26 October 2017

Dear Bob

With thanks to the Local Government and Communities Committee for its post-legislative scrutiny report on the High Hedges (Scotland) Act 2014. Please find the Scottish Government’s response to this in Annex A. I hope the Committee finds this information helpful.

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Kind Regards

KEVIN STEWART
RESPONSE TO COMMITTEE REPORT RECOMMENDATIONS

The Committee recommends that there should be consistent data collection across all local authorities in order to allow the effectiveness of the policy to be evaluated. The Scottish Government should take steps to achieve this. (Paragraph 25)

The Scottish Government will work with partner organisations, including CoSLA, to update the current guidance associated with the legislation. As part of this work we will specifically consider the issue of data collection both in terms of the types of data that can be usefully collected and the frequency with which this data should be reasonably collected. A key aim of this objective will be to ensure that data can be collected in a consistent way which will help the development of future policy in this area.

We recommend that the Minister considers using the powers under Section 35 to clarify what is and what is not a high hedge. (Paragraph 69)

The Scottish Government recognises the importance of having clear definitions as well as the Committee’s concerns that there is a lack of consistency in how high hedges are defined by different local authorities across Scotland. However, we also recognise that the application of a rigid definition runs the risk of excluding vegetation which may be appropriately considered a high hedge because of the specific circumstances in which such vegetation exists. We therefore believe that a certain amount of flexibility is needed within any definition to allow local authorities to respond in the most appropriate way in different circumstances.

The Scottish Government believes that there is already a clear definition of a high hedge in the legislation but recognises that there is an issue with the definition of what constitutes a hedge. We believe that the addition of a robust and workable definition of a hedge to the guidance would add additional clarity to interpreting and applying the legislation. We will therefore consult with partner organisations, including CoSLA, to develop as clear a definition as possible of what a hedge is. This will include considering why previous definitions were felt to be inadequate and the usefulness of setting out what should not be classified as a hedge.

We were disturbed to hear of instances where alternative trees are being removed in order to circumvent the Act (and its definition of what constitutes a hedge) and believe that local authorities must take into consideration the original state of the hedge and the likelihood that the trees would cause further problems in future when considering these applications and subsequent appeals. (Paragraph 70)

The Scottish Government notes this recommendation is for local authorities and agrees that home owners taking action to deliberately circumvent the Act amounts to unacceptable undermining of the purpose of the Act. As part of the Scottish Government’s considerations for updating the guidance relating to the Act, noted above, we will consider whether any guidance needs to be included to ensure that such circumstances are appropriately dealt with.
We recommend that the Scottish Government publishes revised guidance setting out clearly that applications should be considered in terms of the impact of the vegetation rather than whether or not the barrier was originally planted as a hedge. In addition, the revised guidance should encourage local authorities to be flexible when considering high hedge applications, while still adhering to their green space strategies. (Paragraph 71)

As noted above, the Scottish Government is happy to consider how existing guidance can be improved. Within this revised guidance we will look to clearly set out the considerations that need to be given to any high hedge applications to allow an appropriate and proportionate decision to be reached. While we recognise that the impact of the vegetation is an important consideration, we have concerns about giving this consideration a disproportionate level of prominence within the range of considerations that need to be taken into account.

We are pleased that the Committee has acknowledged the need for green space strategies to be taken into account. The maintenance of woodland, areas of natural beauty and wildlife habitat are essential for maintaining and sustaining our natural environment. In responding to this recommendation we will therefore look to balance all of the considerations to ensure the best decision can be reached through allowing flexibility to accommodate local circumstances.

We believe that local authorities should introduce concessionary rates for those who are in difficulty paying. We also consider the cost of the application should be recoverable from the hedge owner where an application has been successful, such that the local authority can reimburse the applicant. (Paragraph 86)

The Scottish Government notes this recommendation is for local authorities. The legislation already allows local authorities to vary fees and the Scottish Government will consider how the guidance can be updated to make it clearer that they should be maximising opportunities to use this power for the benefit of the communities they serve.

The idea of recovering the cost of the application from the hedge owner where an application has been successful presents a number of difficulties and it is important to note that this issue was considered during passage of the Bill. The oral evidence given by Mark MacDonald MSP to the Committee highlighted the view that passing the cost of the application to the hedge owner would do little to improve relations between neighbours, and indeed could actually lead to a deterioration in these relations, and that it would not be cost effective for local authorities to recover relatively small sums of money to reimburse the original hedge applicant.

The English high hedges model highlighted the need to avoid complex systems relating to high hedge applications as these ran the risk of becoming needlessly convoluted and bureaucratic. The Scottish Government therefore does not believe that the cost of the application should be recoverable from the hedge owner.
The Committee believes that it is imperative that local authorities fully use the powers they have under the Act to ensure owners of high hedges comply in a timely fashion with the conditions of any high hedge notice issued, subject to any wildlife considerations. (Paragraph 96)

The Scottish Government notes this recommendation is for local authorities and believes that the timescales set out for complying with high hedge decisions is reasonable and should be adhered to. Where these are not adhered to it is appropriate and legitimate for the relevant local authority to use the powers available to them to force the hedge owner to comply with the decision. We will consider what could be included in revised guidance on this matter.

The Committee does not believe it is practicable to set a statutory timescale by which applications should be processed however, we recommend that the Scottish Government makes it clear in its guidance that councils should ensure that all applications are processed in a timely manner and, where the process exceeds three months, that councils should update interested parties on progress to date and indicative timescales of when the process will be completed. (Paragraph 97)

The Scottish Government accepts the Committee’s recommendation and will look to strengthen what the guidance says about processing applications in a timely manner, including advising councils that they should, where the process exceeds three months, update interested parties on progress to date and provide indicative timescales of when the process will be completed.