

## Local Government and Communities Committee

### Post-Legislative Scrutiny of the High Hedges (Scotland) Act 2013

#### Summary of Written Evidence

##### Introduction

1. At its meeting on 1 February, the Local Government and Communities Committee agreed to issue a call for views on post legislative scrutiny of the High Hedges (Scotland) Act.<sup>1</sup>
2. This paper provides a summary of the responses.

##### Background to the Act

3. The aim of the Act is to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property and gives the relevant local authority powers to settle disputes between neighbours related to high hedges. Where a hedge has been defined as a high hedge under the Act, an owner or occupier of a domestic property may apply to the relevant local authority for a high hedge notice.
4. If the local authority, having taken all views into account, finds that the hedge is having an adverse effect, it could issue a high hedge notice requiring the hedge owner to take action to remedy the problem and prevent it recurring. Failure to comply with such a notice would allow the authority to go in and do the work itself, recovering the costs from the hedge owner. There is a right of appeal to the Scottish Ministers against decisions of an authority and any high hedge notice issued by it.
5. The Act places a duty on the Parliament to make arrangements for a committee or sub-committee of the Parliament to report to the Parliament on the operation of the Act during the review period. That review period begins when section 2 (relating to applications for high hedge notices) comes into force and ends 5 years after that date, or on such earlier date as either the committee or sub-committee may determine. Section 2 came into force on 1 April 2014.

##### Call for views

6. The call for views was issued on 6 February 2017 and closed on 20 March 2017. 62 responses were received with 45, around 73%, from individuals and 17 from organisations.
7. A list of the written submissions received are attached at **Annexe A** to this paper.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2013/6/contents> [Accessed January 2017]

## Call for views responses

8. The following questions were posed—

- Has the definition of a high hedge as set out in the Act proved helpful? If not, please provide details;
- Do you have any experience of the appeals procedure as set out in the Act?
- Do you have any comments on the enforcement procedures under a high hedge notice?
- Do you have any comments on fees and costs?
- Overall, are there any aspects of this Act which has had a positive or negative impact on your life?
- Any other issues relating to the Act which you wish to bring to the attention of the Committee?

9. Most of the respondents did not answer each question in turn, but rather provided views on their personal experiences. The following is a summary of issues raised.

### Definition

10. Many highlighted issues with the definition of hedge, as set out in the Act. For example, respondents raised the issue where those who had been issued with a High Hedge Notice had removed alternate trees from a row of trees and thus making it no longer being defined as a hedge. John Kinloch explained—

*..the trees are bare-stemmed for the first 4 ft, then thickening out into a 16 ft unattractive loose hedge of no value other than perhaps as a source of irritation...the definition is being used to avoid what would otherwise be a reasonable demand from the local authority to reduce the overall height and impact of the hedge. This removal of alternate trees is being done not for any conservation or amenity reasons but to thwart the purpose of the legislation. The motives are best described as malicious or spiteful.*

11. Denis Parry, in a similar situation, believed the current definition is not helpful—

*... in spite of the fact that a High Hedges Notice under section 14(2)(c) was served on our neighbours, on the final day by which time compliance with the Notice had to be carried out, our neighbours cut down every alternate tree contending that the offending Hedge was no longer a Hedge in terms of the Act. The result was that whereas previously at least there was greenery albeit at a disproportionate height, we are now faced with an unsightly outlook as are our other near neighbours who have all along been fully supportive of the actions we have been obliged to take.*

12. Fife Council found the definition helpful but warned—

*However the mechanisms which can be employed to overcome the definition such as the removal of every other plant or tree so it is no longer legally a*

*hedge does create a situation where the legislation can be brought into disrepute.*

13. Scothedge said, in circumstances where the tree owner removes 50% of the hedge—

*Removal of part of the hedge should not be allowed without enforcement of the removal of the height too as it is quite clear what the tree owners intentions are. By enthusiastic enforcement of a few cases like these, this type of action would quickly stop.*

14. Angus Council said there is still a question as to whether the definition of a high hedge applies to high trees. Stirling Council felt the definition was too general and East Dunbartonshire Council agreed that the definition had to be improved—

*We have had a number of cases where an application has been made relating to a loose group of trees where we have concluded that due to their irregular planting and gaps in canopies they have not been considered a high hedge. In this situation we have refunded half of the fee however a number of applicants have been aggrieved by this decision.*

