when it is no longer required for the purpose for which it is granted, or

(b) on the expiry of such period as may be specified in it.

## **24 Local authority action: offence**

(1) It is an offence intentionally to prevent or obstruct a person authorised by a relevant local authority under section 22 from doing anything which that person is authorised to do by virtue of this Act.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Expenses of enforcement action*

## **25 Recovery of expenses from owner of land**

(1) A relevant local authority may recover from any person who is an owner of the neighbouring land—

(a) any expenses reasonably incurred by the authority in taking action under section 22,

(b) any administrative expenses (including registration fees) reasonably incurred by it in connection with recovering those expenses, and

(c) interest, at such reasonable rate as it may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

(2) The date specified under subsection (1)(c) must be after the date on which a demand for payment is served by the authority.

(3) Each owner of the neighbouring land is jointly and severally liable for the expenses and interest mentioned in this section.

## **26 Notice of liability for expense of local authority action**

(1) A relevant local authority may apply to register a notice (a “notice of liability for expenses”) specifying the matters mentioned in subsection (2).

(2) The matters are—

(a) the amount of the expenses payable in accordance with section 25(1)(a) and (b),

(b) whether interest is payable under section 25(1)(c),

(c) the action taken under section 22 to which those expenses relate,

(d) a description of the neighbouring land in respect of which an owner is liable under section 25,

- (e) the effect of section 27 in relation to a new owner of that land, and
  - (f) the name and address of the local authority.
- (3) For the purposes of subsection (2)(d) the description must—
- (a) in the case of land registered in the Land Register of Scotland, include the title number of the land,
  - (b) in the case where the title to the land (or a larger area containing the land) is derived from a deed recorded in the General Register of Sasines, identify the land by reference to that deed.

## 27 Recovery of expenses from new owner of land

- (1) Subsection (2) applies where—
- (a) a notice of liability for expenses is registered in relation to the land, and
  - (b) the notice was registered at least 14 days before the date on which a person (the “new owner”) acquires right to the neighbouring land.
- (2) The new owner is severally liable with any former owner of the neighbouring land for any expenses and interest for which the former owner is liable under section 25(1).

## 28 Continuing liability of former owner

- (1) An owner of the neighbouring land who is liable for expenses and interest under section 25 does not, by virtue only of ceasing to be such an owner, cease to be liable for the expenses and interest.
- (2) Where a new owner pays any expenses and interest for which a former owner of the land is liable, the new owner may recover the amount so paid from the former owner.
- (3) A person who is entitled to recover an amount under subsection (2) does not, by virtue only of ceasing to be the owner of the land, cease to be entitled to recover that amount.

## 29 Notice of discharge

- (1) This section applies where liability for expenses and interest to which a registered notice of liability for expenses relates has been discharged.
- (2) The relevant local authority must apply to register a notice (a “notice of discharge”) specifying the matters mentioned in subsection (3).
- (3) The matters are—
- (a) the date of registration or recording of the notice of liability for expenses to which the notice of discharge relates,
  - (b) the action taken under section 22 to which that notice of liability relates,
  - (c) a description of the neighbouring land in respect of which an owner was liable under section 25,
  - (d) that the liability for the expenses and interest has been discharged,
  - (e) the name and address of the local authority.
- (4) For the purposes of subsection (3)(c) the description must—

- (a) in the case of land registered in the Land Register of Scotland, include the title number of the land,
  - (b) in the case where the title to the land (or a larger area containing the land) is derived from a deed recorded in the General Register of Sasines, identify the land by reference to that deed.
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- (5) On registration, the notice of discharge discharges the notice of liability for expenses to which it relates.

### 30 Receipt of notices by the Keeper

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- (1) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in a notice of a type mentioned in subsection (2) which is submitted for registration is accurate.
- (2) The notices are—
- (a) a notice of liability for expenses,
  - (b) a notice of discharge.

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#### *General*

### 31 Guidance

- 20
- (1) The Scottish Ministers may, after consulting such persons as they consider appropriate, issue guidance about this Act.
- (2) A local authority may, after consulting such persons as the authority considers appropriate, issue guidance on—
- (a) the duty imposed by section 3(1),
  - (b) any other provision of this Act.
- (3) A local authority must have regard to any guidance issued under subsection (1) when—
- (a) issuing guidance under subsection (2),
  - (b) carrying out its functions under this Act.
- 25

### 31A Report on operation of Act

- 30
- (1) The Scottish Parliament must make arrangements for one of its committees or sub-committees to report to the Scottish Parliament on the operation of this Act during the review period.
- (2) In this section, the “review period” means the period—
- (a) beginning on the day on which section 2 comes into force, and
  - (b) ending 5 years after that day or on such earlier date as may be determined by the committee or sub-committee making the report under subsection (1).
- (3) A report under subsection (1)—
- (a) may be made in such form and manner as the committee or sub-committee considers appropriate, but
  - (b) must be made no later than 18 months after the end of the review period.
- 35
- (4) The Scottish Parliament must publish a report made under subsection (1).

**32 Service of documents**

- (1) If, having made reasonable inquiries, a person is unable to ascertain the name or address of a person to whom a notice relating to land is to be given under this Act, the notice may be given by—
- 5 (a) addressing it to the person concerned by name or by a description of the person's interest in the land, and
- (b) delivering it by—
- (i) leaving it in the hands of a person who is or appears to be resident on the land or employed on the land, or
- 10 (ii) fixing it to a building or object on, or to a conspicuous part of, the land (or, where that is not practicable, to a building or object near that land).
- (2) Where a document is delivered as mentioned in subsection (1)(b)(ii) it is to be taken to have been given on the day on which it is fixed on or near the building, object or land, unless the contrary is shown.

