

PROPOSED HIGH HEDGES (SCOTLAND) BILL

STATEMENT OF REASONS ON WHY NO FURTHER CONSULTATION IS REQUIRED

Proposal

1. My draft proposal is for a Bill to create a right to prevent high hedges from interfering with neighbouring property, and to provide a formal mechanism for enforcement of that right in a case of dispute.

Background to proposal

2. The proposal to legislate to provide a solution to the issue of high hedge disputes was a specific option contained in the recent consultation on "High Hedges and other Nuisance Vegetation", which was published by the Scottish Government on 14 August 2009. The consultation also sought views on a number of ways in which creating this legislative solution might be done. The consultation, responses to the consultation, and analysis of those responses can be found on the Scottish Government website at:

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

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

4. The proposal for my Bill can be found at:
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/29731.aspx>

Statement of Reasons

5. In relation to my draft proposal for this Bill, I do not consider that a further consultation is required for the following reasons.

6. The consultation document, referred to above, considered the practical, operational, legal and financial considerations associated with the likely

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

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

8. At a Parliamentary briefing held on 16 September 2009 the then Minister for Community Safety (Fergus Ewing MSP) sought to gather support from elected members for taking action on the high hedge issue. The briefing was attended by elected members from all the main political parties. Following the election in May 2011 and the significant number of new Members in the Parliament, I held a Parliamentary briefing on 26 October 2011. The four main political parties were represented. The view expressed to me was that no further consultation was necessary.

9. I met with Scothedge on 15 September 2011 and have provided updates for them since. Scothedge has a membership of over 200 members from households throughout Scotland (source: "A Growing Problem, Scothedge 2009")

<http://scothedge.colwat.com/files/A%20Growing%20Problem%20FINAL.2.pdf>
(9.89MB)

Scothedge agrees that no further consultation is necessary.

10. Views that have been expressed to me so far, as part of my ongoing engagement with a number of bodies, the public and others with an interest in this proposal, confirm those views expressed during the formal consultation process from August to November 2009. I therefore believe that the views of stakeholders and the public submitted during that period have not materially changed. As a result, I consider that any further consultation would duplicate effort already expended on this issue, incur additional and unnecessary costs and be construed by the public as "over consultation" on a process on which views have already been clearly expressed.

11. It is also relevant to note that there is currently legislation in England and Wales in the "Anti-social Behaviour Act 2003"; in the Isle of Man's "Trees

and High Hedges Act 2005”; and in Northern Ireland the “High Hedges (Northern Ireland) Act 2011”. Links to all are below

- <http://www.legislation.gov.uk/ukpga/2003/38/contents> (England and Wales)
- <http://www.gov.im/lib/docs/transport/msd/local/trees/treesandhighhedgesact2005.pdf> (Isle of Man)
- <http://www.legislation.gov.uk/nia/2011/21/contents> (Northern Ireland).

12. The issue of how any right created is to be enforced remains a key issue to be decided. The two main options are a local authority option (as is the case in England and Wales and elsewhere in the UK); and a court based solution. Both of these options were specifically consulted on in the 2009 consultation that I have previously referred to. The 2009 consultation showed a large number of respondents suggested that replicating or modifying the English and Welsh legislation was the appropriate way of creating a new right. The consultation also showed that private individuals were most likely to oppose civil actions. However, the views of local authorities were more diverse. Four of the fourteen local authorities that replied favoured the option of replicating or modifying the English and Welsh legislation. Four indicated their preference was to use Statutory Nuisance Powers; three preferred the Lands Tribunal; and three favoured civil action of some kind.

13. Given this, further discussion is necessary with local partners in order to finalise the means by which rights are to be enforced in the forthcoming Bill. However, I do not consider that a further public consultation exercise would assist in this connection, as the options for enforcement I am currently considering are the same as those set out in the 2009 consultation. These options are enforcement by way of civil action in the courts; and enforcement through the local authority by replicating or modifying the legislation used in England and Wales.

Conclusion

14. I consider that no further consultation exercise requires to be undertaken on my proposal for a Bill for the reasons set out above. I believe that adequate material has been published on this issue, and is sufficiently detailed to inform the Bill’s policy objectives and eventual production.

15. I request that the Parliament considers this statement of reasons and indicate whether it is satisfied with the reasons I have set out above for not consulting on the current draft proposal.

MARK MCDONALD MSP
21 December 2011