15. Where the vegetation consists of mixed trees and shrubs, the differing interpretation by local councils of the definition of a high hedge was highlighted. Paul Bruce said—

*We believe that the Act should cover situations like ours where we are now stuck with huge trees and shrubs blocking light from our property and are continuing to grow and nothing can be done about it because of the way the High Hedge definition has been interpreted.*

16. Hugh Brown believed that 'to decide that a high hedge is not a high hedge because there are other trees behind it making it part of a wood is absurd. A high hedge is a high hedge no matter what is behind it.' Kenneth Gray made the point—

*The definition of a high hedge is too restrictive when the problem lies with closely-planted trees which spread sideways as well as upwards at a horribly quick rate. Too much sympathy and leeway seems to be given to the offending party who is generally basking in the sunshine denied to the complainer.*

17. A number of respondents including Sam Andrew and Donald Shearer argued that the definition should cover trees and foliage which block natural light, a point also made by Councillor Martin Greig —

*For consistency, the act should aim to apply where the foliage is dense and clustered and functions in the same way as a 'hedge' – i.e. where the foliage brings the same negative and unwanted consequences of darkness and oppressiveness. The act is intended to deal with these situations albeit in formal terms which are more narrowly circumscribed. There are situations -*

*such as this case - where foliage and plants cannot be classified as 'a hedge' despite having the same nature, characteristics and impacts. The current policy, therefore, appears to be arbitrary.*

18. J Myles & Co made a similar point and provided the following example—

*The relevant local authority thus far has referred to the offending body of trees as a “plantation” and thereafter as “woodland”. Our client is somewhat perplexed as his reading of the Act suggests that the legislation should be available to him to resolve his problem with restricted light reaching his property. The offending vegetation causing the barrier to light consists of a row of two or more trees or shrubs and rises to a height more than two metres above ground level and most certainly forms a barrier to light...However the use of the words “plantation” and “woodland” appears to be causing some difficulty with the relevant local authority accepting that the High Hedges (Scotland) Act 2013 applies.*

19. Dr Donald Brown said that loose definitions in the Act result in differing interpretations by local authorities across Scotland. Roger and Catharine Niven said that the guidelines used by local authorities to interpret the definition are contrary to the spirit of the Act. They told us—

*The phrase causing the problem is: ‘A row of bushes or young trees .... planted closely to form a boundary....The Highland Council refused to consider our application under the Act on the grounds that the hedge does not form the boundary between our property and our neighbour’s. The hedge is planted parallel to the boundary, but between one and two metres away from the fence, which technically delineates the boundary between our land and his. In practice, almost all urban hedges are planted inside a fence or wall.*

20. Colin and Pat McLaren believed that local authorities were misinterpreting the definition contained in the Act and denying individuals access to the appeals process, a point also made by Robert MacIntyre—

*...it has become evident that the law has been administered in a way that has fallen well short of its intended objective. This is because Local Authorities and DPEA Reporters are misinterpreting the meaning of the term ‘high hedge’, leading to many High Hedge applications being dismissed. In the case of Local Authorities, this is without a right of appeal.*

21. South Lanarkshire Council said that the inclusion of both broadleaf and conifers in the definition has resulted in applications to have groups of broadleaf trees felled. On these applications—

*A decision on whether or not to determine these applications has often depended on a subjective judgement as whether or not the trees have been ‘planted as hedges’ or form a continuous barrier. This can prove difficult to consistently determine or judge. It has also resulted in applicants seeking to pursue applications which relate to parts of an area of woodland, of mixed species, bordering properties. Had the Act confined the definition of a hedge*

*to evergreens or semi-evergreen then there would be greater clarity on the kind of cases that it would be appropriate for the legislation to handle.*

22. Stirling Council said that there was a 'lack of guidance on assessing deciduous hedge with regard to loss of light, variety of deciduous plants and seasonal variations in light levels'. Perth and Kinross Council said the definition must be clarified and a section should be added to state that it does not apply to trees and woodlands.

