



The Scottish Parliament  
Pàrlamaid na h-Alba

## **Local Government and Regeneration Committee**

**3rd Report, 2013 (Session 4)**

# **Stage 1 Report on the High Hedges (Scotland) Bill**

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## Local Government and Regeneration Committee

### 3rd Report, 2013 (Session 4)

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The Scottish Parliament  
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## **Local Government and Regeneration Committee**

### **Remit and membership**

#### **Remit:**

To consider and report on a) the financing and delivery of local government and local services, and b) planning, and c) matters relating to regeneration falling within the responsibility of the Cabinet Secretary for Infrastructure and Capital Investment.

#### **Membership:**

Stuart McMillan  
Anne McTaggart  
Margaret Mitchell  
John Pentland  
Stewart Stevenson  
Kevin Stewart (Convener)  
John Wilson (Deputy Convener)

#### **Committee Clerking Team:**

##### **Clerk to the Committee**

David Cullum

##### **Senior Assistant Clerk**

Fiona Mullen

##### **Assistant Clerk**

Seán Wixted

##### **Committee Assistant**

Fiona Sinclair



The Scottish Parliament  
Pàrlamaid na h-Alba

## **Local Government and Regeneration Committee**

### **3rd Report, 2013 (Session 4)**

#### **Stage 1 Report on the High Hedges (Scotland) Bill**

The Committee reports to the Parliament as follows—

#### SUMMARY OF RECOMMENDATIONS

1. The Committee supports the general purpose of the Bill.
2. The Committee is content with the definition of a high hedge as established in section 1 of the Bill.
3. The Committee would welcome clarity regarding the instances where a local authority is considering an application where one or more of the properties concerned in the application for a high hedge notice are owned by the local authority.
4. The Committee recommends that the Government examine the feasibility of establishing a central tree officer to provide a core of expertise to local authorities, as is the case in Wales.
5. The Committee recommends that the Scottish Government take the opportunity of the on-going review of Scottish Planning Policy to examine the issues raised such as residential development in proximity to woodlands.
6. The Committee recommends that the Bill be amended to include reference to National Park Authorities as statutory consultees for any high hedge notice applications made within their park area.
7. The Committee recommends that the Bill include a mechanism for a review. Such a review should take place within a reasonable timeframe, no later than five years, after the commencement of the system. Such a review should examine the operation of the Bill in general and not be confined to any specific issues.

#### INTRODUCTION

##### **Parliamentary scrutiny**

8. The High Hedges (Scotland) Bill, (“the Bill”), was introduced into the Scottish Parliament on 2 October 2012 by Mark McDonald MSP, the member in charge of

the Bill (“the member in charge”). The Parliament designated the Local Government and Regeneration Committee as the lead committee for the consideration of the Bill.

9. The Bill is a Members’ Bill, as specified under Standing Orders Rule 9.14. The Scottish Government has publically stated that it is supporting the passage of the Bill; and officials from the Scottish Government assisted the member in charge in drafting the Bill. The Bill is accompanied by both a Policy Memorandum and Explanatory Notes, containing a Financial Memorandum.

10. The Committee issued a call for evidence on the Bill on 5 October 2012. The call for evidence closed on 29 November, and the Committee received 90 submissions in response.

11. On 5 December the Committee took oral evidence from Pamala McDougall and Derek Park, Scothedge; Dr Maggie Keegan, Scottish Wildlife Trust; Aedán Smith, RSPB Scotland, and Angus Yarwood, Woodland Trust Scotland.

12. On 12 December the Committee took oral evidence from Roy Corlett, Legislation Manager, Isle of Man Department of Infrastructure; Peter Keenan, Southern Area Forester, Isle of Man Department of Environment, Food and Agriculture; Colin Whiteway, Clerk, and Paul Parker, Community Warden, Braddan Parish Commissioners (Isle of Man); Robert Paterson, Land Services Officer with Clackmannanshire Council and Member of the Scottish Tree Officers Group; Eric Hamilton, Forestry Officer for Dundee City Council and Treasurer of the Arboricultural Association’s Scottish branch, and Graham Phillips, Forest Manager, Bell Ingram Ltd.

13. Finally, on 19 December the Committee took oral evidence from Derek Mackay MSP, Minister for Local Government and Planning (“the Minister”) and the member in charge of the Bill. Extracts from the minutes of the Committee are attached at Annexe A. Oral and written evidence received by the Committee is attached at Annexe B and Annexe C.

## **Purpose of the Bill**

### *Policy intention*

14. The Policy Memorandum states that the policy objective of the Bill is to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property. The Bill provides that primary responsibility for resolving disputes over high hedges should lie with individuals in the first instance. The Bill requires that applicants for a high hedge notice must have taken all reasonable steps to resolve the issue before making an application to a local authority. The Bill also enables local authorities to reject an application where such steps have not been taken.<sup>1</sup>

15. The principle objective of the Bill is to establish a system to resolve disputes over high hedges. The Bill seeks to achieve this by putting in place a mechanism which provides local authorities with new powers to resolve disputes. The Bill

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<sup>1</sup> Policy Memorandum, paragraph 36.

enables local authorities to consider an application from an individual, seeking action against a high hedge located next to their property. The Bill also enables local authorities to recover the costs of taking action to address a high hedge problem. The Policy Memorandum states that the aim of the Bill is to ensure that the costs to the public finances of resolving private disputes over high hedges are minimised.

16. In summary, the Bill includes provisions which:

- define a high hedge as one which is wholly or mainly formed by a row of two or more evergreen or semi-evergreen trees or shrubs which are over two metres in height and form a barrier to light;
- provide an effective means of resolving disputes over the effects of a high hedge where the issue has not been able to be resolved amicably between neighbours. It does so by giving home owners and occupiers a right to apply to a local authority where they consider a high hedge [as defined] is affecting the enjoyment of their property, and empowers local authorities to make and enforce decisions in relation to high hedges;
- enable a local authority to issue a high hedge notice where, having taken all the circumstances into account, it finds that a high hedge is having an adverse effect. A high hedge notice may require a high hedge owner to take action to remedy the problem and prevent it recurring;
- make provision for both the applicant and the high hedge owner to appeal against a decision to issue/not issue a high hedge notice;
- provide local authorities with the power to undertake the work specified in a high hedge notice, if the notice is not complied with by the high hedge owner within the time specified;
- empower local authorities to charge a fee for applications for a high hedge notice, and recover the costs of any enforcement action from the hedge-owner,<sup>2</sup> and
- ensure the provisions for resolving a high hedge dispute are to be largely cost-neutral for local authorities.<sup>3</sup>

## **Background to the Bill**

### *Previous consultations in Scotland*

17. Former MSP Scott Barrie lodged proposals for the introduction of a members' bill on high hedges into the Parliament on two previous occasions, in September 2003 and November 2006. On neither occasion was a bill introduced into the Parliament.

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<sup>2</sup> Policy Memorandum, paragraphs 2 - 9.

<sup>3</sup> Financial Memorandum, paragraph 82.

18. Between August and November 2009 the Scottish Government undertook a public consultation on the issue of high hedges and nuisance vegetation. In response the Government received 617 written submissions to the consultation, 575 from private individuals, 13 from local authorities and 29 from other stakeholder organisations. Approximately 90% of respondents favoured the introduction of legislation to address the issue of high hedges.

19. On 21 December 2011, the member in charge lodged a draft proposal for a members' bill. In light of the Scottish Government public consultation in 2009, and the level of response to the consultation, the member in charge lodged a statement of reasons stating that, in his opinion there was no further need for public consultation on his draft proposal.

20. The Local Government and Regeneration Committee considered this statement of reasons on 1 February 2012 and was satisfied with the reasons given by the member for not consulting on the draft proposal. As a result, the member in charge became entitled to introduce a members' bill.

#### *Legislation in other jurisdictions*

21. Scotland is currently the only part of the UK which has not enacted legislation to address the issue of disputes between property owners or occupiers in relation to problems caused by high hedges.

