1 May 2019

Dear James

Thank you for your letter of 10 April in relation to the High Hedges (Scotland) Act 2013 (the 2013 Act) – revised guidance. I am writing to provide further clarity on the content of the guidance in response to the questions raised in your letter.

The legislation as passed by the Scottish Parliament deals with high hedges rather than being a broader law dealing with infringements on a home owner’s enjoyment of their property. Any move away from this would undermine the purpose of the 2013 Act. Consideration of the impact of the vegetation on the neighbour’s enjoyment of their property is what the local authority does when considering a high hedge application rather than being a test for whether an application can be made. Therefore, the high hedge process already allows for such considerations on impact to take place, but the subject of the application has to be a high hedge as defined by the legislation for these considerations to be made.

Section 35 of the 2013 Act states that Scottish Ministers may by regulations, subject to the affirmative procedure, modify the meaning of “high hedge” but such action would not change the fact that the vegetation must be a hedge before it can be considered within the scope of the Act. The powers under section 35 were limited by the Parliament when the Bill for the legislation was being considered to balance between the competing interests and ensure that things like vegetation which is vital for the wellbeing of our wildlife was not captured by the legislation.

The Bill at introduction sought a wider power to amend the definition of a high hedge, but a non-government amendment at Stage 2 narrowed the scope of the power to amend, following concerns of the Subordinate Legislation Committee and the lead Committee on the width of the power. It was a specific choice by the Parliament at the time for section 35 to be narrow.

Changes to the subject of the 2013 Act, such as moving from high hedges to all vegetation, would require legislative changes and the Scottish Government believes that such a change would move away from the purpose of the 2013 Act. We therefore do not have any plans to
change the 2013 Act. The revised guidance therefore includes some additional guidance to clarify what is and is not covered. The definition of a ‘hedge’ aims to better describe what the legislation applies to.

In order to assist with the revision of the guidance officials carried out a survey to get the views of all local authorities and gain a better understanding of how effective the legislation has been; how local authorities are interpreting the legislation; whether there is consistency in how the 2013 Act is being interpreted; and what additional guidance local authorities would find helpful. From this we were able to ensure that the revised guidance sets out procedures which are practical and workable and I am, therefore, satisfied that local authorities can and will apply the 2013 Act fully and in the manner intended by Parliament.

I hope the Committee finds this information helpful and reassuring.

KEVIN STEWART