23. North Ayrshire Council said that trees not initially planted or maintained as a hedge but which have become over grown and taken on the form of a hedge are a common complaint and asked whether the Act could provide more clarity in these circumstances. Glasgow City Council also called for more clarity and said that it should be emphasised that a hedge needs to have been planted as a boundary treatment hedge rather than a collection of trees to meet the definition. Aberdeen City Council also called for more clarity and stated—

*It is considered that future clarification should clearly state that the Act only applies to hedges and that any group of trees and/or shrubs need to firstly be considered to constitute a hedge. Future clarification should avoid expanding the remit of the Act and care should be taken to ensure the Act can only be applied to hedges and cannot be applied to groups of trees and/or shrubs that can have a similar impact to a high hedge but do not form a hedge.*

24. The subjective nature of defining 'reasonable enjoyment' was also raised, Ann Forbes recommended that guidance should be produced for local authorities on what constitutes 'reasonable enjoyment.' Sarah Chadfield stated—

*Is the act about shadow length etc, or are 'amenity' and 'reasonable enjoyment' looser term? To my mind, I have lost 'reasonable enjoyment' in that I now sit and look at 4 metres of hedge rather than the open panorama I had previously. I am unable to make an informed decision as to whether this hedge should be subject to a high hedge order because I have no specific information to go on. It is 'high' and I have lost my 'reasonable enjoyment', but apparently not necessarily so in the subjective eyes of the planners.*

25. Perth and Kinross Council called for greater clarity on what is meant by 'reasonable enjoyment of a domestic property' and Angus Council said—

*The question of reasonable enjoyment is quite subjective and hard to quantify. This is a key consideration of any High Hedge application yet the guidance does not provide any substantive guidance of the factors to be considered.*

26. Vreni Fry, owner of two spruce trees, said it would be useful if all emotive language, such as 'reasonable enjoyment' were removed from the Act. Julian A Morris said—

*This is an odd variation of the wording of legislation in all other parts of the UK. In short, without the Act, there can be no expectation of relief from neighbouring vegetation. This amounts to a classic Catch 22 situation. From*

*whence comes the expectation but from the Act itself? It leaves no objective basis for defining expectation.*

27. JB Anderson made the point that hedges and stands of trees which have existed for a long time provide ideal habitats for wildlife and a natural method of flood prevention, and problems arise when new houses are built in adjacent land. He said—

*I would recommend that the planning process is updated to ensure any new building will not create a contravention of the High Hedges legislation by being sited too closely to well established hedges & trees. This should make certain that existing property owners and their new neighbours will not find themselves in a difficult, expensive and confrontational situation from the outset.*

### Appeals procedure

28. The ability to appeal decisions was raised by respondents. Paul Bruce told us when his application was rejected—

*We believe that the council's definition of a high hedge has not been accurate as we have shown above that it has failed to help our situation. Furthermore we have been told that we are unable to lodge an appeal as our vegetation has not been found to be a hedge.*

29. Scothedge said that having no right of appeal in these circumstances constitutes a breach of natural justice and—

*The LA's have thereby wholly circumvented the intention and purpose of the Act and prevented any appeal upon their decision.*

30. Peter Grant and Dr Donald Brown among others urged that the legislation should allow individuals to appeal to the Department of Planning and Environmental Appeals Division (DPEA) of the Scottish Government on local authority decisions where it is deemed that it is not a high hedge. Perth and Kinross Council also make this suggestion.

31. Sarah Chadfield explained that she was unable to ascertain the criteria used by the appeals team to define reasonable enjoyment—

*There should be more transparency in the process to enable members of the public to make informed decisions.*

32. East Dunbartonshire said—

*Appeal decisions have on occasions been inconsistent. One point in particular relates to whether it is appropriate to serve a notice which would result in the death of the hedge. Some appeal decisions seem to have suggested that this is not appropriate however in many cases to achieve an appropriate level of amenity a fatal reduction in hedge height may be necessary.*

33. North Ayrshire Council also highlighted the inconsistencies between planning decisions and appeal decisions—

*...in high hedge cases, a property may have been built or bought to benefit from a coastal view; it would therefore be 'reasonable' to expect that view to be maintained and this should be taken into account. In planning cases, it is long established that loss of a specific view is not a material consideration.*

34. Conversely, East Ayrshire Council stated that the appeals process procedure was no different from any other planning appeal process. East Renfrewshire Council expressed concern at what is considered to be relevant during the appeals process, such as loss of view, which it felt was not relevant.