22. England, Wales and Northern Ireland all have legislation currently in force which empowers local authorities to operate schemes to address the problems of high hedges. The scope of these schemes, and the statutory definition of a high hedge in each jurisdiction, are similar.

23. The Isle of Man also has legislation to deal with high hedges, however, that legislation also covers the issue of single trees. The Bill effectively seeks to establish a scheme for high hedges in Scotland similar to the ones operating in England, Wales and Northern Ireland.

## GENERAL PRINCIPLES OF THE BILL

### **High hedges**

#### *Introduction*

24. The definition of a high hedge is the central issue raised by witnesses who gave evidence to the Committee. Most of the written and oral evidence commented on this aspect on the Bill. Opinion varied with some witnesses who believe the definition should be expanded to include other forms of vegetation, such as single and deciduous trees. Other witnesses favoured retaining the definition set out in the Bill, while some called for it to be narrowed even further to provide protection to various types of evergreen, or semi-evergreen species (e.g. yew or juniper).

25. Other aspects of the Bill which were considered where:

- its implications for tree preservation orders (TPOs);

- the fees system;
- the cost of the Bill and the resource implications for local authorities;
- the delegated powers set out in the Bill, and
- other issues relating to the Bill.

*Definition of a high hedge*

26. Central to the operation of the system which the Bill proposes to introduce is the need to provide a statutory definition in Scots law of a high hedge. In this regard the member in charge of the Bill has opted to follow the statutory definition used in England and Wales. Section 1 of the Bill defines a high hedge as a hedge which:

- “is formed wholly or mainly by a row of 2 or more evergreen or semi-evergreen trees or shrubs,
- rises to a height of more than 2 metres above ground level, and
- forms a barrier to light.
- For the purposes of this definition “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.”<sup>4</sup>

27. In its evidence to the Committee, Scothedge speculated that there would be up to 5,000 cases in Scotland where there is a dispute between property owners about obstruction of light by high hedges or trees.<sup>5</sup> Based on the experience of high hedge legislation in other jurisdictions such as England and Wales, Scothedge estimates that up to 92% of these cases would “resolve themselves”<sup>6</sup> if the Bill were enacted, without the need for any formal action.

28. Indeed, Scothedge suggested to the Committee that there has been a case which has recently been resolved on the basis of the Bill being introduced. Scothedge cited this as an example of the persuasive effect that legislation in this area will have in compelling individuals to reach an agreed resolution to a high hedge dispute and avoid the possibility of formal action being pursued.<sup>7</sup>

29. Scothedge are strongly supportive of the introduction of the Bill, and believe it is a long overdue revision to the legislative framework in Scotland in relation to such disputes. However, they felt that the definition of a high hedge should be expanded to include single evergreen or deciduous trees. They referred to situations where the enjoyment of property, or quality of life, has otherwise been impacted by trees. Scothedge cited surveys undertaken by them in 2005 and 2009 which showed that 78% of cases involved disputes over evergreens plants,

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<sup>4</sup> Sections 1(1) and 1(2) of the Bill.

<sup>5</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec Col 1482.

<sup>6</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec Col 1481.

<sup>7</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec Col 1573.

and around 20% involved deciduous plants. The surveys showed that 49% of all Scothedge cases involved a dispute over “a single inappropriate tree.”<sup>8</sup>

30. While acknowledging that the definition in the Bill broadly replicates the system currently in place in England, Wales and Northern Ireland, Scothedge stated in oral evidence that—

“Our preferred definition is the one that is used in the Isle of Man, because it is a wide definition. The wording is about something that stops people having reasonable enjoyment of a property....We prefer the Isle of Man definition because it allows all the cases to be made. People can make a complaint and their case can be considered. If we do not do that, the danger is that people will just switch species. Believe me; our experience is that some pretty unscrupulous people are growing these hedges.”<sup>9</sup>

31. The Committee took oral evidence from witnesses representing both government and local authorities on the Isle of Man. The witnesses outlined how the Manx system, which has been in place since 2005, deals with the issue of disputes over single trees. Roy Corlett of the Isle of Man Department of Infrastructure informed the Committee that—

“The legislation has gone down well on the Isle of Man. It certainly seems to have settled many cases that would previously have caused issues”.<sup>10</sup>

32. Paul Parker of Braddan Parish Commissioners, one of the Isle of Man’s 24 local authorities, gave evidence on their experience of operating the system over the last 7 years. Mr Parker stated that of the six cases a year that Braddan Commissioners deal with, about 75% have included a deciduous tree of some sort.”<sup>11</sup>

33. Witnesses from the Isle of Man highlighted differences in the statutory framework in relation to forestry and tree management between the Isle of Man and the various parts of the UK. Peter Keenan of the Forestry Directorate of the Isle of Man Department of Environment, Food and Agriculture outlined the statutory background to forest management and tree felling in the Isle of Man. He stated that in the Isle of Man “areas of trees and individual trees are registered under the Tree Preservation Act 1993”, and that the Manx Government has responsibility for monitoring and supervising these areas. This made the Isle of Man “unique in as much as home owners need to apply to us for a felling licence to remove any trees from their property.”<sup>12</sup> This allows the Manx authorities to assess and deal with any cases that might arise before they come up under the high hedge system.

34. Other witnesses giving oral evidence were unanimously opposed to the expansion of the Bill to cover single trees. Dr Maggie Keegan of the Scottish Wildlife Trust told the Committee that the principle intention of the Bill should be to

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<sup>8</sup> HH66, Scothedge submission, page 2, paragraph 10.

<sup>9</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1487.

<sup>10</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1517.

<sup>11</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1520.

<sup>12</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, 1521.

“capture leylandii and other trees such as western red cedar that have little biodiversity value.” Dr Keegan suggested that the definition in section 1 could be amended to specifically identify “non-native evergreen and semi-evergreen” plants.<sup>13</sup>

35. Aedán Smith of the RSPB highlighted what he saw as the advantages of retaining the definition of a high hedge as set out in the Bill. In oral evidence he stated—

“The current definition has the merit of simplicity, which has obvious benefits in terms of administration and management if the implementation of the bill is progressed. As Dr Keegan said, the current definition is likely to mean that hedges and trees that, broadly speaking, are of higher biodiversity value—those tend to be native species—will not be captured by the bill. Our primary concern is that there should not be an adverse impact on wildlife or biodiversity, and the current simple definition means that adverse implications for wildlife are less likely.”<sup>14</sup>

36. The Scottish Wildlife Trust also expressed concerns in relation to the inclusion of single trees and the potential impact for forested land which adjoins urban areas, or where domestic property is developed adjacent to existing woodland. This may give rise to pressure from developers, or property owners, to seek to have existing trees removed on the grounds they impinge on the reasonable enjoyment of their property. They highlighted a case where a developer had built houses close to existing woodland. The land manager of the woodland eventually had to cut down trees in response to complaints from homeowners.<sup>15</sup>

37. Angus Yarwood of the Woodland Trust Scotland expressed a concern that widening the definition of the Bill to include single trees would require a more considered examination of the implications, telling the Committee—

“If there is to be a broader definition, we would want to go back and look at the other sections in the bill, particularly with regard to tree preservation orders and the importance of heritage trees and the proper assessment of biodiversity value.”<sup>16</sup>

38. Concerns were also expressed by some witnesses that expanding the scope of the Bill to include single or deciduous trees may create a situation in law where trees which may have existed for dozens, or hundreds of years could come under threat. It was feared that pressure from modern property development to remove trees which obstruct light to new housing, or to conservatory/sun room extensions in existing properties, may increase.

39. The Scottish Tree Officers Group (“STOG”) represent local authority tree officers who will have primary responsibility for implementing and managing the high hedge notice system under the Bill. In their evidence to the Committee they

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<sup>13</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1482.

<sup>14</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1482.

<sup>15</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1484.

<sup>16</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1489.

expressed some concerns in relation to the definition of a high hedge in section 1 of the Bill. STOG felt that this definition may be drawn too widely and could lead to the removal of trees and hedges of historic and biodiversity value.