**33 Interpretation**

- (1) In this Act, unless the context otherwise requires—
- “applicant” has the meaning given by section 2(1),
- “compliance period” has the meaning given by section 6(6)(a),
- “domestic property” means—
- 20 (a) any part of a building in Scotland which is occupied or intended to be occupied as a separate dwelling, and
- (b) a yard, garden, garage or outhouse in Scotland which belongs to such a building or is usually enjoyed with it,
- “high hedge” has the meaning given by section 1,
- 25 “high hedge notice” has the meaning given by section 8(2),
- “initial action” has the meaning given by section 6(5)(b),
- “neighbouring land”, in relation to a high hedge, means the land on which the high hedge is situated,
- “new owner” has the meaning given by section 27(1),
- 30 “notice of discharge” has the meaning given by section 29,
- “notice of liability for expenses” has the meaning given by section 26,
- “office-holder in the Scottish Administration” is to be construed in accordance with section 126(7) of the Scotland Act 1998 (c.46),
- 35 “owner” in relation to any property, means a person who has right to the property whether or not that person has completed title; but if, in relation to the property (or, if the property is held *pro indiviso*, in relation to any *pro indiviso* share in it) more than one person comes within that description of owner, then “owner” means such person as most recently acquired such right,
- “preventative action” has the meaning given by section 6(6)(b),



“register”, in relation to a notice of liability for expenses and a notice of discharge, means register the information contained in the notice in question in the Land Register of Scotland or, as the case may be, record the notice in question in the General Register of Sasines; and “registered” and other related expressions are to be construed accordingly,

“relevant local authority” means the local authority in whose area the high hedge is situated,

“tree preservation order” has the meaning given by section 160(1) of the Town and Country Planning (Scotland) Act 1997 (c.8),

“vary”, in relation to a high hedge notice, means—

- (a) remove initial action or preventative action from the notice,
- (b) amend initial action, the compliance period or preventative action in the notice,
- (c) add further initial action (with a compliance period) or preventative action to the notice,
- (d) correct a defect, error or misdescription in the notice.

- (2) References in this Act to a high hedge include references to part of a high hedge.
- (3) References in this Act to enjoyment of domestic property include references to enjoyment of part of the property.
- (4) Where domestic property is for the time being unoccupied, references in this Act to the reasonable enjoyment of that property are to be read as if they were references to the reasonable enjoyment of an occupant of the property if the property were occupied.

### **34 Power to modify meaning of “high hedge”**

- (1) The Scottish Ministers may by regulations modify the meaning of “high hedge” for the time being in section 1 by—
  - (a) adding a type of tree or shrub to, or removing a type of tree or shrub from, section 1(1)(a),
  - (b) increasing or reducing the height above ground level specified in section 1(1)(b) and (2),
  - (c) modifying or adding to the effect of a hedge specified in section 1(1)(c).
- (2) Regulations under this section may—
  - (a) make different provision for different cases,
  - (b) include such supplementary, incidental, consequential, transitory or transitional provision or savings as the Scottish Ministers consider appropriate,
  - (c) modify any enactment (including any other provision of this Act).
- (3) Regulations under this section are subject to the affirmative procedure.

**35 Ancillary provision**

- 5 (1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional or transitory provision or savings as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under this section may modify this or any other enactment.
- (3) An order under this section containing provision which adds to, replaces or omits any part of the text of an Act, is subject to the affirmative procedure.
- (4) Otherwise an order under this section is subject to the negative procedure.

**36 Crown application**

- 10 (1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (2) Despite subsection (1), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.
- 15 (3) The powers conferred by sections 18, 19 and 22 are exercisable in relation to Crown land only with the consent of the appropriate authority.
- (4) For the purposes of subsection (3), land is “Crown land” if an interest in the land—
- 20 (a) belongs to Her Majesty in right of the Crown or in right of Her private estates,
- (b) belongs to an office-holder in the Scottish Administration or to a Government department,
- (c) is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department.
- (5) In subsection (3) “appropriate authority” means—
- 25 (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners,
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the office-holder in the Scottish Administration or, as the case may be, Government department having the management of the land,
- 30 (c) in the case of land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
- (d) in the case of land belonging to an office-holder in the Scottish Administration or to a Government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department, the office-holder or
- 35 Government department.
- (6) Any reference in this section to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).
- (7) If a dispute arises in relation to the meaning of “appropriate authority” in the case of any
- 40 land—
- (a) it is for the Scottish Ministers to determine the appropriate authority, and
- (b) the Scottish Ministers’ decision is final.

- (8) In this section “Government department” means a department of the United Kingdom Government.

**37 Commencement**

- (1) This section and sections 33, 35 and 38 come into force on the day after Royal Assent.
- 5 (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may contain transitory or transitional provision or savings.

**38 Short title**

10 The short title of this Act is the High Hedges (Scotland) Act 2013.

# **High Hedges (Scotland) Bill**

[AS PASSED]

An Act of the Scottish Parliament to make provision about hedges which interfere with the reasonable enjoyment of residential properties.

Introduced by: Mark McDonald  
On: 2 October 2012  
Bill type: Member's Bill

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