35. Julian A Morris said experience of the appeals process has been mixed and depended on Reporters to fill in the gaps in legislation and guidance—

*Reporters must substitute the decision with one of their own, and they quite simply do not have the qualifications, experience, equipment, reference material and technical abilities to do so, or access to technical advice. Decisions become subjective and unexplainable. The frustration for parties to appeals is palpable and real.*

36. Fife Council said that it was difficult to quantify the costs associated with enforcement saying—

*This area is being looked at within the planning review however it is an area which should be incorporated into the High Hedge legislation review to enable the cost of direct enforcement action to be recovered as quickly and efficiently as possible to prevent unrecoverable unbudgeted expense to the local authority.*

### Enforcement procedures

37. Respondents did not believe that full compliance with high hedge notices is being enforced appropriately by local authorities. Denis Parry said—

*...once a Notice has been served, the Local Authorities must ensure compliance in full and they should have no right to deviate in any way whatsoever.*

38. Margaret Stewart told us—

*If the neighbour does not comply, then let the sufferer have the right to go to the council, without paying them anything, and get them to deal with the problem, charging the owner.*

39. East Renfrewshire Council explained that enforcement can be difficult and frustrating—

*Direct action by the Council is now imminent. If the Council is required to undertake the works then it is suggested that we should also have the ability to serve a fixed penalty notice for non-compliance with the notice.*

40. John Bolbot believed the Act is not working primarily due to non-compliance, he warned—

*Obviously if a precedent is set that a determined non-complier can simply ignore the law (or perhaps use the obvious excuse of 'I can't afford it') and get away with it then word will quickly spread to other High Hedge Offenders and the High Hedges Act will be useless – a dead duck.*

41. The City of Edinburgh Council felt there was an anomaly in that there was no requirement to register a High Hedge Notice with the Registers of Scotland—

*This means that the presence of a Notice does not appear in title searches and may be unknown to prospective purchasers yet the Notice affects future owners who are bound by a previous High Hedge Notice and could face enforcement action.*

42. East Renfrewshire Council explained that enforcement can be difficult and frustrating, and suggested that—

*If the Council is required to undertake the works then it is suggested that we should also have the ability to serve a fixed penalty notice for non-compliance with the notice.*

#### Fees and costs

43. The differing costs across council areas, ranging from around £200 to £500, were raised by many respondents and the lack of explanation for this. Denis Parry told us—

*As regards fees and cost there is a wide disparity amongst Local Authorities as to what they consider appropriate.*

44. South Lanarkshire Council and Perth and Kinross Council said that the fee charged should be set nationally and should not be determined individually by each Local Authority.

45. Many respondents including Alasdair Moodie and Pamela Baillie, suggested that the fees associated with applying for a high hedge notice should be paid by the hedge owner, not the complainant. James Barr's comments were typical—

*There should be no cost to the complainer where a Council upholds their cause for complaint. All costs should be borne by the hedge owner.*

46. The point was echoed by Nancy Clunie who posed—

*I can understand the need for a fee but surely the person in the wrong should pay.*

47. A number argued that successful applicants should be able to recover the cost, East Ayrshire Council suggested—

*Where it subsequently turns out that the hedge is causing a nuisance and gets a notice served it may be worthwhile exploring a mechanism where the recipient of the notice is required to refund any fees paid by the applicant as part of the enforcement process.*

48. A point echoed by John Kinloch who stated—

*So in fairness a successful applicant ought to be able to reclaim the cost of the charges which he has had to pay to the local authority. Otherwise, it is quite conceivable that the costs to the hedge-owner may be considerably less than the costs to the successful applicant. Money is probably not the prime mover, but it is an issue of fairness.*

49. Sandra Dobson agreed with this and also suggested waiving of fees for those unable to pay—

*Where an application is successful it would be reasonable if the fee charged was repaid to the appellant and recharged to the hedge owner. Not everyone has the money to pay the fee. Some system should be in place where those unable to pay are able to have the fee waived. That would give them the ability to access legislation that better off people can afford.*

50. Pamala and James McDougall, founder members of Scothedge said the fees were unfairly high, telling us—

*In contact with many other hedge victims as founders of Scothedge, we know that many who would seek legal redress cannot afford to pay the fees. This is an injustice. Because Councils are allowed to set their own fees it is noticeable that fees across Scotland vary widely and is unfair, from £192 to £500. Fees should be reassessed, should be consistent throughout Scotland and with a sliding scale of fees taking account of the ability to pay and making allowances for those on benefits, pensioners and the low paid.*

51. East Ayrshire Council made the point that the legislation does not allow for concessionary rates for low income families. Duncan McAllister put it simply when he said 'the proposed fee is extortionate and should not exist' and Kenneth Gray made the point that the fees could make applying prohibitive—

*Our local council requires an up-front fee of £495 before proceeding with a HHN application. This is a considerable amount of money to spend with no guarantee of success. It must deter many put-upon people from proceeding,*

*and begs the question of what is the point of legislation which makes it so difficult and pedantic to fulfil its purpose.*

52. Vreni Fry believed the fees to be reasonable saying 'It does encourage people to think twice before submitting an application'.