40. In its written evidence STOG provided an example where the Bill may give rise to a problem where two evergreen trees could be planted 5 meters apart. Eventually, the lower branches come together and form a barrier to light, however the original intention was the establishment of two individual trees, not to form a hedge.<sup>17</sup>

41. In oral evidence to the Committee, Robert Paterson of STOG expanded these concerns when he stated—

“My understanding of section 1 is clear, which is that it applies to a hedge or two or more trees growing closely together. We would seek to have the latter part of the provision removed because it could relate to a couple of mature yew trees that are 3,000 years old. If, as you suggest, those trees are reduced to 2m high, we will no longer have yew trees that look individual.”<sup>18</sup>

42. Graham Phillips of Bell Ingram Ltd, which manages commercial forestry and woodland areas for private clients, expressed general satisfaction with the definition of a high hedge in the Bill. However, he stressed that the definition would need to be “tight enough to deal with the specific problems that the bill wants to address without giving too much scope for capturing individual trees and woodland trees”.<sup>19</sup>

43. Eric Hamilton, Forestry Officer with Dundee City Council, stated that the definition of a high hedge “must cover just high hedges and not any trees of any type”, adding that the inclusion of trees in a bill designed to address high hedges “would lead to tremendous problems.”<sup>20</sup>

44. Commenting on the potential level of inquiries tree officers might receive from people seeking to have neighbouring trees removed to improved levels of light, or landscape views, Mr Hamilton responded—

“I could not put that into numbers. There would be too many—we would be inundated. My switchboard and emails would light up.....The number would be very substantial.”

45. Graham Phillips referred to six potential cases Bell Ingram Ltd has dealt with in the last two years which may have come under the provisions of the Bill if it were to include provisions for making applications to remove single trees.<sup>21</sup>

46. Some of the written evidence questioned the suitability of adapting definitions in legislation in operation in England and Wales, for use in Scotland. Mr Peter Robinson, in his submissions, pointed to the differences in the angle of sunlight in

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<sup>17</sup> HH68 Scottish Tree Officers Group submission, page 1, paragraph 2.

<sup>18</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 12, Col 1533.

<sup>19</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1522.

<sup>20</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1522.

<sup>21</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1525.

winter between locations in the south of England, as opposed to locations in central and northern Scotland.<sup>22</sup>

*Exemptions for native species*

47. The Scottish Wildlife Trust and Bell Ingram Ltd also expressed a view that the Bill should explicitly exclude, or protect, native species of evergreen and semi-evergreen plants from being subject to high hedge notices.

48. Dr Maggie Keegan of the Scottish Wildlife Trust highlighted the important role native evergreen species such as holly, juniper and yew stating that these “native trees have much more biodiversity value than do non-native tree species”. She questioned whether the definition of a high hedge in section 1 should be amended to read “non-native evergreen or semi-evergreen trees”, to protect such species.<sup>23</sup>

49. Grahame Phillips, of Bell Ingram Ltd stated that yew trees should be explicitly excluded from the definition of a high hedge. Yew, he stated, was usually part of a historic landscape, such as churchyards, and is “a fairly slow-growing species”.<sup>24</sup>

50. In response to some of these concerns, Derek Park of Scothedge pointed out that even if deciduous or single trees were included in the Bill, they only constitute less than 0.5% of the total domestic hedge stock in Scotland.<sup>25</sup>

51. Pamala McDougall of Scothedge also pointed to the effect a long running dispute with a neighbour, irrespective of where it involves an evergreen hedge or a deciduous tree, can have on the health and wellbeing of the people involved. She stated—

“I am sorry but, as much as I love trees, I think that when it comes to weighing people’s quality of life against the value of a tree, there are definite priorities to consider.”<sup>26</sup>

*Tree Preservation Orders*

52. Where a tree has already been identified as having particular significance, it may be protected by a tree preservation order under section 160 of the Town and Country Planning (Scotland) Act 1997<sup>27</sup>. The Policy Memorandum states that the intention of this Bill is that local authorities should take account of any tree preservation orders when making a decision on a high hedge application (in light of the fact that the same factors are considered as for the making of a tree preservation order). However, a local authority should not be unnecessarily constrained by a tree preservation order in deciding what action should be taken in respect of a high hedge.<sup>28</sup>

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<sup>22</sup> HH38 Submission from Peter Robinson.

<sup>23</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1482.

<sup>24</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, 1534.

<sup>25</sup> Local Government and Regeneration Committee, *Official Report* 5 Dec 2012, Col 1485.

<sup>26</sup> Local Government and Regeneration Committee, *Official Report* 5 Dec 2012, Col 1492.

<sup>27</sup> Section 160 of the Town and Country Planning (Scotland) Act 1997 (as amended by section 28 of the Planning etc. (Scotland) Act 2006).

<sup>28</sup> Policy Memorandum, paragraph 66.

53. The evidence received by the Committee pointed to concerns regarding the lack of uniform application and enforcement across Scotland in relation to tree preservation orders (“TPOs”). Angus Yarwood of Woodland Trust Scotland, in response to questions on the application of TPOs, informed the Committee that—

“...tree preservation orders are not applied uniformly throughout Scotland for various reasons. Recently, we did some research on their use in the past 10 years or so, and their numbers have dropped off significantly. One local authority in Scotland is not even able to lay its hands on the legal documents, although most other authorities are much better prepared. There is a big issue about enforcement and you are right to say that, in certain cases, the penalties are not high enough. The same is true of building regulations—if trees are cut down, the penalties are not high enough.”<sup>29</sup>

54. Scothedge stated that they were content with the way the Bill proposes to deal with TPOs.<sup>30</sup>

55. Other concerns were expressed regarding the possible impact the Bill may have on the system of TPOs. Eric Hamilton of Dundee City Council requested that the Bill be amended to “remove altogether...any contact with tree preservation orders”.<sup>31</sup>

56. Mr Hamilton also referred to the issue of the effective reviewing of TPOs by local authorities, pointing out that currently there is no set timescale in Scotland within which TPOs must be reviewed, so it is at the discretion of each local authority. Mr Hamilton informed the Committee that currently Dundee City Council is “undertaking a 10 year review [of TPOs] after 30 years of not reviewing anything”.<sup>32</sup>

57. Concerns over the impact of the Bill on TPOs were also shared by Grahame Phillips of Bell Ingram Ltd. In response to a question as to whether the Bill might present an opportunity to ensure a more effective monitoring regime for TPOs in Scotland, thereby pre-empting some of the issues in relation to single trees, Mr Phillips responded—

“The issue should be dealt with more through a review of TPOs rather than through the bill. If a tree became dangerous, that would not preclude a TPO. The commonsense approach is valid, but it should be taken at the TPO stage rather than under the bill.”<sup>33</sup>

#### *Views of the Scottish Government*

58. In oral evidence to the Committee, the Minister stated that the Scottish Government supports both the Bill, and the definition of a high hedge as set out in

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<sup>29</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1491.

<sup>30</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1493.

<sup>31</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1523.

<sup>32</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1523.

<sup>33</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1523.

section 1, stating that it “broadly strikes the right balance and required neither narrowing nor expanding.”<sup>34</sup>

59. The Minister added the Government’s view that the Bill will change behaviour amongst property owners who are in dispute over a high hedge and “sets a scene and a tone such that one would hope that others would not use vegetation or other such growth to upset their neighbours.” Moreover, widening the definition in a way that satisfied everyone would come with its own particular difficulties which may not be achievable.<sup>35</sup>

60. In relation to questions raised about the implications of the Bill on TPOs, the Minister stated—

“I am aware that there has been much discussion of the bill’s interaction with tree preservation orders. The Government’s memorandum makes it clear that we support the bill’s approach as it ensures that a local authority’s decision to issue a high hedge notice will not be frustrated by an inappropriate TPO. The committee will be aware that a similar issue arises in relation to conservation areas. The Government’s memorandum makes it clear that we are prepared to take forward regulations under the Town and Country Planning Act (Scotland) 1997 to ensure that high hedge notices are not adversely affected by conservation areas...”<sup>36</sup>

61. The Minister confirmed that the Scottish Government would examine the legislation and guidance around TPOs in Scotland, with the aim of ensuring it is complementary to the provisions of the Bill.<sup>37</sup>

*Views of the member in charge of the Bill*

62. The member in charge addressed the questions raised about whether the definition of a high hedge should be amended, stating that “we should go forward on the current basis and see how the definition works in a Scottish context.”<sup>38</sup> On single trees he added—

“...deciduous trees will be covered by the bill if they are part of a high hedge that is mainly formed of evergreen or semi-evergreen plants. Deciduous trees are not, by definition, completely off the agenda. However, in our view, the real problem in the context of barriers to light is the semi-evergreen or evergreen hedge.”<sup>39</sup>

63. The member in charge did not support protection for native Scottish species of evergreen and semi-evergreen plants fearing it would “create a significant loophole”, so that anyone who wished to pursue a neighbourhood dispute could

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<sup>34</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1556.

<sup>35</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1557.

<sup>36</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Cols 1555-56.

<sup>37</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1560.

<sup>38</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1569.

<sup>39</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1972.

simply shift from a non-native to a native species. He stated that each case should be judged on its merits.<sup>40</sup>

64. Responding to concerns that the definition of a high hedge might adversely impact the biodiversity value of certain native evergreen species, the member in charge commented—

“Undoubtedly, there will be some requirement to look at the biodiversity impacts of any action that will be taken, but I do not view the inclusion of native species in the bill as a problem. It prevents the creation of an unnecessary loophole.”<sup>41</sup>

65. Referring to the points raised in relation to TPOs, the member in charge pointed out that section 6(6) of the Bill will ensure that the same test applied to making TPOs, will be applied in assessing whether any action is required to be taken in relation to a high hedge notice. This, he stated, is a “pragmatic approach”, which “will ensure that protections for valuable trees are kept in place.”<sup>42</sup>

*Conclusions and recommendations*

**66. The Committee supports the general purpose of the Bill to establish a statutory system to address disputes over high hedges. The Committee notes the views expressed by Scothedge and the member in charge of the Bill that approximately 92% of current cases where a dispute exists over a high hedge could potentially be resolved under the proposals set out in the Bill.**

**67. The Committee believes it is desirable that the application of the Bill seeks to resolve as many disputes as possible, but considers it unrealistic to expect any single piece of legislation in this area to resolve 100% of cases. This Bill is the simplest way of addressing the majority of cases relating to disputes over high hedges.**

**68. The Committee is content with the definition of a high hedge as established in section 1 of the Bill. The Committee does not believe, at this stage, that the definition needs to be amended to include single or deciduous trees, or other forms of vegetation.**<sup>43</sup>

**69. The Committee notes the concerns expressed over the provisions of the Bill and how they will work in relation to Tree Preservation Orders (TPOs). The Committee is satisfied that a TPO will not be varied, or removed, as a result of a high hedge notice being granted, without due process and consideration taking place.**

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<sup>40</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1580.

<sup>41</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1580.

<sup>42</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Cols 1569-70.

<sup>43</sup> Stuart McMillan dissents.

## **Fees, costs and resources**

70. Section 4 of the Bill provides for an application fee to be charged by a local authority for persons seeking a high hedge notice. In relation to the fees which local authorities may charge, the Policy Memorandum states—

“The Bill does not specify any upper limit or ‘cap’ on fees but requires that fees must not exceed an amount which the local authority considers represents the reasonable costs of an authority in deciding an application. This is intended to enable local authorities to take account of local facts and circumstances when setting application fees as well as to ensure that fees are not set beyond a level that is reasonable.”<sup>44</sup>

71. Much of the discussion which took place in relation to the Financial Memorandum centred on issues such as whether there should be a cap on the fees chargeable under the Bill, and whether the effect of the Bill would truly be cost neutral on local authorities, as the member in charge of the Bill intends.

### *Fees*

72. It was noted that other jurisdictions with similar legislation had set a cap on application fees. Several witnesses called for an upper limit to be set (somewhere in the region of £350 - £400). This level, it was suggested, would deter frivolous or vexatious applications while at the same time fund the operation of the system so as to be cost neutral for local authorities.

73. Scothedge expressed concerns around fees, stating their first choice would be for the owner of a high hedge to pay the full costs, including the fees of the applicant. They stated—

First and foremost, we do not think that justice would be served if a claimant who has lived in an awful condition for years had to pay hundreds of pounds. Most of these people—who are victims—could not afford it.”<sup>45</sup>

### *Capacity and resource issues*

74. Several witnesses expressed concerns regarding the potential need for additional staffing and training for local authority tree officers if the definition in the Bill were expanded to include issues such as single trees.

75. In the event that the definition of a high hedge is expanded to include single trees, Dr Maggie Keegan of the Scottish Wildlife Trust pointed out that there may be a need to set a fee level which would go some way to supporting the additional staff training needs, (e.g. to support conducting biodiversity surveys).<sup>46</sup> She feared that there—

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<sup>44</sup> Police Memorandum, paragraph 54.

<sup>45</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Cols 1494-95.

<sup>46</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1502.

“...would be an impact if an authority were to be using someone who did not know a lot about biodiversity, because that person would need a lot of training.”<sup>47</sup>

76. Aedán Smith of the RSPB pointed out that additional assessments of the biodiversity value of given areas may be needed if the definition in the Bill was broadened to include trees. That might result in more work for tree officers.<sup>48</sup>

77. Angus Yarwood of Woodland Trust Scotland was concerned that—

“The number of biodiversity officers and tree officers in local authorities has been hard hit in the past five or six years. Fife has one part-time tree officer, and I think that I am right in saying that Edinburgh has gone from four or five members of staff in its tree officer group to two or two and a half. That is quite common throughout Scotland because of the economic climate. If authorities have to upskill staff and provide extra training for biodiversity or tree survey work, there will undoubtedly be an impact.”<sup>49</sup>

78. Eric Hamilton of Dundee City Council informed the Committee that—

“If the bill sticks to hedges, I will be able to deal with that comfortably. If trees are introduced to it, I will be taking early retirement.....I would think that, in my urban environment, once all the hoo-ha had died down [following the coming into force of the law], I would be looking at 10 cases a year, or perhaps fewer.”<sup>50</sup>

79. Robert Paterson of STOG elaborated on this point in response to questions on the potential workload issues for tree officers—

“I get six to eight inquiries a year, a couple of which are repeat inquiries. In the case of three current inquiries, people are waiting for the High Hedges (Scotland) Bill to be enacted before they consider their individual situations further.

As Eric Hamilton suggested, when the bill is enacted, there will be an initial flurry of complaints. That has already been anticipated in the background papers to the bill. We hope that we will deal with that at the inquiries stage and that the number of cases in which there is a need for a notice will be few, but it is difficult to ascertain that because such legislation is a new beast for us in Scotland.”<sup>51</sup>

80. Scothedge suggested—

“In Wales, there is a central tree officer—or whatever you want to call the person—to provide a core of expertise that covers the whole of Wales. We

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<sup>47</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1502.

<sup>48</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1502.

<sup>49</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1502.

<sup>50</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1525.

<sup>51</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1525.

have advocated that in the past as a possibility for Scotland so that we could pool the expertise and make it available to all the local authorities.”<sup>52</sup>

81. Witnesses from the Isle of Man discussed resourcing implications arising from a recent legal court challenge to a decision by the Braddan Parish Commissioners. This followed remedial action taken by the Commissioners relating to a high hedge between two residential properties, following an application from one of the residents.<sup>53</sup> Responding to questions on the costs to the Commissioners, Colin Whiteway stated—

“The local authority picked up the tab for the case. We had to present it. Because it was so important, we had to instruct an advocate. By the end of the case, we had spent more than £7,500. We think that the complainant had spent considerably more than that....We have not calculated the cost in staff time. The £7,500 relates to the legal expenses that were paid to our advocate. The amount of time spent on the matter was extraordinary and I am sure that the cost would be many thousands of pounds.”<sup>54</sup>

*Refunds and the loser-pays principle*

82. Various witnesses referred to the concept of the “loser-pays principle”<sup>55</sup>. This is where a local authority has the discretion to charge a portion, or the whole cost of the application fee to the person on whom the high hedge notice is served. It was suggested this could be an incentive to persuade a reluctant or unreasonable party to reach an agreement. This approach could also allow the complainant to be reimbursed by the hedge owner, via the council clawing back their application fee.