53. RTPi Scotland highlighted the current financial constraints in the planning service and said that the fees charged are unlikely to be at a level that would compensate for planners being diverted from their primary duties.

54. Glasgow City Council outlined the basis for its £500 cost—

*Glasgow set this figure on the basis of analysis of costs through the "Costing the Planning Service" exercise carried out under the banner of Heads of Planning Scotland for the Executive Committee and facilitated by Improvement Services. The application involves the same amount of processing, consideration as a planning application but with the higher potential for appeal related work given the rights of appeal both to the applicant and the recipient.*

#### Other issues

55. Respondents raised a number of other issues including—

- the extent to which this issue has caused upset/stress/depression
- councils should use the same high hedge notice application form
- clearer guidance for councils
- a time limit should be set from the application of a High Hedge Notice to the decision by the Council
- the introduction of canopy width reduction as a required action in High Hedge Notices
- danger to life and property is not taken into account in the Act
- the benefits of free pre-assessment services
- Fixed penalty notices for failing to comply with a High Hedge Notice

**Written Submissions Received**

- [Submission from Ann Forbes](#)
- [Submission from Ruth Hughson](#)
- [Anonymous Submission](#)
- [Submission from James Barr](#)
- [Submission from John Kinloch](#)
- [Submission from Dr J N Cape](#)
- [Submission from J Myles & Co](#)
- [Submission from Nancy Clunie](#)
- [Submission from Sandra Dobson](#)
- [Submission from Paul Bruce](#)
- [Submission from John Williamson](#)
- [Submission from Sarah Chadfield](#)
- [Submission from Margaret Stewart](#)
- [Submission from East Dunbartonshire Council](#)
- [Submission from Kenneth Gray](#)
- [Submission from Denis Parry](#)
- [Submission from Pamala and James McDougall](#)
- [Submission from Robert Howard](#)
- [Submission from Elizabeth and Ian Brunton](#)
- [Submission from Roger and Catharine Niven](#)
- [Submission from Scothedge](#)
- [Submission from Pamela Ballie](#)
- [Submission from Colin and Pat MacLaren](#)
- [Submission from S Allan](#)
- [Submission from Vreni Fry](#)
- [Submission from Mark Lough](#)
- [Submission from William Quinn](#)
- [Submission from Dr Martyn Ward](#)
- [Submission from Sam Andrew](#)
- [Submission from North Ayrshire Council](#)
- [Submission from East Renfrewshire Council](#)
- [Submission from East Ayrshire Council](#)
- [Submission from John Bolbot](#)
- [Submission from Donald Shearer](#)
- [Submission from Robert MacIntyre](#)
- [Submission from RTPi Scotland](#)
- [Submission from Aberdeen City Council](#)
- [Submission from Stirling Council](#)
- [Submission from Peter and Liz Grant](#)
- [Submission from Dr Donald Brown](#)
- [Submission from J B Anderson](#)
- [Submission from Hugh Brown](#)
- [Submission from South Lanarkshire Council](#)
- [Submission from Glasgow City Council](#)
- [Submission from Angus Council](#)
- [Submission from Jane Harker](#)

- [Submission from Perth and Kinross Council](#)
- [Submission from Fife Council](#)
- [Submission from Julian A Morris](#)
- [Submission from Councillor Martin Greig](#)
- [Submission from Joan and Clayton McCormick](#)
- [Submission from Alasdair Moodie](#)
- [Submission from Duncan McAllister](#)
- [Submission from Harry Jamieson](#)
- [Submission from the City of Edinburgh Council](#)
- [Submission from South Ayrshire Council](#)
- [Submission from West Dunbartonshire Council](#)
- [Submission from Alex Cole-Hamilton MSP](#)
- [Submission from Lewis Macdonald MSP](#)
- [Submission from John Lewis](#)
- [Submission from Dave Mackie](#)