83. Roy Corlett of the Isle of Man Department of Infrastructure, informed the Committee of the system they operate for refunds—

“The fees on the Isle of Man are set at £150 and have been set at that figure for several years now. However, there is discretion to allow a refund, depending on the stage of the complaint at which the matter is dealt with— that might be after the first remedial letter is issued or a visit is made to the site. The department would encourage the two parties to continue talking and to take part in a mediation process, even though the fee would have been paid by the complainant.”<sup>56</sup>

84. Eric Hamilton of Dundee City Council suggested that the policy “would be easier to apply if there were one price for all”<sup>57</sup>.

85. In relation to his primary role in Clackmannanshire Council, Robert Paterson of STOG suggested that Clackmannanshire would approach the issue of fees for high hedge applications in a similar way to that for planning application fees—

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<sup>52</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1502.

<sup>53</sup> Boardman v Braddan Commissioners (June 2012), High Bailiff’s Court, Douglas, Isle of Man: <http://www.scotland.gov.uk/Resource/0040/00401665.pdf> [Retrieved 14 January 2013].

<sup>54</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1516.

<sup>55</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1572.

<sup>56</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1515.

<sup>57</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1528.

“The fee will vary depending on the local authority that takes the case and the number of different departments that are involved—the legal advisers and others that Eric Hamilton mentioned. From the initial meeting that I had with my service manager at Clackmannanshire Council, I know that she takes the view that we should deal with such issues as we deal with planning applications and should apply the same fee. That may be the way in which Clackmannanshire Council will take the matter forward.”<sup>58</sup>

*Views of the Scottish Government*

86. The Minister took the view that not specifying a cap on fees is the correct approach to take—

“I do not have concerns, because the proposition is that the fee will reflect the cost of the local authority’s work. If that is applied proportionately, fairly and reasonably, that would not give us cause for concern.....The Scottish Government is fairly content as long as the approach is followed of local authorities recovering the costs by using the fee for the applicant and recovering the costs of any enforcement work from the so-called perpetrator. The fee will be fair and proportionate to the cost of the service, which is why we are content that we do not need to set a national cap on the fee.”<sup>59</sup>

87. On the cost neutrality of the Bill, the Minister told the Committee that—

“We should be able to design a system that is as low cost as possible. Just because that is difficult does not mean that we should not proceed, because clearly there is a need for legislation to enable action to be taken where none has been taken in the past. We will want to design the legislation, regulations and guidance in a way that tries to keep costs down and avoids such figures.”<sup>60</sup>

88. Commenting on the loser-pays principle, the Minister highlighted the need to be fair to a high hedge-owner who has complied with a high hedge notice and paid for the high hedge to be cut. On any deterrent factor which a loser-pays principle may deliver in terms of an early resolution to a dispute the Minister added—

“I understand the rationale, and I can see how what you describe could be a deterrent. However, the system in which the complainant pays the fee works, too, and also serves as a deterrent. Rather than a free-for-all, in which people complain frivolously, it seems to encourage an appropriate use of the system.”<sup>61</sup>

*Views of the member in charge*

89. The member in charge, Mark MacDonald, also opposed placing a cap on the level of fees set by a local authority in making an application for a high hedge notice—

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<sup>58</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1528.

<sup>59</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1559.

<sup>60</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1561.

<sup>61</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Cols 1563-64.

“...I am keen to ensure that the costs of providing the service can be recovered by local authorities. I believe that my bill provides the ability to do that while giving local flexibility on the fee-setting process. The bill provides that, in setting the fees, a local authority

“must not exceed an amount which it considers represents the reasonable costs”

to the authority of making that decision. That is a key point. Although there will be no cap on fees, in effect the bill provides a form of capping by ensuring that the service cannot be a revenue raiser while simultaneously providing flexibility to take account of local circumstances.”<sup>62</sup>

#### *Conclusions and recommendations*

**90. The Committee is content that the provisions of the Bill require local authorities to set fees at a reasonable level.**

**91. Based on the current definition of a high hedge as set out in the Bill, the Committee is of the view that the proposed fees system should be sufficient to ensure the provisions of the Bill are substantially cost neutral.**

**92. The Committee recommends that the Government examine the feasibility of establishing a central tree officer to provide a core of expertise to local authorities, as is the case in Wales.**

93. The Committee notes that the Finance Committee did not make any recommendations to the Committee, setting out their conclusions in relation to the Financial Memorandum, or otherwise. Instead they simply forwarded the written evidence, and official report of their oral evidence session, under cover of a letter to the Committee.

### OTHER ISSUES

#### **Local authority owned property**

##### *Applications involving local authority property*

94. Questions were raised as to how a local authority would deal with a situation where an application was received from a person occupying council property (a tenant). Or an application seeking action against a high hedge located on council-owned or managed property (e.g. council housing; council property, urban parks, green spaces etc.). Questions were also posed in relation to how an application may be handled where the boundary between two councils is involved.

95. Aedán Smith of the RSPB drew on the parallel with planning applications which involve local authority boundary issues—

“If a planning application had been submitted, there would be a requirement to consult the neighbours, regardless of whether they lived across a local authority boundary. The planning application would go to the authority in which the development was to take place. I guess that the bill would work in a similar way, and that the authority in which the tree or the hedge that was

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<sup>62</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1569.

being dealt with was situated would be the lead authority on the matter, but there would need to be scope for cross-border co-operation.”<sup>63</sup>

*Views of the Scottish Government*

96. Responding to the issues, Norman MacLeod of the Scottish Government Legal Directorate informed the Committee that “if the hedge is on local authority land, the notice can be brought against the local authority and vice versa. There are no restrictions on local authority use and there is an option to appeal to ministers in the event that you do not like the decision that you get.”<sup>64</sup>

97. The Minister expanded further on this response by adding—

“...we would want to check who would be responsible. If it was a council tenant, for example, they have probably signed a tenancy agreement that says that they are responsible for the maintenance of the garden. If the tenant has taken responsibility for the garden and the hedge and the hedge is a problem, it is not necessarily the local authority that would be charged by the tenant. Fundamentally, though, the issue would still have to be resolved. We are happy to look into the detail of that to ensure that we are absolutely accurate and bring back a response through me or through Mr McDonald.”<sup>65</sup>

*Conclusions and recommendations*

**98. The Committee would welcome clarity regarding the instances where a local authority is considering an application where one or more of the properties concerned in the application for a high hedge notice are owned by the local authority.**

**99. The Committee notes the views expressed regarding the existing situation where a local authority may consider and rule on a planning application involving property or lands owned by the authority itself. The Committee is content, in light of this parallel, that no additional provisions are required to provide for the situation where an authority must consider an application for high hedge notice relating to hedges or property owned by the authority.**

**Planning issues**

100. Some reference was made to the role of the planning system during the oral evidence on the Bill. Scottish Wildlife Trust cited an example of where the construction of domestic property adjoining existing woodland has caused problems. Dr Maggie Keegan stated—

“...we have had conflicts with neighbours in Cumbernauld, where a development went up after a woodland was established. Neighbours who adjoin our woodland now want some of our woodland cut down. If a big buffer zone had been created by the developer that might not have happened. One of the unintended consequences is that that could happen more often. The issue is about having the right tree in the right place and there is Forestry

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<sup>63</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1500.

<sup>64</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1567.

<sup>65</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1567.

Commission guidance on having smaller trees. If local authorities had that guidance to give to people and developers and if urban woodland and development was designed more about what will happen in 20 years' time, we would have fewer of these conflicts."<sup>66</sup>

101. Angus Yarwood of Woodland Trust Scotland, highlighted the important role of the planning system in Scotland in managing the tensions between woodland development and urban development, and in ensuring a healthy sustainable ecosystem in urban areas.<sup>67</sup> He went on to refer to some difficulties which have arisen in the construction of domestic housing developments close to urban woodland and vegetation—

“I agree with what has been said about properties being built near trees that are already there. There are lots of examples of developments being built close to fairly young trees....that, over many years, will grow to a bigger size. You must appreciate the process that native and deciduous trees go through of maturing into large trees and then falling back as they die over the years. Those dimensions are often not included in planning considerations.”<sup>68</sup>

102. Aedán Smith of the RSPB informed the Committee that the effect trees may have on the levels of light to private property would be a planning matter.”<sup>69</sup>

103. In relation to interaction with the planning system, Robert Paterson of STOG set out the role of a local authority tree officer in terms of an application for, say the extensions of an existing domestic property—

“When construction is concerned and planning consent is required, such as for an extension to a house, the advice note BS5837—the amended 2012 version—takes cognisance of trees in relation to the proposed development. Advice would be given to our development team on how the application should be processed in view of that issue.....that would be for any type of construction, but you mentioned a conservatory or something like that. For anything that requires planning consent, if there are trees involved there should be a consultation process whereby the tree officer is asked to give advice to the development team on the relationship of the proposed building to the tree and whether there would be any adverse effects on the residents—the occupants—or indeed on the tree.”<sup>70</sup>

104. In response to further questioning by the Committee Mr Paterson confirmed that this procedure applies to applications for new housing developments and those seeking to extend existing houses.<sup>71</sup>

#### *View of the Scottish Government*

105. The Minister informed the Committee—

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<sup>66</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1487.

<sup>67</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1492.

<sup>68</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1498.

<sup>69</sup> Local Government and Regeneration Committee, *Official Report*, 5 Dec 2012, Col 1499.

<sup>70</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1529.

<sup>71</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1529.

“Each planning application will continue to be developed on its merits. Issues about trees, hedges and the environment are already a consideration in any planning application. To take it a level further, perhaps local authorities will consider producing good practice guidance on being a good neighbour in relation to hedge growing and so on. We do not have a plan for new national guidance on the issue but, as people will want to understand and interpret the bill, we will want to produce guidance on it. The planning system, however, will continue as at present, with each planning application being considered on its merits.”<sup>72</sup>

#### *Conclusions and recommendations*

106. The Committee is content that issues regarding single trees which have been raised in evidence can be addressed under the current planning system.

**107. The Committee recommends that the Scottish Government take the opportunity of the on-going review of Scottish Planning Policy to examine the issues raised such as residential development in proximity to woodlands.**

#### **Implementation of the Bill**

108. Several witnesses referred to the need for detailed guidance to be issued by the Scottish Government in relation to the operation of the system established by the Bill. Examples of guidance in other jurisdictions were cited in terms of ensuring uniform application of the high hedge dispute resolution system across various local authorities.

109. Roy Corlett of the Isle of Man Department of Infrastructure informed the Committee of the Building Research Establishment guidelines they have utilised in operation their high hedge system in the Isle of Man—

“I think that the general view is that, although we have had a few difficulties with enforcing the legislation, nothing has proved to be insurmountable. We have been able to rely on the guidance that is available for England from the BRE, although we have had to bear it in mind that that needs to be slightly adjusted to take account of the differences in our definition of a high hedge and the fact that we also include single trees.”<sup>73</sup>

110. The STOG also stressed the need for clear guidance under the Bill in order to assist property owners in mediating a dispute over a high hedge, and in reaching a decision on whether to lodge an application for a high hedge notice. Robert Paterson of STOG suggested that guidance similar to ‘*Hedge height and light loss*’,<sup>74</sup> which was issued by the UK Government at the time of the introduction of the legislation in England and Wales legislation in 2005, should be made available in Scotland. Following that approach, he added, would mean that

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<sup>72</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1560.

<sup>73</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1513.

<sup>74</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1527.

“making a calculation and a judgment of a high hedge would be a straightforward process”.<sup>75</sup>

*Views of the Scottish Government*

111. The Minister referred to the potential role good practice guidance might play in terms of ensuring that property owners do not develop hedges which might go on to cause disputes with their neighbours. He stated it would be up to local authorities to develop such guidance. The Minister informed the Committee that the Scottish Government will be seeking to develop national guidance to assist people in understanding and interpreting the system established by the Bill.<sup>76</sup>

*Views of the member in charge of the Bill*

112. In responding to questions posed with the Committee, the member in charge of the Bill highlighted the role guidance could play in addressing many issues.

113. The member in charge referred to existing guidance in other parts of the UK, as well as to industry standards for issues such as hedge height, which can assist tree officers, and members of the public, in making determinations on applications received under the Bill. However, the member in charge pointed out that, ultimately “each case will be judged on its merits”<sup>77</sup>. The member in charge went on to set out the role guidance could play in supporting the system for resolving high hedge disputes—

“The guidance will look to draw on best practice elsewhere. I believe that documents have been drafted on taking account of issues such as the height of the hedge and the effect of light when making an assessment. We put our trust in the professionalism of the officers who will make the decisions.”<sup>78</sup>

*Conclusions and recommendations*

114. Many of the issues raised in relation to the operation of the system established by the Bill will benefit from the provision of clear and comprehensive information to the public. This will assist in understanding and interpreting the high hedge dispute resolution system established by the Bill.

**115. The Committee are content that the Scottish Government plans to develop guidance utilising best practice from other jurisdictions. It is appropriate that the guidance also draw on existing best practice documentation produced by the Building Research Establishment and the UK Department of Communities and Local Government.**

*National parks*

116. Some national park authorities in Scotland have responsibility for planning within their park area. They will not, however, determine applications on high hedge notices under the terms of the Bill. In its written evidence to the Committee Loch Lomond and the Trossachs National Park Authority stated that—

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<sup>75</sup> *Hedge Height and Light Loss* (2005), UK Department of Communities and Local Government [Retrieved 18 January 2013].

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/hedgeheight.pdf>

<sup>76</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1560.

<sup>77</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1575.

<sup>78</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1575.

“[We are] the planning authority for the geographical area [the Park] covers and therefore has the same powers as any other planning authority under the Town & Country Planning (Scotland) Act 1997 to make new and administer existing TPO’s within the National Park; consider notices of intention to remove trees in conservation areas and; attach conditions to planning permissions to protect trees/require new planting. While we agree that the most suitable body to administer the high hedge legislation would be the relevant local authority we think it’s necessary that the relevant National Park Authority is a statutory consultee for any proposed high hedge notice within its area. This should ensure that any notice affecting a protected tree or other trees considered to contribute to the special qualities of the National Park can be carefully considered. In this regard we consider it appropriate to: (1) include consultation with the NPA’s in section 6(2) and to amend section 6(7) to include “(c) comments from any relevant National Park Authority”. Section 7(3) should include “(c) any relevant NPA”.”<sup>79</sup>

117. The STOG also supported the inclusion of the national park authorities as statutory consultee on high hedge notice applications, where the property in questions falls within their park area.<sup>80</sup>

#### *Conclusion*

**118. The Committee recommends that the Bill be amended to include reference to National Park Authorities as statutory consultees for any high hedge notice applications made within their park area.**

#### **Delegated Powers**

##### *The views of the Subordinate Legislation Committee*

119. Section 34(1) of the Bill enables the Scottish Ministers to make regulations which modify the meaning of a high hedge, as set out in section 1 of the Bill. As the Bill will only apply to hedges which are high hedges within the meaning of section 1, this power enables the Scottish Ministers to vary the applicability of the Bill by making subordinate legislation.

120. The Subordinate Legislation Committee has expressed reservations about the delegated powers set out in section 34, which allow the Scottish Ministers to modify the definition of a high hedge. They felt that this power is particularly broad in its scope, pointing out that it may be used to significantly alter the scope of the Bill. Either by narrowing the definition to the point that it defeats the ends of the Bill, or by widening the definition so that it extends beyond anything that may have been considered by the Parliament.<sup>81</sup>

121. In commenting on the views of the Subordinate Legislation Committee, the Minister stated his understanding that—

“...there is an enabling power in the bill to expand the definition—as long as it still refers to high hedges, because this is, at the end of the day, a high

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<sup>79</sup> HH60 Loch Lomond and the Trossachs National Park Authority submission, paragraph 3.

<sup>80</sup> HH68 Scottish Tree Officers Group submission, page 4, paragraph 15.

<sup>81</sup> SL/S4/12/R58 - Report from the Subordinate Legislation Committee on the High Hedges (Scotland) Bill, (SP Paper 233), paragraphs 9 – 14.

hedges bill. There are reasons why trees have not been considered, other than in the scenario that is outlined in the definition.”<sup>82</sup>

122. The Minister expanded on this view stating that a reasonable use of the section 34 powers would be say to change the height of a high hedge from 2 meters to 3 meters.<sup>83</sup>

*Views of the member in charge of the Bill*

123. The member in charge further clarified the position on the use of the section 34 powers—

“Let me be clear that only the definition of a hedge, including its height, can be amended. As I understand it, the provision will not allow for a statutory instrument to bring single trees into the picture at a later stage. The definition could be amended to include, for example, deciduous hedgerows as opposed to evergreens or semi-evergreens. That might well happen. However, I am not going to give a yes or no answer to the question. Who knows what the future holds? Who knows what is going to happen tomorrow, never mind in a few years’ time?”<sup>84</sup>

*Conclusions and recommendations*

124. The Committee notes the conclusions and recommendations of the Subordinate Legislation Committee in relation to the breath of the proposed delegated powers as set out in the Bill. This would allow the Scottish Ministers to expand the definition of a high hedge to include more than the definition as currently set out in section 1 of the Bill. On the face of it this provision may seem like a sensible mechanism to facilitate inclusion of other types of vegetation in the future, without the need for further primary legislation. However, it is clear from the report of the Subordinate Legislation Committee that this power could be used to amend the definition of a high hedge to such an extent as to fall outside both the clear purpose of the Bill, and the powers granted to the Government by the Parliament to make reasonable adjustment to the law without the need to return to the Parliament to seek further powers via primary legislation.

125. The Committee notes the statement of the member in charge that any future amendment made by way of delegated powers under section 34 of the Bill could only seek to amend the current definition of a high hedge, as set out in section 1. Section 34 could not be used to redefine other vegetation, such as a single tree, as a high hedge for the purposes of the Bill.

**126. The Committee therefore recommends that section 34 of the Bill be amended to explicitly make this clear.**

**Problems caused by nuisance vegetation**

127. The Policy Memorandum makes clear that the objective of the Bill is to address disputes over high hedges which “interfere with the reasonable enjoyment

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<sup>82</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1558.

<sup>83</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Cols 1564-65.

<sup>84</sup> Local Government and Regeneration Committee, *Official Report*, 19 Dec 2012, Col 1576.

of domestic property”.<sup>85</sup> Subsection 1(1)(c) of the Bill established the principle interference to be addressed as being the blocking of natural daylight from a domestic property by high hedges in close proximity to an adjoining property.

128. A significant number of submissions received highlight other issues which people wish the legislation to address in relation to high hedges, trees and plants on property which adjoins their own.

129. These include complaints over organic litter from the shedding of foliage from one property to another; obstruction of landscape views by trees and plants in a neighbouring property; damage caused by the growth and expansion of the root bulbs of large trees; concerns of property owners of potential damage from trees or large plants which they considered to be in an unsafe condition, or unstable location, and which may fall onto their property, especially in bad weather.

### *Conclusion*

130. It is clear that the Bill as introduced does not primarily seek to address these issues. While the Committee has sympathy with the plight of many of the individuals who have made representations to the Committee, it would clearly be outwith the scope of the policy intention on which the member in charge is seeking the Parliament to legislate, to use this Bill to address such issues as the obstruction of landscape views, damage from root growth etc. In many instances such issues are already covered by existing legislation or guidance in terms of urban planning or dangerous trees etc. The Committee, therefore, does not intend to comment further in this report on these issues.

### **Reviewing the legislation**

131. When high hedge legislation came into effect in England in 2005, the UK Department of Communities and Local Government asked English local authorities to maintain records of complaints under the high hedge system. This was to inform a review of the process, which would take place on a five-yearly basis. For each year of operation, the following information was requested from local authorities:

- numbers of enquiries about the legislation;
- numbers of formal complaints received;
- number determined;
- number of remedial notices issued;
- number of complaints about failure to comply with the requirements of a remedial notice (enforcement cases);
- number resolved informally;
- number of prosecutions and outcome;

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<sup>85</sup> Policy Memorandum, paragraph 2.

- number of occasions that the authority used its default powers to carry out works to the high hedge.<sup>86</sup>

132. In response to questions as to whether there had been any requests to review the Manx legislation on high hedges in the light of experience, Roy Corlett from the Isle of Man Department of Infrastructure informed the Committee—

“The department may wish to consult on that issue, or some local authorities may wish to draw issues with the legislation to our attention. The department would certainly be prepared to review any elements of the legislation if it received a request from a local authority. We would undertake due consultation to seek the views of all 24 local authorities on the island. Our colleagues from the department of environment, food and agriculture would be involved, too.... in the light of recent developments, I suspect that that could happen in the next few weeks.”<sup>87</sup>

#### *Conclusions and recommendations*

133. The Committee notes the review procedures put in place by the UK Government at the time of the introduction of legislation in England in 2005. Similarly, the authorities in the Isle of Man have expressed the view that a review of certain aspects of their high hedge system may now be warranted, in the light of experience. The Committee believes that there is value in establishing a review process at the commencement of the provisions of the Bill.

**134. The Committee recommends that the Bill include a mechanism for a review. Such a review should take place within a reasonable timeframe, no later than five years, after the commencement of the system. Establishing a defined review date to take account of experience at the time the provisions of the Bill comes into force will provide certainty for local authorities and members of the public as to the mechanism for improving and refining the system in Scotland. Such a review should examine the operation of the Bill in general and not be confined to any specific issues.**

**135. Such a review should include any additional issues identified by local authorities in the operation of the high hedges system which may not have been considered during the progress of the Bill through the Parliament. A review will also be an opportunity for the Government to decide whether any further legislative or regulatory provisions are required to address other issues surrounding nuisance vegetation etc.**

136. The results of the review, and any actions the Government may propose to take as a result of its findings, should be published and laid before the Parliament. This would enable the relevant committee to conduct informed post-legislative scrutiny of the legislation.

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<sup>86</sup> *Matters Relating to High Hedges: Notes to Local Authorities*, page 5 (2008). UK Department of Communities and Local Government. [Retrieved 18 January 2013]  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7736/highhedgesnotes.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7736/highhedgesnotes.pdf)

<sup>87</sup> Local Government and Regeneration Committee, *Official Report*, 12 Dec 2012, Col 1520.

CONCLUSIONS ON THE GENERAL PRINCIPLES OF THE BILL

**137. In conclusion, the Committee reports to the Parliament that it is content with the general principles of the Bill and recommends that the Bill be agreed to at Stage 1. The Bill meets the policy intention of the member in charge in seeking to establish a system to resolve disputes between property owners over high hedges.**

## **ANNEXE A: EXTRACTS OF MINUTES OF THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE**

### **3rd Meeting, 2012 (Session 4) - Wednesday 1 February 2012**

**Decision on taking business in private:** The Committee decided to take item 3 in private.

**Proposed high hedges bill:** The Committee took evidence on the statement of reasons lodged to accompany the draft proposal from Mark McDonald.

**Proposed high hedges bill (in private):** The Committee considered the statement of reasons and agreed that it was satisfied with the reasons given by the member for not consulting on the draft proposal.

### **21st Meeting, 2012 (Session 4) - Wednesday 3 October 2012**

**High Hedges (Scotland) Bill (in private):** The Committee considered its approach to the scrutiny of the Bill at Stage 1 and agreed to undertake an eight week call for written evidence on the Bill. The Committee also agreed to bring this call for evidence to the attention of key stakeholders, as well as utilising any opportunities for fact-finding exercises on the Bill. Finally, the Committee agreed to hold a discussion, in private, at the end of each meeting at which oral evidence is taken; to consider all draft reports on the Bill in private, and to delegate to the Convener, under Standing Order Rule 12.4.3, responsibility for arranging to pay expenses to witnesses under the SPCB witness expense scheme.

### **28th Meeting, 2012 (Session 4) - Wednesday 5 December 2012**

**High Hedges (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

Pamala McDougall, Scothedge

Derek Park, Scothedge

Dr Maggie Keegan, Head of Policy, Scottish Wildlife Trust

Aedán Smith, Head of Planning and Development, RSPB Scotland

Angus Yarwood, Government Affairs Manager, Woodland Trust Scotland

**High Hedges (Scotland) Bill (in private):** The Committee considered the evidence received.

**29th Meeting, 2012 (Session 4) - Wednesday 12 December 2012**

**High Hedges (Scotland) Bill:** The Committee took evidence, via video conference, on the Bill at Stage 1 from—

Roy Corlett, Legislation Manager, Department of Infrastructure, Government of the Isle of Man;

Peter Keenan, Southern Forester, Department of Environment, Food and Agriculture, Government of the Isle of Man;

Colin Whiteway, Clerk, and Paul Parker, Community Warden, Braddan Parish Commissioners; Isle of Man;

Robert Paterson, Land Services Officer, Clackmannanshire Council, Member of the Scottish Tree Officers Group;

Eric Hamilton, Forestry Officer, Dundee City Council, Branch Treasurer, Scottish Branch of Arboricultural Association;

Graham Phillips, Forest Manager, Bell Ingram Limited.

**High Hedges (Scotland) Bill (in private):** The Committee considered the evidence received.

**30th Meeting, 2012 (Session 4) - Wednesday 19 December 2012**

**High Hedges (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

Derek Mackay, Minister for Local Government and Planning, Scottish Government; Gery McLaughlin, Head of Community Safety Law, Scottish Government; Norman MacLeod, Senior Principal Legal Officer, Scottish Government Legal Directorate, Scottish Government.

Mark McDonald, Member in Charge; John Brownlie, Policy Manager, Community Safety Unit and High Hedges Bill Team Leader, Scottish Government; Emma Thomson, Principal Legal Officer, Scottish Government Legal Directorate, Scottish Government.

**High Hedges (Scotland) Bill (in private):** The Committee considered the evidence received.

**2nd Meeting, 2013 (Session 4) - Wednesday 23 January 2013**

**High Hedges (Scotland) Bill (in private):** The Committee considered a draft Stage 1 report. Various changes were agreed to, and the Committee agreed the report for publication.

**ANNEXE B: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE**

**28th Meeting 2012 (Session 4), 5 December 2012**

Written Evidence

[RSPB Scotland](#)  
[Scothedge](#)  
[Scottish Wildlife Trust](#)  
[Woodland Trust Scotland](#)

[Oral Evidence](#)

Scothedge  
Scottish Wildlife Trust  
RSPB Scotland  
Woodland Trust Scotland

Supplementary Written Evidence

[Scothedge](#)  
[Scothedge](#)

**29th Meeting 2012 (Session 4), 12 December 2012**

Written Evidence

[Bell Ingram Limited](#)  
[Eric Hamilton, Forestry Officer, Dundee City Council](#)  
[Scottish Tree Officers Group](#)

[Oral Evidence](#)

Bell Ingram Limited  
Braddan Parish Commissioners, Isle of Man  
Department of Infrastructure, Government of the Isle of Man  
Eric Hamilton, Forestry Officer, Dundee City Council  
Scottish Tree Officers Group

Supplementary Written Evidence

[Eric Hamilton, Forestry Officer, Dundee City Council](#)  
[Department of Infrastructure, Government of the Isle of Man](#)

**30th Meeting 2012 (Session 4), 19 December 2012**

[Oral Evidence](#)

Minister for Local Government and Planning  
Mark McDonald MSP

## **ANNEXE C: OTHER WRITTEN EVIDENCE**

The following submissions were received in response to the Committee's call for evidence on the High Hedges (Scotland) Bill.

Note: certain information has been redacted from some of the submissions published online in order to comply with requirements in relation to potential defamatory material, Data Protection issues and confidentiality.

[Jim Paxton](#)

[Pauline Wilson](#)

[Colin Reid](#)

[Alastair Gowans](#)

[Helen Smith](#)

[Linda McGhie](#)

[Carole Walker](#)

[John Radcliffe](#)

[Philip McAulay](#)

[Janet and Hazel Finlayson](#)

[David G Jones](#)

[Aileen Benson](#)

[Allan Wright](#)

[Elaine Smith](#)

[Andrew Maclean](#)

[Sarah Chadfield](#)

[Desmond Brady](#)

[Donald Craig](#)

[William Biggans](#)

[Alasdair Moodie](#)

[Zander Caven](#)

[Jennie Gibson](#)

[Tommy Bolton](#)

[Duncan Cameron](#)

[Joan and Clayton McCormick](#)

[Bill and Anne Duncan](#)

[Fiona McIntosh](#)

[Carol Glover](#)

[Julian Morris](#)

[Elizabeth Moran](#)

[Bruce Crichton](#)

[Derek Park \(Scothedge\)](#)

[Andrea Brooks](#)

[Neil White](#)

[Pam Cameron](#)  
[Aberdeen City Council](#)  
[James Robertson](#)  
[Peter Robinson](#)  
[Arnold Sidebothan](#)  
[Tom Pyemont](#)  
[Dr Colin Watson](#)  
[Neil Smith](#)  
[Ian Kirton](#)  
[Peter Buchanan](#)  
[UK Mediation](#)  
[Katherine Bain](#)  
[Keith Aitchison](#)  
[Rosemary Meyers](#)  
[Melanie Chambers](#)  
[Ljubica Erikson](#)  
[Alison Bryceland](#)  
[Mr Pedro Gajardo and Mrs Evelyn Love- Gajardo](#)  
[Private submission](#)  
[Professor R and Mrs M Churchill](#)  
[Stephen Catto](#)  
[Margaret Currie](#)  
[Deirdre Balaam](#)  
[Brian Blacklaw](#)  
[Peter McGlone](#)  
[Loch Lomond and the Trossachs National Park Authority](#)  
[Livingston Village Community Council](#)  
[Woodland Trust Scotland](#)  
[John Knowles and Margaret Kane](#)  
[Margaret Bell](#)  
[RSPB Scotland](#)  
[Scothedge](#)  
[Private submission](#)  
[Scottish Tree Officers Group](#)  
[Bell Ingram Ltd](#)  
[Falkirk Council](#)  
[Sheena Watson](#)  
[Alan Motion and John Harkiss](#)  
[Alison Byrne](#)  
[George Donnachie](#)  
[Hannah Ross](#)

[Eric Hamilton](#)

[Carol Walsh](#)

[Mr and Mrs Alexander Rutherford](#)

[Mr and Mrs Brunton](#)

[Mr and Mrs J MacGregor](#)

[Mr R Hopkins](#)

[Muriel G Thompson](#)

[Stuart McHardy](#)

Ann Robertson (submission not reproduced online)

Blackadders Solicitors on behalf of Ann Olsen (submission not reproduced online)

Mr and Mrs Mitchell (submission not reproduced online)

Colin and Jean MacKay (submission not reproduced online)

[Donald Macsween](#)

[Jim Paxton](#)

[Pauline Wilson](#)

[Colin Reid](#)

[Report from the Subordinate Legislation Committee on the Bill](#)

[Evidence from the Finance Committee on the Bill](#)

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